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"safe and dignified", voluntary or "forced" repatriation to "safe" third countries

- coupled with trade and aid sanctions against countries who are "uncooperative"

The European Union's policy on repatriating rejected asylum-seekers and "illegal" residents is now openly based on "voluntary" and "forced" repatriation to be carried out in a "safe and dignified" manner (see feature page 16).

This is to be backed up by two other moves. First, the Declaration that asylum-seekers from the ten EU applicant countries will automatically be refused and returned because they are "safe" countries (Justice and Home Affairs Council, 14-15 October). Second, the Conclusions of the Seville EU Summit in June which threatened trade and aid sanctions against third world countries who refuse to accept readmission agreements - with the automatic repatriation of their own nationals, people who may have passed through their country on the way to the EU and any stateless people in similar situations.

Applicant states "safe" third countries

The decision of the Justice and Home Affairs Council on 14-15 October to declare the ten EU applicant countries "safe" to return asylum-seekers is highly questionable. The United Nations High Commission for Refugees says that no country can be declared 100 per cent safe and that each application should be considered individually.

In its report of 23 October the UK Joint Committee on human rights concluded that: "in view of the well authenticated threats to human rights which remain in the states seeking accession to the EU.. we consider that a presumption of safety is unacceptable on human rights grounds".

This position is given added weight by the European Commission's own updated reports on the accession countries. The latest, for 2002, include the following conclusions: Estonia (use of force by police, arbitrary detention); Czech Republic (widespread discrimination against Roma); Hungary (degrading treatment by police, especially of Roma); Latvia (bad conditions at asylum detention centres); Lithuania (degrading treatment by law enforcement officials); Slovakia (degrading police treatment of people, especially Roma) and Slovenia (instances of the use of excessive force by police against people in custody, particularly Roma).

Readmission agreements and "sources" of migration

When it comes to readmission agreements there is no pretence that the countries to which people are to be returned are "safe", it is simply an "obligation" to readmit people as determined by the EU. Third world countries who refuse, or who are "non-cooperative", will face "appropriate measures" which could include a "review" of the "allocation" of funds to combat poverty (Seville point 11).

The Seville Conclusions go beyond the imposition of readmission agreements. The EU is demanding that any country which is the "source" of a "migratory flow" adopt a whole series of measures to prevent people entering and leaving (the first named countries are: Albania, China, Morocco, Russia and Turkey). The measures include "joint integrated border management programmes [and] comprehensive control measures". Where these plans "do not provide the expected result" the country will be "invited" to cooperate and adopt further measures or face political and economic sanctions.

Conclusion

The new EU's plans for the expulsion of "illegal residents" is based on the post-11 September assumption that such people are a potential terrorist (or criminal) threat to the internal security of the EU. This has been reinforced by the rise of rightwing and racist political parties in EU Member States who are now in government in a number of countries. In order to marginalise them, mainstream political parties have adopted many of the policies advocated by the parties of the extreme right - with the main target being refugees, asylum-seekers and "illegal" residents. Their motivation has not been based on principle but rather to remove challenges to their hold on power.

IN THIS ISSUE

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CIVIL LIBERTIES

AUSTRIA

Education data retention law

At the beginning of this year, under the auspices of the parents committee and a multimedia firm, an A-level college introduced a compulsory fingerprinting system which pupils need to go through before being able to order their lunch for the next fortnight. Now the Ministry of Education is planning to extend the practice in a pilot project involving four colleges, to control pupil's access to certain areas of the school. The fingerprinting and the recent Ministry plans follow legal changes introduced last year, allowing the collection and retention of personal data in the education system. The data ranges from exam results and special needs to behavioural assessments and parent's careers, effectively to be used by all public authorities.

The law has raised deep concerns in parent and civil liberties organisations on data protection grounds and in relation to children's rights. The Austrian Federal Law on the Registry of Educational Data (*Bildungsdokumentationsgesetz*) will allow authorities to "document" (ie. collect and retain for 60 years since the last entry) personal and educational data on students without separating the data from the person concerned. The fingerprinting of pupils has proved critics right that the new law has set a precedent for the practice of broad-based data retention by the authorities and the erosion of privacy rights, rather than representing a genuine government attempt to improve Austria's education system.

Parent's organisations, the Federal Council for Data Protection and civil liberties organisations all protested against the ministerial draft which served as the basis for the current law, when it was published by the Federal Ministry for Education, Science and Culture at the end of June last year. The Austrian Association for Data Protection (*ARGE DATEN*) rejected the draft wholesale on "constitutional and data protection grounds", and argued that the collection and effective life-long retention of personal data, which will be available to all public authorities, was in contravention to national and international human rights and civil liberties laws. It also said attempting such total control of citizen's personal data was last carried out in Europe during the nazi period. Despite such strong criticism as well as detailed recommendations for changes to the law by a number of organisations, it was passed by parliament (*Nationalrat*) without major amendments on 6 December last year.

The new law was said to be necessary for obtaining statistical information in order to improve the educational system in Austria. It foresees the creation of a central register of personal data relating to all pupils as well as university students, where the records will be kept for 60 years after the last entry (at the end of university education) where the record will include the following (§3):

> *Name (first and surnames, including academic grades), date of birth, social security number, gender, nationality, home address and school address, the starting date of the relevant training, the ending date of the relevant training, the institution's student reference number, the professed religion declared by the student or the legal guardian, the first year of compulsory school attendance, recognised special needs, attributes of regular or extraordinary studentship.*

The above data collection criteria apply to university students with their relevant examination system as well, whereby they will also have to reveal data on possible participation in international exchanges.

Criticism has been levelled in particular at the recording of special needs requirements, which are seen as subject to teachers' misinterpretation of pupil's behaviour or their possible prejudices, opening the door to stigmatisation in future life and career. The inclusion of other data, "relevant to schooling", has also alerted parents and civil liberties groups to the danger of social profiling and data abuse: the new law stipulates that schools need to record information such as participation in classes and extra-classes, general "success" at school, the individual's "educational development" as well as information on family participation in family burden equalisation schemes (as is the case particularly with economically deprived families).

The proclaimed aims of the legal changes, although not clearly stated in the Act, are apparently to develop the statistical handling of pupil's data for future improvements in the educational system or in the case of a pupil moving schools. However, the collection and processing of this data had always been regulated under university and school teaching laws as well as the Data Protection Act 2000. All educational institutions were able to process their pupil's data under the existing laws and any further collection of data would only be legal if they served pressing state interests. As these interests are not defined in the Act, *ARGE DATEN* points out that the Act is in contravention of Austria's constitutional provisions of the Data Protection Act as well as the EU standards on data protection.

The Act does not prohibit other authorities having access the data, which means the transfer of data falls under the vague regulation of "administrative assistance" (*Amtshilfe*), where all public institutions effectively have access to it. Again, *ARGE DATEN* points out that:

> *it takes only little imagination to think what destructive consequences information on developmental or socially related, time-specific unusual behaviour will have in the hands of civil servants, police or employment officers.*

In particular, the linking of personal records to an identity through the social security number implies a total loss of privacy as all public authorities will be able to access the records. Due to strong public criticism of the first ministerial draft, the final wording provided a tokenistic encryption method, whereby the number of the personal record is linked to his/her social security number through encryption. The only effect of this encryption is that anyone who knows a person's social security number has access to the central register; the social security number however, is known to employers, authorities, tax advisers, health insurance officers etc. Dr Hans Zeger, spokesman for *ARGE DATEN* commented:

> *The so-called data encryption is nothing more but a simple technical procedure by which codes are changed, but that does not provide any improvement in the protection of privacy.*

For background information and a regular news service (all in German) on privacy and data protection in Austria, see www.argedaten.at.

HOLLAND

Hunt for al-Qaeda "logistical supporters"

In the Netherlands, the hunt for so-called logistical supporters of the al-Qaeda network is concentrating on the *Groupe Salafiste pour la Predication el le Combat* (GSPC) (which separated from the Algerian *Groupe Islamique Armé*, GIA). According to the Dutch General Intelligence and Security Service, the GSPC maintains contacts with al-Qaeda. At the end of last year, four people were arrested in Rotterdam, allegedly in relation to the attacks of 11 September (see *Statewatch* vol 12 no 1). One of those arrested was released because of a lack of evidence and another was freed because of a curious miscommunication between the public prosecutor and the Immigration and Naturalisation Service. The lawyers for the remaining two

accused have called the second person as a witness, but he seems to have disappeared, (suspicion has been voiced that this individual was an informant, infiltrator or agent of the French Intelligence Service). In June a court extended their detention by a further three months, for the second time. On 21 June, the police arrested Adel T., alias Amine M., in Montreal, Canada. He had been living at the same address as the four people arrested last year (see *Statewatch* vol 12 no 1). Adel T. will be extradited to Holland and testify in the case against the two men who are still detained.

On 24 April 2002 ten more people, mainly Algerians, were arrested in the south of Holland, at Eindhoven, Bergen op Zoom and Groningen. Five of them were released immediately because of lack of evidence, another was placed in an immigration detention centre for lack of documentation. The other four were detained in Breda prison awaiting their trial. On 5 June one of the men (hereafter RD) managed to escape by binding his bed sheets together and climbing down them. The fact that RD escaped led to questions in the Dutch parliament. A project manager, involved in the building of the prison security network in 1992, said that it was impossible that the person did not have help from inside. After climbing down the bed sheets, he had to climb a wall. The project manager stated in the *BN/De Stem* regional newspaper that "not even a bird can pass these walls". A large-scale search was organised by the police without any result. The three other detainees are still imprisoned.

On 6 June 2002 a special police team raided a house by mistake where four Iraqis lived. A neighbour observed the police action and said that he saw the men lying face down on the ground with their heads covered. The police said that it was a very well prepared action. One of the men is the father of Arkan A, a refugee granted asylum in Holland, who was visiting his son.

The four men were playing dominos in the house when they heard yelling, and were thrown to the floor. Not until they reached the police station in Assen did they realise they had been arrested by the police. The neighbour who watched the arrests at first thought the operation was a robbery, asking one of the men if he should notify the police. The carefully planned and prepared police action ended in the police station, where the men were told that their arrests had been a mistake. Why the police officers did not identify themselves during the operation and why the action was carried out in such a violent manner, remains unclear. In the middle of the night the men had to go home by themselves by taxi. When they arrived a police car brought the keys to the house. At 5.30 am they checked the house and found that all the personal files had been disturbed. During an investigation in the hospital it became clear that the nose of the father of Arkan A. was broken and that he had a crack in the bone of his left lower arm.

Six days later, a 19-year old man was arrested in Groningen who is also accused of being member of the GSPC. The police found passports in his house which, according to the Public Prosecutor, were false. This was probably the man the police sought during the arrest of the Iraqis.

FRANCE

Papon "too ill" to serve sentence

The convicted war criminal, Maurice Papon, walked free from La Sante prison in September after serving only two and a half years of a ten year sentence for crimes against humanity. A Paris appeal court, in a decision described by his lawyer as "a moment for humanity" and "special treatment" by human rights organisations, ruled that the former cabinet minister's failing health qualified him for immediate release. Papon was sentenced after being found guilty in 1998 of deporting 1,600 Jews, whom he described as an "inconvenience", to Germany from Bordeaux. Many of his victims died in the Auschwitz death camp. Papon's crimes against humanity were not limited to the second world war. Appointed Paris police chief between 1954-1967, he oversaw the massacre of 200 Algerian protestors at a demonstration in 1961 (see *Statewatch* vol 9 no 2).

As the unrepentant Papon, who in March asserted that he has neither "remorse nor regrets" for his actions, posed for cameras on his release, families and organisations that had waited for nearly two decades for him to be brought to account greeted him with shouts of "assassin", "fascist" and "murderer". Outside his home protesters read out the names of his victims. Doubts about the extent of Papon's illness have been expressed by other detainees at La Sante as well as prison officers. Human rights organisations point out that Papon was the first of 1,764 prisoners in this category to benefit from reforms allowing the early release of critically ill prisoners.

Papon will now seek to reverse his conviction, following a decision at the European Court of Human Rights last July, which ruled that France had breached his right to an appeal against the original conviction. His appeal rights had been rescinded after he attempted to avoid prosecution by fleeing to Switzerland in 1999. Maurice Papon is the only high ranking French civil servant to be sentenced for collaborating with the nazi deportations.

Guardian 19, 20.9.02.

Civil liberties - in brief

■ **Germany: CDU violates privacy in election campaign**: The German investigative news programme *Monitor* has revealed that in order to improve their election chances, the conservative party *Christlich Demokratische Union* (CDU) in Cologne contracted the market research firm *dimap* to develop a computer programme that not only collected the personal addresses of almost all eligible voters in an electoral district, but also their social and political background. From 180,000 potential voters, 176,000 were entered in a database detailing their age, social status, housing situation, all contact details (address, telephone, mobile and fax numbers) and even the type of car they drive. None of those placed under surveillance were informed. The CDU has refused to comment and will not disclose where the personal data has come from or if it has been or will be destroyed. An individual can only press charges in civil law against the party if they have experienced personal injury on grounds of a privacy violation. To date, no investigation has been instigated by the authorities. *See Monitor report from 26/09/02: Dubioser CDU-Wahlkampf (Dubious CDU election campaign).*

■ **Turkey: Ocalan death sentence commuted to life sentence:** The special state security court in Ankara has enacted the ban on executions, decided in August 2002 by the Turkish government. They have converted the death sentence passed on PKK (Kurdistan Workers Party) leader Abdullah Ocalan for treason into a life sentence. Ocalan is being detained in isolation on Imrali island. This decision was taken in the framework of negotiations to be admitted into the EU. Ocalan was tried in 1999 following his capture in Kenya by Turkish security forces. This followed pressure from Turkey for him to be removed from Italy where he had put in an application for political asylum. Long after his arrest and trial, Ocalan was granted political asylum in Italy. *El País 4.10.02*

Civil liberties - new material

From Kosovo to Kabul. Human Rights and International Intervention, David Chandler. *Pluto Press* 2002, pp.268. Chandler's book charts the development of an increasingly interventionist brand of human rights advocacy that threatens to revolutionise international

relations, giving powerful countries (notably NATO countries, or "coalitions of the willing") unlimited scope for intervention around the world. Notions such as national sovereignty, the UN emphasis on neutrality and negotiated settlements, and the idea of force being a last resort are being undermined as obstacles to the imposition of a global human rights framework. Looking at recent conflicts Chandler argues that an elitist view of human rights sets an agenda whereby intervention abroad makes up for an absence of legitimacy and ethics in domestic policy, with failure to intervene forcefully abroad viewed as complicity in abuses. This interventionism requires the identification and punishment of culprits and an extended remit for NATO countries and the US to intervene in disputes involving human rights in other countries. This, according to Chandler, is turning back the clock to an imperial time when "might is right", and human rights issues will be addressed differently depending on whether countries are friends or foes of the USA and its allies.

Human rights free zone, Louise Christian. *Red Pepper* September 2002, pp19. Discusses the fate of the hundreds of prisoners "incarcerated without trial in barbaric conditions at the US Naval Base at Guantanamo Bay, Cuba". Christian's arguments range from the legitimacy of America's use of Cuban national territory as a prison to the legitimacy of the "no man's land" where prisoners are held without access to Geneva Convention rights in inhuman conditions.

The other September 11, Paul Foot. *Guardian* 18.9.02. This piece, reviewing a short film by Ken Loach, recalls the "even more appalling manmade disaster [that] took place on Tuesday September 11, 1973...This was the armed overthrow of the elected social democratic regime in Chile...[which] ousted the elected government, murdered the elected prime minister Salvador Allende, and set up a military dictatorship under Margaret Thatcher's friend Augusto Pinochet. The dictatorship murdered up to 30,000 of its opponents on some estimates."

IMMIGRATION

DENMARK

Loyalty oath to become a Dane

As part of the spring deal between the new rightwing Anders Fogh Rasmussen government (liberal/conservative) and the extreme right wing populist Dansk Folkeparti (DF, Danish Peoples Party) regarding refugee and immigration policy (see *Statewatch* vol 12 no 1) a special declaration must now be signed by applicants to become Danish citizens.

