

# statewatch

monitoring the state and civil liberties in the UK and Europe

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## Civil liberties/human rights:

# DEATH BY A THOUSAND CUTS

- **EU DNA database to define "race" and "gender"?**
- **EU-FBI: prohibition on the erasure of telecommunications data?**
- **Plan for "global apartheid"**
- **The "technologies of repression"**
- **no freedom of information in the EU**

The EU is planning to allow the exchange of DNA samples between its member states. Part of these discussions revolve around what data police and other agencies should be allowed to extract from the sample. Now it is being argued, by the Netherlands, that agencies should be able to extract data establish the "population group or race" and gender and, in time, an increasingly complete description of the "owner" (see feature page 22).

In the UK the Criminal Justice and Police Bill is to allow all DNA samples taken by the police to be kept in future - under the present law they are meant to delete data on people who are not charged or who are acquitted of an offence (and the police have failed to delete thousands of records). In addition, DNA data, like other police data, will be able to be exchanged with states and agencies outside the UK, including for "speculative searches" (see feature page 16).

### Telecommunications surveillance

The EU-FBI telecommunications surveillance system too has taken a new turn. In the EU the Working Party on Police Cooperation wants to: "to prohibit the erasure or anonymity of traffic data". This is in response to the EU's planned Directive on data protection and privacy in telecommunications (phone-calls, e-mails, faxes, internet sites and usage). Like the police, security and intelligence agencies in the UK (see *Statewatch*, vol 10 no 6) the EU working party wants the "law enforcement agencies" to have on tap access to all communications - as distinct from being authorised to have access for a specific investigation (see feature on page 18). Plans are afoot too to expand the capacity and data categories held on the Schengen Information System (SIS). Like the planned "exchange" of DNA samples it is falsely claimed that the SIS simply "exchanges" data held at national level (see feature page 24).

### "Global apartheid"

At the international level social democrat politicians (Labour/Socialists in the UK and EU) want to create a system of global apartheid. Defining all refugees and asylum-seekers as "illegal immigrants" they propose the creation of "detention centres" in the third world (with the likelihood of EU funding). People fleeing from hunger and poverty and persecution are to be held in the nearest transit/"safe country" (as defined by the EU) where any application for asylum would be considered. They will not set foot in the EU without permission. An EU report from 1998, prepared by the Austrian Presidency, indicated some of the likely transit/safe countries: for Somalia it is Kenya, for Morocco it is Algeria and Ceuta (Melilla), for Afghanistan it is Pakistan and Iran, and for Sri Lanka it is India (see *Statewatch* vol 10 no 3/4; [www.statewatch.org/news/NEWSINBR/05migration.htm](http://www.statewatch.org/news/NEWSINBR/05migration.htm))

The responsibility of EU governments for the export to the third world of the "Technologies of repression" is taken up by the OMEGA Foundation report for the European Parliament (see feature page 26).

### Liberties, rights and democracy

Liberties and rights are the lifeblood of democracy. But for democracy to work civil society has to have access to the raw material - information on the policies and practices of governments and the state. This right too is under attack in the EU with a new code of access to documents destined to take away existing rights (see feature page 20).

Civil liberties and human rights established in the postwar (and Cold War) period have been under threat for more than a decade. Now, with little opposition in mainstream politics, they are under sustained attack. They will not disappear "at a stroke" but step by step, through "a thousand cuts".

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**UK: Annual "law 'n' order" Bill** see page 16

**EU: DNA - how long before we are all "profiled"?** see page 24

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## CIVIL LIBERTIES

UK

### Cambridge Two lose appeal

Ruth Wyner and John Brock who were jailed in the first case of its kind for "knowingly permitting" the sale of heroin at a drop-in centre for the homeless in Cambridge have lost their appeal to have their convictions quashed. The two were sentenced to five and four years respectively (see *Stawatch* vol 10 no 1) but were released last July pending their appeal, after serving 207 days.

On 21 December Lord Justice Rose, one of the three Court of Appeal judges, said the conviction stood because: "This case must serve as a warning that no-one, however well intentioned, can with impunity permit their premises to be used for the supply of Class A drugs." The judges did rule that their sentences were "very significantly too high" and reduced them to 14 months (or a lesser term that ensured their immediate release) but stated that prison was an appropriate punishment for the offence.

Wyner and Brock, described by Lord Rose as having "hitherto impeccable character", continue to contest that they had done as much as they could to prevent dealing. Ruth Wyner said she felt "badly misrepresented by the court" and felt "especially bad for the people working in the homeless sector who have sword of Damocles hanging over them." The two intend to take their case to the European Court of Human Rights.

### Civil Liberties - new material

*bristle*. No 7 (Winter) 2000/1, pp25, £0.70. This Bristol-based magazine is "committed to create an alternative media" by providing "a space and information for local groups and activists". Themes covered are therefore diverse and not only of local interest. They range from biological weapons research in Bristol and anti-fascist news to information about the private contractor Sodexo which has taken on the government's voucher scheme, the EU Nice Summit and the visit of the Civil Rights Caravan to Bristol and dispersed asylum seekers' communities. This issue includes a prison special, which provides information on the growing number of inmates, on increasing resistance to the prison system, a campaigns update, an interview with an inmate who was politically involved whilst in prison and gives first-hand insights into harassment and intimidation in prison institutions. Available from: *bristle*, Box 25, 82 Colston Street, Bristol BS1 5BB, [bristle@network.com](mailto:bristle@network.com), [www.bristle.co.uk](http://www.bristle.co.uk).

*ICCL News*, Irish Council for Civil Liberties, vol 12 issue 3, ISSN 0791-3761, December 2000, pp15. Articles focus on: recent controversies over the appointment of members to the newly established Human Rights Commission and plans by the Law Society for an "interpretative incorporation" of the European Convention of Human Rights into domestic law, rather than incorporating it at a constitutional level, which could leave appellants to the Irish Constitution on human rights grounds with contradictory rulings. Further covers the Mental Health Bill 1999, the shooting of John Carthy in Abbeylara, the Refugee Act 1996 and the European dimension to Irish Anti-racist struggles. Available from: *Irish Council for Civil Liberties*, Dominick Court, 40-41 Lower Dominick St., Dublin 1, Ireland, Tel: 00353-1-878-3136, Fax: 00353-1-878-3109, [iccl@iol.ie](mailto:iccl@iol.ie).

**"Beaten up, fitted up, locked up. Mark Barnsley and the 'Pomoma incident': a miscarriage of justice".** Justice for Mark Barnsley campaign, pp45, £2. Mark Barnsley is in his seventh year of a prison sentence after defending himself when attacked by a gang of 15 drunken students who were armed with knives and bottles in June 1994. Mark, who was with a friend and his baby, was badly beaten and fled the scene only to be pursued and attacked again; during this second attack he resisted and when the police arrived Mark was the only person arrested. Despite being the victim of an assault at his trial he was convicted of

wounding two of his assailants with intent and unlawfully wounding another three. He was sentenced to 12 years imprisonment. Mark, who has consistently protested his innocence, has spent most of his time in high or maximum security prisons, including long periods in segregation and has been frequently "ghosted" (moved from one prison to another). Last April, at Long Lartin prison, Mark alleges that he and six other prisoners, were beaten by prison officers - they have since been charged with "barricading a cell". Since then Mark has been transferred to HMP Frankland, where he is among the general prison population and not segregated; he is also closer to his family and friends in the north of England. Messages of support: Mark Barnsley WA2897, HMP Frankland, Brasside, Durham DH1 5YD. The Justice for Mark Barnsley Campaign can be contacted at PO Box 381, Huddersfield HD1 3XX; email: [barnsleycampaign@hotmail.com](mailto:barnsleycampaign@hotmail.com); website: [www.appleonline.net/markbarnsley/mark.html](http://www.appleonline.net/markbarnsley/mark.html)

#### Parliamentary debates

**Domestic Violence** *Commons* 8.11.00 cols 45WH-66WH

**Freedom of Information Bill** *Lords* 14.11.00 cols 134-158; 173-266

**Freedom of Information Bill** *Lords* 22.11.00 cols 817-852

**Freedom of Information Bill** *Commons* 27.11.00 cols 718-782

**Poverty and Social Exclusion** *Commons* 30.11.00 cols 281WH-326WH

**Private Security Industry Bill [H.L.]** *Lords* 18.12.00 cols 574-602

**Human Rights (Joint Committee)** *Commons* 15.1.01 cols 146-167

**Radioactive Discharges (River Tamar)** *Commons* 17.1.01 cols 118WH-124WH

**Misuse of Drugs Act 1971: Crack Cocaine** *Commons* 23.1.01 cols 128-130

## EUROPE

EU:

### Police Academy on the way?

EU member states have agreed on the creation of a European Police College (CEPOL). The college will initially be established as a network of existing national institutes with the prospect of a permanent institution being set-up in three years time. Agreement on CEPOL is another so-called "Tampere milestone" (after the EU summit in October 1999 that set numerous policy objectives).

An "Association of European Police Colleges" in which all member states participate had already been created in 1996, but without legal personality or EU funding. Its formal replacement is mandated with providing: "training sessions, based on common standards, for senior police"; specialist training in combating cross-border crime; training for national trainers; "training for police authorities from the accession candidate states"; to "disseminate best practise and research"; contribute toward "harmonised programmes for the training of middle ranking police-officers"; and facilitate the necessary exchanges and secondments. It is also to develop and provide training to "prepare police forces of the EU for participation in non-military crisis management" operations outside of the union (see *Stawatch* vol 10 no 3/4).

A Board comprised of the directors of the EU national police training institutes will oversee CEPOL, deciding unanimously on the specific activities and annual programme of the college. Its first meeting was held in February under the Swedish Presidency. Representatives of Europol, the Council General Secretariat and the Commission attend the meetings (but can not vote). The college shall consider "on a case-by-case basis the possibility of

admitting officials of the European Institutions and other EU bodies" - such as Europol, Eurojust and the European Commission's Financial Action Task Force - for training.

Funding for CEPOL will come directly from the member states and indirectly from the Community budget. The CEPOL board is to submit a budget for approval to the Council with the member states providing the money in proportion to their GNP. The management board can then apply for funding for specific projects from the EC's law enforcement cooperation budget lines ("Falcone", "Oisin", "Stop" and "Odysseus").

An annual report on CEPOL's activities will be sent to the Council, Commission and EP and in three years a report on the "operation and future" of the college will be submitted.

Article 8 of the Council Decision establishing CEPOL allows the college to cooperate with the national police training institutes of third states ("in particular Norway, Iceland and the applicant States"). However, the EU is lagging far behind the US in providing training for central and eastern European police officers. In 1995 the International Law Enforcement Academy (ILEA) in Budapest was set up by the main American law enforcement agencies (FBI, DEA, Secret Service, IRS, etc.). An internal EU foreign policy document of May 2000 shows Brussels officials' frustration that the member states were "slow to react" when the USA and Hungary created ILEA:

*Owing to inertia or a lack of political will, not only was the Union unable to prevent the school being set up, it was no more capable of ensuring that at the very least the school would be set up according to European standards - this in spite of repeated requests by the American partner to join in the project in the context of the Transatlantic partnership.*

CEPOL is also to cooperate with "relevant training bodies in Europe, such as the Nordic Baltic Police Academy (NBPA) and the Central European Police Academy (MEPA)". The NBPA involves the Scandinavian and Balkan countries, MEPA is a "virtual institution" comprising Germany, Switzerland, Austria, Poland, Czech Republic, Slovakia and Slovenia. There is no mention in the CEPOL Decision of cooperation with ILEA. The US have recently set up another ILEA in Bangkok, Thailand.

The college network will have its own permanent secretariat for administration and implementation of the annual programme. However, the member states have not been able to agree on its location with the UK, France, Germany, Finland, the Netherlands and Italy all understood to want to host it. According to a Home Office explanatory memorandum Jack Straw, UK Home Secretary, made the offer to host the secretariat at Bramshill (home of the England and Wales national police training institute) at the informal JHA Council in Turku in September 1999 - this was prior to Tampere and before any formal EU discussions whatsoever on the creation of a European police college.

*Establishment of the European Police College, Note from Presidency to Article 36 Committee, 14030/99, Limite, Cats 37, 13.12.99; EU Strategy for external relations in the field of justice and home affairs: fulfilling the Tampere remit, SN 2574, 18.4.00; Home Office Explanatory Memorandum on EU document 11037/2/00, November 2000; Council Decision establishing a European Police College, 13857/00, Limite, Enfopol 84, 12.12.00.*

## Portugal rejects Spanish-Italian treaty on extradition

Following the signing of the "Protocol on Extradition" between Spain and Italy in July last year by Justice Ministers Piero Fassino and Angel Acebes (*Statewatch* vol 10 no 5), the two countries have signed a treaty for "the pursuit of serious crime by superceding extradition within a common area of justice" on 28 November (see *Statewatch news online, January 2001*). The

treaty replaces extradition procedures with administrative transfers. It also covers the mutual recognition of criminal judgements, formal procedures for requesting custody, arrests and transfers, and limiting the grounds for refusal of extradition requests. It will apply to offences including terrorism, drug trafficking, people smuggling, arms dealing and the sexual abuse of minors, carrying maximum prison sentences of no less than four years. The Italian Justice Ministry suggested that Spain and Italy are pioneering the "common area of security and justice" envisaged at the EU Tampere Summit in October 1999. Spain, whose ongoing involvement in fighting terrorism has placed it at the forefront of efforts to limit judicial scrutiny of extradition requests, has reportedly started negotiations with France, Portugal, Belgium and Germany to expand the area to which the treaty applies, through a network of bilateral treaties. This would result in fast-track progress towards the so-called "European area of justice".

During a Spain-Portugal summit in Sintra on 29 January the Portuguese Prime Minister, Antonio Guterres, refused to sign a judicial co-operation agreement to supercede extradition procedures. He said that the Portuguese Constitution impedes his country's participation, because of its guarantees for the rights of defendants. José María Aznar, the Spanish Prime Minister, responded by saying that "all the countries will have to make adjustments if we consider ... the European commitment to advance towards a common legal space". Portugal would only consider such measures if the impetus came from Brussels. Josep Piqué, Spain's Foreign Minister, declared that: "It would be convenient for this kind of agreement to have European backing in order for it to become legislation which would be capable of prevailing over national laws." Spain and Portugal nonetheless agreed to set up a commission to study how the issues of replacing extradition hearings and increasing judicial cooperation between member states may be raised in a European context.

France also refused to sign up to the treaty with Spain and Italy. However, Marylise Lebranchou, Justice Minister, oversaw the creation of a joint French-Spanish working group in Madrid on 2 February. Its mandate is to analyse ways to ensure the automatic mutual recognition of criminal judgements for crimes including terrorism, the smuggling of drugs, persons or weapons, and the sexual abuse of minors. Lebranchou stressed the importance of a "close cooperation" between France and Spain on terrorism, expressing "interest" for the initiative taken by Spain and Italy. "These two countries, France and Portugal, the four from the south," she said, "should unite and work together to promote the common legal space as a main theme during the Spanish presidency of the EU", *El País* reported on 3 February.

An "agreement for strengthened judicial co-operation between France and Italy to create a common European space of justice" was announced by Fassino and Lebranchou on 29 January. The main priorities of this planned co-operation, according to an Italian Justice Ministry press statement, include the immediate execution of sentences and judicial decisions by replacing extradition, for cases of organised crime, human trafficking, sexual abuse of minors, drug and arms trafficking and money laundering. It also envisages simplified procedures to execute decisions on the confiscation of assets or evidence, the creation of joint investigative teams, the extension of liaison magistrates' activities, and joint assistance and formation schemes for countries which are candidates to join the EU.

The French-Italian summit in Rome resulted in a joint commitment for the speedy implementation of the UN Convention against organised crime, signed in a high-level ceremony at the Conference on Organised Crime in Palermo on 12-15 December 2000. It is open for signature by countries that have not yet done so at UN Headquarters in New York until 12 December 2002, and will come into force 90 days after ratification. The Convention aims to prevent the existence of

## SPAIN

### Immigrants struggle for papers and rights

Twelve Ecuadorian undocumented migrant workers died while travelling in the back of a van when it collided with a moving train in Lorca (Murcia) on 3 January. It emerged that in order to avoid being stopped by the police, the thirteen migrant workers (one survived) were transported in a minibus with a maximum capacity for eight people, travelling at a very early hour, on a path unsuitable for vehicles. Their employer, Victor Liron Ruiz, owner of Greensol, was subsequently taken to court over a failure to pay agreed salaries to over 80 immigrants. The government promised a crackdown on businesses employing undocumented immigrants illegally, resulting in a massive loss of crops due to lack of manpower, as landowners preferred not to risk being fined.

Ecuadorian immigrants, many of whom thus became unemployable, responded by locking themselves in churches demanding regularisation and improved conditions. The Interior Ministry responded by offering those working illegally in Spain the chance to legalise their position if they accept to return to Ecuador. The offer was initially rejected by Ecuadorian collectives who explained that several among them contracted debts to travel to Spain, and that if the majority of Ecuadorians living illegally in Spain accepted the offer, the Spanish government would be unable to fulfil its promises. Employers' associations, faced with a labour shortage, also opposed the plans for voluntary repatriation. Nonetheless, two weeks before the end of February deadline 1,000 out of an estimated total of between 25,000 (official sources) and 150,000 (*Rumi ahui* a Spanish-Ecuadorian association) "illegal" Ecuadorian immigrants accepted the offer. Fifty were due to be flown to Ecuador on an Iberia flight on 19 February.

The bilateral agreement between Spain and Ecuador on the regulation and organisation of "migratory fluxes", signed on 31 December by Spain's Interior Minister, Mayor Oreja, and Ecuador's Foreign Minister, Heinz Moller Freire, represents a blueprint for agreements which Spain is also negotiating with Morocco and Poland. The agreement stipulates that the Spanish authorities, acting through the Spanish embassy in Quito, will inform the Ecuadorian authorities of the numbers and characteristics of workers required to fulfil the vacancies available. A Spanish-Ecuadorian Selection Commission will be responsible for screening applicants to select those individuals who are most suitable for existing work offers. Those selected will receive contracts, visas (under a fast-track procedure) and will work under the same conditions as the local workforce. It will also be possible to exercise the right to family reunion.

Immigrants selected to work on a seasonal basis will have to sign a commitment to return to Ecuador at the end of their period of employment. They will have to go to the Spanish consulate in Quito within a month of the end of their employment, or they will not be allowed back into Spain for five years. Each contracting party will readmit its nationals when their requirements for entry or residence cease to be valid. There is no distinction made between people expelled and people who return voluntarily, although measures to assist voluntary repatriation on the part of both countries are envisaged. The readmission clause will also apply to third country nationals and stateless persons who no longer fulfil the requirements to reside in the contracting party requesting readmission if they have "entered the territory ... after having stayed, resided or passed through the Requested Party's territory".

