

# statewatch

monitoring the state and civil liberties in the UK and Europe

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Tampere European Council, 15-16 October 1999

## The story of Tampere

### an undemocratic process excluding civil society

"Tampere" was a very strange "Summit". It was a summit of EU "spin" (for non-UK readers this means putting the most positive gloss on everything). It was a summit like no other (except the extraordinary summit in Luxembourg on employment, 20.11.97) where no preparatory reports were available, only the final summit conclusions. This special report traces what was available and who decided what.

In the weeks running up to the summit NGOs and voluntary groups said that Tampere should be about "freedom" and "justice" and not just "security" ("Tampere European Council: An 'Area of freedom, security and justice' or an 'obsession with security'?", *Statewatch*, May-August, 1999) and this was a theme embraced by EU leaders up to and at Tampere. The other main criticism, that no preparatory reports were available to civil society, was never addressed. However, in the latter mode the Tampere Conclusions says:

*The area of freedom, security and justice should be based on the principles of transparency and democratic control. We must develop an open dialogue with civil society on the aims and principles of this main area in order to... (para 7)*

It might be thought this paragraph would conclude with something like: "allow civil society to play its full part in the decision-making process." But no, it ends:

*[in order to] strengthen citizens' acceptance and support.*

And here is the nub. The intention is not to enable citizens and civil society to participate but rather to "spin" policies in such a way that *passive* citizens "accept" and "support" what is being done in their name.

#### The Tampere process - background

The Amsterdam Treaty in Title VI of the TEU and Title IV of the TEC set new objectives for justice and home affairs in the EU covering policing, customs, legal cooperation, visas, immigration and asylum. This was followed up by the "Action

Plan establishing an area of freedom, security and justice", a detailed programme for the Council and Commission adopted at the December 1998 regular European Council in Vienna (some Council documents refer to this as the "Vienna Plan"). The Action Plan contains 51 specific objectives with target dates of two and five years.

The idea of a special European Council on justice and home affairs was put forward by Spain (following a suggestion by Jacques Santer) at an informal European Council at Pörschach, Austria on 24-25 October 1998. The proposal was formally adopted at the Vienna Summit at the end of the Austrian Presidency of the EU. The intention was to put "justice and home affairs" at the centre of the EU agenda in the same way that previously the original customs union, then the internal market, and more recently the common currency ("euro") had been.

The December 1998 Justice and Home Affairs Council (JHA) spoke of the Tampere meeting considering three major items: 1) a strategy paper on migration and asylum; 2) the Action Plan/Vienna Plan; and 3) the High Level Group report and action plans on six target migration "producing" countries. In the event these three major reports were not discussed as such at Tampere, rather the Tampere Conclusions assumed these three reports had already been agreed - which they had.

So what was to be on the Tampere agenda, what was its purpose?

By June there was no concrete agenda, and no preparatory reports, in the public domain. On 18 March the German and Finnish Presidencies had written jointly to all EU governments and then carried out the first of two "tours of capitals" in April and May (the second started at the end of September). This established agreement on the three themes to be discussed: a) asylum and immigration; b) the fight against cross-border crime; c) the establishment of a "European judicial area".

At the end of July the UK House of Lords Select Committee on the European Communities produced a report on "Prospects

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for the Tampere Special European Council" (HL 101, 27.7.99). This includes a useful background to the broad issues, as under a-c above, and the UK government's contribution to the summit. The UK contribution, while acknowledging that immigration and asylum would be given particular attention, singled out the mutual recognition of judicial decisions, "citizen's access to justice" and "preventing and combatting youth crime". The report said that there "have to be tangible benefits for the citizens - most importantly, in relation to civil liberties" and that accountability remained a major problem. In evidence Home Secretary Jack Straw told the committee that "whenever two or three Interior Ministers are gathered together, they tend to talk about nothing else" than asylum and migration.

So was Tampere to be more about "freedom" and justice" than "security" (immigration and asylum and policing)?

Five documents were being discussed in the Council working parties in June and July: 1) asylum and immigration, 9.7.99; 2) criminal matters, 12.7.99; 3) civil law, 23.6.99; 4) "Guidelines for a European migration strategy", 1.6.99; and 5) "Mutual recognition of judicial decisions and judgements in criminal matters", 29.3.99. All were clearly relevant to the three themes set out in the Presidency's letter and tour of capitals, but were they going to be on the agenda at the informal meeting of JHA Ministers in Turku in September and then the JHA Council on 4 October and were these the only documents?

A "Presidency Information Note" (SN 2946/1/99) dated 13 July setting out a full programme between July and the October Tampere meeting seemed to include the five documents, and implied discussions on these at the Informal JHA Council in Turku (16-17 September) and the JHA Council in Luxembourg (4-5 October). If this was accurate then civil society, if it could get access to the documents, could perhaps take a view on the issues.

### **Turku and the Presidency "agendas"**

The gathering of the JHA Council in Turku shed some light on what might be on the Tampere agenda, but not much. The Presidency issued five or six very general press releases (see sources below), the UK, Denmark and Sweden launched a "Joint Initiative on crime prevention and youth crime" and Germany and France presented their demands (see below).

At the Presidency press conference it became clear that there was to be no commitment to the "mutual recognition of judgements" in general but only an initial agreement on specific offences such as extradition and money-laundering. It also emerged that the adoption of similar, if not equal, treatment of refugees and asylum-seekers on reception (for example, dispersal and vouchers) and on education, work and welfare was to be used in the "information campaigns" in the six third world countries in the High Level Groups' Action Plans.

It was the letters from the Finnish Prime Minister Mr Lipponen to all EU governments which provided the best guide to Tampere the last of which, at the end of September referred to the "attached draft agenda".

But if this "draft agenda" plus the five early summer documents formed the basis for Tampere they were not presented as such to parliaments nor were they available to most NGOs and voluntary groups and citizens. Nor were they on the JHA agenda in Luxembourg.

### **JHA Council, Luxembourg, 4 October**

The Justice and Home Affairs Council had, in the words of the Presidency, only been "submitted by way of information" the report of the High Level Group - it did not discuss or agree it as it was not meant to. Thus the JHA Council in Luxembourg did *not* agree the High Level Group report because it was not asked to because it was a so-called "cross-pillar" report (covering first pillar economic and humanitarian aid, second pillar diplomatic

pressure, and third pillar demands for the automatic return of refugees to their country or "region" or origin). So presumably this far-reaching report was discussed by the General Affairs Council? No, the General Affairs Council simply nodded it through on 12 October without any discussion as an "A" Point.

The scheduled two day JHA Council ended with a late Ministerial lunch on day 1.

As to the Tampere Council, there were *no* reports on the table and the Ministers simply "discussed it over lunch" where they were apparently much concerned with being excluded from going to the Tampere Summit - it being a long-established tradition at Summits/Council that the Heads of Government (Prime Ministers) are accompanied only by Foreign Secretaries (all preparations for Summits go through the EU General Affairs Committee which is comprised of Foreign Secretaries).

The scheduled Presidency press conference was upstaged by one organised by Germany, France and the UK - which was only announced in the middle of the morning. The Joint Note put out by Germany and France launched at Turku was now re-launched with the UK joining in. The object of this "Note" was to emphasise that immigration and asylum stayed top of the agenda in Tampere. What was new, and on the Presidency's "agenda", was that third country nationals "residing legally and long-term.. were entitled to be fully integrated" and "as soon as good integration has been achieved and confirmed, it is natural and desirable that the foreigners defined.. should acquire the nationality of their state of residence". What is unclear is whether they were talking about third country nationals becoming full EU citizens, citizens only of the country of residence, or naturalised in some kind of half-way house as second-class citizens. This is apparent because in the next breath (or rather paragraph) the "Note" says:

*8. Germany, the UK and France emphasise that foreigners have responsibilities as well as rights and that they have in particular the obligation to respect and to share the laws which exist in Europe both in private life (personal rights) and in social life.*

*In this regard, common procedures for withdrawal of residence permits and for expulsion, where there is a threat to public order and security, should be sought by the European Union.*

EU citizens cannot be expelled (or have their right to live in the EU withdrawn) if their actions or beliefs are deemed to threaten public order or security but this could happen to "foreigners"/third country nationals/second-class citizens.

### **"Illegal immigration and trafficking"**

A consistent, common theme in Turku at the Informal JHA Council, at the JHA Council in October (during the presentation of the Germany, France and UK plan), and at the Blair-Straw-Cook press conference in Tampere was "illegal immigration" and the assumption that all "illegal" migrants enter the EU with the help of organised criminal gangs. Yet the "1998 Annual Report on police cooperation under the Schengen Convention" reports that during a pilot operation in 1998 of:

5,000 people [who] were detained either on illegal entry, in attempting illegal entry or when illegally resident on the territory. Approximately 500 of these were proven to have been smuggled in.

This operation was carried out after careful planning by Schengen states to target known routes. Although it is not possible to extrapolate from these figures, it can be said that according to this official report *only 10% of "illegal immigrants" detained were "smuggled" in by organised criminal gangs.*

### **Tampere, 15-16 October**

The Tampere Council on 15-16 October started with the same kind of general press releases as had been given out in Turku, a month earlier. Although Interior Ministers were not meant to be

present Jack Straw was there alongside Robin Cook and Tony Blair (the only other Interior Minister present was from the Netherlands, even the Finnish Presidency Justice Minister and Interior Minister were not there).

Although there was some UK embarrassment as to why the new Ministers and parliament in Scotland were not present as they had a right to be Straw-Blair-Cook were clear that the purpose of the Summit was to tackle "illegal immigration and allow no hiding place for criminals". Straw attacked another embarrassing situation which has found UK courts coming to a different view from EU partners on refugees from "non-state" persecution, "our courts adopted a wide definition, I want a narrow definition". While Straw said the UK was adamantly against an EU "Single Judicial Space" he was enthusiastic about "Eurowarrants" which would lead to the "arrest and transfer of our own nationals plus any other suspects for trial".

It appears that the only document "on the table" was the 14 page "draft conclusions" which was revised by a group of officials overnight and redistributed to delegations early on Saturday morning - this small group of officials were from the Presidency, the Commission and DG H (justice and home affairs) of the Council General Secretariat. At about 10.00 am on the final morning the revised "draft Conclusions" were available to the media, and to NGOs actually in Tampere - after a morning session which lasted until 12.40 the final, amended, "Conclusions" were announced at 2.00 pm.

In Turku (Informal JHA Ministers meeting), Luxembourg (JHA Council) and Tampere (Summit) it was hard not to get the impression that EU government ministers and prime ministers did know about the "headline issues" (issues likely to get in the headlines) but little of the details. The "key players" were the officials on the small drafting group (officials like Mr Charles Elsen, head of DG H in the Council and Mr Adrian Fortescue, director-general of the Commission justice and home affairs directorate) and those from the Article 36 Committee and the Strategic Committee on Immigration and Asylum (supported by a great multitude of specialist officials who sit on the Council working parties).

At times it was a bit like the Peter Sellers scene in the film "Dr Strangelove" on the one *hand* Prime Ministers and Ministers knew they should be emphasising the positive, "citizen-friendly", aspects of "freedom" and "justice" but on the other *hand* the "security" aspects, "threats", "illegal immigrants", "organised criminal gangs and illegal immigration" and "asylum-shopping" kept slipping out.

A realistic assessment of the "Tampere process" would have to conclude that the only documents of substance were the two September letters from the Presidency setting out the "draft agenda" and the draft and final "Conclusions" of the summit - the so-called "Tampere milestones".

As an exercise to bring the "Union ever closer to the people" history will be the judge. As a process involving parliaments (national and European), civil society and citizens Tampere was a complete sham - but then it was only intended to: "to strengthen citizens' acceptance and support" not their participation in democratic decision-making.

*Draft Presidency Conclusions, Tampere European Council, 15 and 16 October 1999, SN 162/99, undated but put out on the morning of 16.10.99; Presidency Conclusions, Tampere European Council, 15 and 16 October 1999; Follow-up of the Tampere Summit: Technical working paper, drawn up by the Presidency, Commission and General Secretariat of the Council, dated 25.10.99; "1998 Annual Report on police cooperation under the Schengen Convention", doc no 8744/99, ENFOPOL 39 COMIX 34, 2.6.99; Letter from Finnish Ministers of Justice and Interior, 3.9.99; Letter, "draft agenda", from Finnish Prime Minister, last week of September, 1999; Joint Note by France and Germany concerning asylum/migration for the European Council in Tampere, 15/16 October 1999, 17.9.99 and UK, France Germany Note, 4.10.99; Presidency Information Note: Preparation*

*for the European Council (Tampere, 15/16 October 1999) - Presidency presentation procedure, SN 2946/1/99 REV 1, 13.7.99; Concrete actions harmonising asylum and immigration policy expected of Tampere Summit, Finnish Ministry of Interior, 17.9.99; Creation of European Area of Justice important challenge to EU, Finnish Ministry of Justice, 16.9.99; Tampere Special European Council, UK Position Paper, 5.10.99; Preparation of the European Council of Tampere - asylum and immigration issues, Presidency to Strategic Committee on Immigration, Frontiers and Asylum, 10015/99, ASIM 31, 9.7.99; Guidelines for a European Migration strategy, Presidency to Strategic Committee on Immigration, Frontiers and Asylum, 8815/99, ASIM 23, 1.6.99; Preparation of the European Council of Tampere, 15-16.10.99, 9576/99, JUSTCIV 91, 23.6.99; Spanish Contribution to the preparation of the European Council in Tampere, 19.7.99.*

**See the features in this issue on what was decided at Tampere, "A victory for "spin" over content? and on the High Level Group report on the targeted countries. Many of the document sources are available full-text on the SEMDOC website.**

## CIVIL LIBERTIES

### Civil liberties - in brief

■ **Spain: New data protection law.** On 30 September the Spanish Congress approved a law on data protection, repealing the present law. The old law was drawn up in 1992 and an appeal against some of its articles is still being considered by a constitutional tribunal. Among the new measures is the creation of a publicity centre for citizens wishing to receive information; free access for every citizen to the information which is stored in the automated databanks and an obligation on companies to keep the databanks updated and to provide accurate details of those registered. It is curious that several of the unresolved articles in the old law which were appealed before the constitutional tribunal are included in the new law, (eg. the exclusion of guarantees expected from private databank services regarding archives of public interest, registration or those relating to security). Opposition groups criticised this tactic, portraying it as a means of avoiding forthcoming decisions which may rule such articles to be unconstitutional, by transferring them into a new law which has not yet been appealed before the tribunal.

### Civil liberties - new material

**Review: "Do or die: Voices from the ecological resistance".** *Do or Die* (special pre-millennium tension issue) No 8, 1999, 346pp, (ISSN 1462 5989). Unrivalled review of resistance on the ground in a range of ecological and social movements, combined with interesting discussion. The UK section includes J18, the visit of the Intercontinental Caravan, squatting and a round-up of Direct Action Sites. Discontent in other places range from anti-fascism in Germany and Poland, a football tour of Zapatista communities in southeastern Mexico by a team from Bristol and activism in Israel. Includes a range of reviews and contacts, £3.60. *Do or Die, c/o 6 Tilbury Place, Brighton, East Sussex, BN2 2GY, e-mail: doortp@yahoo.co.uk. Back issues are sold out, future ones can be ordered; a lot of D&D material is on the web: <http://www.eco-action.org/dod/>.*

**Rights.** Scottish Human Rights Centre, September 1999, pp4. Has pieces on "Children in police cells", mental health (the "Ruddle" case) and a response to the Stephen Lawrence inquiry. Available from SHRC, 146 Holland Street, Glasgow G2 4NG, Tel. 0141 332 5960, Fax. 0141 332 5309, email: shrc@dial.pipex.com

**Squall Download.** Issue 1 (October/November) 1999, 20pp, 20p. The welcome return of *Squall* includes articles on the prevarication of the freemasonry in disclosing its membership, Indonesia and the arms trade

and 1999's People's Global Action conference in Bangalore, India. "Download" is a digest of *Squall's* website material (updated twice-weekly), <http://www.squall.co.uk>.

#### Parliamentary debates

**Freedom of Information: Select Committee Lords** 17.6.99. cols. 417-418

**Genetically Modified Crops Bill Lords** 18.6.99. cols. 545-569; *Commons* 30.6.99. cols. 312-319; *Lords* 9.7.99. cols. 1173-1196; *Lords* 16.7.99. cols. 647-650; *Lords* 20.7.99. cols. 815-818

**Begging Lords** 7.7.99. cols. 869-871

**Travellers Commons** 19.7.99. cols. 940-948

## IMMIGRATION

### SPAIN

#### Violence against immigrants

Madrid council has removed 100 Romanian families from an area in the Malmea neighbourhood where they had been living for a year. As they were being ejected on 8 July, a five-year-old boy was run over on the main road. Following protests after the eviction, and the Romanians' refusal to leave Madrid, the local council erected a camp in an uncultivated field ten kilometres from Madrid. It was set up in three days using army tents. There were attacks against Maghreb country citizens in the Ca'n Anglada neighbourhood in Terrassa on 14 July. An initial fight between youths developed into an open confrontation against Maghreb immigrants by some people from the neighbourhood. Commercial establishments run by Maghreb immigrants were stoned, and several xenophobic demonstrations were organised. A building inhabited by immigrants in Banyoles (Girona), and a mosque in Girona were set alight on 19 July resulting in injuries to three Ghanaians.

Members of racist groups have increased by a factor of five in the last four years, according to the second Raxen report (RAXEN, European Monitoring Centre of racism and xenophobia) which aims to document racist and xenophobic attacks in Spain. In 1995 police sources only identified 2,331 youths as being members of violent groups, most of whom were football supporters. By 1998, 11,132 violent youths were under security force surveillance. According to estimates from the *Movimiento contra la Intolerancia* (Movement against Intolerance), the number of people associating with organised violent groups is at least 10,400, but could be as high as 20,800. These groups have provoked thousands of racist attacks in the last decade.

### BELGIUM

#### Roma caught in deportation trap

Fifty Roma have been caught in a deportation trap. Using techniques chillingly reminiscent of thirties Germany, Gent police invited 150 Roma to come to their local police station to "round off their files". Over 50 people turned up, only to find themselves detained and sent to the notorious 127bis asylum centre in Steenokkerziel. They were deported to Slovakia. The trap also extended to children whose parents had been detained. In what has been described as a well prepared plan by the Belgian home office children were hauled out of school by police following the arrest of their parents. Gent police have also begun arresting people in their homes. Anti-deportation

campaigners are now warning asylum seekers and migrant communities to expect widescale round-ups. The Belgian government has denied setting traps, claiming that the Roma were free to go home if that was what they wanted to do. However, a lawyer for the Roma has described the government claim as "rubbish". He stated:

*...people turned up at police stations suspecting nothing. They were offered a stark choice; agree to deportation or go home and be arrested by the police. The thirties are back.*

Although they are described as economic migrants, recent reports have suggested that Roma living in Eastern Europe have genuine reasons to fear for their lives. They allege that Slovakian police have been cooperating with far-right groups in attacking Roma ghettos. In one recent raid police beat a one-year old child on the sole of his feet, whilst in the Czech Republic 27 Roma have been killed by racists in the last ten years. The deportations have not gone unopposed. A demonstration against deportations held outside Steenokkerziel was broken up by police using water cannons, injuring one demonstrator in the process.

*Solidair* 6.10.99.

### UK

#### Refugees under attack

A public meeting in Camden, north London, on October 27 was warned that the refugee community is under attack "both through the Asylum legislation proposed by the government and as victims of violent racism." Highlighting the intimidation of the Somali community the National Civil Rights Movement (NCRM) meeting brought together a number of families whose relatives have been either killed or seriously injured and launched campaigns around the cases of Farhan Mire and Liban Ali. Addressed by Liban's sister the meeting heard how, last June, her brother was attacked by a racist gang, beaten about the head, and left for dead in Leicester city centre. The young Somalian remained in a coma for five weeks. In a climate that Suresh Grover of the NCRM ironically described as "a post Macpherson paradise", Liban's attackers still remain at liberty. Farhan Mire's cousin described how Farhan was kicked to death by a white man in an unprovoked attack in Harrow, west London in December last year. A suspect was arrested by police officers but on the eve of the committal proceedings the Crown Prosecution Service (CPS) discontinued the case. The family have lodged a complaint against the police but have yet to receive a reply. They are also demanding a meeting with the CPS and the Metropolitan police commissioner to express their concerns at the handling of Farhan's murder. In an emotional discussion session representatives of the Somali and other refugee communities expressed their disgust at government immigration procedures, and fear of racist attacks and killings, and police assaults. In summing up the meeting the NCRM's Suresh Grover explicitly linked the spate of racist attacks on refugees with government immigration and asylum policies. Contact: NCRM, c/o 14 Featherstone Road, Southall, Middlesex UB2 5AA, Tel 020 8574 0818, Fax 020 8813 9734, email: [info@ncrm.org.uk](mailto:info@ncrm.org.uk)

#### Key ruling on "safe third countries"

In a ruling which may affect decisions in a considerable number of asylum cases, the Court of Appeal, on 23 July, held that the Home Secretary had acted unlawfully in issuing certificates ordering the return of two asylum seekers to Germany and one to France, on "safe third country" grounds. This is a crucial ruling

as the core principle underpinning the court's decision appears to have been a determination to stand by a strict interpretation of the 1951 Geneva Convention Relating to the Status of Refugees, (and its 1967 Protocol); in particular, to uphold the fundamental and internationally applicable refugee definition contained in article 1A (2) of the Convention.

The three asylum seekers in question, Adan, Subaskaran and Aitseguer, sought leave to apply for judicial review of the Home Secretary's decision to remove them on "safe third country" grounds, (in line with the Dublin Convention), by issuing certificates to that effect under Section 2(2)(c) of the Asylum and Immigration Act 1996.

In all three cases the applicants were claiming that they were at risk of persecution from non-state agents. Ms Adan, from Somalia, had her claim for asylum rejected in Germany and subsequently came to the United Kingdom. She was seeking asylum from an armed group who were persecuting her clan. Mr Subaskaran fled via Germany from Sri Lanka, fearing persecution at the hands of the Tamil Tigers. Mr Aitseguer fled from Algeria via France because of death threats made against himself and his family by Islamic fundamentalists. Their grounds for seeking judicial review of the Home Secretary's decision were that their removal to France and Germany would contravene the United Kingdom's obligations under the 1951 Geneva Convention, because they *could not* be granted refugee status in France or Germany, owing to those countries' interpretations of certain parts of the Convention. Before the appeal hearing date, the Home Secretary decided that he would consider the substantive asylum application in each case, perhaps hoping to avoid the court's consideration of the issue of "safe third countries". The court, however, held that there was sufficient public interest in a hearing on these very matters for it to hear the cases in full. The "safe third country" issue was one which would arise in a large number of pending cases.