In the declaration the applicant must sign the following general statement:

> *I declare faith and loyalty toward Denmark and the Danish society and states willingness to abide by Danish law and respect fundamental Danish legal principles*

The oath of loyalty asks the applicant to list all criminal acts for which they have been convicted, whether in Denmark or abroad. The oath then, extraordinarily, requires people to admit to offences which the police do not know about (again in Denmark or back in their home country). The information provided may eventually be handed over to the police for possible investigation and prosecution.

As a sign of the new political situation in Denmark - a dramatic move to the right since the elections last November - these changes in the procedure to apply for citizenship have raised few eyebrows or the public debate. In the parliament the Red-Green Alliance have taken up the implications of the oath of loyalty which are far-reaching. One problem is that it is not specified in what the consequences are of breaking the oath. When one is being accused of being disloyal to Denmark, what can one then do to defend oneself from accusations? Who is to decide that a person is disloyal? These are some of the questions raised with the Minister of Integration, Mr Bertel Haarder.

One of the few people outside the parliament to have taken up the issue is the former human rights commissioner for the Baltic Sea Area, Mr Ole Espersen. In a comment in the daily *Information* he writes:

> *the document bears testimony of the xenophobia and mistrust which the government parties and Dansk Folkeparti so eagerly claims does not exist in Denmark*

The agreement between the government and DF also contains a number of demands which the applicant must fulfil, such as the ability to speak Danish at the same level as the final exam in the basic school (by the age of ten) and a knowledge of Danish history, culture and society at the same level.

Applications for citizenship will only be considered after nine trouble-free years of uninterrupted residence in the country. If a foreigner is married and, due to the partner's work has to leave the country for a period, this period is not included in the nine years. Added to this is a condition that the partner's work abroad is for Danish "interests", whatever that means.

The effects of this new procedure are already evident. Only about 900 people been granted citizenship and this is expected to be, at the most, a couple of thousand. This compares to 16,757 last year. 11,000 people, who were waiting to be processed, having completed their tests, have now received a letter telling them that their application have been nullified and that they must start all over again under the new rules.

ALBANIA/ITALY

Customs patrol sinks dinghy

The Albanian survivors of a collision between a dinghy and an Italian customs patrol boat in Albanian waters on the night of 21 July 2002 have accused customs officers of deliberately sinking the dinghy, that was carrying 36 people to Italy. The death of two persons has been acknowledged by Italian authorities after their bodies were found, and a further 15 are alleged to be missing by survivors. Fatyon Hysi, one of the survivors, said that:

> *The customs patrol boat was playing cat and mouse.. They followed us with their lights switched off, and when they arrived at about 100 metres distance from the dinghy they suddenly switched their lights on. They continued to follow us, overtaking us and crossing our route.. the patrol boat continued its game for a good half hour, until it struck us. It hit the rear end of the dinghy, smashing one of the engines and causing many of us to fall overboard.*

Reform of Italian immigration legislation (see *Statewatch* vol 11 no 6 and this issue) allows Italian police or customs patrols to stop, search and, if evidence of involvement in the smuggling of migrants is found, to confiscate vessels and lead them into an Italian port. These powers also apply to navy ships, and may be carried out in national waters and even outside them, "in nearby areas", without further specification. There has been an Italian police presence in Albania aimed at preventing illegal immigration for some time, with Italian *carabinieri* posted in Albanian ports and a base on the island of Saseno opposite the Albanian port of Valona. At a time when Italy, Greece, Spain and the UK are proposing, at an EU level, to conduct joint patrols of the Mediterranean Sea, it is worth recalling that in 1997, an Italian navy frigate sank the *Kater i Rades*, a ship laden with migrants, while it conducted aggressive manoeuvres and lost control in the rough sea, reportedly leading to over 100 deaths. More recently, on 7 March 2002, over 50 people are believed to have died in a shipwreck that led to criticism of the Italian navy after a nearby navy ship refused to take part in the rescue (see *Statewatch* vol 12 no 2).

Associazione Senzaconfine, press statement, 23.7.02; Corriere della Sera 24.7.02

ITALY/ALBANIA

Agreement on sentencing in country of origin

An agreement between the Italian and Albanian governments signed by the respective Justice Ministers, Roberto Castelli and Spiro Peci, on 23 April 2002 will allow judicial authorities in either country to pass sentences on nationals of the other country. The agreement allows the country of origin to imprison nationals who have been sentenced in the other country "if the sentenced person finds him/herself in its territory", as would be the case following expulsion - this is even before documents concerning the sentence passed against them have been made available by the sentencing country, or a subsequent decision has been made on the basis of those documents.

Although the agreement is couched in terms of reciprocity, it is aimed at expelling Albanians sentenced in Italy to serve their prison terms in Albania, alongside "illegal" Albanian migrants who have been expelled, in accordance with the Italian government's plans to combat illegal immigration and prison overcrowding. In fact, the Italian Justice Ministry commented on the agreement by noting that it will reduce overcrowding in Italian prisons, as well as having the humanitarian goal of allowing prisoners to serve their sentences in their country of origin, near their families.

Nonetheless, the text of the Italian-Albanian additional agreement to the 1983 European Convention on Extradition states (Art 2.3) that "for the execution of the sentence as described in this Article the agreement of the sentenced person is not necessary", a notion that is reiterated in Article 3 in relation to sentences that have been passed, or administrative measures whose effects include expulsion or police accompaniment to the border. The opinion of the sentenced person with regards to serving the sentence in their home country has to be heard, but the preceding clauses empty it of any significance. To decide on whether to execute the sentence, authorities from the country of origin must receive a statement of the sentenced person´s view on the transfer, a copy of the document whereby the sentence is passed, and a copy of the administrative order forbidding the person from returning to the sentencing state. After ratification by the two countries, this additional agreement will apply to people against whom sentences have been passed.

SPAIN

Migrant occupation of Seville university

On 10 June 2002, 400 immigrant workers locked themselves in Pablo de Olavide University in Seville, beginning a two-month occupation to demand the regularisation of their status (ie: the right of residence). Some of the protestors had taken part in similar occupations last year but felt compelled to re-occupy because of the failure by the authorities to fulfil commitments (ie: obtaining preliminary employment contracts and being regularised by the government). The police response was to cordon off the university including mounted officers, and screening everyone seeking access to it. In the process they arrested several dozen immigrants who tried to join the occupation. The police even conducted a mounted charge within the university grounds, followed by detentions, which led to tension with the university authorities.

The initial cooperation given by the head of the university to the occupation dissolved as the occupation continued. It ended with complicity in a police raid and the detention of those who remained inside. The role of mediator in negotiations with the government was taken on by the Andalucían regional ombudsman (*Defensor del Pueblo*), José Chamizo. After the first month of occupation, differences between the immigrant collectives ended with the decision by 145 of them to abandon the occupation and wait for their regularisation requests to undergo due procedure. With these divisions Chamizo abandoned his role as mediator.

On 8 August, shortly before the second month of the occupation, the police broke into the university and detained the 270 immigrants who remained inside, expelling a large number of them from the country in the following weeks.

DENMARK

Anti-detention action during JHA Ministers meeting

On 12 September this year, around 25 activists organising under the name of Global Roots (*Globale Rødder*) staged a protest at the *Sandholmlejren* detention centre, near the city of Hillerød. The detention centre was targeted one day before the informal Justice and Home Affairs meeting in Copenhagen.

The *Sandholmlejren* detention centre has been seriously criticised in the past by Amnesty International as well as the local authority health officer. Apart from being imprisoned without having committed any crime, five inmates have to share a room of 15 square meters, with toilet and kitchen. The activists brought ladders and forced their way through the fences of the detention centre and to occupy the roof of the prison for about three hours with banners and slogans before leaving peacefully. To publicise the conditions at the centre and in criticism of the EU's asylum and migration policies, the occupation coincided with the JHA ministers meeting, during which asylum and migration policies and strategies are discussed and decided by EU government ministers. A *Global Roots* press release states that:

> *Only people who can prove themselves to be victims of political persecution can dream of getting asylum in Europe. In our opinion people fleeing conditions of poverty have the same right. Peoples must have the right to live wherever they want. At the same time we must commit ourselves to a fair distribution of the world's wealth, thus ensuring that nobody is forced to flee their homes*

Some activists were arrested and held for eight hours after the occupation.

Between the 13-15 December, *Global Roots* together with the *Initiative for Another Europe* is planning a series of workshops and seminars as well as civil disobedience actions and parties against xenophobia and racism and the restrictive EU asylum and migration regime. Various other Scandinavian groups and initiatives are involved in the three-day programme which includes demonstrations and rallies. Information and updates on counter summit activities can be found on the internet.

See http://www.disobedience.dk/ for information on the counter summit, the English section is still under construction & also see http://www.cph2002.org/english/calendar/ for information in English

ITALY

Immigration law amended

The Bossi-Fini law amending the Italian immigration law (see *Statewatch* vol 11 no 6) underwent limited changes as it passed through the Senate and Parliament, and these changes are intended to toughen the restrictive effects on immigrants of a law whose original draft was widely condemned as racist. Its provisions aim to seal Italy's borders, including the use of navy ships or customs patrols to stop ships carrying "illegal" immigrants from reaching Italy even outside its territorial waters. It introduces stricter sanctions for "assisting illegal entry" (3 years in prison and a

15,000 Euro fine per person) and doing so "for profit" (4 to 12 years in prison and a 15,000 Euro fine per person), limits the number of foreigners allowed into Italy to people hand-picked in their countries of origin, extends the duration of legal detention in detention centres (see *Statewatch* vol 10 no 1) from 30 to 60 days and makes expulsion orders immediately enforceable.

The main changes to the draft involve the fingerprinting of all third-country nationals who apply for residence permits or for their permit to be renewed, and the introduction of possible retaliatory sanctions, such as the review of aid and cooperation programmes, if governments in third countries fail to take adequate measures to prevent the illegal return of their citizens to Italy after their expulsion. This measure was aired by the Italian, Spanish and UK prime ministers before the EU summit in Seville in June 2002, although it was withdrawn after facing criticism, and replaced by a formula whereby third countries that cooperate would be rewarded.

Other developments include a halving of sentences for persons who cooperate with police or judicial authorities to provide "crucial evidence for the reconstruction of events, for the identification or capture of one or more authors of crimes and for the withdrawal of significant resources to the undertaking of crimes". Qualified nurses working in the public or private health sector have been added to a special category of kinds of employment for which foreigners may follow specific, and by comparison advantageous, procedures for securing permission.

Legge Turco-Napolitano 40/98, Ddl Senato 795 - Modifica alla normativa in materia di immigrazione e di asilo, Ddl Camera 2454 - Modifica alla normativa in materia di immigrazione e di asilo.

Immigration - in brief

■ **UK: Deportation filmed to show enforcement is working:** The UK government, one week after Home Secretary Blunkett admitted that the target of 30,000 deportations per month had not been met as it was "too ambitious", invited national camera teams and journalists to broadcast the deportation of 48 undocumented migrants, from the Czech Republic - who were identified by one newspaper as Roma, 12 children amongst them, as they stepped into the plane. A spokeswoman from Human Rights Watch said that "to expose people in this way without their consent is appalling"; "macabre" and "indefensible" others commented. Human rights organisations have consistently warned against Roma persecution in the Czech Republic as police brutality and racist attacks places Roma communities under risk for life and limb. The move is in line with Blunkett's opportunistic scapegoating of migrants urging them to speak English at home and blaming ethnic communities for their "failed integration". *Guardian 21.9.02, The Times 21.9.02.*

■ **Spain: 4,000 deaths in dinghies in five years**. According to the *Asociación de Trabajadores e Inmigrantes Marroquíes en España* (ATIME, Association of Moroccan Workers and Immigrants in Spain), between 1997 and July 2001 a total of 3,932 immigrants, the majority Moroccan or of sub-Saharan origins, have disappeared or died in the waters of the Strait of Gibraltar and of the Canary Islands as they tried to reach the Spanish coast in dinghies. In the first six months of this year, and only counting information concerning the Spanish coast, 18 immigrants have died and 14 have disappeared in six known shipwrecks. This information, provided by the AITME on 1 August, was confirmed only a day later when the bodies of 13 drowned immigrants (five from Maghreb countries and eight sub-Saharans) were found in Tarifa (Cádiz). *El Pais* also recently reported that six sub-Saharan women and three men, one of whom was Moroccan, died in a dinghy shipwreck near the Spanish coast of Barbate (Cádiz) on 8 October. Forty-two people were reportedly crossing the Gibraltar Strait in the vessel, 28 of whom were saved in a coordinated rescue attempt involving helicopters, launches and divers, with a further five missing, presumed dead. The large percentage of women and children can be seen from the following figures: on 8 August 70 immigrants were intercepted in front of the Tarifa coast as they travelled in a dinghy. There were 29 women on board, 11 of whom were pregnant and another that was only 12 years old.

■ **Spain: The quota system fails**: The system to limit the entry of immigrants based on a previously established quota (known as *contingente*) assigned to certain kinds of employment and nationalities, has proved to be totally ineffective. The government fixed the figure for 2002 at 10,884 employment vacancies that needed to be filled by 1 October. By the deadline, only 400 of the posts were covered. On one hand, the system prevents work and residence permits from being obtained by thousands of people who have firm employment offers and who could be working, earning salaries and contributing to the *Seguridad Social* (Social Security).

■ **Spain: SIVE comes into operation**. In early August SIVE (Integrated External Surveillance System), the electronic border-sealing system officially came into operation. The mechanism combines radar towers for the detection of boats with infra-red cameras, cameras for night and day-time vision, on land-based platforms (both fixed and moving), as well as sea launches and helicopters. The project can detect a boat at a distance of 10 kilometres. The SIVE has been tested in the Canary Islands in the last months (see *Statewatch* vol 12 no 3 & 4). The first phase of the project covers the Cádiz coast, where large numbers of dinghies carrying migrants have been recorded. It will go on to cover a radius extending from Huelva to Almeria.

Immigration - new material

Estadisticas, delito e inmigrantes, *Mugak*, no 19 2002, pp60. This issue aims to deconstruct the link between Spanish immigrants and crime that has been pursued by the media, government and public authorities in the wake of figures indicating a rise in crime. The government attributed this increase to the rising number of immigrants, although they exaggerated the increase in the number of crimes committed by immigrants, the number of immigrants arrested for criminal conduct, and ignored the nature of crimes such as illegal residence. On the other hand, they failed to note that in 1998-2000 the increase in the number of immigrants had been substantially higher, yet figures concerning crime levels indicated a substantial decrease. In that instance, figures concerning crime were not linked to immigration. The issue also carries: a letter to president Aznar from an Argentinian citizen who has been expelled from Spain, a press review section and an analysis of the prison population in Sangonera showing how statistics can be manipulated are also included. Available from: Centro de Estudios y Documentacion sobre racismo y xenofobía, Peña y Goni, 13 - 1º -20002 San Sebastian, Basque Country, Spain.

Marokko - Transit NON Stop. *Forschungsgesellschaft Flucht & Migration (FFM) and Solidarité sans frontières (Research Centre for Flight & Migration (Berlin) and Solidarité sans frontières (Bern))* ISBN 3-935936-10-9, pp 159, 2002, 9 Euro. This publication is the sixth in a series of research books published by the FFM based on qualitative and quantitative research on flight and migration in the EU's neighbouring, so-called transit countries. A common theme of the publications is the EU's common asylum and migration policies and their impact on migrants and refugees ("origin" or "transit") in neighbouring countries. The present research on Morocco provides impressive detail and analysis of the situation of refugees and migrants, based on several hundred interviews (including those conducted by other human rights and migrants organisations), as well as doing justice to the reality of women and children. Finally, the book addresses the role non-governmental or humanitarian organisations who increasingly aid the state in the implementation of the global migration regime that EU

ministers and officials have developed since the 1970's. Available from: *Assoziation A, Gneisenaustr. 2a, 10961 Berlin, Germany.*

Making an Asylum Application: A best practice guide, Jane Coker, Garry Kelly & Martin Soorjoo. *Immigration Law Practicioners' Association* (ILPA) May 2002, pp.132.

Asylum statistics United Kingdom 2001. *Home Office Statistical Bulletin* 09/02 (31 July 2002), pp62 (ISSN 1358-510X).

