

statewatch

monitoring the state and civil liberties in the UK and Europe

vol 14 no 2 March- April 2004



“HOMELAND SECURITY” COMES TO THE EU

Terrorism or crime - a confusion of aims

“Under the guise of tackling terrorism the EU is planning to bring in a swathe of measures to do with crime and the surveillance of the whole population. After the dreadful loss of life in Madrid we need a response that unites Europe rather than divides it.” Tony Bunyan, Statewatch editor

On 24 March *Statewatch* published a detailed analysis of the 57 measures being put forward following 11 March 2004 (Madrid) by the Council of the European Union (the 15 EU governments) and the European Commission. The analysis found that 27 of the measures had little or nothing to do with tackling terrorism including measures to do with crime in general and the surveillance of telecommunications and of movement. This strategy begs the question whether there is, at the highest level, a confusion of aims and effort.

A classic example is a Commission Communication dated 29 March 2004 (COM 221). This contains a proposal for a Council Decision on exchanging "information and cooperation concerning terrorists offences" (see below) and a "wish-list" on criminal matters. The logic is to bring together the:

Union's arsenal of weapons against terrorism. Many of these are not specifically anti-terrorism but range wider while including terrorism [and] a link should be established between terrorism and other forms of crime" [even though these are] not always immediately obvious..if the fight against terrorism is to be totally effective, it must be handled in conjunction with the fight against other forms of crime.

It argues that the similarity comes, in part, through the use of "similar" methods and proposes everybody's (criminal or not) bank accounts should be "registered" and "be accessible to law enforcement agencies". Companies and charitable organisations too are to be targeted because they could be "infiltrated" by terrorists.

The big project is the creation of a "European Criminal Record" to be held on a "European Criminal Registry" - which according to a Commission spokesperson would contain not only all convictions and disqualifications *but also all charges brought* (even of those found innocent) from the whole of the EU - in *"the fight against crime, and in particular terrorism"*.

The simplistic notion is that there is an intrinsic link between terrorism and organised crime and indeed all crime - turned around it implies that all crime is linked to terrorism.

Framework Decision: exchanging information

The concrete proposal in the Communication is draft Council Decision on "the exchange of information and cooperation concerning terrorist offences". This envisages in Article 2 the exchange of "information" during investigations and prosecutions concerning terrorist offences as set out in Article 1 to 3 of the 2002 Framework Decision on combating terrorism. The "information" is to be communicated to Europol and Eurojust (EU prosecutors) and made "available immediately to the authorities of other interested Member States".

It is clearly sensible that such information should be made available. However, the proposal contains no provision for the "information" to be removed/deleted should a person be found innocent. Equally, there is no provision for the "information" passed over on those caught up in a "criminal investigation" but never charged to be removed/deleted. This latter category is especially worrying as an "investigation" into a suspected terrorist offence would embrace not just the subject but their family, friends and work associates to see if there were any links. A typical investigation might involve 20-40 other people who are found to be quite innocent but "information" on them could be "immediately" transmitted to dozens of agencies across the 25 EU member states.

In April ten Muslim "suspects" were arrested in the north of England but never charged - this could have led to several hundred names and personal details being put into EU-wide circulation with no obligation for them to be deleted. If there is no obligation to delete the names and details of innocent people they could find themselves on "watch-lists" for years to come.

There is another problem with the draft Decision. The intention is to widen the scope from those persons, groups and entities placed on updated lists of alleged terrorist groups to all those investigated under Articles 1 to 3 of the controversial Framework Decision on combating terrorism (2002) which covers those acting with the aim of:

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EU agrees refugee and subsidiary protection see page 17

Post-Amsterdam immigration and asylum policy see page 20

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unduly compelling a Government or international organisation to perform or abstain from performing any act (Art 1.ii)

This Communication - which is one of the most confused ever produced - should be withdrawn. It should be re-presented and deal only with the Framework Decision on terrorist offences (including safeguards for those caught up in investigation).

The tendency, especially by the Commission, to stress the "anti-terrorist" benefits of crime control and surveillance measures is illogical and divisive. Tony Bunyan, Statewatch editor, commented on 24 March:

Under the guise of tackling terrorism the EU is planning to bring in a swathe of measures to do with crime and the surveillance of the whole population. After the dreadful loss of life in Madrid we need a response that unites Europe rather than divides it.

Communication from the Commission on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information, COM 221, 29.3.04; Statewatch "Scoreboard" on post-Madrid counter-terrorism plans:

www.statewatch.org/news/2004/mar/swscoreboard.pdf

CIVIL LIBERTIES

UK

Belmarsh internees "suicidal"

"M", who cannot legally be identified, was the first of the Muslim Anti-Terrorism, Crime and Security Act (ATCSA) internees to be released from Belmarsh high security prison after being locked up on secret evidence from the Home Secretary, David Blunkett, and the intelligence services that judges have described as "wholly unreliable" (see *Statewatch news online*). In his first interview, published in the *Guardian* newspaper on April 23 "M" protested his innocence, pointing out that there was no evidence against him indicating that he was a terrorist. He also claims that fellow ATCSA prisoners are suffering severe mental problems from being held without charge and without a time limit: "Three or four of them have become mad...They can't control themselves, they are not thinking in a good way", he said. "M", who is a 38-year old Libyan, was released from Belmarsh on 8 March, after being held for 16 months in the high security prison after his arrest in November 2002 on undisclosed evidence that was described as unreasonable, "exaggerated" and "should not have been used to justify detention" according to the Special Immigration Appeals Commission (SIAC). The Home Secretary's assertions about "M" were "not reliable" and failed to establish even "reasonable suspicion".