Broadly constructed, the prevailing interpretation of the 1951 Convention in France and Germany, known as the "accountability" theory of interpretation, requires persecution, (the basis for a claim for asylum), to be attributable to the state. Thus not only does an asylum seeker have to show that s/he is being persecuted, or fears being persecuted for one of the five reasons enumerated in the Convention, but also that, in the case of Germany, the persecution is directly attributable to the state or to a quasi-state authority. If a claimant seeks to rely on persecution by a *non-state* agent, s/he would also have to show that the state either tolerated or encouraged the persecution, or was *unwilling* to afford protection against it. In France, it is possible to claim fear of persecution by a *non-state* agent, but in this case it must also be shown that the state was *unwilling* to afford protection.

Article 1A(2) of the 1951 Convention defines a refugee as any person who, "Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country of origin and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country....". The approach to interpreting the 1951 Convention which prevails in the United Kingdom, and indeed in most of the states party to the Convention, (the "protection" theory), recognises a possible *inability* of a state to afford protection from persecution, as well such unwillingness as posited above. This inability may, for example, arise from there being no competent or effective state authorities in the country of origin.

There is thus a significant difference in the interpretation of article 1A(2) of the Convention by the United Kingdom on the one hand, and by France and Germany on the other. It was this matter to which the Court of Appeal addressed itself.

The Court held that the interpretation of article 1A(2) of the Convention in France and Germany deviated from the true international meaning of the Convention which, it was

emphasized, must be regarded as a living document. The court accepted that there would be variance in the ways different states party to the Convention chose to apply it and that legitimate disagreements over matters of *fact* would arise. Article 1A(2) however *could not be the subject of legitimate disagreement*. The article was fundamental to the protective measures contained within the Convention; its interpretation was a matter of *law*, not one of fact. If a country were to qualify as a "safe third country", to which asylum seekers in the United Kingdom could lawfully be removed, that country would have to apply the 1951 Convention, in full respect of its true international meaning. Moreover, if the Home Secretary decided to issue certificates under section 2(2)(c) of the Asylum and Immigration Act 1996 in any case where the scope or interpretation of article 1A(2) arose, the court was obliged to provide an authoritative interpretation of that article and to supervise the Home Secretary's decision for errors of law.

The court's view in this case was clear. The true international meaning of the Convention required article 1A(2) to be interpreted so as to extend to persecution by non-state agents in which the state was not complicit, but against which it was unwilling *or unable* to provide protection. France and Germany's interpretation of the Convention was thus, as a matter of law, at variance with its international meaning. Therefore the Home Secretary was not entitled to issue the certificates for removal.

## ITALY

### Kosovo Romas denied refugee status

The Italian government is to treat Roma as illegal immigrants rather than refugees, denying them access to temporary residence permits. Interior Ministry sources explained that the arrival of thousands of fleeing Kosovo Romas in Italy will be viewed as a problem of human trafficking while Ministry spokesperson Daniela Pugliesi was quoted saying that the Ministry did not accept that the lives of Roma in Kosovo are at risk, in spite of evidence to the contrary.

On 20 July, the Interior Ministry said that it would stop granting "temporary humanitarian permits", valid until December 1999, which had been available to refugees from Kosovo since 26 March. An announcement by Prime Minister Massimo D'Alema on 19 June, explained that the special humanitarian protection measures in force during the war were no longer applicable. "There is an international contingent that has the task of protecting all the minorities that live in Kosovo", he said, adding that "If I recognise someone's status as a refugee I am legitimising the possibility that a minority can be driven out of a country where there is an international contingent present. And that would be a mistake."

Roma continue to drown trying to cross the Adriatic Sea to Italy, and over 40 bodies were found after a vessel carrying an estimated 100 refugees sank in August. Interior Ministry sources estimate that 7,421 Roma had arrived in Puglia from Montenegro from 19 June to 19 August. Salvatore Di Staso, president of the regional council, suggested that Puglia was "under siege", describing the fleeing Roma as an "indiscriminate and extremely dangerous movement that brings tension to our region. Which, for its peculiarities, history and tribal characteristics, represents a further danger for Puglia." Interior Minister Rosa Russo Jervolino promised that measures were being taken to deliver the strong action Di Staso asked for to protect Italy's Adriatic coast. Italy and Montenegro are negotiating an agreement to return large numbers of the Roma who recently disembarked in Italy to Montenegro. The agreement involves the deployment of Italian police and the presence of Italian immigration officials in Montenegro.

In Kosovo returning Albanians have been attacking the Roma minority for siding with the Serbs, despite statements they

issued to express their neutrality, accusing them of looting abandoned villages. A field report by the European Roma Research Centre (ERRC) in Kosovo from 30 June to 7 July, interviewing Kosovan Romas, reports a "pogrom situation". It documents cases of abductions, torture and physical abuse, rape and expulsions; Roma houses have been subject to confiscation, looting and forced entry. The KLA were allegedly able to set up detention centres in public buildings in some of the larger towns. The testimonies collected confirm previous reports, such as the German soldiers' discovery of a KLA torture chamber in the former police headquarters in Prizren.

ERRC researchers witnessed instances where United Nations security forces (KFOR) troops failed to react to looting. They presented a list of Roma-inhabited neighbourhoods needing special protection to the KFOR military police in Prizren. Lieutenant Grotzow explained that despite being aware of the problem, he did not have the manpower to ensure effective policing. KFOR officers unofficially told ERRC that over 250 Roma had been killed in the German sector since KFOR entered the area. Camps such as Stenkovac in Macedonia and Rozaje in Montenegro, which were recently sheltering Albanians fleeing from Serbian police and security forces, have been filling with Roma. UNHCR figures indicate that there were 23,475 Kosovan refugees in Montenegro in August. Roma refugees in Prizren told ERRC that there are no Roma communities left in the towns of Pec, Gnjilane and Urosevac. The ERRC has sent prime minister D'Alema an open letter stressing that, in the present circumstances, the expulsion of Roma would be both "morally repugnant" and would constitute inhuman and degrading treatment in violation of Article 3 of the European Convention on Human Rights as well as Article 7 of the International Covenant on Civil and Political Rights.

*Roma Rights no 2 1999; ERRC "Letter to prime Minister of Italy" (4.8.99); Migration News Sheet September 1999; Guardian 22.7.99; Independent 10.7.99 & 27.8.99; Avvenimenti 25.7.99; Il Manifesto 24, 25 & 27.8.99; Times 21 & 28.6.99; Il Messaggero, 7 & 27.8.99.*

## GERMANY

### How Germany deports Germans

When Germany changed its citizenship law earlier this year, there were some who thought the practise of *Jus sanguinis* (defining nationality on grounds of the "blood" principle) was finally being abolished and with it, the old German classification of rights being based on ethnicity. Anti-deportation campaigns and anti-racists have found this to be unfounded.

Deportations of usually young "offenders", most of whom have been born and brought up in Germany and all of whom speak German as their mother tongue, have not only been continuing since the discussions on the new law (see *Statewatch* Vol 9 nos 2, 3 & 4), they have been steadily on the increase. At the same time, news coverage of these cases has dramatically declined. They are not seen as worth reporting any more, the shock effect has worn off.

The first case, which at the time created newspaper headlines for weeks as well as sparking off a heated public debate was that of "Mehmet". "Mehmet" is not actually the real name of the young Turkish German (born and brought up in Germany), who had committed a series of, sometimes serious, criminal offences. The name seems to be used by the German press as an acronym for any criminal Turkish-German adolescent. After a long legal battle around the "first Mehmet", the Bavarian Administrative Court decided not to extend the residency permit of the then 14-year old, paving the way for the deportation of a boy, who had never been to Turkey, whose parents were still living in Germany (although the court considered deporting them as well) and who was clearly German.

Since then, there has been a "second Mehmet". The 16-year

old Goekay U was deported just like "Mehmet". He had also started to get into trouble for various offenses from the age of 11. All attempts to "integrate" him into society had failed, said public order spokesman Willi Reiser (CDU). After Goekay reached judicial responsibility at the age of 16, he received a juvenile sentence for offences ranging from grievous bodily harm to coercion and robbery, which led to his deportation in May this year by the city of Augsburg (Bavaria). Goekay has also been born and brought up in Germany, his mother tongue is German.

Unlike the first incident however, this very similar case was hardly mentioned in the local and regional news and the public debate was curiously missing. The *Frankfurter Rundschau* (FR) thinks that this is not only due to the "duplication effect", but because the partial resistance to the deportation of "Mehmet" had turned out to be a political disaster for the *Sozialdemokratische Partei Deutschland's* (SPD). The party related its loss of 4% at the regional elections in Bavaria last Autumn to the fact that voters objected to their handling of the case, apparently denouncing them as "the Turks Party, which even defended that bastard". So this time, although the Greens conceded that "it is no solution to just deport the culprits", Green MP Christine Stahl also thought that the cases were not "entirely comparable", due to the age difference between the two deportees. Maybe the age of sixteen gives a green light for the deportation of young offenders born and brought up in Germany?

A more recent case which has gone entirely unnoticed, is now proving that Germany's deportation practices are extending to anyone, who has even the slightest contact with the criminal justice system and who can be classified as a foreigner. The latter, as the above cases portray, is not very difficult in Germany. Bruce B, an American national, is now sitting in a detention centre in Darmstadt. He was brought to Germany at the age of five by his mother, who became an alcoholic and drug addict and under whose care he remained until the age of eight. When social services took notice of him because he was absent from school, he was taken to a foster family, which broke up so that he had to be referred again. He then stayed with a second foster family for the next ten years, finished his schooling and successfully completed an apprenticeship as a chef.

But when he moved to live in the south of Germany, a series of incidents brought him in contact with the law. He stole a bicycle, attempted to cash somebody else's train ticket, and was finally found with 20 grammes of marijuana. Although the possession of marijuana has been partly legalised in Germany, it is up to the discretion of the individual *Laender* to determine the amount. The judge in Bad Kreuznach (Baden-Wuerttemberg) issued a deportation notice with the justification that it was likely that he would commit more offences (which implies a sentencing for offences that might be committed in the future), that Bruce B. had obviously failed to integrate into German society and had established "no relationships worth protecting". He concluded that his deportation would have "no detrimental effects", because "anyway, every German wants to go to America".

The deportee however, has no relatives in America and his English is only rudimentary. His foster parents, friends, brother and sisters are outraged by the judge's claims as well as concerned as Bruce is not seen to have a stable character, perhaps making a social and economic downfall almost inevitable, once deported to a strange environment where he will be treated as a serious criminal and where the likelihood of being introduced to serious crime and drug addiction is very high.

His lawyer, Jan Suerich, says the justification for the deportation is ludicrous and the offences minor. Mr Suerich also referred to a case which was successful in the European Court of Human Rights. Two years ago, the Court declared the deportation of a French-Algerian criminal offender who was issued with a deportation notice in France as illegal.

Anti-deportation activists claim that there is a series of cases where young, "foreign", criminal offenders are being threatened

with deportation. The Interior Ministry has denied this. "These are extreme isolated cases", says spokesman Michael Ziegler. When confronted with the assertion that the government was even compiling a list of adolescents to be deported, he dismissed it as "nonsense".

Behind these discussion around deportations of "criminal offenders" however, is not only the question of the severity of the offences committed. It is the definition of nationality and citizenship, which is so obviously, and more than ever, based on "race" and "ethnicity" in Germany as it is elsewhere in Europe.

*Frankfurter Rundschau, 28.4.99; Jungle World, 5.5.99.*

## Deportation without papers

In August the Hamburg Foreigners Authority (FA) came under attack for its illegal deportation practices, when the interior senator Hartmuth Wrocklage (SPD, *Sozialistische Partei Deutschland's*) issued a decree saying that the main hindrance to deportations was the existence of medical certificates, which were obviously issued by doctors on false grounds. Since then, Hamburg has started overruling doctor's warnings of ill health and suicidal tendencies by employing its own medical officers, who issue "fit for travel" documents in order to enable deportations of unhealthy or seriously depressed asylum seekers.

A similar practice has now been extended to asylum seekers whose identity and therefore country of origin is unknown. At the end of August, it was made public that the Hamburg FA had started "identifying" refugees from Africa with the help of diplomats from the Ivory Coast "in order to create the preconditions for the swift return to their country of origin", said spokesman Norbert Smekal. The FA issued a notice of attendance to around 180 African refugees who were not in possession of papers. Of the 49 who turned up, 33 were then identified by a representative of the embassy. By what criteria he "identified" them was not clear.

Once in the building the refugees realised that they had practically been taken into detention for deportation, and started to demolish the waiting room and attempted to block a prison van which was about to take those "identified" to the detention centre. They are now facing criminal prosecution. Wrocklage opined that these were "unjustified attacks" and assured that the "authority would fulfil its duties with.. persistence".

The practices of the Swiss Federal Office for Refugees (BFF) and the Zurich Foreigner's Police (Frepo) are run in conjunction with Swiss embassies in Ghana and the Ivory Coast (see *Statewatch* vol 9 no 3 & 4). Moreover, embassies and security services of the countries which refugees are trying to escape from are being contacted by European authorities in order to enforce deportations.

*CARF no 52 (October/November) 1999; taz 30.8.99.*

## "Borders are there to be crossed"

The *kein mensch ist illegal* (no one is illegal) campaign, which has been protesting at Europe's border regime and the criminalisation of refugees and migrants for the past two years, together with The Caravan for the Rights of Refugees and Migrants, which toured over 40 cities in Germany last year, have successfully organised their second international "border camp". Over 1,000 anti-racists, anti-fascists, artists, refugees, computer specialists, refugee organisations and interested locals visited the camp, located in eastern Germany's so-called three country triangle, where Poland, the Czech Republic and Germany meet.

Once endowed with a thriving industrial sector, with large-scale trade and movement between borders the area has, since the "reunification" and Germany's clamp down at its eastern borders, turned into no-man's-land. The population has halved and racist

and xenophobic attitudes are prevalent. The camp was deliberately set up in this region, where the BGS (Federal Border Guards) regularly pick up refugees and migrants who have crossed the border without papers. The Guards distribute leaflets encouraging the population to denounce anyone who looks like they have not got a regular status. When they pick up migrants, they often disregard their claims for asylum, and send them back to the Czech Republic or Poland. There is an asylum seekers home at the edge of the city of Zittau, inhabited by Yugoslavians, Algerians, Turks and west Africans, who say that if they enter the city centre, they either get stopped, searched and abused by the police, or beaten up by fascists.

This environment meant that local support for the camp's objectives was thin on the ground. There were daily actions to confuse the border police by arranging swimming competitions in the river dividing Germany and the Czech Republic, spontaneous all night raves along the border line, and, if possible, help for refugees and migrants attempting to cross the border. In one case, a young Kurd who had fled from Turkey and had roamed the area without food and drink for several days, heard of the camp and found food, a translator, and immigration specialists who accompanied him to lodge an asylum claim with the authorities.

Within the camp, there were daily discussion groups and workshops on borders, developments in European immigration policies, racism and resistance movements such as the *Sans Papiers*. Polish activists reported on the effect that the shifting borders to the east have on the "buffer states" as well as on the migrants who pass through it. Theatre performances, ironic political sketches and films on the struggles of refugee movements in France and Germany brought a welcome break to the task of building an infrastructure of communication and resistance within a single week.

The refugee group *the Voive, e.V., Africa Forum* initiated a campaign for the closure of the asylum seekers home in Zittau. Several camp members visited the home and reported back: two washing machines and four cookers for over 150 people, several families amongst them. Water was dripping from the walls and sanitary facilities were dirty and few. The lack of a common room or space for sports activities, of a playground for the children or even a single television, added to the isolation and deprivation of the asylum seekers, who were, moreover, prone to racist abuse from the "caretaker" of the home.

A demonstration was organised, which went past the *Landratsamt*, the municipal authority directly responsible for the conditions in the home, which is situated almost directly opposite the asylum seekers home: one, a spacious new building, the other, a barracks formerly used to house foreign migrant workers, surrounded by barbed wire. The Refugee Council responsible for Saxony, was not pleased with the critique and thought that compared to other homes, the one in Zittau was tolerable. Two months after the camp however, the home was closed down. The closure is viewed by activists as a small step and not necessarily in the right direction, as the inhabitants have been dispersed to other homes in the area and the demand for decentralised and humane housing has not been met.

The camp was a success and triggered off debates around Europe, created links between activists and stirred various groups into action. The location for the next year's camp is under discussion, and proposals have been made to synchronise several border camps across Europe. One is being planned between the Polish and Czech border, another between Italy and Austria.

*Discussions on the border camp: off-limits no.26 July-September 1999. kein mensch ist illegal <http://www.contrast.org/borders>.*

## Immigration - in brief

■ **Italy:** *Corelli Anno Zero*. A new publication monitoring the conditions of detainees in Milan's first immigration detention

centre, in Via Corelli, Milan, which opened on 11 January. It contains up to 150 immigrants and 642 detainees from the centre have been expelled from Italy to date. The first issue explains the reasons for setting up the bulletin and observation centre, which were born out of the protests following the death of Semira Adamu (see *Statewatch* vol 8 no 5), and subsequent demonstrations against the criminalisation of immigrants. It provides a detailed description of the detention centre, and offers useful legal information, critiques of detention policies and the denial of detainees' rights, alongside accounts of interviews with internees. Instances of abuse are documented, including a police operation which led to two detainees ending up in hospital, as five more were moved to Milan's San Vittore prison, and an instance of rape. Actions by support groups to improve conditions and help individuals are also highlighted. In some instances individuals have been released after their situation became public (due to an asylum request having been ignored by the authorities, or a detainee being under age). Available from: *NAGA, Viale Bligny, 22, Milano 20136, Italy.*

■ **Italy: Kosovo Roma occupy school:** On 16 October, approximately 100 Kosovan Roma who were evicted from the municipal grounds in Brescia to be dispersed in Rimini and Foggia occupied the "Achille Papa" disused school in Villaggio Badia. They want to stay in Brescia where their parents and families, who have regular residence permits and authorisation to stay in reception centres, are living. Manlio Vicini, a lawyer, explained that they were in the *Magazzino 47* social centre for 20 days, but the hygienic and personal conditions were inadequate. Their communique "We are refugees, we ask for justice", explains their dismay at being treated like criminals after fleeing a war, their shock at the eviction by police, and their request that they may be allowed to stay somewhere close to their relatives. *www.ecn.org "Consolato Ribelle Messico", 17.10.99.*

■ **Greece: 12 more migrants die in ferry boat fire:** On 1 November, there was a fire on the ferry "Superfast III" from Greece to Italy, a very modern ferry only one year old. At first it did not seem anything serious and the ferry had plenty of time to turn back to the Greek port of Patras, where the passengers were disembarked and the fire extinguished. But when the firefighters searched the garage-area they discovered between the burnt trucks and cars the bodies of at least 12 migrants, most likely Iraqi Kurds. They had no time to escape as the garage was not equipped with an alarm. The Greek government has opened two enquiries on how the fire started and how the migrants entered the ferry without being noticed by the border police and truck-drivers.

■ **Germany: Death in detention.** On 28 August 19-year old Rachid Said committed suicide by setting himself on fire in his cell in the Bueren detention centre, near Hamburg. The Algerian refugee, who was arrested and detained for deportation last March, had been put in isolation after he allegedly took part in an argument after a televised football match. According to anti-deportation campaigners, the psychological pressure of isolation and constant threat of deportation drove him to set fire to his clothes and his bedcovers. Since the practical abolition of the right to asylum through the Asylum Act of 1993, more than 30 people have killed themselves whilst in detention or due to the threat of deportation. The use of isolation as a disciplinary measure to pacify refugees shortly before deportation is common practice in Germany's detention centres. The measure results in resistance through hunger strikes, suicide attempts and protests, often leading to severe injuries to those detained. These effects are largely ignored by the media. *Frankfurter Rundschau 1.9.99; Anti-Deportation campaign press release 8.9.99. - ifghh@mail.nadir.org*

■ **Spain: African stowaways request asylum.** On 21 September, five African citizens who arrived in the Basque port

of Pasaia in a boat flying a Cypriot flag asked for political asylum. The five came from Liberia, Sierra Leone and Cameroon. Such events are frequent, but this case is peculiar because they all managed to stay ashore after the ship left the harbour. Two succeeded in having their asylum requests admitted, and the other three, with their lawyers' assistance, convinced the *Audiencia Nacional* to prevent their expulsion on the boat on which they arrived while their applications were considered for admission. It is an important decision because the immigration authorities, as happened on other occasions, tried to prevent their applications from being considered, and to have them repatriated on the boat in which they arrived.

## Immigration - new material

**Would you allow this man to run our prisons?** Nick Cohen. *Observer* 29.8.99. This piece examines the record of Group 4 at Campsfield detention centre - who give "a convincing impression of the police service of a banana republic" - and the even more sinister record of Burns International Security Services, the US conglomerate who have been given the contract to run the centre at Heathrow.

**Report on the joint OSCE/ODIHR-Council of Europe field mission on the situation of Roma/Gypsies in Kosovo (27.7-6.8.1999).** Criticises the persecution Roma/Gypsies face after the war and the unbearable living conditions in the "internally displaced persons" camps as well as a general lack of protection by the United Nations Security Forces (KFOR). It recommends a recognition of Roma from Kosovo under the Geneva Refugee Convention, including non-refoulement for those already in western Europe. A plan of action was drawn up at the OSCE Supplementary Human Dimension Meeting on Roma and Sinti Issues (Vienna, 6.9.99) and at the eighth meeting of the Council of Europe Specialist Group on Roma/Gypsies (Sofia, 20-23.9.99).

*Migrations Europe.* Centre d'information et d'etudes sur les migrations internationales & Migration Policy Group, No.96 (August) 1999. Comprehensive survey of EU migration policies and news on refugee and asylum issues, clandestine immigration and racism across Europe. Reports include news of Greek plans to deploy satellites and 2,500 specially trained police to monitor borders, a German tribunal's decision to make the employer of a Yugoslav asylum seeker who had no work permit pay the full costs of the latter's deportation and Italy's decision to apply the provisions of its readmission agreement with Switzerland, before the agreement had been ratified by the Italian parliament.

### Parliamentary debates

**Health Bill [Lords] and Immigration and Asylum Bill (Allocation of Time)** *Commons* 15.6.99. cols. 174-222

**Immigration and Asylum Bill** *Commons* 15.6.99. cols. 267-297; *Commons* 16.6.99. cols. 396-531; *Lords* 29.6.99. cols. 176-257; *Lords* 8.7.99. cols. 1024-1925; *Lords* 12.7.99. cols. 11-80, 96-164; *Lords* 19.7.99. cols. 662-730; *Lords* 19.7.99. cols. 746-804; *Lords* 21.7.99. cols. 976-1048; *Lords* 21.7.99. cols. 1064-1126; *Lords* 28.7.99. cols. 1531-1598; *Lords* 28.7.99. cols. 1613-1668.