LAW

SWEDEN

Amnesty "concern" at Gothenburg trials

An Amnesty International (AI) report in June 2002 states that charges brought against 69 people following the demonstrations during the EU summit in Gothenburg in June 2001 resulted in 52 individuals being found guilty of criminal offences. AI expressed concern over the fact that significantly higher sentences were passed in relation to comparable events in previous years, and the extensive period of solitary confinement and denial of prompt access to legal counsel during pre-trial detention experienced by several arrested protestors. AI says that further trials are expected, including those of four police officers on charges of misconduct who had been in charge at Schillerska school, where people were alleged to have been arbitrarily detained and to have suffered ill-treatment (including kicks, beatings with batons, having their hands tied behind their backs and being made to lie face down). A report into events surrounding the summit by the Gothenburg Committee headed by former Prime Minister Ingvar Carlsson is expected in December 2002.

Information gathered by a Gothenburg prisoner support group, *Solidaritetsgruppen*, in June 2002, gives details on the trials. The longest prison sentences passed were of two years and six months for instigating rebellion and for disturbance. At that stage, with several trials and appeals outstanding, eight people had received sentences of two years or more, twelve received sentences of between one and two years, and 13 sentences of under a year. Eight people were found not guilty and young offenders were generally punished with community service or fines, except for one case in which a Danish youth was sentenced to a month in a young offenders institution. Nineteen foreigners were charged, 13 from Denmark, three from Germany and one from Italy, Norway and the UK. Eleven were found guilty (seven Danes, two Germans, one Italian and one from the UK) and, apart from the Danes, were banned from returning to Sweden for 10 years.

In the first case referred to the Swedish supreme court 19-year-old JA from Gothenburg had his sentence reduced from one year and four months to four months. A group of eight persons got lengthy sentences (from 1 year and 4 months to 2 years and 4 months) on charges of “being involved in disturbances, instigating revolt and causing disturbances”. Prosecutors claimed that they coordinated and instigated disorder by sending text messages to protestors on the streets. They have appealed to the supreme court.

Both the protestors who received bullet wounds when police fired shots at protestors were found guilty. Twenty year old SS, a German who was shot in the leg, was sentenced to a year and eight months in prison after being charged (twice) with involvement in disturbances - a sentence that was confirmed by the supreme court refusal to consider the case. Hannes Westberg, who was shot in the stomach by police and narrowly survived after spending some weeks in a coma, received an eight-month sentence for involvement in disturbances and attacking a police officer. On the other hand, as the AI report stresses, prosecutors felt that there was not enough evidence to indicate that the police officer who shot Westberg [as he ran away] had committed a criminal offence. AI suggests that fabricated material was used against Westberg in the trial, with doctored sound recording added to a video that showed him throwing stones at police.

Amnesty International "Concerns in Europe", January - June 2002; Solidaritetsgruppen "Update on prisoners in Gothenburg", 11.6.02

ITALY/EUROPE

Solidarity with Genoa accused

Many summits have taken place since Genoa and the death of Carlos Guiliani, but those people who were victims of police brutality and subsequent prosecution have received little media attention. Preliminary proceedings are still ongoing against 300 people and police are planning to start charging people this year. Groups in different countries have started defence campaigns and are urging support for the dismissal of all preliminary proceedings and an independent inquiry into the police operation during the summit of Genoa. Concern is particularly centred on prosecution evidence which rests on: the main criterion being applied is being classified as a member of the "black bloc", and therefore being open to prosecution under terrorist legislation. Defence campaigns are providing detailed personal testimonies of police brutality, the repeated beatings, threats and humiliations of people imprisoned at and after the summit.

genoajust@lycos.com (Austria), genova.libera@gmx.net (Germany), see also: www.no-racism.net

ITALY

Judicial "independence threatened"

Repeated clashes between the Italian government and sections of the judiciary over planned reform of the judicial system and long-running court cases involving Silvio Berlusconi and some of his associates, led the UN Special Rapporteur on the independence of judges and magistrates to undertake an urgent mission to Italy on 11-14 March 2002. He explained that "a confrontation of this nature can easily degenerate and become a threat to the rule of law". Hundreds of magistrates demonstrated in January to express their concerns about "government attempts to undermine the independence of the judiciary", political interference in current trials, planned reform of the justice system seeking to put prosecutors under control of the executive and a reduction of police escorts for magistrates and prosecutors.

The preliminary report and statement by Mr Param Cumaraswamy to the UN Commission on Human Rights indicated that there was "reasonable cause for judges and prosecutors to feel that their independence is threatened". He also called on "prominent political figures" involved in criminal cases "to respect the principles of due process and not to use their positions to delay the proceedings unduly", and to respect decisions made by courts.

After Cumaraswamy's recommendations, criticism of judicial decisions by members of the government have continued, with Berlusconi repeatedly claiming that the 1990s Tangentopoli trials, that uncovered endemic corruption and led to the collapse of the main governing parties, was politically motivated by the "toghe rosse" (red gowns, that is, communist magistrates), who he claims are persecuting him. Magistrates were also being criticised in connection to decisions to investigate and charge police officers and officials for the use of violence against demonstrators in Naples in March 2001 and in Genoa in July

2001.

A number of legislative initiatives by the centre-right government have been widely viewed as being aimed at obstructing magistrates in specific cases. They include a law passed to introduce stricter guarantees of authenticity for material obtained from foreign magistrates. This is seen as a ploy to invalidate material received by Italian investigators regarding banks accounts held in Switzerland in the framework of Italian-Swiss judicial cooperation, and a planned law on "legitimate suspicion" to allow a change of venue if suspicion arises that a judge may be partial (widely viewed as an attempt to have Berlusconi´s trials moved from Milan).

Even the government's rejection of the early implementation of the European arrest warrant has been viewed as an exercise by Berlusconi to escape prosecution for fraud instigated against him by judge Baltasar Garzón in Spain. In this context, it is interesting to note that a law to decriminalise company fraud in the form of false accounting prevented the Prime Minister's brother Paolo and his close associate Dell'Utri from being convicted in separate trials. The two were acquitted on 8 and 9 October 2002 because, following the decriminalisation of false accounting, "the facts do not constitute a crime", or "are not included in the criminal code".

SECURITY & INTELLIGENCE

NETHERLANDS

New Intelligence agency law

On 20 February 2002 the Dutch Senate approved a new law on the Intelligence and Security Services. With the new legislation the Netherlands will have its own equivalent to MI6 (overseas intelligence agency), with far reaching powers. While the law was introduced on the premise of improving democratic control of the secret services, in practice it gives them more powers than they had before.

In June 1994, in accordance with the European Court of Human Rights, the *Raad van State* (the highest governmental body for the supervision of laws) ruled in favour of giving people the right to view the files created on them by the intelligence services. It also imposed democratic control of the services and stringent conditions on investigation methods.

The new law follows the European Court's decision on the inspection of security service's records. Access to one's records is allowed on condition that:

* the information is more than five years old;
* no new information has been added relating to the subject in the last five years;
* the information is not relevant to any running investigation, and that
* the sources and the methods of the intelligence services are kept secret.

With the new law the names of the intelligence services will change. The *Binnenlandse Veiligheidsdienst* (Internal Security Service) will become the *Algemene Inlichtingen- en Veiligheidsdienst* (AIVD, General Intelligence and Security Service) and the *Militaire Inlichtingendienst* (Military Intelligence Service) will become the *Militaire Inlichtingen- en Veiligheidsdienst* (Military Intelligence and Security Service). As outlined in *Statewatch* (vol 9 no 3 & 4), the name change implies the extension of the remits of both services.

Serious questions about the new law have been raised about the issues of democratic control and limitations on complaints about the services' conduct. Complaints can be directed to the national ombudsman (National Complaints Commission), but this institution can only give an opinion and does not have any powers to impose sanctions. An appeal against the opinion of the Ombudsman is not possible. Alongside this a new Commission for the supervision of the services will be created. It will consist of three government appointed members, who will oversee the legitimacy of the activities of the services. Its function and reports are secret.

The biggest change that the legislation introduces is the extension of the services remits to allow for wide-reaching investigation methods. Many of the activities sanctioned by the new law were already practiced by the services, although they were not covered legally. The services are now allowed to open mail without requiring the authority of a judge, rendering the right to confidentiality in communications obsolete. The constitution will have to be amended to allow for this removal of data protection rights. Further, they will be allowed to hack into computers and to record and tap all communications by phone, even in public places. In the past it was necessary to gain the authority of three ministers to tap phone lines, now the approval of only one minister is sufficient.

The services can break into a house without the permission of a minister in the following cases:

* to investigate computer or communication equipment,
* to place wiretaps and videotapes,
* to search a house and to place tracking equipment.

In other instances the services are required to seek permission from a minister, but this seems unlikely to occur as most security service activities will be covered by the preceding instances.

Furthermore, the services are allowed to use undercover agents who can commit any crime without the risk of prosecution. In defence of this measure, the government argued that limitations on them might lead to their exposure. As there are no limitations to the crimes specified, theoretically undercover agents would be allowed to commit murder to avoid being discovered by the organisation they infiltrate.

The AIVD is allowed to search the content of mobile telephone information which comes from abroad. The communication can be intercepted and filtered by computers. *De Raad van State* declared that this is possibly contrary to the Constitution. Intelligence services can now ask for the log-files of telecommunication companies, (log-files contain traffic data - all phone numbers phoned from the line).

But the possibilities go even further. The services are also allowed to request account information from banks, bonus card information from supermarkets, and CCTV video tapes of train stations.

A special section of the new law is reserved for encryption. Services are allowed to:

* make encryption impossible by forcing telecommunication companies to reveal the encryption methods of their clients,
* alter or steal encryption keys during hacking actions of the services and
* force people to decrypt their messages for the services.

If someone refuses cooperation, they can be imprisoned.

Altogether, it can be said that the Dutch Intelligence and Security Services are trying to compete with their foreign counterparts. They will also be able to operate abroad and although the provisions on industrial espionage have been removed under pressure from the European Commission and the Dutch Parliament. In an explanation of the new law, the Home Affairs Minister said that it had to be understood in the light of a broad definition of national security. Economic interests were specifically included in the new law as part of national security. Under pressure fom the European Commission, this proposal was removed, but it remains to be seen if this means that the services will not focus on industrial espionage in the future. With a new department of about one hundred employees, especially for work

abroad, the international arm of the new services will receive a new boost - the separate *Inlichtingendienst Buitenland* (Intelligence Service in Foreign Countries) was closed down in 1994, after a series of scandals.

Security - new material

Fingerprints in the digital medium, the evolution of electronic privacy, Keith Brennan. *Fortnight* no. 406 (July/August) 2002. Evaluation of the UK's Regulation of Investigatory Powers Act that is particularly critical of the data retention clauses. "Cartography of communication is set to achieve both precision and totality. Someone may well be watching you."

Blair's big con, Robin Ramsey. *Chartist* September/October 2002, pp20-21. Ramsay considers the rise of "new" Labour "through constitutional changes and...through a shift in the party culture towards an acceptance of Stalinist style discipline." It charts the "prawn cocktail" years and the increasing influence of the Bilderberg Group and American Democratic Party politics.

Removing the Veil: US intelligence & the origins of 911. *CovertAction Quarterly* no. 71 (Winter) 2001, pp.50. Covers the USA Patriot Act, depleted uranium, political Islam, Plan Columbia, the military-industrial complex, the Palestinian diaspora and the right of return and America's "special relationship" with the Saudi regime.

RACISM & FASCISM

AUSTRIA

Haider flees sinking FPÖ ship

The Austrian government collapsed in September when Chancellor Wolfgang Schüssell called a general election after his far-right coalition partners resigned from the cabinet. The conservative *Österreichische Volkspartei* (ÖVP) had formed a government with the previously untouchable *Freiheitliche Partei Österreichs* (FPÖ) in February 2000. Schüssell, who at the time of the elections pledged to go into opposition rather than form an alliance with Jörg Haider's FPÖ, said that he now wanted to "create clarity". The new elections are expected to take place on November 24.

The resignation of vice-chancellor, Susanne Riess-Passer and two other ministers, followed a "putsch" at the FPÖ congress on October 20 by Haider. Haider, who because of his frequent statements expressing admiration for the policies of Adolf Hitler had been forced to stand down from the FPÖ leadership as a condition of their joining Schüssell's coalition, had given the leadership role to Reiss-Passer, ostensibly retiring from national politics to run his feifdom in Carinthia.

However, the nature of the move became clear at the congress when he forced the resignation of the party's cabinet ministers by demanding sweeping government policy changes. At the same time the party executive reinstated Haider as leader.

Days before his confirmation as FPÖ leader at a special convention on September 19, Haider astonished his party by withdrawing his nomination. In a statement Haider claimed that he had received threats to his family, forcing him to drop his leadership claims. In reality his decision is widely thought to have more to do with forecasts that the FPÖ will do disastrously in the forthcoming election.

Green Party MP, Karl Ollinger, said: "The FPÖ ship is rudderless and sinking fast and Jörg Haider does not want to be associated with it. He is leaving the sinking ship".

Guardian 10, 12.10.02; Daily Telegraph 16.9.02

UK

Coalition launched to boot out BNP councillors

In October the Coalition Against Racism launched its "Unite to Stop the BNP" campaign to defeat the three recently elected British National Party (BNP) councillors in Burnley, Lancashire. The campaign aims to bring together broad opposition, both locally and nationally, "against the BNP and their politics of race hate". In September one of the councillors, Carol Hughes, refused to support Burnley Football Club's initiative to ban racist supporters from their ground. Hughes abstained from the council's motion of support, while the BNP's two other councillors failed to attend the meeting.

The fascist party recently attempted to sponsor its own football team, the Tipton Boilers, who have been instructed by the Football Association to remove the BNP's logo from their shirts. West Midlands BNP spokesman, Simon Darby, said "It is a free country and we can sponsor who we want".

At Nottingham crown court at the beginning of September members of a racist gang, who invaded a football match and attacked an Asian team and their supporters, were jailed. Twenty-five white men, armed with iron bars, clubs and bottles, scaled a fence to assault Guru Nanak Gurdwara FC in a Leicestershire league match. The ringleader, Jason Martin, was jailed for 4 years and 9 months while another six members of the gang were sentenced to between three years and 18 months.

The "Show Racism the Red Card" campaign has launched an educational resource pack on racism in football. The pack includes a series of historical fact sheets and a teacher's secondary schools pack. The campaign has also produced a video and CD ROM to accompany the fact sheets. It has information in seven languages and can be bought for £2 from Show Racism the Red Card, PO Box 141, Whitley Bay, Tyne & Wear, NE26 3RG, UK. The Coalition Against Racism camapign can be contacted at PO Box 263, Oldham OL8 1PZ, UK.

Coalition Against Racism press release 14.10.02; Birmingham Post 12.7.02; Daily Star 3.9.02; Daily Mirror 13.9.02

UK

Stephen Lawrence suspects jailed for racist attack

Two of the five men named in the media as the murderers of Stephen Lawrence - the 18-year old black student who was stabbed to death by a gang as he waited for a bus in Eltham, south London, (see *Statewatch* vol 3 no 3, vol 5 nos 3 & 5, vol 6, no 3, vol 7 no 1, vol 8 nos 3/4, 5) - were jailed at the beginning of September after racially abusing a black police officer. Neil Acourt and Stephen Norris were sentenced to 18 months imprisonment at Woolwich crown court for the aggravated racial harassment of detective constable Gareth Reid in May 2001, less than half a mile from the scene of Stephen's murder.

The court was told that Norris drove a hire car at the policeman and that Acourt threw a drink at him and shouted "nigger". They were arrested after police traced them from DNA samples left at the scene. Judge Michael Carroll described the attack as "serious" and said that: "The court has a duty to make clear society's abhorrence of racially aggravated intentional harassment." The two men, who in mitigation claimed that their lives had been disrupted by Stephen's death, said that they would appeal against the conviction.

Eltham has seen a renewal of serious racist attacks over the last year, recalling the days prior to Stephen Lawrence's murder

when a local gang, the "Nazi Turn Outs", was responsible for a series of vicious racist assaults. In September the fascist British National Party announced, on BBC Radio 4's morning news, that they were launching a leafleting campaign in the area targeting school students.

