

Statewatch bulletin

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EU: Solana coup: access to documents rules re-written to meet NATO demands

- **parliaments by-passed**
- **access to document: "could fuel public discussion"**

In an swift and unexpected move to satisfy NATO far-reaching changes to the 1993 Council Decision on the public right of access to EU documents were rushed through the Permanent Representatives meeting (COREPER) in Brussels on 26 July. The changes were formally adopted by the EU on 14 August through what is known as "written procedure" (the measure is simply faxed out and is passed if a majority is in favour). National parliaments and the European Parliament were not consulted. The International Federation of Journalists called the move a "Summertime Coup" to satisfy NATO. When Statewatch requested a copy of the options on the table access was refused because it "could fuel public discussion on the subject" and embarrass "the Council's partners". Mr Jacob Soderman, the European Ombudsman, said in an interview that the present code did not need amending to protect military secrets and "non-military crisis management" should not have been included.

The change to the 1993 Decision on documents permanently excludes from public access all documents which are classified Top Secret, Secret and Confidential concerning the "security and defence of the Union or one or more of its Member States or on military or non-military crisis management". It also excludes access to any category of linked documents which "enables conclusions to be drawn" regarding the existence of another, classified document without the express permission in writing of "the author" (eg: NATO or the US).

The person behind these changes is Mr Solana, the Secretary-General of the Council of the European Union/High Representative on Common Foreign and Security Policy who is also the Secretary-General of the Western European Union (WEU) military alliance. He was Secretary-General of NATO until September 1999 when he took over the top job at the Council - the body working on behalf of the 15 EU governments.

What is extraordinary about this Decision is that the prime mover for the change was Mr Solana, an appointed official, and not the EU governments who had put the 1993 Decision in place, set up a public register of documents and agreed that classified documents should be listed on the register (this has now been overturned). Nine EU-NATO governments fell into line and supported the Solana "coup". Denmark, the Netherlands, Sweden and Finland issued a statement disassociating themselves from the Decision and saying that it should not influence the discussion on the new measure put forward by the Commission (see Statewatch, vol 10 no 1).

However, the European Commission immediately put out a statement saying that it too would fall into line and amend its proposal to meet the Solana changes.

The new Decision lumps foreign and military policies together with "non-military crisis management", which includes a proposal to set up a 5,000-strong EU paramilitary police force and it, and impinges on nearly every issue covered by justice and home affairs (including border controls), aid and trade issues.

The Decision was rushed through as Brussels was closing down for the summer, MEPs had left (many were already on holiday) and so had most of the media.

The move throws into utter confusion the Amsterdam Treaty commitment, under Article 255, to "enshrine" the citizen's right of access to EU documents. In January the Commission put forward a new draft code of access to meet this commitment and by July the European Parliament had appointed four Committee rapporteurs with a full agenda running up to Christmas.

All of this begs the obvious question: Who is running the EU? Appointed officials or the governments - because it is certainly not parliaments or the people. (See Features)

EUROPE

EU-US: Telecommunications surveillance

US: "Carnivore" surveillance system challenged

The US group EPIC (Electronic Privacy Information Center) has lodged a lawsuit to get the FBI to reveal details of its new "Carnivore" telecommunications monitoring system - to be used by "black boxes" placed in service providers. "Carnivore", developed in the FBI laboratories at its HQ in Quantico, Virginia, is apparently named thus because it finds the "meat" in vast quantities of data. It is apparently capable of scanning millions of e-mails each second and able to give the "law enforcement agencies" access to all of an ISP's customers' digital communications. Marc Rotenberg, of EPIC, said: "It goes to the heart of the Fourth Amendment and the federal wiretap statute that are going to be applied in the Internet age".

"Carnivore" consists of a laptop computer, communications interface cards and software. It uses the fact that virtually all internet communications are broken up into "packets" or uniform chunks of data and FBI programmers devised a "packet sniffer". The system is able either to download whole sets of traffic or what is called in the US a "pen register" - a list of people/sites contacted or from whom information is received (an early version, called in the UK "telemetry", was used by BT from the 1970s onwards).

It is interesting to note that the total telecommunications interception warrants issued in the US in 1998 was only 1,329 whereas in the UK it was 1,903 (excluding Northern Ireland).

Sources: EPIC Alert, 3.8.00; International Herald Tribune, 13 &

17.7.00; see also Statewatch News online for UK telephone tapping figures, on <http://www.statewatch.org/news>

EU: What happened to the ENFOPOL decision?

After the debate surrounding an EU document called "ENFOPOL 98" it was expected that the Justice and Home Affairs Council would adopt the streamlined version, ENFOPOL 19, dated 15.3.99 (see Statewatch, vol 7 no 1 & 4/5, vol 8 nos 5 & 6, vol 9 nos 2 & 6, vol 10 no 2). This would have extended the EU-FBI Requirements to cover the interception of the internet, e-mails and satellite phones. Instead, as reported in the last Statewatch, the "negative press" over interception meant there was little political will to adopt this update.

In the spring the EU's Working Party on Police Cooperation has decided that the issues previously discussed under "interception of communications" will now come under "advanced technologies". One of the first document to surface with the title: "Advanced technologies: relations between the first and third pillars" came out on 12 July. This seemingly innocuous report is concerned with "the single market and the EU's entry into the global Information Society". It then says that experts in the first (economic) pillar and third (police cooperation) need to work together on criminal use of new technologies and the "emergence of cybercrime". While the first pillar takes decisions on "technical and commercial" matters, the Working Party on Police Cooperation has:

"therefore defined the technical specifications intended to safeguard the possibility of lawful interception of such services"

The report suggests "an inter-pillar dialogue" now be established. This is all a polite way of saying that the EU-FBI "Requirements" have to be built into trade and commerce in the EU.

One of the issues which has apparently already been discussed is "the definition of the length of time data may be stored in the telecommunications sector". This is a reference to the on-going debate between Data Protection authorities in the EU and the "law enforcement agencies". Elizabeth France, the UK Data Protection Commissioner, said in her latest annual report that:

"The routine long-term preservation of data by ISPs [internet service providers] for law enforcement purposes would be disproportionate general surveillance of communications."

The Spring 2000 Conference of European Data Protection Commissioners, 6-7 April, Stockholm, issued a declaration on the "Retention of Traffic Data by Internet Service Providers (ISPs)". It noted with concern:

"proposals that ISPs should routinely retain traffic data beyond the requirements of billing purposes in order to permit possible access by law enforcement bodies.

The Conference emphasised that such retention would be an

improper invasion of the fundamental rights guaranteed to individuals by Article 8 of the European Convention on Human Rights. Where traffic data are to be retained in specific cases, there must be a demonstrable need, the period of retention must be as short as possible and the practice must be clearly regulated by law."

There is an on-going "debate" over the length of time ISPs should be required to keep data, the "law enforcement agencies" variously argue for 30 days, 90 days and some for much, much longer.

Sources: ENFOPOL 19, 6715/00, 15.3.99; ENFOPOL 150, 10571/1/94, REV I +REV 2 +REV 3 +REV 4, 17.1.95.

European Parliament: Inquiry into Echelon launched

The European Parliament has agreed to set up a temporary committee to investigate Echelon, a world-wide electronic surveillance network headed by GCHQ (UK) and the National Security Agency in the US. The Committee will meet over a year and has 36 members. The setting up of the Committee follows an initiative by the Green group of MEPs who obtained 172 MEP's signatures to get a vote on the issue at the parliament's plenary session (when 210 MEPs voted in favour). The signatories wanted a full committee of inquiry with the power to call witnesses to testify and to get documents. The details of the committees work are on the following web pages:

Members of the committee:

<http://europarl.eu.int/tempcom/echelon/en/members.htm>

The mandate for the committee: <http://europarl.eu.int/tempcomechelon/en/mandate.htm> Meetings of the committee:

<http://europarl.eu.int/tempcom/echelon/en/agenda.htm>

STOA study on the development of surveillance technology <http://www.europarl.eu.int/dg4/stoa/en/public/pop-up.htm>

Extensive background information on Echelon is on:

<http://www.echelonwatch.org>

Germany: demand for agreement on Echelon

The spokesman for the EU Committee of the lower house of the German parliament, Christian Sterzig (Die Grunen), supported by the coalition spokeswoman on human rights, Claudia Roth (Die Grunen), have called for a swift and consistent mutual agreement between the US and EU member states on the Echelon system. At a hearing of the EU Committee in the beginning of July, ministers concluded that the system is threatening civil liberties in Germany. In a report by Duncan Campbell for the European Parliament it became evident that Echelon, a world-wide interception system run by the US, the UK, Australia, New Zealand and Canada under the auspices of the US National Security Agency (NSA), not only intercepted

firms' business communications but also those of human rights organisations such as Amnesty International.

Committee expressed concern that the NSA is running a station connected to the Echelon system in the Bavarian town of Bad Aiblingen. The German government has accepted reassurances by the US that their status as NATO partners would not allow them to carry out economic espionage against Germany. However, the data protection officer for the Land Brandenburg, Dr Alexander Dix, informed the parliamentary EU Committee that the status of NATO as a military force did not provide an adequate legal basis regulating surveillance via the Bad Aiblingen station. Echelon, he concluded, did not only violate German, but European community law as well. Currently, a German governmental supervisory committee meeting in secret gets information on Echelon. Data protection officers and MP's concerned with civil liberties however, are demanding an open parliamentary- debate as well as a binding agreement prohibiting the interception of telecommunications through Echelon in EU member states.

Source: Buro Jansen and Janssen

Netherlands: BVD using random interception?

The daily newspaper De Volkskrant has revealed that the Binnenlandse Veiligheidsdienst (BVD) has intercepted e-mail correspondence between a Dutch and an Iranian company. The Dutch company, which specialises in industrial automatic processing, last year responded to a request for compact discs with software by the Iranian company. The software was designed to run special computers for water purification equipment. The Dutch company also informed the Iranians by e-mail about other technological matters.

In September 1999, the BVD visited the Dutch company and told them to stop the transactions, because the Iranian company was concerned with the installation of nuclear plants. A BVD officer told the company it had been screening their email traffic and was searching for keywords like "water purification", "Iran", and "Programmable Logical Controllers", (the technique the Iranian company was interested in).

This indicates that the BVD is intercepting random e-mail traffic and satellite communications and searching them for keywords. The BVD does not have the legal powers to do this the Dutch Parliament is discussing a Bill under which they would be given the power to intercept and scan all communications at random.

De Volkskrant, 31.7.00

EU: Opening the door to migrants?

The speech by Barbara Roche, UK Home Office Minister, to the conference in Paris "Fight against clandestine entry networks" and the later pronouncement by Jean-Pierre Chevenement, the French Interior Minister that the EU needs 75 million immigrants by the year 2050 had the same theme. Both argued that there must be a crackdown on unwanted and uncontrolled migration to stop "trafficking" and "people smuggling" while, as

Barbara Roche put it:

"We need to find ways to meet legitimate desires to migrate, be ready to think imaginatively about how migration can meet emerging social and economic needs."

The economic needs of the EU thus must be met by the planned immigration of skilled labour to meet shortfalls in the ageing population - migration is "legitimate" if it satisfies EU labour objectives. Illegitimate, and soon to be "unlawful" under the EU French Presidency plans, entry to the EU by political and economic refugees and asylum-seekers is characterised as feeding "organised crime" and criminals who exploit people (including those who give them homes or work in the EU).

An extensive 100-page report for UNHCR's Policy Research Unit by John Morrison directly questions the assumptions of EU immigration policy. The report says that the policymaking of the EU governments:

"is part of the problem and not the solution. Refugees are now forced to use illegal means if they want to access Europe at all... There are very few legal possibilities for refugees to enter the European Union so the majority are required to attempt ever more clandestine forms of entry."

All the EU's policies the report says are geared to border controls, controls on the transit countries and the countries of origin. As to migrants who get involved in smuggling and trafficking to escape persecution:

"the emphasis is on closing down criminal activities but without providing alternative means for migration for those with no choice other than to flee."

It was at the Informal meeting of Council of Justice and Home Affairs Ministers in Birmingham in 1998 under the UK Presidency of the EU that the long-term plan was spelt out. The Council and the Commission said that the issue of "economic migrants" had been dealt with, now was the time to tackle "political" migrants and replace the now-outdated 1951 Geneva Convention - this would leave the EU to define its own needs.

The issue is addressed head-on by an article in the Guardian newspaper by A Sivanandan, director of the Institute of Race Relations in an article entitled: "Casualties of globalism - today's economic migrants are also political refugees". He writes:

"the distinction between political refugees and economic migrants is a bogus one - susceptible to different interpretation by different interests at different times. The west is quite happy to take economic migrants if they are businessmen (with the requisite £250,000), professionals or technologically-skilled.. /but] the west does not need, as it did in the immediate postwar era, a pool of unskilled labour on its doorstep..."

The International Monetary Fund, the World Bank and the G8 countries hold the "poor regimes in hock" and demand "so-called structural adjustment programmes" with the effect that:

"It denies the possibility of indigenous growth or any hope for

the future which is not tied up with foreign powers and foreign capital. Hence resistance to economic deterioration is inseparable from resistance to political persecution. The economic migrant is also the political refugee."

"Together Europe can beat people smugglers - Roche", Home Office press release, 21.7.00; Independent, 21.7.00; "The trafficking and smuggling of refugees: the end game in European asylum policy?", John Morrison, UNHCR's Policy Research Unit, July 2000; "Casualties of globalism", A Sivanandan, Guardian, 8.8.00.

Europe in brief

Schengen: Ireland follows UK "opt-in"

Ireland has drafted its application to participate in certain provisions of the Schengen acquis. It is seeking to join the Schengen provisions on police cooperation, mutual assistance in criminal matters, drugs and the relevant parts of the Schengen Information System (SIS). It will remain outside the Schengen framework for border controls and visa policy. The request to "opt-in" is being made under Article 4 of the Schengen Protocol to the Amsterdam Treaty, and follows the initiative of the UK. Ireland had waited until the UK had successfully negotiated its application, and has submitted a virtually identical proposal. Home Office officials had been in contact with their Irish counterparts throughout. The major stumbling point for the UK's application was the partial participation in the SIS, which had posed both technical and political difficulties (see Statewatch vol 9 no 5). Unanimity among the other Schengen states is required for any accession, and Justice and Home Affairs ministers were finally able to adopt the decision on the UK at the JHA Council on 29-30 May 2000 following a year of discussions. The Irish application is likely to be approved at November's JHA Council - there is however one difference between the Irish and UK applications on the cross-border surveillance clauses (Articles 40 and 41).

Sources: Irish application to participate in some of the provisions of the Schengen acquis, NOTE from Presidency to Schengen acquis group, 9950/00, Limite, Schengen 11, 30.6.00; Council Decision of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis, OJ L 141, 1.6.00; House of Commons Select Committee on European Scrutiny, 24th report, 24.7.00.

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Netherlands: Basque political prisoner extradited to Spain

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On 27 July Esteban Murillo Zubiri was extradited to Spain after he lost his appeal at the High Court in The Hague. His extradition was requested by the Spain, who alleged that he had been involved in a murder and was a member of ETA; a claim that was denied by Murillo (see Statewatch vol 10 no 1).

Supporters, who had previously occupied the Spanish consulate, picketed the Harlaam prison on 25 July in anticipation of his extradition. The High Court rejected Murillo's claim that in Spain he would be persecuted because of his political beliefs. Despite the presentation of evidence from Amnesty International, the United Nations and the Council of Europe's Committee Against Torture that criticised the frequent use of torture against Basque prisoners, and evidence that Murillo had been tortured while imprisoned in Spain during the late 1970s-early 1980s, in the early morning he was handed over to four Spanish representatives at Schiphol airport. After being briefly detained at Madrid airport Murillo was taken to Valdemoro prison, where he is still trying to speak to a lawyer. Amnesty Spain has been asked to monitor Murillo's case by his Dutch lawyer and the Dutch Socialist Party has asked questions about the extradition in parliament.

The "Solidarity komitee Esteban Murillo" can be contacted at Postbus 2882, 3500 GW Utrecht, Netherlands.

Europe- new material

Review: "Making up the rules: interception versus privacy" Buro Jansen & Janssen (by Jelle van Buuren, edited by Eveline Lubbers) published on the internet at: <http://www.xs4all.nl/~respub/crypto/english>.

For some time now, the struggle against cyber-crime has enjoyed a prominent place on the political agenda. Three components crop up every time in the rhetoric on the threat of cybercrime, cyber-terrorism and cyber-warfare; the vulnerability of the digital infrastructure, the use of the Internet to commit digital crimes and the use of encryption to communicate freely and to suppress evidence. No hard statistics on the actual dangers are given; instead, there is a lot of shuffling with statistics and anything remotely connected to hacking is consigned to the great pile of cyber-crime. The authorities emphasise the dangers of a perilous, uncontrolled cyberworld in order to obtain extensive authorisation to survey data, to track and to intercept. This dossier sheds some light on the attempts of the authorities to carry out interceptions at will on the internet, paying special attention to the ways in which they try to tackle the problem of cryptography. Bringing the Internet under control is an international affair. This dossier highlights organs like the P8, the Council of Europe and the European Council of Justice and Home Affairs, all of which are difficult to control. These are the forums where the industrialised countries discuss the harmonisation of technical standards that will enable the interception of Internet communication, the harmonisation of powers to track down and trace people and cooperation by crossborder investigations into cyber-crime.

European Integration and Migration Policy: Vertical Policymaking as Venue Shopping. Virginie Guiraudon, Journal of Common Market Studies (Blackwell) June 2000, pp25 1-271. The article looks at the way in which transgovernmental "policy forums" in migration and asylum have been dominated by "securitarians". Guiraudon considers how the current decision-

making structures have evolved, noting that intergovernmental cooperation was developing by the early eighties during very low levels of legal migration and a decade before the national reforms in migration and asylum criteria in the early nineties and the emergence of the "mass illegal immigration" phenomenon. She says that the pre-existing security forums, from Trevi onward, have "allowed law and order officials to set the agenda of migration as a European security issue". Within intergovernmental structures, she argues, these officials are less restricted than in national settings where "a number of institutions, levels of government or social groups can act as "veto points" and prevent reforms". Guiraudon suggests that the goals of national migration control officials have been fostered in three ways: through "avoiding judicial constraints", "eliminating adversaries" (parliamentarians, NGOs, activists and lobbyists) and "enlisting much needed cooperating parties" by "co-opting sending and transit countries".

CIVIL LIBERTIES

UK: Cambridge Two freed to appeal

Two charity workers jailed for four and five years respectively for failing to prevent petty heroin dealing at a centre for the homeless in Cambridge have been bailed by the Court of Appeal after seven months in prison. John Brock and Ruth Wyner were found guilty in December of "knowingly permitting or suffering the supply of a Class A drug on the premises" (Section 8, Misuse of Drugs Act (1971)) following an undercover police operation (see Statewatch vol 10 no 1). In their defence the two had relied on the charity's confidentiality policy under which they were unable to pass-on the names of suspected drug-dealers to the police. Despite them having issued ten bans to clients for drugdealing and 162 for suspected dealing over a 16 month period, the Judge, Jonathan Howarth, described the centre as a "haven for heroin dealers". Bail was granted after prosecution lawyers asked for more time to consider evidence produced by the defence. Defence lawyers say Howarth misdirected the jury by not allowing them to consider the relevance of the client confidentiality code. While the granting of bail does not prejudge the result of the appeal (which is likely to resume in September), those working with drug users - and workers across a range of institutions or premises where drug-dealing might occur - have breathed a huge sigh relief. Homeless charities have reportedly been turning away drug users for fear of police investigations and prosecutions threatened by the unprecedented sentences handed to Wyner and Brock. The Free the Cambridge Two Campaign say they are resolved to fight on to overturn the convictions and clear the two's names.

Justice for the Cambridge Two Campaign, www.wintercomfort-justice.org/

Civil liberties - new material

SchQuall: SchNEWS and SQUALL back to back - the best of UK independent media in the mix. Justice?, June 2000 (£7).

ISBN 09529748 3 5. Fifty issues of SchNEWS (the weekly newsheet) and the best of Squall magazine with a detailed index. Covers direct action, civil liberties, anti-racism, public order and terrorism legislation. An excellent resource, available from SchNEWS, c/o On The Fiddle, PO BOX 2600, Brighton, East Sussex, BN2 2DX, UK. Both groups also have websites <http://www.schnews.co.uk> and <http://www.squall.co.uk>

Strange Ways. Centre for Studies in Crime and Social Justice, Vol 3 no 2 (June) 2000, pp12. The most recent issue of the newsletter contains pieces on "bogus" asylum seekers (Renton & Alexander); corporate manslaughter and the Paddington train crash (Louise Christian) and male violence (Helen Jones). CSCSJ

website: www.ehche.ac.uk/study/schsubj/mass/csj/index.htm

Gruppo Abele Annuario Sociale 2000 (Social Yearbook 2000). Feltrinelli, May 2000, pp762 (L32,000, Euro 16.53). An essential reference book by Gruppo Abele, an organisation that works in the field of social deprivation in Italy. Divided into categories including AIDS, environment, youth, justice and prisons, Mafia and criminality, drugs, immigration, social deprivation, and world poverty, conflicts and rights. Each chapter starts with an analytical essay, a day-by-day account of events in the field during 1999, followed by explanatory tables on major developments and a wealth of statistical data. Available from Gruppo Abele, via Giolitti, 21, 10123 Torino, Italy or www.gruppoabele.it

Justice and the General: people vs Pinochet, Frances Webber. Race and Class vol 41 no 4 (April-June) 2000, pp43-57. Places the attempts to extradite Pinochet in the context of the movements demanding justice for the families of the deceased and disappeared in Chile and, discusses the "fraud" of the Truth and Reconciliation Commission. Available from IRR, 2-6 Leeke Street, London WC1X 9HS; Tel +44 (0)20 7837 0041

Anonymous witnesses, Ruth Costigan and Phil Thomas, Northern Ireland Legal Quarterly (2000), Summer, forthcoming. The article deals with the police use of anonymous witnesses which "has its roots in an exceptional trial in Northern Ireland but which has progressed swiftly through the process of normalisation so that it now affects routine prosecutions throughout the UK."

MITTEILUNGEN der Humanistischen Union e. V. - Zeitschrift für Aufklärung und Bürgerrechte no 170, June 2000, pp55. This newsletter introduces a new regular feature which reports on European Union developments. Also includes a statement on the planned EU Charter on Fundamental Rights drafted by a network of German human rights and civil liberties' organisations. It was presented to the EU Committee of the German parliament on 5 April. Available from Humanistische Union e.V Tel 0049-30-204502-56; Fax 0049-30-204502-57; hu@ipn-b.de, www.humanistische-union.de

IMMIGRATION

Europe: Challenge to border regime

After two successive border camps in Germany in the summers of 1998 and 1999 (see Statewatch vol 9 no 5), activists in Europe, and also from the USA, have organised a "chain of anti-racist border camps", to oppose EU migration policies. The aim of the camps is to challenge as well as report on the different aspects of border regimes, from Poland and Slovakia to Germany and Italy. Another aim is to create a practical network between related groups and individuals across Europe through an international presence as well as direct support for refugees and migrants. This year's border camps were a success which the organisers say directly challenge the EU's migration politics.

Eastern European migration policy scrutinised

The first of the camps was organised by Polish anarchists in Ustrzyki Górne in the Bieszczady region, where Poland meets Ukraine and Slovakia, in July. Over 150 people from Poland, Germany, Ukraine, Belarus, Russia, Slovakia, the Netherlands, Finland, Austria, Bulgaria and Spain made their way to the sparsely populated border region. Participants organised a demonstration in front of the border guard offices in Lutowski and around 40 activists organised an "illegal" border crossing through the mountains. At a protest on the building site of a planned Federal Border Guard headquarters activists climbed construction towers and hung banners on the complex which is being financed under the European Union PHARE programme (the Landrovers used by the Federal Border Guards even carry blue stickers advertising the EU sponsorship).