"safe havens" for "organizational activities or the concealment of evidence or profits" to take place through the introduction of basic minimum standards covering: participation in organised criminal groups (comprising of three or more members), money laundering (including acquisition or possession "if the person in possession knows that the property is the proceeds of crime"), corruption (of public officials) and obstruction of justice. Extradition is subject to "domestic law of the requested State Party", with "'dual criminality' and minimum punishment thresholds" for extradition applicable, unless bilateral or multilateral treaties apply. The Convention envisages mutual legal assistance between countries in fighting organised transnational crime, and for developed countries to offer assistance to developing countries in the form of "technical expertise, resources, or both". Three protocols are linked to the Convention, which cannot be applied without prior ratification of the Convention. They are "The Protocol to Prevent, Suppress and Punish Trafficking in Persons", "The Protocol against the Smuggling of Migrants by Land, Air and Sea" and the "Protocol against the illicit manufacturing of or trafficking in firearms".

France and Italy also agreed to provide full backing for Eurojust (see *Statewatch* vol 10 nos 3 & 4), an EU public prosecution unit which will be based in the Hague alongside Europol and is expected to comprise of a "prosecutor, magistrate or police officer of equivalent competence" from each member state. The Council agreed to set up Eurojust, subject to a scrutiny reservation by the Netherlands, at the JHA Council on 30 November/1 December 2000. Its official function will be to provide direct input from prosecutors into criminal investigations covering "serious crime, particularly when organised" (wording changed from "serious organised crime" at the 28 September 2000 JHA Council), involving two or more member states (see *Statewatch* vol 10 no 5).

*Statewatch* news online, January 2001; *El Pais* 30.1.01, 3.2.01, *Italian Justice Ministry press statements*, 27 & 29.1.01; *Spanish Interior Ministry press statements* 24 & 28.1.01; *United Nations Office for Drug Control and Crime Prevention "Summary of the United Nations Convention Against Transnational Organized Crime and Protocols thereto"* (<http://www.odccp.org>)

## Europe - new material

**The Schengen Information System:** a human rights audit. Justice, 2000, £15.00, 84 pages. An excellent study of of the Schengen Information System and the SIRENE network. In particular it looks at the data protection and human rights compliance aspects of what is the biggest database in the EU. It also considers the UK's participation in the SIS. Justice, 59 Carter Lane, London EC4V 5AQ.

### Parliamentary debates

**European Union Charter of Fundamental Rights** *Commons* 22.11.00 cols 71WH-93WH

**European Affairs** *Commons* 23.11.00 cols 451-540

**EC Development Assistance** *Commons* 23.11.00 cols 119WH-162WH

**Nice European Council** *Commons* 11.12.00 cols 349-369

**European Council, Nice** *Lords* 11.12.00 cols 119-135

**Section 5 of the European Communities (Amendment) Act 1993** *Commons* 12.12.00 cols 593-612

**Common European Policy on Security and Defence: EU Report** *Lords* 14.12.00 cols 520-564

**European Enlargement** *Lords* 20.12.00 cols 791-817

The issue of repatriation is becoming a sticking point in negotiations with Morocco said Omar Azziman, the Moroccan Justice Minister. A proposed agreement was submitted by Spain to the Moroccan authorities on 23 January. Azziman said his compatriots "cannot be expelled unless there are exceptional circumstances in which they have committed crimes". Azziman added that "Moroccans living abroad live in countries governed by justice, have their laws, have duties which they fulfil well, and also have rights". On the other hand, he claimed that Moroccans returning voluntarily would be welcomed. Rebutting allegations of not acting to prevent illegal immigration into Spain, Azziman stated that "colossal efforts" are being made although Morocco cannot afford the "luxury of having controls on every three metres of its beaches".

The Ecuadorian immigrants' occupation of churches to demand rights was followed soon after by a national response to the entry in force of the government's reform of the Aliens Law on 23 January. The government justified the reform bill on the grounds that the previous law, passed only last year, was too "soft" and encouraged immigrants to try their luck in Spain. It classifies "illegal residence on Spanish soil" (which even covers expired permits) and "working without a permit" as "serious offences" carrying the penalty of expulsion, and is aimed at distinguishing between legal and illegal immigrants. It has been dubbed as "a law against the undocumented". Apart from paving the way for mass expulsions, the new law has been criticised for denying undocumented immigrants rights guaranteed by the Spanish Constitution.

The Catalan government's *Consejo Consultivo* (its highest body for legal rulings) ruled that three measures in the new law are unconstitutional. Article 1 of the law reforming the previous aliens act includes sections restricting the rights of reunion and demonstration (section 5), the right of association (section 6) and the rights to strike and belong to a union (section 9). The *Consejo Consultivo's* opinion had been requested by the Catalan Socialist Party (PSC), the Republican Left (ERC) and Green (IC-V) groups in the Catalan parliament. The protesters also gained the support of the Conference of Spanish Bishops (*Conferencia Episcopal Espanola*). Their spokesman Juan Jose Asenjo said that "after the entry in force of the Aliens law, a large number of undocumented immigrants don't officially exist, are invisible from a legal point of view ... and ... are condemned to unemployment, marginalisation and delinquency". They called on the government to carry out "every possible effort" to improve the terrible conditions suffered by immigrants in Spain.

In Barcelona, over 700 immigrants have taken part in a hunger strike in eight churches. They demand the regularisation of approximately 60,000 persons (34,000 in Barcelona) whose applications were rejected in the regularisation process which ended on 31 July last year (see *Statewatch vol 10 no 3/4*). After denouncing their initiative as "moral blackmail" it appears that the government may be forced into granting some concessions. Negotiations with local government officials in Catalunya resulted in an agreement for the re-examination of regularisation applications which the hunger strikers believe will result in 85% of them receiving documents. On 4 February, tens of thousands (10,000 according to police sources, 50,000 according to organisers) demonstrated in Barcelona in support of immigrants' rights under the slogan "Papers for all".

*Information: from the demonstrators: www.sindominio.net/sinpapeles; information on immigration legislation in Spain: www.reicaz.es/extranjeria; Proyecto de Ley Organica de modificacion de la Ley Organica 4/2000. de 11 de Enero, sobre derechos y libertades de los extranjeros en espana y su Integracion Social, www.mir.es, 11.1.2001, Acuerdo entre la Republica del Ecuador y el Reino de Espana relativo a la regulacion y ordenacion de los flujos migratorios, www.reicaz.es/extranjeria, 31.1.2001, Interior Ministry press statement 30.1.2001, Migrations newsheet, February 2001, El Pais 20-22.1.01, 26-28.1.01, 30.1.01, 3.2.01, 5.2.01, 14.2.01 La Vanguardia 3.2.01, Mugak, July/Sept 2000*

## GERMANY

### DNA tests to prove "bogus Lebanese" are Turkish

Kurdish civil war refugees from the Lebanon are being accused of being bogus asylum seekers in a publicity campaign started by some German local authorities early last year. In the northern town of Bremen, the Interior Minister deployed special police units in 1999 to uncover "possibly one of the biggest known cases of systematic, organised asylum abuse in the history of the German Federal Republic". Now conservative law and order representatives from the town of Essen have exploited a legal loophole to initiate DNA testing in order to prove that the Lebanese families, who fled to Germany over ten years ago, are in fact Turkish. Apart from the fact that over 60% of the people in question were born in Germany, others have pointed out to the German authorities that there is no such thing as a "nationality" gene.

When civil war broke out in the Lebanon in 1982, many Kurds (some of whom settled in the region during the 1920s from Turkey), fled to Germany. Most of them had never been given Lebanese citizenship during their stay in the Lebanon, thereby remaining a stateless ethnic minority without citizenship rights, but more importantly for the German asylum procedure, without a Lebanese passport. In February 2000, Bernt Schulte (*Christlich Demokratische Partei Deutschlands*, CDU), Bremen's Interior Minister, thought he could finally remove the most common obstacle to deportations, the fact that there is no viable country to deport the refugee to. More than 500 stateless Lebanese refugees live in Bremen alone, and some estimate several thousand live in Germany as a whole. Schulte declared they were all Turkish. The Bremen police, he said, had gathered evidence that the city was the victim of an immense "asylum scam" which had cost the authorities thousands of Marks. He claimed 531 Turks/Kurds had disguised themselves as stateless Lebanese in order to circumvent their deportation after a failed asylum application. The logical conclusion being that all of them, mostly families with children born and/or brought up in Germany, should be deported to Turkey.

Three months later, this apparent abuse of Germany's asylum system was spotted by Ludger Hinsen (CDU), head of the law and order department in Essen. A scandal had been uncovered, he said, as the around 2,000 "bogus Lebanese" living in Essen had claimed up to 25 million Marks a year from the local authority's budget. The true identity of 640 people had finally been established: "460 for example originate from Turkey, 180 from Syria", he declared. During the following months however, Hinsen failed to deliver any proof for his allegations and increasingly came under pressure by the Green, Social Democrat and Socialist opposition on the city council. So he applied for permission with the regional administrative court to carry out DNA tests on the refugees, on grounds of "indirect falsification of papers, amongst others". DNA testing in asylum procedures was introduced in Germany in 1997, with a view to slowing down family reunion. The only legal safeguards are laid down in the prescribed "individual case examination". Dietrich Deiseroth, a member of the regional data protection office, questions the validity of any such individual examination in this case, as he received DNA testing orders which could have fitted any of the cases and there was nothing individual about them. The police in Essen have taken around 40 DNA samples already, and families have complained about police conduct. In 35 of the cases, the authorities claimed, they could prove a Syrian background.

When the media started picking up the story as representing the biggest hit by the fraud investigation departments for decades, the Bremen based AntirassismusBuro (ARAB) and the Research

Centre for Flight and Migration (FFM) pointed out to the authorities several inconsistencies in their stories. Apart from every asylum seeker in Germany being forced into the social security system through a work ban, rather than opting for it in a premeditated "scam", the "facts" which had apparently been uncovered, were known to the authorities for years. In fact, the complex nature of Kurdish migrations in the Middle East, which can lead, for example, to Kurdish Arab speaking Lebanese possessing Turkish passports, are even included in the relevant asylum records.

In October last year, the Bremen county court stopped criminal proceedings (alleging the falsification of documents) against one Lebanese family which had come to Germany with Turkish passports: the authorities had knowledge of their identification papers since 1992, and had registered the family as Lebanese with their Arabic names for years. Despite the positive decision, the regional administrative court is nevertheless going ahead with deporting the family.

ARAB further points out that to have declared themselves Lebanese at the time of their arrival, would not have improved, but diminished their legal position with regards to residency rights: "...as there was the so-called "Kurdish decree" at the end of the 80's and beginning of the 90's, which also guaranteed leave to remain for rejected asylum seekers from Turkey." It seems the campaign launched by certain local authorities had more to do with cutting public spending by reducing the numbers of families that are forced to depend on social security - as well as preparing the ground for deporting a large number of unwanted refugees as well as their German born children.

According to ARAB and FFM, the fact that the Bremen Administrative Court decided against stopping a deportation for a Kurdish Lebanese family to Turkey at the end of June last year, points to a more general political motivation behind the "bogus Lebanese" campaign. There was no attempt to clarify if the family had actually lived in the Lebanon before their flight and had simply used Turkey as a transit country. The court did not even decide on the family's nationality but merely if Turkey is willing to take them "back".

The debate has to be understood within the framework of the EU policy development to achieve a "globalisation of immigration control". This implies the enforcement of stricter migration control practices as well as readmission agreements with so-called transit countries, "safe third countries" and countries of origin. That Turkey is to play a major role in the new buffer zone around the EU's eastern borders is not surprising. Germany has a vested interest in finding ways and means to deport unwanted refugee groups from the Middle East to Turkey, irrespective of their nationality.

*Jungle World 7.2.01, Press Release AntiRassismusBuro Bremen (20.7.00, 26.10.00). See <http://tunix.is-bremen.de/arab> for more information.*

## Immigration - in brief

■ **Germany: Tamil asylum seeker commits suicide.** On 8 December 2000, the 17-year old asylum seeker, Arumugasamy Subramaniam, hanged himself in Hannover Langenhagen prison, shortly before he was due to be deported. He had been in Germany for over five years, and was in the process of being adopted by his uncle, who is resident in Germany. The authorities decided to enforce an immediate deportation order after his claim was rejected. This was despite his pleas not to be detained but to be returned to Sri Lanka of his own accord. The Aliens Office in Osnabruck ordered his imprisonment. According to asylum rights groups, 37 asylum seekers have committed suicide in immigration detention since 1993. In the Netherlands, also in December, Iranian asylum seeker Rasoul Mavali, who had been resident in Holland for six and a half years, hanged himself on hearing about his deportation order. *Nadir aktuell 13.12.01;*

*junge Welt 14.12.01; Hambastegi no 94, 8.1.01.*

■ **UK: France and Germany again ruled unsafe.** On 19 December 2000, five law lords in the UK High Court upheld a Court of Appeal ruling from 23 July 1999, which held that Jack Straw, the Home Secretary, acted unlawfully when he issued deportation orders to remove a Somali and an Algerian refugee back to Germany and France on "safe third country grounds" (see *Statewatch* Vol 9 no 5 for a more detailed legal analysis of the 1999 ruling). The "safe third country" regulation, which was first introduced with the Dublin Convention, has been criticised by asylum rights groups for failing to guarantee the principle of non-refoulement (sending refugees back to unsafe countries). The Appeal and now the High Court, have ruled that France and Germany deviate from the international law when interpreting the "well founded fear of persecution" under Article 1A(2) of the 1951 Geneva Convention as only relating to state agents. The law lords held that both Ms Adan and Mr Aitseguer would most probably be sent back to Somalia and Algeria by the German and French authorities as both countries do not recognise non-state forms of persecution. Britain, as most other signatories to the Geneva Convention, recognises the inability or unwillingness of states to ensure protection from persecution.

■ **UK: Asylum seeker commits suicide after forced dispersal and rejected claim.** On 18 January, Ramin Khaleghi, an Iranian asylum seeker, committed suicide by hanging upon hearing that his asylum claim had been rejected. The 27-year old was found in his room in a hostel in Leicester designated to house asylum seekers under the governments dispersal programme. The run down former *International Hotel* in Leicester has been criticised by its 400 resident asylum seekers who have been complaining for several months about the lack of hygiene, inadequate heating and poor food quality. Ramin, who had been a political prisoner in Iran before fleeing to Britain, was dispersed to Leicester despite having close family in London. Friends and supporters blame his isolation for Ramin's death. Maryam Namazie, head of the UK branch of the *International Federation of Iranian Refugees* sums up the treatment of refugees fleeing persecution as follows: "Upon arrival, they are further abused, detained, housed in degrading conditions, deprived by a voucher system and eventually deported." For more information contact the Campaign Against Racism & Fascism: [info@carf.demon.co.uk](mailto:info@carf.demon.co.uk); the National Civil Rights Movement: [info@ncrm.org](mailto:info@ncrm.org); the International Federation of Iranian Refugees: [ifir@ukonline.co.uk](mailto:ifir@ukonline.co.uk).

■ **Germany: Pilot's association condemns forceful deportations.** The managing board of directors of the German pilot's association *Cockpit* has issued a recommendation to their members not to take part in involuntary deportations. The association, which used to recommend its pilots to adhere to deportation orders so as to avoid difficulties with the employing aviation companies, issued a recommendation earlier this year to ask the deportee if they agree to the deportation. If this is not the case, pilots should refuse to fly. Anti-deportation campaigners who, since the death of several refugees on aircraft during deportations from Europe, are increasingly targeting aviation companies for their involvement in the deportation business, argue that this development highlights the issue of personal responsibilities in the case of injury or death of deportees, and calls for a European-wide lobby of pilots associations and other transport unions to refuse cooperation in the potentially deadly practice of deportation. See: [www.cockpit.de](http://www.cockpit.de) and [www.deportation-alliance.com](http://www.deportation-alliance.com)

## Immigration - new material

*Barbed Wire Europe: a conference against immigration detention (15-*

17 September 2000, Ruskin College, Oxford) - the conference report. Campaign to Close Campsfield, January 2001, pp92. This conference report summarises the wide-ranging discussion that took place amongst UK and European anti-detention groups and migrant self-organisations in an attempt to build a movement for the abolition of immigration detention in Europe. It provides country reports from Belgium, France, Germany and Italy (which includes a list of detention centres) and refugee and migrant contributions from Germany, Ireland, Norway and Portugal. There were further contributions on the European legal and institutional process (Tony Bunyan, Caroline Lucas, MEP) and the report summarises the outcomes of eight workshops. Finally, plans for future action are drawn up, with practical proposals to expose conditions of detention in Europe, lobby MEP's and trade unions, link the campaign to related movements and call for an international day of action against immigration detention. Also includes useful contact list of groups which attended the conference, with the aim to encourage networking. Available from: *Campaign to Close Campsfield*, c/o Magdalen Road, Oxford OX4 1RQ, e-mail: asylum@sable.ox.ac.uk; www.closecampsfield.org.uk

**Migration: an economic and social analysis.** Research, Development and Statistics Directorate (Home Office) Occasional Paper no 67, 2001, pp68. In line with the government's drive for a more "sensible and rational" approach to immigration and asylum matters, this report is an attempt by researchers and policy makers "to identify the overall economic and social outcomes of migration policy in the UK". Contrary to former government approaches, this research marks a distinct break in that it positively assesses the impact of migration and sets out to encourage an informed public debate. It draws on economic migration theories in an attempt to create "a new analytical framework for thinking about migration policy" and sets out to break down existing preconceptions about the nature and impact of migration. Reiterating the not so new insight that migration has in fact been economically beneficial to Western Europe (contrary to common belief that it creates labour shortages for domestic workers). The report calls for a review of existing government policy towards a more coordinated immigration approach, taking into account skill shortages. Although this report marks a welcomed break with former uninformed nationalistic debates ("They [migrants] do not disproportionately claim benefits"), it falls short on the social and humanitarian aspect of migration. Rather than pointing to the migrants welfare, it is always the UK's economic welfare which lies at the heart of this research: although it points to current inadequate policies, the latter is criticised not as being inhumane/ethically unacceptable, but because the government "could enhance migrants' economic and social contribution [to the UK], in line with the Government's overall objective." "Irregular" migration is seen as "undesirable in economic and social terms" and should be combatted, presumably through more research to gather "better information on illegal and irregular migrants - who they are, how they get here, what they do when they get here, where they live and where they work." The report emphasises that "[a]ll of this research and analysis will make an important contribution towards our understanding of migration and migrants' experiences in the UK", and that "it will assist in identifying whether there are areas where policies should be reviewed". The question is who this review will benefit. Available from: Home Office, Communication and Development Unit, RDS, Room 201, 50 Queen Anne's Gate, London SW1H 9AT, 00-44-20-7273-2084, you can download the report for free from the internet under: <http://www.homeoffice.gov.uk/rds/whatsnew1.html>

**The numbers game,** Refugee Council, *inexile*, December 2000, pp5-7. This article outlines some of the most appalling effects the failing National Asylum Support Service (NASS) has on the lives of newly arriving asylum seekers which (together with the newly introduced voucher system) has come under severe criticism. It shows how the present realities of isolation, destitution and vulnerability to racist attacks, were all developments which were foreseen by refugee groups and asylum rights campaigners as soon as government dispersal plans under the 1999 Asylum and Immigration Act were outlined - not least because a large part of government policy with respect to service provisions for asylum seekers was the shifting of responsibility from government to non-governmental agencies.