The Metropolitan police have also attempted to exploit Stephen's murder, by overlooking the fact that Stephen's killers escaped conviction because of their institutional racism and corruption, to call for changes in the law on double jeopardy. Under the double jeopardy rule a defendant cannot be tried twice for the same crime. The Met has supported a proposed Home Office amendment that would allow a second prosecution for serious crimes, including murder, rape, manslaughter and armed robbery.

The planned move has been described as "outrageous" by Imran Khan, the solicitor who acted for Stephen Lawrence's family. He said: "Those who are going to be targeted and prosecuted will be exactly those who are over-represented in the criminal justice system anyway. It will be really ironic that a change which came out of a race case ends up being used against black people." The change, which is opposed by civil liberties organisations, is expected to come into effect next summer. A campaign will be launched to oppose it.

Racism and fascism - in brief

■ **UK: "Police indifference" blamed for racist murder**: Friends and supporters of Tayman Bahmani, a 28-year old Iranian asylum seeker who was murdered in a racist attack in Sunderland in late August, have said that "police indifference" was partly to blame for his murder. They have also called for the discriminatory policy of forced dispersal of asylum seekers to be halted. Tayman was stabbed to death outside his home, in one of the most deprived areas of Britain, in an attack that his supporters - and police - say was racially motivated. He had been in the UK for two years and had previously complained of racial harassment. Mohammed, who shared a house with Tayman, said: "We have had our windows broken over 25 times.. We asked the police for a security camera, but they refused. We know the attackers, they abuse us and tell us to go home. Four weeks ago one of the refugees had his nose broken, the police came and took a statement and left." Tayman's friends have picketed the city's police station and organised a vigil at the spot where he died. Only eighteen months earlier another asylum seeker had been wounded in a similar attack. An 18-year old man from Scotland has been charged with murder, and two other men were charged with violent disorder. *"Kick it Out" news release 30.8.02; NCRM press release 29.8.02.*

Racism & fascism - new material

El Ejido revisited. *Equal Voices*, issue 8, April 2002, pp.32. This issue returns to the scene of racist disturbances two years ago in southern Spain, where North Africans were attacked by mobs and many had their homes and shops burnt down. It finds a desolating picture in which no one has been charged, only one aid organisation has remained in the town, whose head suffers daily threats and believes that "People are behaving as though they have won a war", and Moroccans keep a low profile. Some compensation has been paid, and 40,000 residence permits issued in the area, but the housing problem has not been solved and plans to make farmers build living quarters on their land are criticised as establishing "bonded labour in a more sophisticated form". A special report on "Racism, Football and the Internet" looks at the websites of 455 prominent supporters groups from eight European countries (Germany, UK, Italy, Austria, Switzerland, Spain, France and Portugal). Thirty-two were found to have latent racist content, nine featured recurrent racism and nine more where categorised as having strong and well structured racist content. Four of these were in Italy (including *Irriducili Lazio*, *Juventude Crociata Padova* and *Pro Patria*), the only country where some websites had links to a neo-fascist political party (*Forza Nuova*), two in Switzerland (*Koma Kolonne 88* and *Commando Ultrá 88 Lugano*), one in Spain (*Mods e Skinheads Real Madrid*), one in Austria (*Rapid Club Wels*) and one in Germany. Available from: European Monitoring Centre on Racism and Xenophobia (EUMC), Rahlgasse 3, A-1060 Vienna, Austria.

The Battle of Wood Green, David Renton, Keith Flett & Ian Birchall. *Haringey Trades Union Council* 2002, pp.20 (ISSN 0-9531179-4-X) £2.50. In April 1977 a 1,200 strong National Front march through Wood Green, north London, was confronted by 3,000 anti-facists. The ensuing clashes saw 81 people arrested, 74 of them anti-fascists. This pamphlet, with essays by Dave Renton, Keith Flett and Ian Burchill attampts to explain "what the National Front was, where it came from, and why so many people felt that it should be opposed."

POLICING

UK

"In the public interest" to keep "discriminatory" DNA

In September the Court of Appeal upheld an earlier divisional court ruling that the retention of body samples is "necessary in a democratic society", (see *Statewatch* vol 12 no 2). The Appeal court judges rejected, by two to one, a claim that keeping the DNA samples and fingerprints of suspects subsequently cleared of any charges, breached their human rights. Richard Gordon QC, who was representing an unnamed youth and a man, Michael Marples, who had all charges against them dropped, said South Yorkshire police operated a blanket policy of retaining all DNA samples and fingerprints unlawfully. Lord Woolf and Lord Justice Walker (with Lord Justice Sedley dissenting) ruled that the practice of keeping genetic data from innocent people adhered to the European Convention on Human Rights, while Walker claimed that it was in the public interest for the police to have as large a databank as possible.

Currently 1.5 million DNA profiles are held on the national database, which is run by the Forensic Science Service, mainly from convicted criminals, but also from ongoing casework and unconvicted suspects. However, at the beginning of September the director of the Police Standards Unit, Kevin Bond, called for all forces to use the database more extensively. He complained about the "poor use" of the database, pointing out that in certain forces the technology was not understood.

The government is also proposing to allow police forces access to a "back door" national fingerprint database, through the introduction of an identity card. The identity card, which the government calls an "entitlement card" despite the fact that it will deprive those who refuse to carry it of access to services that they are entitled to, is expected to carry detailed fingerprint data. Roger Bingham, of Liberty, said: "We are talking about a national fingerprint or biometric database by the back door."

The retention of DNA from cleared suspects was criticised by the man who discovered genetic fingerprinting, Sir Alec Jeffries, who argued that it was "discriminatory". He believes that the database should cover the entire population. Jeffries, addressing the British Association festival of science, claimed that there were three options for retention:

i. The database could contain the DNA of convicted criminals. This would reduce its effectiveness and deny the police a lot of potential for fighting crime;

ii. The database could contain the DNA of convicted criminals and cleared suspects, as approved by the Appeal Court. This was "discriminatory" and almost certainly over-represented

black people in London and Asians in the Midlands as they were likely to be questioned more often by police, Jeffries said;

iii. The database could include everybody. This was Jeffries preferred option, "with appropriate safeguards". These include maintaining three separate databases controlled by a separate agency. One would hold profiles, another would hold names and addresses and a third would contain data that would connect the DNA to the names and addresses.

The Appeal Court has refused permission to appeal their decision or take the cases to the House of Lords. But, Peter Malby, the solicitor who brought the cases, told the *Times* that he would appeal to the law lords. He argued that: "It is clear.. that the judges recognised the deep unease that innocent people feel about this practice of retaining samples, and the fact that one of the senior judges today disagreed with their colleagues makes it clear that there is still every reason to continue." The dissenting Appeal Court judge, Lord Justice Sedley, argued that each case should be considered on its merits.

Guardian 13.9.02; Police Review 13.9.02; Times 13.9.02

NETHERLANDS

"Experimental" pepper spray used as weapon

The introduction of new police equipment in Holland is done in a typical "Poldermodel" way. "Consensus" lies at the heart of this model, in which experiments, research and debate are prolonged until eventually introduction is inevitable. Although pepper spray is already being used throughout the Netherlands, it is still being portrayed by the authorities as "an experiment" that is due to conclude in 2006. This contradiction is further compounded by the fact that the pepper spray currently used, is produced by a different company than the pepper-spray which was extensively tested by the TNO, the Dutch Institute for Applied Scientific Research. This year, every police officer will be issued with pepper spray, and even police reservists are issued with the spray to take home on return from their annual training. One person has already died this year after having been sprayed with the gas.

Despite explicit rules for the use of pepper spray, it is frequently used by police as a means to control situations. In February this year, there was a minor fight in a squat in Amsterdam between the squatters and the house owner. The house owner had his foot in the door but could not get further. When the police arrived, the first thing they did was use pepper-spray to "control" the situation. According to regulations, the distance between the police officer and the person who is sprayed should be at least 1 meter. In a recent documentary (Saturday 29 June 2002 with Aart Zeeman) on the Rotterdam police force however, one could see that a policewoman was spraying people from a distance of about 20 centimetres. Other precautionary measures are not met. It is stipulated that every police car should have special equipment to aid the people who came into contact with the spray, but in the majority of cases, the victims are only helped at the police station.

On 9 May 2002, a man was arrested and died after pepper spray was used against him. The National Department of Criminal Investigation (*Rijksrecherche*) has begun investigating the death. Meanwhile an internal police investigation reached the conclusion, four days after the incident and a forensic examination, that the death was not the result of police action. Family and friends were furious and broke the windows of the local police station.

The use of pepper spray is not restricted to the police. On 27 June 2002, the Federation of Parents of Mentally Disabled People announced that in the Groot Schuylenburg psychiatric health clinic, pepper spray is being used to "calm" aggressive patients. The former Liberal MP Erica Terpstra has asked for an explanation about its use in the clinic from E. Borst, the Minister of Health.

ITALY

Policeman acquitted of killing

Police officer Tommaso Leone has had his 10-year sentence for the "voluntary homicide" of 17-year old Mario Castellano overturned on appeal. Leone shot the youth in the back after Castellano failed to stop his moped for a police check in Agnano near Naples on 20 July 2000. His claim that he accidentally fired the shot was contradicted by an eyewitness who described how Leone had "knelt down, aimed and fired" after failing to stop Castellano by chasing his moped, (see *Statewatch* vol 10 nos 3 & 4).

At his trial in April 2001 (see *Statewatch* vol 11 nos 3 & 4), conducted under the *rito abbreviato* (shortened procedure involving hearings in front of a single judge introduced to speed up court cases, which may be chosen by the accused in exchange for discounted sentencing) judge Alfonso Barbarano found Leone guilty. The appeal court, presided over by judge Pietro Lignola, found that "the facts did not constitute a crime", suggesting that it interpreted the firing of the shot as unintentional. Leone's version was that he held the gun as he was hailing Castellano, and that the shot was fired as he slipped trying to stop the youth escaping. The acquittal means that the officer, who was temporarily suspended from duty, may have his suspension revoked.

Castellano's mother Patrizia Battimelli described the acquittal as "scandalous", arguing that "all the evidence in the trial nailed Leone. The site examinations, the witness accounts, his precedents". Castellano's lawyers had claimed that Leone´s record was littered with worrying precedents, including the shooting of a smuggler in his native Apulia region in 1996, for which he was acquitted. She added that she had tried to have the appeal judge changed, but failed to present her request within the deadline. Patrizia Battimelli had found out that before he was selected to hear the case, judge Lignola wrote an article in support of "zero tolerance" in *Roma* magazine, stating that although he:

> *cannot accept that a police officer kills a 17-year-old boy who is committing a crime punishable with a fine... I, and many others, cannot accept the exaggerated space that government media has reserved for this very sad event. The unfortunate officer, tried and sentenced without appeal by the media, is a far too convenient a scapegoat*

Leone spent 460 days in Santa Maria Capua Vetere military prison until he was released on 29 October 2001, when the appeal court accepted the defence lawyers' argument that the reasons for preventative custody (that he may escape or tamper with evidence) no longer applied. Antonio Ascione, regional secretary of the police trade union SIULP, expressed his satisfaction with the outcome, "once again our trust in the judiciary has been shown to be well placed".

Il Mattino 2.10.02, Repubblica 2.10.02.

UK

"Suppressed" film wins award

Ken Faro and Tariq Mehmood, the co-directors of the film *Injustice*, an uncompromising documentary produced by Migrant Media which examines black deaths in police custody, won the prestigious BFM (*Black Filmmaker Magazine*) best documentary film award at the end of September. The film, which highlights the struggles of families to gain justice after the death of a family member in police custody, was officially launched in August 2001, but cinemas were immediately pressurised by the Police

Federation to cancel or face a lengthy and expensive legal action.

The "ban" was broken when in August 2001, at a viewing at Conway Hall, London, the film was shown as part of an *Inquest* and *United Friends and Families Campaign* public inquiry into deaths in custody. Then the audience barricaded the exits and took over the projector, showing the film in full, despite attempts to disrupt them. The film, highlights the deaths in police custody of Shiji Lapite (see *Statewatch* vol. 5 no. 1, 4 and vol. 6 no. 1) and Ibrahima Sey (see *Statewatch* vol. 6 no. 3, vol. 7 no. 6), both of whom were found to have been unlawfully killed by inquests. A third case is that of Brian Douglas (see *Statewatch* vol. 5 no. 3, vol. 6 no. 4) and the film presents compelling evidence for the prosecution of two named police officers involved in his death. The film also documents the campaigns of numerous other families, many of which have been covered in *Statewatch*, over a five year period.

The BFM award describes *Injustice* as:

a breathtaking piece of cinema [that] has reduced audiences to tears with its moving portrayal of the struggles for justice by the families of people who have died at the hands of police officers. On its release... the police tried to censor the film by threatening cinemas. Months of fighting by the film-makers and the families in the film, ended in victory with the police backing off and the film screening across the UK, Europe and the USA.

Despite the films impressive reviews, television producers in the UK have refused to show the film.

For information on screenings of Injustice and articles about the film email info@injusticefilm.co.uk, or visit their website: www.injusticefilm.co.uk;

Policing - in brief

■ **UK: Alder officers cleared:** In June, after a three-month long trial, the five police officers charged with the manslaughter of Christopher Alder were cleared of all charges. The outcome was foretold by Christopher's sister, Janet, over a year ago when she said: "They have done all that they can to cover it up.. I have no confidence in these people.. I expect nothing." However, Janet's prediction was perhaps inevitable - not since 1969 has a policeman been convicted for involvement in a black death in custody. Christopher died in Queen's Gardens police station, Hull, in April 1998, after being detained by police officers. He was dumped on the floor of the police station with his trousers around his ankles, doubly incontinent and struggling to breathe. As he lay dying for ten minutes the police officers joked and made monkey noises, but this taped evidence was inadmissible because it was not possible to identify which officer made the sounds. Lesser charges of misconduct were also dismissed because there was not enough evidence "to prove that each defendant behaved wilfully." *Crown prosecution Service press release 21.6.02; CARF 68 (Autumn) 2002.*

■ **UK: "Independent" complaints body delayed for a year:** The new Independent Police Complaints Commission (IPCC) that will succeed the widely discredited Police Complaints Authority (PCA), has had its launch delayed by the government. The IPCC was scheduled to take over from the PCA next year, but this has been put back until April 2004, to allow the body more time to recruit staff. The Superintendents' Association and the Association of Police Authorities, who are on the steering group overseeing the setting up of the IPCC, have both expressed "disappointment" at the delay. David Palmer, secretary of the Superintendents' Association, said that the delay will allow the service to have more input into the creation of the new commission. The United Friends and Family Campaign (UFFC) have already rejected the claim that the PCA is "reformable" rather than "discredited". Seeing the new body as falling far short of the "sweeping reforms needed" the UFFC have called for a genuinely independent body. *Police Review 6.9.02.*

■ **UK: Family seeks judicial review of inquest open verdict:** The family of Harry Stanley, a 46-year old Scottish painter and decorator who was shot dead by armed police as he walked to his home in September 1999, are seeking a judicial review of an inquest's open verdict ruling. The family believe that coroner did not allow the jury to consider a verdict of unlawful killing and that the inquest also saw an attempt to smear him, when details of long-spent criminal convictions were released in an attempt to undermine his case. Harry was shot dead by armed police after he left the Alexandra public house in Hackney, when they received information that he was an "Irish terrorist" carrying a shotgun in a plastic carrier bag. In fact the "shotgun" was a table leg that his brother had repaired for him. Having recently been released from hospital after an operation, Harry had difficulty in raising his arms above his waist and was unable to surrender (even if warnings were given), resulting in him being shot in the head by Inspector Neil Sharman (see *Statewatch* vol 10 no 2, 6, vol 11 no 3 & 4).

■ **Spain: Plan to "combat criminality"**: President Aznar presented the so-called Plan to Combat Criminality on 12 September 2002, a few days after he stated that he was "going to sweep criminality off the streets". The range of measures envisaged include: making the criminal code tougher; a higher proportion of sentences to be served, with the suppression of prison benefit regimes and an increased use of provisional imprisonment; the expulsion of foreigners involved in crimes or offences entailing sentences of under six years; an increase in numbers of judges and prosecutors; speedy trials; the contracting of 20,000 police officers and *Guardia Civil* (paramilitary police force) officers over the next three years.