The main focus for participants were the migration policies laid down in the EU's *acquis* on justice and home affairs implemented by the Polish government. Since July 1998, Polish police officers have increased stop and search operations targeting undocumented migrants and Poland has since implemented large-scale detention and deportations.

Closure of detention centres in Sicily

In Italy, a border camp took place in Marzamemi (Sicily) between 23 and 30 July, focusing on Italy's role as "the guardian of Schengen country", referring to the multitude of deaths on Italy's shores each year due to the "militarisation" of the Adriatic Sea and the Otranto channel. Over 100 participants took part in demonstrations and debates. On 27 July, a demonstration calling for the closure of all detention centres marched through the town of Trapani, where last December, five north African immigrants died in a fire in the detention centre Serraino Vulpitta. After riots against the living conditions had erupted a fire broke out, and the five died because an emergency door had been locked from the outside (see Statewatch vol 10 no 1). Two days after the demonstration, Serraino Vulpitta was closed by the judicial authorities and activists report that legal proceedings have been initiated against the chief constable on grounds of manslaughter, neglect of duty and abuse of office.

Countering the culture of informing

The situation on the borders of Germany was at the heart of the activities which characterised the border camp in the town of Forst on the German-Polish border between the 29 July and 6 August. Around 1,000 people met for the third time in this eastern border region where over 90% of "detections" of undocumented refugees and migrants is attributed to information received from the local population. Activists met for a week and, as on previous occasions, local authorities attempted to prevent the organisation of the camp by refusing to grant a camping license. Police finally accepted the occupation of the site because of the large numbers of activists arriving in the small town.

For the preceding weeks the camp had been widely discussed in the local and regional newspapers, which mostly presented the participants as troublemakers. During the course of the week however, largely due to extensive leafleting and the posting of a camp newspaper informing local people about the aims and activities of the camp, some press coverage was favourable. There were daily meetings of camp participants to discuss public activities and a variety of working groups on migration and eastern Europe. There were demonstrations and reports on the appalling living conditions in the asylum seekers home in Cottbus and in Eisenhüttenstadt, a blockade of the regional Federal Border Guard station in Janschwalde-Ost and the building of border crossings over the river NeiBe. A camp delegation also held a rally in the east German city in Guben which was dubbed the most notorious far-right town in Germany after the asylum-seeker Omar Ben Noui was chased to his death there in 1999. All the camp activities, including discussion texts and pictures were put on the internet, with the help of the German internet group nadir, through a computer working station on site. At 8.30 am on 6 August, the last day of the camp, police raided the internet tent under the pretext that there were illegal transmitters for a pirate radio station on site. Although no transmitters were found police searched several vehicles and confiscated equipment.

Border camps successful

Organisers and participants of this year's border camps found that they were successful on several fronts. Not only did they, in the case of Italy, contribute to the closure of a detention centre and practical support for migrants such as the facilitation of border crossings in the case of Germany. They also created important links between migrant support groups and anti-racist activists from across Europe. Plans are being made for a more extensive "chain" next year, extending eastern European participation through a bigger camp on the Polish side of the three-country triangle bordering Lithuania and Belarus.

Although the experiences of the emerging border regimes are vastly different in some aspects, the reports which have come out of the camps have striking similarities. There has been extensive militarisation and the investment of considerable amounts of money and technical equipment. A culture of informing to the authorities has been encouraged and the consequent hunting down of refugees and undocumented migrants has become established. The number of deaths, whether through unsafe border crossings or killings by border

guards, is on the increase. In eastern Europe, the implementation of the EU *acquis* regarding the control of borders and imposition of visa requirements has become an selective instrument in the control of domestic labour markets. The border camps draw attention to these facts as well as challenging current developments.

See www.noborder.eu.org for all four border camps. The German border camp has more extensive coverage on www.nadir.org/camp

UK: Protests at forced deportations

In July, one British Airways (BA) aircraft was forced to abandon take-off from Heathrow and another BA flight departing from Gatwick to Munich was picketed at the check-in by anti-deportation activists. After years of targeting the Home Office and local MP's, opposition to Britain's asylum and immigration policy has broadened to include aviation companies, similar to the campaigns against Lufthansa in Germany (see this issue), KLM in the Netherlands and Sabena in Belgium. British Airways however, seems to have been taken by surprise and refuses to comment on the issue of forced deportations.

The first action was organised by the anti-prison group CAGE, which had made contact with the deportee during their protest against Harmondsworth detention centre. They started talking to Salim Rambo a 23-year-old asylum-seeker from the Democratic Republic of Congo, who was looking for a lawyer to appeal his deportation. The group tried to find him legal representation, but due to the bleak track record of trying to protect people by legal means, decided to stop the deportation by use of direct action. After passengers refused to take their seats in protest of the forced deportation, the flight had to be abandoned and Rambo, who had been in Britain for eight months and whose asylum claim had been rejected in Germany before, was taken off the plane.

The second incident was organised by friends of Amanj Gafor, a 34-year-old Kurdish asylum-seeker from Iraq, and the Bristol Defend Asylum Seekers Campaign. Activists lobbied the check-in queue for the flight to Munich. It turned out that Gafor was not on the plane, possibly because of suspected protests or due to the intervention of Valerie Davey, Labour MP for Bristol West. However, she was deported on the third attempt.

The legal situation

When questioned as to BA's stance on forced deportations and the legal situation in case of casualties or death, the BA press officer at Gatwick airport was unable to respond referring responsibility to the Home Office under the 1971 Immigration Act. When looking closely at the legal situation however, the picture becomes more complex.

Under the 1963 Tokyo Agreement, which regulates responsibilities aboard aircraft, it seems that airline companies are directly responsible for the ill-treatment of deportees by immigration officers. In case of the injury or even killing of a passenger at the hands of immigration or police officers, the

legal responsibility under civil law depends on whose jurisdiction the officers were active in. If they support the pilot in the execution of his powers on board the aircraft, they are his assistants. According to labour law principles, in the last instance the legal responsibility in this case lies with the employer of the pilot, that is the airline company. If the accompanying officers are not authorised by the flight captain, they are legally responsible in person: the legal norms which guide the responsibility of the state for damage caused during sovereign actions do not apply, as there is no national jurisdiction. Making the pilot responsible for forceful measures taken on board was primarily introduced to guarantee safety on board aircraft. They alone bear any legal powers once the doors are shut and are thereby obliged to guarantee security on the aircraft. The accompanying police or immigration officers on the other hand have the same status as passengers, they are not authorised to take official action once they are on board. This situation has led to much controversy in Germany.

German airline companies as well as the pilot association Cockpit are trying to delegate the responsibility to the state. "The airline companies, or rather the captain, are relieved of their legal responsibilities because the deportation is taking place on order of the state, in which case the state is in the last instance responsible for the well being of the passenger, or deportee", says Georg Fongern, Cockpit spokesperson. The police trade union (GdP) on the other hand refers responsibility to the pilot: "The officers are merely the henchmen of the captain: he has the sole responsibility for passengers and aircraft", says Jorg Radeck, spokesman for the GdP. In criminal law also, the acting officers as well as the captain can be held responsible for the possible injury or death of a passenger. Because the captain holds the position of what is called a "guarantor" and is legally responsible to ensure the safety of his passengers, he can be held accountable for the consequences of neglect of duty.

The start of a campaign?

Given the success of the Lufthansa campaign in Germany, some activists think it is only a matter of time until BA receives more attention. Michael Taylor, of the Bristol Defend Asylum Seekers campaign, said it would be the first of many protests. The group is already appealing for people to donate "air miles" to allow protesters to board flights and refuse to sit down until deported asylum-seekers are removed from the plane. The group is also appealing to the pilots' union Balpa to ask pilots to refuse to collaborate in deportations, and is asking people to write to the Director of British Airways in protest at the companies involvement in the government's deportation practices.

For more information see <http://www.deportation-alliance.com>
Contacts: Bristol Defend Asylum Seekers Campaign: 07714757984 or Kebele Kulture Projekt (Bristol): 0117 9399469 or Campaign Against Racism & Fascism: 020 78371450, National Coalition of Anti-Deportation Campaigns: 0121 554 6947, CAGE: 07669 167 489

Germany: Protest at Lufthansa AGM

On 15 June, the "deportation.class" campaign and the Organisation of Critical Shareholders (DKAA, Dachverband der Kritischen Auktionarinnen und Auktionare) protested at the annual general meeting of Lufthansa AG, calling on the aviation company to end forced deportations involving its aircraft. The "no one is illegal" network started their Lufthansa campaign, deportation.class (see, www.deportation-alliance.com), a year ago and it has attracted much media attention. The campaign has emphasised the damage to the company's image through deportation "deals". It has also attracted broad based support from German celebrities, critical shareholders and IT specialists.

The campaign gained widespread attention some months ago when thousands of spoof leaflets were found at travel agents, airports and Lufthansa outlets, advertising a new deal for customers. They offered cheap flights to "Third World" destinations, claiming that the only drawback was the transportation of a "deportee" on the same flight. Customers were reassured, that the deportation would not disturb anyone, as there was a hermetically sealed section at the back of the aircraft, ensuring an undisturbed flight. Unfortunately, it claimed, Lufthansa could not guarantee that personnel and police officers could manage without the use of shackles, gags and sedatives, but customers would benefit from the deal in other ways, for example from the free use of a shuttle from town to the airport, generously provided for by the Aliens Office.

The shareholders meeting was dominated by the "deportation" issue. "Air hostesses" greeted shareholders with information on Lufthansa's involvement in thousands of deportations every year, while members of the no one is illegal network re-enacted a forced deportation, recalling that of Aamir Ageeb, who died on a Lufthansa scheduled flight in May 1999 (see Statewatch vol 9 nos 3 & 4). Around 30 activists got into the meeting and unrolled a banner commemorating the deaths of Aamir and Kola Bankole, who died on a Lufthansa aircraft in 1994. Other activists had bought Lufthansa shares, and the DKAA argued that the continued involvement in deportations gave Lufthansa a serious "image" problem which was detrimental for shareholders. They proposed a motion accusing the managing board of responsibility for the deportations which was rejected.

The legal arguments around liability however, could not be dismissed. After public criticism last year, the company declared an end to all enforced deportations, but claimed it had no choice in transporting deportees per se. Gisela Seidler, a lawyer specialising in immigration and foreigner law and a member of no one is illegal, says that this is deliberate "misinformation". Since the Tokyo Agreement (1963), sole responsibility on board lies with the captain, she said. Seidler pointed to a decision by Lufthansa last year, which ordered an end to the transportation of tropical birds for "ethical" reasons. Their decision established the principal that the company is not obliged to transport them and triggered demands by human rights activists for it to be extended to humans. Further, the claim made by managing director Jurgen Weber, that Lufthansa had ended all deportations involving force was refuted by activists; the no one is illegal campaign has received calls from passengers who have witnessed enforced deportations.

The Lufthansa campaign in Germany has put the company in

the spotlight and has created difficulties for the German authorities when reassuring its "deportation agents" that they are acting within the law. Activists have already targeted KLM, Sabena and Air France and recent events suggest that British Airways is under scrutiny.

For more information see www.deportation-alliance.com

Germany: Government paves way for European Green Card system

The Minister of State Hans Martin Bury (Sozialdemokratische Partei Deutschlands, SPD) has announced the basic conditions under which the new labour immigration system is to work. This follows months of controversy over allowing foreign computer specialists to work in Germany for a limited period under a system similar to that used in the US.

The work permit scheme is scheduled to be introduced in August and permits will be issued for three years, with the possibility of a two year extension. The applicant is allowed to change their place of work but will be expected to earn at least 100,000 DM (£33,000) a year. Close relatives will now be allowed to join the applicants, but not allowed to work for at least two years. The system is limited to computer specialists and has not yet been extended to other branches of industry.

So far, there is no legal basis for this "arrangement", the details of which were worked out at a meeting on 2 May between the Federal Chancellery, the board of directors of the industry initiative "D21", the president of the Federal Labour Institute as well as the permanent secretaries of the relevant ministries. The FDP (Freiheitlich Demokratische Partei Deutschlands) had previously proposed a draft law regulating immigration with a yearly quota system granting permits according to "national and economic interest". However, this was rejected by the Bundestag in 1998. More recently, the Secretary of State, Cornelia Sonntag-Wolgast, conceded that under the Amsterdam Treaty, a new law would have to fall within the framework of the EU. Although the spokesman for the SPD fraction in parliament Dieter Wiefelsputz, commented that there would not be an immigration law until at least 2002, this recent change in policy with regards to the immigration of skilled labour points to wider developments within the EU.

National industry representatives have long called for a more open and flexible regulation of immigration in order to meet labour market demands. However, EU ministers have been reluctant to change immigration laws, which currently make it impossible for most immigrants to enter the EU via legal means (although people who enter the EU from the "white list" of countries - USA, Canada, Australia, Japan etc - on visas often overstay and settle). At a conference entitled The Fight Against Clandestine Entry Networks organised by the French government on 21 July it was proposed that the EU should welcome skilled migrants - rather than representing a progressive approach to migration this would only serve the interests of EU states, not those of refugees and asylum-seekers.

Early discussions about changing immigration laws in

Germany triggered outbursts of xenophobic nationalism among conservative, but also liberal Ministers. The priority in their view, is to think of a way to exclude the permanent settlement of foreigners. As the Hessian CDU Interior Minister pointed out: "the computer people do not come on their own, they have family." After initial plans to refuse applicants' families residence permits, the idea was discarded, possibly due to the fact that only a fraction of the 10,000 work permits offered were taken up. The CDU also felt that it was unacceptable for a new policy to allow more foreigners into Germany and demanded a restriction of immigration in other fields, such as asylum.

What all parties agreed upon however, is that the new approach should under no circumstances be modelled according to the interests of the immigrants: CDU party whip Friedrich Merz clearly spelled this out when he said that:

"the regulation of immigration should be defined by the interests of the state and not the immigrant."

This approach is also evident at EU level, where immigration is first and foremost linked to labour demands.

The Commission has recently implemented a Council Regulation (577/98) which binds all member states to undertake a labour force survey. Although the Regulation is not explicitly linked to future immigration measures but the recent comment made by Jean-Pierre Chevenement, the French Interior Minister, saying that the EU would need to admit 50-75 million immigrants by 2050, suggests the labour survey is more than simply data collection. As in Germany, the EU's intent is to work closely with industry in order to identify labour shortages, to issue temporary work/residency permits to very specific professions and then to discard the foreign labour as soon as it is no longer required. It remains to be seen if this "rationalisation" of migration control is workable. A comment from Max Frisch, on the German "guestworker" system of the 1970's, retains its relevance. He said that "they called for labour, but humans came."

Migration und Bevdikerung Issue 3 (April) 2000, Issue 4 (May) 2000; Guardian 28.7.00; Commission Regulation 1575/2000, 19.7.00.

UK: 58 dead - Chinese community criminalised

On 18 June, 58 irregular migrants from the Chinese province of Fujian were found dead in a lorry during a routine inspection in the port of Dover, Kent. 54 men and four women suffocated whilst two men survived the journey in a container carrying tomatoes from Rotterdam via Zeebrugge to Dover. Jack Straw, the Home Secretary, was quick to express his shock over this "most terrible human tragedy" and blamed the "profoundly evil trade" in migrants. The Prime Minister also seemed oblivious to the connection between Europe's immigration policy and the death of thousands of people trying to enter the EU every year when he condemned "this dreadful incident".

The Dutch driver of the vehicle is facing 58 charges of manslaughter (unlawful killing) and one man from Rotterdam and two Chinese living in London were charged with facilitating

illegal entry, but it is the Chinese community which was not only blamed but criminalised after the events. Not only were friends and relatives of the victims suspected by police to be part of an international smuggling gang, their immigration status was under scrutiny as well.

Bobby Chan of the Central London Law Centre as well as Suresh Grover of the National Civil Rights Movement, both of whom have taken up some of the families cases, have strenuously criticised the police investigation in the aftermath of the tragedy. One woman trying to help identify the victims had been asked by the police to give information on her contacts. "This is the type of thing she doesn't want to get involved in, because that will actually have an effect on her in this country and in China", Chan commented. Suresh Grover also accused the authorities of disrespecting the families by threatening them with interrogations and neglecting the identification process: apparently, British officials have invited Chinese authorities over to help in the identification, rather than granting immunity to families and friends in London.

The Home Secretary's first reaction was to draw attention to new stringent provisions in the 1999 Immigration and Asylum Act, which will see a £2,000 fine for unintentionally aiding illegal entry (for example on lorries) and up to ten years imprisonment for directly aiding illegal entry. Then he held emergency talks with Lord Sterling, the chairman of P&O ferries, whose Stena vessel transported the Dutch lorry to the UK in order to intensify collaboration between carriers and immigration police. The deaths also triggered disagreements between EU countries on the need for harmonised procedures. It turned out that the Chinese immigrants had earlier been held in Belgium and told by officials to leave the Schengen area which "counts as leaving the Schengen space" - although the UK has joined the Schengen system it opted out of measures on asylum and immigration.

The reaction of the French Presidency of the EU to the death of 58 migrants was to call for minimum fines of 2,000 Euro's per "illegal" immigrant. The Presidency is also planning to make the aiding of irregular entry an offence punishable by criminal law, where the decisive factor is neither the safety of the migrant, nor the motivation for "smuggling". One Brussels-based diplomat said: "The beauty of this proposal is that it is informal anyway, so each member state can just go off and do it".

Wah Piow Tan, an immigration lawyer based in London, said: "the global reality now is that you cannot stop people from poorer countries aspiring for life in richer countries, but people in European states are not ready to confront this reality."

Home Office Press Release 19.6.00; Guardian 20.6.00; European Voice 20.7.00; Independent 21.7.00; International Herald Tribune 22.6.00. 24-25.6.00.

"Barbed Wire Europe"

This past year has seen a growth in resistance to the EU's increasing use of immigration detention, through hunger-strikes and riots by imprisoned refugees and migrants, demonstrations by activists and criticism by civil liberties groups. Oxford campaigners from the Close Down Campsfield Campaign have

now taken up the issue of immigration detention and want to see this practice abolished in the EU. They are organising a pan-European conference this September to coordinate future strategies of resistance and put the issue of detention on the agenda of MP's and MEP's.

The demand for the abolition of immigration detention comes at a time when EU ministers are planning an immense increase in detention centres and deportations. In the UK, over 1,000 refugees and migrants are detained under Immigration Act powers at any given time and in the first four months of the year, over 15,000 people have been deported from the UK. The UK Home Secretary, Jack Straw, and Ireland's Minister for Justice, John O'Donoghue, have announced plans to further increase the number of deportations.

Ian Boon, UK Immigration Service director of enforcement, told a public meeting in June that deportations are to be increased from 9,000 in 1999 to 12,000 in 2000 and eventually to 57,000 a year. The UK government is planning to increase the number of asylum-seekers held in detention centres from the current 900 places to 2,700 over the next year. Detention centres are planned to be built at Thurleigh, Bedfordshire and Manston near Thanet, Kent.

Oakington, a new detention centre which has opened in March this year near Cambridge, is located in a former military barracks and is being used to fast-track asylum-seekers whose applications are suspected to be "manifestly unfounded" by immigration officers upon arrival. Asylum rights campaigners have strongly criticised this procedure, under which asylum-seekers are sent straight from the airport to the detention centre. Oakington is the first detention centre to hold families and has a capacity for about 400 people.

Another former prison complex in the town of Aldington will also be used to house asylum-seekers. When asked in the House of Lords why the government considered a former prison complex, Home Office Under-Secretary Lord Bassam of Brighton said that:

"the redevelopment of Aldington as an immigration detention centre providing 300 places is an excellent opportunity to make effective use of Crown land in a good location in proximity to major ports in the South East and to motorway systems. The development will allow the return to Prison Service use of the 198 beds currently occupied by detainees at Rochester prison."

It is precisely this preoccupation with facilitating the deportation procedure by imprisoning asylum-seekers near to air and sea ports, rather than concern for a fair asylum procedure, which is condemned by human rights and civil liberties organisations.

In Ireland, the Human Rights Commission (HRC) and the Irish Catholic Bishops' Conference have criticised the fact that asylum-seekers whose claims are being processed are being held in prison conditions and treated like criminals. The HRC chief commissioner, Brice Dickson, said he wanted the practice of detaining asylum-seekers be made unlawful. After a visit to Magilligan prison in Derry, which is currently being used to "house" asylum-seekers and refugees, SDLP councillor Gerard Lynch said that "it is simply not good enough that people who have been convicted of no crime should be locked up in the way

they are at present".

Another concern is the secrecy and unaccountability surrounding Europe's new "asylum-prison complex". The Campaign Against Racism and Fascism (CARF) points out that detention centres such as Granja Agricola (Spanish enclave in North Africa) Steenokkerzeel (Brussels) and Via Corelli (Milan, shut down after massive protests) "are synonymous with repression and human rights abuse" and that "secrecy and lack of accountability...lie at the heart of the asylum prison system".

European activists and Members of the European Parliament have been invited to the Conference Against Immigration Detention entitled "Barbed Wire Europe", which will take place on 15-17 September in Oxford. It is the third European anti-detention conference - the first two having been organised by the Federation des Associations en Solidarite' avec les Travailleurs Immigre's (FASTI) in Lille in 1997 and in Fernay-Voltaire in 1998. It aims to "bring together people from across Europe to promote coordinated activities" in order to achieve the abolition of immigration detention as part of the asylum procedure in Europe.

For more information about the conference contact Bill MacKeith, Campaign to Close Down Campsfield, 60 Great Clarendon Street, Oxford OX2 6AX 0044-1865-558145, ConfAgstlmmDetn@aol.com; The Irish Times 29.4.00; House of Lords debate 19.6.00 cols 4-; Irish News 24.7.00; Labour Left Briefing July 2000; CARF no 55, (April/May) 2000.

Spain Regularisation process

The regularisation of migrants process in the present Aliens' Law ended on 31 July with 208,000 requests being made, for 155,000 places. If the figures are confirmed, over 50,000 immigrants will be excluded, and if these are added to those who were unable to present their applications because they did not fulfil the necessary requirements (such as being in Spain since 1 June 1999), there may be around 100,000 undocumented immigrants. Solidarity organisations and trade unions have expressed alarm about the fate these immigrants. The figures show the failure of the immigration policy because, after the largest regularisation process carried out to date, the figures for irregular immigrants remains static. In fact, every five years, the government is obliged to resort to regularisation procedures which are always qualified as "exceptional" and are announced as "the last" of such policies.

Netherlands New Aliens Act in 2001

The Tweed Kamer, the Second Chamber of the Dutch parliament, passed a new Aliens Act before the summer recess. The Act, which was one of the last items the "purple" coalition agreed when they established the Kok II government, will come into force on the 1 January 2001 and will be much more restrictive than the old one. There always had been political differences between the PvdA and the Volkspartij voor Vrijheid en Democratie (VVD) pressed for the restrictive new Act.

The Bill before parliament was designed to decrease the number of refugees and to tighten standards for family reunion. Under the new Act there will be: a) a reduction to four different types of residency permits; b) a strict legal distinction between refugees and all other immigrants; c) refugees will receive a temporary permit to stay for the first three years; d) if, while on a temporary permit, the situation in the country of origin improves the refugee can be expelled.

As if this law was not restrictive enough, the minister of Justice added an exception if there was a "mass influx" of refugees. Under these circumstances refugees won't even get a temporary permit; they will be "tolerated" but can be expelled as soon as the situation changes.