## EUROPE

### FRANCE

## Court annuls SIS visa refusals

On 6 June, the French Council of State annulled two decisions to refuse visas to individuals on the basis of their being registered on the Schengen Information System (SIS). This was the first time that the Council had been asked to consider the legality of individual decisions concerning the registering of foreign nationals on the SIS.



The SIS was created to "maintain public order and security, including state security" (Article 93, Schengen Implementing Convention 1990) to compensate for the removal of internal borders under the 1986 Schengen Agreement. It is made up of national information and intelligence databases to which authorities in other signatory states have access. Individuals are registered if they are wanted for extradition purposes, wanted in court, if they are subject to "discreet surveillance" or if they are to be refused entry. This last category, Article 96, is the largest (relating to persons) and contains data relating to "aliens" to be refused entry to the "Schengen space" on grounds of "public order or national security" (para. 2) or "non-compliance with national regulations on the entry or residence of aliens" (para. 3).

The first case before the Council of State concerned the decision of the French consulate in Casablanca to refuse a short stay visa to a Moroccan national. The refusal made references to Articles 5 and 15 of the 1990 Schengen Implementing Convention but failed to mention which state was responsible for entering the information in the first place. The Council held that this omission denied the affected person the chance to pursue any recourse toward the state in question and annulled the decision.

In the second case a Romanian national was refused a long stay visa by the consulate in Bucharest because of information registered on the SIS under Article 96 by the German authorities based on their rejection of her claim for asylum. The Council of State considered their competence extended to judging whether the registration on the SIS conformed to the grounds set out in the Convention, and ruled that the reason given by the German authorities (a rejected claim for asylum) did not comply with those laid down in Article 96. In declaring the registration unjustified, they indicated that people who are unfairly registered on the SIS can demand compensation from either the state who made the entry or the state who acted on the information therein - the French authorities were ordered to pay FF 3,000 compensation for refusing the visa.

In 1997, there were nearly 15,000 "hits" identifying "aliens" registered under Article 96 among the seven Schengen states who had access to the SIS (see *Statewatch* vol 8, no 3 & 4).

*Migrations Europe, August 1999.*

## EU

### Justice and Home Affairs Councils 4 & 29 October

During October there were two meetings of the Justice and Home Affairs Council in Luxembourg. The first, on 4 October was scheduled for two days and in the event only lasted until lunch-time on the first day. It included two "non-events" - the Final Report of the High Level Group on Asylum and Migration was simply passed to the Council, in the words of the Presidency, "for information" (and was adopted without debate at the General Affairs Council on 11 October), and the preparations for the Tampere summit boiled down to a discussion "over lunch".

The Council did discuss the return of people to Kosovo and cooperation with Russia and the Dublin Convention. On the latter Commissioner Vittorino presented a recommendation to allow Norway and Iceland to participate in the Convention.

There was a discussion on the ratification of the 1995 Convention on a simplified procedure ("voluntary" return) and the 1996 Convention ("involuntary" return). So far only six member states have ratified both Conventions. Ratification requires national parliaments to agree the proposals and it is expected that this may take another year for this to be fully completed.

Finally, the Netherlands government raised the issue of the

availability of documents prior to decisions by the Council to their national parliament. At the 29 October meeting it was agreed to draw up a report on the practice in all member states.

### 29 October JHA Council

The half-day JHA Council started with an "open debate" on the "area of freedom, security and justice" and this was followed by discussion on the Tampere conclusions. Mr Vittorino, for the Commission, said that they would be drawing up a "first draft scoreboard" (to monitor the progress of measures and member state implementation) which should be ready for the December Council meeting.

A progress report was given on the draft regulation by the Commission on EURODAC and the outstanding issues include the usual "territorial scope" (the UK/Spain dispute over the status of Gibraltar) and that of granting implementing powers to the Commission. The Danish delegation said that they wished to exercise the option under the Protocol in the Amsterdam Treaty to join EURODAC - the UK and Ireland have already opted-in to it.

The "Parallel Dublin Agreement" was discussed. It extends the Dublin Convention to non-EU states, Norway and Iceland. Until this is agreed then the abolition of border checks in the other Nordic Union states - Denmark, Finland and Sweden - cannot come into operation as planned by the end of 2000. Bearing in mind the Council's dislike of measures which have to be ratified by national parliaments (because it takes too long) the Commission proposed that there should be a Community agreement, which did not require ratification, rather than a "mixed agreement".

There is still no agreement on the two major issues holding up the draft Convention on Mutual Assistance in criminal matters which has been on the table for more than three years. These issues concern the provisions on the interception of telecommunications as regards: i) the Italian government's resistance to agreeing to open-ended interception warrants (rather than the current individually authorised ones) for communications coming from the satellite telecommunications ground station in Italy; ii) the problem of the UK due to the fact that MI5 (the Security Service) is empowered to conduct investigation of serious crime in addition to the police. The Presidency put forward a "compromise" proposal but no agreement was reached.

### Europol to exchange data with third states, including Turkey

The most controversial issue before the Council was a "Draft Council Decision" drawn up by the Management Board of Europol on the exchange of data files between Europol and non-EU states and bodies. The proposal to exchange data with non-EU states has been highly criticised for lack of controls, accountability and civil liberties/human rights monitoring. The agreements would allow Europol to pass data on suspects outside the EU and in turn it could open up files on individuals and groups as a result of information/data sent by non-EU states and agencies. The proposal before the Council covered the proposed countries for the first two "phases".

In the "first phase" are the eleven applicant countries plus "States which have applied for membership of the European Union, namely Turkey and Malta".

In the "second phase" are "the USA, Canada, the Russian Federation, Switzerland, UN offices and bodies active in the areas falling in the Europol remit and WCO [the World Customs Organisation]".

The JHA Council press release expresses the issue diplomatically: "consensus could not be secured on the main question of identifying the countries with whom negotiations should be launched first."

*Justice and Home Affairs Council, press release, 4.10.99; Justice and Home Affairs Council, press release, 29.10.99; Draft Council Decision instructing Europol to start negotiations on cooperation agreements with Third States and non-EU bodies", Europol Management Board, The Hague, 9.7.99, File no: 3710-07r3; Draft Model-Agreement cooperation with Third States, Europol Management Board, The Hague, 13.8.99, File no: 3710-01r1.*

## GERMANY

### No "legal repercussions" in Israeli embassy killings?

Despite the transmission of a police video in the television documentary series *Kontraste* on 27 May, the Berlin public prosecutor will not review the fatal shootings by Israeli security guards during the Kurdish embassy occupation in Berlin in February, according to a leaked Justice Administration Authority document. Four Kurds involved in the occupation were shot dead and 15 severely injured. Those killed, Sema Alp, Ahmet Acar, Mustafa Kurt and Sinan Karakus had been shot in the back, contradicting Israeli security guard claims to have acted in self-defence.

In an attempt to justify the killings Israeli embassy officials claimed that the embassy was stormed by around 200 Kurds, armed with axes and iron bars. However, shots were also fired from within the embassy at protestors outside who, the police video showed, were standing calmly with their backs towards the building, none of them attempting to enter. A police officer described what he saw:

*I could see, that the person who was standing inside [the embassy] immediately reloaded the gun without lowering it. He continued shooting with the new ammunition with a speed which could only be described as rapid, continuous fire.*

The German magazine *Der Spiegel*, cited an Israeli security officer who confirmed that shots were fired at people standing outside the embassy. The public prosecution service was unable to explain why the supporting video evidence was only released two months after the events. Israeli officials claimed that only one warning shot was fired outside. They rejected all criticism of their actions and declared that critical eyewitness reports from seven police officers were "plucked out of thin air".

In spite of the evidence contradicting the official Israeli version of events, inquiries are about to be abruptly concluded, according to the German Press Agency (dpa). The agency obtained a confidential report from the Berlin Justice Administrative Authority to the Federal Ministry of Justice which stated that the investigation should be concluded "without a renewed questioning of the security officers and without any legal repercussions". The *Berliner Zeitung* commented:

*Of course the shots from behind do not correspond to the classic self-defence situation. Because the Israelis have a diplomatic status however, a prosecution against them is out of the question. Without this protection, the Berlin public prosecutor, would have to lead a prosecution with charges ranging from bodily harm resulting in death up to murder.*

The German prosecution service has taken legal actions against 88 Kurdish protesters, all of whom are threatened with deportation.

*Junge Welt, 29.5.99; taz 31.5.99; Frankfurter Rundschau 31.5.99.*

## Europe: new material

**Review: "Human Rights and the Third Pillar"**, Steve Peers in Philip Alston (ed) "The EU and Human Rights", (Academy of European Law, Oxford University Press 1999). ISBN 0 19 829809 9 (paperback) £35. Dr Peers submits a detailed analysis of the potential post-Amsterdam legal framework for the protection of human rights within the EU field of

justice and home affairs. He then addresses the question of how the European Court of Human Rights may interpret the available judicial protection as its jurisdiction in the third-pillar develops (at present there is no case law beyond access to documents). The chapter then provides an analysis of the practise of the Council in respect to human rights in terms of the recording/use of personal data. It examines data protection legislation applying to a number of JHA conventions and measures, including the Schengen Information System, Europol, the Customs Information System and the proposed DNA database. The paper concludes that only minimum human rights standards have been accorded in treaties and subsequent measures, and that these can not even be guaranteed. It further suggests that these minimum EU standards risk compromising the existing standards for the protection of human rights provided for in national law.

**Europe in Transition: Past Trends and Future Perspectives. Papers from the 25th Conference of the European Group for the Study of Deviance and Social Control held in Poland, 1997.** Fifteen papers from across Europe on current trends in judicial practice, prisons and punishment, police non-lethal weapons, "crimes" of the powerful and the control and regulation of women. For copies contact: C.Pantazis@bris.ac.uk

**Banlieue Babylon**, Simon Rawles. *Observer magazine* 25.7.99., pp31-33. Detailed account of life on one of the poor estates of St Denis, in the Parisian suburbs. Rawles contrasts the standard negative images conjured up by places such as the Cosmonauts estate with the reality of a community attempting to rid itself of violence through unified action and grassroots initiatives to provide positive projects for the young people of the estate.

### Parliamentary debates

**Comitology: ECC Reports Lords** 18.6.99. cols. 620-642

**EU Intergovernmental Conference 2000 Lords** 1.7.99. cols. 426-428

**Turkey: Human Rights Lords** 6.7.99. cols. 717-719

## MILITARY

## ITALY

### Soldier's death reveals army bigotry

On 13 August Emanuele Scieri, a 26-year old conscript from the elite *Folgore* parachute brigade, fell to his death after climbing a tower in the Gamerra barracks near Pisa. Investigations into the death led to the replacement of the barracks commander, Brigadier General Calogero Cirneco. The discovery of documents revealing disturbing traits of the barrack culture prevailing in the *Folgore*, and suspicion that bullying may have played a part in the death, have caused widespread condemnation. Accounts from former soldiers have surfaced, illustrating the practices and abuse they had to suffer. The debate was also fuelled by an increase in reports of bullying; from 99 in 1997 to 268 in 1998, although sources in the Defence department's Observatory on Bullying suggest that this is the result of an increase in incidents being reported. On 21 July 1999, the Military Magistrates Council criticised military laws which fail to protect soldiers' rights; after the scandal broke, Defence Minister Carlo Scognamiglio said he would revise the peacetime military code.

Scieri was found dead at the foot of the tower, in a remote part of the military compound, two and a half days after his death. It was his first night in the Pisa barracks, after completing a training course near Florence. Investigators are trying to discover if he was on his own when he climbed the tower, whether some of his injuries were unrelated to his fall, and whether he would have survived if he had been found earlier. Pisa public prosecutor Enzo

Iannelli explained that the possibility of a suicide attempt had been discarded, leaving an accident or a confrontation as the possible causes of death. He said that four people are under investigation for the failure to find Scieri, who may have been alive. It was suggested that during the autopsy, doctors found injuries which are unlikely to have been caused by the fall and it is suspected that he may have been forced to climb up the tower after a violent confrontation.

The Scieri family lawyer, Ettore Randazzo, filed charges against unknown persons on three counts. Firstly, for violence against the person, as Scieri had been forced to sit motionless in the "position of the sphinx" (hands on knees, back bent forwards, head upright) while he was transferred from Florence to Pisa, as were those transported with him. Secondly, for murder, due to the suspicion that Scieri was forced to climb the tower he fell from. The last charge, for negligence, suggests that Scieri may have died because he was not rescued promptly. "It is unacceptable that a person, maybe still alive for a period of time, may stay for two and a half days in his barracks without being found", Randazzo commented.

The controversy surrounding Scieri's death was augmented by the discovery of a collection of quotations and diagrams for elite corps officers, which included racist entries, fascist maxims, and guidelines for the bullying of novices, a practice known as *nonnismo*. General Enrico Celentano, responsible for editing the guide and distributing it among fellow *Folgore* officers, escaped punishment, although earlier reports assured that he would be replaced. Celentano explained that "its contents are so negative that...they induce people to do the opposite", and that he was pointing out forms of behaviour which the army should protect itself against.

This argument was contradicted by Charlie Barnao, formerly in the *Folgore* parachute regiment in the Gamerra barracks in Pisa, serving under Celentano. Barnao wrote a diary of a day in the corps for the *Avvenimenti* newspaper, stressing the violence and rituals soldiers had to undergo. His brutal account includes violent beatings while recruits did press-ups, a company commander with Mussolini's head tattooed on his chest, and soldiers returning from the UN peacekeeping mission in Somalia talking proudly of rapes and beatings inflicted on locals, referred to as "dirty niggers". There was also a regiment commander, Enrico Celentano, who is said to punish anyone whose hand position when saluting strayed from the Roman (fascist) salute. The exemplary punishment which followed would be disguised, according to Barnao, as resulting from the transgression of other rules.

On 21 July, prior to the scandal, the Military Magistrates Council stressed the need to confront *nonnismo* in the army. The document, which was ratified and sent to the government, highlighted the present legal framework's failure to protect soldiers' "inalienable rights". Article 260 of the military penal code was highlighted for criticism, as it denies victims of abuse within the armed forces the right to denounce those responsible. The unit's commander must first investigate the matter, and decide whether the judicial authorities will be informed. On 9 September Defence minister Scognamiglio announced that he would change Article 260 to ensure that victims of personal abuse could appeal to judicial authorities directly.

Stefano Semenzato, secretary of the Senate's defence commission, called for the disbanding of the *Folgore*. He said its violence, detachment from society (he recalled clashes with locals in Pisa) and opposition to democratic institutions justifies such calls, as does its controversial history, which includes torture and violence during the UN "Restore Hope" mission in Somalia. A Senate defence commission investigation team was set up following the allegations, and despite criticism of racist and violent behaviour within the corps, there was no formal condemnation. Nonetheless, the incident led to changes in the *Folgore's* hierarchy, only last year.

*Avvenimenti* 29.8.99, 5 & 12.9.99; *Corriere della Sera* 2.9.99; *Il Manifesto* 18, 21, 22, 24, 25 & 27.8.99; *Il Messaggero* 26 & 27.8.99, 10.9.99; *La Repubblica* 20, 21, 22 & 28.8.99, 10.9.99; [www.repubblica.it](http://www.repubblica.it) "la Repubblica/dossier: Lo zibaldone del comandante Celentano"

## Generals indicted for air crash cover-up

Judge Rosario Priore indicted four air force generals on charges of undermining constitutional bodies and high treason relating to the cover-up of circumstances surrounding the crash of a civilian DC9 aircraft on 27 June 1980 in which 81 people died. Priore excluded the possibility that the crash had been caused by structural failure or a terrorist bomb, as had been repeatedly suggested, claiming it was an undeclared "act of war" by NATO forces against a Libyan Mig plane. Generals Lamberto Bartolucci, Zeno Tascio, Corrado Melillo and Franco Ferri are accused of attempting to prevent magistrates from discovering the truth about the crash. The cover-up included lies, the suppression and tampering of radar evidence, hiding the discovery of the crashed Libyan jet which was officially "discovered" on 18 July, and denying that NATO forces were in the area.

According to Priore, the air force must have had government approval for the cover-up because: "The decisions by the military personnel were of such an extent and seriousness that it seems impossible that there was no authorisation from a higher level." Likewise, he seems convinced of an American military presence in the area, "There was an aircraft carrier, there were airplanes, and then lifebelts, helmets (one was of someone called John Drake) and acoustic buoys were found", and hypothesises an American air attack against a foreign aircraft.

The Italian government has informed its NATO allies of the findings, in the hope that they will help to shed light on the tragedy. The UK, France and the US have all previously denied involvement, but Giovanni Pellegrino, president of the Massacres Commission, observed that parliament has a duty to encourage the Italian government to investigate internationally "asking precise questions about specific facts" to Libya, NATO and allied countries.

*Avvenimenti*, 12.9.99.; *Corriere della Sera* 2.9.99.; *Il Messaggero*, 10.9.99.; *La Repubblica*, 3.9., 4.9.99.; *Times* 3.9.99.; *Guardian* 1.9.99. The findings are available at: [www.repubblica.it](http://www.repubblica.it) Dossier: *Le conclusioni di Priore*.

## Military: New Material

**Der Weg zur Europaischen Ruestungspolitik** [The road to a European Armament Policy]. Hans-Heinrich Weise, *Europaische Sicherheit* 8/99, pp33-36.

**Reaction Time**, Heinz Schulte. *Jane's Defence Weekly* 7.7.99, pp 24-35. Germany is assessing the future of its forces, especially those earmarked for rapid reaction in the light of the Kosovo conflict.

**At the crossroads**, Julien Mathonniere. *Jane's Defence Weekly* 15.9.99, pp 61-71. France is halfway to an all professional army.

**"Missili, caponata e bugie"** ["Missiles, cover-ups and lies"] *Avvenimenti* 12.9.99, p.20-23. An exhaustive, fascinating account of the Ustica cover-up, which also analyses the political background behind an incredibly well orchestrated campaign to deny the undeniable.

**Depleted uranium and the new face of war**, Prof. Siegwart-Horst Gunther. *Third World Resurgence* 107, 1999 pp2-3. Examines the use of weapons systems containing depleted uranium (DU). Notes that DU "is both radioactive and toxic, and persists as a serious threat to public health and the environment long after hostilities cease."

**Was NATO's war necessary?**, Noam Chomsky. *Third World Resurgence* 107, 1999 pp37-41. Article on NATO's war against

Yugoslavia that compares the Rambouillet accords and options (23.3.99.) with the agreements that concluded the war to reveal "that diplomatic initiatives could...have been pursued to avert the subsequent human tragedy."

## NORTHERN IRELAND

### Northern Ireland - in brief

■ **FBI links with RUC cut:** The US House of Representatives has cut the funding for an FBI training programme with the Royal Ulster Constabulary (RUC) after expressing concerns over the Northern Irish police force's sectarianism. The ruling, initiated in July by Congressmen Chris Smith and Peter King, followed discontent over civil rights abuses, particularly involving RUC collusion with loyalist death squads. Evidence continues to come to light linking the RUC to the deaths of solicitors Pat Finucane and Rosemary Nelson (see *Statewatch* vol 9 no 3 & 4). Smith, chairman of the sub-committee on International Operations and Human Rights, said: "This bill puts our money where our mouth is by blocking US funds to RUC programmes and requiring the President and State Department to closely monitor the harassment of defence attorneys. When these human rights issues are rightly addressed, then the monetary assistance continues." The Rosemary Nelson Campaign welcomed the decision noting that: "This move by the US House of Representatives unanimously and resoundingly backs the call for a fully independent international investigation." They added that it was preposterous that the RUC, an organisation alleged to have threatened the life of Rosemary Nelson, should be involved in any capacity in an investigation into her murder. *An Phoblacht/Republican News* 29.7.99.

### Northern Ireland - new material

**Rosemary Nelson: the life and death of a human rights defender**, Pat Finucane Centre, 1999, pp51. This important report presents the harrowing account of the death, by loyalist paramilitaries amid the alleged collusion of the Royal Ulster Constabulary (RUC), of internationally respected civil rights lawyer Rosemary Nelson. Rosemary was killed in Lurgan, Co Armagh, when an explosive device was detonated beneath her car by the Red Hand Defenders after RUC police officers had issued threats to her life. Her crime was to initiate an action against the RUC after a young nationalist, Robert Hamill, had been kicked to death by loyalists as police officers watched but failed to intervene. The investigation presents a summary of events surrounding Rosemary's murder and a chronology of security forces' activity in Lurgan. It raises a number of unanswered questions and articulates the need for an inquiry independent of the RUC. It is a need that has not been fulfilled despite the call by UN Special Rapporteur, Parem Kumaraswamy, for "an independent and impartial commission of inquiry to investigate this brutal crime", (UN press release 16.3.99.). Eight appendices provide relevant background material. The report is available from the Pat Finucane Centre, 1 West End Park, Derry BT48 9JF and on the web: <http://www.serve.com/pfc>. The Rosemary Nelson Campaign can be contacted at PO Box 1251, Belfast BT1 6DN, Fax 01232 220101.

**Careless Talk, Ronnie Flanagan and the future of the RUC**, Laura Friel. *An Phoblacht/Republican News* 24.6.99, p5. This article summarises a recent *Panorama* television documentary on Flanagan's views concerning the murder, allegedly with the support of the RUC and security services, of civil rights lawyers Rosemary Nelson and Pat Finucane.

**Force of Habit**, Seamus Keenan. *Red Pepper* August 1999, pp28-29. Keenan takes RUC chief constable Ronnie Flanagan's performance in the recent *Panorama* documentary on RUC collusion in sectarian

murders as his starting point to call for the disbanding of the RUC.

**Fresh evidence of Bloody Sunday cover-up**, Eamonn McCann. *Observer* 19.9.99, p8. The first Bloody Sunday inquiry, under the Lord Chief Justice, Lord Widgery, has been condemned as a blatant cover-up since its publication in 1972. Here McCann, the author of a book that revealed important information about the Parachute Regiment's slaying of 14 civil rights protesters in Derry, brings together the latest disclosures. New forensic evidence refutes allegations that some of the dead were armed and suggests that one of them was shot through the back of the head, while prostrate on the ground, with an illegal "dumdum" bullet.

**Radicals and revolutionaries: essays on 1798**. *Connolly Association* (1998), pp44. This pamphlet contains a collection of essays on the United Irish Movement's rebellion of 1798. It contains chapters on the role of women in the rebellion, James Connolly's examination of the United Irishmen, a study of Wolfe Tone, links between Irish and Scottish republicanism and the position of Ulster in 1798. Available from: The Connolly Association, 244 Grays Inn Road, London WC1X 8JR. Price £3.