■ **Spain: Deaths of immigrants in police custody continues.** On 30 June another immigrant died in a Spanish police station. It happened in Las Palmas and the deceased was a young Kenyan, not older than 25-years old who had reached the coast of the Canary Islands on a dinghy with 16 other sub-Saharans. As has happened on other occasions, the police statement says that the cause of death is unknown. The *Comisiones Obreras* (CCOO) trade union condemned the lack of health care for immigrants. The subsequent autopsy indicated that two heart attacks had caused the death.

Policing - new material

Bürgerrechte & Polizei (Civil liberties and the police), *Cilip* 72, No. 2/2002, ISSN 0932-5409, pp 110, individuals: 7.16 Euro, institutions: 10.74 Euro. This issue focuses on the democratic rights of assembly and demonstrations and their erosion over recent years. From the history of the violation of these constitutional rights, demonstration bans and police "crowd control" strategies to the criminalisation of demonstrators and the political policing of anti-fascist demonstrations, the articles detail how police strategies in relation to demonstrations have become more flexible with new legal powers, where the law's wording has resulted in arbitrary arrests and police misconduct. New technologies of control, such as biometrics, are also explained and it is found that although biometric identification has become a buzzword in anti-terrorist ideology, its practical implementation is very difficult. To order: *Verlag Cilip*, Malteserstr. 74-100, 12249 Berlin, 0049-30-838 70462, info@cilip.de.

Police and Criminal Evidence Act 1984 - Code A: Code of Practice for the exercise by police officers of statutory powers of stop and search and recording of police/public encounters. Home Office (March) 2002, pp.22. This draft code of practice "reflects the work which has been done in response to the [Stephen] Lawrence Inquiry Report." Available from the Home Office website: www.homeoffice.gov.uk

PRISONS

ITALY

Protest at extension of “hard” regime

The hard prison regime governed by article 41 bis of the penitentiary system code, temporary legislation that was renewed on a yearly basis, is to be made permanent, and to become applicable to criminal offences involving terrorism (subversive activity) and human trafficking. It was previously applicable to serious crimes involving participation in organised crime syndicates, notably the Mafia and other such organisations, like the ´Ndrangheta in Calabria, Camorra in Campania and Sacra Corona Unita in Apulia.

It introduces a system whereby: a) prisoners are excluded from benefits such as work outside prison, short-term release for good behaviour, or alternative punishment to detention (the exclusion may be overturned by inmates becoming informants); b) increased precautions for internal and external security are taken; c) there is a reduction in the number of visits and telephone conversations allowed; d) the amounts of money and parcels detainees may receive from outside of prison are limited; e) they may not take on any role as representatives of detainees. Effectively, it means that visits and contacts with the outside world are severely limited, a semi-isolation regime is imposed, hours spent outside of cells are curtailed and the concession of benefits is denied, among other consequences.

The explanatory memorandum attached to the draft law to reform the special prison regime claims that the experience in fighting organised crime has shown the importance of “putting into place measures aiming to guarantee the interruption of contacts with the rest of the organisation”. It adds that this is even more important if one considers the “worrying” resurgence of terrorism. The extension of the 41 bis regime to terrorism will affect Islamic detainees suspected of belonging to al Qaida and similar organisations, and to persons accused of committing crimes with "aims of terrorism”. The latitude with which such legislation may be interpreted is a possible cause of concern, considering the number of recent arrests on suspicion of “terrorism” that have proved unfounded, and the investigation and arrests of members of the Taranto section of the Cobas trade union last June on grounds of “subversive association”.

The Radical Party published a dossier on detainees serving under the 41 bis regime, indicating that on 27 July 2002, there were 645 such prisoners held in special sections in prisons in Cuneo, L'Aquila, Marino del Tronto (Ascoli Piceno), Novara, Parma, Pisa (Therapeutic Diagnosis Centre), Rebibbia (Female section), Rebibbia (Male section), Secondigliano (Naples), Spoleto, Terni, Tolmezzo (Udine) and Viterbo. The three women held under the 41-bis regime are held in Rebibbia prison in Rome. These sections are usually in a separate building and managed by the Gruppo Operativo Mobile (GOM, see new materials). Some have a special “reserved area” for prisoners that are considered particularly important or dangerous, of which there are 17 (including Mafia super-boss Totó Riina). One of the problems highlighted is that of prisoners who are selected for a harder regime than their crime would entail because it is sometimes considered dangerous for top criminals to share a “reserved area”. The dossier also documents the poor medical treatment reserved for detainees serving under the 41 bis regime.

Sergio D’Elia and European MEP Maurizio Turco visited the prisons in which the special regime is in force, interviewing detainees. They claim that the norm “indefinitely suspends some fundamental freedoms of detainees”, and that the Italian Constitutional Court has ruled that this would only be constitutional if it was for a limited period. The dossier describes conditions in the cells, noting that measures such as light deprivation (resulting from multi-layer barring of windows that allow very little light through) cause “unnecessary and unreasonable suffering, inflicted out of mere sadism” in a letter complaining about prison conditions addressed by detainees in Viterbo prison to President Carlo Azeglio Ciampi in August 2002. Interviews with prisoners also indicated the feeling that video-conferences stifle their defence in court: one claimed that the use of video-conferences is “perfect for the prosecution”.

A protest that started in Marassi (Genoa) after the suicide of two inmates in late July (see *Statewatch* vol 12 no 3/4) concerning prison conditions, received support in other prisons, spreading outside Liguria, the region where it started. It was followed by a further protest promoted by *Papillon*, a cultural association run by inmates in Rebibbia prison in Rome, that started on 9 September. It included a refusal to eat prison food, to carry out ordinary prison work routines, and so-called “noisy protests” (including banging on cell bars). The aims of the protest include abolishing articles 41 bis and 4 bis of the penitentiary system code, which regulate the special regime. Other demands to deal with overcrowding and prison conditions include: for the national health service to take over health in prisons; reform of the criminal code, including the decriminalisation of lesser crimes and abolishing life sentences; a generalised three-year pardon; the expulsion of foreign detainees who request it; and an increase in early release and alternative sentencing schemes. After five days, the justice ministry acknowledged that the protest involved 90 prisons, and *Papillon* suggests that 115 prisons were eventually affected in the action lasting most of September (these included all the 116 prisoners serving under the 41 bis regime in Spoleto). On 22 October *Papillon* announced that the action would re-start on 11 November 2002.

Draft law project, "Modifica degli articoli 4 bis e 41 bis della legge 26 luglio 1975, n. 354, in materia di trattamento penitenziario"; on the protest, www.rebibbiapapillon.org; dossier on the 41 bis regime, www.radicali.it; Repubblica, 19.7.02, 26.9.02, 24.10.02; Corriere della Sera 23.9.02.

UK

Another death in Feltham YOI

On 26 September 2002, a jury returned a verdict of "suicide to which neglect contributed", at an inquest held into the death of 16 year old Kevin Jacobs, found hanging from the bars of his single cell at HM Young Offenders Institute Feltham, in the early hours of 29 September 2001. Deborah Cole, co-director of INQUEST noted that "Kevin had been recognised as a deeply disturbed young boy at risk of suicide, yet was placed in an unsafe single cell...If children like Kevin continue to be sent to prison they will continue to die."

Kevin had a history of serious self-harm, and had recently been informed by Lambeth social services that he would be homeless upon his release from custody. Two weeks before his death he had hanged himself to the point of unconsciousness. On 26 September 2001 he had smashed a light bulb in his cell on the induction wing, clearly intending self-harm. Ripped sheets with a ligature hook had been found beneath his bed. Despite this, because the safe observation cell was in use, Kevin was placed on normal location following return from the hospital wing. The inquest revealed that no proper Mental Health Act assessment had ever been carried out in relation to Kevin and that there had been no effective liaison between the prison, Lambeth social services, and the Youth Justice Board.

INQUEST Press release 26.9.02; Miscarriages of Justice UK Press release 26.9.02

UK

Prisoner resistance

With prison conditions deteriorating as overcrowding increases, prisoners have begun to organise resistance to their conditions. Protests took place in September over conditions at HMP Swaleside, HM YOI Ashfield, and at HMP Pentonville, where an eight hour sit down was held over continued confinement to cells.

Three prisoners at HMP Frankland, Tony Daniels, Greg Newland and Tony Woods, have been on dirty protests to protest the continued segregation of Daniels, a black prisoner known for his spirited resistance to prison racism. Tony Daniels was held for seven months in segregation at HMP Long Lartin before being shipped to HMP Frankland and immediately re-segregated. A demonstration was held outside HMP Frankland to support the prisoners.

Dirty protests have also occurred at Swaleside and Long Lartin. At HMP Parkhurst, another black prisoner, Dorent Lord Francis, announced the start of an indefinite hunger strike on 11 September 2002, to protest his unjust imprisonment and wrongful conviction, and the Prison Service's violation of his right to privacy and family life - his location at Parkhurst prevents his elderly parents being able to visit him. For updates, contact Miscarriages of Justice UK on 0121-554-6947.

Miscarriages of Justice UK; Prisoners Fightback; Justice for Mark Barnsley Campaign

UK

Wormwood Scrubs inspection

On 6 September 2002, the Chief Inspector of Prisons, Anne Owers, reported on an unannounced inspection at HMP Wormwood Scrubs over a 10 day period in December 2001, following the appointment of a new governor and the jailing of prison officers following serious assaults on prisoners.

The report notes that inspectors found evidence of good and carefully supervised practice in the segregation unit (where the assaults had taken place) and no evidence of a culture of brutality towards prisoners. However, the inspectors note that "Wormwood Scrubs may have instituted systems which make prisoners safe from staff, but it had no effective systems to make them safe from one another or themselves." First night and induction procedures were entirely inadequate. Allegations of prisoner-to prisoner assaults had trebled since the last inspection. Nearly one in three prisoners reported that they felt unsafe sometimes, often or most of the time. Forty-four percent of recorded injuries to prisoners were as a result of self-harm; a further 34% resulted from fights and assaults. Health care was worse than on previous inspection - no clinical manager had been appointed; the condition of in-patient wards was described as appalling and patient regimes (particularly detoxification regimes) were entirely inadequate.

Purposeful activity had declined. In February 200 only 17% of prisoners reported that they were out of cells for less than 4 hours per day. On re-inspection the number had risen to 44%.

ECHR Chamber decision

Ezeh and Connors v United Kingdom (nos 39665/98 and 40086/98)

The applicants, both UK nationals, are serving prisoners. The case concerned the applicability of Article 6 (right to a fair trial) of the European Convention on Human Rights to prison adjudications. Mr Ezeh was charged with using threatening language to a parole officer, and Mr Connors with assault on a prison officer. Both were found guilty at adjudication. Mr Ezeh was sentenced to 40 days detention, and Mr Connors to seven days detention.

The applicants complained under Article 6.3 (right to legal assistance) in that they were not allowed to have a lawyer present at the hearing before the governor and that they could not obtain free legal aid for legal representation prior to and during the hearing (this latter ground was not considered).

The Court found that the nature of the charges against the applicants, together with the nature and severity of the potential and actual penalties, were such as to lead to the conclusion that both applicants were subject to criminal charges within the meaning of Article 6.1 of the Convention and that accordingly Article 6 applied to the adjudications. The governor - as was his right under domestic law - had decided that legal representation was unnecessary. The Court considered that as a result, the applicants were denied the right to legal representation and held unanimously that there had been a violation of Article 6.3(c), (15.7.02).

Prisons - in brief

■ **UK: Prison overcrowding:** On 20 September 2002 the UK prison population stood at 71,894, an increase of 4,659 since September 2001, and 7,747 above the Certified Normal Accommodation figure. Statistics released by the Howard League for Penal Reform show that, as of August 2002, over 52,500 prisoners were being held in overcrowded conditions, with the worst overcrowding found at HMP Preston. Over 20% of prisoners were forced to double-up in their cells. On 29 August 2002 the Prisons Minister Hilary Benn tried to claim that: "Regimes are still being delivered, and prisoners are still receiving education, purposeful activity and getting exercise and time out of cells." *Howard League for Penal Reform press release 29 August 2002; Miscarriages of Justice UK; Fight Racism Fight Imperialism.*

Prisons - new material

Punishment & Society vol 4 no 3 (July) 2002. This is a special issue on prison privatisation with contributions on legitimacy and accountability (Elaine Genders), prison commodities advertising 1949-99 (Mona Lynch), nonprofit privatisation in juvenile punishment (Sarah Armstrong) and race and crime (Michael A. Hallett). Available from SAGE Publications, 6 Bonhill Street, London EC2A 4PU.

Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment which visited Turkey from 21 to 27 March 2002 and **Response of the Turkish authorities**. *CPT* (CPT/Inf 13, Strasbourg) 23.7.02. The CPT delegation's visit to Sincan F-type prison and other detention facilities in Diyarbakir (part of the State of Emergency Region) welcomed the development of communal activities in F-type prisons, although it recommended that prisoners should enjoy "the possibility of participating in association (conversation) periods", regardless of participation in other communal activities. The conversation periods would be for a mere five hours per week, but according to the delegation, "dropping the link" would provide "a solid counter-argument to those who claim a system of isolation is being applied in the F-type prisons". The Turkish authorities insist on maintaining an isolation regime, unless prisoners participate in communal programmes by arguing that "if terrorist offenders ... come together purely for conversational purposes, they will clearly use this opportunity to do organisational work in an ideological context rather than for rehabilitation purposes". Further complaints from the CPT delegation relate to prison staff presence during medical examinations of detainees, evidence gathered confirming accounts of ill-treatment in Diyarbakir Provincial Gendarmerie Command and the failure to ensure access to a lawyer for detainees in the Anti-Terror Department and Narcotics Sector in Diyarbakir Police Headquarters. Available from:

Secretariat of the CPT, Human Rights Building, Council of Europe, F-67075 Strasbourg CEDEX, France.

The GOM - Gruppo Operativo Mobile (Operative Flying Group). This text is available on the *filiarmonici* website, which specialises in the penitentiary system, includes many documents written by prisoners and advocates an end to prisons in Italy. The article outlines the GOM´s origins as a replacement for the SCOP (Servizio Coordinamento Operativo) in 1997 after instances of brutality against inmates. Two major investigations into abuses in Secondigliano (Naples) and Pianosa prisons resulted in 65 prison officers facing charges. The duties of the 500-strong GOM are to maintain order and discipline in prisons, with priority given to "serious situations of turmoil". They must also guarantee safety during transfers, and the surveillance of persons deemed to be dangerous or at risk, as is the case of *collaboratori di giustizia* (informers), or inmates serving sentences under a hard prison regime. The GOM were accused of setting up the temporary detention area in Bolzaneto carabinieri barracks during the G8 summit in Genoa in July 2001 where violent abuses were perpetrated on protestors. Information and web links on the GOM available on www.ecn.org/filiarmonici

MILITARY

Military - in brief

■ **UK: SAS accused of murdering Iranian hostages:** The widely held belief that members of the SAS executed hostages during the Iranian embassy siege in 1980 received further support in July when a BBC2 television programme, *SAS - Embassy Siege* in London interviewed former soldiers and hostages who were witness to the events as they unfolded. The embassy was seized, and hostages held for a week, by a previously unknown organisation called the Group of the Martyr in May 1980. According to one of the survivors, embassy staff member Ahmad Dadgar, the SAS shot two of the gunmen after they had surrendered. He said: "Both were sitting there and put their hands on their head. Then several SAS men came in. They took the two terrorists and pushed them on the wall and shot them." Dadgar's account was verified by other sources. The programme also heard that assassination had been effectively sanctioned by then prime minister, Margaret Thatcher. She told the SAS team that "that she did not want on ongoing problem. She didn't want there to be a problem beyond the embassy". An inquest into the events found that the soldiers had used reasonable force.