**Zehn Jahre Asyl in Tschechien** (Ten years of asylum in the Czech

Republic), Herbert Langthaler. *Asylkoordination* no 4/2000, pp 30-35. In October 2000, the Lower Saxony Refugee Council and the Research Centre for Flight and Migration (Berlin) organised an asylum information tour through the Czech Republic. This article gives first hand insights into what the implementation of the Schengen acquis in eastern Europe means for refugees and migrants and the asylum application procedure in the Czech Republic. The country has remained mainly a transit country, with 70% of asylum seekers vanishing during the procedures, and since the introduction of an asylum procedure in 1990, few more than 2,000 applications have been successful. Available from Asylkoordination Österreich, Schottengasse 3a, A-1010 Vienna.

**Asylum: a balanced view.** Centre for Reform, Paper no 15, 2000, ISBN 1-902622-15-4, ISSN 1463-6751, pp72 (£8). This booklet contains contributions from members of various immigration support groups and NGO's and provides "extremely useful material to allow us to move towards a more balanced debate, to undermine some of the myths surrounding the issue of asylum and to provide potential policy proposals to improve the asylum system". Articles outlining the present asylum procedures deal with legal representation, detention, dispersal and the voucher system. Others outline the geographical origins of asylum seekers in the UK, the effect of EU enlargement, Schengen and a common EU asylum procedure as well as the effect of the current asylum procedure for refugees with mental health problems. A common theme running through this booklet, is the contradictory nature of the UK asylum system, with political rhetoric stressing a commitment to the principle of asylum and social welfare, whilst the practice (social exclusion, illegalising entry, fostering public resentment) points to very different political commitments. Available from Centre for Reform, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF, Tel: 0044-20-7222-5121, Fax: 0044-20-7222-5185, info@cfr.org.uk

#### Parliamentary debates

**Immigration Appeals** *Commons* 20.11.00 cols 109-142

**Detention Centre Rules** *Lords* 30.11.00 cols 1459-1461

**Immigration: Clandestine Entry by Rail** *Lords* 12.12.00 cols 211-213

## LAW

### Law - new material

**The right to privacy - RIP?**, Ed Cape. *Legal Action* January 2001, pp21-23. Considers the provisions of the Regulation of Investigatory Powers (RIP) Act 2000 "and asks whether it really safeguards privacy." Covers interception of communications, access to communications data, surveillance and covert human intelligence services and access to encrypted material.

**Human rights, government wrongs**, Tim Gopsill. *Journalist* October 2000, pp18-19. This article surveys the state of media freedom under British law. Considering the Terrorism Act, the Regulation of Investigatory Powers Act and the Freedom of Information Bill, Gopshill concludes that, "for all the freedom rhetoric of New Labour, the state is not readily letting go of the levers of control over information."

**Public Order review**, Jo Cooper. *Legal Action* February 2001, pp14-18. Bi-annual article reviewing "trends and significant developments" in public order and arrest cases. Covers "Criminal Damage Act 1971", "Violent disorder", "Racially aggravated offending", "Anti-social behaviour", "Arrest" and "self-defence" among other topics.

**Waiting for Auld**, Lee Bridges. *Legal Action* December 2000 pp6-7. Bridges reports on the defeat of the government's Criminal Justice (Mode of Trial) (No 2) Bill, which would have restricted the right to jury trial. He also considers the likely recommendations of Lord Justice Auld's review of the criminal courts.

#### Parliamentary debates

**Sexual Offences (Amendment) Bill** *Lords* 13.11.00 cols 18-122

**Criminal Justice and Court Services Bill** *Commons* 14.11.00 cols

**Criminal Justice and Court Services Bill** *Lords* 28.11.00 cols 1262-1297

**Criminal Justice and Court Services Bill** *Commons* 30.11.00 cols 1186-1231

**Criminal Defence Service (Advice and Assistance) Bill [H.L.]** *Lords* 21.12.00 cols 845-850

**International Criminal Court Bill [H.L.]** *Lords* 15.1.01 cols 924-941; 955-1001

**Social Security Fraud Bill [H.L.]** *Lords* 16.1.01 cols 1037-1056; 1064-1091

## MILITARY

### EU

## Rapid reaction force "pledged"

On 20 November EU Defence Ministers held a "pledging" conference in Brussels at which they formally committed themselves to provide manpower and equipment for a 60,000 strong rapid reaction force. The force, which will have the capacity to be marshalled within 60 days, is designed for military intervention for up to a year as far as 4000 km from Europe's shores. Since the force would need to be periodically relieved the Europeans pledged, in the "Force Catalogue", at least 100,000 personnel from which the rapid reaction forces could be drawn. About 400 fighter aircraft and 100 warships were also promised. The force would officially complement NATO and would be employed in situations in which the USA does not wish to be involved.

The largest contributor will be Germany with 13,500 ground troops while the UK has committed 12,500 and France 12,000. Italy and Spain will each contribute up to 6,000 and the Dutch 5,000. From the EU nations only Denmark refused to take part. A 100-strong European Military Staff should be in place in January under the command of German Army Lt Gen Klaus Schuwirth with British General Graham Messervy-Whiting as deputy. Elements of the EU force could start being used from late 2001, but the likelihood of the EU going alone into central Europe shortly after 2003 is considered very small in NATO-circles.

The most difficult side of the project is, for the moment, its relation to NATO. Complex talks are taking place between NATO and EU officials. Non EU-member Turkey has threatened to veto employment of NATO assets for the European force and block a NATO-EU agreement if it is not fully involved in the planning from the beginning. According to a French diplomat, "they don't want an EU crisis mission in Cyprus without NATO, plain and simple". The French for their part have made clear that although they do not want a fully independent European planning cell, existing French or UK planning centres could easily manage EU operations. They do not want the US to be involved in that planning.

William Hague, UK opposition, announced he will end the UK's commitment to the force if elected. Another shortcoming is the lack of equipment in essential areas like strategic airlift, combat search and rescue, precision-guided munitions, suppression of enemy air defences and electronic warfare. It will be expensive to fill the gaps that the Americans would leave if they withdrew from an operation. A detailed plan on equipment acquisition and burden-sharing will be made soon.

*Jane's Defence Weekly* 29.11.00, 20.12.20, 17.01.01, (JAC Lewis, Luke Hill, Nick Cook)

## Military - In brief

■ **Germany, Italy, UK: Joint air group planned.** European operators of the Tornado have pledged to collaborate closely on the creation of an air group dedicated to the suppression of enemy air defence operations. A joint air group will be set up combining units, aircraft and crews from Germany, Italy and the UK. There will be joint training and flying operations. The move is a direct result of the 1999 air operations above Kosovo. The joint force can attack enemy air defence systems in operations in which the USA is not taking part according to a senior *Luftwaffe* officer. *Jane's Defence Weekly*, 18.10.00. (Paul Beaver)

■ **Germany: Army restructuring for rapid military interventions:** On 29 January, Germany's defense minister Rudolf Sharping announced the closure of 59 garrisons and a substantial reduction in numbers of soldiers in 40 different towns and municipalities. Under far-reaching plans to restructure the German army, approved by the Upper House of parliament last June, around 55,000 positions are to be cut by 2006. The plans to "modernise" Germany's army represent its new position within NATO and the planned European Rapid Reaction Force after years of legal obstacles to the deployment of German troops abroad. The new armed forces are to have a personal capacity of 285,000 men and (since the recent European Court of Justice decision) also women, 150,000 of whom will be specially trained for "rapid reaction" military operations in "international trouble spots". Businesses have not surprisingly expressed dismay about the announced proposals, as the garrisons have formed an important income for regional economies. *Jungle World* 7.2.01; *International Herald Tribune* 30.01.01.

## Military - new material

**Cost cut for eyes in space,** Mark Hewish. *International Defense Review* 12/2000, pp32-38. Military users are exploiting commercial satellite technology.

**Europäische Sicherheits- und Verteidigungspolitik - Was erwarten wir vom Gipfel von Nizza?** [European Security and Defence Policy - what can we expect from the Nice Summit?], Helmut Frietsche, Dirk Parchmann & Peter Michael Sommer. *Europäische Sicherheit* 12/2000, pp38-41.

**Die EU macht mobil: Einsatzradius von 4000 Kilometern** [The EU deploys rapidly: 4000 km deployment radius], *AMI* December 2000, pp29-36.

**European defense edges towards a new spirit of co-operation,** Gordon Wilson. *International Defense Review*, January 2001 pp54-58. Technological advancement is a major element in Europe's latest steps toward a new defence identity.

**Europäische Sicherheits- und Verteidigungspolitik - Der Erfolg von Nizza?!** [European Security and Defence Policy - The success of Nice?!]. Joachim Tzschaschel & Stefan WD Spanik, *Europäische Sicherheit* 2/2001 pp10-12.

**UK: U-18s: Report on recruitment and deployment of child soldiers.** *Amnesty International* November 2000, pp37 (+ appendices) EUR 45/57/00. Observing that in the UK members of the armed forces under the age of 18 are not merely recruited and trained but "routinely sent into the battlefield", this report calls on the UK government "to stop both the recruitment and deployment of child soldiers". It also calls for the government to ratify the Optional Protocol to the United Nations Convention on the Rights of the Child without any reservation. Amnesty urges the government "to make it a criminal offence to recruit and use under-18s in hostilities by armed groups and offers eight recommendations for the "interim period".

**UK: U-18s: Child soldiers at risk.** *Amnesty International* November 2000, pp21, EUR 45/56/00. This report notes that it is not only the



deployment of under-18s that is dangerous, but also their recruitment. Amnesty argues that under-18s have died or been injured during live-ammunition training exercises and physically arduous training programmes and are vulnerable to ill-treatment and bullying.

#### Parliamentary debates

**European Defence Co-operation** *Commons* 22.11.00 cols 311-327

**European Defence Co-operation** *Lords* 22.11.00 cols 857-867

**Strategic Export Controls** *Commons* 14.12.00 cols 1WH-42WH

**Gulf War Illnesses** *Lords* 15.1.01 cols 1001-1025

## NORTHERN IRELAND

### Crown Servants and the denial of truth

The Bloody Sunday Inquiry continued last month after the Christmas recess. The Inquiry has considerable powers but so did its predecessor, the Widgery Tribunal, which was used by those in power to justify the events of 30 January 1972. There are two fundamental problems facing it. First, it is up against the interlocking network of power in Whitehall which is socialised and practised in secrecy and subterfuge. Second, it can only investigate the events on 30 January 1972 and cannot consider other events -such as Kinora, the removal of Stalker or the murder of Pat Finucane - and hence will not recognise the patterns in the methods and techniques used in the denial of the true facts to the public by Crown Servants.

The Ministry of Defence appeared before the Tribunal last month. Although not formally represented at the enquiry, it was permitted to make an opening statement. Mr Ian Burnett, the MOD's lawyer, said that "the MOD of today has no case to put to, or to advance before this tribunal, nor does it have a position to defend". This is technically true but a legal nicety because the army as a whole is not represented as a single party, as it was in the Widgery tribunal. It is the individual soldier who is represented. As Catherine McKenna, British Irish Rights Watch lawyer, has commented:

*This sidesteps the fact that the MOD was then and is now the government department responsible for the army, and hence the soldiers. Added to that, the soldiers did not act as individuals on Bloody Sunday. They operated as an Army.*

This position distances the MOD from the responsibility of what happened but at the same time it can still play a fundamental part in the Tribunal such as arranging and funding the soldiers' legal representation, providing a team of civil servants to attend the tribunal on a daily basis and supporting the soldiers in their successful legal action to secure anonymity.

During his opening address Mr Burnett emphasised that the MOD was trying to help the enquiry all that it can and said that it was unthinkable that servants of the Crown would try and frustrate the work of the inquiry. But there is already evidence that this may be precisely what is happening. The Home Secretary and the Secretary of State for Defence have issued Public Interest Immunity Certificates - basically gagging orders - to prevent certain information being released to the Tribunal.

PIICs gained considerably notoriety in Britain when two people were prosecuted in the Arms to Iraq affair and it emerged that the Home Secretary signed a PIIC which prevented information vital to their defence entering the public domain. PIICs have also been used extensively in the past in Northern Ireland to prevent the full truth from emerging in highly controversial incidents. For example, one was issued in relation

to the inquest of Gervaise McKerr. Two were issued in the civil action brought by John Thorburn - Stalker's second in command in the Shoot-to-Kill inquiry - against John Hermon for alleged defamation. One was also issued in the civil action brought by Kevin Taylor against James Anderton, Chief Constable of the Greater Manchester police, for misfeasance in public office, malicious prosecution and conspiracy. Taylor claimed that he was investigated and prosecuted in order to discredit Stalker and hence remove him from the shoot-to-kill enquiry.

Mr Burnett represented the Treasury Solicitor in the Taylor civil action. Stalker's statement would have been approved by the Treasury Solicitor's office before it emerged into the public domain.

The MOD has told the Tribunal that they can no longer trace all the photographs which they took on Bloody Sunday. The Greater Manchester police similarly "lost" many key documents in the Taylor/Stalker affair. This did not come to light until after the Sampson enquiry into Stalker's alleged disciplinary offences and two police enquiries into the failure of criminal prosecutions against Taylor and another co-defendant had been completed. Their absence was only discovered after Taylor brought his civil action and the GMP was forced to defend itself. The lost documents included the diaries and pocket books of a number of senior officers.

In addition the MOD has stated that it has destroyed a number of rifles used on Bloody Sunday. This has parallels with Stalker's attempts to obtain the tape which recorded the McCauley and Tighe shooting in the hay shed. He was eventually told that it no longer existed and informed that it was MIS's policy to destroy all tapes after they have been transcribed. The first Stevens enquiry, which investigated the allegations of collusion between the army's FRU and the loyalist paramilitaries, "lost" much of the material it had collected after a fire in their highly secure offices in Carrickfergus RUC station.

One of the major tasks facing the Bloody Sunday tribunal is whether an inference can be drawn from the loss and destruction of vital evidence, likewise whether the accounts of individual soldiers and the MOD may be viewed critically. It must thoroughly investigate the authenticity and veracity of every document which is favourable to the case of the MOD. Only then will it get close to discovering the truth of what happened on that fatal day at the end of January 1972.

*Just News, January 2001; "MOD has no case to answer over shootings, say barrister", Guardian, 16.1.01; "Defender of Official Secrecy to Head Inquiry", Guardian, 27.1.01; "The Hidden Role of the Home Office", Guardian, 31.1.01.*

### Northern Ireland - in brief

■ **Formal complaint on Rosemary Nelson.** The human rights organisation, the Committee on the Administration of Justice (CAJ), has lodged a formal complaint against the chief constable of the Royal Ulster Constabulary (RUC) with the office of the Police Ombudsman. The complaint alleges that Sir Ronnie Flanagan failed to properly investigate written threats to the civil rights lawyer Rosemary Nelson, who was an executive member of CAJ. The CAJ submitted copies of the threats to the Minister for Security who passed them to Flanagan for immediate investigation seven months before Rosemary was murdered by loyalist paramilitaries in March 1999. The CAJ believes that the RUC's failure to look for the original documents means that they overlooked crucial forensic evidence that could identify those responsible for sending the threats and raises "serious questions about the efficacy of the investigation". They maintain that: "the chief constable or the officers he appointed to conduct the assessment of the risk failed to protect Rosemary Nelson. They failed to undertake the most basic of investigative steps to determine the source of the two documents." The organisation is

asking the chief constable for an explanation "as to what steps, if any, were taken by the authorities to investigate the threats which were forwarded to them" in the seven months leading up to the murder. *Just News vol 15 no 1 (December) 2000.*

## Northern Ireland - new material

**Northern Ireland's experience of human rights**, Brice Dickson. *Legal Action* December 2000, pp8-9. The chief commissioners of the Northern Ireland Human Rights Commission, which was set up in March 1999, considers the Commission's experiences.

### Parliamentary debates

**Police (Northern Ireland) Bill** *Lords* 15.11.00 cols 275-338

**Police (Northern Ireland) Bill** *Commons* 21.11.00 cols 201-275

**Political Parties, Elections and Referendums Bill** *Lords* 27.11.00 cols 1111-1188

**Political Parties, Elections and Referendums Bill** *Commons* 29.11.00 cols 1040-1109

**Disqualifications Bill** *Commons* 30.11.00 cols 1141-1185

**Disqualifications Bill** *Lords* 30.11.00 cols 1472-1491

**Terrorism Act 2000 (Code of Practice on Audio Recording of Interviews) Order 2001** *Lords* 19.1.01 cols 1359-1364

## PRISONS

UK

## Tagging extended to children

The Home Office announced an extension of electronically monitored tagging to 10-15-year old offenders in November, under Section 43 of the Crime (Sentences) Act 1997. The tags will be used to extend curfew orders by keeping convicted children off the streets following pilot schemes in Greater Manchester and Norfolk. In the pilot studies 155 curfew orders were imposed in the two areas between March 1998 and February 2000. The majority of the orders were applied to 14- and 15-year olds (none were made on 10-year olds) and 10 curfew orders applied to girls.

The measures against child offenders were justified by Jack Straw, the Home Secretary, who argued that tagging would "... help break patterns of offending by keeping young offenders off the streets...". However, Harry Fletcher, of the National Association of Probation Officers, disputed Straw's claims telling the *Guardian* newspaper that: "Tagging has no effect on crime or criminality and there is no proven deterrent effect. The danger is that younger children won't understand it and that older ones will see it as a trophy. What is needed is supervision and guidance, not electronic gimmicks."

Powers to impose the curfew orders will be given to the courts early in this year, at a time when the rapidly deteriorating prison system has seen the number of child prisoners double. In a parliamentary answer the Home Office said that 1,086 boys aged between 15 and 16 were remanded into prisons in the six months since last April. A decade ago, under the Criminal Justice Act 1991, it was promised that custody for boys would be reduced before being abolished. The Home Office predicts that about 1,200 curfew orders will be imposed throughout England and Wales at a cost of £1.8m.