**The Agreement and a New Beginning to Policing in Northern Ireland Conference report including Human Rights Benchmarks for Policing Change**. Committee on the Administration of Justice, Belfast, ISBN 1 873285 93 0. Includes papers by Ralph Crawshaw "Police Composition and Training"; Lee Jasper "Police Accountability: Lessons from the Stephen Lawrence Case"; Heather Ward "Framework for Democratic Police Accountability"; Francesc Guillen "The Catalan Police Model"; Phil Scraton "The Illusion of Consent: Community Policing or Policed Communities"; Zelda Holtzman "Management of Change: South Africa" and a chapter on Human Rights Benchmarks for Policing Change. Available from CAJ 45/47 Donegall Street, Belfast BT1 2FG. Price: ú5.00.

*Just News*. Committee on the Administration of Justice, Vol 14 no 6, (June) 1999, pp8. This issue contains pieces on the Paris Declaration on Human Rights Defenders and the UN Declaration on Human Rights Defenders, the UN Commission on Human Rights, the Bloody Sunday inquiry, the Fair Employment Commission and domestic violence. It also reviews McGarry and O'Leary's "Policing Northern Ireland".

*Just News*. Committee on the Administration of Justice, Vol 14 nos 7/8 (July/August) 1998, pp8. Contains articles on the new guidelines on plastic bullets, Human Rights Act and Criminal Justice in Northern Ireland, ten years of the Fair Employment (NI) Act 1989, policing on the Garvaghy Road and the miscarriage of justice case of Billy Gorman.

**Republicans want agreement implemented**, Gerry Adams. *An Phoblacht/Republican News* 8.7.99., pp10-11. Interview with the Sinn Fein president in which he discusses recent developments in the Good Friday negotiations.

**Rank outsiders**, Rosemary Craig. *Police Review* 1.10.99, pp22-24. Craig notes that equal opportunity laws were introduced into northern Ireland almost 25 years ago and laments the fact that the RUC have failed to comply with the legislation.

**The siege that never ended: report from Garvaghy Road, July 1998**. PeaceWatch Ireland (April) 1999, pp55. This is an account of the "state of siege" that enveloped the nationalist community of the Garvaghy Road, Portadown, during the Orange Order's annual march to Drumcree Church in July 1998. After being banned by the Parades Commission the Order lay siege to the Garvaghy Road in defiance of the decision. Their actions continued until the tragic death of three young children in a sectarian loyalist firebomb attack brought the terror to a temporary close. The report includes a summary of the delegations findings and 11 recommendations. PeaceWatch Ireland, PO Box 2543, Boston, MA 02130, USA.

**Defending the Good Friday Agreement: Sinn Fein submission to George Mitchell**. Sinn Fein (September) 1999, pp25. This is Sinn Fein's submission to the US senator who brokered the Good Friday Agreement, George Mitchell, "because of the failure to establish the political institutions agreed on Good Friday 1998, and endorsed in referendums north and south..." The document notes that: "It could have been a time

when former enemies gave space to learn new ways of thinking, of speaking, of trying to understand one another. A time of certainty and decisive, forward looking leadership to demonstrate that we had turned the corner...that compromise, tolerance and the beginning of a process of reconciliation had replaced domination, intolerance and division."

#### Parliamentary debates

**Northern Ireland (Emergency and Prevention of Terrorism Provisions) (Continuance) Order 1999** *Lords* 8.6.99. cols. 1401-1422

**Appropriation (No.2) (Northern Ireland) Order 1999** *Lords* 15.6.99. cols. 199-217

**Northern Ireland** *Commons* 21.6.99. cols. 862-900

**Prevention of Terrorism** *Commons* 23.6.99. cols. 1171-1178

**Prevention of Terrorism (Temporary Provisions) Act 1989** *Lords* 23.6.99. cols. 952-962

**Prevention and Suppression of Terrorism** *Commons* 24.6.99. cols. 1382-1404

**Prevention of Terrorism (Temporary Provisions) Act 1989 (Revival of Parts IVA and IVB) Order 1999** *Lords* 24.6.99. cols. 1129-1136

**Northern Ireland** *Commons* 5.7.99. cols. 639-653

**Northern Ireland** *Lords* 5.7.99. cols. 606-618

**Northern Ireland Bill (Programme)** *Commons* 13.7.99. cols. 171-174

**Northern Ireland Bill** *Commons* 13.7.99. cols. 175-293; *Commons* 13.7.99. cols. 294-312; *Lords* 14.7.99. cols. 337-396

**Northern Ireland Act 1974 (Interim Period Extension) Order 1999** *Lords* 14.7.99. col. 397

**Northern Ireland** *Commons* 15.7.99. cols. 565-577

**Northern Ireland** *Lords* 15.7.99. cols. 548-558

**North/South Co-operation (Implementation Bodies)(Amendment) (Northern Ireland) Order 1999** *Lords* 16.7.99. col. 629

**Public Processions (Northern Ireland) Act 1998 (Procedural Rules) Order 1999 - Public Processions (Northern Ireland) Act 1998 (Guidelines) Order 1999 - Public Processions (Northern Ireland) Act 1998 (Code of Conduct) Order 1999** *Lords* 16.7.99 cols. 631-636

**Northern Ireland Act Tribunal (Procedure) Rules 1999** *Lords* 23.7.99. cols. 1256-59

7 stipulates that baton rounds can be used:

*(i) where other methods of policing to restore or sustain public order have been tried and failed, or must from the nature of the circumstances be unlikely to succeed if tried*

*and*

*(ii) where their use is judged to be necessary to reduce a serious risk of:*

*(a) loss of life or serious injury, or*

*(b) substantial and serious damage to property where there is or is judged to be a sufficiently serious risk of loss of life or serious injury to justify their use.*

Previously in England and Wales the firing of baton rounds was restricted to situations when there was a risk of injury or loss of life to the general public.

Noting that "Baton rounds have...never been used in England and Wales", Home Secretary Jack Straw claimed that the lethal weapons would only be used in "serious public order situations". However, this is vaguely defined and Straw also notes that baton rounds provide "an effective tool for the police service in controlling public disorder." It is not difficult to envisage their use at demonstrations, such as the recent J18 day of action in the City of London, where provocative policing led to a "serious public disorder situation".

The new guidelines make the use of plastic bullets in public order situations in England and Wales inevitable despite the evidence from Northern Ireland. In the recently published Patten report (*A new beginning: policing in Northern Ireland*) the Royal Ulster Constabulary (RUC) was criticised for failing to keep adequate records on their use. The report also expressed "surprise" and "concern" that the RUC, Police Authority and government has failed to research an alternative. Eyewitness accounts demonstrate that the rules for their use are frequently ignored leading to vast sums being paid out in compensation by the RUC. Medical studies have also pointed out the dangers of these lethal weapons. Significantly, not a single RUC policeman has been brought to account for the deaths and thousands of injuries caused by these lethal weapons.

*ACPO "Guidelines on the use of baton rounds and firearms in situations of serious public disorder" 1.8.99.*

## POLICING

### UK

## ACPO relaxes guidelines on plastic bullets

Guidelines for the deployment of plastic bullets to police forces in England and Wales have been relaxed in new rules drawn up by the Association of Chief Police Officers (ACPO) at the beginning of August. A ban on the use of the lethal ammunition was recommended by the European parliament in 1982 and 1997 because it was considered to represent "excessive force" and breached the United Nations code of conduct for law enforcers. Seventeen people, many of them children, have been killed by the baton rounds in Northern Ireland and thousands of people have suffered injuries. A separate review governing their use in Scotland has yet to be published.

The ACPO review, which replaces previous Home Office and Northern Ireland rules, allows police officers to use baton rounds in public order situations to protect themselves or other members of the emergency services and the general public. Point

## Asian woman dies at Stoke Newington police station

Stoke Newington police station, in north London, has become the focus of angry protests again after the death of an Asian woman, Sarah Thomas, in police custody in August. The police station has earned a notorious reputation after a number of suspicious black deaths in custody, racist beatings and involvement in drug dealing over the past 30 years. From 1991-1994 the station was at the centre of an internal police investigation - Operation Jackpot - after an investigation by local community organisations disclosed that police officers were involved in cocaine dealing in the area (see *Statewatch* Vol 2 nos 2 & 4; Vol 3 no 1; Vol 4 nos 2 & 5, Vol 6, no 5; Vol 7 no 1 & 6).

Sarah Thomas, a 35-year Asian student, died in Homerton hospital on 6 August. She had been arrested two days earlier by two plainclothes police officers as she waited for her partner outside their flat in Finsbury Park, north London, having misplaced her keys. The still unidentified plainclothes officers approached her because they claim she was acting suspiciously; terrified by the approach of the unknown men at such a late hour, she fled screaming for help. Sarah was caught and charged and taken to Stoke Newington police station where, according to police sources, she suffered a fit and went into a coma. Two days later she died.

The Police Complaints Authority (PCA) have claimed that her death was "drug-induced" - an allegation which is disputed - and have stated that there was no evidence of any injuries which could have contributed to her death. However, Sarah's boyfriend, Paul Dobbs, described seeing her at the hospital where "...she was covered in bruises and scratches." He added, "God knows what sort of treatment she got in that police station." Sarah's treatment has also been raised by INQUEST, which campaigns in support of bereaved families following a death in custody, who said the death raises "serious questions". The PCA will supervise an investigation into the "circumstances surrounding the death" but it will be led by the Metropolitan police's Complaints Investigation Bureau under Detective Superintendent Andy Bamber. The PCA's handling of earlier deaths in custody has been strongly criticised while the practice of the police investigating themselves has been long discredited - the recently published Butler report into "CPS decision-making in relation to deaths in custody and related matters" criticised the practice. An inquest will be held when the inquiry is complete.

On 19 August a packed meeting, called by the Hackney Monitoring Group (HMG) and addressed by local community organisations, supported a picket of Stoke Newington police station. The campaign was angered by the lack of accountability shown by borough commander, chief superintendent Peter Robbins, who failed to inform the community of the circumstances surrounding Sarah's death preferring to contain his information within the confines of a closed meeting of the Community and Police Consultative Group. The meeting also expressed scepticism at the PCA's ability "to carry out an independent and fair investigation". The HMG have made three demands:

\* *The suspension of the plain clothes officers involved in the arrest while the death is investigated.*

\* *A local and national television and media campaign to encourage witnesses to the circumstances of Sarah's death to come forward.*

\* *A genuinely independent public inquiry into Sarah Thomas' death.*

Stoke Newington police station's reputation stems from the 1970s when the first in a series of suspicious black deaths in custody occurred. Over the following 30 years there have been more unresolved deaths and other racist incidents that led one independent report to conclude that: "The police in Hackney have not policed on behalf of the Black community in Hackney, but against it" (Independent Committee of Inquiry, "Policing in Hackney 1945-84", Karia Press 1988, p247). Their view proved prophetic when, between 1991 and 1994, the police station was subject to an internal police investigation, Operation Jackpot, into the planting of drugs, theft and conspiracy to pervert the course of justice. Although only two police officers were charged with criminal offences after the police investigation the Metropolitan police have paid out over £1 million in damages, and more than a dozen prisoners have had their convictions overturned on the basis of the inquiry.

Some of the more serious incidents involving the station are catalogued below:

\* 13.5.71. A black woman, Aseta Sims died in police custody. Inquest reached verdict of death by misadventure.

\* Sept 1976. David and Lucille White, an elderly black couple, had their home illegally searched by Stoke Newington police. Their son, Dennis, was beaten unconscious and his parents were assaulted when they attempted to intervene. The Whites were charged with 11 offences and police harassment continued during the investigation. The charges were thrown out of court and the family won £52,000 damages in 1982.

\* 10.12.78. A black man, Michael Ferreira was stabbed by a gang of white youths. His friends took him to the police station seeking medical help where police questioned him about the incident without getting assistance. An ambulance was

eventually called but Ferreira died on the way to hospital.

\* 12.1.83. A black youth, Colin Roach, was found shot dead in the police station. An inquest reached a verdict of suicide, but an independent inquiry pointed to discrepancies in police evidence, inconsistencies in reconstructions of the death and misdirections from the coroner to conclude that Colin "could not have died in the way the police and the inquest say he did."

\* 22.1.87. A black youth, Trevor Monerville, was arrested by police officers from Stoke Newington police station and subsequently "disappeared" for two days. He was located in Brixton prison four days later, where he was found to have a blood clot on his brain requiring surgery. Trevor suffered a loss of memory and frequent fits. Later he was subjected to a series of controversial arrests, none of which resulted in a conviction.

\* 29.4.91. An Asian woman, Vandana Patel, was stabbed to death after seeking shelter from her abusive husband at Stoke Newington police station. Despite a history of violence he was allowed to visit her in the domestic violence unit where he stabbed her to death.

\* 1991-94. Police investigation - Operation Jackpot - into widespread corruption and drug dealing at Stoke Newington police station follows an investigation by the Hackney Community Defence Association. The police investigated 22 cases, with a total of 134 complaints against 45 uniformed officers. Sixty five of the complaints involved the planting of drugs; 27 allegations of conspiracy and 27 claims of theft; nine complaints of assault. Heavily criticised by the local community and MPs the police investigation resulted in charges being brought against only two policemen. By 1997 over a dozen prisoners had their convictions quashed and more than £1 million had been paid in damages.

\* 1994. A Nigerian asylum seeker, Shiji Lapite, was arrested by plainclothes police officers from Stoke Newington after he was seen acting "suspiciously". He was taken to the police station and was dead within half an hour. An inquest found that Shiji had been unlawfully killed but the CPS found no cause to bring charges against any officers. The Police Complaints Authority even ruled against bringing any disciplinary procedures against the officers involved.

\* 6.8.99. Sarah Thomas died in unclear circumstances in police custody.

The catalogue details only the most controversial of case brought against Stoke Newington police station. It has a long and well-documented reputation, for "policing against the Black community" as the Roach inquiry described it. For all the Metropolitan police's public relations exercises there appears to be little of the "openness, transparency and accountability" that they promised after the Stephen Lawrence inquiry.

*Hackney Monitoring Group can be contacted on 0181 806 0742, website: <http://www.blink.org.uk/prelease.hmg0899.htm>. INQUEST, Ground Floor, Alexandra national House, 330 Seven Sisters Road, London N4 2PJ, Phone 0181 802 7430, Fax 0181 802 7450, email: [INQUEST@compuserve.com](mailto:INQUEST@compuserve.com) Police Complaints Authority press releases 7 & 11.8.99; National Assembly Against Racism press releases 4 & 5.8.99; Hackney Monitoring Group press release 8.8.99; Hackney Gazette 12.8.99.*

## **"Deeply flawed" advanced technology proposals**

Home Secretary Jack Straw published a consultation paper on his "Proposals for Revising Legislative Measures on Fingerprints, Footprints and DNA Samples" at the end of July. "The most exciting changes in police technology in decades", according to Straw, will require changes to the Police and Criminal Evidence (PACE) Act to permit an unprecedented increase in police use of fingerprint and DNA technology. The paper's proposals have been described as "deeply flawed" by John Wadham, director of the civil liberties group Liberty, and would allow suspects to be

stopped on the street and fingerprinted without their consent. They would also allow the police to store thousands of DNA samples provided by innocent people during mass screenings in the course of criminal inquiries.

In his paper Straw argues that "legislation must keep...pace with technology" and that the introduction of the National Automated Fingerprint System (NAFIS), which is currently being implemented by the Police Information Technology Organisation, necessitates changes to PACE legislation in order to increase "efficiency". NAFIS will provide fingerprint matching facilities for the 43 police forces in England and Wales "using a sophisticated Automatic Fingerprint Recognition (AFR) function". It "will be capable of supporting a database of over 6 million ten-print sets and over 2 million crime scene marks. It will be possible to process over 5000 scene of crime mark[s] each day and make over one million fingerprint comparisons every second."

According to the paper the system will be compatible with new technologies including:

- \* **Remote capture:** Ink on paper fingerprints can be scanned via a terminal at the charging station and downloaded electronically.
- \* **Livescan:** Fingerprint impressions can be "read" electronically and downloaded digitally for processing and adding to the national database.
- \* **Compression:** Digital images of fingerprints can be manipulated and compressed reducing the size of the data file.
- \* **Live-id:** Can be undertaken "at a charging station or at a remote site or on patrol" and involves an AFR search of data gathered from handheld scanners (live-id) to identify a suspect.

It is the introduction of Live-id which has prompted the proposed changes in PACE, ostensibly to ensure that electronic data is covered by the Act. However, the report then proposes that: "PACE should be amended to provide powers to take fingerprints without consent at any location." It explains:

*Remote capture and livescan technology will enable police officers on patrol who suspect the involvement of an individual in an offence to verify that person's identity on the spot. This has obvious operational benefits. Not only can a suspect's given identity be confirmed within a matter of minutes, [if] his/her fingerprints are already stored, but the officer will be able to ascertain, via a Police National Computer check, whether there is a history of, for example, violence or contagious disease. However, under current legislation, it will only be possible for the police to make use of this facility if the individual in question consents to his/her fingerprints being taken. This is because section 61 of PACE states that fingerprints may only be taken without consent at a police station or designated charging station.*

Not content with evading the principle of consent the proposals further advocate extending the range of officers permitted to give authorisation for fingerprints to be taken. As John Wadham has pointed out, the proposals "will lead to more innocent people being subject to unwanted and intrusive harassment...[which is] likely to have a disproportionate effect on black people."

Proposals on changes in the law to enable the police to keep details on the DNA profiles of volunteers have been even more widely criticised than Straw's plans on fingerprints. Under PACE 1984 the taking of body samples was limited to people suspected of a "serious arrestable offence" but this was amended by the Criminal Justice and Public Order Act (CJ&PO) 1994 to "extend the circumstances in which body samples may be taken and made possible the operation of an effective national database." As a result of the changes non-intimate DNA samples (mouth swabs and hair samples) may be taken without consent from i. those "in police detention or held in custody" if there are "reasonable grounds for suspecting the involvement of that person in a recordable offence", ii. any person charged with a recordable offence, and iii. any person convicted of a recordable offence. An intimate body sample "may be taken from [a] person in police

detention if a police officer of at least the rank of superintendent authorises it." Consent is required.

There have been 110 mass DNA screenings in which thousands of samples taken from innocent people were used to compare with potential matches found at crime scenes. Section 64 (1)-(3) of PACE stipulates that where a sample is taken from a person "and that person is not suspected of having committed the offence or is not prosecuted or is acquitted of the offence, the sample must be destroyed" and "cannot be used in evidence against that person or for the purposes of any investigation of an offence." Straw, citing police approval, proposes amending Section 64 because:

*...the retention of samples, and the DNA profiles derived from samples, for use in future investigations would be mutually beneficial*

While the report cursorily notes the need for "appropriate safeguards" the real thinking behind the "mutual benefit" of retaining DNA samples is found in the section on "Searching Foreign Sets" where it notes:

*Moves are afoot within the EU and Interpol to facilitate the linking of members states' national DNA databases so that profiles held on one can be searched against profiles held on another. This will allow, for example, the DNA profile of a person charged with a serious...offence in the UK to be checked against the DNA profiles derived from crime stains recovered in any other country with a DNA database. However, ...the position as regards checks against samples held by foreign forces, the Ministry of Defence, the Armed Forces and Interpol (ICPO) requires clarification."*

*Home Office "Proposals for revising legislative measures on fingerprints, footprints and DNA samples" (July) 1999 <http://www.homeoffice.gov.uk/>; Home Office press release "Equipping the police with the hi-tech tools to fight crime in the 21st century" 30.7.99; Guardian 31.7.99; Times 31.7.99.*

## Police officers acquitted

The acquittal in July 1999 of three Metropolitan police officers charged with the manslaughter of Irishman Richard O'Brien renewed calls for independent investigations into police custody deaths. It is a testimony to the strength and tenacity of the O'Brien family that these officers ever stood trial and were finally made to account for their actions in front of a judge and jury.

On 3 April 1994 Alison and Richard O'Brien with their teenage boys, James and Richard Charles went to a christening party at a pub in south London and then on to another event at a parish hall. A disturbance broke out and the police were called. Outside the hall, Richard and Richard Charles waited while Alison tried to find James. She returned to find Richard under arrest and knowing there was nothing she could do resolved to leave with her boys. However, 14 year old Richard Charles intervened in his father's detention and when Alison was unable to dissuade the police from taking him to the station also, she insisted that she too should be arrested so that she could accompany her son. Meanwhile, Richard was being restrained by police, face down on the ground. Alison and Richard Charles maintain that they heard him call out, "I can't breathe, let me up, you win" and that the officer who was restraining him replied, "We always win". The officers denied that exchange of words, claiming that Richard was drunk and struggling violently. They also denied being racially abusive.

His body was apparently lifeless by the time police officers placed him inside the van with Alison and Richard Charles. The family said that when Richard Charles demanded that the police check his father, an officer slapped him about the face and forced him back into his seat, and after Alison protested he replied, "we'll teach him a lesson while he's young." The officer, who has never faced any charges, denies these allegations. At Walworth Police Station, Alison and Richard Charles were informed that Richard had been transferred to King's College Hospital. On

reaching the hospital they were told that Richard had been dead on arrival.

Alison then had to begin the process of trying to find out precisely what had happened after her husband's arrest. No information about where she could go for advice and support was forthcoming from the authorities. By chance she was referred by a friend to INQUEST. She was to begin an epic battle in which she would pit her resources against the Metropolitan Police and the Crown Prosecution Service. She would play her part in bringing about significant changes to the state's handling of deaths in police custody.

Ten months after Richard's death it was announced that no police officer would be charged with any criminal offence. The inquest took place in late 1995. After two weeks the jury took just 40 minutes to return a unanimous verdict, beyond reasonable doubt, of unlawful killing. They gave the cause of death as "postural asphyxia in the course of a struggle against restraint". In essence it had been brought about by three inter-linking factors: the position in which he was held - face down on the ground; the restraint by the police officers which prevented him from adjusting his position and his own struggle to breathe against that restraint.

The Coroner referred the case back to the DPP for further consideration and castigated the training offered by the Metropolitan Police in restraint techniques. He took particular care to thank Alison and INQUEST for the assistance they had provided to his inquiry.

It took Barbara Mills 11 months to reconsider and she did not change her mind. INQUEST advised Alison that although she could challenge the decision - by judicial review - the courts had never before overturned a decision by the DPP not to prosecute. Alison allied herself with others: the widow of Shiji Lapite who had obtained an unlawful killing verdict following the death of her husband in the course of restraint by police and Derek Treadaway who had convinced a High Court Judge that he had been tortured in police custody. Their joint application for judicial review came before the Divisional Court on 22 July 1997.

On the first day, the DPP's defence of the Lapite decision crumbled enabling Alison to obtain the CPS memoranda underlying the decision-making process in Richard's case. It emerged that in reaching their decision, the CPS had come up with a new theory: Richard's injuries had been caused accidentally by his son in the back of the van. This suggestion flew in the face of the pathological evidence. In a further memo personally approved by Barbara Mills, the CPS concluded that there was insufficient evidence to prove that Richard had called for air, simply because no police officer accepted the allegation. It fell to Alison to explain the reasoning to her children and in particular, to explain to Richard Charles precisely what had been said about him.