"M's" testimony on the health and welfare of the other detainees came on the same day that another ATCSA prisoner, known as "G", became the first person in the UK to be held under house arrest. The SIAC ruled that "he had become mentally deranged in Belmarsh and that his detention meant he was in danger of self-harm". Their view was supported by his solicitor, Gareth Peirce, who claimed that the government had driven her client into a psychosis. The decision was described as "extraordinary" by Blunkett, who had appealed against the SIAC's ruling last January. "G", a 35-year old Algerian who had been detained for two years, is now permitted to reside at his home under strict bail conditions and will be electronically tagged. He will be cared for by mental health workers. "M" told the *Guardian* that "G" knew that suicide was against Islam but had told him: "I am in prison, I am thinking taking my own life would do less harm than what prison is doing to me." G's solicitor, Gareth Peirce, said: "The home secretary has tried to stop this man from getting out and getting sane. He drove this

man to madness. This is not what should happen in a civilised society."

"M" also alleged that he had been the victim of racism at the prison and that during the first few months of his incarceration he had only been allowed to leave his cell on two or three occasions. "We don't have enough time out of our cells in Belmarsh", he said, adding, "Sometimes we are locked in there for 22-23 hours a day." He also described a hunger strike by some of the detainees after discovering that the food that they were served "may not be halal"; a claim denied by the prison authorities, who only acknowledge some "confusion" over the food. They deny that a hunger strike took place.

A decade and a half ago Irish women and men - the Birmingham 6 and the Guildford 4 are recognised cases - were convicted on terrorism charges, and sentenced to some of the longest sentences ever handed out by a British court. The evidence against them was false, confessions coerced through terror and intimidation in the police station and the prison cell, a process that was justified by the government of the day as essential in the war against terrorism. The Labour government has done away with the need for evidence, relying instead on "wholly unreliable" information from an intelligence service whose stock-in-trade is deceit and mendacity. As "M" pointed out: "This country is supposed to be a democracy and they should have many other ways to sort this situation out...to lock people up like this is unlawful." David Blunkett has promised to bring in new laws to stop judges releasing terror suspects.

"For detainee M, still no explanation why he was locked up for 16 months" Audrey Gillen. Guardian 23.4.04, p1 & 4.

GERMANY

Activists jailed in RZ "terrorist" trial

On 19 March, the second division of the Berlin Supreme Court ended a three year trial against former members and alleged members of the *Revolutionary Cells*, a network of left-wing militant activists who carried out attacks against institutions and people responsible for, amongst other things, repressive refugee politics in Germany in the 1980s. The convictions were based on evidence provided by only one witness, a former RZ member who himself was accused of leadership of a terrorist organisation and decided to act as a crown witness to provide the prosecution with names of his former comrades in order to lower his own sentence (see *Statewatch* vol 10 no 1). Despite crucial contradictions in the crown witness's statements on alleged members and actions of the RZ, they formed the sole basis for the court's charges and sentencing, ranging from 2 years and nine months to 4 years and 3 months imprisonment. Throughout the trial, criticism was levelled against the political character of article 129a of the German Criminal Code, the terrorist paragraph applied in the trial (see *Statewatch* Vol 11 no 5) and the court's conduct in uncritically repeating the prosecution's bill of indictment whilst ignoring factual contradictions. Civil liberties organisations and lawyers argue that the court's conduct violated legal democratic principles such as the independence of the judiciary and the latter's obligation to engage in objective fact finding.

The RZ declared itself responsible for around 180 attacks (40 of which were in Berlin) in the 1980s and beginning of the 1990s and was marked by a structure of autonomous cells rather than being a hierarchical organisation. The Berlin trial dealt with two shooting incidents against a judge and an official in 1986 and 1987 respectively (these are statute-barred crimes) as well as two explosives attacks on a Berlin monument and a social security office for asylum seekers. Both resulted in property damage. The main charges against the five accused were

leadership or membership of a terrorist organisation.

Contrary to the RAF (*Rote Armee Fraction*) prosecutions, the authorities could never ascertain who was part of the RZ, which meant that most of their activities remained unsolved. In this case also, the prosecution stumbled over the crown witness and former RZ member Tarek Mousli by accident rather than investigation, when two youngsters robbed his cellar where he had stored explosives and subsequently contacted the police. After putting him under surveillance for some months, police arrested him first in April 1999 for one day, then in May for 7 weeks and again in November 1999. After months of interrogation, they offered him a crown witness deal. Mousli gave a wealth of detail which, with the help of the German crime police authority (*Bundeskriminalamt*, BKA), were collated and presented as detailed insider knowledge of RZ's history in court. Some of the accusations were true. For instance, one of the accused had shot a leading judge in the legs: Günther Korbmacher had been the sitting judge in 1983 when the Federal Administrative Court ruled that torture was no reason to grant asylum if a state tortured without political motives (which led to the deportation of many Kurdish refugees from Germany). In 2002, Rudolf Schindler admitted to the court that he had been a member of the RZ and had shot the judge during the RZ's "refugee campaign". He also argued that the majority of Mousli's statements were untrue. Schindler commented that "although the purpose of most of [Mousli's] lies is obvious, it remains a mystery to me why he names some people who were never members as members, whilst leaving others out of the picture."

Indeed, Mousli's statements often contradicted the known facts. He accused Harald Glöde of having carried out an unsuccessful bomb attack against a social security office for asylum seekers in 1987, a time when he was in police custody. He also accused Sabine Eckle of having shot Harald Hollenberg, an official responsible for Berlin's foreigner policy, but Eckle was exonerated by a witness during the trial who declared that she (the witness) had shot Hollenberg in the legs (by then the crime was statute-barred). The court, however, declared the witness unbelievable. There were also other discrepancies in Mousli's evidence. He held that a car had been stolen when in fact it had been bought, named wrong street names and confused locations; he wrongly described an explosive device used in one of the attacks. Mousli admitted he knew of a 1991 attack against the *Siegessäule* monument, a symbol of German nationalism, only by hearsay, but still thought he could name all of the people involved. The trial often acquired a bizarre edge when the police and prosecution continued to support Mousli's claim that a social centre had hosted an explosives depot despite the fact that police could find no traces of explosives either in the place Mousli named nor anywhere else in the building. Experts gave evidence denying the possibility of the explosives leaving no trace, yet, the prosecution and court continued to defend their only witness by admitting that although he "confused" facts a little at times, in general he was credible. If Mousli's description of an action turned out to be wrong, the presiding judge Hennig thought that the "plan of action had been changed without his knowledge."