The Bill also contains provisions governing the supervision of aliens and measures for the restriction and deprivation of their liberty. Under the present Aliens Act, (Section 19, which was influenced by migrant's groups), officials may exercise their powers only if they have "definite indications of illegal residence". Previously, any "reasonable suspicion of illegal residence" was enough for surveillance which led to harassment on the streets. Under the new Act the criteria is changed to: "any facts or circumstances suggesting reasonable suspicion of illegal residence measured by objective standards", which is vague and close to the old discriminatory one.

The debate on the Aliens Act was well prepared by coalition members. The VVD wanted more restrictions and PvdA wanted more legal security for refugees. At a stroke, the proposals made it almost impossible to appeal a negative decision from the Immigration Office, (because they won't have to justify their decisions any more). The VVD and PvdA reached agreement: more legal security will be given, but the VVD insisted on stricter implementation of existing legislation, for instance, concerning undocumented migrants. The strict guidelines will allow more refugees will be expelled.

Netherlands: "Suicide" of deportee

In April 1999 Suleyman Aksoy, a Kurdish conscientious objector, was deported from the Netherlands. Back in Turkey, he was arrested and forced to serve in the army; within three months he was dead. Turkish officials have claimed that he committed suicide. The Dutch launched an investigation by the Ministry of Justice, and the expulsion of Kurdish conscientious objectors was suspended until it reported. The investigation was carried out by staff at the Dutch Embassy in Ankara, who claimed to have spoken with Turkish human rights organisations, which accepted that Aksoy had committed suicide. Now, Job Cohen, State Secretary of Justice, has issued a statement confirming that the inquiry concluded that Aksoy had committed suicide. As a result, Kurdish conscientious objectors can once again be expelled.

On 23 June representatives of the IHD and TIHV, Turkish human rights organisations, and Suleyman Aksoy's father participated in a press conference in The Hague. Both organisations said that Dutch Embassy staff visited them briefly and that they had expressed their concerns that Askoy did not commit suicide. His case was similar to those of 40 other Kurdish conscientious objectors who died in the army.

Suleyman's father told that media that the Turkish authorities did not perform an autopsy on his son. He was prevented from seeing him, but at the funeral he had a opportunity to look at the face of his son, which was battered. It looked as though he had been tortured, he claimed.

Parliament might have been misled by the Dutch embassy in Turkey. But when, Femke Halsema (GroenLinks) asked for the report, she was told it was still secret.

Buro Jansen Janssen

Immigration - in brief

Italy: Struggle for residence permits:

Undocumented migrants have begun a campaign to get residence permits as part of the regularisation process which started in 1998. The last date to register for the process was 15 December 1998, but over 50,000 applications have still to be resolved. The claims are processed in police headquarters throughout Italy, where a massive backlog has built up - most of these applications were thought to be destined for rejection. Within two months the movement, which started on 20 May in Brescia (Lombardy), spread to several other cities including Rome, Florence, Naples, Milan, Palermo, Lucca, Bologna, Treviso. After a demonstration on 18 June marched to the Interior Ministry in Rome, Massimo Brutti, Under-Secretary at the Interior Ministry, said that in many cases the rejected applications could be granted, acknowledging that special circumstances sometimes apply. "Many applicants have had difficulty presenting proper evidence for reasons which they cannot be blamed for - for example those who had an employment, but on the black [market] - and this must be considered." 11 Manifesto 9 & 17.6.00, 2 & 16. 7.00, 5 & 6.8.00; Social centres website www.ecn.org; Radio Onda d'Urto communiques

UK: Charter flights for deportations:

Barbara Roche, Home Office Minister, announced the government's intention to hire private charter planes to carry out deportations. An increase in the number of applicants refused asylum and the problems the Immigration Service faces using scheduled flights for deportations have combined to make the option cost effective. People deported by air are often accompanied by immigration officials and most airlines refuse to take more than four deportees on a flight to minimise disruption.

Spain: Asylum:

In 1999, Spain only granted 3% of the political asylum applications it received. The number of applications rose to 8,405, and 294 were granted. This figure is the lowest in the last decade, while requests rose by 26% compared to the previous year, when 4% of them were granted. This illustrates a hardening of policies on the granting of political asylum, which uses a kind of quota system.

Spain: Electronic wall in the Strait:

According to the plan (SIVE) drawn up by the Spanish government for the electronic control of the Strait, the SIVE, consisting of an electronic barrier of video-cameras, infrared cameras, an OPTRONIC system, sensors, radars and Guardia Civil units, will start being installed in 2002. The project will cost 20,000 million Pesetas.

Immigration - new material

Control of immigration: statistics United Kingdom, second half and year 1999, Keith Jackson and Rod McGregor. Statistical Bulletin Issue 11/00 (Home Office Research, Development and Statistics Directorate) 22.6.00, ISSN 1358-510X, pp29. Among other statistics this bulletin includes acceptance rates for settlement (by nationality, legal category), numbers of illegal entries and deportations, www.homeoffice.gov.uk/rds/index.htm; publication.rds@homeoffice.gsi.gov.uk

Roma Rights European Roma Rights Centre, no 1, 2000, pp86. This issue focuses on women's rights and a "variety of excellent authors have weighed in on this often misunderstood, often contested issue". Includes a roundtable discussion on the role of women in Romani society, and articles on female power in Muslim Romani rituals, domestic violence and forced sterilisation of Romani women in former Czechoslovakia. Also includes sections on advocacy, legal defence cases, a special Kosovo update and useful "snapshots from around Europe". Available from ERRC, 1386 Budapest 62, P.O. Box 906/93, Hungary; Tel 0036-1-428-2351; Fax 0036-1-428-2356; 100263.1130@compuserve.com; <http://errc.org>

InExile Refugee Council, June 2000, pp29. Finding a lack in the asylum debate regarding why people are forced to migrate, this issue looks at flight reasons. It compiles information on human rights abuses around the world. In its now regular feature "disperse!", there are news items from across the UK, many of them reporting on racist attacks and far-right activities focusing on asylum hostels. The editorial considers the UK's "routine use of detention" as a human rights abuse which has been consistently criticised by the UNHCR. Available from: Beatrice Baided, 3 Bondway, London SW8 1SJ; Tel 0044-20-7820-3042.

Migrations Europe. Centre d'information et d'etudes sur les migrations internationales, vol 12 nos 69-70, (May-August) 2000, ppl74. This issue which deals with several aspects of "integration" and the attitudes of different religious bodies in relation to the French (and Turkish) state's lay tradition. Other topics include immigration and nationality laws in Greece, nineteenth century slavery in Brazil, the regularisation of "sans-papiers" in Belgium and an outline of the potential development of a French-style Islam.

African refugees needs analysis. African Refugee Network,

October 1999, pp31. This "needs analysis" concentrates on African refugees in Ireland and covers four areas: integration into Irish society, including experience of personal and institutional racism, education and training, accommodation and health. Based on interviews with 40 refugees, the research found discrimination in all areas. Around 87% of those interviewed had experienced racism, their legal status was as a rule insecure and the interviewees were found to suffer from anxiety and fear. The report stresses the importance of the right to work, legal aid, more support mechanisms and demands "strictly enforced anti-racist legislation" as a requirement for the well-being of refugees and asylumseekers in Ireland. Includes useful statistics on refugees in Ireland and a critique of the 1999 Immigration Bill. Available from: ARN, 90 Meath Street, Dublin 8, Ireland; tel. 00353-1-473-4523; fax 00353-1-454-0745; arn@yahoo.com.

Kriminalisierung im Grenzregime (Criminalisation on the borders). Off limits, 1/2000, pp48. This issue concentrates on criminalisation methods around the border areas of Europe. It includes articles on the role of the German Federal Border Guards (BGS) in criminalising refugees and migrants, the death of seven clandestine migrants who died during a BGS car chase in 1999 and racism in the German courts. Also considers the border regime at Dover and other European shores. Available from: offlimits, Hospitalstr 109, 22767 Hamburg, Germany; Tel: 0049-40-38614016; Redaktion@offlimits.de, www.offlimits.de.

Newsletter. National Coalition of Anti-Deportation Campaigns, Issue 19 (July-September) 2000, ppl2. This issue contains an article on the "Angel Heights Seven", six Iraqi Kurds and one Iranian who protested against unacceptable living conditions at the Angel Heights hostel in Newcastle-upon-Tyne, and were then expelled from it. They were arrested and refused bail on the grounds that they lacked a place of residence. Also examines misinformation on asylum seekers in the press; the "Residenzpflicht", a travel restriction regulation for asylum seekers in Germany, but thought to be enforced all over Europe, as well as campaigning updates on Amanj Ghafur, Paramjit and Mukhtiar Singh, Charles Obinna and others. Email: ncadc@ncadc.demon.co.uk.

Red Pepper May 2000, pp35. This issue is dedicated to "Britain's gulag - the refugee outrage". Includes articles by Nick Cohen on the similarity of New Labour's policies' to those of the far-right, Jennifer Monahan on the newly introduced dispersal system and Bill MacKeith from the Close Down Campsfield Campaign on detention centres in Britain. The contributions expose the creation of two parallel societies in Britain where the treatment of newly arrived black communities by the authorities does not differ much from colonial times. Available from: Red Pepper, 1b Waterlow Rd, London N19 5SN; tel: 0044-20-72817024; fax: 0044-20-7263-9345; redpepper@redpepper.org.uk.

The Amsterdam proposals - the ILPA/MPG directives on immigration and asylum, Steve Peers (ed). Immigration Law Practitioners' Association and the Migration Policy Group, 2000, pp232. In-depth analysis of the repercussions of the

Amsterdam Treaty on immigration and asylum, with a detailed proposed directive adhering to international obligations. A group of independent experts and NGO's have identified six major areas (asylum, family reunion, long-term residents, visa and border controls, business and work migration and irregular migration), that are discussed in this study. The emphasis on the right to free movement - including for economic gain makes this directive a refreshing attempt to redefine immigration discourse. Available from ILPA, Lindsey House, 40-42 Charterhouse Street, London EC1M 6J9; Tel 0049-20-7251-8383; info@ilpa.org.uk.

Infodienst des Bayerischen Flüchtlingsrates no.74 (July/August) 2000, pp42. This newsletter of the Bavarian Refugee Council covers the recent activities of the Lufthansa campaign and has a piece on the city of Munich granting Yugoslavian conscientious objectors temporary resident's permits. It includes an article on the latest visit by the Research Centre for Flight and Migration from Berlin (FFM) to the first detention centre of the Czech Republic in Balkova. Available from Bayerischer Flüchtlingsrat, Valleystr 42, 81371 München; tel 0049-89762234; fax 0049-89-762236; bfr@ibu.de

Trafficking in Women. European Parliament Working Paper (Civil Liberties Series) LIBE-109-EN, March 2000, pp79. Contains useful information on sexual exploitation but calls for the full implementation of Eurodac as a solution to trafficking in women. Available from: Andrea Subhan, Directorate-General for Research, Division for Social, Legal and Cultural Affairs, B-1047 Brussels; tel 00-32-284-3684; fax 00-32-284-9050; asubhan@europarl.eu.int

POLICING

UK: Exposure of "perjured evidence" sets M25 Three free

Three black men, who were convicted for murder following a series of burglaries in the M25 corridor in December 1988 that culminated in the death of 51-year old Peter Hurburgh, were freed from prison on 17 July (see Statewatch vol 10 no 1, vol 9 no 3/4, vol 2 no 6). The "M25 three" - Raphael Rowe, Michael Davis and Randolph Johnson - walked from the Court of Appeal after judges said that they could not be sure that their convictions were safe due to a highly disturbing "conspiracy" between the police and an informer, who was also a key prosecution witness, to give perjured evidence. While the judges saw fit to pronounce that their judgement was not a finding of innocence, the men's lawyers are demanding an inquiry into the conduct of Surrey police officers involved in the case.

On the nights of 15-16 December 1988 three masked men conducted a series of violent attacks off the M25 motorway in Surrey, which left one man dead and another with knife wounds; two houses were robbed and four cars stolen. The victims identified their attackers as two white men and a black man, but three black men Rowe, Davis and Johnson were arrested after police received a tip off. After a six-week trial, at which no forensic, confessional or direct evidence was presented against

the defendants, they were sentenced to life terms in March 1990. The prosecution case had relied on the evidence of a Surrey police informant, Norman Duncan.

The three men protested their innocence and their lawyers appealed against the convictions in 1993, arguing that they had been convicted on the evidence of unreliable witnesses who had originally been suspects. They lost their appeal but in 1997 the Criminal Cases Review Commission (CCRC) ordered a new inquiry into the killing and the police investigation of it. The CCRC referred the case back to the Court of Appeal following a lengthy and critical Greater Manchester police (GMP) review of the original investigation. This was followed by the ECHR decision to refer the case to the European Court of Justice on the grounds that the men were denied a fair trial because "relevant evidence was withheld from the defence on the ground of public interest immunity."

The GMP review brought to light a number of problems with the original Surrey police investigation, in particular the role of their informer, Norman Duncan. Duncan had lived in the same house as Raphael Rowe and Michael Davis and had been arrested, but not charged, with a number of robberies. He was also a suspect for the M25 robberies before he became a key witness. The jury was unaware of this because public interest immunity certificates were issued preventing disclosure. Duncan lied to the jury about the manner in which he had volunteered information to police officers and omitted to mention that he had received a £10,000 reward from the Daily Mail newspaper.

In his judgement Lord Justice Mantell said there:

"could only have been...collusion with the police. It amounts to no less than a conspiracy to give perjured evidence. We find the fact profoundly disturbing. It must dent the credibility of both Duncan and the police officers directly involved" (Guardian 18.7.00)

Council of Europe Infonote 15, February 2000; M25 Three Campaign <http://www.m25three.co.uk>

Italy: Youth killed by a police bullet

Around midnight on 5 May Mourad Fikri, a 17 year old Moroccan youth, died on the banks of the Tiber in Rome after being shot by a policeman. The police initially claimed that Fikri had drowned after jumping in the river while being pursued for committing a petty crime. However an autopsy revealed that the bullet shot by an officer who was chasing the youth burst his right lung after bouncing off his shoulder blade, causing his death. The officer has not been suspended from duty and is being charged with criminally exceeding "legitimate self-defence".

Police claim that Mourad was holding a water pistol similar to one found near the scene of the shooting. Friends claim they never saw the toy gun and a fingerprints expert has asked for two months to provide a report. Simonetta Crisci, the Fikri family's lawyer said an eyewitness who was fleeing with Mourad told her that "the agent shot when the 2 youths had already jumped in the river". She added that such behaviour by

people who are trained in the use of firearms is "very serious".

The eyewitness has not been called to testify, but is threatened with being charged for a mobile phone theft which had provoked the police operation. Following a report that a group of foreigners armed with a knife had stolen a mobile phone two hours earlier, a dozen police cars flooded the area outside the Villaggio Globale (Global Village) social centre in Testaccio, where immigrants often assemble. Several people fled, including Mourad, who was chased to the river bank and according to the autopsy, was then shot from behind.

On 9 May, 400 people led by Mourad's mother and sister, walked from Testaccio to the Ministry of Justice, holding torches and demanding truth and justice. In a statement the Villaggio Globale said:

"Here we go again, the forces of law and order's zeal in repressing what has been made into a major national emergency, that is, petty crime which is linked to the phenomenon of immigration, and has caused another victim... The anger over the death of a minor will stay with us, because we are convinced that in this case, those responsible will remain unpunished."

Villaggio Globale press statements 6 & 7.5.00; 11 Manifesto 10.5.00, 11 Messaggero 10.5.00; Avvenimenti 28.5.00.

Italy

Policeman shoots youth dead

On 20 July, 17 year-old Mario Castellano was shot dead by a police officer in Agnano, Naples, after he failed to stop his moped after being chased because he was not wearing a crash helmet (for which he could have been fined or reprimanded). The police officer, Tommaso Leone, was arrested on 24 July when the charge of involuntary manslaughter was changed to murder, in spite of his claim that he fired by mistake. Gianni Di Gennaro, the head of the Naples police force, accepted that there must be a judicial investigation: "If we have made mistakes, we will pay for the mistakes we committed."

Giovanni De Bernardo a 28-year-old who works in the nearby race track, witnessed the scene and confronted the policeman, slapping him, after the shooting. Leone allegedly threatened him, saying "Leave or I'll arrest you." De Bernardo claims that he saw the police car chasing the moped, until it stopped near a roundabout.

The policeman got out of the rear door and took up a position behind a bush, which the boy on the moped was about to pass. When he arrived, the policeman jumped onto him from behind the hedge. But he got his timing wrong and fell to the floor. "... [As the youth was getting away, Leone took out his gun] "knelt down, aimed and fired.

Castellano bled to death within a minute: the autopsy confirmed that it was the bullet which hit his back, and not the fall, which caused his death. The ballistic report said that the bullet had an upward trajectory. Leone was based at the Bagnoli police station flying squad (volante).

Castellano's girlfriend was quoted saying of Leone: "The bastard used to persecute him", and his aunt, Patrizia Battimelli, said: "he knew Mario well, he had fined him before." Leone

denied that there was any ill-feeling between him and Castellano. He added "I only recognised him after I shot, when I saw him bleeding on the ground."

Leone is detained in isolation in Santa Maria Capua Vetere military jail in the province of Caserta. He is reportedly suffering from depression, upset about the shooting, his treatment by the media, and the lack of support and protection he received from colleagues. Repubblica reports that he is under 24-hour surveillance by conscript soldiers, in an institute where police, carabinieri and customs officers who are facing prosecution are detained. According to Repubblica, investigators discovered that in 1997, a medical commission found him not suitable for police patrols due to psychological instability. Later that year, the ruling was reversed.

Il Messaggero 25.7.00; 11 Manifesto 22 & 25.7.00; Repubblica 23, 24 & 26.7.00

Policing - in brief

UK: DNA thousands of samples held illegally:

A report, Under the Microscope, from the Inspector of Constabulary, states that the national database of DNA profiles is 730,000. But the report says that "many thousands of such samples are being held outside the rules". The DNA samples of people who have not been charged or acquitted have, under the law, to be destroyed. Guardian, 1.8.00.

Correction: In "Carabinieri's new status sparks controversy" (Statewatch vol 10 no 2) the Italian Corpo Forestale is erroneously referred to as Territorial Army. Corps of Foresters is a better description, as the Corpo Forestale is a civilian public order, environmental and forest policing body; one of the five police forces which make up the Italian Security division.

Policing - new material

Feasibility of an independent system for investigating complaints against the police, KPMG and Gary Mundy. Police Research Series Paper 124 (Home Office Policing and Reducing Crime Unit) April 2000, pp2. Summary of a study commissioned in response to a recommendation in the Stephen Lawrence report for an independent system for investigating complaints against the police. It covers: access to the system; sifting of complaints; conduct of investigations and supervision and monitoring. Also covers organisational structure and associated costs.

Police National Network (PNN2), C Buelrijk. Police Journal vol 73 no 1, 2000, pp3-6. This article looks at the PNN2 Extranet "that will for the first time enable electronic communication to occur between individual police domains, between agencies engaged in criminal justice, between users and other government departments and last but not least the public".

LAW

UK RIP gets Royal Assent

The Regulation of Investigatory Powers Act got the Royal Assent on 28 July (see Statewatch, vol 10 no 1). Much of the public debate on the RIP Bill centred on the important provisions in Part III on encryption. Little attention was paid to Parts I (interception of telephones and mail) and II (covert surveillance, including "induced" informants) - the latter legitimising previously unlawful practices.

During the debate on the Bill a number of issues were highlighted. On Part III encryption it became clear that "black boxes" (similar to "Carnivore") could be placed in internet service providers at the behest of a law enforcement agency. Equally illuminating was the admission by Lord Bassam, Home Office Minister, in response to Andrew Phillips, Liberal Democrat peer, that GCHQ (Government Communications Headquarters) will gain new powers. Until now GCHQ was only authorised, by ministerial warrant, to intercept domestic communications if there was a suspicion of terrorist activity. Lord Bassam for the government admitted GCHQ, MI5 and MI6 can lawfully intercept internal communications even when a warrant specifies only external ones. Referring specifically to e-mails and mobile phones he said: "it is not possible to intercept the external communications.. without intercepting internal ones as well."

There was also a certain amount of confusion over encryption, handing over keys and access to e-mails. Some argued that businesses and others would take their trade to other EU countries if this was not changed. In fact many of the key features in the RIP Bill, including these, are ones all member states of the EU are signed up to enforce under the combination of the Convention on Mutual Assistance in criminal matters (adopted by the Justice and Home Affairs Council in Brussels on 29 May; it now has to be ratified by national parliaments) and the "Requirements" to meet the needs of the "law enforcement agencies" (the start of the EU-FBI telecommunications surveillance system) agreed on 17 January 1995.

The admission in the final debate in the House of Commons by Charles Clarke, Home Office Minister, that the government did not realise when it drew up the Bill how many agencies would be allowed to carry out "directed surveillance" (Article 28) or make use of "covert human intelligence sources" (Article 29). The Act distinguishes between "directed surveillance" and "intrusive surveillance" with the latter involving the presence of an informers or listening/recording devices actually in the premises/home. "Directed surveillance" is distinguished from "intrusive surveillance" where it involves putting a tracking device in a vehicle or if surveillance, eg microphones, video cameras is carried out by a device not actually in the vehicles or premises/home. "Covert human intelligence" includes undercover police or Special Branch officers or informants ("induced" or voluntary). For the latter the agencies which are able to authorise the use of "covert" sources are:

Health and Safety Executive
A Health Authority

A Special Health Authority
A NHS Trust
Royal Pharmaceutical Society

For both Articles 28 and 29 the following agencies, Ministries and bodies under them can authorise surveillance:

Any police force
National Criminal Intelligence Service National Crime Squad
Fraud Office
Any of the intelligence agencies (GCHG, MI5 and MI6)
Any of Her Majesty's Forces
Commissioners of Customs and Excise
Commissioners of Inland Revenue
Ministry of Agriculture, Fisheries and Food
Ministry of Defence
Department of the Environment, Transport and the Regions
Department of Health
Home Office
Department of Social Security
Department of Trade and Industry
National Assembly for Wales
Any local authority
Environment Agency
Financial Services Authority
Food Standards Authority
Intervention Board for Agricultural
Produce Personal Investment Authority
Post Office

No wonder the Minister was surprised at the implications of the Bill, ones which were clearly known to the officials advising him.

To effect the surveillance of telecommunications the Government Technical Assistance Centre (GTAC) is being set up in MI5's headquarters at Thames House, Millbank, London SW1. Its primary purpose will be to crack encryption codes used for private e-mail or to protect files on personal computers. Ultra-fast super-computers, of the type used to crack Soviet codes, are to be installed and experts from GCHQ are to be seconded to the Centre. Although not confirmed it is expected that the Centre will use "Dictionaries" which hold thousands of target keywords, names and addresses to select messages of interest from the mass of data downloaded.

A number of questions were left unanswered during the debates and public discussions on the Bill. Who is going to authorise requests from non-UK police and security agencies for an immediate intercept, will the National Criminal Intelligence Service (NCIS) just nod it through? The police, Special Branch, MI5 and MI6 are meant to get warrants for the interception of telecommunications - but are they capable of simply "breaking" into any service provider at will and downloading all the relevant material (including the content of messages) in just a couple of minutes? The answer to this question is: yes.

Guardian. 13 & 19.7.00; "The spy in your server' Duncan Campbell, Guardian, 10.8.00; for the RIP Bill see: <http://www.statewatch.org/news>

MILITARY

Military- In brief

EU: Western European Union plans its demise.

The Western European Union (WEU) is planning its demise as relevant bodies of the organisation will be gradually absorbed by the EU. Legal aspects of the transfer of the WEU Satellite Centre in Torrejon, Spain and the Institute for Security Studies in Paris next year are now being considered. The centre in Torrejon processes information derived from commercial satellites and the military Helios I satellite jointly developed by France, Spain and Italy. Meanwhile, the WEU Assembly has urged the EU to create a 30-strong military intelligence unit that should be integrated into the EU military staff. The dissolution of the WEU politico-military council and the WEU Major Staff Committee will follow the full implementation of equivalent EU bodies. Some specific bodies like the Western European Armaments Group and the Western European Armaments Organisation should survive. Jane's Defence Weekly 24.5.00 21.6.00. (Peggy Beauplet)

Military - new material

Fewer but faster, JAC Lewis and Julien Mathonnicre. Jane's Defence Weekly 26.4.00 pp22-33. The French army is adapting to a post-conscription era.