*"Electronically monitored curfew for 10- to 15-year-olds -report of the pilot"* Robin Elliot, Jennifer Airs, Claire Easton and Ruth Lewis, *Research, Development and Statistics Directorate (Home Office) 2000*

UK

## DG threatens to resign

The Director General of the Prison Service, Martin Narey, threatened to resign at the beginning of February over the "...immorality of our treatment of some of our prisoners and the degradation of some establishments." Speaking to the Prison Service conference Martin Narey described six of the UK's prisons - Wormwood Scrubs, Birmingham, Leeds, Wandsworth, Portland and Brixton - as "hell holes" and "terrible places" that have seen little change and no improvement in the last six years. His remarks followed on from the publication of a report, after a snap inspection of Brixton prison, south London, by the chief inspector of prisons David Ramsbotham, which described the deteriorating conditions at the jail as "totally unacceptable."

### Narey's half dozen

**Birmingham:** 1999: Grossly overcrowded. Chief Inspector of Prisons (CIP) says conditions unacceptable. Healthcare centre was the worst the inspectors had seen ("the stench... pervaded the corridor"). Concern over the use of "physical force".

**Brixton:** 2000: Report says that staff harassed inmates and illegally punished black prisoners; 2001: Healthcare centre criticised for dirt and neglect. Staff neglected prisoners at risk of suicide.

**Leeds:** 1995: Conditions unsatisfactory

**Portland YOI:** 2001: Condemned as militaristic with a culture of violence. Deputy governor resigns after allegation he assaulted an inmate.

**Wandsworth:** 1999: Segregation unit: staff neglected prisoners and failed to maintain basic standards of hygiene. Culture of intimidation.

**Wormwood Scrubs:** 1994. CIP expresses concern over allegations of brutality in segregation unit; 1996: CIP express concern over illegal use of force in segregation unit; fears about prisoner treatment; 1999: Prison officers ran a campaign of racism, intimidating and assaulting prisoners; 2000: Three prison officers jailed for assaults on prisoners.

Narey, making his third address to the Prisons Service conference, attacked the apathy and negligence that had allowed prisons to become accepted as "terrible places, which can't be changed". Speaking of the six named prisons, he continued:

*Year after year, governor after governor, inspection after inspection, prisons like these have been exposed. Year after year the exposure has led to a flurry of hand wringing, sometimes a change of governor, a dash of capital investment, but no real or sustained improvement.*

He went on to question the commitment of the Prison Service and argued that it has to "decide, as a Service, whether this litany of failure and moral neglect continues indefinitely or whether we are going to reform places."

Narey then went on to issue an ultimatum:

*I want to tell you frankly that I have no wish to be a Director General of a Service which is going to duck these issues. I don't yet know whether I will be offered an extension to my contract when it expires in 11 months. But I tell you now: unless, in addition to the unequivocal support of Ministers and the backing of an outstanding, committed and cohesive Board I believe I have the support, encouragement of all*

of you in this audience, I'll find an easier way of earning a living.

In concluding his talk Narey identified "three vital things" that need to be improved: "reduce suicides, improve the care of the mentally ill and improve the impoverishment of regimes in some locals and in YOI's [Young Offenders Institutions] caring for the over eighteens."

However, Narey could have chosen any one of a dozen issues that have received scathing criticism from other authoritative figures. In September three prison officers were jailed for a premeditated attack on an inmate, which was described by Judge Byers as "an abuse of trust". In November a Prison Service report into conditions at Brixton prison led Narey to conclude: "that the administration at Brixton was institutionally racist and that a small number of staff sustained and promoted overtly racist behaviour."

In December police and the Prison service announced an investigation into staff bribery and corruption at three prisons. The *Observer* newspaper reported that, "Almost 400 inquiries have been launched in the last six months alone into offences ranging from sexual and racial harassment of other prison staff to assisting convicts to escape from prisons, rape and moonlighting." Also in December, the chief inspector of prisons, Sir David Ramsbotham, drew attention to the chronic overcrowding that blights the UK's jails. He called for a release of a third of prisoners to alleviate the problem.

*Martin Narey's speech to the Prison Service conference 20001, Home Office press release 5.2.01; Guardian 31.1.01; Observer 24.12.00;*

## Prisons - new material

**Zahid: failed by the prison system**, Suresh Grover. *Legal Action* January 2001, pp6-8. In March 2000 Zahid Mubarek was battered to death in his cell at Feltham Young Offenders Institute by his cellmate, a self-confessed racist, hours before he was due to be released. In this article Grover, chair of the National Civil Rights Movement and co-ordinator of the Mubarek Family Campaign, cautiously welcomes the formal investigation by the Commission for Racial Equality, but asks why the Mubarek family's demands for a public judicial inquiry have been ignored.

*Andar Ki Larai* [The struggle from Inside], Campaign Against Racism in Prisons, Issue 2 (January) 2001, pp8. The most recent issue of the newsletter contains a report from the public meeting at which the campaign was launched, and pieces on the Human Rights Act 1998 and the Freedom and Justice Campaign for Samar and Jawad (who are appealing against their wrongful conviction for the 1994 bombings of the Israeli embassy and Balfour House).

**Recent developments in prison law**, Hamish Arnott & Simon Creighton. *Legal Action*, February 2001, pp10-14. Update on the law relating to prisoners: "parole and lifers", "prison discipline", "close supervision centres, Category A and Escape List prisoners", "Sentence calculation", "Rights, privileges and communications".

**Frankly, I'm appalled**, Simon Hattenstone. *Guardian* 2.2.01. Interview with chief inspector of prisons, Sir David Ramsbotham, on the state of the UK's prisons.

*Die Rote Hilfe*, 4/2000, Nov/Dec 2000, C 2778 F, pp30, DM 3.50. This issue of the bi-monthly civil liberties bulletin focuses on the conditions in detention, specifically in deportation prisons. It gives legal details of immigration detention in Germany (length, age, psychological pressure, conditions) as well as an outline of Project X in Lower Saxony, which was introduced "as a real alternative to detention", but in reality means the intimidation and exertion of psychological pressure on asylum seekers who cannot be deported due to lacking travel documents. Attention is also given to the export of Germany's model for isolation cells (used for RAF prisoners) to Turkey. Available from: Die Rote Hilfe e.V., Postfach 6444, 24125 Kiel, Tel/Fax: 0049-431-75141.

### Parliamentary debates

**HM Prison Chelmsford** *Commons* 29.11.00 cols 256WH-262WH

**HM Chief Inspector of Prisons** *Lords* 14.12.00 cols 483-486

**HM Prison Blantyre House** *Lords* 17.1.01 cols 1166-1193

**Young Offenders (London)** *Commons* 18.1.01 cols 627-634

## POLICING

### GERMANY

## Police attack asylum seekers

When three African asylum seekers in the city of Arnstadt called the police after they were racially attacked by around 15 German youths in late October last year the officers joined in the assault instead of arresting the perpetrators. More than three months after the attack, no legal proceedings have been initiated, and the Thuringian Refugee Council has received desperate letters from refugees asking to be transferred to another, safer city. The regional police headquarters in Gotha is devising a "security concept" for asylum seekers because of the continuing threats and racist abuse, but the evidence suggests that an increased police presence on the streets is unlikely to provide greater safety for asylum seekers.

Patterson Kenwou and Georges Fopa from Cameroon and John Adana from Sierra Leone were first attacked on 20 October in the local *Lindeneck* discotheque when Patterson was dancing with his German girlfriend. The group was abused ("monkey, niggers out, prostitutes") by male and female youths so they left the pub to go home. Around 15 local youths followed them and brutally attacked Patterson. After attempts by his friends to free him, the three men were able to scare their attackers off with a toy pistol. Mr Adana called the police, at which point the local youths started to return. Instead of protecting the three asylum seekers, one police officer hit Mr Adana when he defended himself from a renewed attack by one of the youths. The three men were then handcuffed and taken to the local police station, where they suffered further racial abuse from their attackers as well as the police officers, whilst remaining handcuffed. A public statement by the three men reads:

*All of us were handcuffed brutally with more beatings received from the police and the gang of Germans [...] The...15 Germans were left unarrested. They moved freely to the police station and mounted another confrontation on us. One of the German aggressors bought hot coffee from an automat in the police station and threw it on the face of John Adana while the rest stood by laughing and insulting us with racist words.*

After Adana and Fapo were released, Mr Kenwou was held for another ten hours without food or drink; no charges were brought against him. When he asked if the police could take off the painful handcuffs, he was subjected to more verbal abuse ("You're an animal, you come from the jungle, why are you here anyway? You should go back to Africa"). The same day, the police sent a report to the local newspaper *Arnstädter Allgemeine* which declared that the three African men had caused trouble, resisted the police and were then successfully arrested with the help of German bystanders.

The everyday reality in the town of Arnstadt is pointed out by some journalists who visited the refugees after the attack. Eben Mancho, a member of the human rights organisation *The Voice, Africa Forum* and an asylum seeker said:

*After we interviewed the refugees in question and left the asylum seekers hostel, we wandered through a shopping mall and were abused. One hundred metres behind the hostel the first car stopped to hurl abuse at us: "nigger, monkeys out" and similar things. Shortly before we reached the shopping area we heard the same abuse from different cars. [A few days later], the same thing happened again.*

In another interview, Adama Quattara from the Ivory Coast

reports: "We are not safe here. They wind down their car windows and shout "monkeyboy, go back to the bush"...we are not safe here, I didn't know they hated Blacks in this country, I don't want to stay." In January this year, the regional refugee council were approached by other asylum seekers resident in Arnstadt: they asked to be relocated as they had suffered another racial attack in the same discotheque, this time with security staff joining in. The owner barred the victims, not the attackers, from entering the premises again.

Given the extent of official collusion the feeling of fear is neither surprising, nor unfounded. Last November, the youths who hounded to death Algerian asylum seeker Farid Guendoul were let off lightly by the German courts (see *Statewatch* vol 10 no 6) and as with the Arnstadt police report, the events of that evening were turned around and described during the court case as German youths being chased by African asylum seekers. A similar pattern can be found in other cases: when 10 refugees died in an arson attack on an asylum seekers hostel in Lübeck in 1996, the police ignored blatant evidence pointing to young right-wing perpetrators and instead arrested a young Lebanese refugee (only recently acquitted) who himself had been a victim of the attack.

*The Voice, Africa Forum* is holding public information meetings to publicise the events of last October. The Thuringian interior ministry on the other hand is taking its time to answer the written questions by the regional Refugee Council and the Working Group on the Prevention of Violence enquiring about the police misconduct. Whilst the police devise their "security concepts", Kenwou, Fopa and Adana conclude their public statement with the following words:

*We have lost faith in the police and feel even more threatened and insecure in their presence. They failed to protect us when we were helpless and needed their protection.*

Press release *The Voice, Africa Forum e.V. THE\_VOICE\_Jena@gmx.de*,  
press release *Flüchtlingsrat Thüringen e.V.*  
*fluechtlingsrat-thr@dgb-bwt.de, Gemini News Service 3.11.00.*

## CZECH REPUBLIC/DENMARK

### Danish youth cleared

The Czech police lost their case against the young Dane, Mads Traerup, who was charged with attacking police officers during the protests against the International Monetary Fund and World Bank summit in Prague in September last year (see *Statewatch* vol 10 no 5 & 6). Around 800 participants in the demonstrations were arrested and kept in prison for shorter or longer terms. Traerup, who was held in a Prague prison for 72 days, was the last to be released. During his imprisonment he consistently maintained that he was innocent of the charges against him. In December Traerup was released on bail set at 170,000 Dkr (£14,000) and returned to Denmark.

On 1 February his case was listed at the Prague Court and he returned to appear before the judges. At the seven hour court hearing the state prosecutor demanded a fine of 120,000 kr and permanent expulsion from the Czech Republic; alternatively, she wanted him jailed for two years. The prosecution presented three witnesses, all police officers, but none of them were able to positively identify Traerup and even contradicted themselves in their description of what actually took place during the protests.

According to a Danish newspaper report from the trial they did not convince the three judges and Traerup was acquitted. The state prosecutor appealed the decision on the spot. According to a Czech human rights organisation several hundred people have, in the aftermath of the demonstrations, issued complaints about the treatment they received at the hands of the Czech police. A Danish Radio a spokesperson said that the police force, ten years after the downfall of the old regime, is still influenced by

authoritarian methods and ideology. Many of the demonstrators experienced these "old" methods last September.

## UK

### "Irish watch" withdrawn

In December the *Observer* newspaper disclosed that the Humberside police force had been instructed to treat all Irish-born citizens within its boundaries as terrorist suspects. A leaked memo, dated 20 October 2000, detailed Operation Pre-empt which "has been "live" since 1989" and "is controlled by the Special Branch." The memo calls for the police to report all dealings with Irish people to the Special Branch because Humberside is a major port and is regarded as a possible bombing target. It instructs Special Branch to be notified:

*as soon as practicable of anyone of Irish origin, descent or background who:-*

*a) Is brought into custody;*

*b) Is subject to a routine street or driver (including motor cyclist) check;*

*c) Is subject to police enquiry for any reason;*

*d) Is brought to the attention of the police by a member of the public for any reason, in particular when seeking accommodation.*

The blanket surveillance measures were condemned as "racist and offensive" by Labour MP and former Northern Ireland Secretary Kevin McNamara, who raised a number of questions about the operation in the House of Commons. McNamara described the Humberside policy as:

*...a return to the bad old days of the 1970s - serving only to intimidate the Irish community and create miscarriages of justice*

Operation Pre-empt has now been withdrawn, but McNamara has also asked for Home Secretary, Jack Straw, to call for a report on Operation Pre-empt from the Humberside Chief Constable, David Westwood.

## UK

### Routine armed police patrols

In October 2000 *The Sunday Times* revealed that officers patrolling the St Ann's and Meadows estates in Nottingham were routinely armed with Walther P990 automatic pistols as part of "Operation Real Estate". The operation, which began last February, was said to be drawn-up in conjunction with Nottingham City Council and community groups and was the first regular use of armed officers on the beat in mainland Britain. The patrols are backed up by armed response vans equipped with Heckler and Koch MP5 rifles.

Senior officers in the Merseyside, South Yorkshire and Greater Manchester forces are now reportedly considering following the lead of their Nottinghamshire counterparts. John Stalker, former deputy Chief Constable of Greater Manchester said the move was "another step along the road toward routinely arming police" - a move the public and many politicians and members of the police and have resisted for decades.

The police cite an increase in gun-related crime and the need to protect officers as the justification for the increase, also arguing that armed officers on the streets both reassure the public and deter criminals. A Home Office source said: "Arming officers is a matter for chief constables but I think there comes a stage, when something fundamental is changing, when it would become a political issue".

In January the Association of Chief Police Officers (ACPO) was due to update its confidential guidelines on the deployment

and use of firearms by police forces in England and Wales, while police figures showed that the deployment of armed police rose sharply during 2000 in a number of forces.

According to *Inquest*, 25 people have been shot dead by police since 1990. The resulting inquests recorded 17 "lawful killings" and one "open verdict". Another four verdicts are awaited (the details of two were unknown and in the other case no inquest took place).

Sources: *www.gn.apc.org/inquest*; *The Sunday Times*: 22.10.00, 7.1.01; *Guardian* 3.12.00.

## Policing - in brief

■ **UK: Racist insult PC reinstated.** A Metropolitan police officer who was sacked for making a racist remark was reinstated in December. PC Steve Hutt was suspended and then sacked by a disciplinary tribunal after calling a 14-year old black youth a "black bastard" when he was detained in west London in 1999. Home Secretary, Jack Straw, reinstated the officer after 16,000 police officers signed a petition in his support. Hutt, who admitted making the remark in "a moment of madness" said that Straw's decision was a "victory for common sense". However it was condemned by the Black Police Association who said that it was "a license to be racist". *Guardian* 23.12.00.

■ **Pentagon comes to the rescue of Iridium:** the collapse of Iridium last year led to concerns that its 70 satellites circling the earth could, if not maintained, pose a danger of falling onto the earth. Iridium failed because it failed to attract sufficient business to match its \$7 billion investment. However, one of its major customers were US government agencies like the army, Secret Service and the Drug Enforcement Administration (DEA). The Pentagon has come to the rescue by agreeing a two-year deal worth \$72 million to provide unlimited air time for 20,000 government and military users of hand-held satellite phones. The deal is with Iridium Satellite who will buy the network from Iridium LLC. *International Herald Tribune*, 8.12.00.

## Policing - new material

*Bürgerrechte & Polizei*, Cilip 67 Nr 3/2000, pp110, £5. Police violence and lack of accountability is the focus of this issue of the German civil liberties research publication. Articles focus on: the inadequate definition of brutality which leads to the failure of addressing other forms of intimidating police behaviour, racist police conduct in the form of disproportionate police brutality directed against black communities and the lack of an independent police commission for the notorious Hamburg police force. The European dimension of the lack of police accountability is highlighted in a contribution on police brutality and inadequate appeals procedures in the UK and France. Also included is a critique of the official tampering with statistical evidence to "reduce" the number of fatal police killings and articles on the south-eastern stability pact (which paved the way for increasing international police cooperation) and on the recently introduced German police laws, which follow the UK in curbing individual liberties in the form of large-scale CCTV surveillance, new powers for arbitrary stop and search operations and wire-tapping. Available from: *Verlag Cilip*, c/o FU Berlin, Malteserstr. 74-100, 12249 Berlin, Tel: 0049(0)30 838 70462, info@cilip.de, www.cilip.de.

■ **Hard cell**, Lisa Bratby. *Police Review* vol 109 no 5603, 2001, pp19-20. This article discusses Bradford constabularies "community involvement cell", which was put into operation last July and has a team of up to 12 community safety and race relations officers who work alongside investigating officers "during major incidents and times of disorder or potential disorder...". Inspector Martin Baines, who developed the cell, says that the principle behind it is to "manage our involvement with the community outside an ongoing operation or incident. Staff in the cell are able to manage the intervention and involvement with the community

freeing up the operational commander or investigating officer."

■ **Leading the race**, Stuart Mulraney and Roger Graf. *Police Review* 15.12.00, pp19-20. Interview with Roger Graf who has written extensively on the police and racism for 25 years. Following Macpherson, he describes "the visible history" of institutionalised racism and says: "I have seen many unwittingly racist acts, but I still haven't seen it done on purpose all that often." Contradicting this is his observation of "coppers with NF badges" being "lenient on NF marches but hard on the protesters", a claim made by anti-racist for many years but dismissed by the media.

■ **Spiralling costs of Old Bill**, Paul Donovan. *Red Pepper* February 2001, pp26-27 & 34. This article considers recent cases of compensation payments for police officers discriminated against by their own force. It discovers that "millions of pounds of public money is being lost because police employment practices remain doggedly in the dark ages."

■ **Widening access: Improving police relations with hard to reach groups**, Trevor Jones & Tim Newburn. *Police Research Series* (Home Office) Paper 138, pp72. This report is part of a Home Office programme of research on police-community relations, and looks at consultation with "vulnerable sections of society". It is based on a telephone survey of police forces in England and Wales and more detailed research in five case study forces.