In the case of Derek Treadaway Lord Justice Rose ruled that the DPP's reasoning and conclusions demonstrated a flawed approach and that she had failed to give the close scrutiny, careful consideration and proper appraisal demanded by the evidence. All three cases were sent back for further consideration.

Systematic failings were exposed in the manner in which the CPS was dealing with criminal allegations against police officers. The Attorney General responded by appointing His Honour Gerald Butler, QC to conduct a judicial inquiry. He also instituted radical interim measures, which prevented the DPP from taking sole responsibility for decisions in death in custody cases.

Under the interim arrangements, Richard's case was considered outside the auspices of the CPS for the first time. On 10 February 1998 three police officers were charged with Richard's manslaughter. At no stage were the officers concerned suspended from duty. The prosecution did not proceed smoothly

to trial. In November 1998 the officers sought judicial review of the decision to prosecute them. On 18 December 1998 Mr Justice Dyson rejected the officers' application and sent the matter back to the Old Bailey.

The trial started on 14 June 1999 and lasted seven weeks. The jury took over 14 hours before returning majority verdicts on 29 July 1999 acquitting each of the defendant police officers of manslaughter. The evidence heard was not of the strength that was heard at the inquest because of the passage of time and because so much evidence was excluded. There were also concerns about the insensitive family liaison leading up to the trial, the Metropolitan police investigation into Richard's death and the complete failure to revisit evidence following the inquest.

For Alison her fight is not over. She has achieved a great deal in holding the individual officers accountable to a criminal jury. She has also achieved a great deal in ensuring greater public accountability within the CPS in relation to deaths in police custody. She now wishes to hold the Metropolitan Police accountable for what she considers to have been a fundamentally flawed police investigation into Richard's death and a formal complaint is to be made.

*This is an edited version of an article appearing in the November 1999 edition of "Legal Action" magazine. Deborah Coles is a Co-Director of INQUEST. Fiona Murphy is a partner of Bhatt Murphy solicitors.*

## Rising toll of deaths in police custody

Two recently published government reports confirm the rising toll of deaths in police custody and that "a disproportionate number of people from black or other ethnic communities" were among those who died. However, neither of the reports addresses the issue of the police investigating crimes by other police officers, thereby missing an opportunity to propose measures on openness and accountability. The Police Complaints Authority's (PCA) "Annual Report 1998-99" recorded 65 deaths in police custody last year, an increase of 41% since 1995. The second report, "Inquiry into Crown Prosecution Service Decision-Making in Relation to Deaths in Custody and Related Matters" (the Butler report), severely criticises the Crown Prosecution Service (CPS) over its "confused" decision-making processes and "inefficient" handling of deaths in police custody.

The PCA, which supervises police investigations into complaints against police officers from members of the public, published their 14th annual report in July. In the section on deaths in custody the report confirms that there were 65 deaths in 1998, representing the fourth successive annual increase. The report states that "a disproportionate number of people from black and ethnic communities died in police custody" and expressed "particular concern" over deaths following a struggle or restraint: "...of the nine people who died following a struggle three were black", the report says. Recommendations to stem the tide of deaths include "refresher training courses" on restraint techniques and "the introduction of CCTV to detention cells holding vulnerable detainees."

The Butler report, which was published in August, was set in motion two years ago following the controversial deaths of Richard O'Brien in April 1994 and Shiji Lapite (see *Statewatch* vol 5 nos 1 & 4; vol 6 nos 1, 4 & 6; vol 7 no 4 & 5) in December 1994, at Lambeth and Stoke Newington police stations. Relatives believed that the police had used excessive force in both cases and inquests into the deaths supported their claims by returning verdicts of unlawful killing. Nonetheless, the CPS refused to prosecute any of the officers involved in the arrests, which Butler attributed to a system that was "inefficient and fundamentally unsound".



The report has been described as a "missed opportunity" by solicitor Raju Bhatt who pointed out that it failed to "examine how allegations of criminal wrongdoing by police officers come to be considered within the CPS." Indeed, Butler's perceptive complaint on this point is only found in the Postscript and is not part of his inquiry. Here Butler comments on the "procedure under which it is the police who investigate and report to the CPS on a death in custody":

*In principle, however, I have always regarded this as a questionable procedure. Certainly, I am not alone in feeling uneasy about it. It is no part of my Inquiry to make a recommendation on the matter, and it would be wrong for me to do so. But I regard this issue to be of such importance that I feel I ought to mention it so that those in a position to do so might give it their consideration.*

Butler's remarks, which reflect long-standing public criticism of the CPS over its lack of independence and accountability, were highlighted by Deborah Coles, of INQUEST, who commented:

*Judge Butler's concern about the fact that the CPS have to rely on the police to investigate the police adds further momentum to the campaign for independent investigations into deaths in custody...Deaths in state custody are a serious human rights issue and the Home Secretary must acknowledge the widespread distrust and anger about the current system that appears to protect police and prison officers. In order to restore public confidence that state officials are not above the law he must set up an inquiry into all the processes that follow deaths in police and prison custody.*

*Police Complaints Authority "The 1998-99 Annual Report" 1999 [ISBN 0-10-270499-6]; Judge Gerald Butler "Inquiry into Crown Prosecution Service Decision-Making in Relation to Deaths in Custody and Related Matters" (Crown Prosecution Service) 1999 [ISBN 0-11-341236-3]; INQUEST press release 11.8.99.*

## SPAIN

### **Guardia Civil implicated in drug trafficking**

Evidence of *Guardia Civil* involvement in drug trafficking networks has come to light in two recent controversial court cases. In August, a military judge granted three *Guardia Civil* officers, who were sentenced to eight years imprisonment in 1997 for drug trafficking, an open prison regime, seven months after they were jailed in Alcalá de Henares military jail. The arrest of a *Guardia Civil* lieutenant colonel, Maximo Lopez Blanco, for hashish smuggling in August led a *Guardia Civil* association to condemn the incident and to demand the right to handle the prosecution in the case.

In October 1997, the *Audiencia Nacional* found 15 people guilty of drugs offences in the "Ucifa affair", including colonel Francisco Quintero Sanjuan, commander Jose Ramon Pindado Martinez and lieutenant Gonzalo Mendez Gutierrez, of the *Guardia Civil's Unidad Central de Investigacion Fiscal y Antidroga* (Ucifa, Central Body of Customs and Drug Investigations). The court heard that between January 1988 and April 1991, Ucifa had become "an organisation of drug traffickers" whose crimes included the ordering of cocaine shipments from South America in order to confiscate them (thereby gaining false merits), the disappearance of 17 kilos of confiscated cocaine and 2 kilos of confiscated heroin, and the payment of informers with drugs. The Supreme Court confirmed the verdict on 11 January 1999, sentencing the three officers to eight years imprisonment, disqualifying them from public office for a further eight years, and fining them.

Anti-drug prosecutor Pablo Contreras criticised the military judge's decision to grant them an open prison regime. He called on the *Audiencia Nacional* to annul the order, claiming that the military judge had no competence in the case, and that the

measure was unreasonable, as the defendants had not yet completed a twelfth of their sentences. The sentence, which entails the loss of their military status, was passed by a civil court, for a crime against public health (drug trafficking), which is in the civil legal code, not the military code. The defence lawyer said his clients are not responsible for existing legal loopholes and that, as they are in a military jail, it is a military judge who must decide their status.

Lopez Blanco was arrested on 2 August for his alleged involvement in a hashish smuggling network on the Catalan coast, near Tarragona. A *Guardia Civil* association, *Coproper 6-J*, asked to handle the prosecution, in order to shed light on the "shameful" events involving a *Guardia Civil* officer. The association expressed its total opposition to Lopez Blanco's activities, stressing that he had previously been linked to an investigation into a drug smuggling ring in Guipuzcoa.

*El Pais*, 6.8.99. 6 & 11.9.99, *El Mundo* 8.8.99.

## **Policing - in brief**

■ **UK: Officers charged in connection with Alder death:** The Director of Public Prosecutions has announced that five officers from West Yorkshire police force have been charged in connection with the death of a black man, Christopher Alder on 1 April 1998 (see *Statewatch* vol 8 no 6). The five officers, PCs Dunn, Dawson, Blackley, Barr and Ellerington, faced charges of misconduct in public during September, but their case was put back until 12 October. Christopher Alder died after being arrested for a breach of the peace at a nightclub. On his arrival at the police station he was unconscious; despite this, it is alleged he was left lying on the floor, with his hands handcuffed behind his back. A video film of the last minutes of his life is said to reveal that although he was in critical respiratory distress he failed to receive any medical or other assistance. The five police officers were suspended and a Crown Prosecution Service investigation, under John Holt of the West Yorkshire police force, took 15 months to reach its decision to charge the officers. The prosecution was welcomed by Christopher's sister, Janet, who condemned the delay in bringing proceedings, observing: "...I have had to fight every inch of the way. I won't give up till the whole truth is out in the open - until then Christopher cannot be buried with the dignity he deserves." *The Justice for Christopher Alder Campaign, c/o Red Triangle Cafe, St James Street, Burnley, Lancashire, Tel 01282 832319. The National Civil Rights Movement, c/o 14 Featherstone Road, Southall, Middlesex UB2 5AA, tel. 0181 574 0818, Fax 0181 813 9734.*

■ **UK: Tears and anger at deaths in custody.** At the end of October over 200 friends and relatives of people who have died in police custody marched from Trafalgar Square to Downing Street to demand accountability in the reviewing of deaths in prisons, police cells and psychiatric institutions. Dozens of family members and their friends and supporters linked arms in an emotional but dignified march called by the United Families and Friends Campaign. At Downing Street 65-year old Sylvia Sylvester, the mother of Roger Sylvester, handed in a placard with the names of 1,350 people who have died in custody since 1980 to the prime minister. Demonstrators held pictures of the dead and a minutes silence was held in their memory. With seventeen black deaths in custody so far this year the campaign is demanding that police and prison officers implicated in the killings should not be allowed to avoid prosecution through retirement. They also want to see the replacement of the Police Complaints Authority with a genuinely independent body and called for the government to launch a public inquiry into the rising toll of deaths in custody. *The United Families and Friends Campaign can be contacted c/o INQUEST, Ground Floor, Alexandra National House, 330 Seven Sister Road, London N4 2PJ, Tel 0370 432 439 or 0181 802 7430*

■ **Germany: Extended Brandenburg police powers constitutional.** After the PDS (*Partei des Demokratischen Sozialismus*) tested the constitutionality of the Brandenburg police law (see *Statewatch* vol 9 no 3 & 4), the regional constitutional court found that the new law did not violate data protection standards and is in line with Brandenburg's constitution. The police law was passed in 1996 and allows for the collection of data through the use of audio and visual devices as well as undercover operations. This has now been extended to include "contacts" (ie. friends and family, who are not suspected of any illegal activities) which is justified by preconditions for surveillance that have to be fulfilled: "real events", which suggest that the person concerned is going to commit a crime of "great importance", have to exist before the law comes into effect. However, with "cross border crime" the police have not had problems justifying surveillance and stop and search operations (see *Statewatch* vol 9, no 3 & 4). Brandenburg's Interior Minister, Alwin Ziel (*Sozialdemokratische Partei Deutschlands*, SPD), welcomed the decision and thinks that the police will gain important instruments in the fight against "serious as well as organised" crime. Police spokesman, Schumann, welcomed the fact that the new law will allow data to be collected on every civilian. *Frankfurter Allgemeine Zeitung* 2.7.99.

■ **Spain: Guardia Civil on trial for Seville shooting:** The public prosecutor in the trial of *Guardia Civil* brigadier Pedro Jimenez for the shooting of Miriam Gomez in Dos Hermanas (Seville) in April, has asked for an eight month prison sentence (see *Statewatch* vol 9 no 2). Carlos Bedate considered the offence an imprudent act leading to death, which would carry a sentence of between one and four years. He decided that the sentence should be less than the minimum because Jimenez was fulfilling his duties. Benito Saldana, the lawyer representing Lopez's family, argued that the case should be treated as homicide, because firing was an excessive reaction to a car failing to stop for a breathalyser test. Jimenez claimed that he was aiming to burst the tyre. *El Pais* 2.9.99.

■ **France: Ertzaintza denied hot pursuits by French.** A French judge in Bayonne has ruled that officers from the *Ertzaintza* (Basque Autonomous Police) have no right to enter France in chases following flagrant crimes, known as hot pursuits. The trial, lasting three years, involved five *Ertzaintza* officers who arrested two French citizens in Hendaye (France) in April 1996. They had pursued them for over 15 kilometres on the roads around Guipuzcoa in Spain after they had run over an agent during a police roadblock before crossing to the French side of the border. The ruling cites Article 41 of the Schengen Treaty, which includes the right of police officers from a member state to enter up to 10 kilometres into a neighbouring Schengen country during a hot pursuit. However, the agreement states that neighbouring countries must negotiate the concrete aspects. In the case of Spain and France this right has only been granted to the National Police, *Guardia Civil* and *Servicio de Vigilancia Aduanera* (Customs service). The Spanish government is repeatedly rejecting the Basque autonomous government's request that the *Ertzaintza* be included among the forces that are authorised.

## Policing - new material

**Breaking and entering.** David Bowen. *Police Review* 23.7.99, p26-27. Short piece on a Greater Manchester police training policy on "forcing and entering premises safely and quickly". The article concludes that "the policy has quickly resulted in officers becoming much more confident in entering premises..."

**Policing with contempt: the degrading of truth and the denial of Justice in the Aftermath of the Hillsborough Disaster,** Phil Scraton.

*Journal of Law and Society* Vol 26 no 3 (September) pp273-297. Considers the formal legal processes and their outcomes regarding the long-term aftermath of the Hillsborough disaster in the context of the reconstitution and registration of the "truth" in official discourse. It raises fundamental questions about the legal and political accountability of the police and looks forward to the acknowledgement of "truth" and reconciliation of injustices through a positive rights agenda.

**Deaths in police custody: reducing the risks.** Police Complaints Authority (PCA) 1999, pp18. The PCA have been severely criticised over their investigations of 250 deaths in police custody since 1993. A measure of their problem is the fact that this report came out of a PCA organised conference held in London in October 1998; it was picketed by angry families of those killed in custody after they were excluded from the meeting on the grounds that they would be "too emotional".

**After the Stephen Lawrence report,** Eugene McLaughlin & Karim Murji. *Critical Social Policy* Vol 19 no 3 (August) 1999, pp317-385. This article, written in the aftermath of the Stephen Lawrence inquiry, highlights the "uneven nature" of the report. It covers reactions from the press and the police and argues that "the critical challenge will be to construct an agenda for pushing forward key recommendations." Proposals for how to overcome "the limitations of official discourses on police reform" are presented in the conclusion.

**The Lawrence inquiry and incompetence, corruption, and institutional racism,** Lee Bridges. *Journal of Law and Society* Vol 26 no 3, pp298-322. A critical analysis of the Macpherson Report, particularly its approach to "institutional racism" and the down-playing of the need for a thorough re-examination of policing policies and priorities at a strategic level. It raises concerns over the potential ineffectiveness of key recommendations (stop-and-search and policing racist crime), doubting the Government's commitment to "anti-racism" given its decision to further restrict rights of defendants and the ability of black people to defend themselves against police racism via the criminal justice system.

**Press Digest Three.** *National Campaign Against CS Spray* August 1999. The National Campaign Against CS Spray was set up by the family and friends of Ibrahima Sey, who was unlawfully killed at Ilford police station after being restrained by police officers using CS gas. The Digest compiles information about the use and misuse of CS in order to promote a nationwide ban on its use. The third volume covers the period October 1998-August 1999. With the Department of Health's Committee on Toxicology report on the safety of CS ten months overdue the campaign would welcome press cuttings, reports and other documentation to make their coverage as comprehensive as possible. To obtain the digest (please send £3.50 to cover costs) or report an incident contact: Kevin Blowe, National Campaign Against CS Spray, c/o NMP, Suit 4, 63 Broadway, Stratford, London E15 4BQ, Tel/Fax 0181 555 8151.

### Parliamentary debates

**City of London Demonstration** *Commons* 21.6.99. cols. 777-785; *Lords* 21.6.99. cols. 690-700

**Police Service** *Lords* 21.6.99. cols. 722-737

**Metropolitan Police** *Commons* 22.6.99. cols. 1089-1108

**Rural Policing** *Commons* 23.6.99. cols. 1137-1142

**Libya** *Commons* 7.7.99. cols. 1033-1043; *Lords* 7.7.99. cols. 903-913

## PRISONS

### UK

## Satpal Ram calls for inquiry

A demonstration was held outside Frankland prison, Durham, at the beginning of September to protest at an alleged racist assault

by prison officers on Satpal Ram while he was in the segregation unit of the prison. Satpal was sentenced to fifteen years imprisonment, with a recommended tariff of ten years, in 1986 after defending himself against a racist gang attack in a restaurant in Birmingham, west Midlands. He stabbed one of his attackers with a knife in self-defence; the man died after refusing medical treatment (see *Statewatch* vol 4 no 3 & vol 6 no 6). His tariff expired in November 1996 but was extended, many believe, because he was vehement in asserting his innocence. Prison Rules state that an inmate cannot be considered for parole unless they have come to terms with their offending behaviour. His next parole review is in December.

Satpal alleges persistent ill-treatment by prison officers throughout his imprisonment, as well as frequent transfers between prisons. In a recent letter (4.8.99.) he says:

*...I am back in solitary. I've been down here since 30th June and once again my treatment has been such that I've had to endure a whole catalogue of abuse. I've been assaulted twice in the past month and I've received constant threats and intimidation.*

Satpal has made a statement, naming several prison officers, to Durham police and the Prisoners Advice Service regarding the attacks on him and "an assault on a Sikh prisoner, who had been assaulted and dragged into a strip-cell." Both Satpal and the unnamed Sikh prisoner, along with witnesses, were transferred to other prisons a week before the picket was held. Satpal was transferred to HMP Full Sutton. It is the fifty-ninth time that he has been moved.

He issued a statement in which he condemned the "brutal and overtly racist" treatment of prisoners and called for:

*an independent inquiry into the segregation unit at Frankland and the way in which prisoners, especially black prisoners, are treated here.*

He is asking supporters to write to him in support of his campaign and also to the Home Office demanding his release and an inquiry into the prison's segregation unit. Over 10,000 people have signed a petition supporting Satpal's claim of a miscarriage of justice and civil rights lawyer, Gareth Peirce, has now taken on his case. The petition will be presented to the Home Office and a new initiative will raise Satpal's case in Parliament.

*Satpal can be contacted (at least for the time being) at: Satpal Ram E94-164, HMP Full Sutton, Moor Lane, Stamford Bridge, York YO4 1PS. You can email him: FreeSatpalRam@ncadc.demon.co.uk Satpal Ram website: <http://www.ncadc.demon.co.uk/Satpal.html>*

## GERMANY

### Campaign for the release of RAF prisoners

In the wake of the killing of the *Rote Armee Fraktion* (RAF) member Horst-Ludwig Meyer and the arrest of his companion Andrea Klump by Austrian police in Vienna in mid-September, a concerted effort to campaign for the release of political prisoners seems to be back on the agenda of German activists. Meyer and Klump, who were members of the third generation of the RAF, had been living underground since the 1980s. The killing came unexpectedly as the RAF had officially declared an end to its military campaign in April last year. Eight former RAF members are still imprisoned (some for 20 years and often in isolation) in special departments of Germany's high security prisons.

With their latest issue the association of lawyers against miscarriages of justice and the defence of political legal cases, *Die Rote Hilfe*, has launched a broad based campaign for the release of prisoners connected to the RAF. It aims to include groups and individuals from a wide political and social spectrum. To make this possible, discussions are based around three arguments: firstly, the political context of RAF activities and the

relevance of their political ideas to recent developments in German and US imperialism; secondly, the judicial process and thirdly, the humanitarian aspects of a demand for the release of political prisoners.

Great emphasis is put on international solidarity and contributions include those of the Belgian Prisoner's Collective of the Communist Cells (CCC) and a report on the International Conference on the release of political prisoners worldwide, which took place on 1-5 April 1999 in Berlin. The conference was prepared by the German groups *Libertad!*, the *Rote Hilfe e.V* itself and Kurdish solidarity groups. The international contributions to the conference included *Adameer* from Palestine, *Gestoras Pro Amnestia* from the Basque country, *Coordinamento Mumia Abu Jamal* from Italy, *Comision Argentina por la Libertad de los Presos Politicos*, *ODEP* from Chile, a Guatemalan refugee organisation (*ARDIGUA*), *International Concerned Family & Friends of Mumia Abu Jamal*, the Turkish Human Rights Organisation *IHD* as well as several former political prisoners.

*Die Rote Hilfe (3/99) Postfach 6444, 24125 Kiel, rote-hilfe-kiel@cl-hh.comlink.de, www.nadir.org/periodika/rhz; Observer 19.9.99; Junge Welt 17.9.99*

## Prisons - new material

*Punishment & Society*. SAGE Publications, Volume 1 no 1, pp128, (ISSN 1462-4745). This is a new journal that aims "to publish research...in the field of punishment and penal control...". The first issue has pieces on "Sentencing trends in Britain", "Penal communities", staff-prisoner relationships and "Imprisonment and prisoners' work". Available from SAGE Publications, 6 Bonhill Street, London EC2A 4PU.

*Prisoners' Rights Bulletin*. Prisoners' Legal Rights Group, No 7 (June) 1999. pp8. Contains a feature on "Mental health and medication" and pieces on compassionate release, close supervision centres and the framework document for the prison service. Available from the Prisoners' Advice Centre, Unit 305 Hatton Square, 16/16a Baldwins Gardens, London EC1N 7RJ. Tel 0171 405 8090; Fax 0171 405 8045.

**HM Prison Wormwood Scrubs: report of an unannounced inspection 8-12 March 1999.** HM Inspectorate of Prisons (Home Office) June 1999, pp181. The inspectorate found "evil" and "rottenness" at the heart of the Scrubs, where 25 prison officers are facing criminal charges accused of assaulting prisoners. HMCIP offer five options for the future of the prison: i. immediate closure, ii. a change of managers, iii. privatisation, iv. partial closure and v. a change of roles.

**Prisons Drug Use, Prison and the Social Construction of Femininity**, Margaret S Malloch. *Women's Studies International Forum* Vol 22 no 3, pp349-358. Based on primary research in Britain's women's prisons this article examines the impact and effects of social constructions of femininity experienced by women drug-users. The women discuss their perceptions of "appropriate images" of womanhood, considering the focus on physicality and the body as the primary site of drug injecting. It considers the broader context of penalty aimed and directed towards women within wider structures of control, particularly the maintenance of gender identity.