The professionals, David Ing. Jane's Defence Weekly 31.5.00, pp21-35. The Spanish government may find it hard to meet its promise of ending conscription next year.

Sweeping changes, Daniel Langenkamp. Jane's Defence Weekly 5.7.00 pp22-26. Defence reforms in Hungary after the Kosovo war.

Europarische Lufifahrtindustrie: Vaterlandslose Allianzen [European Aerospace industry: alliance without loyalty], AMI 2000/5, pp12-21. Review article of new developments with ownership diagrams.

A Conflict Prevention Service of the European Union, Daniel Plesh and Jack Sevinour. BASIC Research Report 2000/2.

The intervention "pay-off", Theodor Fruendt. RomNews Network, February 2000, ppl 8. This report deals with the treatment of the Roma community during the Kosovo war. It includes statistics on persecution of the Roma during the conflict, on the remaining Roma community and ethnic make up of the region after the war. It also refers to the recent UNHCR/OECD report on their field mission to Kosovo which criticises the lack of protection for the Roma. Available from romnews @romnews.com or theodorfruentd@ hotmail.com

NORTHERN IRELAND

Northern Ireland - in brief

RUC officers jailed for sectarian beating:

Calls for the full implementation of the Patten proposals on the reform of the Royal Ulster Constabulary (RUC) were vindicated in a "ground breaking" case at Belfast Crown Court in May that saw two RUC officers jailed for an assault on a Catholic teenager, Bernard Griffin, in 1998. Constable Darren Neil was jailed for two years for assault and threatening to have Bernard shot while his colleague, Michael McGowan, was sentenced to one year for perverting the course of justice. Another policemen and a soldier were fined for perverting the course of justice in a case, described by Justice McLaughlin as "a systematic cover-up and attempt to frame Mr Griffin on charges of which he was not guilty..." Griffin was arrested and called a "Fenian bastard", before being punched, beaten with a baton and threatened with being handed over to loyalist paramilitaries. At Antrim Road police station he was charged with disorderly behaviour, but after making a complaint about his treatment the charges were upgraded to assaulting a police officer and resisting arrest. While pursuing his complaint, and within weeks of his case coming to court, Griffin's home was raided by RUC officers who claimed that they had found a "coffeejar" bomb. In September 1999 Griffin was remanded in custody at Hydebank Young Offenders Institution where he was held until all charges were dropped three months later. Griffin's solicitor, Eamonn McMenamin, said that he found the circumstances "very suspicious". He added that Griffin's case was like hundreds that he had dealt with in the past; however, it is the first time that serving RUC officers have been jailed in a case of this kind. The RUC, which received the George Cross for valour last April, has promised a "full inquiry" and McGowan will appear before a disciplinary hearing to decide his future in the force. Neil has resigned from the RUC.

Irish News 11, 12 & 17.5.00.

Northern Ireland - new material

Betrayal: how MI5 lost Thatcher's mole, Liam Clarke & Nick Fielding. Sunday Times Review 21.5.00., ppl-2. This article investigates the 1980s relationship between alleged Derry IRA informer, Willie Carlin, his handler "Ben" (MI5 agent Michael Bettaney) and Stella Rimington, head of MI5's Northern Ireland branch (and later head of MI5). It does not take into account Bettaney's claims that his drinking problems, and conversion to communism, owed much to his disgust at British undercover operations in Northern Ireland.

Sinn Fein analysis of British government Policing Bill 2000. Sinn Fein, 1.6.00, ppl O. This document records Sinn Fein's objections to the Policing Bill, the legislation introduced by the British government, but which "bears no resemblance to Patten." It presents a background argument and incorporates 35 proposed changes. Sinn Fein, 53 Falls Road, Belfast BT12 4PD.

Just News vol 15 no 4 (April) 2000, pp8. This issue contains

articles on UN concerns about human rights in Northern Ireland, equality guidelines, the Criminal Justice review, cases before the European Court of Human Rights, a Bill of Rights for Northern Ireland and the child and the European Convention on Human Rights. Available from CAJ, 45/47 Donegall Street, Belfast BT1 2BR; Tel (028) 9096 1122.

Statistics on the operation of the Prevention of Terrorism Acts, Northern Ireland 1999, Michael Willis. Research # Statistical Bulletin 1/2000 (Northern Ireland Office) ppl2.

Annual statistics on the operation of the Northern Ireland (Emergency Provisions) Act 1996, H Kerr, G Lyness and D Wilson. Research & Statistical Bulletin 2/2000 (Northern Ireland Office) pp20.

Patrick Finucane's killing: official collusion and cover-up. Amnesty International, February 2000, ppl2 (EUR 45/26/00). Since lawyer Patrick Finucane was shot dead by loyalist paramilitaries in 1989 compelling evidence has emerged of collusion between loyalists, the police and military agents. This report considers the events surrounding the murder, weighs the evidence for official collusion and considers the "investigations" under current Met Commissioner, John Stevens. Amnesty concludes: "that evidence of collusion can only be fully and impartially investigated by a judicial inquiry which has full powers of subpoena of witnesses and disclosure of documents." Amnesty International, International Secretariat, 1 Easton Street, London WC1X 0DW.

Policing in Northern Ireland: a new beginning? Amnesty International, June 2000, pp3 (EUR 45/48/00). This paper is Amnesty's initial response to the government's draft legislation, the Police (NI) Bill 2000, which came out of the policing review by the Independent Commission on Policing for Northern Ireland under former Conservative minister Chris Patten. Amnesty, which had already noted "shortcomings" in the Patten report, is "greatly disappointed that human rights protection is not at the heart of the draft legislation." They argue that legislation should "provide a policing service in Northern Ireland which will fulfil the law enforcement responsibilities fairly, which will be fully accountable for its actions, and which will have the confidence of all sides of the community." In conclusion they observe that: "The Bill, as it currently stands, does not meet this challenge."

A policing "Patten" for the millennium, Colin Crampton. Criminal Justice Matters no 38 (Winter) 1999/2000, ppl2-13. Brief article by the RUC deputy chief constable on the proposals by the Independent Commission on Policing for Northern Ireland. He concludes that: "The identification of clear philosophical and cultural anchors for policing could not...be more timely or important when thinking about "Millennium justice"."

A briefing paper on the office of the director of public prosecutions for Northern Ireland. Pat Finucane Centre, February 2000, pp65 + appendices. This document examines the

role of the Director of Public Prosecutions over the last 30 years. Working from the premise that stone of the fundamental causes of conflict on this island has been the failure to uphold Article 7 of the Universal Declaration of Human Rights" on equality before the law, the paper presents a detailed historical and statutory background to the issues. Part III presents proposals for reform. Available from the Pat Finucane Centre, 1 west End Park, Derry BT48 9JF, Ireland. Available on the web: <http://www.serve.com/pfc>

Why did Robert Hamill die? Jeremy Hardy & Tanuka Chokroborty-Loha. Socialist Lawyer no 32 (Summer) 2000, pp8-11. Robert Hamill was kicked to death by a loyalist gang 200 yards from a police station in April 1997 as RUC officers sat in their Land Rover and watched. At the end of 1999 the Director of Public Prosecutions decided that there was no good reason to prosecute any of the policemen for neglect of duty. This piece articulates the arguments of the Robert Hamill Campaign who are demanding an immediate public inquiry into the events.

PRISONS

Denmark

No limits on the use of isolation

Over the past 20 years the Danish authorities have been severely criticised for their continued practice of holding remand prisoners in isolation. Criticisms have come from Danish expert groups, lawyers, doctors and psychologist's unions, ethical committees and from some politicians. Leading the protests were human rights groups and international committees such as the European Committee Against Torture, the UN's Committee Against Torture, Amnesty International and the UN's Committee for Human Rights.

Their investigations found that the most common results of being kept in isolation are anxiety, loss of memory and concentration, general nervousness and stress, emotional instability, insomnia and psychosomatic symptoms. The more severe effects are serious mental illness, such as psychosis and later an inability to relate closely to other people. These findings were met with arguments claiming that damage was rare or exaggerated, and that the use of isolation is imperative for the police to investigate serious crime. However, a government commission (Strafferetsplejeudvalget) in 1990, set up after criticisms, carried out an extensive research programme in order to explore the "damage caused by isolation." The first results were published in May 1994, and concluded that, "isolation during pre-trial detention, compared to non-isolation, implies a strain and risk that can disturb the mental health of the isolated person."

Among other things, the research showed that 28% of those kept in isolation suffered severe repercussions, compared with 15% among those not isolated. Among those who had been kept in isolation for more than two months, 43% could be diagnosed with a psychiatric illness and the risk of after-effects grew with the length of time spent in isolation. A follow-up study of the same population was published in 1997, and reached the same

conclusions. However, the researcher's findings were extended; they recommended that "the strains related to pre-trial detention should not be increased by the use of isolation." The researchers found that the risk of being transferred to a mental hospital after only 15 days is five times more likely for an individual held in isolation than for the non-isolated prisoner, and this increased to 50 times after 40 days.

A government commission published a report (Betnenkning 1358/1998) proposing legal reform (L 233). In the light of the years of criticism, supported by a major research project, the law that was finally passed (L 14) in early summer this year, is profoundly depressing. Not only did a majority in parliament vote for the preservation of the use of isolation during pre-trial detention, but the law also preserves the possibility of isolating detainees for unlimited periods. It is also permissible to isolate minors (children between the ages of 15 and 17-years), although the law says that they cannot be isolated for more than eight weeks continuously. However, the legislation retains at least the theoretical possibility of removing a child from isolation after eight weeks for a short period before returning them to isolation. Amnesty International, the Danish Centre for Human Rights, UNICEF Denmark and other organisations concerned with the rights of children have all raised objections to this flaw.

While the new law makes some concessions it fails to ensure that change will take place in practice. Several organisations will monitor the court's decisions to ensure that the new law is not abused.

UK DPP overruled on Alton Manning

In a landmark ruling the Lord Chief Justice, Lord Gingham, set aside a decision by the Director of Public Prosecutions (DPP) not to take criminal proceedings against any of the prison officers involved in the restraint-related death of black remand prisoner Alton Manning at Blakenhurst prison, Worcestershire, in December 1995. Alton collapsed and died at the private prison after he was taken to a cell, stripped naked and forced to squat to be searched for drugs. He was then forcibly carried semi-naked by six or seven prison officers who apparently used a neckhold that prevented him from breathing. Two pathologist's reports confirmed that he had died as a result of pressure to his neck leading to asphyxia, and an inquest jury returned a unanimous verdict of unlawful killing in March 1998.

HMP Blakenhurst was a contracted out prison run by UK Detention Services, which is jointly owned by the American company Corrections Corporation of America (CCA), at the time of Alton's killing. In the US the Corporation's private prisons have been described as a "private hell" by Christian Parenti in her book *Lockdown America*, which documents the "horrors and absurdities" of militarised policing and profitmaking prisons. Alton's death was the first restraint death in a private prison in the UK and one of three restraint deaths between October and December 1995 (the other two deaths were of Kenneth Severin at HMP Belmarsh on 25 November and Dennis Stevens at HMP Dartmoor on 18 October, see *Statewatch* vol 6 no 1).

The Lord Chief Justice's finding, that the DPP's decision not to

prosecute any of the prison officers involved in Alton's death is unsustainable, follows a five-year campaign by family members, supported by the campaigning group INQUEST. In his ruling Gingham found "serious questions arising" from the fact that the available evidence on the neckhold had not been addressed; that the decision not to prosecute any prison officer was "ultimately based on a hypothesis untenable on the available evidence" and that a DPP press release announcing the decision not to prosecute the prison officers "did not accurately reflect the true basis of the decision."

The solicitor acting for Alton's family, Raju Bhatt, said:

"What we see, in this case as in previous cases, is an institutionalised inability or unwillingness on the part of the DPP and the CPS to uphold the rule of law when those appointed to enforce the law are alleged to have abused their powers. And we see this very same weakness mirrored in the flawed and inadequate investigations of such allegations, as in the complacency of our political masters when confronted with the extent and depth of such a problem."

INQUEST, Ground Floor, Alexandra National House, 330 Seven Sisters Road, London N4 2PJ. Tel. 0208 802 7430, Fax 0208 802 7450; Christine Parenti "Lockdown America: police and prisons in the age of crisis" (Verve, London & New York) 1999, pp221-225; "Briefing: the death in prison of Alton Manning 1995" INQUEST 1998

Prisons - new material

Governing prisons: an analysis of who is governing prisons and the competencies which they require to govern effectively, S Bryans. *Howard Journal of Criminal Justice* Vol 39 no 1 (February) 2000 pp11-29. Prison Governors have received little attention from researchers. This article explores the characteristics of prison Governors as a group and by identifying the competencies which they require to govern effectively. The response to a questionnaire sent to all Governors reveals that the typical Governor is a white male, aged 50 who has been a Governor for the last six years of his 24 years Prison Service career and joined the Prison Service as a second career without a degree. The article goes on to argue that, to be effective, Governors need to be competent in four areas: general management, incident management, public sector management and prison management. In addition, they must demonstrate certain behaviours which are identified in the Prison Service Core Competency Framework.

Women's imprisonment at the Millennium, Pat Carlin. *Criminal Justice Matters* no 38 (Winter) 1999/2000, pp20-21. Views the prison scandals of the 1990s (suicides at Cornton Vale, "filthy" conditions at Holloway, manacled mothers and degrading drugs testing methods) in light of the establishment of a Women's Policy Unit in 1997. The author concludes that "there are grounds for being at least cautiously optimistic about the future of women's imprisonment."

Therapeutic communities in prisons, B Rawlings. *Prison Service Journal* no 129 (May) 2000, pp19-22. This paper is based on a

review of therapeutic communities carried out for the Prison Service in 1998 It provides a general description of treatment approaches used and an outline of evaluative research into treatment outcome.

After Lawrence: race and prisons, Dennis Valentine. Runnymede Bulletin no 232 (June) 2000, pp3-5. Assesses how the criminal justice agencies measure up to the recommendations of the Macpherson report into the racist killing of Stephen Lawrence.

Prison Report Issue 51 (June) 2000, pp27. This issue focuses on "Justice for Women", with articles on young women in the prison system; justice for women and the need for a radical revision of the criminal justice system and counting the cost of imprisoning women offenders ("something like £118 million every year"). Also contains pieces on the recent Special Branch raid on the Blantyre House resettlement prison in Kent and the Prison Service's "progress" in the decade since the Woolf report into the uprisings in Strangeways and twenty other prisons. Available from: Prison Reform Trust, 15 Northburgh Street, London EC1V OJR. Tel 020 7251 5070.

RACISM & FASCISM

UK

Teacher cleared after rescuing schoolgirl from racist attack

An Asian schoolteacher, Arvinder Singh Paul, walked free from Redbridge magistrates court, east London, in July after magistrates threw out charges of assault brought after he rescued an 11-year old girl from a racist attack in August 1999. Mr Paul had intervened to protect the schoolgirl after she was attacked by a gang of youths, only to later be arrested and charged. The police decision to pursue his prosecution, and the role of Ilford's Community Safety Unit, was condemned by members of the Asian community in Redbridge and Newham.

Mr Paul had just returned from work when his 11-year old daughter, who been playing with her friend in Goodmayes Park, came rushing home to get help, because the two girls had been victims of a racist assault by around 20 youths. Although his daughter had escaped, her friend was still being attacked. Mr Paul asked his wife to call the police and direct them to the park. He then drove there with his daughter. On seeing Mr Paul arrive, many of those involved ran off although the ringleaders remained. As Mr Paul anticipated the imminent arrival of the police, he waited at the scene of the attack so that his daughters' friend could identify those involved.

When the police arrived, Mr Paul and the girls were surrounded by a threatening crowd of adults and youths. The police officers witnessed Mr Paul being racially abused and threatened and had to intervene in order to prevent them from being attacked. When police officers came to his house some time later, rather than assure him that action had been taken against the attackers, they arrested Mr Paul. The decision to pursue his prosecution - and in particular the actions of Ilford's Community Safety Unit, set up by the Metropolitan Police to

tackle racist crime - has been condemned by members of the local Asian communities. Hundreds of letters and a petition with over 2000 signatures were sent to the Crown Prosecution Service demanding that the charges be dropped, but concerns that this case should never have been brought were ignored.

Commenting on the case, Tanuka Chokroborty-Loha, Mr Paul's caseworker at Newham Monitoring Project, said:

"No-one can understand how, in the aftermath of the Stephen Lawrence Inquiry, the father of a child who has been the victim of a racist crime can be treated in this way. This case nails the lie that the police have learnt lessons from the Inquiry and have changed. The involvement of the Community Safety Unit (CSU) in pushing the prosecution flies in the face of the promises made by senior officers that CSUs would provide sympathetic support to victims of racist crimes. We will be making a formal complaint about the way that Mr Paul has been treated and believe that Deputy Assistant Commissioner John Grieve of the racial and violent crimes task force should apologise personally to him."

NMP can be contacted at: Suite 4, 63 Broadway, London E15 413Q; Tel: 0208 555 8151; Fax: 0208 555 8170; 24-Hour Emergency Service: 0800 169 31 11; email: nmp@gn.apc.org

UK

"Lone bomber" an NSM member

David Copeland, the "lone bomber" responsible for a series of explosions in London which killed three people in April last year, received six life terms at the Old Bailey in July. The 24 year old engineer, who had targeted black and Asian communities in east and west London, killed three people with his final attack on a gay pub in Soho. Copeland, of Hove, Hampshire, had his plea of manslaughter on the grounds of diminished responsibility rejected by a jury. He received three life sentences for the murders and three life sentences for causing explosions in Brixton, Brick Lane and Soho (see Statewatch vol 9, no 2, vol 10, no 2). However, questions have been raised about this "outstanding example of modern policing", and misleading information presented at a Scotland Yard press conference after the arrest.

At the press conference journalists were informed that Copeland had no links to the far-right organisations that had claimed responsibility for the bomb attacks. "He was acting alone" journalists were told, a factor that made tracking down the bomber all the more difficult. Technically their statement was accurate as Copeland was neither a member of Combat 18 (C 18) nor the White Wolves, the organisations that had claimed responsibility for the explosions. However, as became clear at his trial, Copeland was a member of a C 18 splinter group, the National Socialist Movement (NSM) at the time of the bombings. His membership card had been found when his home was searched by police.

Copeland had joined the NSM after spending a year as a member of the British National Party (BNP). He was active in east London where he associated with Tony Lecomber, who would have been well known to anti-terrorist units as he was

jailed in 1986 for a nail bomb attack on political opponents in south London. The party's current leader, Nick Griffin, was himself a close associate of members of the Italian Nuclei Armati Rivoluzionari, who are reported to have escaped extradition to Italy for terrorist acts by becoming informants for the UK's external security services, MI6. The BNP, after initially denying Copeland's membership, went on to acknowledge his "marginal" involvement. More recently, Griffin has asserted that Copeland was a state agent who infiltrated the BNP to undermine their electoral programme - a theory that has received little credibility outside of the more esoteric branches of the extreme-right.

Copeland went on to join the NSM at the end of 1988 or early in 1999. If the Metropolitan police, Special Branch and MI5 had overlooked Copeland's involvement with the UK's largest fascist organisation, they can hardly have missed his involvement in the small, but violent NSM. The NSM was born out of a split with C18 and a feud between their respective leaders, Charlie Sargent and Wil Browning. The culmination of the feud saw the stabbing to death of a Browning supporter by the NSM leader and another man, which resulted in Sargent's imprisonment for life. During Sargent's trial suspicions that the NSM leader was a long-time police informer were confirmed, suggesting that the police would have been very familiar with the modus operandi of his organisation, (following Sargent's jailing his brother, Steve, went on to play a prominent role in the organisation). C18 would also have been under intense scrutiny due to the involvement of Browning in a widely publicised letter-bomb campaign against black British athletes, orchestrated from Denmark (see Statewatch vol 7 no 1, 2, 4 & 5).

It is inconceivable, given the number of agencies involved in the monitoring of the far-right in the UK, the resources at their disposal and a seemingly endless supply of informants, that they can be as ignorant of the activities of the far-right as they claim to be. While Copeland clearly has psychological problems, he was not simply the "disturbed loner" portrayed by Scotland Yard but an active player on the far-right. This milieu gave him access to, information, materials and support that enabled him to carry out his campaign. Copeland's arrest appears to have been seen as little more than a public relations exercise for the Metropolitan police, an opportunity to impress upon the public their anti-racist credentials in the post-Macpherson era.

"Operation Marathon: How the Met ended the career of a vicious bomber," Metropolitan police press release, undated.

Basque Country

Roma schoolchildren boycotted

On 25 May, when three Roma children registered at the San Juan Bosco religious school in Barakaldo, Bizkaia, the remaining 633 students failed to attend following protests from their parents. The boycott came after a secret ballot in which 438 parents voted against registering their children at the school, (29 voted in favour and 163 abstained). They claimed that the children "can cause physical and psychological problems to the other children". The boycott has been described as racist and elitist by the Movimiento asociativo gitano (a Gypsy association

collective). The three children, who are 3, 7 and 8 years old, were walked to school by Jesus Gimenez of Iniciativa Gitana (Gypsy Initiative) under the supervision of the local police to avoid incidents.

The children's previous school, Ametzaga, in the district of Retuerto, was closed in the second half of the school year. It was criticised by Javier Lozano, a teacher and member of the STEEEILAS (a Basque teacher's union) who highlighted the hypocrisy of an educational system which states that it aims to achieve integration, while its organisation perpetuates social divisions, resulting in some institutions becoming ghettos. Ametzaga school had 13 students, all of whom were Roma, drawn from four families. When the school was shut down, allegations that students and their families were unruly and difficult to control arose, leading to their stigmatisation. They were redistributed to four schools; parents from the Zuazo school objected to their admission, leading to a request for local authorities to provide alternatives. From these their parents chose Barakaldo's religious school.

In response to the boycott, the Movimiento asociativo gitano wrote an open letter to the Spanish people and their institutions. They expressed the hope that their children may escape the cycle of poverty, marginalisation and rejection in which Gypsies are trapped through education. They said the episode was a symptom of "racism, intolerance, lack of solidarity, cultural elitism, prejudice, misuse of force by a social majority, and manipulation of their sons and daughters" and an attempt to impose negative stereotypes on Gypsy children.

Alfonso Unceta, vice-councillor for Education in the Basque government, lamented that values such as tolerance, integration, cohabitation and solidarity had been trampled on. Following the intervention of the legal department concerned with minors (Fiscalia de Menores), the children were guaranteed schooling in Barakaldo.

Pagina Abierta June 2000; Hika no 111 (May) 2000; RomNews Network, 26.5.00.

Italy

Clashes at FN demonstration

On 13 May a Forza Nuova rally led to clashes, when police charged a "social centres" (leftwing young peoples' centres) protest in central Bologna. FN leader, Roberto Fiore, claimed a "victory" during the 10-minute rally, which saw 150 fascists celebrating the opening of an office in the area. Afterwards FN supporters were escorted into cars and buses by the police. Around 10,000 protesters had gathered to oppose the rally, including trade unions, anti-fascist veteran's associations, left parties and social centres. Renzo Imbeni, MEP for the Democratic Left, said "The left did not want to accept an initiative which violated Italian constitutional law. The justification of fascism should not be expressed."

Clashes between police and demonstrators ensued after vice questore (deputy chief constable) Della Rocca ordered repeated charges, using teargas and armoured vehicles to drive demonstrators back. Members of the counter-demonstration's front line wore tyres covered with nylon to protect themselves.