■ **UK: War Resisters International in court:** Executive members of the international network of antimilitarist and pacifist organisations, War Resisters' International (WRI), have decided to withhold the proportion of their tax used to fund the war against terrorism from the Inland Revenue. The protestors, in a symbolic action following a request from their staff, have been withholding 7% (the quoted percentage of taxation allocated to the Ministry of Defence) of their PAYE since last December. In a letter to the Inland Revenue they wrote: "War is a crime against humanity. I am therefore determined not to support any kind of war, and to strive for the removal of all causes of war." *War Resisters' International, 5 Caledonian Road, London N1 9DX, tel. +44 20 7278 4040, email: info@wri-irg,org. An exchange of letters between WRI and the Inland Revenue can be seen at: http://www.wri-irg,org /news/ 2002/ officewtr.htm*

■ **EU: Military mission at risk from Turkish rift:** There are increasing doubts about the EU's first military mission following its failure to resolve a dispute with Turkey. The mission was scheduled to take place from October in Macedonia, where the EU had hoped to take over from the Nato-led Operation "Amber Fox", currently led by the Netherlands. This small Nato operation (800 soldiers, mainly from European countries) has a mandate to protect international monitors overseeing a peace agreement between the Slav majority and the ethnic Albanian minority. But the EU and Turkey failed to reach agreement on the terms for European access to Nato's assets, including planning. Such access requires agreement from all Nato-members and Turkey is taking a blocking position. Turkey wants a greater say in how decisions over any EU operations are made and assurances that missions would not take place in areas sensitive for Turkey like the Aegean Sea. Greece is now chairing the European Security and Defence Policy (ESDP) for the full year until July 2003 because the current EU Presidency, Denmark, opted out of defence policy. Some countries like Belgium, France and Greece suggested that the EU could go ahead without Nato agreement because Amber Fox is not considered very risky and France could take care of the planning. But Britain, Spain and Germany oppose the EU acting independently from Nato. *Financial Times 19.9.02 (Judy Dempsey); Jane's Defence Weekly 24.7.02 (Luke Hill)*

■ **EU: US and EU at odds over Nato force:** The US and some European countries are at odds over plans by the Bush administration to create a new Nato rapid response force that will operate 'out of area'. The Europeans fear it could undermine the EU's own attempts to establish such a force under the ESDP umbrella. General Joseph Ralston, Nato's top American military commander in Europe had said that the rapid reaction force of 21,000 soldiers should be ready to go "anywhere, any time at very short notice", capable of carrying out 200 combat sorties a day and continue the battle for 30 days. The force should be operational in October 2006 and start training by October 2004. The missions should comprise preventive peace enforcing, preparing the battlefield for more conventional forces and evacuation of their 'own' civilians. A European diplomat commented: "what a reversal of roles. ESDP is struggling for survival while Nato is attempting a revival." *Financial Times 18.9.02, 4.10.02 (Judy Dempsey); Le Monde 26.9.02 (Laurent Zecchini)*

Military - New material

Endspurt zum einheitlichen europeaeischen Ruestungsmarkt? [Final push towards a unified European arms market?] *AMI* 7/8. 2002 pp.31-36

Die Division Spezielle Operationen - ein Jahr nach der Auf-stellung [Special Operations Division - One Year after Activation], Andreas Schmidt. *Europaeische Sicherheit* 8/2002 pp.30-35. Special forces of the *Bundeswehr.*

Militaerische Spezialkraefte fuer die Europaeische Union [Military Special Forces for the European Union], Thomas Frisch. *Europaeische Sicherheit* 7/2002 pp.18-25. In the EU member states there are a total of just under 10,000 special forces of which the operational forces number approximately 3,000.

Green views on the European Security and Defence Policy, Joost Lagendijk (MEP). In Werner Hoyer & Gerd F. Kaldrack (eds.), "Europaeische Sicherheits - und Verteidigungspolitik (EVSP)", Nomos Verlagsgesellschaft, 2002.

SECRECY AND OPENNESS IN THE EU

an updated online “book” with eight Chapters by Tony Bunyan is available on:
www.freedominfo.org/case/eustudy.htm

EU

European Parliament settles for limited access to documents

One of the outstanding matters in implementing the Regulation on access to EU documents (1049/2001) was settled at end of October. The European Parliament agreed a report on its access to sensitive documents from the Council of the European Union covering security and foreign policy.

When the Regulation was going through the parliament in 2000-2001 it was argued that a safeguard would be in place to ensure that, even it citizens could not get access to classified documents (listed as "Top Secret, Secret and Confidential"), the European Parliament would ensure they were subject to necessary scrutiny. At the time civil society groups argued that the fourth and lowest classification, "Restricted" was not covered by the citizen's right of access nor apparently, under Article 9, the proposed agreement between the parliament and the Council.

The report adopted by the parliament at its plenary session was prepared by Elmar Brok MEP, chair of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy. He writes in the Explanatory Statement that "quite significant opposition in the Council had to be overcome and the parliament too, had to make concessions".

The interinstitutional agreement (known as an IIA) is based on the parliament's general right to be "consulted" (under Article 21 of the Treaty on European Union) on the main aspects of policy and the specific Article 9.7 in the new Regulation which says the Council is to "inform" the parliament regarding sensitive documents as defined in the IIA.

The IIA does not cover the "Restricted" classification - this category carries most classified documents. Civil society had warned that officials might be tempted to upgrade a potentially embarrassing "Limite" (unclassified) document into this category to keep it from public view.

The notorious "third party" veto over citizens' access to documents (Article 4.4 and 4.5) is maintained for the parliament (Article 1.2). This allows EU member states and third-parties like NATO, WTO and the US government to veto access.

Article 2.1 of the IIA expressly states that documents concerning "non-military crisis management" (that is, for example, policing matters) are covered.

Most extraordinarily of all it appears that the parliament is not to be supplied with copies of sensitive documents but has to *request* them (Article 2.2). How will the parliament know what documents have been produced in order to request them?

Any request for sensitive documents has to be made through either the President of the parliament or the chair of the Committee on Foreign Affairs. Subsequently a "special committee", chaired by the Chair of the Committee on Foreign Affairs, plus four MEPs chosen by the "Conference of Presidents" (the leaders of the political groups) can "consult the documents on the premises of the Council" (ie: they cannot copy and take them away) or in some instance copies will be sent over to the parliament (if the Council agrees) - when one of four options can (with the agreement of the Council) be taken. The four options do not apply to "Top Secret" documents which can only be viewed by the Chair plus four MEPs.

The options are: i) copies only to the Chair of the Committee on Foreign Affairs; ii) copies to members of the Committee only; iii) a discussion in the Committee *in camera* (in secret); iv) documents to the Committee with certain information "expunged".

The pre-condition for implementing the IIA is that all MEPs getting access have to be security vetted.

A similar agreement covering justice and home affairs issues is expected to follow soon.

It is very hard to see how this agreement, or future ones, will in any way guarrantee proper parliamentary scrutiny and accountability.

Another "concession" made by the European Parliament as part of this deal is to drop its court case against the Council for failing to consult it over the adoption of its Security Regulations.

Brok report dated 7.20.02, PE 313.404; Brok letter to Council Presidency 10.4.02.

EU: "safe and dignified" repatriation

With a comprehensive expulsion policy taking shape deportations from the EU are set to rise dramatically. This feature examines the Commission's Communication and EU plans to implement it

In April 2002, the Commission released a Green Paper on an EU policy on "return" (expulsion, deportation or repatriation) from the EU. In line with the Council of the European Union (the 15 EU governments) it says that the EU has to develop a detailed policy on expulsion of migrants who do not have documents authorising them to enter and reside or whose documents authorising them to reside have expired ("irregular migrants"). This was the first time that the Commission had issued a Green Paper on any aspect of EU immigration or asylum law. The purpose of EU "Green Papers" is to launch a wide-ranging public discussion on whether the EU should have a policy on a particular subject at all and what the content of that policy should be. Usually, the Commission leaves a year or more after the submission of the Green Paper so that there is time for national parliaments, the European Parliament, civil society, EU consultative bodies and national executives to comment on the issues.

For this Green Paper, the Commission organised a public hearing on 16 July 2002, at which civil society groups who came to speak were allotted the princely period of five minutes each to respond to the Green Paper. The deadline for submissions was 31 July 2002.

With the ink hardly dry on the Green Paper the Council of the European Union adopted a list of third countries (and criteria) with whom re-admission agreements (accepting the return of people) should be negotiated.

The EU Summit in Seville, under the Spanish EU Presidency, on 21-22 June endorsed the plan in the Green Paper and half-formulated policies on expulsion.

On 11 July the incoming Danish EU Presidency circulated a draft programme on expulsion including "forced and voluntary return". It set the deadline for the adoption of a "Return/Repatriation Programme" at the November meeting of the Justice and Home Affairs Council. In June the German government put forward a resurrected proposal for a Directive on transit by air and expulsions (see below). On 14 October the Commission issued a formal Communication based on the so-called consultations.

"Return policy on illegal residents"

The Commission's Communication advocates the "return" (expulsion/repatriation) of all "illegal residents", that is, those who do not "fulfil the conditions for entry to, presence in or residence" in the EU. The objective is the adoption of a:

> *general policy on the return of illegal residents, valid for all regions or countries of origin or transit*

This extends to those who asylum claim has been rejected, those who overstay their visas or residence permits and resident third-country nationals who pose a threat to national security or public order. It should be noted that people coming from the "white list" of countries (eg: USA, Canada, Australia and Japan) who do not need visas to enter are quite unaffected by this plan.

The argument in the Communication is, at times, quite tortuous in self-justification. It quite openly recognises that:

> *where voluntary return fails, the forced return of illegal residents becomes a necessity.. The possibility of forced return is essential to ensure that admission policy is not undermined and to enforce the rule of law.. A credible policy of forced returns helps to ensure public acceptance for more openness towards persons who are in real need of protection, and for.. labour-driven migration*

"Labour-driven migration" is a reference to the emerging EU policy whereby people with skills needed to maintain EU economies are encouraged to come for fixed terms as distinct from people fleeing poverty and persecution.

The Commission, in line with the Council, argues that:

> *Third countries must readmit their own nationals unlawfully present in a Member State and, under the same conditions, nationals of other countries who can be shown to have passed through their territories before arriving in the EU"*

The "smooth and timely return of illegal residents" is hampered, according to the Commission, by the "lack of willingness to return voluntarily" and "resistance to return".

The main problem for the EU in operating an expulsion policy is partly because third world countries are highly reluctant to accept people back and create the complex infrastructure needed for reception, housing, employment etc. This is compounded by the fact that many "illegal residents" do not hold identification papers from their country of origin - so, in turn, third world countries refuse to accept undocumented people.

The EU's main device for getting round this problem is to issue its own travel documents, the EU's *laissez-passer*. To this will be added the European Visa Identification System. When in place this will include the storage of an "electronic photo or other biometric identifier combined with the scan of the travel document shown by the visa applicant" on a "central database". The objective is to: "identify people without the need for their cooperation".

The idea of "joint return operations" is gaining currency too by the bringing together of people to be deported to a country from different EU states. Small numbers of returnees may be placed on normal flights including escorted and restrained (ie: tied down by some means) returns - providing passengers and especially the air crew do not object. Some EU states "use small charter jets in cases of non-compliant forced returns". However, larger charter flights are increasingly being used "with the necessary escorts", but this is costly "when the capacity cannot be fully utilised". The Commission says this:

> *often happens due to the unavailability of the returnee because of absconding, illness or major resistance of the returnee or legal action at a very late stage to avoid removal*

So instead of flight from individual countries "joint operations" with "voluntary and forced returns" are to be encouraged (see below).

Overall the Commission's Communication is so totally in step with decisions already made by the Council it is hard to see what the Commission's role is, except perhaps to find some of the money to finance the plan.

EU Ministers declare applicant countries "safe" to send back asylum-seekers

The meeting of the EU's Justice and Home Affairs Council in Luxembourg on 14-15 October took two steps to ensure that thousands of asylum-seekers arriving in EU countries from central and eastern Europe can be sent straight back without their claim for asylum being considered.

The Declaration by EU Ministers (see below) says that from the "day of signature of accession treaties" the ten central and eastern European states due to join the EU in January 2004 will be considered "safe" countries of origin and that applications for asylum from nationals from those countries will be considered as "manifestly unfounded". The applicant states are expected to sign the accession treaties next spring.

The ten countries are: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

The Justice and Home Affairs Council argues that all the applicant countries are "safe" and "democratic" and are committed to the European Convention on Human Rights and introducing the full justice and home affairs acquis (including the Schengen provisions).

The presumption that all the applicant countries are "safe" to send back asylum-seekers to is highly questionable. There have been a number of cases where it has been judged that, for example, it cannot be considered "safe" to return Roma to certain of these countries. Moreover, the presumption that proper democratic and legal standards are already in place in all the applicant countries is not borne out by the evaluations carried out by the Commission which says that much progress is needed before the justice and home affairs acquis is being fully implemented. In the implementation of the Schengen acquis (which is now part of the overall EU *acquis*) it is reported that this will not be fully implemented for years to come.

The Austrian proposal

In a linked demand the Austrian government put forward a more far-reaching proposal which the JHA Council agreed should be considered by the European Commission and that it should "report back to the Council as soon as possible". The Austrian government proposal calls for a binding Regulation on all EU Member States for "a European list of safe third countries" to which people could automatically be returned to be adopted by the end of the year.

The list of countries proposed by Austria covers the ten applicant countries due to join the EU in January 2004 plus Norway, Switzerland, Iceland, Bulgaria and Romania.

Common European list of safe third countries, Note from the Austrian delegation, doc no 12454/02.

The Declaration by the JHA Council reads as follows:

> *We, the Ministers of Justice and Home Affairs of the Member States of the European Union, having met in Luxembourg on 15 October 2002, Whereas:*
>
> *The negotiations with the Candidate States with which negotiations on accession to the European Union have been initiated have made considerable progress, in particular in the field of justice and home affairs;*
>
> *Upon accession, those Candidate States will become bound by the Protocol on asylum for nationals of Member States of the European Union, annexed by the Treaty of Amsterdam to the Treaty establishing the European Community;*
>
> *In the meantime, the Member States are resolved, as from the day of signature of accession treaties, to deal with applications for asylum lodged by nationals of those Candidate States, on the basis of the*

presumption that they are manifestly unfounded;

The exercise of any decision-making power of each individual Member State in asylum matters will take place with due respect of obligations under international law, and in particular obligations under the Geneva Convention relating to the status of refugees and the European Convention for the Protection of Human Rights and Fundamental Freedoms;

Declare the following:

Given the level of protection of fundamental rights and freedoms by the Candidate States, Member States agree to the presumption that Candidate States with which an accession treaty is being negotiated are safe countries of origin for all legal and practical purposes in relation to asylum matters, as from the date of signature of such accession treaty.

Accordingly, any application for asylum of a national of any such Candidate State shall be dealt with on the basis of the presumption that it is manifestly unfounded, without affecting in any way, whatever the cases may be, the decision-making power of the Member State concerned."

EU seeking readmission (repatriation) agreements with 11 countries

The meeting of the EU's Justice and Home Affairs Council (JHA) on 14-15 October received a report from the European Commission on progress being made to get readmission agreements with seven countries (Morocco, Sri Lanka, Russia, Pakistan, Hong Kong, Macao and Ukraine) and the drafting of negotiating mandates for a further four countries (Albania, Algeria, China and Turkey). The purpose of readmission agreements is to introduce an obligation on the third country to automatically readmit its nationals and stateless people coming from or having lived in that country.

The EU brings to bear economic (trade and aid), diplomatic and political pressure on third countries to sign readmission agreements which are described as "an extremely useful and efficient instrument in the fight against illegal immigration" (JHA Council press release, 15.10.02). The JHA Council emphasised the importance of an expected report from the European Commission on the financial cost of:

"- the repatriation of illegal immigrants and rejected asylum-seekers,

- for the management of external borders,

- for asylum and migration projects in third countries... in particular in order to conclude readmission agreements"

Although still awaiting this report the JHA Council concluded that:

A combined action of the European Community and of Member States in the fight against illegal immigration will be much more cost-effective than providing support to a growing number of illegal immigrants

In simple terms the Council of the European Union is seeking to justify in terms of "cost-effective" measures, not of rights and obligations: the automatic return of asylum-seekers from third countries through readmission agreements or to EU applicant countries in central and eastern Europe (see: EU Ministers declare applicant countries "safe" to send back asylum-seekers) plus the tracing and repatriation of "illegal" immigrants living in the EU combined with effective external border controls. This is "much more cost effective" than having to entertain lengthy asylum procedures and the cost of housing and looking after people who have fled from persecution and poverty.