■ **Attitudes of people from minority ethnic communities towards a career in the police service**, Vanessa Stone and Rachel Tuffin. *Police Research Series* (Home Office) Paper 136 (November) 2000, pp4. The paper seeks to "identify the main factors influencing people's attitudes towards a career in the police service and to examine how these might influence recruitment strategies." These attitudes were probably more accurately reflected in January when the Metropolitan police commissioner, John Stevens, announced that his force had recruited 218 minority officers between March and September 2000. He was later forced to admit that the figures submitted to the Home Office were wrong - the correct figure was four.

### Parliamentary debates

■ **Police Response Vehicles: Fatal Accidents** *Lords* 12.12.00 cols 214-215

■ **Police Numbers** *Commons* 18.1.01 cols 575-625

## RACISM & FASCISM

### GERMANY

## AAP investigation dropped

After three years of criminal proceedings by the Bavarian regional police authority (LKA) and public prosecutor into the *Antifaschistische Aktion Passau* (AAP) on the grounds of "formation of a criminal organisation" under the German equivalent of the Terrorist Act (see *Statewatch* vol 9 no 5), the public prosecutor in Munich has declared an end to the investigations. Members of *Antifaschistische Aktion* in Passau and Berlin. They were subject to extensive surveillance, interception of telecommunications and confiscation of personal property and are demanding compensation procedures for the victims and the immediate destruction of personal data which was collected during the seven years of the operation, which was initiated to investigate the "anti-fascist spectrum" in the region.

On 29 December 2000, Manfred Wick, the public prosecutor, informed the 39 accused that proceedings against them were being dropped under paragraph 170 of the *Strafprozessordnung* (German Criminal Procedures Act) due to a lack of evidence. Their "activism in trying to achieve these aims [eg "the fight against the existing capitalist world order"] was largely located within the legal spectrum", he said. Claiming to

have evidence that people from the anti-fascist movement were forming a terrorist organisation, the Bavarian LKA searched 28 houses in seven German cities in May 1998, confiscating £20,000 worth of computers, monitors, printers and other personal belongings. 39 people were charged under paragraph 129/129a of the German Criminal Code with "the formation of a criminal organisation". However, the prosecution was strongly criticised for lacking specific charges. Three years after the searches and seven years after the initial investigation started (an operation which the AAB estimates has cost millions of Marks) only seven criminal offences could be linked to specific individuals. These include criminal damage, intimidation and coercion.

The anti-fascist groups argue that the accusations under paragraph 129/129a served no purpose other than to gather intelligence and intimidate activists in a region in which the far-right is prominent (Passau is the homeland of the extreme *Deutsche Volksumion*), which hosts its annual party conference there). According to the defence campaign, the investigation has put many victims under severe psychological as well as physical strain through continuous intimidation, long-term interception of communications and confiscation of personal belongings irrelevant to the investigation.

*Press Release Antifaschistische Aktion Berlin und Passau, 11.1.01; Passauer Neue Presse 30.12.01. For more information contact the AAB, Weydinger Str. 14-16, 10178 Berlin, 0049-30-2756-0756, aab@antifa.de*

## UK

### Lawrence family accepts £320,000 from Met

The family of Stephen Lawrence, the black youth stabbed to death by a racist gang in Eltham in 1993, have accepted a payment of £320,000 in compensation from the Metropolitan police for their failings during and after the investigation into their son's murder. The agreement was reached last December and follows talks between the Lawrence's lawyers and the police. It ends a seven year battle, during which the family were forced to instigate a civil action. The Macpherson inquiry into Stephen's murder in 1999, found that incompetence and racism had undermined the police investigation. While the Met has ended the protracted negotiations by agreeing to the payment they refused to admit any negligence in their handling of the case, despite the Commissioner giving a personal apology to the family during the inquiry (see *Statewatch* vol 3 no 3, vol 5 no 5, vol 7 no 1, vol 8 nos 3/4 & 5).

The *Observer* newspaper has reported allegations that one of the key police officers in the police inquiry "was involved in drug dealing and theft". The allegations concern former Detective Sergeant John Davidson, who served in the South East Regional Crime Squad in the early 1990s. Davidson was named by a police informer, Neil Putnam, who claims that he was involved in the theft of goods from a highjacked lorry in 1994 and a cocaine deal in 1995. The Macpherson inquiry was critical of Davidson and concluded that his attitude "is to be deplored". However the inquiry drew a line in the ground on the issue of racism and largely ignored serious evidence of endemic corruption. Even more astonishing is the revelation that detectives investigating the officers' corruption informed the inquiry about their concerns. The Lawrence family representatives at the inquiry were never informed of their concerns. The disclosure has prompted lawyers representing the Lawrences to call for a new inquiry.

The main witness to Stephen's murder, his friend Duwayne Brooks, who was with him on the day he died, has been told he cannot claim negligence by the Metropolitan police at a London county court. Duwayne intended to sue the Met for negligence and misfeasance in public office and false imprisonment after the

Macpherson inquiry report condemned the police for stereotyping him and failing to treat him as a victim. His claims were thrown out by Judge Neil Butter who decided they were unsubstantiated because the police did not realise that Duwayne was in a distressed state, despite his having watched his friend die.

Scotland Yard also faces the prospect of a £1m damages payment to a couple from north London after a long campaign by supporters and a highly critical internal police investigation. Delroy Lindo and his wife Sonia, have brought a case against the Metropolitan police alleging "systematic harassment", after being stopped or arrested by officers 37 times in the past eight years. In the same period Delroy was charged with 18 offences, including assaulting a police officer, but never convicted; on one - typical - occasion he was arrested and held in custody for "sucking his teeth in an aggressive manner". The Lindo's claim that the campaign of police harassment was a result of their support for Winston Silcott who was falsely convicted, (he was cleared on appeal receiving £50,000 damages) of the murder of PC Blakelock during the 1985 Broadwater Farm uprising in north London.

The Metropolitan police will publish the internal report which says that the couple suffered from "negative stereotyping" and "punitive" use of the courts to punish them. However, the 47 police officers named in the report are considering legal action against Scotland Yard seeking damages for defamation. Several newspaper reports have suggested that the legal course is being taken with the tacit approval of senior officers. Bob Elder, chairman of the Tottenham branch of the Metropolitan Police Federation said:

*The officers are getting legal advice on the issue. It's a question of their human rights because when they went to disciplinary interviews the reports made out many were reluctant to answer questions, which is not the case. [our emphasis]*

*The Lindo campaign, 17 the Shady Grove Club, 7 Bruce Road, London N17 8RA. Guardian 20.12.00, 11.1.01; Independent 11.1.01; Evening Standard 15.2.01.*

## Racism & fascism - in brief

■ **France: Le Pen reinstated.** The far-right leader of the *Front National*, Jean Marie Le Pen, has regained his seat in the European parliament. Le Pen, who is primarily known for his utterances in support of the policies of Adolf Hitler, was banned from public office for a year after he was convicted of assaulting a woman socialist politician while campaigning in local elections near Paris in 1997. At the end of January the European Court of Justice backed his appeal. They said that the European Parliament did not have the right to ban him according to French law.

## Racism & fascism - new material

**From Scarman to Lawrence.** Stuart Hall. *Connections* Spring 2000, pp14-16. A year after the publication of the Macpherson report into the racist murder of Stephen Lawrence Hall considers developments since the Scarman report into the uprisings of 1981. *Connections* is available from the CRE, Elliot House, 10/12 Allington Street, London SW1E 5EH.

**Diversity and equality for Europe: annual report 1999.** *European Monitoring Centre on Racism and Xenophobia*, pp136. The report contains sections on "Acts of racism and discrimination", "Combatting racism and discrimination", "Preventative actions taken by the EU" and a number of recommendations. Part 2 reports on the EUMC since it was set up in 1997. Available from the EUMC, Rahlgasse 3, A-1060 Vienna, Austria.

*Demos Nyhedsbrev* no 62, *Efterår* 2000, pp24. This issue of the anti-fascist magazine has several articles on the *Danmarks National*

*Socialistiske Bevaegelse* (DNSB) and an update on the presence of Blood and Honour in Scandinavia, particularly Denmark, Norway and Finland. Available from: Demos, Postbox 1110, 1009 Kobenhavn, Denmark. Tel 35 35 1212

**Bash the Fash: anti-fascist recollections 1984-93**, K. Bullstreet. Kate Sharpley Library 2001, pp30, £2, ISBN 1-873605-87-0. This pamphlet records a decade of struggle against fascism on the streets through the eyes of an anonymous member of the radical Anti Fascist Action (AFA). AFA developed and sustained a policy of confronting fascism physically, as well as ideologically, and neutered the far-right, who boasted that they controlled the streets, on their own terrain.

**European Race Bulletin**. *Institute of Race Relations*, no 35, December 2000-February 2001, pp67, ISSN 1463 9696. Following a summer of right-wing violence and increase in public debate on racism in Germany, this issue provides a special report into the developments since then. It outlines the debates on the possible ban of the far-right *NPD*, the lack of acknowledgement of institutionalised racism in the German justice system, the Düsseldorf bomb attack, Germany's new Green Card system as well as giving a round up on asylum campaigns and racist attacks. Available from: *Institute of Race Relations*, 2-6 Leeke Street, London WC1X 9HS, Tel: 0044-20-7837-0041, Fax: 0044-20-7278-0623.

**Roma Rights**. *European Roma Rights Centre*, Number 4, 2000. Apart from monitoring racist attacks against the Roma in eastern Europe, this issue of the *ERRC* newsletter deals in detail with the phenomenon of racism in Europe, historically and sociologically. Articles also deal with inter-ethnic conflicts in central and eastern Europe since world war two, anti-Roma racism in Hungary and Slovakia in the political arena and a contribution by Robin Oakley on what lessons could be drawn from the UK with regards to institutionalised racism. Available from: *ERRC*, 1386 Budapest 62, P.O. Box 906/93, Hungary, 0036-1-413-220. Fax: 00 36-1-413-2201, [errc@errc.org](mailto:errc@errc.org).

**ZAG**. *Antirassistische Initiative e.V.*, no 36/37, 4/2000. This issue deals with the death of the asylum seeker Farid Guendoul and the court case against his killers, which became internationally known for the light sentence passed on 30 November 2000 (see *Statewatch* vol 10 no 6). Also covered are the state prosecutions against alleged members of the Revolutionary Cells (*RZ*) which was active in the 1980's (in particular against state institutions responsible for the implementation of the asylum regime). A detailed history of radical resistance against the detention and deportation machinery during the 1980's in Berlin is given, as well as an interview with the former *RZ* member Enno Schwall. This focus on the recent state prosecutions against former members of radical left groups is a deliberate move by the editors to counter the ignorance towards these developments as well as a re-evaluation of a historically important phase in the struggle for the rights of refugees and migrants in Germany. Available from: *ZAG*, Yorckstr. 59, 10965 Berlin, Tel: 0049-30-785-7281, Fax: 0049-30-786-9984, [zag@mail.nadir.org](mailto:zag@mail.nadir.org).

#### Parliamentary debate

**Race Relations (Amendment) Bill [H.L.]** *Commons* 27.11.00 cols 1188-1207

## SECURITY & INTELLIGENCE

### SPAIN

## Franco's torturer receives award

Melitón Manzanás, the head of the Franco regime's political police (*Brigada Politico-social*) in San Sebastian was controversially awarded the "*Gran Cruz de la Real Orden de Reconocimiento Civil a las Víctimas del Terrorismo*" (Great Cross of the Royal Order of Civil Recognition for the Victims of Terrorism) by the Spanish government on 19 January. Manzanás was the first killing by ETA when he was shot on his doorstep in Irún in August 1968. Manzanás was a symbol of Franco's

repression in the Basque Country, and collaborated with the *Gestapo* in southern France during the Vichy regime and specialised in the torture of dissidents.

Left and nationalist parties expressed their outrage that such an award should go to a "man of violence", a "torturer" who "served a regime which suppressed liberties", describing the act as a "provocation". Interior Minister Jaime Mayor claimed the government merely applied the law, "*Ley de víctimas del terrorismo*" (Law for the victims of terrorism), which also decrees that the families of victims should receive 23 million Ptas compensation. Government spokesman Pio Cabanillas (PP) explained that Manzanás fulfilled the requirements agreed unanimously in parliament when the law was passed in October 1999.

The PNV (Basque Nationalist Party) had proposed that the law should be applicable from the start of the democratic regime, but the *Partido Popular* (PP) fixed January 1968 as its starting date, including victims of all forms of terrorism. The family of Admiral Luis Carrero Blanco, blown up by ETA on 20 December 1973 in central Madrid, is expected to receive compensation, although they have not requested the award. Carrero Blanco's murder is widely believed to have caused the end of the dictatorship in Spain, as he was Franco's chosen successor.

Victims of the state-sponsored *Grupos Antiterroristas de Liberación* are also eligible for compensation; the family of HB (*Herri Batasuna*) leader Santiago Brouard (see *Statewatch* vol 9 nos 3 & 4) assassinated by a GAL unit in November 1984 also received compensation.

*El País* 20, 21 & 28.1.01.

## Security - new material

**Whistle down the wind**, Paul Donovan. *Red Pepper* December 2000, pp19-20. Gerald James was the chairman of the arms company Astra who exposed the illegal arms sales to Iraq scandal during the 1990s. He has since been burgled six times and investigated by 11 government agencies. Donovan investigates this "strategy of harassment" and concludes that there are more "political skeletons...in the locked cupboard."

**Slovenia's missing intelligence reform**, Blaz Zgaga. *Jane's Intelligence Review*, November 2000 pp12-13.

**Lobster, the journal of parapolitics - CD-ROM**: Lobster has produced a *tour de force*, all issues of Lobster since September 1983, forty issues, on a fully searchable CR-ROM. It costs £51.00 (UK), £51.50 (Europe) and £52.00 (elsewhere) and can be ordered by sending a cheque to: Lobster, 214 Westbourne Avenue, Hull HU5 3JB or can be ordered by credit card from: [www.lobster-magazine.co.uk](http://www.lobster-magazine.co.uk)

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UK

# The annual "law 'n' order" Bill

**The new Bill proposes on the spot fines, the retention of DNA samples from innocent people, powers to seize computers, powers to exchange all data with overseas police and agencies and a UK "FBI"**

The Criminal Justice and Police Bill, published on 18 January, is 150 pages long and is backed by 68 pages of Explanatory Notes (EN). It could almost be renamed the "annual" Bill on "law 'n' order" for it wraps up a whole range of new measures from fixed penalty fines for allegedly being drunk in a public place to turning the National Criminal Intelligence Service and the National Crime Squad into the UK's FBI.

Part I covers "Provisions for combatting crime and disorder". The first new measure (Clause 1) covers on-the-spot penalty tickets for "disorderly behaviour" (described as "low level, but disruptive, criminal behaviour", EN). "Spot penalties" are to cover everything from i) "being drunk in a highway, other public place or licensed premises" (of course pubs and wine-bars are where people drink to a greater or lesser degree and highways are used by people to get home) and ii) "consuming alcohol in a designated public place" (councils will have powers to "designate" places where public drinking will be banned). Associated offences like "disorderly behaviour" in a public place or being threatening or abusive or insulting are covered too.

Spot penalties are also to be used for throwing fireworks in the street, trespassing on the railway, throwing "things" at trains, wasting police time or "giving a false report", damaging or destroying property and using telephones to send "messages known to be false in order to cause annoyance".

People over 18 can be given a penalty notice on the spot and providing they pay the fine there will be no criminal record attached to the offence. Alternatively people can opt to be tried before a court.

The "penalty notice" is going to be quite an important document. It has to be given to the alleged offender and will contain:

*a) a notice serving as a summons where the person opts for trial (Clause 7)*

*b) the "constable's witness statement" (Clause 8)*

To pay the spot penalties a person has the "opportunity" (2.4) to pay the fine by "properly addressing, pre-paying and posting a letter containing the amount of the fine (in cash or otherwise)" (9.2). Whether it is wise to send cash in the post might be a subject for debate. If the person fails to pay then the courts get involved and the penalty turns into an enforceable fine.

There are obvious problems with on-the-spot penalty tickets served on the street by police officers. People are not the same as cars, a car's number plate will normally establish the name and address of the owner which police can quickly verify with the Driver Vehicle Licensing Centre (DVLC). Like stop and search the issue will arise as to whether the officer believes the name and address given if it cannot be verified, if it cannot police cells could fill up very quickly. Will the allegedly drunk and/or disorderly person be capable of exercising their right to a trial instead of paying the fine? If they are not they will have seven days to challenge the allegation of the officer and police chiefs will be given wide discretion to discontinue proceedings at any stage before trial if:

*the police believe that there was a legitimate excuse, not evident at the time, for the behaviour in question or that the penalty notice had been incorrectly issued.(EN)*

It takes little imagination to see that the application of these new powers in certain inner city areas could themselves lead to

disorder on a much greater scale. Imagine the result of the use of such powers in places like Hackney in London on a warm summer day and would such powers be used outside Islington wine-bars, just two miles away?

The next section of the Bill, Clauses 14-35, deal with alcohol consumption on, or off, licensed premises. First, there are to be bans on public drinking in "designated public places" decided by local councils (Clause 15). If a police officer believes a "person is, or has been.. or intends to consume intoxicating liquor" in a "designated area" the person in question will be asked to stop and/or to "surrender" any container with intoxicating liquor - the constable may then "dispose of anything surrendered to him.. in such a manner as he considers appropriate" (14.3). By drinking it himself?

Licensed premises or clubs will not be covered. But they too are targeted by the Bill which would allow police to immediately close premises where there is a threat of disorder. It also makes it an offence for a licensee to "permit drunkenness.. or to sell alcohol to a drunken person" (EN) and makes it an offence for anyone working for the licensee (landlord) to do likewise - to prevent "violent, quarrelsome or riotous conduct".

Under the heading "Other provisions for combatting crime" powers are to be taken to confiscate the passports of convicted drug traffickers. The same section also changes the "child curfew schemes". The age of children to be affected who are in a particular public place between 9pm in the evening and 6am in the morning is to be raised from 10 to 16 years old. Local authorities have been highly reluctant to introduce these schemes so this Bill will give the same power to the police as to the local council.

Part II of the Bill gives new powers for disclosing information. Clause 45 massively extends the powers of government departments and state agencies to disclose information they hold for:

*any criminal investigation or criminal proceedings being carried out, or which may be carried out, in the United Kingdom or anywhere. (Clause 43)*

And for "initiating" any investigation or proceedings (Clause 44).

The agencies (largely non-policing) to which this new power applies is set out in Schedule 1, which covers five-and-a-half pages, lists 62 Acts in Britain and a further 12 Acts in Northern Ireland.