Leoncavallo social centre issued a statement after the demonstration, criticising the "extremely violent charges". The statement alluded to recent demonstrations in Ancona, Genova (anti-GM) and Bologna (anti-OCSE) to argue that the police violence was far from an isolated incident; they attacked the policy of "using the truncheon" to undermine support for protests. "They are countering the mass...movement...with institutional violence which is serious and, most importantly, out of control."

The FN has 40 offices covering all but five of Italy's regions. It claims to have set up youth training camps and blends militant catholicism with street violence. They support Jorg Haider's policies and their relationship with the Austrian far-right leader has been getting closer. A delegation from the Freiheitliche Partei Osterreichs (FPO) had been expected at the rally in Bologna, although FPO reportedly backed down at the last moment. However, Haider did have time to meet Renato Martin, the mayor of Jesolo in north-east Italy (formerly of Lega Nord and now representing an independent list), invited him to the city to give him the keys to the city as an "honorary citizen" on 9 June. The ceremony was attended by few supporters and a larger contingent of protesters who clashed with police. He later visited Udine and Venice, cities with centre-right local governments, under the pretext of promoting tourism to Carinthia. Interviewed by L'Espresso in June, Haider spoke of "our northern Italian friends", claiming "agreements on programs" and expressing "pleasure for the cooperation between Forza Italia, Alleanza Nazionale and the Lega".

L'Espresso 8.6.00; 11 Messaggero 14.5.00;
www.ecn.org/lists/ecn-news; Searchlight July, August, 2000;
Repubblica [darder; 11 Manifesto 8 & 9.7.00; L'Unita 16.3.00.

Racism & fascism - new material

Materialien zum Thema Auslander - und fremdenfeindliche Straftaten 1998 und Rechtsextremismus [Materials on racist and xenophobic crimes in 1998 and right-wing extremism]. German parliament, 17.11.99 and 16.2.00, pp217. This dossier compiles written answers from the German government to a range of parliamentary questions concerning right-wing extremism posed by MP Ulla Jelpke (PDS). Includes detailed information and statistics on anti-Semitic and other racist attacks (the place they occurred, the number of arrests and convictions etc) as well as detailed information on rightwing music (distributors, Blood & Honour concerts, bands etc) and press. Available from Buro der Bundestagsabgeordneten Ulla Jelpke, Mauerstr. 34-38, Haus III, 10117 Berlin, Germany; tel 0049-30-22775816; fax: 0049-227-76793.

Second Report on the Czech Republic. European Commission against Racism and Intolerance, 21.3.00, CRI (2000)4, pp23. Issues of particular concern in the Czech Republic: racist violence against the Roma community. Available from ECRI, tel 0049-33-388412964; fax 0049-33-388413987; combat.racism@coe.int.

Hika, no 111, May 2000, pp50. This issue deals with the

effective denial of Gypsies' rights as citizens in Spain. Looks at numerous issues including Gypsy identity, exclusion, possible avenues for development, Gypsy women and the penal system, and the work of social services. Data concerning Gypsy population, employment, poverty and literacy levels is also included. Features analysis of the Basque conflict referred to as "tug-of-war politics", and criticism of the role played by the media. Other themes include the situation of prisoners in Spanish jails and an overview of the structure of the Network for the Abolishment of Foreign Debt and its initiatives. Available from: Pena y Goni 13-lo, Donostia 20002, Basque Country, Spain.

SECURITY & INTELLIGENCE

Italy

Carabinieri hold 70 million secret files

Valerio Mattioli, a 21-year-old carabinieri in the San Giovanni Valdarno barracks in the province of Arezzo has criticised the carabinieri for holding millions of records on individuals associations and parties, businesses and social or research institutes. On 31 May, 11 Manifesto reported that he had sent a series of complaints to public prosecutor's offices all over Italy after officials in the carabinieri general command failed to answer his questions about the implementation of data protection legislation. According to one former Defence commission president the files relate to the activities of a shadowy "third secret service", Ucsi. A parliamentary question on the files by Rifondazione Comunista MP Giovanni Russo Spena, who has described the files as part of a "parallel" system forbidden by law, remains unanswered.

Mattioli reported the collection and permanent storage of information about people who have no criminal records as a violation of data protection legislation. Data protection ombudsman Stefano Rodota is still investigating the allegations, over a year after his office was first notified. He explained the delay:

"At the start the allegation was very vague. The requests in May 2000 were very detailed and we started an inquiry. It mentions reference numbers, registers, modules marked with an acronym... they are precise."

These records, marked Unclas riservatissimo (strictly reserved), are kept and maintained permanently in carabinieri barracks. They include information on the personality and character of the subject under scrutiny, such as their beliefs, habits, associates and public standing. Mattioli said that an internal directive states "any other information which is useful to shed light on the subject's personality" should be collected. Falco Accame, former Defence commission president, told La Stampa that the collection of files relates to the activities of Ucsi: "In practice, [Ucsi] constitutes the third Italian secret service, apart from Sisd and Sismi, and...collects information by using the legions of carabinieri from all Italy."

Mattioli supports these claims by noting that there are 58,000 files in the San Giovanni Valdarno barracks, for a town of

18,000 persons. He spoke of 70 million files, stored in 5,000 carabinieri posts around Italy. The ombudsman, although unable to offer an estimate, commented that there had been "an accumulation, in several places, of large quantities of files and there has never been an effective clear-up." Inspections can be carried out, he said, but "there could also be files which are kept in such a way that it is difficult to gain access to them." However, if it should arise that some files exist whose existence had been officially denied... It will be impossible to say that it was a particularly bad police constable because these answers have come from the top.

Giovanni Russo Spina wrote on 2 June in *Liberazione* that the carabinieri probably have a "parallel" system which is forbidden by Law 121/81, covering databases. He questions the authorities' failure to intervene on the basis of the existence of classified registers and the collection of sensitive information in these files. He says that an investigation three years ago discovered files in Liguria barracks on all policemen expressing sympathy for the then Partito Democratico di Sinistra (now DS, Democratici di Sinistra) and for Rifondazione Comunista:

"We ask (Council) president Amato: if present filing practices do not result from a military control of citizens but are merely a residue from a dark past, why can't a procedure be decided to destroy the files?"

Franco Frattini, head of the parliamentary committee for the control of the secret services, spoke of a conspiracy against the carabinieri. He said that information collection is a "normal activity which the data protection ombudsman has known about for a year", adding that "it isn't a privacy violation, if it refers to information" about the persons under scrutiny. The data is collected for "institutional reasons, such as the issuing of a security permit, or to have access to certain duties, such as tests to enter the judiciary."

Corriere della Sera 2.6.00; *Repubblica* 1.6.00; *Liberazione* 2.6.00; *Stampa* 2.6.00.

Netherlands/UK

MI5 recruited former BVD/IDB officers

Last year MI5, the UK's security service, recruited several former Binnenlandse Veiligheidsdienst (BVD) and Inlichtingendienst Buitenland (IDB) intelligence officers to spy in east European countries. The story broke after one of the former IDB-officers complained to the Ombudsman about the behaviour of the BVD. The IDB is the former Dutch foreign intelligence service, which was disbanded in 1994. Former IDB officials found it difficult to find new work, some went to the BVD, some started their own businesses while others were unemployed.

At beginning of 1999 the BVD came across an MI5 operation in the Netherlands, and a special unit was set-up to investigate the activities of a liaison officer at the UK embassy. "The annoying thing is that a friendly intelligence service is involved", the BVD say in the Ombudsman's report. The BVD discovered that the liaison officer had contacted former BVD

and IDB officers. One of the former IDB officers was visited by the BVD on the 8 March 1999. They questioned him about his activities and he denied that any contacts had taken place. He complained that he felt harassed by the BVD and on 25 May 1999 he made a complaint to the Ombudsman.

In the Ombudsman's report are sections of the transcript of the interview between the BVD and the former IDB officer. The main focus of the interview is the involvement of the former IDB officer in MI5 operations. The IDB man, who now runs a private intelligence company, seems to have established a "business relationship" with the liaison officer. The BVD were very interested in activities the IDB agent was setting up in Berlin. He said these activities were to establish cooperation with German private security firms. He denied cooperating with the UK embassy. The final report was submitted to the Prime Minister, who decided to quietly expel the UK liaison officer. The BVD was angered at being overlooked by the UK authorities. A UK embassy spokesman said: "It would have been much more appropriate if the director of the BVD had contacted us. We do work a lot together and share a lot of secrets. This is not a way to act against a friendly service".

Ombudsman's report, 29.2.00, file no 20/076, see: <http://www.ombudsman.nl> (search for svD)

Security - new material

DSL: serving states and multinationals, Yves Goulet. *Jane's Intelligence Review*, June 2000 pp46-47. Defence Systems Limited is a private security company that offers services such as "crisis management, threat assessment, specialist manpower, de-mining, oilfield and mining security, guard-force management, military training, communications security, technical security equipment and human resources". It has over 3,000 employees with former soldiers from the SAS, Special Boat Squadron and Gurkhas as supervisors.

Ustica, "I general) non pagheranno" (Ustica, "The generals won't pay"), Paolo Pentimella Testa. *Avvenimenti*, 11.6.00, p 17. Maybe no one will be sentenced for a cover-up by the Italian military following the shooting down of a DC-9 in Ustica on 27 June 1980. Many of those involved have already been acquitted due to the statute of limitations after a 19-year investigation in which judge Rosario Priore ruled that the DC-9 was shot down in an "act of war" by NATO forces, breaching Italian sovereignty (*Statewatch*, vol 9 no 5). Failure to decide on a suitable courthouse, and the logistical problems of moving the huge amount of documentation may result in the acquittal, on statute of limitation grounds, for the nine indicted members of the armed forces. Four are generals, who are facing charges including high treason.

Free Samar and Jawad, Daniel Guedalla. *Socialist Lawyer* no 32 (Summer) 2000, pp22-25. Overview of the case of Samar Alami and Jawad Botmeh, two Palestinians convicted of conspiracy to cause explosions in London during 1994. It shows how the court approved the failure by the prosecution to make full disclosure of vital evidence on the grounds of public interest

immunity created another miscarriage of justice. The Freedom for Samar and Jawad campaign can be contacted at Box BM FOSA, London WCIN 3XX.

Stragi e terrorismo: strumenti di lotta politica. Dossier dei DS dal dopoguerra al 1974 (Killings and terrorism: instruments for political struggle. The Democratic Left dossier from the postwar period to 1974). Analysis submitted to the Italian Massacres Commission (Commissione Stragi) which looks at the CIA-inspired network linking far-right extremist groups, political parties, the Ministry of the Interior's Reserve Affairs Bureau, the secret services, armed forces and NATO elements. Analyses the roles of groups and individuals, the development of a "dependable" network of anti-communists selected from the armed forces and far right groups, and the protection which they were granted. The roles of organisations such as Gladio and the P2 masonic lodge are also examined.

"A most extraordinary case". Jane Affleck. *Lobster Summer 2000*, pp17-19. On Christmas eve 1990 two men were arrested and placed in a cell at Hammersmith police station. Patrick Quinn was later found dead and the second prisoner, Malcolm Kennedy, who maintained that Quinn had been killed by the police, was charged with murder. Kennedy was jailed for life his case, described by Labour MP Chris Mullin as "a serious miscarriage of justice", was the subject of a book - *Who killed Patrick Quinn? The framing of Malcolm Kennedy* - by the Hackney Community Defence Association. Now out on parole Kennedy claims that his removal business is subject to constant interference and disruption, and he suggests that Special Branch and/or MI5 are involved, working on the basis of an interception warrant established during his case.

FEATURE

UK

The Football (Disorder) Act (feature)

Police and magistrates in England and Wales are to gain sweeping new powers under the Football (Disorder) Act. The legislation gives the police the power to arrest and detain people they believe might commit an offence and stop them from leaving the country. Magistrates will be able to impose extensive, fast-track banning-orders where there are "reasonable grounds" that this will "help" prevent disorder and all domestic stadium bans will apply internationally.

The "emergency legislation" was drafted in response to the behaviour of English fans during the European championships in June. The Bill passed rapidly through both the House of Commons and the Lords - in time for it to become law before the England teams next away fixture in September (the draft was published on July 7 and received "Royal Assent" on the 28th). Jack Straw, the Home Secretary, said that the National Criminal Intelligence Service (NCIS) considered the match, which is a "friendly" in Paris, to be "high-risk". A Liberal Democrat spokesman in the Lords commented: "you don't throw centuries of law making procedure out of the window because there's going to be a game in Paris in September."

Section I of the Football (Disorder) Act 2000: (a) creates single domestic and international banning orders; (b) allows magistrates to issue a banning order on the basis of a complaint from a police officer (or on the basis of a previous conviction, which does not have to be football related); (c) requires people subject to a ban to surrender their passports prior to matches played outside the UK; (d) gives the police new powers to arrest and detain people they suspect may cause trouble, and to bring them before a magistrate within 24 hours.

Section 2 allows NCIS intelligence data to be disclosed to and taken into account by magistrates and police. Section 3 sets out the limitations and scope of the Act, which includes parliamentary review of the law after one year.

The new banning orders

The provisions for domestic banning orders had been updated as recently as September last year by the Football (Offences and Disorder) Act. Specific orders to prevent people attending matches abroad were not previously available, although the police did have powers to stop convicted hooligans from travelling. The new banning orders cover both domestic and international matches and tournaments, at both club and national level. The length of the bans are determined by the circumstances under which the application was made. For persons convicted of a "relevant offence" (see below) and receiving a custodial sentence, the minimum is six years and the maximum ten years. Non-custodial convictions carry a 3-5 year ban. Where magistrates believe there are "reasonable grounds" for issuing a ban - even in the absence of a criminal conviction - 2-3 year bans are available. In a parliamentary briefing on the draft legislation, human rights lawyers from Liberty criticised the removal of the courts' power "to use their own judgement to make the punishment fit the crime". Non-compliance with an order is criminal offence, punishable by up to six-months imprisonment, a fine, or both. People subject to a ban can apply to have the order terminated after two-thirds of the time-period has elapsed.

The new law designates the six days leading up to and including a football match or tournament as a "control period". Where control periods concern fixtures outside the UK, anyone subject to a banning order is required to hand their passport over to the police. Liberty suggest these provisions may breach freedom of movement provisions guaranteed by the European Convention on Human Rights, although exemptions to EC law exist to allow states to restrict free movement on the grounds of public policy or national security.

"Relevant offences"

The "relevant offences" to which the Act applies includes not only acts of hooliganism as defined in specific legislation, but a range of public order and criminal offences. The complex schedule of offences begins by including these other offences in relation to football matches, but ultimately allows the new law to be potentially applied to a range of offences in a "non-football" context.

Relevant offences while attempting to enter or leave a stadium

include harassment, racial hatred, violent disorder or the threat of violence towards persons or property, and carrying offensive weapons. These offences also apply while on "a journey to or from a football match", as does being drunk and disorderly in public or drink-driving. During the control period the new powers can be used in connection with any racist offences, harassment, violent behaviour (or the threat of) or weapons offences. "Ticket touts" (people who resell match tickets at a profit) also fall within the scope of the law during the six-day control period. The final part of the Schedule of Offences allows the police and magistrates even greater scope through an inventive decision on what constitutes a journey to a match: a person may be regarded as being on a journey to or from a football match to which this Schedule applies whether or not he attended or intended to attend the match.

Magistrates rule OK

Magistrates will be able to impose a banning order on anyone convicted of a relevant offence where they are: satisfied that there are reasonable grounds for believing that making a banning order would help prevent violence or disorder at or in connection with any regulated football matches.

This allows magistrates to issue a ban on the grounds that they believe it might "help" prevent trouble: an alarmingly low "test" with which to decide on the imposition of far-reaching sanctions.

The new law combines civil and criminal procedure, the bans are issued under civil law yet carry criminal penalties for breach. In civil law matters, the standard of proof is the "balance of probabilities" but for punishments to be imposed under criminal proceedings, a court must be satisfied "beyond reasonable doubt". Criminal procedures also provide certain safeguards, such as rules of evidence and the duty of "fair disclosure" on the authorities to provide any information which might assist the defendant. Liberty are critical of this situation, which also exists for Anti-Social Behaviour Orders. Writing in the Guardian, Liz Parratt commented: "A civil test should not be used as a means of securing a criminal penalty. Either you have sufficient evidence for charge, trial and conviction or you don't."

Seeking a ban: any violence, any disorder

The police are now empowered to make an application for a banning order to be heard by a magistrate within 24 hours if they believe that: the respondent [suspect] has at any time caused or contributed to any violence or disorder in the United Kingdom or elsewhere. The violence or disorder in question does not have to be football-related: Violence means violence against person or property and includes threatening violence and doing anything which endangers the life of any person; and disorder includes:

"using threatening, abusive or insulting words or behaviour or disorderly behaviour [and] displaying any writing or other thing which is threatening, abusive or insulting."

The scope for the police to exercise their new powers - on the

basis of "insulting words" or "disorderly behaviour" - and have a person brought swiftly before the courts could scarcely have been set any wider.

The new police powers

As well as enabling the police to issue notice of civil proceedings in court to take place the next day (with which failure to comply is a criminal offence), the legislation also gives them new powers of arrest and detention during "control periods". As drafted, the Bill included a proposal to allow police to arrest anyone they think should be subjected to a ban and detain them for up to 24 hours - the time-period within which they must be brought before the courts. In one of only a few significant concessions in the Bill's passage onto the statute book, the maximum detention was reduced to four hours (or six on the authority of a policeman ranked inspector or higher).

Nevertheless, the officers were still granted the powers to arrest people they suspect may cause trouble and summon them to appear before a magistrate. When the control period concerns a fixture in another country, and the police decide to seek a banning-order, the suspect must surrender their passport until the following day's hearing. This will mean that if the Magistrate then decides there is insufficient grounds to issue a banning-order, the suspect will already have been effectively restricted from travelling. In another concession, a provision was introduced to allow individuals against whom an order was sought but not granted to seek compensation of up to £5,000 for malicious prosecution. People handed down a ban by a magistrate can appeal.

Practice, potential and precedent

When drafting the new law, there appears to have been little consideration of the underlying causes of football hooliganism, no reference to the international experience of other countries faced with similar problems, no research or analysis into the use and effectiveness of existing powers and, as Liberty point out, it is not clear whether extending the scope of banning orders follows from the perception that they are working well or badly. Opposition to the Bill created strange bedfellows. Civil liberties issues were raised by both Anne Widdecombe (Conservative "Shadow" Home Secretary) and the Police Federation. Yet in spite of the apparent widespread concern, the Act was adopted largely as drafted within just three weeks. In giving new powers to the police and magistrates, the legislation has set an alarming precedent: the criminalisation and restriction of movement of people who may contribute to "disorder" in another country. The Home Office Football Disorder Unit, which is due to publish guidelines on the use of the Act, dismisses the idea that the powers could be used to prevent people from leaving the country for other reasons (eg: an anti-racist demonstration). However, this certainly does not rule out the prospect of emergency provisions, based on the new powers, for different purposes in the future.

Football (Disorder) Act; Briefing on the draft Football (Disorder) Bill, Liberty, July 2000; Guardian, 7.7.00.

FEATURE

EU

Mutual recognition of judicial decisions (feature)

The EU is to draw up a range of legislation to speed up judicial cooperation in criminal matters and integrate national criminal justice systems. The cornerstone of the "European Judicial Space" (a term spun out of the Amsterdam Treaty by-line an "Area of Freedom, Security and Justice") will be the principle of "mutual recognition". UK officials describe the principle as:

"decisions taken in one member state should be accepted as valid in any other member state and put into effect on a reciprocal basis"

Mutual recognition can apply to all aspects of the judicial process, from pre-trial orders - including search and arrest warrants, witness summonses and the seizure of evidence - to final judgments (such as fines, sentences and asset seizure). Where applied, the member states will be obliged act upon each other's judicial orders and certain types of final judgment will be valid and enforceable across the EU.

The mutual recognition principle is well established in EC law and applies in a range of policy areas, particularly within the single market. In Justice and Home Affairs (JHA) matters, the principle is used in a number of international agreements and mechanisms (examples include the recent convention on community-wide enforcement of driving bans, agreements on the seizure of assets in international fraud and corruption cases, and a resolution on the mutual enforcement of stadium bans given to football "hooligans"). The 1968 Brussels Convention provides for the enforcement of judgments in civil or commercial matters in another (contracting) state.

A fair trial abroad?

The mutual recognition approach is described as "tolerance of diversity on the basis of mutual confidence and trust in each others' legal systems, as opposed to insistence of uniformity for its own sake". This "basis of mutual confidence", however, is likely to be a little thin on the ground in some countries.

Fair Trials Abroad (FTA) is a UK legal rights group concerned with the fair treatment of people in alien jurisdictions. FTA's primary concern is over the judicial standards in some countries, particularly since the mutual recognition proposals will ultimately allow courts in one country to issue highly coercive judicial orders for direct enforcement in another. FTA cites a number of miscarriages of justice involving UK citizens tried in foreign jurisdictions, including the infamous Bridget Seisay case (see Statewatch vol 9 no 3 & 4). The countries with the judicial standards that they are most concerned about are Greece, Portugal, Spain and Belgium, although they suggest that there is a Europe-wide problem of discrimination against non-nationals by judicial authorities.

An EU programme of measures

Following a political agreement by EU governments at the Tampere summit, EU working parties have drawn up a draft "programme of measures to implement the principle of mutual recognition". The document is scheduled for adoption at the JHA Council in November. The proposals in the programme will require new legislation and the updating of existing international agreements. Initially, mutual recognition will be limited to certain offences and procedures.

Pre-trial orders and Eurowarrants

At present, judicial cooperation takes place through formal requests for mutual legal assistance. These requests are then subject to judicial authorisation in the requested state. In the UK the Home Office Mutual Legal Assistance (MLA) Section checks all requests ("letters rogatory") and submits them for endorsement to the relevant judicial authority. This is to ensure that requests for legal assistance comply with both UK and international law. The process is considered laborious and time consuming by the authorities - the European Commission describes it as "slow, cumbersome and uncertain" - so the longterm aim of the mutual recognition programme is to remove both administrative and judicial supervision by replacing requests with directly enforceable orders - European Enforcement Orders or "Eurowarrants".

Under the mutual recognition programme, initial arrangements will be made for the fast-track endorsement of Eurowarrants by authorities across the EU - possibly via the EU's European Judicial Network or the "EUROJUST national correspondents" (see feature in this issue). The member states will have limited grounds for refusal. In the longer term, certain orders will become directly enforceable.

In removing judicial supervision, and the legal safeguards this should guarantee, the EU will have to draw up a set of minimum standards that authorities in the member states must satisfy before issuing a European order. Justice (a UK legal policy research group) has called for any EU code to be based on the minimum standards in the UK Police and Criminal Evidence (PACE) Act. However, with some member states applying lower standards than PACE, any workable EU system is likely to be based on a lower, common denominator - a possibility that is also criticised by FTA.

European arrest warrants and fast-track extradition

Provisions to speed up extradition procedures are likely to be among the most controversial. At the moment, member states have several important exceptions available when considering requests for extradition. The "political offence" exception allows countries to refuse extradition on the grounds that the trial is politically motivated, as was the case when France recently refused to extradite ex-MI6 agent David Shayler to Britain. Also available, is the "own-nationals" clause which allows a member state to refuse to extradite its own citizens.