The most controversial aspect of the trial was therefore the manner of fact finding by the court, namely, on the basis of a witness whose own future was based on presenting the prosecution with as many names and as much detail as possible. The court repeatedly ignored defence arguments that the witness had been pressurised into giving names under the threat of receiving a high sentence himself which they argue made his statements unbelievable because they were given under duress. Police files disclosed that the Federal Supreme Court attorney, Christian Monka, told Mousli that he could expect 5 to 6 years in prison unless he made "high-profile statements" about RZ members and delivered "scoops", in which case he could expect a short trial with two years on probation, which Mousli received in the end. Under this deal, Mousli also gained a new identity and

receives 2400 euros a month, free health insurance, car and telephone use and is still living in an unknown location, instead of serving a 5-year prison sentence. This could be an incentive, the defence argued for providing false evidence. The crown witness regulation was in fact abolished on 31 December 1999, a few weeks after Mousli was offered the deal by the BKA, on grounds of constitutional concerns.

On the basis of this crown witness's information, and terrorist legislation which allows for prosecution on grounds of membership of a terrorist organisation without having to prove a specific crime: Matthias Borgmann received four years and three months (leadership under article 129 and involvement in two bomb attacks), Sabine Eckle and Rudolf Schindler received three years and nine months (leadership under 129a, involvement in one bomb attack), Axel Haug received two years and ten months (membership under 129a, involvement in bomb attacks) and Harald Glöde received two years and nine months (membership under 129a, involvement in one bomb attack and handling of explosives). Although the attacks on judge Korbmacher and a former head of Berlin's foreigner authority formed a central element of the prosecution, they were already statute-barred and charges could therefore not be brought. In January this year, federal public prosecutor Kai Nehm ordered another trial to be opened against Lothar Ebke, who was extradited to Germany from Canada in October last year. Ebke was named by Mousli as a member of RZ and is accused of membership and involvement in the bomb attacks as well.

The prosecution's final statement appeared so weak in factual detail that one daily newspaper commented:

The accused were somehow involved in the preparation of the attacks, they were around somewhere during the attacks and at some point they discussed position papers. This is how the six hour long speech of chief public prosecutor Bruns...after more than 160 trial days in the Berlin trial against five alleged members of the RZ, could be summarised. (Tageszeitung, 19.3.04)

Defence lawyers for Haug, Glöde and Borgmann, who have pleaded innocent, have announced they will appeal against the sentences.

Information on the RZ and for transcripts of each trial day, see www.freilassung.de. The summary of the trial and sentences can be found in German: <http://www.freilassung.de/prozess/ticker/berichte/180304.htm>

POLAND

Intimidation of EEF activists

Activists have reported intimidating police and secret service tactics against them in the run up to the protests against the European Economic Forum, the regional off-shoot of the World Economic Forum (WEF), held for the first time in Eastern Europe (Warsaw), between 28 and 30 April this year. The WEF describes itself as a "global community of business, political, intellectual and other leaders of society committed to improving the state of the world," and the organisation acts as a think tank and lobbying group for promoting global business relations, with WEF members representing the "world's 1,000 leading companies, along with 200 smaller businesses." An Alternative Forum was hosted by a variety of social and political groups in Poland, in order to "make the public aware of the undemocratic nature of these meetings by government leaders and leaders of big businesses, who take fundamental political and economic decisions on world affairs without the slightest societal participation" (Indymedia Poland). The city was turned into a fortress for the duration of the meeting to prevent protests and demonstrations. Organisers of the Alternative Forum include ATTAC Poland, the Coalition of Freedom Groups (Anarchist Federation and anti-authoritarian groups), Workers' Democracy (*Pracownicza Demokracja*) the Stop War Initiative, the Poznań

Antiwar Coalition as well as small trade unions..

In the run-up to the Alternative Forum, the *Praha Cinema* that had offered to host discussions and workshops was subjected to a police check and subsequently withdrew its offer. Pressure from the police also led to a withdrawal of an offer by the *Centre of Cultural Revival* to host an information meeting about the Alternative Forum. Police and the Polish secret service (*Agencja Bezpieczeństwa Wewnętrznego* - ABW) also intimidated activists from Warsaw, Poznań, Rzeszów, Suwaki and Toruń by forbidding them to host guests of the alternative summit in their cultural centres. A concert in support of the Alternative Forum was stopped by police and advertising for the Alternative Forum was targeted. Activists have reported being stopped at borders due their names having been stored in the Europol database and the Schengen Information System. A press release by the Coalition of Freedom Groups from 15 April says that:

The police harassment and the escalation of violence are becoming more and more systematic against participants of the freedom movement involved in organising demonstrations and other activities. Just a few weeks from the Forum, in Warsaw and in other cities, a campaign of harassment against activists was started. Techniques used by the police and the ABW [secret service] have included: spoken threats, repeated telephone calls with proposals for interviews, summons to appear in police stations, interrogations, home visits, enquiries at activists' workplaces and to neighbours, stopping people in the street because of posters and leaflets they are carrying. As well, telephone tapping and surveillance of electronic communications. Police in civilian clothes have been to squats and to independent information centres, they have frightened owners of cinemas and places where meetings had been planned. (<http://pl.indymedia.org/pl/2004/04/5059.shtml#english>)

The activists have contacted the Helsinki Human Rights Foundation which has offered to provide legal support and independent observers. The Coalition has demanded that the responsible police chief, Mr Siewierski, apologises to the management of the *Praha Cinema* from Warsaw for the police intimidation. They have also demanded that the police "dissociates itself from criticisms against anti-globalists and that it does not advise people against working with us, because that would be a violation of the constitutional right to freedom of speech."