Part III covers new "powers of seizure". The Explanatory Note goes into some detail about why new powers are needed. It says that in a court case in 1999 it was ruled that under the Police and Criminal Evidence Act 1984 (PACE) the police did not have powers "to seize material for the purposes of sifting it elsewhere". The particular case concerned the police seizure of correspondence which included correspondence with solicitors. Before the case went for judicial review the Derbyshire Constabulary agreed that the search warrant and seizure were unlawful and paid £1,000 in damages. The court decided that while it was reasonable for the police to conduct a preliminary sift of documents and to remove all or part of them there was no defence under PACE if some of the seized items fell outside of PACE (eg: legally privileged material like correspondence with legal advisers).



The issue is hardly a new one but the government has decided to use this judgement to introduce sweeping powers of seizure to a whole range of laws - in Schedule 2 there are seven-and-a-half pages of over 70 existing powers which are affected including PACE 1984, Police and Criminal Evidence (Northern Ireland) Order 1989, the Official Secrets Acts, Immigration Act, Criminal Justice (International Cooperation) Act 1990, the Terrorism Act 2000, Criminal Justice and Public Order Act 1994 and the Freedom of Information Act 2000. And what is the rationale used to justify this - the power to seize computers.

#### **Clause 49: "something" on a computer**

Clause 49 allows the police to remove a computer even if it contains legally privileged material. The contents of a computer hard disk is defined as "inextricably linked material". The Clause says that an officer can remove:

*anything on those premises that he has reasonable grounds for believing may be or may contain something for which he is authorised to search (49.1.a)*

Or put another way because it is not possible to "separate" the data being looked for from that which they are not looking for and that which they are not allowed to take away (because it is legally privileged) then they are allowed to remove the "something" (computer) for examination elsewhere. Clause 49.2.a says that where an officer:

*finds anything .. which he would be entitled to seize but for it being comprised in something else that he has no power to seize..*

then it can be removed. The police are meant to weigh the length of time it would take, the number of people and the damage that might be caused if examined on the spot.

Clause 53 says the legally privileged material must be returned, but allows the police (or other agency) to retain it if it is "inextricably linked".

Clause 54 applies the same principle to "excluded and special procedure material", that is, journalistic material and personal records. It can be retained (under Clause 55) if it contains any evidence of "any offence".

Clause 57 contains an entirely new power which could well worry journalists and researchers. If the police, having seized and examined a computer or file of documents, think that someone else other than the person from which it was taken should have it then they will have a duty to:

*return it to.. the person appearing to him to have the best right to the thing in question. (57.2.b)*

Clause 61 expressly allows the police to retain a whole computer hard drive on the grounds of "inextricably linked property".

#### **PACE and Terrorism Act**

Part IV covers changes to PACE and the recent Terrorism Act. It opens with new powers to cope with kerb-crawling (Clause 70), failure to stop after an accident where a person is hurt (Clause 70) and makes the importation of indecent and obscene material a serious arrestable offence (Clause 71).

PACE is then amended to allow for telephone reviews of detention, video reviews of detention and video links for other custody decisions where the "review officer is at a different station from the person detained". Section 36(3) of PACE is amended so that the custody officer does not have to be a sergeant but can be an "officer of any rank" - this is one of a series of changes in the Bill to downgrade the rank/position of officers dealing with those held in custody.

The rank of an officer who can authorise the delay in allowing a person to notify someone of their arrest/detention is lowered from superintendent to inspector.

Clause 74 would change the situation where the Home Secretary decides on all extensions of detention under the Terrorism Act. This would be conducted by judicial extensions

by video link.

#### **Fingerprints and DNA**

The Bill changes the rules on the taking and exchange of fingerprints, footprints and DNA to "take account of developments in a number of new technologies".

The UK DNA database records contain data on many people who have been arrested but not charged or who have been charged but acquitted (see feature in this issue). Such records are meant to have been deleted by the police. The Bill removes this "problem" by allowing:

*all lawfully taken fingerprints and DNA samples to be retained and used for the purposes of the prevention and detection and prosecution of offences... The Bill removes the requirement of destruction [of DNA profiles] and provides that fingerprints and samples lawfully taken on suspicion of involvement in an offence or under the Terrorism Act can be used in the investigation of other offences.*

This means that hundreds of thousands, and in the future millions, of fingerprints and DNA samples of people quite innocent of the offence for which they were "suspected" will be permanently held on the database.

Indeed Clauses 80 and 81 allow DNA samples, taken from someone who is not charged or convicted of an offence, to be retained and used for "speculative searches". Clause 80 allows "speculative searches" to be carried out with "foreign police forces, the Ministry of Defence and Armed Forces police forces."

The compulsory taking of fingerprints is to be extended to people simply cautioned for a recordable offence "or warned or reprimanded for recordable offences" under the Crime and Disorder Act 1998. The Explanatory Note says to justify this new power: "This will enable details of these offences which are held in national police records to be supported by fingerprints."

#### **Intimate searches**

There is a lowering of standards again when it comes to "non-intimate searches without consent" and "intimate body searches" with consent. The authorisation would be given by an inspector not a superintendent. The Bill also provides for samples to be taken not just by a registered medical practitioner but by a registered nurse as well.

#### **UK "FBI" created at a stroke**

The government is also using this Bill to completely change the status of the National Criminal Intelligence Service (NCIS) and the National Crime Squad (NCS) (see *Statewatch* vol 6 nos 5 & 6; vol 8 no 2). Currently the NCIS and the NCS are funded by "levies" on local police authorities with the "Service authorities" (police committees) overseeing their work with representatives from local government.

At a stroke the Bill will change all this. Instead of local police authorities paying for these agencies the Home Office will now take over the funding. This means there is no need to have four local councillors representing local police authorities now there is to be just one. For each of the "Service Authorities" places are given to HM Customs and Excise and the Security Service (MI5). The additional representatives from Northern Ireland on the two "Service Authorities" will, astonishingly, be either a member of the RUC or a member of the Police Authority or a Crown servant. To complete the picture the Home Secretary takes over the appointment of the Director Generals of the NCIS and the NCS. In a few short years the NCIS and the NCS, which had their origins in Regional Crimes Squads, have become in effect the UK's "FBI".

*Criminal Justice and Police Bill, 18.1.01; Criminal Justice and Police Bill, Explanatory Notes, 18.1.01; Criminal Justice and Police Bill, House of Commons Research Paper 01/10, 25.1.01; Liberty 2nd Reading briefing.*

## The battle shifts to trying to undermine EU privacy

**"The only effective national legislative measure would... be to prohibit the erasure or anonymity of traffic data"** [EU Working Party on Police Cooperation]

The debate over the surveillance of telecommunications in the EU has shifted from the "third pillar" (justice and home affairs/law enforcement agencies) to the "first pillar" (community law/industry). At issue is the length of time service and network providers have to keep data on all telecommunications (e-mails and internet usage). EU community law requires providers to retain data only for purposes of billing and then to erase it. The law enforcement agencies (police, customs, immigration and internal security services) want **all** communications to be kept for at least 7 years (see *Statewatch* vol 10 no 6).

### The shift from the "third" to the "first" pillar

When ENFOPOL 98 was produced in September 1998 it was followed by extensive criticism in the media for wanting to extend the EU-FBI "Requirements" for the surveillance of telecommunications to e-mails and the internet. The final version of this document, ENFOPOL 19, was never adopted by the Council of the European Union (the governments) because of the "negative press" reaction (see *Statewatch*, vol 10 nos 2 & 3/4).

In the spring of 2000 the EU's Working Party on police cooperation decided that issues previously discussed under "interception of telecommunications" will now come under "advanced technologies". In July 2000 a document from the same working party entitled "Advanced technologies: relations between the first and third pillars" said there needed to be an "inter-pillar dialogue" over the "Information Society" (an overarching EU term referring to e-mails and the internet).

From then the debate shifted with EU law enforcement agencies and EU working parties seeking to change, and if possible remove, the protection given to individuals under existing EU laws on data protection and privacy and proposed new Regulations on privacy and rules for the industry. Current, and planned, EU laws protecting individual rights are seen by the EU's law enforcement community as standing in their way.

### The protection of privacy

The European Commission has put forward a proposal to update the 1997 Directive on the protection of privacy in the telecommunications sector (97/66/EC) which has only been in force for a couple of years. The proposed revision is primarily intended to update the 1997 Directive to allow for "new and foreseeable developments in electronic communications and services and technologies" (COM(2000)385 final).

It includes proposals to allow (Article 15) derogations (under Article 9) to restrict the scope of rights and obligations where national security, criminal investigations and "unauthorised use of electronic communications system(s)" are concerned.

As background to its proposal the Commission has put out a Communication on "Creating a Safer Information Society by improving the security of information infrastructures and combating computer-related crime". This report notes the ongoing work on the much-criticised draft Council of Europe Convention on cybercrime (see *Statewatch*, vol 10 no 6) and says that: "EU approximation could go further than the CoE Convention, which will represent a minimum of international approximation." (p15)

In a section on legal issues the report says that at present:

*Interceptions are illegal unless they are authorised by law when necessary in specific cases for limited purposes.(p16)*

At present legislation in EU member states requires that interception by law enforcement agencies is authorised by a judicial order or by a senior Minister. This legislation, the report says, has to be in line with Community law and provide:

*safeguards for the protection of the individual's fundamental right of privacy, such as limiting the use of interception to investigations of serious crimes, requiring that interception in individual investigations should be necessary and proportionate, or ensuring that the individual is informed about the interception as soon as it will no longer hamper the investigation. (p16)*

These protections are precisely what the law enforcement agencies want to overturn.

Moreover the report notes "with grave concern reports on alleged abuses of interception capabilities" in reference to the ECHELON inquiry set up by the European Parliament.

The report then deals with the "retention of traffic data". Under the 1995 and 1997 EC Directives traffic data must be erased unless it is needed for billing purposes. For flat-rate or free-of-charge access to telecommunications services the service providers are "in principle not allowed to preserve traffic data" (p18). Member states "may" adopt legislative measures to restrict the obligation to erase data where necessary for the prevention, investigation or prosecution of crime or the unauthorised use of the telecommunications system. But such measures have to be appropriate, necessary and proportionate as required by Community and international law. It concludes that:

*This is particularly relevant for measures that would involve the routine retention of data on a large part of the population.*

The European Parliament has generally taken a stance in favour of the "strong protection of personal data". In the context of combating child pornography on the internet the parliament favoured "a general obligation to preserve data for a period of three months".

Data protection supervisory authorities have taken the position that to protect privacy "traffic data should in principle not be kept only for law enforcement purposes". The Commission's Data Protection Working Party has issued a strong report on the question:

*Large-scale exploratory or general surveillance must be forbidden... the most effective means to reduce unacceptable risks to privacy while recognising the needs for effective law enforcement is that traffic data should in principle not be kept only for law enforcement purposes and that national laws should not oblige telecommunications operators, telecommunications services and Internet Service Providers to keep traffic data for a period of time longer than is necessary for billing purposes. (Recommendation 3/99, 7.9.99)*

The Data Protection Working party also made recommendations on anonymity concluding that: "remaining anonymous is essential if the fundamental rights to privacy and freedom of expression are to be maintained in cyberspace". This, they say, should be balanced against proportionate restrictions in limited and specific circumstances.

## EU Working Party on police cooperation

The key player in this debate is the Council's Working Party on police cooperation made up of police and interior ministry officials from all the EU member states. Many of these same officials also go to G8 meetings on interception and others to the ILETS meetings (the International Law Enforcement Telecommunications Seminar, see *Statewatch*, vol 7 no 1 & 4 & 5; vol 8 no 5 & 6; vol 9 no 6), including some from the working party's technical sub-committee.

A report from this working party in November last year shows that six countries oppose ("expressed misgivings") the wording in Article 6 of the draft Directive on personal data and the protection of privacy (COM(2000)385). The wording is that all traffic data:

*must be erased or made anonymous upon completion of the transmission.*

The six governments are Belgium, Germany, France, Netherlands, Spain and the UK.

Their reasoning is that it would not allow the "investigation services" to identify "perpetrators of serious offences involving the use of telecommunications networks" and then cite "child pornography and incitement to racial hatred" - which are specific offences but which do not justify total surveillance.

The draft Directive does, in Article 15, allow governments to adopt strong powers where they are necessary to "safeguard" national security, the investigation of criminal offences or the unauthorised use of telecommunications. The EU's law enforcement agencies do not like this provision as it would have to be specific and limited in scope:

*It is impossible for investigation services to know in advance which traffic data will prove useful in a criminal investigation.*

And it goes on to say,

*The only effective national legislative measure would therefore be to prohibit the erasure and anonymity of traffic data. However, such a measure would probably not be considered proportionate, as it would call into question the very aim of the draft Directive.*

The report tries to use an economic argument to support its case. Telecommunications equipment is "standardised and produced by only a few market leaders" who would apply the general rule to erase traffic data. This would leave each EU member state having to adopt the so-called "safeguard clause" in Article 15 by way of exception and thus have to "re-jig standard equipment, entailing considerable extra expense". The report, however, does not state the obvious problem for law enforcement agencies - namely that surveillance will only work if *all* EU states have to apply the same rules of surveillance, that is to give access to every communication. If some states only get limited access to communications in specific cases EU-wide (and Europe-wide) then the surveillance breaks down.

The working party is also concerned about another proposed Directive from the Commission on setting a common framework for the authorisation of telecommunications networks. This is

intended to simplify and encourage the "Information Society" for commerce. The proposed Directive would do away with individual licences. The report comments:

*The Working Party does not see how any Member State could then safeguard public policy and security interests (cf. Article 15). By taking no account of the storage of data on communications by operators/service providers, definition of storage time and making such data rapidly available to investigation services, that proposal would in general be likely to jeopardise State prerogatives such as crisis management, judicial interceptions etc.*

The report then gives examples of what data the law enforcement agencies need: i) positioning; ii) inverse tracing; iii) number of caller and recipient - important for knowledge of environment eg: "relationships, ongoing conflicts or disputes, professional activities" is "paramount"; iv) prepaid cards, SIM cards; v) connection data; vi) navigation data and vii) positioning in stand-by mode:

*the real-time location (in stand-by mode or in the context of interception) must continue to be included on one of the files in mobile phone chip cards because of the importance of the situations - criminal investigations or rescue operations - in which they are utilised.*

A number of examples follow of the use of such data. What is striking is that in some instances the examples used are about specific investigations - which are quite possible under existing rules.

It is also noticeable that the report uses examples, like child pornography and racial hatred and rescue operations, which would command wide support to try and justify the wholesale, indiscriminate monitoring of all communications by everyone about everything. Their rationale is:

*to ensure that a fair balance is struck between respect for privacy and freedoms and the right to security and protection from crimes committed using technological means.*

The "fair balance" for the law enforcement agencies and this working party means putting their interests above those of the citizen.

It is possible to argue that the law enforcement agencies should be able to intercept communications for a *specific* investigation concerning serious crimes which is *authorised* by a judicial authority on each and every occasion - and the subject of the interception being *informed* of the fact. Such a system, which is subject to judicial and parliamentary accountability and review, could properly be used for investigating offences.

*Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Creating a Safer Information Society by Improving the Security of Information Infrastructures and Combating Computer-related Crime, COM (2000) 890 Final; Relations between the first and third pillars on advanced technologies - Proposal for a Directive of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector, submitted by the Commission, 12855/1/00 Rev 1, ENFOPOL 71, 27.11.00.*

# "Call for an Open Europe"

Sign up to the "Call for an Open Europe" launched by *Statewatch* and the European Federation of Journalists, dozens of people have signed up already. As the institutions discuss the new code of access to documents in Brussels in it is important that civil society registers its voice in the discussions.

All the background information and full-text documents are on *Statewatch's* website, see:

<http://www.statewatch.org/secret/call.htm>

# “Triologue” talks collapse

The Council, Commission and European Parliament failed to resolve their different positions on a new code

In an attempt to resolve the substantial differences between their draft positions the three EU institutions - the Council (15 EU governments), the European Commission and the European Parliament - held a series of informal "trialogue" meetings in January and February. These meetings were held on 24 January, 6 and 14 February and ended in failure. It is now clear that the deadline set by the Amsterdam Treaty (TEC) of 1 May 2001 will not be met and that it is unlikely that a new code of access will be agreed before the autumn.

When the European Parliament adopted the report from the Committee for Citizens' Freedoms and Rights at its plenary session on 16 November it put off adopting the legislative resolution - this would then have been the parliament's First reading position (see *Statewatch*, vol 10 no 6).

On 20 December COREPER, the Brussels-based permanent representatives of the Council (the 15 EU governments), discussed the final draft of their common position drawn up under the French Presidency (see below).

Before, and after, Christmas the main parliament rapporteurs, Michael Cashman (PSE) and Hanji Maij-Weggen (PPE), held informal discussions with the Commission to see if there was any room for compromise between their two positions (the Commission had put out its draft measure in January 2000).

Sweden took over the Presidency of the EU Council on 1 January and the "trialogue" meetings were set up. Little was achieved at the first meeting on 24 January. The Council made clear its opposition to certain clauses in the EP's report, particularly the provisions on including interinstitutional agreements (the Commission too is opposed to including these).

For the second "trialogue" meeting on 6 February the EP drew up a "compromise" report which made a number of changes to the Cashman/Maij-Weggen report. However, little progress was made and by the time of the final planned meeting on 14 February the Council at least knew there could be no agreement (the meeting of COREPER on that day had before it the final French draft Council common position for the next General Affairs Council on 26-27 February).

With the collapse of the talks the three institutions - after a three month delay between 16 November and 14 February - are reverting to the "normal" legislative procedure. The European Parliament will now adopt in March its legislative resolution which will make the Cashman/Maij-Weggen report its First reading position (though there was some talk of adopting its slightly improved "compromise" version of 6 February). Under the "co-decision" procedure (under which all three institutions have to agree) the Council could accept the EP's position but it will not, so the Council will then adopt its common position (on which a majority of EU governments are agreed). The European Commission will then inform the parliament of its position on the proposals.

The EP then has three months to accept the Council's common position or to amend it, which it is likely to. If, within a further three months, the Council cannot agree with the parliament's views (which it is very unlikely to) then within six weeks a "Conciliation Committee" of the three institutions is set up - this committee has six further weeks to agree. This process could take the rest of the year or could be shorter, but whatever happens now it will not meet the 1 May Treaty deadline.

To any outside observer it was crystal clear by December

last year that the positions of the three institutions were irreconcilable and were not likely to be resolved through informal, secret meetings.

## How did this fiasco come about?

The commitment made in Amsterdam in June 1997, nearly four years ago, was intended to "enshrine" the citizens' right of access to EU documents (under Article 255). It was meant to build on the existing code and practice and turn it into a true freedom of information law.

Indeed, June 1997 may well go down in history as the high-point of EU openness because neither the Council of the European Union (that is, the majority of governments) nor the European Commission want a freedom of information law.