The proposed fast-track extradition procedures will see the introduction of a European Arrest Warrant. The procedure for issue is likely to be modelled on the Schengen Information

System (SIS) arrangements for "alerts" for provisional arrest for the purposes of extradition (Article 98, Schengen Implementing Convention). However, as not all member states are party to the full application of the SIS:

"the question of establishing a European Information System modelled on the SIS but applying throughout the Union also needs to be reexamined." (draft Programme of Measures, 2.2.1)

The EIS was originally proposed as part of the External Borders Convention, and would have seen all the EU countries participating in the SIS. The proposals never really got off the shelf because of the lengthy delay in the SIS becoming operational (it went "live" in 1995 - five years after the Schengen Implementing Convention was agreed). In 1997, the Amsterdam Treaty incorporated the Schengen provisions and the SIS into the EC/EU legal framework, allowing the rest of the EU countries to apply to join in. However, the UK and Ireland are not participating in any of the "common-border" provisions, and since Article 96 also covers persons to be refused entry to the EU on immigration grounds (among others), they will be unable to access the information.

Final judgments and a European Criminal Record

The final part of the EU's draft programme deals with the mutual recognition of final judgments by criminal courts. Eurowarrants for provisional arrest will be replicated to provide fast-track extradition for the purposes of enforcing a prison sentence. However, the "own-nationals" reservation on extradition is available even where that person has received a prison sentence in the requesting state. The EU is proposing a new principle of "extradite or enforce the sentence" (3.1.2.) to counter such situations.

Persons "fleeing justice" will also be covered by the new warrants, with fugitives either returned by the state in which they were discovered or being imprisoned there for the remainder of their sentence. This will also require a new legal instrument, which will be based on the principle of "transfer the fugitive or continue enforcement of his sentence" (3.1.3).

Fines, confiscation orders (relating to the assets of convicted criminals) and disqualification orders are also to be mutually recognised. A legal instrument to allow fines imposed by one member state to be levied in another will be drawn up, and it is proposed that the Schengen Executive Committee Decision on "cooperation in proceedings for road traffic offences and the enforcement of financial penalties in respect thereof" (28.4.99) should be applied across the EU. The issue of which type of disqualifications should be enforceable across the Community is to be discussed, and:

"consideration should be given to introducing a European disqualifications register (driving disqualifications, occupational disqualifications, deprivation of civic rights). Failure to comply with certain disqualifications could be considered an offence at Union level."(3.4)

The proposals on final judgments also include provisions to

allow the courts in one member state to take into account the defendant's criminal record in another. A feasibility study on the exchange of national criminal record data was called for in the 1998 Action Plan to implement the Amsterdam Treaty (point 49(d)). A new EU measure will formalise the arrangements for exchange, while:

"consideration should be given to the feasibility of introducing a "European Criminal Record" [for] serious offences" (1.2).

Ensuring an adequate defence?

The proposed mutual recognition programme, the recent Mutual Legal Assistance Convention and the EUROJUST proposals amount to significant progress for the EU in achieving its goal of "free movement of prosecutions". What is less clear are the compensatory steps that will be taken to ensure the adequate standards of defence and with it the free movement of actual criminal justice. After Tampere, FTA made recommendations it considered crucial to the protection of the individual against possible injustice. As yet, none of these issues appear to have been considered in the new EU legislative programme, these are:

- ensuring the availability of legal aid ('free or low cost competent legal representation');

- improvement of judicial standards (in 1998 the Council of Europe identified the following problems in national justice systems: political interference in the administration of justice, corruption, a shortage of resources, delays, prosecution too close to the judiciary, racism and xenophobia);

- provisional liberty (where "Eurobail" should balance procedures for fast-track extradition and eurowarrants for arrest).

Protecting the citizen against injustice in the European Legal Space, Fair Trials Abroad, November 1999; Mutual recognition of Judicial decisions and judgements in criminal matters: programme of measures to be adopted by December 2000, NOTE from UK Delegation to Article 36 Committee, 6375/99, limite', Cats 13 Crimorg 33 Copen 12, 22.2.00; Programme of measures to implement the principle of mutual recognition of decisions in criminal matters, Incoming /French] Presidency to Article 36 Committee, 9737/00, limite', Cats 48 Copen 46 Crimorg 98, 26.6.00; European Commission Press Release, 26.7.00; EU cooperation in criminal matters: a human rights agenda, Justice, August 2000. A feature article: "The mutual recognition of criminal judgments in the EU: will the free movement of prosecutions create barriers to genuine criminal justice?" appears on Statewatch News Online. See:<http://www.statewatch.org/news/jun00/05mutual.htm>

FEATURE

EU

EUROJUST, an EU public prosecution system (feature)

EU Justice and Home Affairs (JHA) ministers are set to approve the creation of a European prosecutions unit - "Eurojust". It will be located in the Hague alongside Europol and will coordinate criminal cases with investigating and prosecuting officials from the member states, Europol and other agencies. The measure raises the long-term prospect of Eurojust one day bringing public criminal prosecutions for trial at the European Court of Justice. The Eurojust "unit" is being created on the back of well-documented problems in prosecuting international organised crime cases. However, its mandate is tied to the increasingly broad EU definition of "organised crime" which already goes well beyond the traditional concept of gangsters, Mafia's and traffickers.

A short history?

Eurojust is credited as a "Tampere initiative" (called for in paragraph 46 of the EU's October 1999 summit conclusions). Discussions on the Eurojust proposal can be traced to a working document in February 1999 on the implementation of the 1997 Amsterdam Treaty posed the following question:

"Is the establishment of a European Public Prosecutor's Office and a penal competence of the European Court of Justice the long-term objective... ?"

According to the minutes of the Europol Working Party of May 1999, "The idea of an European Prosecutors Office was at this moment rejected by all delegations". Nevertheless, nine-months later, the Portuguese presidency had tabled "Exploratory thoughts concerning Eurojust" (the question of giving a penal competence - sentencing powers - to the ECJ is far more contentious and will certainly not progress so rapidly).

Eurojust builds on earlier EU legislation which also provides a workable structure within which the unit will operate. In 1996 an EU Joint Action created a "framework for the exchange of liaison magistrates" which served as guidelines for member states to make bilateral or multilateral arrangements for the exchange of their officials in order to enhance cooperation "by establishing direct links [between] competent departments and judicial authorities". Two years later the liaison magistrates were given a more formal role as the European Judicial Network (EJN) was created.

Paving the way: the European Judicial Network

The EJN has contact points in every member state, meets twice a year, has its own dedicated telecommunications network and is soon to be given its own permanent secretariat. Contact points informally expedite requests for assistance in criminal investigations or prosecutions (international judicial orders or "letters rogatory") and the network provides up to date information on the different procedures and laws in the member states. Meetings of the EJN cover EU policy on judicial cooperation, international criminal case studies and the development of practical cooperation. The EJN is to be further developed under the EU's "strategy for the prevention and

control of organised crime", an action plan adopted in March of this year. Recommendation no 24 (of 39) states:

"The European Judicial Network should be implemented effectively and, where appropriate, further developed, for example by exploring ways in which to equip it with modern tools to make efficient cooperation possible, and ways in which to make it more operational."

In the first of six drafts of the organised crime strategy, this recommendation (then no 49 of 75) originally continued:

"... particularly by ensuring that it can contribute in specific cases to the coordination of the investigation and prosecution of international cases... Consideration of closer involvement of the Network should begin in the field of interception of telecommunications and of special investigative techniques."

UK delegates to the last EJM meeting included two officials from the Home Office, two from the NCIS (National Criminal Intelligence Service) and one each from the Customs and Crown Prosecution services.

Legislating for Eurojust

Eurojust is being proposed by five EU member states and has been drawn-up in three separate initiatives which has made the development of the policy quite difficult to follow. Germany's proposed Draft decision on the setting up of a EUROJUST team was forwarded to the Council General Secretariat. This was followed by two joint proposals from Portugal, France, Sweden and Belgium (the EU Presidencies January 2000-December 2001) on 1) the setting up of a Provisional Judicial Cooperation Unit and 2) the setting up of EUROJUST with a view to reinforcing the fight against serious organised crime. It is this second joint initiative that sets out the structure, mandate and powers of Eurojust. The draft Decisions are scheduled for adoption at the JHA Council on 30 November and the first JHA Council of 2001 under the Swedish Presidency of the EU. Further legislation will be required for Eurojust to become fully operational, but like the Europol Drugs Unit allowed the pre-ratification establishment of Europol, a "provisional unit" will set Eurojust on its way. According to the minutes of the Council's Article 36 Committee, the proposals aim:

"firstly to facilitate existing judicial cooperation and smooth out disparities and secondly to form a fully-fledged institutional unit."

Composition

The Eurojust "team" will be comprised of one "prosecutor magistrate or police officer of equivalent competence" from each member state. The fifteen will decide which among them should be the President and be in charge of running the unit for a four year period. The "management team" will be completed by one or two vice-presidents. Each of the Eurojust officials will be supported by a permanent staff seconded from their member

state, the unit will also have permanent interpreters and translators. In addition to the team member, each member state may appoint one or more "national correspondents" to the unit (but who will work within the member states) - these can be members of the EJM and are likely to be so. The salaries of Eurojust officials will be met by the member states, with all other expenses considered "operational expenditure" and met by the Community budget (under Article 41(3) TEU).

Mandate

Eurojust's competencies (provided for in Article 5 [all articles referred to are from the Draft Decision contained in the joint initiative on the setting up of EUROJUST with a view to reinforcing the fight against serious organised crime]) are tied to Europol's and cover all types of crime and offences covered by Article 2 and the Annex of the Europol Convention, and the Decisions on the extension of this mandate to include trafficking in human beings, terrorism and the protection of the euro. Additionally, Eurojust is also mandated to deal with "computer crime" (this is likely to be tied to the Council of Europe Convention on "cybercrime" which is currently being negotiated), the protection of the European Communities' financial interests, the laundering of the proceeds of crime [as defined in the 1998 Joint Action on "identification, tracing freezing, seizing and confiscation of] and, like Europol, any "other forms of serious crime committed in connection with the offences referred to in this Article" (Article 5 (h)).

Powers

The Article 36 Committee meeting on 6 April 2000 noted contrasting positions on the extent of Eurojust's powers among the member states:

"The discussion had shown that there were different approaches. Certain delegations wanted a "light" Eurojust while others insisted on the Tampere conclusions, which spoke of "unity".

Within two months "unity" had prevailed. The Eurojust unit will, "where appropriate", "help coordinate actions for investigations and prosecutions" (Article 8, 1(c)). In order to do this, each Eurojust member shall have direct contact with their relevant national authorities. The 15 officials will, in accordance with their national law, "be empowered to consult the criminal record" database, and (subject to the same reservations) be able to access the SIS (Article 8,3). When acting within their own territories, Eurojust officials will be subject to national law and procedure. The question of them acting in another state in the future is alluded to:

"Each member state shall define the nature and extent of the powers it grants its national member in its own territory. The other Member States shall undertake to accept and recognise the prerogatives thus conferred" (Article 8, 2)

In respect to the "setting-up" of criminal investigations, Eurojust may make (non-binding) requests for the member states to

create a "joint-team" (Article 6 (a)) and must be informed when any of the Member States set one up within the framework of the Mutual Legal Assistance (MLA) Convention.

Joint investigation teams

Joint teams "to conduct criminal investigations in one or more Member States" are provided for in Article 13 of the MLA Convention (adopted in May 2000). Due to the length of time the Convention took to agree, the joint team provisions have been on the table for five years. The member states are thus loath to wait until the MLA Convention has been ratified by all 15 national parliaments (see Statewatch vol 10 no 2), so a draft framework decision has been prepared to allow the joint teams to become operational. Although some states will still not be able to participate until they have ratified MLA, others, including the UK, are not constrained in this way. The sticking point has been the role of Europol officials in the investigation teams, who, under the existing limits of the Europol Convention, will be (nominally) restricted to an "operational support" capacity.

Eurojust officials look set to head the fully functioning joint investigation teams of the future, which will be comprised of police officers from the member states involved, Europol agents, Eurojust national correspondents and members of the EJM. The discussion paper "Guidelines on Eurojust" contained the suggestion:

"if all the Member States participating in a joint investigation team agree, a national member of Eurojust may be designated as the team leader."

Intelligence and investigative data

During "coordinated" investigations Eurojust will coordinate meetings between the relevant judicial authorities, and ensure communication and information exchange. The national correspondents will facilitate the exchange of the relevant data and information. Eurojust may also request the member states to bring prosecutions against suspects, and:

"shall process the data relating to the cases falling within its sphere of competence (Article 10, 1). This data shall relate to the facts involving offences "and to persons who, under the national Member States concerned, are suspected of having committed, or are being prosecuted for, one or more offences defined in Article 5" [Competencies]." (Article 10, 2)

If the member states supply the "data" to Eurojust, it may include:

"(i) the names, forenames and, where appropriate, the aliases or assumed names of the persons being investigated; (ii) the description and nature of the facts, the date on which they were committed, their criminal status, the level of progress of the investigations; (iii) the links with the other Member States concerned, the facts pointing to an international extension of the case and the known details enabling persons likely to be

involved in the case abroad to be identified and located." (Article 10, 3(a))

And if the data comes from Europol or another body:

"the names, forenames and, where appropriate, the aliases or assumed names of the persons being investigated; (ii) the description and nature of the facts, the date on which they were committed, their criminal status in the various Member States concerned, the stage of the proceedings in each of them; (iii) an analysis of the coordination requirements." (Article 10, 3(b))

Data protection and supervision

Data access and protection provisions are set out in Articles 1115, on "Access to data", "Confidentiality", "Correction and deletion of personal data", "Time limits for the storage of personal data" and "Data security". The only specific reference to data protection legislation is that:

"EUROJUST and each Member State shall take the necessary measures to guarantee a level of protection for personal data at least equivalent to that resulting from the application of the principles of the Council of Europe Convention of 28 January 1981." (Article 15(2))

The 1981 Convention provides for some fairly broad exemptions from data protection standards where the use of personal information relates to ongoing law enforcement or national security matters.

Like the SIS, Europol and the CIS, a supervisory body to oversee Eurojust will be set-up.

Relationship with Europol

Eurojust is to be located alongside Europol in the Hague (Holland). This has been common knowledge for quite sometime. Yet in all the draft initiatives the Council has refused to concede this point, replacing the Hague with "[...]" (Article 22). The explanatory memorandum states that the HQ will be placed wherever Eurojust can "carry out its mandate to the best effect". Regardless of this point, it is clear that the two agencies will work very closely indeed. Article 9(1) states:

"The judicial authorities and the Member States and Europol may exchange with EUROJUST any information that is useful for carrying out its tasks"

This appears to have informally solved the problem of how Europol agents can access SIS data, a contentious legal and political issue.

Article 9(2) entitles Eurojust to ask Europol and national judicial authorities for information. In addition, Eurojust is tasked with assisting Europol "at its request", particularly by providing opinions on Europol's analyses (Article 6 (g)).

In addition to the national authorities and Europol, agents from OLAF (the Commission's European Anti-Fraud Office) and

liaison magistrates may also participate on a case-by-case basis.

Broader horizons: policy-making and the improvement of judicial cooperation

Beyond its operational role (innocuously described as a 'round table' for international investigations), Eurojust will also "contribute towards simplifying the execution of international letters rogatory" (Article 6, 1(e)) and set-up, in collaboration with the EJM, a document database to provide "legal and practical information", and assist the member states through "advice & research" (Article 6 (f)). Crucially, Eurojust may also draft proposals (to the Council) in order to improve judicial cooperation in criminal matters in the EU (Article 20 (2)).

Decision-making process and a "fledgling" Eurojust

Eurojust has been drawn-up exclusively by members of the law enforcement community and permanent EU officials. It will be formally created through several Framework Decisions of the JHA Council. The European and national parliaments and the public are "consulted" through the publication of the initiatives in the Official Journal, but have no scope for input into the Decisions (the European Parliament will be consulted). National parliaments will have to ratify any convention(s) implementing Eurojust but will not be able to make any amendments.

Before parliaments are presented with anything to ratify however, a fledgling Eurojust is likely to be up and running. The joint initiative proposing a Council Decision on the setting up of a Provisional Judicial Cooperation Unit, scheduled for adoption in November and taking immediate effect, will allow the future Eurojust officials to meet in Brussels "supported by the infrastructures of the Council". In "close cooperation with the General Secretariat and the EJM" the provisional unit will:

"(a) within the scope of each Member State's national legislation, help to ensure proper coordination between the competent national authorities with regard to investigations and prosecutions involving two or more Member States and requiring coordinated action; (b) facilitate judicial cooperation in criminal matters between the competent authorities of the Member States; (c) assist Member States and the Council, as necessary, with a view to the negotiation and adoption by the Council of the act establishing EUROJUST" (Article 2).

The Decision to set up Eurojust "proper" takes effect three months after its publication in the Official Journal, and will replace the Decision on the provisional unit. The EP's opinion has been requested for 1 February 2001 so it is likely that the full Decision will be adopted after this.

Accountability

Eurojust will be an international law enforcement agency with an operational and policy-making role and its own legal personality, yet provisions on accountability are minimal. Given that it is effectively being created solely by law enforcement officials, subject to the nod of the ministers of state, this is

perhaps unsurprising. Not only will Eurojust adopt its own rules of procedure, it will not have to produce an annual report to the public (unlike national agencies with equivalent roles).

The only provisions on accountability are in the form of an annual report to the JHA Council and a "special" report to the European Parliament (for special read shorter and less informative).

Sources

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FEATURE

Justice and Home Affairs Council, 29.5.00

The Justice and Home Affairs Council (JHA) on 29 May marked the end of the major decision-making during the

Portuguese Presidency of the EU. The major decision was the final adoption of the Convention on Mutual Assistance in criminal matters (see below).

The Council issued a set of "Conclusions on Interception of telecommunications". This was partly prompted by i) the impending decision of the European Parliament to hold an inquiry into the Echelon surveillance system; ii) partly by stories in the media about how even though the UK participated in Echelon it did not "spy" on its EU partners, and iii) partly by more widespread concern over the interception of telecommunications by "law enforcement agencies". The "Conclusions" reflected this confusion. They "reaffirmed" the Council's respect for the "protection of human rights and personal freedoms", emphasised that interception was an "important tool in combating crime or for the defence of national security" but said it must not be used for "commercial advantage". It ends by urging Council working parties to use interception to "protect against the abuse of new technologies".

Convention on Mutual Assistance in criminal matters

The JHA Council finally signed the Convention on Mutual Assistance in criminal matters which now has to be ratified by each members' national parliament. National parliaments are only able to either endorse the Convention or to reject it as a whole (which has never happened), they are not allowed to amend a dot or comma of the text. In the UK the ratification process will, as usual, be a mere formality with the Convention simply being "laid before the House" (under the "Ponsonby rules").

At the centre of criticisms of the Convention is that the exceptional new powers are said by EU governments to be necessary to combat serious and organised crime - yet the Convention has been drawn up to cover any crime however minor.

The UK Select Committee on the European Union in the House of Lords issued a report on 18 July to follow up their earlier report on early drafts of the Convention in 1998. This report, with pages of correspondence with Home Office Ministers, raises a series of issues still outstanding in the adopted Convention which it says need to be clarified in the Explanatory report accompanying the Convention.

The report says that parliament was told in 1996 that it was expected to be adopted in May of that year, instead it took four more years. A major reason for this was that the original Convention was concerned with judicial cooperation, later substantial additions turned it into a Convention on police cooperation as well. Even in May this year the report is critical of the procedure:

"we feel compelled to express our dissatisfaction with attempts by the Council, particularly in the latter stages of the negotiation, to secure political agreement on texts which were incomplete and ill-prepared."(p6)

On data protection the Committee's report says; "little effort seems to have been made to draw up data protection provisions", it goes on to say:

"We have some difficulty understanding why the inclusion of data protection provisions similar to those found in other Third Pillar Conventions should meet such a degree of resistance among Member States... the fact that a number [of Member States] have objected to the inclusion of any data protection provisions at all fall far short of an adequate explanation of the basis for their objections..."

"We can only conclude that the political will to achieve more favourable provisions is weaker than the political imperative to bring to a close four years of complex and difficult negotiations on the Mutual Assistance Convention." (p16)

Eurostar deal

Jack Straw, the UK Home Secretary, used the occasion of the JHA Council to announce a new agreement with France to "stop illegal immigration via Eurostar services". In March Mr Straw and Mr Chevenement, the French Interior Minister, had "initialled an agreement to work on these proposals". The agreement will allow UK immigration officers to check passengers before they board the Eurostar in France and French officials will be able to carry out checks at Waterloo, Ashford and eventually at St Pancras. The agreement has to be ratified and is expected to come into effect next year. Mr Straw said that in the meantime the French government had agreed to increase checks to stop "those with inadequate documentation" getting on the trains. It should also be observed that, in the meantime, UK immigration officials have taken to asking for passports on the Eurostar in addition to the passport control at Waterloo station posing the question as to whether this practice is proportionate.

The obvious question was put to Mr Straw. This agreement covered checks between the UK and France but the Eurostar also goes to Brussels in Belgium. Apparently Belgium has already agreed to abide by the UK provisions in the Carriers Liability Act but French officials said that there was no chance of getting a similar off-the-shelf decision through the French parliament.

Other matters

European Refugee Fund: after "intensive debate" there was no agreement on the creation of the Fund (26 million euros in 2000). Part of the disagreement is over how much can be spent on "emergency measures" in the event of a "sudden mass influx" and how much on the "reception, integration and voluntary return of refugees".

Community readmission agreements: discussion on this issue concerned the member states agreeing the negotiating mandate for the Commission to conduct with Morocco, Pakistan, Sri Lanka and Russia. "Negotiating mandates" are not submitted to the European or national parliaments for consultation. The discussion centred on the readmission agreement with Morocco

- which would then be used as a model for the other countries. The outstanding questions were "the non-exclusive nature" of the agreements which would allow member states entering "supplementary bilateral arrangements or agreements" in addition to the Community-wide agreement and the obligations to be placed on the third countries. The latter issue relates to the decision on the Lome Convention (see Statewatch, vol 10 no 2) concerning the readmission of third country nationals and stateless persons.

Proposed Directive on family reunification: Three EU member states have indicated that they do not want to be part of this initiative by the Commission - the UK, Ireland and Denmark.

Temporary protection: the Council took "note" of the Commission's proposal for temporary protection which in its latest version has reduced the maximum period for protection from three years to two.

State of play of the implementation of the Tampere European Council: this broad-ranging discussion covered: a) mutual recognition which involves "identifying" and "defining" what "serious crimes" are (see feature on mutual recognition in this issue); b) Eurojust (see feature in this issue); c) the proposal to create a European Police College; d) the creation of the Task Force of European Chiefs of Police and e) the external relations of JHA.

Exchange of information between financial information units (FIUs): this proposal was discussed and broad political agreement was reached but some questions remain for the EU governments, one of which is that some of the FIU's to be created are within the police and some are administrative authorities. Of greater concern is that lack of any definition of minimum levels for the gathering and transfer of personal financial information, the lack of definition of the grounds on which data can be requested, inadequate data protection provisions and no lines of accountability.

UK participation in some provisions of the Schengen acquis: the UK application to join the Schengen system, or at least the parts not concerned with asylum, immigration and free movement went through as an "A" Point (that is, without discussion). The "pick and mix" approach was reluctantly accepted by the existing Schengen states and the outstanding issue of the status of Gibraltar was resolved in April (see Statewatch, vol 10 no 2). The UK therefore now takes part in police, criminal and customs matters and puts in and takes out data from the Schengen Information System (SIS) on these issues.

Asylum Procedure: the Council authorised the Commission to negotiate Norway and Iceland's participation in the Dublin Convention on the handling of asylum applications.

Mixed Committee

The "Mixed Committee" (that is, the Schengen Committee with Norway and Iceland in attendance) agreed on the text of the

Convention on Mutual Assistance on criminal matters. It also discussed reports on the progress of the Nordic countries towards fully implementing the Schengen arrangements which are planned for 25 March 2001.