Photos of police repression:

<http://poland.indymedia.org/pl/2004/04/5313.shtml>

German background article: <http://de.indymedia.org/2004/04/81640.shtml>

See <http://pl.indymedia.org/pl/2004/03/4412.shtml#german> for information and updates on the Alternative Forum in several languages, including English.

ITALY

A surreal ratification of the ban on torture

The process of ratification into Italian law of the ban on torture which Italy has signed up to in repeated international agreements experienced a remarkable turn, as the *Lega Nord* (LN, Northern League), with the support of the governing centre-right coalition, managed to force through an amendment in parliament that allows "threats and torture", if they are not "reiterated". The original text of the new article 613 bis of the Italian penal code "concerning the crime of torture", read: "The public official or person responsible for a public service who, through serious threats or violence, inflicts physical or mental suffering on people who are subjected to their authority in order to obtain information or a confession...or as punishment for actions that a person has committed or is suspected of having committed,..." or

for reasons of racial, political, religious or sexual discrimination, "is punished with detention for between one and ten years". The LN's amendment saw the word "reiterated" introduced after "serious threats and torture" in this article, undermining the measure, and making it possible for torture to be allowed in isolated cases.

The head of the Parliament's Justice Commission, Gaetano Pecorella from prime minister Berlusconi's *Forza Italia* (FI), admitted that the approval of the amendment "runs contrary to the Commission's opposition" to it. Opposition MPs left the chamber in protest against the provision; Maura Palma, the Italian representative in the Commission on the Prevention of Torture (CPT), called on parliament to "return to the original text", which uses the definition of torture that is contained in the UN Convention that has already been ratified by Italy. Even members of the governing coalition criticised the amendment. Subsequently, Pecorella tried to dismiss the amendment's significance, claiming that it is not true that it would legitimise individual cases of torture, and that it would be possible to improve the measure if it was explicitly stated that the description of "reiterated" to limit the definition of the offence should only apply to threats.

Stefano Anastasia, the head of *Associazione Antigone*, argued that "civilised countries like ours should offer more guarantees, and certainly not less, than the UN definition". This controversial amendment was defended by the LN, which referred to it as a means to protect police officers. In this context it worth remembering that 73 officers and officials from the police and *carabinieri* (Italy's paramilitary police force), including four medical workers, are facing charges in relation to the mistreatment of detainees during the G8 summit in Genoa in July 2001.

Introduzione articolo 613-bis del codice penale concernente il delitto di tortura (Introduction of article 613-bis of the penal code, concerning the crime of torture, 22.4.04; available from www.cittadinolex.it; Il manifesto 23-30.4.04

Civil liberties - new material

Informe 2003, *Movement polos dereitos civiles*, pp.45 (in Galician). This report by the Galician-based *Movement polos dereitos civiles* (MPDC, Movement for civil rights), is an annual round-up of the organisation's activities. The MPDC was set up in 2002 "to monitor the respect of citizens' rights" through an active defence of legality, and by using available legal tools to control any "faults or irregularities" committed by public authorities "in the exercise of their duties and obligations". This includes filing complaints or reporting irregularities to prosecutors and ombudsmen, "so that these may investigate, inform and make recommendations" to public bodies concerning possible solutions to be adopted. At the local level, the MPDC focuses on Santiago de Compostela, highlighting problems such as video surveillance, violence or repressive actions by the police, the prohibition of musical events organised against the war in Iraq, and proposals to expel migrants who are caught begging. At a regional level, the most prominent issue was the Galician government's "negligence in response to the catastrophe of the *Prestige*" oil tanker. The MPDC filed complaints to the ombudsman on the censorship of information in relation to the disaster, the "unjustified attacks by members of the regional administration against members of the *Nunca Mais* citizens' platform", which saw them described as "radical" and tried to criminalise them through misguided references to the Basque Country. At a national level, the MPDC focused on the disaster of the *Prestige*, and on the war against Iraq. Available from: *Rua do Campo do Forno, 1 baixo, 15703 Santiago de Compostela, Galicia, Spain.*

EsCULcA, *Observatório para a defesa dos direitos e liberdades*, n.4, pp16, March 2004 (in Galician); *Apdo. Correos 2112, 36208 Vigo, Galicia, Spain.* A bulletin by the one-year old Galician-based observatory on civil rights and liberties, EsCULcA, which includes sections on the protection of personal data, the rights of third country

migrants, freedom of expression and the right of citizens to receive truthful information, as well as a news round-up on developments in civil liberties and fundamental rights. The website of EsCULcA, which seeks to "promote a return of interest for public affairs and collective responsibility [in Galician society], from the awareness that our indifference and absence are the most fertile ground for new forms of totalitarianism and social control to arise", can be found at www.esculca.org

Libertad de expresión y derecho de asociación en Euskal Herria, Behatokia (Basque Observatory on Human Rights), *Eskubideak* (Basque Lawyers' Association), October 2002. This publication focuses on freedom of expression and the right of association in the Basque Country, by focusing on the judicial initiatives and charges brought by judge Baltasar Garzón involving Basque social and political organisations, and through a report and legal analysis of the reform of the *Ley de partidos*, which subsequently led to the criminalisation of *Batasuna*.

EUROPE

PORTUGAL

Free movement to be suspended during Euro 2004

Antonio Figueredo Lopes, the Portuguese Interior Minister, told parliament on 16 March 2004 that Portugal will avail itself of article 2(2) of the Schengen Treaty, allowing it to temporarily reinstate border controls, thus suspending the freedom of movement that applies within the Schengen area, while it hosts the European football championships from 12 June to 4 July - and for the Rock in Rio music festival which will be staged on subsequent weekends, from 28 to 30 May, and from 4 to 6 June. Police presence in airports, places where "large agglomerations of people" are present, and border areas, will be strengthened with up to 20,000 extra officers (12,000 are envisaged at present). These measures are motivated, according to the Interior Minister, by security concerns, especially the possibility that this high profile event may become a target for terrorists, although "no credible threat" has been received.