The Commission was charged with drawing up the initial proposal but never produced a discussion paper to consult with civil society. Not until January 2000 did the Commission produce its proposal which sought to undermine the existing code of access which has been in place since 1993. Specifically, the Commission wants to exclude thousands of documents from access to preserve the so-called "space to think" and "space to act" for officials (a position that the Council supports).

The Council too, or rather a majority of nine national governments, wants to undermine the existing code of access. To mention just two changes, the Council wants to create a "special" procedure for all classified documents, and any other document mentioning one, in all fields of EU activity including "non-military crisis management", justice and home affairs, trade and aid (an amended "Solana Decision"). Second, to allow EU governments to claim "authorship" rights over documents they submit to decision-making procedures with the right to "veto" access to them - the same so-called right would be extended to all documents submitted by non-EU states and agencies (eg: the US, NATO or ILETS).

The European Parliament report fell into the trap of thinking that there was no existing code of access (no history, no struggles for openness) and took a blank sheet of paper to start afresh - or rather to start afresh in the light of the demands on the table from the Council and the Commission. It accepts, though it has a different definition, the "space to think" argument and wants a whole series of interinstitutional agreements to protect the "rights" of the European Parliament. The result is a report that falls far, far, short of "enshrining" the right of access and creates more new rights for EU institutions than for citizens.

In the "space" created by the "trialogue" meetings the parliament's position improved a little. Certainly Graham Watson, the Chair of the Committee on Citizens' Freedoms and Rights, took up crucial issues in letters to the Council on behalf of the negotiating team. In these he says that the new measure cannot "be a step backwards from the current situation" and that both the exclusion of "space to think" documents and the "authorship rule" (giving a "veto" to "third parties") would be unacceptable to the parliament. This "space" has, however, now disappeared.

## Council draft position - Solana back on the agenda

Each new draft Council common position under the French Presidency of the EU was worse than the one before. On 17 November, the day after the parliament adopted its report, the

Council produced a new draft common position which re-introduced in a different form the now infamous "Solana Decision" (see *Statewatch*, vol 10 no 3/4). Defence, military and non-military crisis management documents were not to be permanently excluded from access but were to be subject to "special procedures" (the wording is different, the effect the same).

In another new draft (1.12.00) the words "in the field of security and defence" were removed so that the "special procedures" would apply to all areas of EU activity including justice and home affairs. The same new draft introduced the proposal that EU governments should be treated as "third parties" (even though they comprise collectively the EU Council of Ministers) with the right of "veto" over access.

The final draft under the French Presidency introduced yet another restriction on access. Requests for documents at a national level, under national freedom of information laws, which have not been released by the Council General Secretariat would have to be immediately referred to Brussels for a decision.

### Survey shows who backs openness

A survey by *Statewatch* of 33 confirmatory applications (appeals against the refusal of access) in 2000 showed that Denmark (88%), Sweden (83%) and Finland (58%) have consistently backed giving access to documents. They have been supported by the Netherlands (29%), UK (20%) and Ireland (17%).

Finland, Denmark, Sweden and the UK have also "intervened" to support Heidi Hautala MEP's case in the Court of First Instance. The Netherlands, supported by Sweden and Finland are taking the Council to court over the "Solana Decision" (as is the European Parliament).

The other nine EU governments have consistently opposed openness (giving access): Germany, France, Belgium, Austria, Italy, Portugal, Spain, Luxembourg and Austria.

### Select Committee report on the "Solana Decision"

The UK House of Lords Select Committee on the European Union has adopted a highly critical report on the way the "Solana Decision" amending the code of access was agreed in July last year. The Decision to amend the 1993 code of access to documents was rushed through the Council by what is known as "written procedure" - it was discussed and agreed by COREPER, the committee of senior representatives of EU governments, and formally adopted on 14 August 2000. The planned decision was covered extensively, with the full-text of documents, on the *Statewatch* website from 26 July onwards.

The "Solana Decision" excludes permanently from access all documents concerning foreign policy, defence and "non-military crisis management" and any document mentioning them (whether classified or not).

The Select Committee were sent an "Explanatory Memorandum" dated 14 August:

*It dealt with the Decision as if it were a draft. No document was supplied with the EM, though the decision was adopted on the same day (14 August).*

The Committee sought clarification from the Foreign Office (FCO) Minister responsible, Mr Keith Vaz and:

*The Committee concluded that the Minister had failed to provide sufficient or convincing explanation and considered inviting the Minister and senior officials to attend to give oral evidence. The Minister said that he would be happy to meet the Committee.. "But I would not be able to add significantly to the information provided here." The Minister and his officials cannot have been under any misunderstanding as to the level of detail that was expected.*

The Committee set aside a day for the Minister to attend but he declined.

The report examines whether the "Solana Decision" was

necessary in the light of the ongoing discussions on a new code of access. It concludes:

*Whether the Decision produced a more secure legal environment is debatable.. Indeed it seems to us that it was essentially the procedures for applying the Code rather than its substance (or lack of appropriate exceptions) which was the reason for the changes.*

Citing *Statewatch's* evidence to the Committee the report says it was clear that a proposal would be on the table from 30 June onwards and that drafts were circulated on 12 and 17 July. The Minister, in a written response to the Committee, claimed that:

*it was unclear what the Presidency's intentions were. The text was only available in French.*

The Committee's report is scathing on both counts. First it says there is a "long established practice" that they receive some foreign texts and:

*the existence of a document only in a foreign text is not a satisfactory reason for not depositing the text (emphasis in original)*

As to the failure to consult the Committee before the decision was agreed in COREPER on 26 July the Minister claimed that:

*We... submitted an EM explaining HMG's actions shortly thereafter. Administrative delays meant the EM was not forwarded to the Committee until 14 August.*

The Committee comments:

*One might ask what degree of communication there was between UKRep [UK government representative in Brussels] and FCO officials and when officials, and indeed the Minister, first addressed the issue of parliamentary scrutiny.*

The Minister also stated that:

*we submitted an explanatory memorandum on 14 August. I recognise this gave Scrutiny Committees very little time to respond formally.*

To which the Committee responds:

*The fact is that the Committee has no time to respond, formally or otherwise.*

The Committee's report concludes:

*We suggest that a government that expresses commitment to greater involvement of national parliaments in the European legislative process as well as to openness and transparency ought to show a greater respect for parliamentary scrutiny.*

*Access to documents: the Council Decision of 14 August 2000, Select Committee on the European Union, HL Paper 31, 20 pages, £5.60.*

*For up-to-date news on the new code of access see: [www.statewatch.org/news](http://www.statewatch.org/news) For full background documentation see: [www.statewatch.org/secret/observatory.htm](http://www.statewatch.org/secret/observatory.htm) For the history and background see: [www.statewatch.org/secret/secreturope.html](http://www.statewatch.org/secret/secreturope.html)*

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# DNA: how long before we are all “profiled”?

Developments in the EU, UK and Germany will extend the information available from “genetic profiles”, the number of people on DNA databases and the exchange of DNA analysis results

## Demands for race and gender identification in police DNA analysis

The Netherlands has proposed that the police forces in the European Union should extend the scope of DNA analysis to enable them to establish the “population group or race”, gender and - once the technology enables it - the eye and hair colour of people whose DNA profiles are held in national databases.

### Background

The Dutch demands came in mid-January as part of negotiations on a draft EU measure on the standardised use of DNA technology and the exchange of analysis results which has been on the table for almost two years. The proposal builds on a 1997 EU Resolution that called upon the member states to establish national DNA databases and for a European database to be set up.

The current draft Resolution sets out seven DNA “markers” to ensure that member states use the same technology for DNA analysis in their criminal justice systems. It also allows member states to begin exchanging DNA profiles with one another (as a *Resolution* it is non-binding and will let those member states that are ready to begin exchanges do so ahead of others who have not yet even established databases). However, there are no data protection rules or “legal safeguards” governing the exchange of DNA profiles in the proposal, with the risk that there will be no effective guarantee for an individual to be able to gain access to their file or legally challenge its use following an exchange; no enforceable rules concerning the expiry, correction or deletion of files; no rules on jurisdiction over complaints or damages; and no principles governing independent data protection supervisory bodies (see *Statewatch* vol 10 no 5). The House of Commons Select Committee on European Scrutiny has expressed “surprise” at the absence of data protection rules, and requested that Home Office Minister Barbara Roche “reassure” them that people’s DNA data will be “adequately protected”.

Also cause for concern is the fact both the 1997 Resolution and the current proposal refer only to the use of DNA evidence in the “investigation of crime”, with no reference to a limitation of circumstances in which people can have their DNA taken or retained, or to any scope of offences (as there is in the member states).

Work to establish a European DNA database is likely to follow the adoption of the Resolution and an initial exchange of profiles between member states. Discussions are also taking place within Interpol where an international DNA database comprising the European countries, Australia, New Zealand, Canada, USA and Japan etc. has been proposed.

### The Netherlands demands

The Netherlands objection to the current draft is the proposal to “limit DNA analysis to chromosome segments containing no genetic information factor, i.e. not known to provide information about specific hereditary characteristics” (Article III (1)). The restriction had been proposed to allay concerns that rapid advances in DNA profiling technology would allow the determination of genetic “disorders” and hereditary diseases in

the future. They have proposed that that the Article should instead “limit DNA analysis to the establishment and comparison of DNA profiles *and the determination of external personal characteristics*, i.e. not to the establishment of hereditary disorders or diseases” (emphasis added).

The Netherlands’ position dispels the claim by the law enforcement community that DNA profiles are merely “fingerprints for the twenty-first century” - the crucial difference being that a fingerprint can only be used to place a person at a given location while DNA from cellular material has the potential to provide an entire genetic profile of an individual. As analysis of the human genome gathers pace, profiles will yield more and more information. The Dutch proposal notes that: “In the long term, any further decoding of the cellular material could make it possible to use that material to deduce an increasingly complete description of the “owner”.”

Also proposed is an amendment to the “DNA crime scene profile exchange form” annexed to the draft Resolution. The Dutch suggest that “police organisation” be widened to “competent authority” in line with other EU measures on cooperation in criminal matters.

### Beyond the pale

Writing recently in *The Guardian* on the DNA proposals in the government’s new police bill (see below), Henry Porter suggests that:

*all you need to know about the police DNA data bank is that it doesn’t simply contain an archive of unique markers, or super fingerprints. A DNA sample gives an entire profile of an individual... One can easily envisage a day when these data banks are used to put together lists of suspects simply on the basis of the information contained in their original sample.*

While law enforcement officials will undoubtedly dismiss this as paranoid fantasy, their vigorous embrace of genetic profiling does little to preclude such a vision.

The new demands, made by the Netherlands delegation to the *EU Police Cooperation Working Party* may well cause acute embarrassment to some members of the Dutch parliament, with Holland traditionally seen as one of the union’s more liberal regimes. However, it serves as a reminder that it is law enforcement officials and civil servants, rather than Parliamentarians who set the agenda for intergovernmental cooperation in justice and home affairs matters.

Sources: *Home Office Select Committee on European Scrutiny, 28th Report, 17.11.00; Draft Resolution on the use of DNA technology and the exchange of DNA analysis results - Proposed text. Note from Netherlands delegation to Police Cooperation Working Party, 17.1.01, 5335/01, Limité, Enfolop 5; Guardian 1.2.01.*

## European DNA Database to be run by Europol?

Another contentious aspect of the proposal to allow member states to begin exchanging DNA profiles (see above) is the creation of a “server” at Europol for the “DNA crime scene profile exchange forms”. The first draft of the Resolution, of May last year, proposed that:

*the placing of a server at Europol for sharing data between the member states in the future should be considered, to the extent that such data relates to types of crime falling within Europol's sphere of competence.*

Successive drafts amended the proposal, replacing the vague "sphere of competence" with a legal-based "competence pursuant to the Europol Convention", and introducing a footnote stating that:

*If such a server is installed it will only permit exchanges between the member states, excluding any centralisation of data.*

What remains to be seen is if practical experience in the exchange of profiles will be the determining factor in placing the inevitable European DNA database at Europol. One has only to consider the rapid transformation of the Europol Drugs Unit - which the public was told was merely a liaison office for the exchange of drug-related intelligence - into Europol - the fully-fledged European Police Office with its central intelligence database - to hazard a guess.

*Sources: Draft Resolution on the use of DNA technology and the exchange of DNA analysis results, Note from Netherlands delegation to Police Cooperation Working Party, 29.5.00, 8937/00, Limité, Enfopol 36 & "Rev 1", 17.7.00, 8937/1/00 & "Rev 2", 16.11.00, 8937/2/00.*

### **UK: Law Lords back "common-sense" use of unlawfully retained DNA profiles**

Law Lords have ruled that two men convicted on the strength of DNA evidence obtained from illegally held samples should not have been freed by the Court of Appeal. The men, convicted in separate and unrelated cases of a rape and a murder, both had their convictions overturned on appeal after it was established that the DNA profiles that matched them to the crime scenes should have been destroyed by police. In both cases the Appeal Court had affirmed the rules in Section 64 (3B) of the Police and Criminal Evidence Act (PACE) 1984 which state: "information derived from the sample of any person entitled to its destruction... shall not be used - (a) in evidence... or (b) for the purposes of any investigation".

On December 15, five of the "law-Lords" (the most senior judges in the UK) ruled unanimously that the appeal judges had been wrong to exclude the "compelling" evidence - even though it been kept in clear breach of PACE - and should instead have used a "common-sense" interpretation. (The two men can not be retried for the crimes on the basis of the same facts.)

John Wadham, Director of *Liberty*, expressed concern that the ruling would make the police even less likely to destroy illegally held samples. These are believed to number around 100,000 (see Statewatch vol 10 no 5).

### **Massive expansion of database as innocent people's DNA to be added**

Soon after the law Lords' ruling came the formal proposal that has been expected for some time: that all DNA samples should be retained in the national database regardless of whether or not their owners have been convicted of any offence. Current rules allow DNA samples to be taken from anyone suspected, charged or convicted of a recordable offence, but profiles should be destroyed if no conviction follows. The proposal is part of the Criminal Justice and Police Bill (see feature article in this issue) but had already been made in a 1999 Home Office consultation paper (see Statewatch vol 10 no 1).

In November 2000 the Forensic Science Service announced that the number of people on the UK DNA database had topped one million. If Parliament approves the new bill, it has been suggested this figure could reach four million within three years (six per cent of the UK population).

Meanwhile, Professor Sir Alec Jeffreys, credited with devising the system to identify "criminals" from their genes, has

told BBC Midlands that he has changed his mind about the human rights implications of DNA testing and is in favour of profiling the entire population.

*When this idea was first put forward about 10 years ago, I had considerable concerns over civil liberties issues. On reflection, I'm now actually in favour of this. I think the potential of this database to prosecute serious crime, to save the lives and the misery of future victims is very substantial.*

### **Police Federation to mount legal challenge against forced testing of officers?**

Geff Moseley, general-secretary of the *Police Federation* (which represents the interests of "rank-and-file" officers) has written to Home Secretary Jack Straw suggesting that compulsory testing for crime-scene officers and new recruits is a breach of their human rights. Although the Home Office has not yet formally responded, Mr Straw was happy to tell *Police Review*:

*I simply don't understand the Federation's view point. They have been resisting have police officers on the database. But the integrity of the DNA sample and what happens at the scene of the crime is much more important.*

He also refuted suggestions that a successful human rights based-legal challenge against compulsory DNA testing by the Federation or individual officers would scupper his plans to retain samples from innocent members of the public.

*Source: Police Review 26.1.01*

## **GERMANY**

### **Constitutional Court rules DNA analyses legal**

In April 1998 the Christian Democrat government, with the political support of the present Prime Minister, Gerhard Schröder, passed a decree for the creation of a genetic database located with the Federal Crime Police Authority (*Bundeskriminalamt, BKA*). Data protection officers and civil liberties groups have strongly criticised the lack of legal and practical safeguards, in particular, the vague legal definition laid down to justify genetic profiling.

Two years after the implementation of a national genetic database, the Federal Constitutional Court (*BVerfG*), in a ruling on a constitutional challenge with regards to the collection of data samples of three convicted criminals, has laid down the guidelines by which the authorities can collect, analyse and store "genetic fingerprints" of people suspected and/or convicted of "a criminal offence of considerable importance", if there is "reasonable suspicion" that they will commit another crime. The vague definition of crimes amounting to "considerable importance" leaves enormous scope for arbitrary interpretations by law enforcement agencies. Moreover, the latest annual report of the Bavarian data protection officer shows that legal safeguards (such as individual case examination or the necessity of a court order to rule on "reasonable suspicion") do not necessarily apply in practice.

#### **The law**

The legal basis for collecting and storing DNA samples in Germany was first laid down in the 1998 *DNA-Identitätsfeststellungsgesetz* (DNA Identification Act, hereafter *DNA-IFG*). Paragraph 2 *DNA-IFG* (in reference to paragraph 81g of the Criminal Procedures Act), which was challenged on grounds of constitutionality. It stipulates that for the identification process in future criminal offences, the authorities are entitled to collect, analyse and store DNA samples

of people convicted of a "criminal offence of considerable importance" (these include sexual assault, theft -in very serious cases - and coercion). There also has to be "reason to suspect, that [the prosecuting authorities] will have to initiate another criminal investigation" against the accused. The *Bverfg* ruling of 14.12.00 argues that this form of DNA sampling does not violate the inalienable rights of the person as laid down in Germany's constitution (*Grundgesetz*), because the regulation exclusively deals with the "non-coded" part of DNA and thereby merely serves as a means of identification: "In so far," the *Bverfg* press release reads, "[as] the "genetic fingerprint" is comparable to the conventional fingerprint and other identification methods, even when [the former] proof value is considerably higher."

### Data collection mania?

Criticism of this ruling has been limited, with some exceptions such as the report by Reinhard Vetter, regional data protection officer in Bavaria. His annual report criticises surveillance practices, increased data collection, long storage times as well as the inclusion of witnesses, informants and "contact persons" in the data pools of Bavaria's regional police forces, it also points to the most serious shortcoming with regards to DNA sampling of accused persons or those convicted: the "aversion of legal protection mechanisms" by the judicial authorities in particular (fostered by the lack of accountability), has led to the *de facto* forceful collection of DNA samples of convicted prisoners. The failure of the Justice Ministry to pass on vital exonerating public prosecution evidence to the police departments has also led to the storage of illegally held data in police computers, the report says. Data protection officers have criticised the amount of data being collected: DNA samples in the *BKA* central register have increased from 25,204 in December 1999 to 45,000 in July 2000 and 72,000 personal DNA "identification patterns" are being stored at present. One commentator pointed out, that there seems to be no guarantee of the stipulated individual case examination:

in some Bavarian prisons it was common practice to deny prisoners improved prison conditions (*Hafterleichterungen*) if they did not take part in "voluntary" DNA screenings. Although this practice did lead to a special data protection officers' conference in 1999, the data thereby obtained is still being stored on police computers.