**Prisoners' Information Book: visiting and keeping in touch.** *Prison Reform Trust & HM Prison Service* 1999, ISBN 0 946209 40 5, pp85. This book provides basic information on how prisoners can keep in touch with the outside world. The first section contains information on the rules on visits, letters and telephone calls and how visitors can get help with travelling costs. There is a Prisons Directory with addresses and telephone numbers for every prison. A final section lists useful organisations, set up to aid prisoners and prisoners' friends and families independent of the Prison Service. Available from: Prison Reform Trust, 15 Northburgh Street, London EC1V 0JR, Tel 0171 251 5070, Fax 0171 251 5076.

## Parliamentary debates

Feltham Young Offender Institution and Remand Centre *Lords* 23.6.99 cols. 991-1006

Wormwood Scrubs *Commons* 28.6.99. cols. 21-33

Wormwood Scrubs *Lords* 28.6.99. cols. 32-45

Prisons *Lords* 13.7.99. cols. 244-260

## RACISM & FASCISM

### UK

## Griffin romps home in BNP leadership contest

Nick Griffin is the British National Party's (BNP) new leader after defeating John Tyndall, who led the organisation unchallenged from its formation in 1982, in a leadership contest in September. A perfunctory notice on the fascist organisation's website announced that:

*...on September 29, Mr Griffin, has won the leadership - receiving 62% of the votes cast, against the 38% received by current leader John Tyndall...*

Griffin, whose victory was expected, will attempt to repackage the organisation along "new" nationalist lines, coercing "Middle Britain" while dropping the overtly nazi baggage associated with Tyndall. Griffin, who has been influenced by Le Pen's revamping of the *Front National*, is likely to see his attempts to transform the BNP into a coherent political force go the way of the French fascist party, riven by unsettled disputes and bitter legal actions.

Griffin's rapid rise to power since joining the BNP in 1995 was more surprising than September's victory over John Tyndall. While the new leader had the backing of the majority of party organisers, and therefore members, Tyndall was increasingly isolated and portrayed as a spent force. He was ridiculed by younger BNP members who advocated a modernisation of the party infrastructure and increased exploitation of new technologies such as the internet. His vitriolic campaign tactics reopened many old sores on the far-right and were used against him to show that his monopoly of power within the party was a hindrance to the development of a modern "post-fascist" organisation. It is a measure of Tyndall's political decline that Griffin, a politician whose ambition has split every fascist organisation that he has been involved in, was able to seize power less than five years after joining the party.

The Cambridge educated Griffin first came to attention as the national organiser of the Young National Front (NF) in the late 1970s. He was involved, both at an executive and leadership level, with the NF throughout the 1980s, playing a major role in several bitter leadership power struggles. During this period he also cultivated links with exiled Italian fascists from the *Nuclei Armati Rivoluzionari* (Armed Revolutionary Cells, NAR) and formed the International Third Position. At the time members of the NAR were wanted for questioning for terrorist activities in Italy, which included the Bologna bomb which killed over 80 people in August 1980. By the late 1980s Griffin had moved to Wales with his family, and following an accident in France in 1991 appeared to drop out of politics.

Griffin's return to far-right politics came through old contacts who were involved in BNP branches. A letter to the BNP journal *Spearhead* in July 1995, raised the party's electoral potential following their Millwall by-election victory, noting that "the BNP can only make real electoral gains once it wins the votes of "Middle Britain". To this end he envisages a

campaigning nationalism with a coercive role for the BNP cadres:

*power...built not on short-term ballot box surges but on trained cadres, a sound economic base and a hard-earned reputation as a campaigning organisation which stands up for "Rights for Whites".*

The BNP is a vehicle "that was willing and able to stand up to protect its own and impose its own will" he adds. "In the coming crisis a frightened "Middle Britain" will certainly demand discipline, but it must go hand in hand with **toughness...**" (emphasis in original). Griffin's version of the iron fist in the velvet glove - with its coercive emphasis on will, discipline and toughness - differs from Tyndall's only in its presentation and focus on a "frightened Middle Britain".

Griffin's seizure of power will undoubtedly allow the cosmetic infrastructural changes advocated by the modernisers; but professional and efficient packaging is unlikely to disguise the totalitarian vision that drives Griffin. Ultimately, his scenario of BNP "trained cadres" coercing a "frightened Middle Britain" into voting them into power is likely to have only a transitory appeal to the BNP's working class footsoldiers. Other key figures such as Tony Lecomber, whose grassroots popularity played a crucial role in Griffin's victory, are known to have leadership ambitions of their own. Tyndall, having rejected Griffin's token offer of life presidency, will remain a thorn in his side. Commenting in *Spearhead*, Tyndall wrote:

*The contest fought was a bitter one...I expressed myself strongly in giving my reasons why there should not be a leadership change, and this earned me the condemnation of some people in the party. I have nothing to withdraw from what I said; nor have I anything to add to it...*

The unrepentant Tyndall has a reputation as a man who bears a grudge. It is unlikely that he will take his latest humiliation quietly.

### GERMANY

## Anti-fascist movement criminalised

After the unsuccessful 1991-1996 mass prosecutions of anti-fascist organisations in Goettingen and Berlin (see *Staterwatch* vol 4 no 4) Germany's public prosecution service, police and municipal authorities have started another investigation of anti-fascist activists. The latest prosecution is against the *Antifaschistische Aktion Passau* (AA Passau) and the related but broader based movement *Passauer Aktion Zivilcourage* (PAZ). The PAZ formed as an alliance to oppose right-wing extremist parties which have held regular meetings in Passau for the last 20 years. The right-wing *Deutsche Volkunion* (DVU) hold their annual party conference there, seeking (and often finding) contacts among right-wing elements of the conservative *Christlich-Soziale Union* (CSU). Support from the local press and administration is the norm rather than an exception.

The PAZ became active through a blockade of the federal election congress of the *Nationale Partei Deutschland's* (NPD) on 7 February 1998. The NPD is known for its connections to the nazi skinhead scene and related fascist attacks. More than 2,000 people attempted to peacefully block the rally of 5,000 right-wing extremists. However, a public exclusion zone which was created for the event, together with police efforts, enabled the NPD members to enter the hall. The authorities' response to this broad based opposition to the presence of right-wing extremists was unambiguous: the criminalisation of the anti-fascist movement as a whole.

On 12 May 1998 at 6am, federal, regional and local criminal police authorities broke into the houses of 28 anti-fascists and in some cases their parents in Berlin, Hamburg, Goettingen, Passau,

Munich, Bielefeld and Muehldorf. Thirty-six "objects", i.e. flats, cars, a book shop and a printing agency, were searched and large amounts of personal belongings (estimates amount to £20,000 worth) confiscated. In some cases, the police stormed in with guns pointed at the inhabitants, one man was handcuffed to his bed, several were strip searched. One woman suffered a nervous breakdown after she was threatened with a gun whilst her flat was raided, by mistake, it was later found out.

The charges were the same throughout: "formation of a criminal organisation" (paragraph 129 StGB, Germany's Anti-Terrorist Act). According to the police and public prosecutor, a "criminal organisation" had been forming in Passau since 1993 and prosecutions were initiated against 39 people, 32 of whom have been named only after continuous pressure by supporters. The lack of evidence to support the charges against the Passau anti-fascists (a lack which was mirrored in the earlier prosecutions in Goettingen) becomes evident when looking at the wording of the initial search warrants. Officers were told to search for:

*objects, that document the connection between the suspect and the "anti-fascist spectrum", that confirm his/her membership in groups of the "anti-fascist spectrum", that verify the extent of his/her involvement in the organisation of the "anti-fascist spectrum", that substantiate the existence of a criminal organisation, that might be connected to criminal offences committed by the "anti-fascist spectrum" in the region of Passau" (Search warrant issued by the Munich public prosecutor)*

The fact that the prosecution implied "cross-links to other *autonomen* circles in other cities" indicates preliminary investigations have also been running against the federal anti-fascist network *Antifaschistische Aktion/Bundesweite Organisation (AA/BO)* as well as the association of lawyers against miscarriages of justice which defends political legal cases, *Die Rote Hilfe*.

At the time of writing, the case is still riddled with inconsistencies and more importantly, one and a half years after the raids, it is still lacking specific charges. No judge has been appointed (due to the lack of charges) and the public prosecutor has been unable to answer various questions brought to him by the defending lawyers. This implies that the Bavarian criminal police authority (*Landeskriminalamt, LKA*) has acted almost entirely independently in their 'investigation'. According to the defence, the content and construction of the files (only four of which have been released so far) mirror that of the investigation: imprecise, inconsistent and not clear as to the charges brought against the accused. In large part, they are identical. The lawyers also complain that the files contain abbreviations intelligible only to the investigation authorities, and that it is not made clear how the results of the investigations were obtained, thereby making the work of the defence considerably more difficult.

Since the initial accusation of a 'criminal organisation', an assertion which the LKA seems to have been unable to substantiate, accusations have now changed to directly include the AA Passau and "covert and sub-organisations" (cultural and alternative associations, youth clubs etc.), claiming they are a "criminal organisation". The original search warrants only indicated a "possible link". Indicative of the few released files is the amount of 'non-suspects' and unrelated persons who are being named. The inclusion of more than 100 people not directly related to the investigation indicates a massive interception of communications and surveillance practise to have taken place for a long time.

Anti-fascists, parents and their supporters suspect the case is political, with the intention of constructing a "criminal organisation" where none exists. This permits increased surveillance and the criminalisation of anti-fascist groups all over Germany at a time where in some places, Passau being amongst them, they are gaining support again. The parents of

those prosecuted have initiated a Committee for a Critical Public(ity), supporting their children in their anti-fascist activism, demanding objective media coverage and appealing to the citizen's of Passau to support the campaign and show solidarity.

Although the prosecuting judge clearly indicates "criminal offences" no specifics have actually been mentioned with vague accusations ranging from "damage to property", "breach of the peace", "coercion", or criminal offences generally directed "against events of the political enemy, state institutions and the city of Passau". The LKA's file on one "suspect" even includes "commitment against Apartheid" and "the fight against Shell" as criminal activities which supposedly give grounds for surveillance; the organisation of (legal) demonstrations against the DVU and NPD are treated as accusations as well. Indeed, police investigations were only taken up after legal proceedings had been initiated against anti-fascists by the NPD. The preliminary proceedings under paragraph 129a are still running and several sentences relating to other offences have been passed.

The *Autonome Antifa (M)* from Goettingen, say that if the accusations under paragraph 129a actually lead to a prosecution (rather than the mere investigation and surveillance of the anti-fascist movement), it would be the biggest trial against anti-fascists in Germany since World War Two. One spokesman said it was "absurd, that in the face of the election success of the DVU in Saxony, they are attempting to destroy a movement whose main activity was to organise public resistance against the annual DVU mass event and the NPD federal election congress".

In a related prosecution campaign, over 46 preliminary proceedings were initiated between February and September 1998, this time under paragraph 111 StGB (to call upon people to commit criminal offences). These allegations relate to a second call for a blockade against the annual DVU rally for September 1998. The charges have been brought not only against anti-fascists but against trade unionists, lawyers and members of the PDS (*Partei des Demokratischen Sozialismus*) and the Green Alliance party. Mayor Willi Schmoeller (SPD) called for a rival protest action under the title "right-wing extremists not wanted here", about 700 metres away from the DVU conference. Police confiscated petitions from the PAZ information stalls in the city. Two cases are known where the Office Responsible for Defending the Constitution (ORDC) attempted to recruit people as informers, offering around £330 for information on anti-fascists and their "spectrum".

*The prosecutions are continuing and the victims and support groups can be contacted at: Rote Hilfe e.V., Postfach 2243, 94012 Passau, rotehilfe@hotmail.com, www.rote-hilfe.de/passau and Antifaschistische Aktion Passau, Grosse Messergasse 8, 94032 Passau. junge Welt 4 & 28.9.98, 2.12.98, 26.3.99; AA Passau 2.1.99, http://www.nadir.org 3.9.99, 14.9.99, Keinen Schritt zurueck - das Paragraph 129 Verfahren gegen "Passauer" AntifaschistInnen, Rote Hilfe e.V., Ortsgruppe Passau January 1999*

## SWEDEN

### Anti-racist killed as neo-nazi violence escalates

Thousands of people across Sweden protested at neo-nazi violence following the murder of anti-racist activist, Bjorn Soderberg, who was shot in the head as he answered the door to his flat in Sutra, Stockholm on October 12. Seven thousand people gathered in Stockholm to demonstrate against the violence despite a bomb blast in Gavle the day before; demonstrations were also held in 20 other towns. Three men, linked to a neo nazi group, have been charged with Soderberg's murder. His death is only the latest in a series of far right violent

activities; in May two neo-nazis - former soldiers - were charged with shooting dead two policemen after a bank robbery and in June a journalist who investigated the far right was injured in a bomb explosion.

Sweden's security police (Sapo) also recorded a sharp rise in neo-nazi criminal activity in 1998. They recorded 940 crimes, almost double the figure for the previous year, including a number of assaults and threats. The increase is thought to reflect an increase in political activity in the run-up to last September's general election. Sapo estimate that there is a core group of 1,500 neo-nazi activists in Sweden divided between three main groups, the National Socialist Front (which is based in Karlskrona), the National Front (based in Smaland, southern Sweden) and the Aryan Brotherhood (a prison-based organisation). Sweden has become one of the main producers of racist "white power" music internationally.

In September police arrested 243 young protesters after a demonstration against fascism and racism on the southern Stockholm island of Sodermalm. Protesters said that the demonstration had been peaceful until the police intervened: "Everyone knows that neo-nazis and skinheads are assaulting and threatening people around [the area]. The point of the demonstration was that young people wanted to reclaim the streets from them", Elin Gauffin told the Swedish news agency TT. Those arrested were dispersed to five police stations and most of them were later released. Four people were detained and charged with inciting violence.

*Reuters 19.9.99, 26.10.99.*

## ITALY

### Gay cabaret attacked in Tuscany

In Torre del Lago (Lucca), on the Tuscan coast, a gay cabaret show was stopped by a violent mob which included AN (*Alleanza Nazionale*) militants and local councillors. The show had been moved from the central square to the lake, so as not to interfere with the village fair, also scheduled for 20 August. The local council authorised the show in a special session, but local people started organising in the afternoon to prevent it from taking place. At 5pm shops closed and a crowd shouting slogans such as "Faggots, damn faggots. You'll end up in the crematoriums" and "You're trash, go back to the laagers", gathered in proximity of the stage. When the directors of the Tuscan Arci-gay organisation asked for police support, they were told that it was a public space, open to everyone. The protesters subsequently attacked the stage, taking it apart and threatening to hunt down gays.

An AN spokesman claimed that they have nothing against gays, saying that "[the resort] is an area for family tourism, it can't become a centre of attraction for gays." However, Sergio Lo Giudice, president of the Arci-gay association, talked of a covert campaign against gays and lesbians. He said that a few days earlier, the Arci-gay secretary in Ravenna was run over, and then insulted. Giudice alleges that he was beaten by AN militants in Bologna on the night when Giorgio Guazzaloca, the right-wing candidate, won the election. They then proceeded to paint celtic crosses all over the Arci-gay section headquarters, shouting "We will finally be able to kick you out". The attack happened only days after Giulio Maceratini, leader of the AN senators, criticised the "pro-gay political groups which back D'Alema's government", in connection with investigations into the death of a *Folgore* elite corps conscript in Pisa.

*La Repubblica 21.8.99., 22.8.99.*

## AUSTRIA

### Neo-nazis second largest party

The *Freiheitliche Partei Osterreichs* (FPO), led by Jorg Haider who was forced to resign the governorship of Corinthia in 1991 after praising Hitler's "orderly employment policies", became Austria's second largest political force after winning 27.2% of the vote in October's general election. The far-right party who conducted a xenophobic campaign, claiming that Austria was being "swamped" by foreigners, won 53 seats in the *Bundesrat*. They finished behind the ruling *Sozialdemokratische Partei Osterreichs* (SPO) (33.3%) and narrowly ahead of the conservative *Osterreichische Volkspartei* (26.9%).

Haider has seen a massive increase in the FPO's vote since the beginning of the 1990s and only two weeks before the *Bundesrat* campaign they made significant gains in local elections. His popularity has not been dented by deferential gestures towards fascism, as in 1994, when he addressed a rally of German and Austrian war veterans which included former Waffen-SS men in 1994, calling them "men of good character". Nevertheless, he has recently attempted to distance himself from his more overt fascist sentiments, claiming to have discovered a third way: "As far as our ideals are concerned we agree with Tony Blair and Gerhard Scroeder on all fundamental questions...They are expressing views which a few years ago were regarded as un-social-democratic - for example on law and order, on immigration, on taxes and on the individual's responsibility towards the community. We have been saying that for years, Blair is simply putting it into practice.

*Times 2.10.99; www.agora.stm.it/elections/election/austria.htm*

## SWITZERLAND

### Far-right electoral success

The far-right Swiss People's Party, led by Christoph Blocher who in 1997 praised the author of a revisionist book that questions the Holocaust, became Switzerland's second largest political party at parliamentary elections in October. The People's Party, which draws its support from the predominantly German speaking cantons, attained 23% of the vote winning 45 seats in the 200-member lower house. The far-right organisation was defeated by the Social Democrats (51 seats) but finished ahead of the Radical Democrats (42 seats) and the Christian Democrats (35 seats). Blocher heads the right-wing faction of his Party and established himself after running a campaign opposed to Switzerland joining the European Union in 1992. More recently he has cultivated a populist anti-immigrant position and has vociferously stated his mistrust of foreigners.

### Racism & fascism - in brief

**UK: Lawrence suspect's brother gets impunity:** Clifford Norris, the brother of David Norris - one of five people named for the murder of black youth Stephen Lawrence in 1993 - walked free from Woolwich Crown Court, where he had been accused of a knife attack on an Asian man, in September. Norris had been picked out by Gatri Hassan, who received a cut to his face and needed hospital treatment, in an identification parade after the assault last November. In May a jury found Norris not guilty of possessing an offensive weapon but could not reach a decision on whether he had unlawfully wounded his victim. His retrial was halted by Judge Brian Prior who ruled that he could not receive a fair trial, partly because of the "notoriety" of his family. The Lawrence family solicitor, Imran Khan, described the ruling as "disturbing" and commented: "...because of the notoriety this family now has, they will be able to evade justice every time they go to court. That cannot be right." *Standard 7.9.99; Independent 7.9.99.*

**Norway: KRIPOS stores illegal data on gypsies:** The Samora

Newsletter, citing the newspaper *Aftenposten*, has reported that: "A criminal register used by Norway's bureau of crime investigation (KRIPOS) almost certainly violates the UN's convention on race discrimination." KRIPOS maintained a paper-based system until the mid-1970s which highlighted cases involving gypsies by marking cards with a blue mark; a yellow mark was used if the accused was on the run and a red mark for those deemed mentally ill. The archive is still used by the police to establish if a current offender has a criminal record. Jens Petter Berg, an expert on privacy law, said that he believed the register was illegal and alarming: "It is alarming that these old records are still in use. This case highlights the need for clear rules governing the obliteration of old police archives." The Justice department is looking into the case. *Samora Newsletter* No 3, 1999.

■ **Italy: Lega Nord splits after fighting at congress.** The *Lega Nord* (LN, Northern League) congress in Varese on 24 July, saw widespread fighting and the expulsion of Domenico Comino, which paved the way for numerous defections in the following weeks. LN leader Umberto Bossi had promised that the congress would be explosive after their vote went down by 2% in the European elections on 13 June, due to an escalation of racist initiatives and support for Serbia during the Kosovo bombing. Comino was a senior figure in the LN's Piedmont cadres and was expelled for secretly organising a local alliance with the *Polo della Liberta* for the European elections. He was labelled a traitor who had sold out to Silvio Berlusconi by negotiating an agreement without the necessary authorisation. Several influential figures followed Comino out of the movement, after Bossi made it clear that the LN had no intention of establishing alliances with the left or right-wing coalitions. Vito Gnutti, Comino and other dissidents, including Francesca Calvo (see *Statewatch* vol 9 no 1 and 2), the mayor of Alessandria who introduced compulsory health certificates for foreign children to enrol for primary school, set up a new movement, called *Futuro Nord*. Those leaving blamed Bossi's authoritarian leadership for the split; Calvo said "Inside the League there is always talk of treachery. When the instances of treachery are so numerous it would be better to open a discussion rather than just condemning and expelling." The former mayor of Milan, Marco Formentini, left suggesting that Bossi's rejection of the possibility of alliances with the centre-left amounted to ensuring the victory of a "dangerous right" in Lombardy.

*Il Manifesto* 25 & 27.7.99, 26.9.99; *La Repubblica* 26.7.99, 29 & 31.8.99, 7.9.99; *La Stampa* 17 & 26.8.99; [www.lapadania.com](http://www.lapadania.com) July 1999 "Espulso il polista Comino".

## Racism & Fascism - new material

*Demos Nyhedsbrev*. No 57 (Summer) 1999, pp24. Latest issue of the Danish anti-fascist magazine contains articles on NATO, Combat 18 and Blood & Honour. Available from: Demos, Postbox 1110, 1009 Kobenhavn K, Denmark; Homepage - [www.demos.dk](http://www.demos.dk)

*Samora Newsletter*. No 3, 1999. The newsletter contains a round-up of racism and fascism in Norway. Available from: Samora magasin, Antiracist Center, PO Box 244, Sentrum, 0103 Oslo, Norway; Tel. +47 22 11 60 00; Fax. +47 22 11 61 00.

**Annual Report 1997-1998.** The Monitoring Group (1999), pp15. The Monitoring Group, which is based in Southall, west London, was formed after a National Front demonstration during which police officers from the Special Patrol Group killed anti-racist Blair Peach. This report provides background to TMG and its services, which includes case studies, support services for women suffering violence, an estates project and community development work. Available from TMG, 14 Featherstone Road, Southall, Middlesex. Tel. 0181 843 2333, Fax 0181 813 9734, Helpline 0800 374 618.

*MUGAK*. Centro de Estudios y Documentacion sobre racismo y xenofobia, May-August 1999, pp59, 900 Ptas. This issue analyses the aftermath of attacks against immigrants in the summer in Catalunya,

stressing their relationship to processes of social exclusion promoted by government institutions. It looks at immigrants as a marginalised "category" through the process of stigmatisation and social exclusion, actively encouraged by the media. Other interesting articles include a study criticising the idea that "immigration = unemployment", the dangers immigrants face on expulsion, immigrants' precarious working conditions, and an analysis of parliamentary debates on immigration. Available from: Centro de Estudios y Documentacion sobre racismo y xenofobia, Pena y Goni, 13-1, 20002 San Sebastian, Basque Country, Spain.