Figueredo told foreign journalists that cooperation with "Spanish security forces" had "intensified", and that "a centre has been established in Portugal in which all the available information from countries that are signatories to the Schengen agreements is received and collected". This information regards the three potential threats that the Portuguese authorities have identified: terrorism, which has been re-assessed in the light of the Madrid attacks, hooliganism and crime in general. The 18 football teams that will take part in the competition will each have security or intelligence liaison officers, to assist their Portuguese counterparts. As a result of the attacks in Madrid, the *Unidade de Coordenação Anti-Terrorista* (UCAT, Anti-Terrorist Coordination Unit), is meeting on a daily basis to identify possible threats. Originally set up in February 2003, the UCAT includes members from the *Serviço de Informações de Segurança* (SIS, Security Information Service), the *Serviço de Informações Estratégicas de Defesa e Militares* (SIEDM, Strategic Defence and Military Information Service), the judicial police, the maritime authority and the *Serviços de Estrangeiros e Fronteiras* (SEF, Border and Immigration Service). Figueredo claimed that they are enjoying "excellent cooperation with Europol", and that NATO will contribute to Portugal's air security by using its AWACS air control aircraft.

The outgoing Spanish government also announced on 22 March 2003 that the free movement of persons across Schengen

borders into Spain will be temporarily suspended from 15 to 23 May 2004. Article 2(2) of the Schengen Treaty will be invoked for the celebration of the marriage of Prince Felipe, heir to the Spanish throne, to former journalist Letizia Ortiz on 22 May. Security measures for the wedding were tightened following the Madrid bombings, and they include actions to be undertaken in advance of the wedding such as checks in thousands of houses in the centre of Madrid, especially rented accommodation, along the route of the royal cortège.

Article 2 of the 1990 Convention implementing the Schengen Agreement abolished checks at the internal borders of participating states (applying to the 15 European member states before the recent enlargement, except for the UK and Ireland, and two non-member states, Norway and Iceland). Nonetheless, an exception is envisaged in paragraph 2 of article 2, "Where public policy or national security so require, however, a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period border checks appropriate to the situation will be carried out at internal borders."

A Statewatch report (in *Statewatch European Monitor* vol. 3 no 4, February 2003) about the freedom of movement for citizens of signatory States under Article 2 of the Schengen Agreement, found that this right had been suspended, with border controls reinstated, "at least 26 times" between January 2000 and December 2002. In at least 16 cases, the suspension of freedom of movement was aimed at countering demonstrations held during international summits, sometimes resulting not just in the re-introduction of border controls, but also in the mass denial of entry into member states to hundreds of people on security grounds. The country that had used the exception contained in article 2(2) of the Schengen agreement the most was Spain, in three instances in relation to demonstrations held in Spain and once due to an informal meeting of EU defence ministers, during its term as presidency of the EU in the first semester of 2002; in one instance to stop Spanish demonstrators from travelling to an EU Council in Biarritz (France) in 2000; and in another case in 2001, because "high-ranking figures" were "travelling to the Arán valley area during the coming Christmas holidays".

El Mundo, 17.3 & 23.3.04; *Libertad Digital*, 17.3.04, 9.4.04; "Free movement curbed on security grounds", *Statewatch European Monitor*, vol. 3 no. 4, February 2003.

Europe - new material

Deaths at Europe's borders, Liz Fekete. *Race and Class* Vol. 45 no 4, 2004, pp75-83. Examination of EU border control policies and the erosion of humanitarian obligations to protect those fleeing persecution. Looks at how the EU has heavily drawn on US and Australian border control programmes and the role of Britain, Spain and Italy in pushing towards discriminatory practices. It examines Operation Ulysses, which saw armed vessels from Spain, Britain, France, Italy and Portugal patrolling sections of the Mediterranean. Concludes that the failure of rescue missions "are endemic to these multimillion pound, EU sponsored border control enterprises, which have been set up primarily as military defence systems designed to repel invasion"

LAW

Law - new material

Sooner or later they will have to admit there is no evidence, Anthony Scrivener. *Independent on Sunday* 22.2.04. The former chairman of the Bar Council considers the "no-man's-land" of Guantanamo Bay, Cuba, and the cosy relationship between the UK and US governments. He points to the "obvious problem" of a US government sending "a national of a friendly state to be tried by a military tribunal, which has the power

to impose the death penalty, in defiance of all principles relating to human rights and international law." Considering the repercussions of this problem, Scrivener concludes: "To justify detention you need to have evidence. The non-existence of this evidence is not a justification for allowing a conviction without evidence on the say-so of some unidentified politician or state official, or on a lower standard of proof: it is only a justification for release and a verdict of not guilty. Sooner or later both governments will have to face-up to this long-established principle. It is all part of the rule of law and helps explain why we are a democracy."

Recent developments in UK human rights law, Nicholas De Marco. *Legal Action* March 2004, pp16-20. A review of recent domestic human rights law cases between April and November 2003.

Test case litigation and the Human Rights Act, John Halford. *Legal Action* March 2004, pp21-23. "Assesses the untapped potential the HRA offers for test case litigation and judicial review."

"Let the people decide", Stuart Weir & **"House of Correction"**, Adam Tomkins. *Red Pepper* March 2004, pp18-21. With Hutton representing the most recent in a long line of judges heading inquiries to act as a "safe pair of hands" in upholding the interests and will of the government, it is clear to Weir and Tomkins that "government-appointed investigations headed by establishment judges cannot hold the executive to account". As Weir points out this is certainly not a recent trend, nor is it, according to Tomkins, necessarily the fault of the judges: "it is not the job of judges to hold the government to account in respect of politically sensitive actions or decisions taken in the interests of national security" (p20). In the light of this, both articles offer alternatives for existing democratic institutions capable of performing this task. Weir advocates the use of juries, a "cornerstone" of the British justice system, sitting with a judge or expert advisor. He believes them to be suitably placed to "strengthen and democratise public enquiries" (p19). In contrast, Tomkins argues that Britain has a parliamentary system unique both in its capability to hold the government to account and its unwillingness to do so. Currently the most effective use of this ability is being exercised through the work of House of Commons select committees. This is where Tomkins believes accountability must come from. The problem he identifies is that although under Blair the quantity of parliamentary scrutiny may have increased, the quality of said scrutiny is unprecedentedly poor. The majority of those who become MPs do so not to embark upon a career sitting on select committees, nor do they see it as their job to hold the government to account. Rather they aspire to ministerial positions, achievable only through pleasing government whips. It is these damaging elements of the party system that Tomkins argues need be addressed, or "we will have no one to hold the government to account save for the dismal likes of Lords Hutton and Butler" (p21).