### From DNA sampling to personality profiling

Critics have argued that the most worrying development is the authorities' underlying logic of "the potential criminal". Paragraph 2 *DNA-IFG*, in conjunction with paragraph 81g of the Criminal Procedures Act, allows genetic sampling not only of convicted persons who are said to be likely to be involved in future crime, but also of those accused of serious criminal offences. It has also been pointed out that in practice the creation of the "potential criminal" diminishes the responsibility of proof to establish the "actual criminal".

It further strengthens the increasingly socio-biological tendencies within the dominant EU-US crime discourse: the central *Bverfg* argument in defence of DNA sampling is that "through the establishment of the DNA identity pattern, it will not be possible to draw conclusions with regards to personality traits such as genetic make-up, individual characteristics or illnesses of the person in question, thereby not allowing the creation of a "personality profile"". However, this not only contrasts with the recent proposal by the Netherlands on EU police cooperation in DNA analysis and profiling but also most recent DNA testing conducted in Germany, which is supposed to prove that stateless refugees who fled to Germany from the Lebanon ten years ago, are in fact Turkish nationals, who need to be deported. Far from being a "conventional" fingerprint DNA sampling is being used to create personality profiles, and in the case of refugees and migrants, these include definitions of race and ethnicity.

EU

## Schengen Information System: SIS II: technical innovation pretext for more data and control

Member states are using the construction of the "second generation SIS" not only to extend the capacity of the system, but also to introduce new technical and investigation possibilities.

First discussions on the present Schengen Information System were initiated in the late 1980's - at a time when the Schengen Implementation Agreement had not even been signed yet. In the SIS, all data is stored parallel, both in the central component in Strasbourg (C.SIS) and in national outlets (N.SIS). Thereby the C.SIS ensures the rapid transfer of alerts put in by one national SIRENE office to the other N.SIS. When the authorities carried out a feasibility study in 1988, they were far-sighted in that they predicted that apart from the then five Schengen members, more EU member states would join the club. The capacity of the system was therefore set at a level at which eight states could join the system. However, the planners were not far-sighted enough: when the SIS went online in March 1995, seven Schengen states were taking part - the five original ones (Germany, France, Belgium, Netherlands and Luxembourg) plus Spain and Portugal. By the end of 1996, when Italy, Austria and Greece joined the SIS, it was being questioned whether the system's capacity was sufficient. After all, ten states, two more than originally planned, were taking part. More candidates were, and still are, waiting in line: the Nordic EU member states

Sweden, Finland and Denmark as well as the non-EU states Norway and Iceland. For the latter, the system had already been extended (SIS 1+). Britain and Ireland are to receive partial participation in the SIS. And then there's the many EU accession states, who have (and want) to implement the whole of the Schengen acquis, including the SIS.

The Schengen Executive Committee therefore decided in late 1996 to extend the SIS to SIS II. Recent papers by the Council's SIS Working Group and the Mixed Committee (which includes Norway and Iceland) prove that this extension will not only serve increased capacities but is supposed to open up new technological "functionalities", which in turn necessitate amendments of the Schengen Agreement. "On the basis of the work carried out over several years by the SIRENE working party, which has studied the new functionalities planned within the framework of the SIS II", the French presidency presented "descriptive sheets" in July last year, from which can be derived the aims, operational interests as well as the technical, financial and legal effects of the planned amendments. In October last year, the SIS working group referred these recommendations to the Article 36 committee. Only Italy had a "general scrutiny reservation" and France declared a partial reservation against the increased storage time of personal data.



### **Longer storage times - more data**

Until now, there was a general three year limit for the storage of personal data after which the inputting agencies had to check if the data was still necessary. The only exception to this rule were alerts under Article 99: in cases of discreet surveillance, personal records could only be stored for up to one year. This curtailed storage time took account of the fact that as a rule, there was no concrete evidence of criminal offences against the people subjected to surveillance. The precondition for surveillance is generally a police prognosis on the person in question being likely to commit a crime in future. Requests for surveillance could also be made by national secret intelligence agencies. These kinds of alerts are one of the most contested aspects of the Schengen Implementation Agreement, because they link police interventions, which are not (supposed to be) known to the affected persons, to a mere suspicion of danger - a typical political police praxis. With the temporal extension of data storage, initial concerns are thrown over board, without even pointing to possible expectations towards police efficiency. After all, these kind of alerts only concerns a relatively small percentage of personal records stored in the SIS.

In relation to Article 96 on the other hand (these are alerts referring to non-EU citizens issued with deportation orders or those to be rejected at the borders) we are talking of masses of data. The extension of the stipulated three year period will automatically imply an increase in the volume of data. Up to now, this category of alerts has represented the lion's share of person-specific SIS data (between 80 and 90%). The real implications of this are clearly indicated by the biggest deletion operation of SIS data. During the first 6 months of 1997, the German SIRENE deleted 207,000 Article 96 records from the SIS. The data concerned had been taken over from the German nation-wide investigative system INPOL when the SIS system first became active in 1995. However, the data had already been stored for at least a year in INPOL. In other words: the three year deadline had long expired. More than a third of this data category input by Germany at the time, had not become obsolete because of a "hit" but invalid through the expiry of the deadline. Although most of the hits in the SIS can be traced back to Article 96, it can safely be assumed that the overwhelming majority of this data is actually deleted on expiry grounds. The extension of the three year period will by no means lead to an automatic increase in apprehensions, but will merely bring about an increase in the mass of data.

### **Not only quantitative increases**

SIS II is not only supposed to be accompanied by the extension of storage times and therefore the increase in person specific data held, but also by a qualitative change in the data input. Amongst other things, the SIS II will enhance the ability to give more references specific to persons into SIS records. Currently only references relating to firearms or possible violent behaviour were permitted. In future, the nature of the offence, as well as indications that the person is an escaped convict or "in psychological danger", will pop up on the screen of police computers.

So far, a record in the SIS did not include more than 2 lines worth of data, in other words: not more than the simple search entry. SIS 2 will thoroughly change this. From now on, photos, fingerprints and if necessary even DNA profiles will be included in the SIS personal records. The character of the system is therefore substantially changed. Up to now, the SIS has been used first and foremost by officers controlling entry at the borders and inland. In future, it will increasingly be police crime investigation units who are interested in the SIS. Further planned innovations are as follows:

New categories are to be created in the area of stolen property searches - for stolen art objects as well as boats and

ships. The latter are also related to entries on surveillance under Article 99. This concerns, amongst others, boats and ships which are thought to be used for drugs transports or for "illegal immigration". The storage time for stolen cars is also to be extended.

The SIS, which up to now had rather simple search/inquiring capacities, is to get expanded search powers in its second generation, for the "officer on the spot". In the case of cars, this means that the officers can enter parts of the chassis number as search criterion, if the number is not fully recognisable. In the case of personal identification papers, the first name as well as the date of issue will serve as search criteria.

If the ideas of the working group are carried through, officers are to receive not only a single and limited answer to their query in the near future. Links are planned to be made between related entries, which will automatically bring a whole range of data (extradition orders for persons, related persons, vehicles under surveillance) on the screen.

### **Necessary changes to the agreement**

The SIRENE working group has worked on these proposal for several years now, it says in the French presidency paper. What it has not done, is to tackle the question if the SIS as a whole has been a sensible achievement. The question of efficiency is not even posed under police criteria, let alone a societal criteria. It is simply assumed that more data and search possibilities will automatically lead to more "successes". It remains to be seen how the parliaments - the European as well as national ones - will view the new Schengen plans.

After all, the legal implementation will not run so smoothly, as many changes and additions to the Schengen agreement will be required. This implies a new protocol, which, just as the Schengen Agreement itself, will have to be ratified by the parliaments. Above anything else, this will take time. It can therefore be expected that the Council, next to the changes resulting from the SIS II project, will present additional extensions to the Schengen Agreement to parliaments. The German 1999 presidency, which was the last before the integration of the Schengen acquis into EU structures, has already said what it wants: an increase in the volume and facilitation of cross border observations, more controlled deliveries, use of undercover investigators etc. A new Schengen avalanche is rolling towards us, and the price we have to pay for it, is once more a piece of our freedom.

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# “Crowd control Technologies” an assessment

**"Crowd Control Technologies - An Assessment Of Crowd Control Technology Options For The European Union" (EP/1/IV/B/STOA/99/14/01)** [The following are extracts from the executive summary from the final report on "Crowd Control Technologies (an appraisal of technologies for political control) by the Omega Foundation.]

This study grew out of a 1997 STOA report, "An Appraisal of the Technologies of Political Control" and takes that work further. Its focus is two fold: (i) to examine the biomedical effects and the social & political impacts of currently available crowd control weapons in Europe; (ii) to analyse world wide trends and developments including the implications for Europe of a second generation of so called "non-lethal" weapons. Seven key areas are covered by the report's project: (a) a review of available crowd control technologies; (b) relevant legislation at national and EU levels; (c) the relative efficiency of crowd control technologies; (d) their physical and mental effects on individuals; (e) the actual and potential abuse of crowd control technologies; (f) an assessment of future technologies and their effects; and (g) an appraisal of less damaging alternatives such as CCTV.

The report presents a detailed worldwide survey of crowd control weapons and the companies which manufacture supply or distribute them. It was found that at least 110 countries worldwide deploy riot control weapons, including chemical irritants, kinetic energy weapons, water cannon and electroshock devices. Whilst presented as humane alternatives to the use of lethal force, the study found examples in 47 countries of these so called "non-lethal" crowd control weapons being used in conjunction with lethal force rather than as a substitute for it, leading directly to injury and fatalities.

It suggests their use should be limited and provides a number of options to make the adoption and use of these weapons more democratically accountable. Three guiding principles were used in formulating these options, namely (i) the precautionary principle that health and safety considerations should be consistently applied across the EU and these should be independently and objectively assessed; (ii) assertions that a particular crowd control technology is safe within particular rules of engagement should be given legal force, both in terms of the accountability of the crowd control personnel and the alleged quality control and technical specification of a particular weapon; and (iii) human rights considerations should guide the licensing of all exports of crowd control weapons to countries which have a track record of violating them.

Assessments of maintaining the status quo option are compared with the benefits of options which take a more proactive approach to implementing the provisions of the 1997 Amsterdam Treaty agreements on creating areas of freedom, security and justice for both citizens who enjoy such rights and the officers who are charged with ensuring their protection. These options include licensing and independent evaluation of the biomedical impacts of such weapons via a formal process of "Social Impact Assessment"; legal limits on weapons which are exceptionally hazardous or lethal; legally binding rules of engagement; better post incident inquiry procedures and more effective, accountable and transparent export controls. The report and the comprehensive appendices provide considerable documentation in support of the policy options presented in Section A: Briefly -

**GENERAL PRINCIPLES - LICENSING** Within Europe, the study found that biomedical research necessary to justify the deployment of certain crowd control technologies was either absent, lacking or incomplete and that there was inadequate quality control at production level to ensure that adverse or even lethal effects were avoided. Currently, alleged non-lethality of any crowd control weapon is dependent on its purported technical specification presented by the manufacturer. However, hard evidence has already come to light during the course of the study that certain manufacturers have failed to carry out adequate quality control on their products to ensure that they meet the technical specification required to assure their alleged safety. Thus in the case of certain plastic baton rounds too much propellant was used which meant that the kinetic energy surpassed the technical specification taking the baton round further into the "severe damage and lethality" range. Likewise, in the case of French CS sprays, a failure to carry out adequate quality control meant that concentrations of the irritant chemicals were far in excess of the technical specifications. Such sloppy quality control would never be permissible in the pharmaceutical industry where alleged standards are subject to independent scrutiny and potential legal redress....

**CHEMICAL IRRITANTS** The study questions the wisdom of maintaining the status quo where government and company research, often undertaken after chemical irritant weapons have been authorised, continues as the main approach to justifying alleged "harmlessness." Given that different countries even within the EU have adopted different stances, there is a risk of not having proper regard to health and safety concerns, since many problems with toxic chemicals only emerge many years after operational usage. Both citizens and officers could have a future legal claim if scientific assertions of safety were later found to be less than well informed or negligent. An alternative option would be to further consider the options outlined in a previous STOA report (<http://jwa.com/stoa-atpc.htm>) which suggested that all EU Member States should establish the following principles:-

- \* Research on chemical irritants should be published in open scientific journals before authorization for any usage is permitted and that the safety criteria for such chemicals should be treated as if they were drugs rather than riot control agents;

- \* Research on the alleged safety of existing crowd control weapons and of all future innovations in crowd control weapons should be placed in the public domain prior to any decision towards deployment;

Within that context, the report takes the view that deployment of OC (pepper-gas) should be halted across the EU until independent research has more fully evaluated the risks it poses to health. Evidence emerging from work undertaken for this study, particularly the way that French chemical irritant sprays were hastily deployed in the United Kingdom, reinforces the need for these principles to be given legal force. The rejection of OC by the Swedish authorities because of its potential for causing eye damage, reinforces the need for a cautious and consistent view to be adopted by all European member states where citizens have equal worth under the commitment to provide universal areas of freedom, security and justice. A further precautionary measure would be to ask Member States within the terms of European data protection legislation, to tag the health records of all those affected by the spray who seek medical treatment, in case common health problems emerge in the future.

**KINETIC IMPACT MUNITIONS** Evidence is presented in the study of the misuse of these technologies and the breach of deployment guidelines which can make their effects either severely damaging or lethal. This is particularly so in the case of kinetic energy weapons. Maintaining the status quo in this regard allows potentially lethal crowd control weapons to be used on our streets which because of their inaccuracy could be targeted on to innocent bystanders, children etc. Yet, no European State has the death penalty for public order offences. An alternative option is to assume that all European citizens who enjoy areas of freedom, security and justice in their home member state should have equal enjoyment of such rights no matter where they are within the European Union. Such a notion implies a consistent and harmonised approach to the use of potentially hazardous riot weapons, one based on the precautionary principle that best and safest practices of public order policing should be adopted by all member states on the basis of the highest standards adopted by all.

It is recommended that new limits should restrict inherently unsafe technology which because of its technical and design characteristics is potentially lethal in many of the operational circumstances where it might realistically be deployed. US military data suggests that limits on the kinetic energy of baton round type munitions should be set excluding any weapon with more than 122 joules of kinetic energy. Indeed, the recommendations of one of the most exhaustive official inquiries ever commissioned on the use of kinetic weapons, i.e. those contained within the Patten Commission Report, September 1999, should be considered as providing a sound basis for the future use of kinetic energy weapons anywhere in Europe. These guidelines cover the need for a legalistic approach in defining the guidelines to be used both operationally and post incident when these weapons are used. Patten's view is that "guidance governing deployment and use should be soundly based in law, clearly expressed and readily available as public documents."

Any European wide adoption of these guidelines should incorporate the legal duties of the Member States of the European Parliament police forces to use only "reasonable force" which means that there needs to be appropriate mechanisms to ensure accountability after any incident where "less lethal" weapons have been used. Any crowd control weapon capable of producing a lethal impact should be subject to the same legal procedures and post incident inquiry as if it were a lethal firearm. Similarly, any Kinetic Impact Weapons with an energy greater than 122 joules should be considered as a lethal firearm as recommended in the Patten report and their use should be regarded as illegal if the use of lethal firearms in the same context would be illegal, for example where innocent bystanders may become unwitting targets. In this context, steps should be taken to ensure that all Kinetic Energy munitions are ballistically traceable to the weapon and security unit.

**ELECTROSHOCK & STUN WEAPONS** The study questions the role, deployment, trade and certification of electroshock weapons. It recommends that if stun weapons are deployed, there is a clear requirement for effective personnel training and transparent recording of usage. However this would enable electroshock weapons to come into the EU from the United States where they can be exported to any NATO member without a licence and for other trade and brokering in these weapons to continue. The question is why, given that so few countries in the EU now use them? This study found that no EU member countries officially admit to using electroshock weapons for policing but that there was significant evidence of EU collusion in supplying this "universal tool of the torturer" to the torturing states. Further more, the EC has actually given EC quality control markings for such weapons and foreign

manufacturers such as those from Taiwan boast that it gives an official seal of approval in promoting their overseas sales (Taiwan bans such weapons for home use). This practice should be terminated and the considered view of the report is that they should no longer be deployed or traded in Europe. The European Union is advised to give consideration to taking up the format request of the British government made on the 28 July 1997, which asked all of member States to follow their example in taking "the necessary measure[s] to prevent the export or transshipment of "Portable devices designed or modified for riot or control purposes or self-protection to administer an electric shock, including electric-shock batons, electric-shock shields, stun guns, and tasers, and specially designed components for such devices..."

**SECOND GENERATION CROWD CONTROL WEAPONS** The report warns against adopting ever more powerful crowd control weapons as "technical fixes" and allowing the policing assumptions of the United States to organise, militarise and market public order options for the European Union without public debate or accountability. Questions over the reliability and safety of certain US crowd policing weapons and practices should urge caution. Technical data in regard to the Second Generation of crowd control weapons from the US are discussed in this report, which advises that they should not be taken at face value. All such weapons should be subject to independent testing and licensing control and until and unless such a checking regime is in place, a moratorium should be considered on accepting any of this technology into European military and police crowd control arsenals. This would mean that no US made or licensed second generation chemical irritant, kinetic, acoustic, laser, electromagnetic frequency, capture, entanglement, injector or electrical disabling and paralysing weapons, should be deployed within Europe unless legally binding guarantees are forthcoming from the agencies deploying these weapons about their alleged safety in assessing the effects of such second Generation weapons, the report advises that adoption of the principles of ICRC (International Committee of the Red Cross) SirUS project (which suggests that because of their technical characteristics and human targeting mechanisms, certain weapons should be banned because they are intrinsically inhumane or capable of causing unnecessary suffering). Since much of this work is shrouded in secrecy, the European Parliament may wish to request the Commission to report on the existing liaison arrangements for the second generation of non-lethal weapons to enter European Union from the USA and call for an independent report on their alleged safety as well as their intended and unforeseen social and political effects.

**EXPORTS OF CROWD CONTROL WEAPONS TO HUMAN RIGHTS VIOLATORS** Member States currently have inadequate export controls to prevent the transfer, brokerage or licensed production of crowd control weapons to human rights violators, including weapons such as electroshock devices which have been directly implicated in torture. EU member states currently have inconsistent policies in regard to controlling the export of certain "crowd control" technologies. If this situation continues, European companies and governments will continue colluding with human rights violations in States that have very poor human rights records. It would be hypocritical for the European Union to define "areas of freedom, justice and security" inside its territories, whilst undermining the same rights of freedom, justice and security because of inappropriate and ineffective export controls and procedures on the supply, licencing and brokerage of crowd control weapons and munitions to other countries.

# Statewatching the new Europe 2001

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## Statewatch website

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

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