**Platform soul**, Gideon Burrows. *Red Pepper* September 1999, pp17-19. Interview with the members of Asian Dub Foundation, whose music retains its political edge through their roots in their community and commitment to grassroots anti-racist campaigns, such as "Free Satpal Ram". Their collaboration with new bands and exploitation of new technology makes their music and ideas accessible to a wide audience. Website: [www.asiandubfoundation.com](http://www.asiandubfoundation.com)

## SECURITY & INTELLIGENCE

### SWITZERLAND

## Investigation into "shadow" secret service stopped

On 13 August, the former military intelligence accountant, Dino Bellasi, was arrested for embezzling nearly 9 million Swiss Francs from the National Bank. The money was allegedly used for the establishment of a secret military service, independent of the government. Bellasi claimed that the head of the *Untergruppe Nachrichtendienst im Generalstab* (UGND, Military Intelligence Service - Sub Group), Peter Regli, had ordered him to embezzle the money for clandestine army manoeuvres in the Alps.

After repeated interrogations by the public prosecution service however, Bellasi retracted the accusations against Regli and other representatives of the UGND. The public prosecutor then reduced its investigation to "embezzlement".

It is not the first time that the UGND has been involved in scandals. In the late 1980's, the French *Le Temps* journalist, Jean Phillipe Ceppi, uncovered contacts between the Swiss military service and that of the South African apartheid regime. Close military contacts were excused by the head of the former military department, Kaspar Villiger, as merely a "lack of political sensibility". The military cooperation, however, continued. In 1993, an UGND informant and arms dealer dumped ten kilograms of "lightly radiating" uranium next to a motorway service station near Zurich - with the knowledge of UGND boss Regli.

However, none of these scandals, nor the recent allegations, have led to a serious investigation of the "black box" (covert) Swiss secret service. In fact, the UGND will continue to expand its remit to include not only the investigation of foreign military services but so-called "organised crime". This might explain the parliamentary lethargy towards setting up an independent investigation of the allegations mentioned above. Not only the military, but the political leadership, has, since the breakdown of the Communist bloc, been informed by the UGND about "migration and refugee waves", economic and natural catastrophes and generally, crisis spots around the world.

## Security - new material

**Informer admits RUC role in Finucane murder**, Padraig MacDabhaid. *An Phoblacht/Republican News* 1.7.99. Sinn Fein have

called for a fully independent inquiry into the circumstances of the loyalist murder of human-rights solicitor Pat Finucane. The call follows revelations by ex-UDR soldier and UDA quartermaster, William Stobie, that he was a police informer at the time of his involvement in the killing.

**Hungary's purge on security services**, Tamas Orszag-Land. *International Police Review* Issue 14 (September/October) 1999, p25. Noting that "European Union candidates are having to invest heavily to improve the policing of their frontiers", this article looks at a task force to weed out corruption within the Customs and border guard service. With 26 officers under investigation Interior minister, Sandor Pinter, has announced a £10m scheme to "confront illegal migration in preparation for the country's accession to the EU early in the next decade."

**"Work with us and you can stay"**, James Meek, *Guardian* 21.9.99, pp4-5. Shafiq Ur Rehman, imam at an Oldham mosque, was threatened with deportation after being falsely accused of recruiting young British Muslims for a terrorist organisation in Kashmir by the Home Office. However, Rehman was interviewed not by immigration officials but by officers from the Special Branch and MI5 who threatened to deport him if he refused to become an informer. Despite a court ruling in Rehman's favour (which saw MI5 and MI6 openly testify in court for the first time) the Home Office plans to appeal.

UK

## Policing road protests: the myth of impartiality

Increased proactive policing amid calls for new legislation to combat road protesters seeks to completely undermine their already marginalised position

The policing of the Birmingham Northern Relief Road (BNRR) - "Operation Encompass" - is expected to cost £12.5 million and will involve officers from three forces. The motorway is the first to be built as a bypass to a motorway and its construction will damage or destroy 49 sites of ecological, archaeological or scientific interest.

In an interview with *Police Review*, Staffordshire assistant chief constable Stephen Green said of the operation:

*It is not our job to ensure that the BNRR is built, to defeat the protesters, to climb trees, to act as security guards or bailiffs, or to enforce the will of the Highways Agency or contractor*

He also talks of "facilitat[ing] the right to demonstrate peacefully, within the law". However, Mr Green is also calling for new laws and police powers aimed directly at combatting the non-violent tactics of the protesters.

### New legislation for new social movements

To combat the popular practise of building tunnels by road protesters, Green is calling for a repeal of Section 6 of the 1997 Criminal Law Act for those who "construct fortifications". The provision was drawn in respect to the rights of squatters but then used "as a cloak for protesters" who erected tents and then demanded rights under Section 6. Also called for is a new trespass law to make the construction of fortifications an offence "in its own right". Current trespass legislation requires the landowner to make a formal complaint to police before they can act. Sympathy toward road protests has in the past denied them this. Green would also like police to be given associated powers of search, arrest and seizure of evidence. His calls mirror those made earlier this year in an HM Inspectorate of Constabulary report "Policing disorder" (see *Statewatch* vol 9, no 3 & 4).

The future of road protests is also under attack by the Home Office, a consultation paper on "Legislation Against terrorism" proposes the adoption of the FBI's definition of terrorism which covers:

*the use of serious violence against persons or property, or the threat to use such violence, to intimidate or coerce a government, the public, or any section of the public for political, religious, or ideological ends.*

With the building of tunnels already seen by the courts to constitute criminal damage to land (see below) it is not difficult to envisage the recognition of serious violence against property. In any case, "serious violence" is being redefined to include "serious disruption".

### "Hitting the safety button"

The legitimisation of tactics geared to undermine road-protests has, according to ACC Green, been partly achieved by the police's branding of tunnels and bunkers as "death-traps". Averting the threat to the human safety provides the police with the "moral imperative" to intervene. Underlying this is a national "media strategy" to "hit the safety button".

The tunnellers, of course, dispute the deathtrap description and actual instances of physical injury are far rarer than the "near-death incidents" recorded by police suggest. As one protester notes, the bailiffs first rule is never to put themselves in danger and those who construct "fortifications" have confidence in what they have built. He adds that if the bailiffs followed the correct eviction procedures, there was no danger - the driving of large vehicles on to protest sites posed a greater threat to those in the tunnels.

### Increased pro-activity

Last December, the coordinators of Operation Encompass decided to act early against BNRR protesters who had constructed a bunker at Moneymore Farm in Staffordshire - police were to intervene as soon as the eviction notice could be served. After the farm's owner had "agreed to make a complaint of damage", a warrant was obtained under Section 6 of the Criminal Damage Act (this was the first time that they had obtained a warrant on the grounds of criminal damage to land) and 300 officers were deployed to the site. The eviction took 13 days and produced 37 arrests with a 100 per cent conviction rate - many of these for "obstructing the under sheriff". Three near-death incidents were recorded, although none of these resulted in any physical injury. For ACC Green the eviction was great success:

*We will only make in-roads if they [the protesters] are put in prison, and if they are putting life at risk, that's where they should go.*

Other bunkers and tunnels along the BNRR route have also been the target of early intervention; the value of which Green expresses as an overall reduction in police costs for operations of this nature.

### A national strategy

The assistant chief constable has called on ACPO (the



Association of Chief Police Officers) to establish a national "road protest strategy". However, such a strategy is already broadly apparent. It is based on the desire for legislation to undermine both the tactics used by road protesters and the legality of the protests themselves. The police are to be given more powers to enforce such legislation and the liability of protesters is to be (potentially) extended from public order and criminal damage offences to include terrorism.

Scotland Yard is setting up a "National Public Order Intelligence Unit" to compile and disseminate intelligence on organisers and protesters across the landscape of contemporary activism (see *Statewatch* vol 9, no 3 & 4). This will centralise the existing intelligence reports and individual profiles that have been actively pursued for some time.

The authorities are also keen to discuss this strategy with their EU counterparts. Green's Staffordshire constabulary has received a £25,000 grant from the European Commission under

the "OISIN" programme (a three-year, £5 million budget line created to further European law enforcement cooperation) to assess whether road protests are a common problem in the EU; to examine "best practice" principles; and to consider the possibility of information exchange among EU law enforcement agencies. In September the UK delegation submitted a questionnaire to EU police forces via the EU's police cooperation working party. It asks what requirements and expectations authorities would have of a system "to share intelligence and information regarding environmental protest". It may well be the first step upon a familiar path in the EU.

*Police Review*, 3 & 27.8.99; *The Big Issue*, 23.8.99; *Legislation against terrorism: a summary of the government's proposals*, Home Office [www.homeoffice.gov.uk/oicd/terrsum.htm](http://www.homeoffice.gov.uk/oicd/terrsum.htm); *The policing of environmental protest - Questionnaire, UK Delegation to Police Cooperation Working Party*, 10716/99, Limite, Enfopol 56, 6.9.99.

## EU

# Schengen: UK given rough ride

**The UK's "pick-and-mix" approach and obstinance over security and border controls in opting into the Schengen provisions has been widely criticised in the EU.**

The United Kingdom government has formally applied to participate in the provisions of the Schengen *acquis* relating to police cooperation, mutual assistance in criminal matters, narcotic drugs and the Schengen Information System (SIS). The application was provided for by Article 4 of the Schengen Protocol to the Amsterdam Treaty which integrates the *acquis* into the EU framework. Because the "special position" of the UK in regard to its "island geography" is enshrined in the Treaty, it is able to remain outside Schengen's (fundamental) provisions on the free movement of persons - those on border control and visa policy (Schengen asylum provisions are now all but supplanted by the Dublin Convention). While the UK Parliament will be required to legislate on amendments to British criminal law, it was not asked to agree on the UK's application.

Intention to apply was announced at the Justice and Home Affairs Council in March (see *Statewatch*, vol 9 no 2), but the formal application had to wait until the entry into force of Amsterdam and the following JHA Council in May (28-29). Acceptance of the UK's application requires unanimity among the 13 Schengen states. And although the Finnish Presidency has just submitted a first draft of the Council Decision for discussion within the EU JHA Council groups, several important issues remain unresolved.

Representatives of a number of countries are critical of the UK's "pick-and-mix approach", and raised concerns about setting a precedent of the possibility of partial application of EU laws by the applicant countries. There was also widespread opposition to the splitting of individuals articles, i.e. partial implementation of Schengen measures and directives.

Ireland also has the right to seek to participate in Schengen provisions, and its application had been expected with that of the UK (the two countries have been discussing aspects of implementation) but is now not expected until late in the year.

## "Freedom, security & justice"? The UK's obsession with security

*The Commission underlined that its approach in regard to the UK's application was positive but that it had nevertheless to be pointed out that the request was very security-orientated and would to a large extent not cover freedom- and justice-related aspects... (Outcome of proceedings, EU Schengen Acquis Working Group, 27 July 1999).*

The European Commission, who are obliged to submit an opinion on the UK's application, is not alone in suggesting that its scope should be widened. The Commission wants the UK to participate in freedom of movement provisions for lawfully resident third country nationals. Article 21 of the Schengen Implementing Convention grants the right of free movement to non-Schengen nationals who hold a residence permit (or equivalent) in a member state. Its application in Britain would benefit a large number of people who are lawfully allowed to live here but require visas for travel in Europe.

## SIS: a single integrated system?

The UK's pick and mix of Schengen provisions is most problematic in respect to the SIS. Data to assist immigration authorities and border control exists alongside that relating to policing and criminal matters, necessitating some kind of partial access to the system by the designated UK authorities. France was not alone in opposing the splitting of the SIS and in considering it a single integrated system suggested that the UK should instead widen its application to all SIS-related provisions. Solutions to the technical problems are based on either alteration of the C.SIS (the central system) to prevent the UK receiving the "alerts", or measures in the UK's N.SIS (the national interface) to either prevent access or delete the alerts on receipt. Both are problematic: the former complicated and expensive; the latter in terms of data protection.

UK authorities will be able to access SIS data on people wanted for arrest, extradition or in relation to criminal proceedings in a member state, missing persons, information on "discreet surveillance" operations, and stolen vehicles or other objects wanted in connection with criminal activity. They will not, however, have access to "Article 96" data, which covers "aliens to be refused entry" at external borders. This category is the largest relating to persons, and data therein is the most frequently acted upon by participating authorities. The UK's National Criminal Intelligence Service (NCIS) will be able to participate in the *SIRENE Bureaux* (the telecommunications link with other participating EU authorities enabling more detailed information to be exchanged bilaterally following a "hit" on the SIS), but immigration authorities will not be able to participate in the *Vision* network (collective information on visa issue).

Request by the United Kingdom to take part in some of the provisions of the Schengen acquis (in accordance with Article 4 of the Schengen Protocol), Presidency NOTE to JHA Council, 8562/99, Limite, Schengen 56 + ADD 1, 21.5.1999; Outcome of proceedings of the Schengen Acquis Working Group: 23.6.99, 27.7.99, 20.9.99 (9813/99, 10549/99 & 11307/99); Commission opinion on the request by the United Kingdom to take part in certain

provisions of the Schengen acquis, European Commission, SEC (1999) 1198 final, 20.7.99; Overview of issues to be taken into account for the UK's participation in SIS matters, Presidency NOTE to Schengen Acquis Working Group, 10172/1/99 Rev 1, Limite, Schengen 68 SIS 22, 2.8.99; UK application to participate in provisions of the Schengen acquis, Presidency NOTE to Schengen Acquis Working Group, 11177/99, Limite, Schengen 74, 21.9.99.

UK

## CCTV in practice: watching the watchers

**A new study on the practice in CCTV control rooms shows the need for regulation and scrutiny in the use of surveillance cameras**

In their latest book on CCTV, *The rise of the maximum surveillance society*, Clive Norris & Gary Armstrong present their analysis of 600 hours of observation in CCTV control rooms. The research is a welcome addition to a more mainstream concern with questions of effectiveness and their findings present an alarming - if somewhat inevitable - image of CCTV in practise.

The authors shadowed operators in three different CCTV control rooms (locations are not disclosed to preserve anonymity). Each CCTV system carried out 24-hour surveillance on public, "commercial centres" and were staffed by non-police personnel. One control room was run by an "independent trust" but was located in the local police station ("in effect a police-led system"). The other two were run by private security firms sub-contracted by the local authority and located in purpose-built premises; one had a retail radio link for which participating stores paid an annual fee. Conditions for those who work in CCTV control rooms reflect those prevalent across the private security industry: low pay and long hours. Pay at the three sites varied between £2.60 and £4.60 per hour with a working week of 42-60 hours. Overtime was paid at the normal hourly rate and there was no holiday pay or recognised union.

### Watching with prejudice

*It will come as no surprise to anyone who is aware of the literature on police suspicion that CCTV operatives adopt a similar criteria to construct the targeted population: focusing on the young rather than the old, disproportionately targeting blacks rather than whites, men as opposed to women, and the working rather than the middle classes. (p.119)*

The research correlated "targeted surveillances" (where individuals are selected for surveillance and actively followed) with the estimated racial composition of the population using the surveilled area ("erring on the side of caution"). Their statistics suggested that black people were two-and-a-half times more likely to be targeted by the CCTV operators than white people at the "County Town" site, and over one-and-a-half times more likely in the "Inner-City area" (p.110). They also categorised the reason that people were watched and found that black people are "twice as likely to be surveilled for no apparent reason" than whites (p.115). This category represented over a third of all the targeted surveillances during the course of the observations. Also noted was "the racist language used by a minority of operators" and the "more widespread stereotypical negative attitudes towards ethnic minorities and black youth in particular" (p.123). Those considered to be "subculturally" attired were also disproportionately targeted, as were the homeless:

*A couple of operators were particularly keen on surveilling the homeless... [One operator] made it clear that he did not have time for: "Big Issue scum", "homeless low-life" and "drug-dealing scrotes. (p.140)*

Central to claims regarding the effectiveness of CCTV is that the cameras deter potential offenders and enable a rapid police response to incidents as they arise. However, such intervention appears relatively rare. The 600 hours of observation resulted in only 45 police deployments, leading to 12 arrests. Black people, while accounting for 32% of the targeted surveillances accounted for only 14% of these deployments and one of the arrests. Field-notes describe the circumstances leading to the arrests and show those for breach of the peace offences resulting from nothing more than the police approach (pp.178-188). In fact, over half of all deployments were the result of what the authors call "behavioural suspicion".

### Abuse of the gaze

A primary concern of civil liberties groups is that the cameras can potentially be misused by operators and authorities alike. Numerous issues arising from the research can only fuel such concerns.

*Women were far more likely to be the object of voyeuristic rather than specifically protectional surveillance... In nearly 600 hours of observation only one woman was targeted for protectional purposes - as she walked to and from a bank cash dispenser. (pp.115 and 127)*

Voyeurism was nowhere more evident than in the surveillance of a couple engaging in a "clearly visible" sexual act in a renowned car-park:

*From beginning to end this scenario is put onto the police monitor, the operator informing me that the police officers in the communications office enjoy such scenarios and when bored will sometimes phone to ask him to put the cameras on Shaggers Alley for their titillation. (11 minutes, 1 camera) (p.129)*

And another operator detailed:

*a large scale public order situation was a product of a local officer leaving a night-club and picking a fight with three black youths. The latter sitting in a car outside a snooker club were approached by him and not impressed with his suggestion that drug dealers like them should "fuck off to where they came from"; in the ensuing fight the CCTV system located the PC, shirt off brawling as more black youths spilled out of the snooker club. The end product was the deployment of 20 uniformed officers to the scene and the spiriting away in the rear of a police car of the offending officer. Two black youths were arrested. According to the CCTV operator the tape was never released to either the police or any other agency and the officer was never disciplined for his actions. (p.190)*

### The regulatory void

The authors also address the lack of a sufficient regulatory framework on the use of CCTV. There is no fundamental right to privacy in British law, so this can not be extended to cover the potential misuse of surveillance cameras. Most public CCTV systems establish internal codes of conduct, but with no agency to enforce them, references to respecting "fundamental rights of

privacy" are rendered worthless. At all sites the researchers witnessed or operators reported "a whole range of breaches of their respective codes" (p.155). Most seriously (aside from in specific cases such as those above), these related to invasions of privacy and the failure to keep a proper record of procedure in the recording of personal data. The code of practice at one of the research sites stated that the system "will not be used for the general collection of intelligence about the events and people in a particular area" (p.101), yet a memo sent to operators by the police liaison officer declared:

*The time has come to remind the villains that we are there. Use the cameras to search the streets for likely looking individuals... zoom in and out, look for faces, potential suspects, potential victims, move the cameras around from time to time to let them know you're alert... Use the real time recorders when you identify people of whom you are suspicious. (p.102)*

In June the Home Office announced a new three-year, £153 million CCTV programme - a significant increase on the expenditure of previous conservative governments who championed the technology. Their press release stated that:

*In order to ensure that CCTV is used fairly and lawfully, with due*

*regard for civil and personal liberties, all successful bids [to the new programme] will be regulated by codes of practise that requires [sic] them to adhere to the principles of the Data Protection Act 1998.*

However, protection afforded by the Act falls short of the statutory laws governing the use of CCTV in many other European countries. Professor Mike Macquire has argued that:

*the potential effectiveness of the [Data Protection Act 1998] is greatly diluted in a number of ways. The drafters of the Act did not regard privacy as a fundamental right, but as one that had always to be balanced against other interests. Many exemptions are allowed and there are numerous ambiguities and loopholes in the wording which can be exploited by companies or agencies wishing to avoid the controls. The practicalities of enforcement are also highly problematic....*

*"The maximum surveillance society: the rise of CCTV", Clive Norris and Gary Armstrong, Berg, 1999, (ISBN 1 89573 2216); "Restraining Big Brother? The regulation of surveillance in England and Wales", Mike Macquire in Norris, Moran and Armstrong (eds) Surveillance, CCTV and social control, Ashgate, 1998 (ISBN 1 84014 126 3); Home Office press release 168/99, 1.6.99.*

EU

## Tampere: A victory for "spin" over content?

**EU "spin" hides the "security" implications of the Summit while the promise of some legal rights for EU citizens seeks to buy off objections to the new global role of "Fortress Europe"**

If civil society groups and citizens were confused by the Tampere decision-making process the Tampere Summit Conclusions (so-called "Tampere milestones") only added to this confusion. The reasons for this were two-fold. First, the language (discourse) used by the Finnish Presidency is in sharp contrast to the blunt, upfront, style normally characterising EU Council reports (for example under the Austrian and German Presidencies). The Finnish Presidency style is at the same time apparently more "liberal" but also more obscure. Second, the presentational theme at the Summit ("spin") was to emphasise the positive "benefits" to EU citizens by trying to lay more emphasis on "freedom" and "justice" than on "security".

So did Tampere mark a new beginning for a more "liberal" justice and home affairs approach? The answer is yes and no, but a small yes and a big no.

### Positive moves?

On the possibly positive side there is, formally on the table for the first time, the status of third country nationals resident in the EU. There is too the promise of "user guides" to laws in different countries (para 29), "minimum standards ensuring an adequate level of legal aid" (para 30), streamlined procedures on cross-border "small consumer and commercial claims, as well as maintenance claims" (para 30), minimum standards for the protection of victims of crime plus compensation (para 32) and a new initiative on crime prevention (paras 41-42). However, there is no mention of "Eurobail", a key demand of *Fair Trials Abroad*, but there is of a "European Enforcement Order" (para 37; Eurowarrants).

But what is to be made of this statement in para 4:

*The aim is an open and secure European Union, fully committed to the obligations of the Geneva Convention and other relevant human rights instruments..*

Was this a change of heart given the swathe of policies adopted since 1992 to undermine the rights of refugees? Of course not, it simply "spin" without meaning.

It might be possible to see objectives in the "Follow up" report on asylum as positive: "common standards for a fair and efficient asylum procedure", "uniform status for those who are granted asylum" and "temporary protection for displaced persons" if it were not for longstanding EU policies and practices and the well-established tendency to harmonise asylum-seekers' rights down to the lowest common denominator.

This having been said it is important to place the Tampere Conclusions in context. They are meant to add to the provisions in the Amsterdam Treaty (Title VI, TEU and Title IV, TEC) and the detailed plans set out in the Action Plan establishing an area of freedom, security and justice - provisions which are overwhelmingly about "security". The Conclusions also assumed that the revised and updated Action Plan on organised crime (soon to be agreed) and the report of the High Level Working Group on Asylum and Migration were in place.

### Extending "Fortress Europe"

The Conclusions extend the mandate of the High Level Group and ask it to draw up "further Action Plans" like the six already agreed which target six countries (see feature in this issue) for economic and political pressure to enforce the implementation of readmission agreements. This again is presented in highly-acceptable terms, the High Level report is "welcome[d]" in the following "context":

*The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states ensuring respect for human rights, in particular of minorities, women and children... Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development (para 11).*

But is there a single mention of EU member states ending their exploitation of third world markets and labour and/or of a

massive aid programme to combat "poverty" etc? No. The "Follow up: Technical Working Paper" on the implementation of the Tampere Conclusions only refers to the work of the High Level Group, which is simply about readmission, sending people back to their country or "region of origin" by expelling them from the EU.