IMMIGRATION

GERMANY

Amnesty warns of immigration abuse in "fight against terrorism"

The German political climate has never been particularly open to immigration debates. Conservative politicians are now resisting more liberal labour schemes with openly racist slogans such as *Kinder statt Inder* (children instead of Indians), referring to white German children and Indian experts who were invited under a government scheme to work in Germany to fill vacancies in the IT sector. Germany is trying to implement the liberalisation of its immigration laws to allow for the flexible migration of skilled workers whilst at the same time restricting immigration as a whole, in particular undocumented immigration. It is also increasing its powers to deport. This "managed migration approach" was first openly propagated at

EU level through the Vitorino paper on immigration (COM(2000) 757 final, 22.11.2000) and it has been pursued in Germany at least since February 2000 with Schröder's Greencard announcement that was the first official admission by government that immigration was necessary for the economy.

At the end of 2001, Interior Minister, Otto Schily, presented an Immigration Bill that, despite earlier promises of liberalisation turned out to discriminate against every immigrant except the highly skilled one. The white paper lowers the age of family reunion from 16 to 12 years, excludes asylum seekers from basic civil rights, denies the regularisation of an estimated 500,000 to 1 million undocumented migrants living in Germany, abolishes the current temporary residency status - *Duldung* - which "tolerates" people on humanitarian grounds (which confronts around 250,000 asylum seekers with the possibility of deportation) and facilitates deportation and detention through accelerating the asylum procedure (see *Statewatch* vol 11 no 5). Despite the restrictive tone of the law, the coalition government (*Sozialdemokratische Partei Deutschlands* and *Die Grünen* - Social Democrats and Green Party) has been in continuous argument with the conservative opposition (*Christlich Demokratische Union* and *Christlich Soziale Union* - conservative christian parties from North and South Germany) on several issues. The dispute was reflected in the initial passing of the law being declared invalid by the Federal Constitutional Court on 18 December 2002 on the grounds of formal irregularities in the voting procedure of the Lower House. This led to the white paper being reintroduced by the government at the beginning of 2003.

In addition to the ongoing demand by the Conservatives to make the law more restrictive than it already is, Amnesty International and six church and refugee NGO's have written an open letter to the parliamentary committee in protest at the recent turn in the debate to focus on security measures and terrorism. The letter says that in light of the Madrid bombings, the white paper is being abused by political parties to present a hard line on terrorism: first Conservatives, and now interior minister Schily are proposing to include increased deportation and "security detention" powers into the law.

The white paper has been debated by a parliamentary committee for the last year. The *Vermittlungsausschuss* is set up automatically when Lower House proposals are rejected by the Upper House and no agreement can be reached. The argument revolves around promoting labour migration, improving humanitarian protection for refugees and integration measures and can be summarised as follows:

i. integration: the white paper demands mandatory participation in German language courses for foreigners who do not speak German. The Conservatives want to introduce sanctions for failure to attend courses and make foreigners pay for the courses as well.

ii. labour migration: the government is currently giving in to Conservative demands to abolish the proposed point system, which allows for the immigration of people who fulfil certain criteria (ie. age, qualification, language skills) without being linked to a specific employer. If the point system is taken out of the proposal, the immigrant/employer will have to prove that the position could not have been permanently filled by a German or EU citizen. Further, the Conservatives reject the proposition to abolish the general labour immigration ban for non-EU citizens that was introduced in Germany in 1973 and is still valid.

iii. refugee protection: the Conservatives are blocking a proposal from the Greens that includes persecution on grounds of gender as well as non-state persecution in the refugee protection regime. Further, the Green party wants to give regional authorities (*Länder*) the power to grant residency permits on grounds of "urgent humanitarian or personal reasons".

The latest dispute was triggered by Interior Minister Schily

proposing facilitated deportation of "terrorist suspects" and those that pose a threat to "national security". Initially Schily indicated that past training in an al-Qaida camp, involvement in fighting in Chechnya or the selling of a video that calls for *jihād* would be enough to deport. Suspects who cannot be deported for humanitarian reasons will be taken into "security custody". The current proposal holds that foreigners can be deported if there is a "prognosis based on facts" that indicates that s/he belongs to an organisation that supports international terrorism, follows extremist goals or supports such an organisation. *Amnesty International*, the Church organisation *Diakonisches Werk*, the lawyers organisation *Deutscher Anwaltverein*, the German *Caritasverband e.V.*, the judges association, *Neue Richtervereinigung*, the charity *Arbeiterwohlfahrt Bundesverband e.V.*, the refugee support organisations *Pro Asyl* and the German welfare charity *Deutscher Paritätischer Wohlfahrtsverband* strongly oppose the inclusion of terrorist measures in the discussion on the law, which, they argue, was intended to facilitate immigration and integration. They argue that the security measures introduced after 11 September 2001 (*Sicherheitspaket II*), provide the authorities with ample powers to detain and deport terrorist suspects. Further, the letter argues that the current proposal violates the legally stipulated right to a fair procedure:

According to press reports [on the recent ministry proposal], the deportation of a foreigner by the interior ministry will already be possible if facts support the prognosis that he poses a threat to the security of the German Federal Republic. It appears that the Federal Administrative Court will decide in the first and last instance on the deportation within a very short period of time. According to '99 Abs. 1 VwGO, the ministry can refuse to disclose the records on the basis of which it decides on the deportation of the foreigner in the legal procedure, if the security of the German Federal Republic is affected. In the opinion of the signatories of this letter, this proposal violates the principle of a fair procedure. The proposed measure would give the federal ministry far-reaching powers to deport a foreigner who has possibly already lived in Germany with his family for many years and is integrated. On grounds of the accelerated legal procedure and the use of numerous undefined legal concepts, there is a danger that the decisions of the Executive [i.e. government] will be taken arbitrarily and that there will be no possibility to check them through the courts.