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FEATURE

EU

Illegal extradition and voluntary return (feature)

The UN police in Kosovo and the International Organisation for Migration (IOM) have been accused in a report from the Organisation for Security and Cooperation in Europe (OSCE) of organising the illegal extradition of a Kenyan citizen and former employee of the IOM.

The OSCE report says that Moses Omweno was extradited from his home in Nairobi on the orders of the Kenyan Attorney-General on 6 June at the request of the UN police and the IOM. The IOM said he had stolen DM190,000 (£60,000). Mr Omweno was simply detained and deported back to Pristina - he did not appear before a court and no international arrest warrant was issued.

The report says that Mr Omweno was questioned three times in Pristina by an RUC officer serving with the UN in Kosovo - he was not informed of his rights before the interviews. Prior to his deportation the RUC officer in charge of the case wrote to his commanding officer that: "There will not be a problem with the appeal re extradition."

The OSCE report says that the UN police did not contact lawyers, the office of the head of the UN mission in Kosovo, or the UN judicial affairs department before making their request for extradition.

The head of the IOM mission in Kosovo denied any wrongdoing and said the cost of the extradition was paid at the request of the UN police. "It is a joke. We did not do any police work. We just provided what the authorities needed", said Pasquale Lupoli, IOM mission head.

But Mr Omweno said the IOM went to great lengths to make sure he was deported from Kenya: "What they actually did was extradite me by themselves.. without any proper legal procedures", he said.

Mr Omweno was only released on 21 July after over six weeks in detention after a court hearing in Kosovo. The OSCE report says that Mr Omweno must be compensated for his unlawful detention in Kosovo and the UN is launching an inquiry.

What is IOM?

The IOM was created in 1951 by Belgium and the United States

as the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME) and then the Intergovernmental Committee for European Migration (ICEM). In 1980 it was renamed the Intergovernmental Committee for Migration (ICM) and in 1989 was given its present title. Its HQ is in Geneva.

The IOM is an intergovernmental organisation with the objective of providing, under the title of "Assisted Returns Service":

"a comprehensive migration management system for the benefit of all parties"

and works with, "migrants and governments". The IOM:

"assists rejected asylum seekers, trafficked migrants, stranded students, labour migrants and qualified nationals to return home on a voluntary basis. IOM also works with other organisations helping repatriate refugees."

Its major programme is "Technical cooperation on migration" (TCM) which covers all third world countries. A report in October 1999 described one of the priorities for TCM as:

"Irregular migration: This can seriously jeopardise orderly migration and its benefits to migrants and host communities, can interrupt development and create social and sometimes security strains on societies. IOM will increase its training and advisory services to ensure effective border management in all regions and provide mechanisms for governments and other partners to find cooperative and multilateral solutions."

The IOM handles: "voluntary return migration, including voluntary repatriation". It thus makes all the arrangements for the return to the country of origin or a transit country of "irregular migrants" and "unsuccessful asylum-seekers". Its travel arrangements are subject to a test of "voluntariness", that is, where:

"the migrant's free will is expressed at least through the absence of refusal to return, e.g. by not resisting to board transportation or not otherwise manifesting disagreement."

If physical force has to be used for "forcibly returned persons" transport arrangements "are the responsibility of national law enforcement authorities." The IOM does not just handle the removal of migrants, it lies major programmes in the countries of origin for resettlement.

There are 76 IOM Member States including the USA, Canada, Australia, Japan and 12 EU states, and there are 45 Observer States, including the UK, Ireland and Spain.

IOM and the EU

The IOM is an international intergovernmental organisation used by individual EU states - it was not set up by nor is it

accountable to the EU.

A survey of EU member states' arrangements for the "voluntary repatriation of third-country nationals" shows the arrangements in eight EU member states for "voluntary repatriation" at the beginning of the year - Greece, Ireland and Italy did not have programmes and Spain, Luxembourg and France did not respond to the questionnaire. Seven of the eight responding states used the IOM. The UK said that a pilot project is "run by the IOM working in close partnership with Refugee Action" and that: "the Home Office had little to do with procedures except to verify that the person is a suitable candidate for return. The IOM is in charge of arrangements for return."

These schemes for "voluntary repatriation" are being conducted in advance of the adoption of the draft "Council Recommendation on voluntary return" (see below).

Part of the High Level Group on Asylum and Migration plans for the six target countries, and EU member state policies, are "information campaigns" in countries of origin and transit to convince would-be refugees and asylum-seekers not to try and enter the EU (see Statewatch, vol 9 nos 2, 3 & 4, and 5, 1999). At the Migration Working Party on 15 April 1999 the IOM was invited to present its experience of running "information campaigns". Its representative described such "campaigns" in Romania, Albania, the Philippines, Ukraine, Morocco, Czech Republic, Thailand and Costa Rica and planned "campaigns" in Hungary, Bulgaria, Vietnam, Pakistan "and the Latin American countries, as well as in southern Africa". The "campaigns" last from three months to four years. The IOM representative said that:

"information campaigns were of great value in dispelling misconceptions about conditions in the Member States... They could not, however, constitute a miracle cure for illegal migration as they always needed to be accompanied by measures in other fields (such as development aid and punitive measures)."

One purpose of this meeting of the Migration Working Party was to consider recommending an "independent body" to provide an expert assessment of the planned "campaigns". The meeting concluded that: "the involvement of an additional independent body for assessment of points 1 to 4 would be superfluous if IOM is employed."

"Voluntary return" draft recommendation
- a reversion to intergovernmentalism

The draft Recommendation on voluntary return has not been adopted so far. The first draft produced in February read as follows:

"1. that the Member States should implement programmes to support the voluntary return of third-country nationals, in accordance with their respective national legislation, through the conclusion of cooperation protocols, preferably with the IOM;

2. that these programmes should potentially cover all the categories of immigrants who are nationals of third countries;
3. that the protocols mentioned should also envisage the carrying out of publicity campaigns, using the IOM and other NGOs as a privileged conduit;
4. that a system for exchanging information, centralised in the EDU-EUROPOL, should be set up making it impossible for applicants for voluntary return to be granted continuous assistance;
5. that this exchange of information should, as far as possible, take place systematically by means of prior consultation via national units of the EUROPOL-ENO network."

In an Explanatory Memorandum (21.3.00) the Home Office said that it: "welcomed any initiative aimed at improving return of illegal immigrants and failed asylum-seekers" and that it was already developing programmes "in conjunction with the International Organisation for Migration (IOM)". Despite this statement it considered "the specific reference to the IOM to be inappropriate, although that organisation would be likely to be involved in any future voluntary return programmes..". The Home Office was also unhappy about the reference to Europol.

The same Memorandum expressed said that the proposal would affect: "all the categories of immigrants who are nationals of third countries" - which would include the "voluntary" repatriation of third world peoples currently settled in the EU.

A further Explanatory Memorandum (18.5.00) from the Home Office said that the reference to Europol had been dropped as "it was not considered that this task was appropriate to Europol's remit". The stated role of the IOM which said "preferably with the IOM" in Article I of the first draft became "in particular with the IOM, without prejudice to other bodies or organisations" in the first revision. By the time of the second revision the IOM has disappeared, or had it? There are now references to "with the appropriate non-governmental organisations" in Article 1 and "using as a privileged channel the non-governmental organisations whose vocation is to cooperate in this field" - this "field" being the running of so-called "publicity campaigns". It would appear that the IOM although not directly mentioned is likely to be used by many EU member states.

Then the Minister's letter dropped a bombshell. The reference to: "all the categories of immigrants who are nationals of third countries", which had now become "the appropriate categories of immigrants who are nationals of third countries" was deliberate and intentional. The Home Office said:

"The scope of the proposal remains vague. However, the current wording would allow Member States to decide which categories of third country nationals should be covered by the proposal. The measure could therefore be tailored to fit each Member State's individual needs and could be interpreted as widely or as narrowly as was considered appropriate."

This was elaborated in a further letter from the Home Office on 12 July which says:

"The document as drafted makes provision for the voluntary return programmes of Member States to include third country nationals who are permanent lawful residents as well as those with temporary or no legal status (including failed asylum seekers). Some Member States currently run such programmes and wished to retain the possibility of including these categories in their voluntary return programmes, The Government does not, however, envisage extending the scope of any voluntary programmes to cover these categories of legal immigrants but was willing to agree that the option could be retained."

Expressed simply, the UK government does not intend to include "illegal" or permanent lawful residents in its programmes - though a pilot project is "open" to "pending" asylum applicants - but is happy to agree for other EU member states to do so.

Then comes the extraordinary conclusion to this proposal. The return of "illegal immigrants" comes under Article 63(3)(b) of the Treaty establishing the European Communities (TEC). But as the return of "legal" immigrants is not covered the EU governments have agreed that it should:

"be taken forward as a Resolution of representatives of the Member States meeting within the Council, i.e. a proposal outside the Treaty. If the document is subsequently presented in that form Parliamentary scrutiny procedures will not apply."

The EU member states, just over a year after the Amsterdam Treaty comes into effect, are thus considering by-passing the new Treaty and reverting to an old-style intergovernmental procedure in order to preserve the practices of some member states. Title IV of the TEC says that within five years (by 2004), the initiative for asylum and immigration will pass to the Commission.

Sources

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FEATURE

Global "policing" role for the EU

How "non-military crises management" will "contaminate"

justice and home affairs

The Amsterdam Treaty allowed for the integration of the Western European Union (WEU) military alliance into the EU and the development of the European Security and Defence Plan (ESDP). The Treaty came into effect on 1 May 1999 and by the end of the year the EU had agreed to create a 50,000-60,000 rapid reaction military force. In September the Secretary-General of NATO, Mr Solana was not only appointed as the EU's High Representative for common foreign and security policy (CSFP) but also given the job of running the Council of the European Union (the institution working for the 15 EU governments) as its Secretary-General. In November he was appointed as the Secretary-General of the WEU as well.

At the Helsinki Council in December 1999 the EU governments agreed that not only was it to have an independent military capacity but that it should also create, as an adjunct to military policy, a "non-military crisis management" role as well.

A EU "crisis management" capacity developed out of its humanitarian role (ECHO) would have been a civilian, rather than a military initiative. But the "non-military crisis management" role which has been adopted threatens to "contaminate" not just the EU's policy on access to documents (see feature in this issue) but also justice and home affairs and the role of (paramilitary) policing at national, EU and international level.

From Amsterdam to Solana

Until the Amsterdam Treaty was agreed by the EU governments in June 1997 the EU was a purely civilian organisation. However, the revised Treaty on European Union Title V (CSFP) says that for the defence of the "security of the Union" Member States shall support policies and practices "unreservedly in a spirit of loyalty and mutual solidarity" (Article 1).

Article 17.1 says that the "Union" shall "foster" closer relations with the WEU with a view to the possibility of the integration of the WEU into the Union". Only 11 of the 15 EU members states are in NATO - Austria, Finland, Sweden and Ireland are outside - and Denmark, while in NATO, is not a member of the WEU. Under the "Luxembourg Declaration" agreed by the WEU Council of Ministers in November 1999 the WEU has: "been de facto integrated into the European Union" (BASIC Briefing). The "Declaration" says:

"Ministers expressed their willingness to allow bodies of the Council of the European Union direct access, as required, to the expertise of the Organisation's operational structures, including the WEU Secretariat, the Military Staff, the Satellite Centre and the Institute for Security Studies... [and] stressed the importance of civil-military cooperation in the context of crisis management missions."

While the Amsterdam Treaty makes no mention of "nonmilitary crisis management" it does refer in Article 17.2 to "humanitarian and rescue tasks, peacekeeping tasks and tasks of

combat forces in crisis management, including peacemaking." The Commission describes this development as: "The so-called Petersberg tasks (de: humanitarian and rescue task, peacekeeping and crisis management including peacemaking)".

The current initiative covering "non-military crisis management" is, however, being justified under a very general power in Article 12 indent five TEU which allows the: "strengthening systematic cooperation between Member States in the conduct of policy."

Helsinki, December 1999

At the Helsinki European Council (Summit) in December 1999 EU governments agreed that:

"the Union [should] have an autonomous capacity to take decisions and, where NATO as a whole is not engaged, to launch and then conduct EU-led military operations in response to international crises.. the Union will [also] improve and make more effective use of resources in civilian crisis management..."

The Helsinki EU Council adopted a report on: "Non-military crisis management" with an "Action Plan" which says the EU, in non-military crises, must strengthen "national, collective and NGO resources" and contribute to situations where the UN or OSCE (Organisation for Security and Cooperation in Europe) are in the lead or for "EU autonomous actions". The decision to set up the Committee for Civilian Aspects of Crisis Management, to oversee this initiative, was taken on 22 May this year and it held its first meeting on 16 June.

Where did the idea come from?

The European Council in Cologne in June 1999, under the German Presidency of the EU, asked officials in the Council Secretariat to draw up a report on the Union's "non-military crisis response tools" and they reported back in September.

The report opens with a list of measures that can "influence the behaviour of third countries" including the prospect of EU membership, using "contractual relationships" where "mere interest" by a third state can be used to "create an obligation for third parties to adapt their domestic and external policies". It can also use regional agreements like the EuroMed process and funding programmes can be "activated" or "suspended" (as the Lome Convention allows) because: "the Union uses its financial resources as an instrument in crisis management". The "Union" being "the largest world commercial power" can "use preferential access to its markets as leverage vis-avis third countries".

Direct measures include "general" (economic) and arms embargoes, diplomatic pressure, police training and "Border Control" ("border management policies, equipment.. procedures combating illegal immigration and illicit trafficking").

Another revealing insight into what is intended to be covered by "non-military crisis management" came out of a meeting in Paris of officers from paramilitary units in France (F), Italy (I), Spain (E) and Portugal (P) on 25-26 January this year. The

F.I.E.P. meeting agreed on the need for a "European security and investigation force" (FESI) - a project which Mr Solana is said to be encouraging.

FESI would act alongside and then taking over from the military before handing over to normal "criminal police" in three phases: "intervention", "transitional" - where the task is "not a matter of facing up to an enemy but to populations" - and "stabilisation" - where control is passed over to "reconstituted local police forces". The model for FESI units would be the "Multinational Special Units" (MSU) developed by NATO and implemented by the Arma dei Carabinieri. These units would have a capability for: "intelligence, general surveillance, judicial police and maintaining order". In what are called "peace support operations" the units could carry out "preventive and repressive actions" because:

"Paramilitary police forces offer, above all else, the capability for the restoration of public order where the absence of any state legitimacy reigns. They have the required expertise and capability to engage in deteriorated situations as a component of armed forces."

To ensure it success the FESI needs to be represented within the military planning and operational structures.

Feira Summit, June 2000

The EU Council at Santa Maria da Feira on 19-20 June 2000 completed the creation of the mechanisms for "non-military crises management". The EU states, who will "cooperate voluntarily", agreed:

"to provide up to 5,000 police officers for international missions across the range of conflict prevention and crisis management operations. Member States have also undertaken to be able to identify and deploy up to 1,000 police officers within 30 days."

The Council report shows that "non-military crisis management", under the new Committee, has been given a "coordinating mechanism", a database of "civilian police capabilities" and is working in close cooperation "with the interim Situation Centre/Crisis Cell established by the Secretary General/High Representative."

Attached to the report are two further documents, the first is entitled "Study on concrete targets on civilian aspects of crisis management". The introduction sets out the broad objectives:

"saving human lives in crisis situations, for maintaining public order, preventing further escalation, facilitating the return to a peaceful, stable and self-sustainable situation, managing adverse effects on EU countries..."

The first, "identified", priority "is police". But if there is to be a "positive outcome of a police mission" then there must also be "the re-establishment of a judicial and penal system". The latter task requires the selection of "judges, prosecutors, penal experts.. to deploy at short notice". The "establishment or

renovation of local courts and prisons" might also be necessary. In addition to introducing an "EU-style" system of law and order "collapsed administrative systems" will have to be "re-established".

Feira: the police role

The second report is titled: "Concrete targets for police". This sets out the EU states "voluntary" contributions under Article 12 fifth indent of the TEU. The current, temporary, deployment of EU police officers is 3,300 (nearly all in Bosnia, Kosovo and Albania) and this is set to rise to 5,000 - but with the need for "rotation" the number of officers involved will be far greater. The additional officers could be found by "the greater use of retiring or recently retired officers and the freeing-up of police capability through greater involvement of experts from adjacent fields". What is meant by "adjacent fields" is not spelt out.

The trigger for an EU police operation could either be the UN, OSCE or an "EU autonomous police operation". From the 1,000 officers on stand-by a "rapid deployment capability" is planned of:

"robust, rapidly deployable, flexible and interoperable European Union integrated police units."

These are to be drawn from "pre-identified police forces which, while actively taking part in national police work, would be available at short notice for police missions."

Examples are given of the kind of situations they would be expected to act in - Minugua in Guatemala, Kosovo, East Timor, Albania, Mostar and El Salvador.

The new EU police force is clearly expected to have an operational role involving para-military style police (de: armed), it is called: "Executive policing" and it is noted that: "rules of engagement" need to be drawn up. However, a document looking at fulfilling "the Tampere remit" says that as soon as possible it is necessary to define:

"the legal conditions (rules of engagement, liability regime, in particular) and technical conditions (financing, training, command etc) of intervention outside the Community by Member States' police forces in destabilised regions, as at present in Kosovo."

Seminar on police role

A Seminar was held on 29-31 May in Cascais, Portugal, on: "the role of police in peace-keeping operations". Its report says there were "rich and fruitful exchanges" and opens with the statement: "the police role is fundamental in the restructuring and reform of the local institutions and of society".

The conclusions of the seminar included: the "police need to be trusted"; they should aim to be "police services" rather than "police forces"; 30% of the "management teams" should be women; and there must be:

"transparency and information pow about the mission's work. Civil society can thus be implicated in the oversight

and policy consultation mechanisms which are shaped to emphasise the key role of partnership in policing."

The UNMIK Commissioner told the seminar that KFOR that:

"Police and military forces are cooperating closely using as an example joint security operations in Northern Ireland."

The suggested legal basis for EU "peacekeeping operations" are "Memoranda of Understandings" on condition "there is agreement of the host-country".

The new military and non-military structures

In March Mr Solana spelt out "his vision" of the ESDP and the new rapid reaction force undertaking "the full range of humanitarian and peacekeeping tasks":

"The Union and Member States have considerable experience in the fields of civilian policing, humanitarian assistance, electoral and human rights monitoring.. It is in our own interests to work for greater peace, stability and security, not only in Europe but also beyond our frontiers. The results will be more reliable partners, more secure investments, more stable regions, and fewer crises in the future"

With effect from 1 March 2000 two new bodies started meeting: 1) the Interim Political and Security Committee (PSC) whose membership comes from the Political Committee (representatives from member states' Foreign Ministries) and the Interim Military Committee (top defence chiefs) which meets under different "hats" - the first meeting of "European Union Chiefs of Defence" (known as "Chiefs of Defence (CHODS)) met in Brussels on 11 May 2000. These bodies, plus seconded military staff experts (MS) attached to the Council Secretariat deal with "military crisis management".

Alongside these are a) the General Secretariat of the Council's Policy Planning and Early Warning Unit (PPEWU); b) The Council's Situation Centre which is responsible for surveillance and drawing up response option papers; c) the Council's Crisis Centre which is mobilised in times of crisis to gather information and "optimise action by the Union"; d) a "mechanism" for coordinating "non-military crisis management" which keeps a database of available resources in member states and coordinates action in times of crisis.

The European Commission has put forward a draft Regulation to provide funds for crises management operations (to governments and NGOs), the Rapid Reaction Facility (RRF) which "will have no geographical limitation". The use of the RRF can be triggered by:

"growing violence destabilising law and order, breaches of the peace, outbreaks of fighting, armed conflicts, massive population movements..."

The Commission quite frankly distinguishes between the RRF and the current ECHO (European Community Humanitarian

Office) providing humanitarian assistance which is:

"politically neutral and .. aimed exclusively at alleviating human suffering"

In the Commission there is the new "non-military" Crisis Management Committee, the Crisis Management Unit complementing the existing External Relations DG's Crisis Management Unit, the Environment DG's Crisis Management Unit and the Humanitarian Office (ECHO).

During the French Presidency of the EU yet another tier of agencies is to be created covering "civil protection" for internal and external action covering "man-made, technological and natural disasters".

What characterises each of these new developments military, non-military crisis management and civil protection are the new roles being undertaken by Council. The role of the Council has traditionally been consistent with governmental practice at national level, namely that of policy-making. Now the Council, or rather the officials working under Mr Solana (the Secretary-General), are increasingly taking a proactive role in the implementation of policies - a role previously reserved for the Commission or ministries at national level. There may a degree of accountability for the Council's policymaking role but there is none at all for its practices implementing policy.

Conclusion

Humanitarian aid to crisis situations usually commands a consensus of public opinion but the use of military force (whether by NATO or the EU) on the other hand often divides societies.

There are also a number of other dangers including: the likely "contamination" (to use Brussels terminology) of justice and home affairs issues by this military initiative; the revision of the code of public access to documents on 29 July; and the effect on the subject populations whether in Hackney or Haiti, Guatemala or Greater Manchester of para-military policing. Moreover, there is no commitment to use such powers under the remit and orders of the United Nations.

The distinction between the "defence" of the EU (which is defined as NATO's job) and "peacekeeping [and] peacemaking" is quite spurious. There are genuine humanitarian situations where all the resources of the EU should be used to save lives and there are also some situations where the UN has authorised military interventions (controversial and otherwise). But the idea that the EU should act independently (so-called "autonomous") in military or "non-military" operations raises much bigger issues as does the use of non-military crises to ensure that the EU has "more reliable partners, more secure investments" (Solana). Moreover, the absence of any recognition that the EU (and the USA) bear any responsibility for "crises" in the third world is striking.

Sources

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FEATURE

EU

Solana's coup gives NATO a veto on EU openness

Changes to the code on access to documents will "contaminate" justice and home affairs, trade and aid

The story of access to EU documents starts with the Maastricht Treaty, when in December 1993 the Council, to effect a Treaty commitment, adopted a code of public access to documents (Decision 93/731/EC).

A few changes have been made to the 1993 Decision on the initiatives of EU governments (except the one introducing fees to be charged for copies of documents, which has now been waived) - the creation of the public register of documents on 1 January 1999 under UK Presidency and the final change was the initiative of the Finnish Presidency of the EU to extend the scope to include references to all documents including classified ones on the grounds that this represented an important step towards openness and was a guard against corruption and the abuse of power.

Up to the signing of the Amsterdam Treaty in June 1997 there were many successful challenges to the Council's operation of the code of access to the Court of First Instance and to the European Ombudsman - by John Carvel of the Guardian, the Swedish Journalists Union, Steve Peers, Statewatch and others. These initiatives were built on by sympathetic governments (Sweden, Finland, Denmark and sometimes the UK and Netherlands). The commitment in Article 255 of EC Treaty adopted in Amsterdam was meant to "enshrine" the citizens' right of access to EU documents.

With the creation of the public register of documents, the commitment in the Amsterdam Treaty and a modus vivendi built up over the years working quite well it seemed a new era of openness was on the horizon.

The European Commission was charged with drawing up a draft code to put Article 255 into effect and this was finally put out in January this year. The Commission failed, despite the two

and a half years time gap, to consult civil society by the publication of a discussion paper before agreeing on its proposal. By July the European Parliament had appointed six rapporteurs, with Michael Cashman MEP in the lead committee, the Committee on Citizens' Freedom and Rights. The parliament started its first consideration of general principles and laid out its timetable up to Christmas. The European Parliament then broke up for the summer vacation.

Solana's plan spelt out

Mr Solana, the Secretary-General of NATO, was appointed Secretary-General of the Council of the European Union and High Representative for common foreign and security policy on 13 September 1999. On 25 November he also became Secretary-General of the Western European Union (WEU) military alliance.