Indeed money proved to be a difficult issue at the Summit. The draft Conclusions said that 250 million euros should be made available over five years to help member states "efforts concerning the reception, integration and voluntary repatriation of asylum-seekers, displaced persons and refugees". Although this is hardly a lot of money, around £32 million a year, it was deleted from the final Conclusions.

### **A "Common European Asylum System"**

Like all EU Summit Conclusions the change of a single word can be significant. The Finnish Presidency "draft agenda" spoke of a "Single Asylum System", implying a uniform, harmonised system. The use of the word "common" effectively means approximation.

The components of a "Common European Asylum System" (paras 13-15) are common standards of asylum procedure, "common minimum conditions of reception of asylum seekers", "approximation of the rules on the recognition and content of refugee status" and a "uniform status for those who are granted asylum" (the latter to be a Commission communication by the end of next year). Past experience would suggest that the concepts of "common", "approximation" and "uniform" will be a consensus at the lowest common level.

The long-term objective is to establish for refugees and asylum seekers the same standards of procedures, the same reception rights (eg: dispersal and vouchers etc) and the same status for those granted asylum in every EU state. Part of this plan, explicitly referred to at the Informal JHA Council in Turku, is to be able to use the "information campaigns" in the six third world countries targeted by the High Level Group to tell potential migrants that whichever EU state they enter they will get the same treatment - to stop "asylum-shopping".

One sentence in the Conclusions slipped through quietly, "Consideration should also be given to rules on internal readmission". This is a reference to complementing the Dublin Convention to bring it in line with the practice in Schengen states. For example, undocumented refugees and asylum-seekers could be directly returned to the EU state from which they have come - the UK would be able to immediately return people to France regardless of establishing through which country they had entered the EU. Within the Schengen "area" tens of thousands of migrants are shuffled between countries every year.

### **"Fair treatment of third country nationals"**

In 1994 the European Parliament narrowly failed to adopt a resolution calling for all third country nationals resident in the EU for five years or more to be granted citizenship. The status of third country nationals is referred to in the Conclusions (para 21), but in much more limited terms.

It speaks of the "approximation" of their legal status, being granted "uniform rights which are *as near as possible* to those enjoyed by EU citizens" (emphasis added), and the longterm objective that they be "offered the opportunity to obtain the nationality of the Member State *in which they are resident*." (emphasis added). This does not add up to citizenship and implies that they will not have the right of free movement (including the right to live and work), and does not refer to EC legislation, right of residence or to equality in family reunion.

### **"Illegal immigration", money-laundering and extradition**

There are strong provisions in the Conclusions on tackling "illegal immigration". Those involved in the "trafficking in human beings and economic exploitation of migrants...[face]... severe sanctions against this serious crime." (adoption is set for the end of 2000).

No less than 12 measures are to be drawn up to tackle money-laundering, the seizure and confiscation of assets, ending bank secrecy and tackling off-shore operations. The formal remit of Europol is to be extended to cover money-laundering as a specific offence and not just money-laundering as a related offence as it is currently (ie: related to drugs).

In the EU extradition procedures are to be abolished by 2002 for "people fleeing from justice after having been finally sentenced". The EU has already redefined the Council of Europe Convention on extradition by limiting the concept of "political" offences in its own Convention (currently being ratified by national parliaments). The abolition of extradition procedures for sentenced people, which now allow courts of the state in which the person is present to examine the case and whether a person was mistreated or had a fair trial, is to be replaced by 2003 with the "simple transfer of such people". What was agreed falls far short of the UK demand that in the longterm extradition procedures should be abolished altogether: "the law enforcement authorities of an EU member state would simply arrest an accused person or convicted criminal and surrender them to the member state in which the crime was committed, on the strength of a warrant issued in that member state".

### **EUROJUST and mutual recognition**

The Summit agreed that EUROJUST be set up. This is to be a "unit" composed of national prosecutors, magistrates, or "police officers of equivalent competence". EUROJUST is to "support criminal investigations in organised crime cases, notably based on Europol's analysis". As it is expected that EUROJUST will be based in the Hague right alongside Europol it may well be that we will see the introduction of prosecutors working alongside Europol officers throughout an investigation.

The debate over "mutual recognition" of judgements (including sentences) took a very limited form. Although the Summit "endorses the principle of mutual recognition" (para 33) the only criminal matter referred to is extradition. There was more agreement on less contentious issues such as pre-trial orders to seize assets and evidence (deadline 2002) and of evidence gathered in one state being admissible in court in another (deadline 2004).

Another way around the "mutual recognition" problem is for EU states to agree on "common definitions.. and sanctions" on specific offences. The Summit therefore did agree to do this for financial crime, drug trafficking, trafficking in human beings, high tech crime and environmental crime. The deadline is set as 2004, though agreement on new "forms of crime" like "high tech crime" may be one of the first to be defined at an EU level.

### **EU Charter of fundamental rights**

The Summit also agreed the composition and method of work for the "Body" (a new concept) to draft a EU Charter of fundamental rights. The "Body" is to be comprised of representatives of the EU governments (15), the Commission (1), the European Parliament (16) and national parliaments (30). The European Court of Justice (2) and the Council of Europe (2) are to be observers.

The role of civil society is simply set out as "other

bodies, social groups and experts *may be invited* by the Body to give their views" (emphasis added). As to openness and transparency, earlier drafts left this issue open, but the adopted remit however severely restricts the right of access to documents to those submitted to public hearings.

Preparatory discussions in the Council made it apparent that this "Charter" of fundamental rights would *not* include any new rights simply the pulling together of existing rights - though it might include a mechanism for enforcing existing rights. These discussions also said that the charter would "include fundamental rights that pertain only to the Union's citizens".

### Conclusion

Despite the "spin" the Tampere Summit did signal a deepening of cooperation on justice and home affairs in the EU to which the EU governments are committed, and which will become

apparent over the next five years. Moreover, "law and order" issues like "illegal" immigration, organised crime, and "access to justice" are seen as ones which bring the EU "closer to the citizens" - and are perceived as being "popular" with voters.

Despite the liberal discourse of the Summit Conclusions, when taken together with the Amsterdam Treaty, the Action Plan on freedom, security and justice, the Action Plan on organised crime and the High Level Group report on asylum and migration, they add up to a package primarily concerned with "security" rather than "freedom" and "justice".

*Draft Presidency Conclusions, Tampere European Council, 15 and 16 October 1999, SN 162/99, undated but put out on the morning of 16.10.99; Presidency Conclusions, Tampere European Council, 15 and 16 October 1999; Follow-up of the Tampere Summit: Technical working paper, drawn up by the Presidency, Commission and General Secretariat of the Council, dated 25.10.99.*

## EU: TAMPERE

# Globalising immigration controls

**The "action plans" of the High Level Group on asylum and migration target six third world countries who will be subjected to economic and political pressure to agree to the EU's readmission plans to expel migrants**

The Tampere European Council of 15-16 October 1999 began the institutionalisation within the EU structures of policies which turn refugee-producing countries into immigration police, completing the process which started in the 1980s with "Fortress Europe" and developed through the creation of buffer states around Europe. The new policies pass responsibility for prevention of immigration to the countries of origin of refugees and migrants and the countries through which they pass, through the adoption of action plans tying trade and aid with prevention and return of "refugee flows". Internally, the Tampere Council saw the foundations of a "single European asylum system" to ensure identical treatment of refugees no matter where they go in Europe.

The arrival in Italy and Greece in late 1997 and the beginning of 1998 of significant numbers of Iraqi Kurds who had travelled by sea from Turkey galvanised the EU into the drafting of an action plan to ensure that such an "influx" did not recur. The plan, entitled "Influx of migrants from Iraq and the neighbouring region", equated asylum-seekers with illegal immigrants (the phrase "illegal refugees" was coined), and was firmly aimed at prevention, recommending the increased use of liaison officers working with carriers to stop suspects from boarding, and of universal fingerprinting of illegal entrants, to make identification and return easier. The Iraq action plan proposed the return of these "illegal refugees" to "safe areas in the region of origin" (meaning Turkey and Jordan).

### Austrian strategy paper

The Action Plan on Iraq was drafted for wider application, and it was followed up in mid-1998 with Austria's strategy paper. This gained notoriety for its assertion that the Geneva Convention was outdated and that individual rights of asylum should be replaced by "political offers" of finite protection by Member States. Its frankness was too much for other national governments, and it was shelved. But its approach to migration strategy has been seized on and developed. The Austrian plan proposed an integrated approach, linking trade, development and migration policy with countries of origin and transit of refugees and migrants. "It is impossible to take decisions on Iraq, Pakistan, former Yugoslavia or Turkey", it commented, "without taking into account the plainly visible tide of illegal migration". The EU "must use its economic and political muscle" to enforce return

and readmission agreements with countries of origin and transit. "Progress in these areas should serve as an important criterion when development aid decisions are taken."

These passages from the first draft of the Austrian strategy paper did not survive scrutiny by other member states, and were cut from the second draft of September 1998. But it is precisely these ideas which have been developed in the action plans which were prepared, building on the model of the Iraq plan, on five more countries or regions which were major sources of migrants or refugees: Afghanistan, Somalia, Sri Lanka, Morocco and Albania (later extended to include Kosovo). A different member state was responsible for drafting each action plan (the UK took Sri Lanka), and the idea was to produce a cross-pillar, multi-disciplinary approach to immigration and asylum which would ensure that action in foreign policy, development aid and trade was coordinated with migration policy. The Iraq plan was to be revised accordingly.

The six action plans were adopted by the General Affairs Council just before Tampere without any debate (the report and "action plans" went through as an "A" point). The plans, five final and the sixth, on Albania and Kosovo, described as "interim", contain thorough analysis of the demographic, economic, political and human rights situation in the country and the causes of migration from and through it. There are statistics showing the size and age structure, life expectancy and infant mortality of the population, imports and exports to and from the EU and the rest of the world, GDP, development aid and existing trade, cooperation and readmission agreements - all of which are to be used to cajole these countries into accepting EU readmission policies. Then the required action is spelt out, covering trade and development policy, foreign policy and priorities in "migration management".

The political analysis of the target countries does not prevaricate. The final Action Plan on Iraq describes the country as a "dictatorship" with no civil rights, where 2,500 people have been extra-judicially executed in the past two years. That on Sri Lanka acknowledges that the primary cause of migration from the island is the conflict between the army and the LTTE, which shows no sign of a political or military settlement, and accompanying human rights abuses. It refers to the double risk faced by Tamils - that of forced recruitment by the "Tamil

Tigers", and their risk from the authorities as suspected Tigers. The Somalia plan describes a lack of any recognised government, amid continuing civil strife compounded by an influx of weapons from the Ethiopian/Eritrean civil war, as well as a complete lack of medical facilities (infant mortality is 143 per 1,000 live births), floods, poor harvests and desperate poverty. The plan on Afghanistan describes routine violation of human rights and summary justice, the rigid Islamic policies of the Taliban, from whom most of the Afghan refugees to Europe have fled, on top of the effects of a 20-year war - a legacy of six to seven million land mines, almost no agriculture and no infrastructure (roads, telecommunications, electricity generation), resulting in a life expectancy of 45. The report on Albania describes a total absence of law and order (riots in 1997 after the collapse of financial pyramid schemes led to 1,500 deaths), and the inability of citizens to obtain legal rights. The Albania report deals too with the 1998-9 persecution of ethnic Albanians in Kosovo. The sixth plan, on Morocco, is the only one to refer to improvements in the human rights situation. It describes a young, poor, under-employed population heavily dependent on remittances from Europe, together with a transient population of refugees from Algeria and sub-Saharan Africa en route to Europe in order to claim asylum.

Of the six countries targeted for action, at least four can be described as refugee-producing countries. Yet none of the action plans contains any proposal which would allow refugees from those countries to seek asylum in Europe. The plans are about making people stay where they are - either in an unsafe country of origin or in precarious conditions in the region of origin - and about sending back those who make it to Europe. The "action required" in each plan attains specificity when referring to the concrete measures for prevention, deterrence and removal of refugees and migrants. To keep them from coming, more airline liaison officers (ALOs) should be stationed at Colombo airport, to prevent Tamils from boarding aircraft bound for Europe (and the Sri Lanka government has already been prevailed upon to push through new laws criminalising trafficking and illegal exit, which have not stopped the illegal movement of people out of the country, merely made it far more expensive). There are no liaison officers in Iraq or Afghanistan - but they should be stationed in Pakistan, where the majority of Iraqi and Afghani refugees are, and Pakistani officers should be helped to detect forged documents. Similarly, ALOs will be placed in Kenya and Ethiopia from mid-2000, according to the Somalia action plan, to stop poorly documented Somalis boarding aircraft to Europe.

Identification and documentation of migrants and refugees are seen as priorities, in the light of the difficulties EU member states have had in the past in persuading countries of origin to take back undocumented deportees. A foreign policy priority in Somalia, along with facilitating conflict resolution, mines surveys and assisting in livestock exports, is agreeing arrangements for the identification and documentation of refugees returning to the entities of Somaliland in north-west Somalia and Puntland in the north-east - areas the EU deems "safe". Sri Lanka will be asked to agree arrangements for the identification and documentation of all citizens. Its authorities have already begun issuing machine-readable passports. In Kosovo, too, UNHCR is to be asked to issue personal and property documentation, and local officials are to be trained in detecting false documents.

Another ingredient in the package is dissuasion. In each country of origin or temporary refuge, potential entrants to Europe are to be targeted with an information campaign telling them of the realities, risks and consequences of illegal entry.

### **Peace and love**

The corollary for stopping migration from war-torn countries and repressive regimes is the improvement of the situation in

those countries. Here, the plans can be read either as utterly naive or deeply cynical. They offer peace, reconstruction, development, reduction of poverty, with little elaboration as to how these laudable aims are to be achieved beyond a continuation of pre-existing humanitarian aid programmes. At Tampere there was no money put on the table to combat third world poverty confirming that these Action Plans are simply and only concerned with expulsion and readmission. Thus in Afghanistan, the "action required" in the field of foreign policy is peace, monitoring human rights, development cooperation and the effectiveness of aid are to be improved, priority should be given to health care, education and reconstruction, while opium growing is to be combated.

Under "migration", on the other hand, very specific plans include readmission agreements covering stateless persons and third country nationals with Pakistan and Iran, helping the Pakistan authorities detect forged documents, more Airline Liaison Officers in Pakistan and more immigration officers in the region, and an information campaign to dissuade illegal migration.

Action under the heading of foreign policy for Somalia includes the "facilitation of conflict resolution", upholding the UN Security Council embargo on weapons, continuing a dialogue with the de facto authorities of the various parts of the country; monitoring and prevention of human rights violations, consideration of the provision of support to the regional administrations, consideration of holding war crimes trials, continuation of humanitarian and development aid, promotion of measures for tolerance and human rights, mines awareness and surveys, strengthening of education, health, job creation and the economic infrastructure, and in particular assistance for the export of livestock.

The priorities for migration policy include the consideration of voluntary repatriation, the assessment of return programmes for failed asylum-seekers; checking the reception and protection capacities of African countries (applying the "safe region of origin" policy), co-operation with de facto authorities on immigrant racketeering and combating trafficking in children (this refers to unaccompanied asylum-seekers from Somalia rather than child prostitutes), information campaigns on the destructive effects of illegal immigration, ALOs at neighbouring airports (probably Kenya, Ethiopia and Djibouti, although these are not spelt out), and readmission arrangements for the return of failed asylum-seekers and illegal entrants. The Foreign Office is to agree arrangements for the identification and documentation of refugees in areas without recognition

The other action plans have a similar combination of vague and aspirational recommendations to improve the social, political, economic and human rights situation in countries of origin with specific, clear, implementable recommendations to stop migration from and through them. The levers of trade and aid will be used explicitly in this process. Readmission agreements, either free-standing or as part of trade and economic cooperation, feature heavily. The Somalia plan recommends the conclusion of readmission agreements with what are called "de facto" authorities, self-proclaimed governments of parts of the country which are unrecognised anywhere in the world. The interim plan for Albania recommends that the EU conclude a general readmission agreement in the context of a future Stabilisation and Association Agreement. For Kosovo it recommends "as soon as practicable", a readmission agreement between the EU and Milosevic's Federal Republic of Yugoslavia for the return of ethnic Albanians.

The Austrian strategy paper commented that "An effective entry control concept cannot be based simply on controls at the border but must cover every step taken by a third country national from the time he begins his journey to the time he reaches his destination". These words have been taken to heart in

the Action Plans' treatment of measures to apply in countries of transit - Pakistan, Iran, Turkey and Morocco. Thus, the Action plan on Afghanistan recommends readmission agreements with Pakistan and Iran, which would cover taking back both their own nationals, stateless persons and third-country nationals. The Iranian and Pakistan governments are to be supported in hosting Afghani refugees (it currently supports 1.4 million, and Pakistan hosts 2 million, as against Europe's few thousand). The Iraq plan suggests that northern Iraq might be safe for Kurds and that a transit agreement be negotiated with Turkey to allow Kurds to be repatriated both voluntarily and forcibly to northern Iraq. The plan for Kosovo recommends transit agreements with Hungary, Slovenia, Croatia, Bosnia and Herzegovina, FYROM and Albania to allow Kosovo Albanians to be returned by land through their territories.

The Morocco plan points out that Morocco is unwilling to take back both its own undocumented nationals and also Africans who are said to have passed through the country. Additionally, it does not require visas of Africans entering the country. The plan recommends, in addition to the implementation of existing agreements and their extension (if necessary) to third country nationals, pressure on Morocco to impose visa requirements on West Africans, particularly Nigerians, Senegalese, Malians and nationals of the Democratic Republic of Congo (formerly Zaire). Morocco's position in the Euro-Mediterranean Partnership and in the Association Agreement signed in 1996, and reliant on the EU for much of its trade, means it simply cannot afford to say no.

### **"Trafficking" in a vacuum**

The fight against trafficking of migrants and refugees dominates the agenda of the Action Plans. It is described as an evil on a par with drug trafficking in the Presidency Conclusions from the summit. But the children who are brought to Europe from Somalia and Sri Lanka, described in the Action Plans as victims of the traffickers, are on the whole children whose parents have lost one or more children to war, to death or forcible conscription or simply to preventable disease in the refugee camps, and who are desperate to save the lives of surviving children. They are victims not of the traffickers so much as of the wars and of western immigration policies and practices which prevent their legal departure. Smuggling of asylum-seekers is now very expensive and, for those smuggled, very dangerous. Dozens drown in the Straits of Gibraltar or suffocate in the holds of ocean-going ships or in container lorries every year. Some people, including some border police in countries of transit, are getting very rich through the human trade. But nowhere is the simple truth spelled out: that asylum-seekers are forced into the hands of traffickers because of the lack of legal means to seek protection in Europe. (The only group of refugees to have been given assistance in reaching EU member states recently were the Kosovans, and they were granted a year's temporary protection with, in many EU states, no right to seek more secure status and the threat of forcible expulsion if they do not leave voluntarily. No refugees from Africa, Asia or the Middle East have been helped to find protection since the Vietnamese boat people.) And nowhere is there any proposal to rectify this omission, nowhere a plan to provide legal means of entry to Europe for those seeking asylum. The Presidency Conclusions on asylum speaks of "absolute respect of the right to seek asylum". It is hard to see how this right will be respected in practice if EU policies on visas, carrier sanctions, airline liaison officers, border controls and anti-trafficking measures continue to be implemented against those fleeing their countries as refugees.

### **Common Asylum System**

The Action Plans were adopted by the Tampere Council as part of the "creation of an area of freedom, security and justice" under

the Treaty of Amsterdam, which brings immigration and asylum issues within the competence of the EU institutions under the first pillar. What this means for asylum is work towards the establishment of a "common European asylum system". In the short term this will involve a reworking of the Dublin Convention to provide a "clear and workable determination" of the State responsible for examining an asylum claim, common minimum conditions of reception of asylum-seekers, and the approximation of rules on the recognition and content of refugee status in all member states. There will also be measures on "subsidiary protection" for those who do not qualify under the Geneva Convention. In the longer term, there will be a common asylum procedure and a uniform status for those granted asylum, valid throughout the Union. The Amsterdam Treaty lays down a period of five years to complete this programme. The avowed aim is to cut down "secondary migration" within the Union on the part of asylum-seekers believed by immigration ministers to be flocking to the country with the highest recognition rates, or the one which offers the best social security or work opportunities during the asylum procedures. Ministers have candidly said that they don't want to offer better conditions than other EU member states, so the uniform conditions, procedures and criteria are likely to involve a levelling down to the lowest standards rather than levelling up to the highest.

### **Immigration and integration**

Although the Treaty of Amsterdam covers immigration as well as asylum, there was very little work on immigration policies for the admission of immigrants (students, family members and workers) - as opposed to the readmission of migrants to countries of origin or transit. The Presidency Conclusions refer to the "need for approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin". This may be a coded reference to the debate about quotas in the context of the need of many EU member states for more workers to support their ageing populations. The final ingredient of the Tampere Council package on immigration and asylum is the promise of action on the 15-million-plus long-resident "third-country nationals" in Europe, whose position has been steadfastly ignored for over a decade. The Council endorses the objective that long-term lawful residents should have the opportunity to obtain the nationality of the member state where they live, and in the meantime, offers "rights and obligations comparable to those of EU citizens" in terms of residence, education and work. Tampere does not offer them full citizenship, rather a new category of "second-class" citizenship dependent on their good behaviour and "integration" into EU values and norms.

The overall picture is clear: give legal residents better protection in the area of freedom, security and justice while exporting immigration controls (with its unfreedom, insecurity and injustice) to the countries and regions of origin of refugees, where they are neither seen nor heard.

*Tampere Summit Conclusions, 15-16 October 1999; High Level Working Group on Asylum and Migration final report, 10950/99, 14 September 1999; Draft Action plan for Morocco, SN 3770/2/99 Rev 2, 23 September 1999; Draft Action plan for Afghanistan, SN 3739/2/99 Rev 2, 23 September 1999; Draft Action plan for Somalia, SN 3714/3/99 Rev 3, 23 September 1999; Draft Action plan for Sri Lanka, SN 3443/3/99 Rev 3, 23 September 1999; Draft Action plan for Iraq, SN 3769/2/99 Rev 2, 23 September 1999; Draft interim report on Albania and the neighbouring region, SN 4025/99, 23 September 1999; Austrian Presidency Strategy paper in immigration and asylum policy, 9809/98 and 9809/1/98 Rev 1, ASIM 170, 1 July 1998 and 29 September 1998; Influx of migrants from Iraq and the neighbouring region: EU Action plan, 22 January 1998.*

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Statewatch was given a “Champion of privacy” award at the annual presentations organised by Privacy International held at the London School of Economics on 18 October 1999.

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