([http://www2.amnesty.de/internet/deall.nsf/windexde/PR2004033/\\$FILE/ob20040427.pdf](http://www2.amnesty.de/internet/deall.nsf/windexde/PR2004033/$FILE/ob20040427.pdf))

The parliamentary committee is expected to conclude its debate on the proposed law by mid-May. For more information see <http://www.aufenthaltstitel.de/index.html>

Immigration - in brief

■ **Sweden: Asylum seekers mutilate hands to avoid Eurodac.** Swedish officials have admitted that hundreds of fingerprints taken from asylum seekers have showed signs of injuries, pointing to the fact that asylum seekers have turned to mutilating their hands through cutting and burning. An asylum seeker interviewed on Swedish radio said he burnt his fingers repeatedly over the stove. Around 5% of the 26,000 sets of fingerprints that the Swedish Migration Board has taken since January 2003 were not legible for identification. Brent Hellstroem, an "identity expert" from the Migration Board thought that the mutilation was not very dramatic because: "It is very easy to mutilate and you don't do any lasting damage...You really only destroy the outer layers of the skin and barely have time to register the pain. The pain you feel for that short period is perhaps worth it to be able to stay in Sweden your entire life." Hellstroem's call is that more stringent checks such as biometric identity checks with iris scanning should be implemented. <http://news.bbc.co.uk/1/hi/world/europe/3593895.stm>,

http://www.news24.com/News24/World/News/0,,2-10-1462_1507421,00.html

■ **Italy: MSF denied access to holding centre in Lampedusa.** On 22 April 2004, the Italian section of the humanitarian doctors' organisation *Medici Senza Frontiere* (MSF) issued a statement criticising the exclusion of its volunteers from providing medical assistance to migrants in the detention/identification centre on the island of Lampedusa, off the coast of Sicily. The interior ministry did not renew an agreement with the local police force that allowed MSF staff access to the centre. MSF reports that it has been present in the centre since September 2002, providing assistance to approximately 7,000 persons per year. The refusal to guarantee MSF staff access to the centre was officially motivated by the efficiency of the centre's management, although according to Loris de Filippi, responsible for the Italian section of MSF "our staff have repeatedly observed the serious inadequacy of the medical assistance issued to the foreigners", and the centre is often overcrowded, ill-equipped for emergencies, such as the simultaneous arrival of large numbers of migrants, and is unhygienic. MSF relates the denial of access to the centre in Lampedusa to its volunteers as a result of the highly critical report on Italian detention centres (see *Statewatch vol 14 no 1*) that the organisation published on 26 January 2004, about which it has asked to be heard by interior ministry officials without receiving a reply. *MSF press statement, 22.4.04; www.msf.it/msfinforma/comunicati_stampa/22042004.shtml*

■ **Spain: Migrant deaths.** The trickle of deaths on the Spanish borders of the EU continued in the month of April. On 4 April, an Algerian immigrant who tried to swim across the Moroccan border into Ceuta, the Spanish enclave in North Africa, was found dead on a beach in Ceuta. On the morning of 17 April, 14 sub-Saharan African men and a baby died when two dinghies carrying 61 persons hit rocks off the east coast of the island of Fuerteventura, in the Canary Islands, during their crossing from the Western Sahara. On 22 April, a Moroccan woman was found dead on a beach near Motril (Granada, in Andalucía) after crossing the Strait in a *zodiac* carrying at least 35 people. On 28 April, two men were found dead in the stores of a merchant ship flying a Turkish flag in Escombreras (Murcia, southeast Spain) that came from Casablanca (Morocco). They may have suffered asphyxia as they tried to smuggle themselves into Spain. *El País, 5, 18, 23, 28.4.04.*

Immigration - new material

Get it right. How the Home Office decision-making process fails refugees. *Amnesty International* February 2004, pp92. This study examines "the quality of initial decision-making on asylum claims in the UK" in light of the introduction of several pieces of legislation introduced "to deter asylum applicants and make access to the UK's territory, asylum procedure and other benefits difficult for those fleeing human rights violations." It considers "The asylum application and the initial decision making process", "The need for objective and comprehensive country of origin information", "Unreasoned assertions about individual credibility" and "Applicants who allege torture" and concludes that, as demonstrated by Refusal letters cited in the report, "Home Office initial decision-making in asylum cases is failing many applicants." www.amnesty.org.uk/deliver/document/15158

Social Work, Immigration and Asylum, Debra Hayes & Beth Humphries (eds.). *Jessica Kingsley Publishers* 2004, 240pp (ISBN 1 84310 194 7) £19.95. The thirteen contributions to this volume examine "the practical and ethical challenges facing human service professionals working with refugees, asylum seekers and other people subject to immigration controls". The essays cover the areas of child protection and family support, disability, the criminal justice system, asylum teams and immigration tribunals, considering "traditional anti-

oppressive roles and the role professionals play as "gatekeepers" to services."

Hijab, el velo, Mugak, *Centro de Estudios y Documentación sobre racismo y xenofobia*, Peña y Goñi, 13-1, 2002 San Sebastián, n. 26, 1st quarter 2004, pp. 59, 5 Euros. This issue focuses on the debate over the use of the veil in France, and features a report on the situation in the Strait of Gibraltar by the *Asociación Pro Derechos Humanos* of Andalucía, which includes charts on the numbers of deaths that result from Spanish immigration policy. In response to the change of government in Spain, the editorial staff also puts on the record a number of demands, asking whether the PSOE, which has presented itself as the party of change, is willing to promote "effective and concrete changes" with regards to immigration policy.