The impact of Solana's newly-created military structure was spelt out in "Note for the Committee of Permanent Representatives regarding the Security Plan for the Council" (the revised version is dated 30 June). The "Security Plan" first deals with the physical security of the Council's new military HQ at the Cortenberg building in Brussels, the vetting of staff, expansion of the Council Security Bureau and installing protection "against the activities of (human or electronic) of foreign intelligence agencies" (in the main building Justus Lipsius as well as Cortenberg).

The key section deals with the "Legal and Regulatory framework" to protect information concerning the European Security and Defence Policy (ESDP) where: "existing legislation must be amended and new texts must be adopted". This says:

1. The first "proposed amendment" is to the decisions of the Secretary-General in 1995 and 1997 to protect classified information, the screening of staff, and the handling of classified information. A new Advisory Security Committee, chaired by the Secretary-General (Solana), is to be created.

2. The second "proposed amendment" reads as follows:

"Regarding public access to documents and the public register of Council documents, proposals have been made in COREPER to amend both Decisions in order to exclude documents regarding security and defence from their sphere of action. A similar exception should be incorporated in the proposed transparency regulation that is being discussed at present. The possibility of establishing specific rules regarding police and judicial cooperation is being examined at present."

3. The report then says a new Framework Decision, under Article 34 (2.b) of the Treaty on European Union, will be needed to introduce criminal sanctions for "any violation of secrecy" (this will be modelled on Article 194 of the Euratom Treaty).

4. The need for interinstitutional agreements within the EU is also asked for including looking again at the recent agreement between the Commission and the European Parliament. These would deal with "new rules and procedures for the exchange of information and the protection of classified information."

Council intervenes in framework agreement

So one of the first Solana interventions was in the negotiations on the "Framework Agreement on relations between the European Parliament and the Commission" in June. A important clause, in Annex III point 2.1, set out the "General Rules" for the forwarding of "confidential information required for the exercise of Parliament's powers of scrutiny". The first version, dated 6 June said that confidential information "from a State or institution" would only be forwarded with their agreement and that:

"Any refusal to forward such information must be duly justified on the grounds of secrecy resulting from national legislation or national or Community rules."

The final version, adopted on 5 July, deleted this paragraph. The Commission can thus simply refuse to forward such information without the need to say why.

And there was another important change. The phrase "State or institution" was changed to "State or institution or an international body", for example NATO. So how had this change come about?

The negotiations on the Agreement had started in January but on 28 June, out of the blue, the Portuguese Presidency of the Council wrote to the President of the Commission, Romano Prodi, saying the member states felt that Article 2.1 did not "give adequate guarantees". The reason said, Mr J Gama (Foreign Minister) for the Presidency, was that the Council was intending to conclude:

"agreements with third organisations within the framework of the implementation of the European Security and Defence Policy"

The letter ended with the veiled threat that "certain delegations" said that if Annex III point 2.1 was not "modified" it would call "into question the extent of the Commission's participation in some of the Council's work" - meaning that the Commission would be barred from some Council meetings.

The next day, 29 June, Mr Prodi wrote to the President of the European Parliament saying: "we must acknowledge that the delegations of the Member States in the Council are not willing to accept the provision appearing in point 2.1 of Annex III" and proposed changes to meet the demands of the Council. In the vote to accept the framework agreement in the EP's plenary session the Green/EFA and GUE groups and others voted against.

How the "coup" was carried out

A "Working Document" setting out the "proposed

modifications" to the 1993 Decision on access, dated 12 July, was sent to the Brussels offices of the EU governments - this was just prior to a scheduled meeting of the Working Party on Information (WPI, EU governments are represented by the Press Officers from the permanent Brussels delegations). Since 1994 the WPI has considered all confirmatory applications (appeals against refusal of access), reports from the Secretary-General on the working of the code of access and on proposed changes to the 1993 Decision.

On this occasion the proposal was prepared by the Legal Service of the Council working directly to Mr Solana. EU officials thus presented the governments with a virtual fait accompli. When the "Working Document" was discussed at the WPI meeting on Friday, 14 July two delegations walked out (Sweden and Finland) and the Netherlands said they had been subjected to a "military coup".

On Monday, 17 July, the Antici Group (high-level representatives of EU permanent delegations) agreed the final proposal and that it should be discussed at the meeting of COREPER on Wednesday 26 July.

At the COREPER meeting there were four options - in the Antici Group report Statewatch was refused access to - on the table: a) all documents with Top Secret and Secret classifications on foreign policy, military and non-military crises management be excluded as a category from the existing code of access; b) all documents classified as Top Secret and Secret in all areas of EU activity be permanently excluded from public access; c) as a. but extended to include Confidential documents as well; d) no category of document to be permanently excluded, only specific documents on specific grounds (the existing practice supported by Netherlands, Sweden and Finland).

Ten governments supported option c). above, the Solana proposal, Germany, Austria, Italy, Greece, Belgium, Ireland, Luxembourg, Spain, Denmark and the UK. the Netherlands, Finland and Sweden came out against the proposal. Portugal abstained because it wanted an even stronger measure and France abstained because it is the Presidency. Only the Netherlands broke ranks with the other EU-NATO states.

The COREPER meeting also agreed that the new code should be agreed, on Monday 14 August, by "written procedure" rather than waiting for the next meeting of the General Affairs Council of Ministers (which would usually adopt such a measure) scheduled for 18 September.

However, the Solana "Security Plan" of 30 June had proposed that as regards "security arrangements" with "NATO" and until permanent treaties are in place there should be, by the end of July, an interim agreement:

"This could happen through an exchange of letters, with as a precedent the security treaty of 15 April 1999 between the Secretary-General of the Council and the WEU." (which was before the Amsterdam Treaty entered into force on 1 May 1999)

Sources inside COREPER say that as soon as the agenda item had gone through the meeting in the morning letters were exchanged between the Secretary-General of the

Council, Mr Solana, and the Secretary-General of NATO, Lord Robertson putting in place the "security provisions agreement" on the confidentiality of documents. Mr Solana did not think it proper to wait until the formal adoption of the measure by EU governments, on 14 August, to set up the agreement with NATO.

By lunchtime on 26 July Solana's plans were in place: i) a new code of access had been adopted to satisfy NATO; ii) a new classification code had been adopted (see below) and iii) EU governments had been told to ensure that their officials looking at secret documents had to be cleared to do so (a reference to the Press Officers on the Working Party on Information). When the European Parliament and the Commission come back from their holidays in the last week of August they will find that the landscape of the EU has permanently changed to meet the demands of NATO and its EU allied governments. Who is in charge of the EU?

This is not the first recent occasion when officials have overridden or determined the decisions of EU governments. Last year Heidi Hautala MEP won a case in the European Court of Justice against the Council over access to documents concerning arms export policy in 1991-92. In September 1999 officials in the Legal Service of the Council, who could not have acted without the agreement of Mr Solana, the Secretary-General decided the Court's verdict should - for the first time on an issue of access to documents by an EU institution losing a case - be challenged. It did not matter that Heidi Hautala MEP happened to come from Finland which at that time held the Presidency of the EU. When the Finnish Presidency tried to stop the move they found that a majority of EU governments had been lobbied to support the line of the officials.

On 19 December 1999 a Council Decision said that classified documents (subject to specific exceptions) should be listed on the public register of documents. Officials simply ignored this decision. It also said that the agendas of the "Council and its preparatory bodies", together with any updates, should be put on the Council website. Officials interpreted this to mean that no agendas of "preparatory bodies" appeared nor that of the Strategic Committee on Asylum, Immigration and Migration (SCIFA).

The "modified" Decisions

The new Decision on public access to Council documents, adopted by the Council by "written procedure" on 14 August substantially amend the 1993 Decision and changed it dramatically. First it amends the fundamental statement in Article 1 which stated that "the public shall have access to Council documents" by adding permanent exclusions from access where the documents are:

"classified as TRES SECRET/TOP SECRET, SECRET and CONFIDENTIAL.. on matters concerning the security and defence of the Union or one or more of its Member States or on military or non-military crisis management.."

Article 2 is amended so that any document which "enables conclusions to be drawn regarding the content of a classified document" cannot be released without the "prior written consent of the author of the information". This gives NATO, the USA, any non-EU state or organisation a veto on the release of an information - moreover, this provision applies to any document whether it is classified or not.

The effect of this clause and the term "non-military crisis management" (which is not defined) will potentially "contaminate" whole areas such as police cooperation and border controls falling under justice and home affairs. This is the more so as the EU Council meeting in Feira in June agreed that the EU should set up a 5,000-strong paramilitary police force for use in Europe and outside.

Article 4.1, the exceptions under which document can be refused, is amended to include: "the security and defence of the Union or one or more of its Member States or on military or non-military crisis management"

Article 5 is amended to exclude the EU Press Officers on the Working Party on Information from considering any documents which are highly classified or any group of documents which have become "contaminated" unless of course they have been security-vetted.

The second measure is the Decision of the Secretary-General, Mr Solana, on Thursday 27 July, to amend the 1995 Decision on the "protection of classified documents". This adds the previously secret category of TRES SECRET/TOP SECRET to the classifications (who disclosure "could cause extremely serious prejudice to the essential interests of the Union"). However, the Solana amendments to the main code of access highlights the effect of the existing (and unamended) Article 3.1 in this Decision, it says:

"Where a number of items of information constitute a whole, that whole shall be classified at least as highly as its most highly classified constituent item."

Thus if a series of documents concerning para-military policing or border controls which might usually be simply "Limite" and accessible to the public contains a single reference to a "Restricted" or "Confidential" document then all the documents would automatically be refused.

The third new decision sets out a procedure to be followed concerning access to classified documents. Top Secret, Secret and Confidential are permanently excluded. Only staff in the General Secretariat of the Council security vetted will be able to see documents at the stage of the initial request. Confirmatory applications for documents classified simply as "Restricted" (where "unauthorised disclosure.. would be inappropriate or premature") will no longer be decided by the Working Party on Information but by the working party which produced it (officials on working parties are not well-known for openness) and must have been security-cleared.

Details of the fourth measure to adopt a Framework decision, under Article 34.2.b. of the TEU, to provide for legal sanctions against leaking are not yet known. However, the Solana "security plan" of 30 June says this will be based on Article 194 of the Euratom Treaty (1957). Article 194, written at the height

of the Cold War says that all officials who:

"acquire or obtain cognisance of any facts, information, knowledge, documents or objects which are subject to a security system... shall be required even after such duties or relations have ceased, to keep them secret for any unauthorised person and from the general public"

The scope of this Article goes beyond documents and extends to the passing on of "knowledge". It goes on to say the Member States have to treat any infringement as being:

"within the scope of its laws relating to acts prejudicial to the security of the State..[and shall] prosecute anyone within its jurisdiction who commits such an infringement."

National laws in the EU vary on this issue, most only target the official in question who has leaked information but in the UK such an action, under the Official Secrets Acts (OSAs, would also criminalised the recipient of the information for example a journalist (Ireland also has a UK-style OSA).

Sources

Council Decision amending Decision 93/731/EC on public access to Council documents and Decision 2000/23/EC on the improvement of information on the Council's legislative activities and the public register of Council documents, 10702/00, 31.7.00; Procedure for preparing decisions on access to classified documents in accordance with Article 5 of the Decision 93/731/EC as amended, 10513/1/00, 25.7.00; Decision of the Secretary-General of the Council, High Representative for common foreign and security policy of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council, 10703/00, 8.8.00; Note for the Committee of Permanent Representatives regarding the security plan for the Council, SN 3328/1/00, 30.6.00; the full-text of these documents are on Statewatch's website: www.statewatch.org/secreturope.html

Chronology

30 June

Solana report on Security Plan for the Council proposes "modifying" the 1993 code on access to documents.

10 July

The General Affairs Council refuses a request for access to documents by Jelle van Buuren with Sweden and Denmark voting against the decision. It said:

"Although it contains only a very brief summary of the results achieved in this meeting, the Council considers that its release would run contrary to the public interest in the progress of the framing of a European Defence Policy, as it is foreseen in Article 17 of the Treaty on European Union.

In fact, an essential factor for progress in the shaping of a European Defence Policy is the establishment of a mechanism allowing close cooperation with NATO. In the context of this cooperation, the Council and some of its preparatory bodies will have to treat highly confidential information whose unauthorised disclosure would have serious consequences for the security and defence of the European Union and NATO. The latter will not accept this cooperation if the Council does not set up an absolutely reliable and credible system for protecting such information. The Council and its General Secretariat are currently examining how best to achieve this objective with a view to the conclusion of a Security Agreement with NATO."

Council letter to Jelle van Buuren, dated 26 June (agreed at the General Affairs Council on 10 July) in response to a request for access to the Outcome of Proceedings of the Interim Military Working Group (iMWG). The document is not a classified (Top Secret, Secret, Confidential or Restricted) is simply LIMITE the of documents normally released.

12 July

Solana sends "Working Document", dated 12 July, on "Consolidated version of decision 93/731 TEC with the proposed modifications" to EU governments' representatives in Brussels

14 July

Scheduled meeting of the Working Party on Information (WPI) where the EU governments are represented by the Press Officers from the permanent Brussels delegations. After a heated discussion two member states, Sweden and Finland, walk out of the meeting.

17 July

The ANTICI Group (Brussels-based high-level representatives of the EU governments) has a scheduled meeting to prepare for the COREPER meeting on 19 July. It looks at two reports - one on options, the other the draft Decision. It agrees the report on the Decision and that it should go to the following COREPER II meeting on 26 July

26 July

COREPER II agrees the new code with 12 voting in favour, three against (Sweden, Finland and Netherlands). The same morning EU exchanges letters with NATO on the "security provisions agreement"

14 August

The new Decision is adopted by the EU under the "written procedure" process

14 August

"Release of preparatory documents like the one in question could fuel public discussion on the subject and raise questions among the Council's partners as to the latter's reliability as regards the respect of its obligations under the security arrangements."

Council letter to Tony Bunyan, 14 August 2000 in response to a request for access to the document setting out the options for changing the 1993 Decision put before the COREPER meeting on 26 July

Statewatch's written submission and suggested amendments to the Commission's proposal are on: www.statewatch.org/secreteurope.html.

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-Title

EU: **Statewatch takes two new complaints against the Council to the European Ombudsman**

-Text

At a press conference held in the European Parliament in Brussels on 11 July Statewatch editor Tony Bunyan launched two new complaints with the European Ombudsman concerning the Council of the European Union's (the 15 EU governments) failure to give access to documents and to provide information. The press conference speakers were Heidi Hautala MEP, President of the Green/EFA Group, Glyn Ford MEP (Socialist, PSE), Graham Watson MEP (ELDR, chair of the Citizens' Freedoms and Rights Committee and Renate Schroder (European Federation of Journalists).

The first is a case which Statewatch has already successfully taken to the European Ombudsman but which the Council then tried to get round by pretending that the General Secretariat of the Council is a separate institution to the Council of the European Union. The documents in question are the agendas of the meetings of the "Senior Level Group" and the "EU-US Task Force" set up under the Transatlantic Agenda.

The second concerns the Council's failure to supply a full list of documents for a series of justice and home affairs working parties. This complaint draws attention to the Council's policy excluding certain documents, for example, SN documents (sans numero), meeting documents and room documents, from the agendas, outcome of proceedings and from the public register of EU documents.

For full details see: www.statewatch.org/secreteurope.html

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-Title

EU: **European Ombudsman inquiry leads to Europol adopting code of access**

-Text

Europol has agreed to use the Council's Decision on public access to documents after internal attempts to draft a code of its own. This decision followed an own initiative inquiry by the European Ombudsman Mr Jacob Soderman when he set a final deadline of 31 July. In 1999 Steve Peers, Essex University, and Statewatch had their requests for Europol agendas rejected by the Council because: "although Europol was set up by a Council act, the Europol Convention, it has a legal personality of its own, distinct from the Council." This is a reference to that fact

the Europol is not an EU institution but an international organisation.

For full details see: Statewatch News online: <http://www.statewatch.org/news/julOO/03ombeuropol.htm>

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-Title

EU: **Heidi Hautala case against the Council**

-Text

In June 1997 Heidi Hautala MEP, who is now leader of the Green Group in the European Parliament, asked the Council of the European Union for a copy of a report setting out the eight criteria for EU arms exports policy. When the Council refused access she took a case to the EU Court of First Instance and won. On 19 July 1999 the Court said that the Council should have considered whether it could have granted "partial access" to the requested document.

In September 1999 the Legal Service of the Council decided - for the first time in a case concerning openness - to appeal against the Court's decision (this decision was taken without reference to the Council of Ministers). Despite this move the Council of Ministers were then faced with the decision of whether to hand over the documents to Heidi Hautala - the Finnish Presidency of the EU was only able to get five other member states to back giving out the documents (Sweden Denmark, UK, the Netherlands and Greece) so in the end the Council of Ministers nodded through a refusal to hand them over.

In the court case two member states have "intervened" on the side of the Council and Finland, Sweden, Denmark and the UK have "intervened" to support Heidi Hautala. It is expected that the Court will make a decision before the end of the year.

FEATURE

EU

An Area of Expulsion, Carrier Sanctions and Criminalisation

The French Presidency crackdown on asylum-seekers and "irregular" migration

The French government took the opportunity even before its Presidency began to make proposals to strengthen the implementation of "Fortress Europe" policies. These take the form of three separate proposals for EU legislation, subsequently split into four.

Return to the country of persecution

First of all, the Presidency has proposed a Directive harmonising national law on carrier sanctions. This would apply to all air, sea or coach carriers, although Member States will likely be anxious to extend it to lorry drivers also. The Directive would require the carriers to immediately "take charge" of any third-country nationals refused entry for lack of visas or other

travel documents when crossing the external border of a Member State, and to return the third-country nationals either to the country which issued the travel document they used to travel, to their state of origin, or to "any other state" which guarantees to admit them. The same applies to any carrier transporting third-country nationals in transit, if those persons are refused entry by the state of destination or refused onward travel by the carrier due to take them there. If carriers are unable to return the third-country nationals, they must pay for the onward transport, presumably to "any other state" willing to admit them. If the carriers cannot transport the third-country nationals immediately, they must "take charge of them".

These obligations make no exceptions for persons claiming asylum. So if a Member State or even a non-Member State which a third-country national is travelling to refuses entry to asylum-seeking third-country nationals because of their lack of visas or travel documents without properly considering their asylum claim, the carrier has to send the asylum-seekers back to the country which is persecuting them. In any event, carriers will likely prove unwilling, as they are already, to take anyone on board who lacks full documentation, as many asylum seekers do. So those asylum seekers will be required to stay in the country of persecution. Moreover, this Directive does not make clear what powers the carriers should have over the persons in limbo, whom they must "take charge" of; the Directive seems to propose some type of authorized private detention system outside the national territory. As a whole, this proposal represents the further privatisation of national immigration policy, because all those asylum-seekers denied a ticket, sent back or held in private detention will have difficulty challenging acts of private carriers.

The Directive also requires Member States to impose fines of at least 2000 euro per person on carriers bringing in persons who lack the travel documents or visas for entry. In this case, Member States cannot impose the fines if the third-country national "is admitted for asylum purposes", but in some Member States asylum applications are considered at the border and refused by border guards with inadequate training in asylum law. The fines and the obligations to transport and detain third-country nationals in the Directive are applied regardless of whether the carrier brought third-country nationals to the borders deliberately.

The carriers sanctions Directive will force even more asylum-seekers to have recourse to illegal means if they want to enter the Community. To stop them doing that, the French Presidency has proposed a Directive defining "the facilitation of unauthorised entry, movement and residence" and a connected third pillar Framework Decision "strengthening the penal framework" against such facilitation. According to the Directive, Member States must make it an offence to deliberately facilitate, by aiding directly or indirectly, the unauthorised entry, movement or residence in their territory" of third-country nationals. They must also prohibit attempts to commit and "participation in" such crimes (as an accomplice or instigator).

"Facilitators" sent to jail

According to the Framework Decision, all such "facilitation" is

a criminal offence, and "facilitators" must face a jail sentence that could lead to extradition (so at least six months long), and could also face confiscation of their transport, prohibition on practising their job and deportation (if not an EU national). There should be extra penalties if the intention is to traffick in persons or exploit children, to allow illegal employment or if the "criminal" belongs to a "criminal organisation" as defined so broadly in an EU Joint Action of 1997 to apply to many NGOs objecting to EU policies. Member States also have to impose penalties on companies and non-profit organisations involved in such activity.

Member States may exempt family members from such prohibitions, but there is no possibility of exempting anyone else, whether they assist asylum-seekers or other migrants on humanitarian grounds. Therefore the effect of these two proposals is that anyone deliberately helping an asylum-seeker to enter or stay in the EU, except possibly a family member, is a serious criminal. Any organisations which help asylum-seekers or other undocumented migrants could be shut down, with their funds and property confiscated, and their staff jailed, expelled and banned from working in that field.

Expulsion orders

If anyone does manage to enter the Union despite these rules, the Presidency has proposed a final measure to make sure that they are removed as quickly as possible: a Directive on mutual recognition of expulsion orders. This requires Member States to enforce any expulsion order against third-country nationals made by another Member State, based on either a sentence of over one year in length, the existence of "serious grounds for believing" that they have committed serious criminal offences, or "solid evidence" of their "intention to commit such offences" within the EU. The initial decision to expel must be consistent with the European Convention on Human Rights (ECHR). Member States must also enforce another Member State's decisions based on "failure to comply with" national immigration law; here there is no requirement that the initial decision had to be consistent with human rights law.

The Directive pretends to allow for expellees' rights, but on close inspection the protection is quite inadequate. First of all, it will, in practice, be impossible in most cases for migrants to challenge the expulsion order. The draft directive says that migrants must be given a "remedy" in the Member State enforcing the expulsion order, but this does not have to mean suspension of the expulsion order; and in immigration cases, if a remedy does not prevent expulsion, it is virtually useless.

Even if migrants are allowed to stay while challenging the expulsion order, they may not be able to obtain the information used to support the initial expulsion order. The draft Directive states that the general EU data protection directive applies, but in fact these rules do not apply to data related to criminal investigations, and also have huge "public security" exceptions. So it seems unlikely that migrants can ever question the supposedly "solid evidence" that they are planning serious crimes. In any event, the data protection directive does not provide rules on access to data from authorities in another Member State, so it will prove very difficult for migrants to

challenge the information being used to expel them - even if they are able to insist on disclosure of such information.

Huge reduction in standards

The drafters of the Directive have appear to have either contempt for, or ignorance of, basic human rights law. First, the prospect of expelling people who breach national immigration law without ensuring that such decisions conform to the ECHR is a blatant breach of that Convention, which provides for no exception to the rule that no person facing a real risk of torture or inhuman or degrading treatment can be expelled. Moreover ECHR rules on protection of family life can apply to illegal migrants as well. Furthermore, the main text of the Directive makes no mention of the Geneva Convention on the status of Refugees, which only allows expulsion of refugees if they have committed serious criminal offences or are a serious security threat. There is no reference anywhere to the UN Convention Against Torture, ratified by nearly all Member States, or to the Sixth Protocol to the ECHR, which contains rights protecting against expulsion, and has been ratified by over half of them. The prospect of expelling people simply because they have been sentenced to as little as one year in jail is a huge reduction in the standard applied by most Member States to long-term migrants, and could encourage Member States with higher standards to lower them.

The reasoning behind the draft Directive is apparently to ensure that third-country nationals are expelled from the EU as soon as possible, without giving them a proper chance to challenge an expulsion order that they would have if they were first sent back to the Member State which made the expulsion order (which is the situation at present). Taken together, the French Presidency proposals would prevent asylum seekers from gaining either access to the Union by legitimate means or by any other method, and criminalise all organisations and non-relatives who assist them, or who assist undocumented migrants. If they do gain entry and then move within the EU, they can be expelled without adequate consideration of human rights or data protection rules. These proposals are even worse than critics of "Fortress Europe" could have expected.

Sources

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