The report from the European Commission on: "Community readmission agreements - state of negotiations" (for text see below) dated 10 October shows that of the state of play with the seven selected countries as follows:

1. Morocco: although the EU's demand for a readmission agreement was formally sent in May 2001 there has been "no formal response" and after two informal meetings this year it is concluded that: "Morocco did not agree to launch formal negotiations".

2. Pakistan: although the EU's demand for a readmission agreement was formally sent in April 2001 there has been "no formal response" and no informal meetings.

3. Russia: although the EU's demand for a readmission agreement was formally sent in April 2001 there has been "no formal response" despite "repeated contact at diplomatic level".

4. Sri Lanka: a final text was "initialled" in Brussels in July 2002 and the Commission is starting "the two-step ratification procedure" (agreement by both sides).

5. Hong Kong: this is likely to be "the first ever Community readmission agreement". The agreement was initialled in November 2001 and on 23 September 2002 the Commission was authorised to sign on behalf of the EU.

6. Macao: agreement due to be "initialled" on 18 October 2002.

7. Ukraine: text sent in August 2002 and formal negotiations expected to start in Kiev in November.

Readmission agreements, from the Commission to the Council: 12625/02, 10.10.02; Criteria for the identification of third countries with which new admission agreements need to be negotiated - draft Conclusions: 7990/02, 16.4.02.

Afghanistan "safe" for return

The EU Justice and Home Affairs Council on 28-29 November is expected to adopt an "EU repatriation plan for Afghanistan" which:

includes voluntary and forced return albeit with voluntary return as the preferred option

The proposal is that the European Commission will chair a committee (ACRG, Afghanistan Coordination Return Group) to coordinate expulsions by EU Member States. The Commission will provide part of the funding at the Afghanistan end and, with Member States, arrange "joint flights" which may be contracted out to international organisations like the IOM (International Organisation on Migration).

The outstanding problem to be resolved by the November meeting is "how best to obtain the consent of the Transitional Government of Afghanistan" both to the repatriations and to the EU issuing its own *Laissez-Passer* travel documents.

The whole plan is based on "repatriation by air to Kabul" and (almost in holiday-like language) "onward travel to the intended destination".

The "Repatriation model" is defined as:

The preferred model for return is by voluntary return. Afghans refusing to avail themselves of voluntary repatriation may after a passage of reasonable time be repatriated through forced return by those countries wishing to do so

In abstract bureaucratic language the plan says that should take place "in safety and with dignity and in full knowledge of the facts", that is, about "their repatriation and reintegration in Afghanistan". After being air-lifted to Kabul there will be "appropriate reception facilities" and "full board and lodging for up to X days after arrival" (the "X" is in the original and is a cost dependent factor). Then "appropriate onwards transport" will be arranged and "where relevant" the "escort of the returnees" (whether this is intended for their safety or to ensure that they go where they say they are going is not clear).

Finally, the EU is provide "Information for returnees" which will include:

adequate counselling regarding risks of mines and unexploded ordinance

Denmark - few "vounteers" to return

On 18 October it was reported that only 42 of the 1,300 Afghan asylum-seekers in Denmark had responded to the government's offer of 18,000 kroner (about £1,700) per person if they returned. The Red Cross believes that most are afraid to go back. A spokesperson for the right-wing Danish Peoples Party said: "the offer regarding returning home voluntarily must be combined with forced deportations" (BBC, 18.10.02).

Transit by air between EU states

Another proposal resurrected in the EU expulsion plans is one from the German government, put forward on 12 April 1999, for a Joint Action (now transposed into a Council Directive) on "Assistance in cases of transit for the purpose of expulsion by air" (doc: 7264/99).

A UK Home Office Explanatory Memorandum produced on 24 September 2002 says that the proposals on detention and "the use of legitimate force" are not covered by current laws. However, the UK government supports "delivering higher numbers of sustainable returns" through "safe, dignified removals" but is worried about the costs.

The 1999 proposal was cleared by the UK parliament in May (House of Lords) and June (House of Commons) 1999 and now, two and a half years later, no wider consultation is to take place with civil society as: "This is an operational matter".

There was no normal EU-wide consultation before the German proposal was drawn up.

The proposal requires any Member State to assist in the expulsion of a migrant whenever requested by another Member State. This will include detaining and:

> *using legitimate force to prevent or end any attempt by the third-country alien to resist transit (Article 4.3)*

Each Member State will automatically have to accept the word of the Member State requesting assistance that there is no risk of torture, death or other inhuman or degrading treatment for the migrant in the state of destination. The requested state would not be obliged or even permitted to consider whether this was in fact the case, as long as the officials of the requesting state have ticked a box on a form asserting that there is no such risk.

There is no obligation on the requesting state to limit requests to certain situations, or to consider human rights issues before deciding to expel and requesting assistance of another Member State. Moreover, Article 6 of the proposal fails to mention that observation of the European Convention on Human Rights and other international human rights treaties (the UN Convention Against Torture and the UN Covenant on Civil and Political Rights) must also have higher priority than the Directive.

Joint EU expulsion flights for "group returns"

The French government is taking the lead on a project to:

> *rationalise expulsion measures, in particular by means of group returns (doc no: 11388/02)*

The idea of moving migrants to be expelled around the EU for flight back to a particular country is not new but this proposal (backed by the Council and the Commission) is intended to "rationalise" this process.

France has opened talks with Germany and the UK on the possibility of joint "European charters". The French Ministry of the Interior with responsibility for expulsion (DLPAJ/DCPAF Directorate of Civil Liberties and Legal Affairs/Central Border Police Directorate) is to organise monthly meetings to work out the procedure - which has to include:

> *legal framework; operational constraints (security rules during flights, composition of escort, requests to overfly third states etc); diplomatic constraints (issue of consular [EU] laissez-passer, reception by the authorities of country of destination etc)*

International Organisation on Migration (IOM)

Interestingly all references to the IOM in the Commission's Green Paper (April, 2002) are omitted from its final Communication (October, 2002) even though it carried out 87,628 voluntary returns from the EU in 2000. This may be because it has become the target of protests and some EU member states are reluctant to draw attention to the major role played in repatriation by an international organisation which is not accountable to the EU (see *Statewatch* vol 10 no 3/4).

The organisation was created in 1951 by the USA and Belgium as the "Provisional Intergovernmental Committee for the Movement of migrants from Europe". It is a product of the Cold War period helping refugees from Hungary in 1956 and Czechoslovakia in 1968. During this period it acquired a nickname as a "travel agency" and in 1989 with the fall of the Berlin Wall was renamed the IOM.

The IOM now has 93 member states and 36 Observer states with 14 EU states (all except Spain) and 8 of the 10 EU applicant states. It has 19 regional offices and over 100 field offices.

The IOM, under its "Assisted Returns Service", runs:

> *a comprehensive migration management system for the benefit of all parties*

and in working with "migrants and governments" it:

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

Its stated policy is that:

> *the migrant's free will is expressed at least through the absence of refusal to return, eg: by not resisting to board transportation or not otherwise manifesting disagreement*

Where physical force has to be used on the migrant this is:

> *the responsibility of national law enforcement agencies*

However, this test of "voluntariness" is open to question as far as the role of national governments are concerned. Evidence from the Netherlands presented to the EU earlier this year suggests there is a degree of pressure on asylum applicants (doc no: 6660/02). In the Netherlands the "alien" is told they do not have any future prospect in the country if their application fails. The first stage is "preparation and orientation" for return to the "country of origin" which is "initiated" when a negative decision is made in the first instance of the application - that is, before any appeal.

The second stage which follows:

> *involves the actual return journey.. the IOM is the most appropriate partner to organise [it].*

In the UK the "Voluntary Assisted Returns Programme" (VARP) run by the Immigration and Nationality Department of the Home Office is "implemented by the IOM and supported by Refugee Action". Between September 2000 and August 2001 a total of 1,033 asylum-seekers were returned through VARP, the majority to Albania and Kosovo. An "independent evaluation by Deloitte and Touche" found "a high level of user-satisfaction" based on a sample of 65 migrants.

The IOM has been targeted by a number of activist groups - in Ukraine, Finland, France, Germany, Czech Republic and the UK - who view its role as implementing unacceptable EU policies.

The Noborder camp in Strasbourg in July called for an international campaign against the IOM and a protest outside the IOM office in Helsinki on 11 October closed it down for the day (see: www.noborder.org/iom). In the Sangatte, France detention centre a IOM video was shown to dissuade people from coming to the UK, apparently 17 would-be asylum-seekers out of 17,500 were persuaded to return home (CARF, Autumn 2002).

How many are being expelled and what happens to them?

Hard figures are hard to come by. A set of figures produced in May 2000 (EU doc no: 7941/00) gives a total of 166,909 people expelled from EU countries and Norway. However, there is no breakdown between voluntary and forced expulsions and an indeterminate number were simply being re-cycled within the EU - returned to another EU country from which they arrived. The Commission's Communication (above) promises that figures will be provided in 2003.

The largest number were expelled from the UK, 45,100, followed by Germany (32,223), Austria (20,027), Netherlands (12,204) and Italy 12,036).

Astonishingly not a single public report is available on what happens to migrants when they arrive wherever they are taken. It appears that the EU collectively feels no responsibility for the lives and welfare of people it expels.

Defining the facilitation of entry, transit and residence

A proposal put forward by France under its Presidency of the EU in July 2000 finally went through the Justice and Home Affairs Council on 14-15 October 2002. The original proposal was roundly criticised by civil society and national parliaments. The European Parliament was "consulted" and on 15 February 2001 rejected the proposal. The proposal was effectively dead for 18 months but in the post-11 September plans to remove "illegal" migrants from the EU it was resurrected and adopted.

The reason civil society and the European Parliament called for the French proposal to be rejected is that it makes it an offence for:

> *any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State... (Art 1.1.a)*

There is no test as to whether these acts are undertaken for financial gain. Thus help from relatives, extended families and friends and support networks are simply lumped together with "organised" networks who bring people into the EU in exchange for money.

Any person who "for financial gain, intentionally assists" a migrant to reside in the EU is also guilty of an offence. Thus a person who runs bed and breakfast or a family where the migrant(s) contribute to the household costs could be caught under this new offence.

The scope of Article 1 is extended by Article 2 to a person who is "the instigator.. accomplice or who attempts to commit" the offences in Article 1.

The only concession the Council has made is in Article 1.2 where it says that Member State "may decide" not to prosecute where the "aim of the behaviour is to offer humanitarian assistance" to enter and transit under Article 1.1.a (but not to 1.1.b on residence). This option for EU governments at national level may or may not be exercised and the interpretation of "humanitarian assistance" will be down to the courts.

The "sanctions" laid down in an accompanying Framework Decision are for "effective, proportionate and dissuasive sanctions" (Framework Directive on the penal framework to prevent the facilitation of unauthorised entry and residence, doc no: 10075/01).

Communication from the Commission, On a Community return policy on illegal residents, COM(2002) 564 final, 14.10.02; Presidency Note, Afghanistan return programme, doc no: 12605/1/02, 8.10.02; Assistance in cases of transit for the purposes of expulsion by air, German EU Presdiency, doc no: 7264/99, 12.4.99; Initiative of the Federal Republic of Germany for a Council Directive on assistance in cases of transit for the purpose of expulsion by air, doc nO: 10386/02, 27.6.02; Explanatory Memorandum on proposal for a Council Directive in cases of transit for the purposes of expulsion by air, UK Home Office, 24.10.02; Proposal for projects, French delegation, doc no: 11388/02, 29.7.02; Action Programme for Return/Repatriation based on the Commission's Green Paper on a Community return policy on illegal residents,

The European Border Guard: developing by stealth?

The force is part of a developing a Europe wide border management plan

Introduction

While the idea of a "European border guard" has been placed on the back burner for the time being, the EU has recently been developing an alternative approach to greater cooperation on external border control. In place of purely national or wholly or partly "European" external border control, the EU is setting up a complex system of coordination between national border authorities, likely to involve the use of coercive power by "visiting" border guards. But there is no adequate arrangement for accountability and many aspects of the EU's developing plans raise serious civil liberties concerns.

Background

The idea of moving toward "European border management" was first raised during the Belgian Council Presidency in autumn 2001. At that time it was agreed that the chiefs of EU border police would meet regularly in the forum of SCIFA (the Council's Strategic Committee on Immigration, Frontiers and Asylum). By this spring, Italy, assisted by other Member States, had prepared a detailed plan for a move toward a "European border guard", the Commission had released a Communication on the same subject and a workshop managed by Finland, Belgium and Austria and funded by the EU's Oisin programme had examined the same subject. Elements from these three programmes (but particularly the Italian project) were then merged in a matter of weeks into a detailed Council border control programme approved in June - without waiting for any input from national parliaments, the European Parliament or civil society.

The Council plan

The Council plan leaves until the future the possibility of developing a "European Border Guard" (paras. 118-120). But much is planned in the meantime. The plan has "five mutually interdependent components": a common operations coordination and cooperation mechanism; common integrated risk analysis; personnel and inter-operational equipment; a common corpus of legislation; and burden-sharing between Member States and the Union. The border guard heads meeting within SCIFA (now imaginatively dubbed "SCIFA+") are in charge of the common mechanism, and their main task is to supervise a highly decentralised network of ad hoc centres, mostly to be set up by summer 2003, that contribute to the application of the plan.

There are to be 16 ad hoc centres, each focusing on a different practical issue. However, despite the central importance of this network, it is mentioned only briefly in the final version of the plan and the 16 issues are not listed. The list of the issues can only be found in the Italian feasibility study.

The 16 issues in the Italian study were:

- *setting up an immigration liaison officer network at international airports;*

- setting up an immigration liaison officer network in non-Member States, or at Member States" headquarters;

- a network of centres for forged documents;

- the creation of an integrated secured intranet between different national border police units;

- the creation of a uniform practical guide for border control guards;

- personnel exchange among border checking points;

- common risk assessment;

- common training;

- rationalising repatriation operations;

- rapid response unit;

- an expert group for missions abroad;

- coordinated criminal investigations;

- creation of a permanent technical support facility and new technical equipment for border guards;

- quality management;

- centres for border police and customs at external borders;

- a common core curriculum.

The institutional framework for this cooperation is very light. There was no agreement to set up a secretariat to assist with further detailed coordination as the 16 elements get going, because some Member States did not want to give the appearance of the institutionalisation of borders cooperation. Instead, the activities of the ad hoc centres will simply be coordinated by SCIFA+. However, since SCIFA is a Council committee, it would be possible for the Council secretariat to perform such a role without need of a formal agreement to this effect. Each of the 16 issues is to be coordinated by one or more lead Member States, and it is also possible for a Member State to coordinate more than one. It was up to Member States to volunteer for this task, and so between July and September many Member States submitted detailed suggestions for operations they could lead. Other Member States could then decide which of the projects they wished to participate in. The Council plan also provided for continued joint operations, which to some extent cross over with the work of the ad hoc centres.

The plan was endorsed shortly afterwards in June by the Seville European Council (summit meeting), which set deadlines to achieve several elements: end 2002 for joint operations, pilot projects and a network of immigration liaison officers, and June 2003 for a common risk analysis model, a common core curriculum and consolidation of EU border rules and a Commission study on EU financial support for border control.

Implementing the plan

An initial batch of project proposals comprised Austrian and Swedish proposals on border guards' curriculum, a German proposal for the exchange of personnel and the organisation of operations at external land borders, a Finnish proposal on risk analysis and French proposals on coordinating criminal investigations and setting up expulsions by means of "group returns". SCIFA+ approved the German, Finnish and Austrian/Swedish proposals in July, and also approved guidelines on joint operations, covering both joint operations carried out by Member States within their own country (essentially a decision to launch a group of separate national operations of the same type in parallel) and the delegation of Member States' border guards to another Member State to provide "expert/specialist and technical support" but not "basic frontier control duties". The Danish Presidency also suggested a joint operation concerning illegal immigration through use of fraudulent visas.

Subsequently, the Italians proposed a project on air borders control at international airports, the Greeks proposed projects on control of eastern land borders and south-eastern maritime borders, the Spanish proposed an operation in EU ports, the UK proposed a centre of excellence for mobile detection equipment, a project inside Serbia/Montenegro and a sea borders project, and the Norwegians (involved with the process as Schengen associates) suggested a joint project on northern sea border control. A first SCIFA+ meeting in September approved the earlier French proposals and the Italian proposal. Then a second meeting of SCIFA+ in September approved the Greek plan on eastern borders, a combined Spanish, Greek and British plan on sea borders (into which the Norwegian proposal might be integrated), and the UK plan on mobile equipment. However, it was decided not to pursue a project on a network of centres for forged documents, on the grounds that the long-planned separate "FADO" system designed to deal with this issue was coming to fruition.

By this time, Member States had also realised that the Council plan inexplicably made no mention of the involvement of EU candidate countries, and so SCIFA+ approved the idea that the project leader of each ad hoc centre could involve candidate countries as it saw fit. In particular, it was considered that the projects on maritime borders, eastern land frontiers, international airports, mobile equipment, expulsion and joint operations would be open to the new associates. Each of these projects will likely now be submitted for EU funding under the EU's new "ARGO" programme for funding immigration and asylum measures. It remains to be seen which of them get funding and whether Member States still go ahead with them if they do not.

Concerns about the plan

It is obvious that the current plans concerning the EU's external borders, while falling short for now of the creation of an European Border Guard, are quite extensive and raise a number of issues. For one thing, there will be extensive deployment of one Member State's guards on the territory of another Member State. The German plan foresees integration of guest border guards into the "work shifts" of the host state, and "as soon as possible the border police officers active in the host country will be given intervention powers at the lowest level, for example the right to stop and interview persons". This is to lead to standardisation of *inter alia*, "command and control/tactics". Moreover, the German plan makes extensive reference to a number of such exchanges already agreed with the German authorities. Obviously the powers enjoyed by guards in this scenario *would* extend to "basic frontier control duties", even though such duties were ruled out in the agreed rules concerning joint operations. But there is no system of accountability planned or foreseen.

Secondly, there is the issue of the participation of the UK, which has formally opted out of EU border control rules. Despite this, the UK has expressed an intention to participate in the German land borders project, the Finnish risk analysis project, the French expulsion project and the new joint operation on visa checking at airports, on top of proposing three projects of its own. One can ask why the UK considers it legitimate to participate in these measures when it has not abolished internal border checks with other Member States. For the UK, the "external borders" are its own ports, airports, coastline, land border with Ireland and Channel tunnel exit--not the sea, air or land borders of any other Member State. But the UK clearly wishes to have its cake and eat it too.

Thirdly, there is a tendency to expand the plan beyond the normal scope of border controls. The French plan on mass expulsions clearly concerns persons already inside the country, and similarly the Portuguese argued that the new joint operation

should concern visa checks not just at airports, but in-country - effectively arguing for a massive coordinated check on "foreign-looking" persons inside the EU. Although the Portuguese were rebuffed for now, the French programme has been approved. Member States will thus be participating in joint expulsion operations without regard for whether the other participating Member States meet the same basic standards on expulsions, and there may be pressure to speed up and/or increase the number of expulsions in order to participate in the plan.

It should be noted that repatriation operations were not discussed in the Commission communication on border controls and developments in the Council on this topic preceded assessment of the results of the public consultation launched by the Commission"s Green Paper on return of illegal immigrants - rendering that consultation even more of a sham.

Fourthly, there seems no interest in ensuring that the right to asylum is respected within the context of this new plan. Will the common curriculum deal with this issue, and will guards be trained to recognise a claim for asylum and apply the international (and soon EU) rules on this subject? Or do some Member States see this is as an opportunity to train others in methods of refusing applications at the border? Moreover, there is no recognition in the plans for the new joint operation that fraudulent visas are sometimes legitimately used by persons who wish to claim asylum.

Finally, the plans for "risk analysis", which have been expedited and which are considered the centrepiece of the new plan, will bear close examination. Essentially "risk analysis" is another form of "profiling" - trying to determine the type of person likely to be an illegal immigrant and the likely methods used to enter the EU. Will this approach be applied to persons living in-country, with the result that there will be further calls for further registration, data collection and control of foreign citizens? Will it take account of the "profiles" of those who have, or who arguably have, a well-founded claim for asylum or other form of international protection?

Italian feasibility study for the setting up of a European border police; 11030/02, 18.7.02, implementation of the border plan: overview of project proposals; 11388/02, 29.7.02, French proposals for projects; 11401/02, 29.7.02, guidelines for joint operations; 11399/02, 30.7.02, outcome of proceedings of SCIFA+, 22.7.02; 11438/02, 31.7.02, Greek pilot project on control of the Eastern external land borders; 11829/02, 10.9.02, note by Portuguese delegation; 11967/02, 12.9.02, project for operation of control and assessment of risks posed by illegal immigration in the ports of the European Union; 11996/02, 13.9.02, joint operations for the control of the south-eastern external maritime borders of the Mediterranean E.U. Member States; 11994/02, 13.9.02, Centre of Excellence at Dover--Mobile Detection Unit; 12129/02, 25.9.02, common projects on sea border control; 12765/02, 7.10.02, inclusion of candidate countries in projects; 12361/02, 25.9.02, network of centres for forged documents; 12448/02, 27.9.02, outcome of proceedings of SCIFA+, 16.9.02; 12518/02, 2.10.02, outcome of proceedings of SCIFA+, 26.9.02.

Viewpoint

BASQUE COUNTRY

Between the clampdown on liberties and the search for political solutions

by Peio Airbre

The political situation in the Basque Country is going through a particularly delicate moment. The illegalisation of Batasuna (which is considered the political wing of the armed Basque organisation ETA), the Basque government's proposal to modify the position occupied by the Basque Country within the Spanish State through a free association formula, and the threat by ETA to make the offices and public meetings of the PP (*Partido Popular*) and PSOE (*Partido Socialista Obrero Español*) targets for its attacks are the latest expressions of a political situation that is blocked and without apparent medium-term prospects for solution.

It may be useful for *Statewatch* readers to cover the immediate antecedents of the current situation.

Exactly four years ago, in September of 1998, the latest serious initiative to channel the Basque conflict towards a democratic solution was born. It was the date when the bulk of nationalist forces (including those that formed the Basque government) and some others that are not nationalist, like *Izquierda Unida* (United Left), signed the Lizarra Agreement which was followed by a truce on the part of ETA, and the support of several trade unions and social organisations. This agreement, which expressly cited the Northern Ireland Peace Agreement as its source of inspiration, recognised the political nature of the Basque conflict and the need to resolve it through an open process of dialogue and negotiation between all the parties involved, which would result in the deepening of democracy in Euskadi (Basque Country), and on whose proposals of a resolution the Basque population should be consulted. This proposal and the dynamics of the truce that followed it gave rise in the Basque society to expectations for a resolution of the conflict that had not been seen for a long time. However, this proposal received an outright rejection from the Spanish majority parties, the *Partido Popular* and the Socialist Party which, based on an unprecedented media campaign, not only refused to participate in such a process, but also sabotaged any possible progress down the path that was opened by the Lizarra Agreement. These expectations finally ended when a year later ETA decided to consider the truce to be at an end and to return to armed activity.

A little over a year ago, in May 2001, the result of the autonomous regional government elections was a majority for those parties that, at the time, promoted the Lizarra Agreement. From that platform the current Basque government was formed, based on the nationalist *Partido Nacionalista Vasco* (PNV) and *Eusko Alkartasuna* (EA) parties and one left-wing non-nationalist party, Izquierda Unida. This is the government that has just made the current proposal that will be commented on later. Currently, we are seeing the illegalisation of Batasuna, instigated by the Spanish parliament (which is currently in the process of being approved) and decreed, in a parallel way, by judge Garzón. This is the latest in a series of illegalisations which have been undertaken by the same judge over a number of years: in February of this year he applied it to the organisation supporting Basque political prisoners, *Askatasuna* (Freedom), and the youth organisation *Segi*, and he had previously done the same to *Ekin*, *Haika*, *Xaki*, *Jarrai* and *Gestoras pro amnistía*, actions that also resulted in the closing of Egin newspaper and even to the arrest, for months, of the entire Mesa Nacional (National Direction) of *Herri Batasuna*. This was despite the fact that many of his

decisions were questioned, when they were not overturned, by other rulings and by other members of the Spanish judicial apparatus, who cannot be suspected of connivance with the nationalist left. Criticism has been repeatedly directed at the weakness of his institution of proceedings, but also at his particular manner of understanding justice: on one side, as being very submissive to the reigning opinions in the dominant political circles in the Ministry of the Interior and, on the other side, for being based excessively on his own *moral conviction* or in that of the police circles that are closest to him: “this person *looks* like he s from the ETA network, therefore he will be from ETA”. Something like a kind of *anthropological justice* in which their attitudes, culture, relations, emotions etc., are deemed to be more more highly valued than the acts committed by the accused.

If we are looking at the reasons for this policy, beyond the personality and intentions of judge Garzón, we would have to make reference to two phenomena, one of a more general nature, let’s say west European, and another that is more domestic, to do with Spanish politics.

The more general one makes reference to the trend that is taking place in criminal law which, of late, has often been highlighted in legal and intellectual media outlets, with the increasing relevance of the "suspect" as a subject for penal action. A trend towards a system of *preventative* penal control. Through its anti-terrorist struggle the State, as an element of the affirmation of its strength, as a trait of its very identity, adopts a policy that looks to gobble up legislative normality and to expand its remit, by way of exception, to other arenas that are ever-expanding: social peace, drugs, sexual freedom, immigration ... This dedevelopment is establishing certain prior social controls by the State that leaves the old liberal State behind. These are, in short, fundamental trends that are characteristic of the States under which we live. Thus, in the illegalisation of *Batasuna*, or of *Gestoras pro amnistía*, instead of showing that these organisations have the aim of committing a given crime, or that they use illegal methods, or violent ones, what Garzón does is, simply, to state that they have a *terrorist* character, full stop. This leads to the criminalisation of that whole sector of the Basque population that, legitimately, expresses different forms of solidarity with ETA prisoners. In this way the judges, instead of being guarantors of freedom, take on the role of conveying the discourse of the Ministry of the Interior, violating not only the freedom of certain persons who are protected by the right to the presumption of innocence, but at the same time violating freedom of association, the freedom of people to group together around a given project. It is not specific persons who are criminalised, but rather groups and fields of activity.

The other phenomenon, more concerned with domestic politics, has to do with the PP's strategy, which seeks to displace nationalism as a governing force in Euskadi. After the turn taken by ETA's activity in the last years and after having displaced the PSOE from the Moncloa (government building), the PP has convinced itself that it is also possible to displace Basque nationalism, and the PNV in particular, from the hegemonic position that it has exercised in the Autonomous Community of the Basque Country since the establishment of the new statutory system. A key aspect of this policy takes advantage of ETA's actions, not only to criminalise all of its milieu, but also to burden the whole of nationalism with responsibility for ETA's actions. The brutality and falseness of such a strategy reaped a defeat last year in the elections to the Basque parliament, in spite of the overwhelming coverage that it received from the majority of the media. In spite of this, the PP continues to step on the accelerator in pursuing the above strategy, whose latest step has been the *Ley de partidos* (Law of political parties) that was approved by the Spanish parliament to be able to illegalise Batasuna, an organisation with parliamentary and institutional representation at almost all electoral levels.

It is within this context that we can place the proposal put forward by the Basque government on 27 September as a basis for the establishment of a new pact between Euskadi and the Spanish State. The proposal includes the shaping of an autonomous Basque judicial power in which all legal instances may be exhausted, with the same judgement principles and fundamental rights that apply in the State. It also envisages taking on a whole series of competencies that are currently reserved for the State and enjoying a direct presence in the European institutions. It proposes to do so within the legal framework established to reform the Statute itself as well as the Spanish Constitution, and the axis around which the entire proposal revolves is the right of the Basque people to be consulted in order to decide its future. It proposes to open a consultation period with all political, trade union and social forces, and gives itself a one-year period to present the resulting document that would be submitted for popular consultation. One of the conditions that it indicates to be able to bring this process to its conclusion is a setting where there is an absence of violence. These are the general traits of a proposal that was immediately rejected as much by the PP and PSOE on one side, as by Batasuna on the other.

For its part, ETA released a statement on 28 September in which it threatens attacks against the offices and (public) meetings of the PP and PSOE.

In its effort to annihilate the political expression of the nationalist left the PP government is tearing to shreds the traditional division of powers, and effectively merges the executive, legislative - with the PSOE’s acquiescence - and judiciary - with the approval of Garzón. Even if to do so it is necessary to stretch legality to extremes that in the recent past it would have been impossible to imagine would have received the approval of a good part of the political, institutional and social forces in the country.

The old and well known Action-Repression-Action strategy which is much supported within ETA also fits well into this setting. In this case they can conclude that with their actions they have been able to move the government to take one more repressive step, which, in accordance with this strategy, will allow them to go further in the conflict that both sustain. Neither is it difficult to imagine that in its milieu this new step taken by the Spanish government will help to strengthen its legitimacy and even the number of persons who, because other paths are closed, may be willing to become part of the armed organisation. ETA, in particular, is unlikely to see the difficulties that this situation causes to other nationalist forces as unwelcome.

Finally it is necessary to note that, apart from the people that are directly affected by the conflict, be this as victims of ETA's actions and threats, or be this due to the repression by the State, the fracture that exists at the political level does not affect the whole of society in the same manner. Here we do not have, in the same way as in Northern Ireland, two opposed communities. The different political parties, beyond the electoral support that each of them may have, are unlikely to expect that significant sectors of society will launch themselves into rupturist dynamics that may endanger the conditions of life of the entire society, which are amply satisfactory. From this it can be understood that proposals such as the one recently put forward by the Basque government, will only be able to make headway if they obtain a sufficient consensus among the different identities and national groups that exist in Basque society, without limiting themselves exclusively to nationalist sectors. The way in which the proposal has been launched by the Basque government makes it doubtful that its intention goes beyond that of using it as a recruiting post. And in this sense, the prospect of municipal elections in one year's time may contribute to forming the interpretation that, basically, all of this continues to be for electoral gain.

News from Statewatch

Over 1 million "hits" on website in last year

Since the Statewatch website was launched in 1995 there have been over half a million "user sessions" (559,901) and over two million "hits" (2,326,185). Over half of this usage has been over the past 12 months with 294,608 "user sessions" and 1,115,378 "hits" (to the year ending October 2002). The website is now one of the leading resources on civil liberties in the EU: **www.statewatch.org**

GENOA: Memorial meeting for Carlo Guilliano in Bern, Switzerland

Le Geometrie della Memoria, a month long exhibition of collages, film and meetings was organised in Bern, 14 September - 5 October. A public square was renamed "Carlo-Guiliani-Platz" in memory of the protestor killed by poice in Genoa. His mother, Haidi Giuliana, attended the ceremony and the public meeting that followed. *Statewatch* was represented by its editor, Tony Bunyan.

Statewatch analyses on the post 11 September threat to civil liberties and democracy

1. EU "Conclusions" on counter-terrorism (JHA Council 20.9.01)
2. US-EU Bush letter
3. The European arrest warrant
4. EU definition of terrorism
5. "The enemy within": plans to put protestors under surveillance
6. Analysis of legislative measures
7. Analysis of "operational" measures
8. EU measure on terrorism criminalises refugees and asylum-seekers
9. EU terrorism situation report: Anarchists are "terrorists"
10. Asylum and "safeguarding internal security" post 11.9.01.
11. EU surveillance of communications to be "compulsory"
12. Secret EU-US agreement being negotiated
13. Essay on the "war on freedom and democracy"
14. Immigration and aylum in the EU after 11 September 2001

Statewatch's "Observatory on freedom and democracy" on:

www.statewatch.org/observatory2.htm

CONTENTS

Statewatch website

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

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