Inmigración, racismo y xenofobia, n. 6, Press review, July-September 2003, Mugak, *centro de estudios y Documentación sobre racismo y xenofobia*, SOS Arrazakeria, pp. 87. This useful press review includes sections on the press coverage of issues including border controls, immigration policies, crime and insecurity, integration and social issues in Spain, and includes sections on Navarre, the Basque Country and the European Union.

The Asylum and Immigration etc. Bill: Why law without judges was a step too far, Sarah Craig. *SCOLAG Legal Journal* Issue 318 (April) 2004. The Asylum and Immigration (Treatment of Claimants etc) Bill "contains many proposals aimed at restricting the rights of asylum seekers, including new criminal offences for applicants without identification papers, electronic tagging of people on immigration bail, and the proposal to refuse food and shelter to families of failed asylum seekers, which could result in local authorities having to take children into care." Craig accuses the government of "double standards" and concludes that "Work still needs to be done to ensure that the changes to the Bill will be enough to preserve the rule of law, and to maintain human rights protections for those who need them most."

Asylum: a guide to recent legislation, Jane Coker, Judith Farbey, Nadine Finch & Alison Stanley. *Immigration Law Practitioners' Association & Resource Information Service* January 2004, pp80. This is the fourth edition of the guide which takes into account new provisions, such as citizenship ceremonies, induction centres and the Immigration Appeal introduced under the Nationality, Immigration and Asylum Act 2002.

MILITARY

SPAIN

Zapatero orders the return of Spanish troops from Iraq

On 18 April 2004, the first announcement as Prime Minister by the recently elected Luis Rodríguez Zapatero (PSOE, Socialist Party) was to order Defence Minister, Jose Bono, to make arrangements for the withdrawal of Spanish troops posted in Iraq "within the shortest possible delay" and with the "maximum security" possible. The commitment to withdraw Spanish troops from Iraq unless the United Nations took charge of the military and political situation in the country was one of his main electoral pledges. Although he originally set a deadline of 30 June 2004 for this condition to be fulfilled, Zapatero claimed that available information, inquiries made by the Defence ministry, and the statements made by the main participants in the conflict, indicated that this requirement would not be fulfilled and consequently ordered the return of Spanish troops.

The Spanish move was followed by announcements by the governments of Honduras and the Dominican Republic that they would withdraw their troops (the Dominican Republic announced that it will withdraw its troops by 5 May), and Poland

and Bulgaria may also reconsider or downscale their presence. On 27 April, the prime minister told parliament that within a month there would be no "Spanish soldiers would be left on Iraqi soil". Zapatero stressed that he had opposed the presence of the Spanish armed forces in Iraq for a long time, and that he had made a public commitment to withdraw troops as far back as March 2003. He had also opposed the role played by the previous Spanish government, which strongly supported the US-led war in spite of overwhelming opposition from the public.

Announcement by the President of the Government, Don Jose Luis Rodriguez Zapatero, concerning Spanish troops in Iraq; La Moncloa palace, 18.4.04; El Pais 28.4.04

Military - In brief

■ **Europe: EADS pressed to sever French link.** EADS, the European aerospace and defence group, is under pressure from Wall Street investors to dilute or scrap stakes held by the French government and its other two main shareholders. Both German-US Daimler Chrysler (DC) and French media group Lagardère have been urged by US investors keen to buy into the majority-owner of Airbus to press Paris for a synchronised sell-down. At the moment the French state shares equally a 30.13% stake with Lagardère while DC holds a 33% share. Arnaud Lagardère the heir of the Lagardère group has indicated that he wants eventually to sell his EADS stake and focus on media business. The French state has long held the view that aerospace and defence businesses are "strategic" interests. But EADS co-chairman Manfred Bischoff warned in *Defense News* against turning EADS into a purely French player. With the European defence market worth \$180bn compared with the \$400 bn-plus American market, EADS is keen to take more US military business. *Guardian 29.3.04 (David Gow)*

■ **EU-led forces could intervene in Sudanese conflict.** The chairman of the EU military committee, Finnish general Gustav Høglund, has said that EU-led forces could intervene in Sudan, where more than 670,000 people have fled the western region of Darfur following weeks of killing, rape and looting by militias. According to Høglund it is part of the new battlegroup concept of the EU that refers specifically to the need to deploy quickly to African hotspots. "In the long run, threats may appear that the US is not willing or even able to counter on behalf of the Europeans. For the US, Europe is a sideshow. It is important the Europeans take responsibility and stop leaning on the Americans to do everything," according to the general. *Financial Times 13.4.04 (Judy Dempsey); Scotsman 5.4.04*

■ **EU to take over from NATO in Bosnia.** The EU is ready for a "seamless transition" that will allow the EU to take over the NATO peacekeeping SFOR operation in Bosnia-Herzegovina as early as this summer. The final decision will be made at the NATO summit in Istanbul on 28-29 June. Whereas the two other EU military operations, in Macedonia and Congo, have only required 300 and 1,300 troops respectively, the Bosnia operations will require the deployment of 7,000 troops. Contrary to a previous decision the EU and not NATO will be in charge of capturing suspected war criminals wanted by the Court in The Hague. The EU troops will use NATO assets and planning. A small NATO force of 200-300 soldiers will stay on. *euractiv.com 7 & 27.4.04*

Military - New Material

EU - Zivil- oder Militärmacht? [EU civil or military power]. *wissenschaft und Frieden 2/2004 pp 6-46*

Fighting Proliferation - European Perspectives. *Institute for Security Studies (ISS) Chaillot Paper 66 December 2003*

Crisis management in sub-Saharan Africa - the role of the European Union. *ISS Occasional Paper 51*, April 2004

The confessions of Soldier C, Tom Newton Dunn, Stephen Moyles & Aidan McGuerran. *Daily Mirror* 7.5.04, pp1, 4-6. Interview with Soldier C, who says that he witnessed British soldiers from the Queen's Lancashire regiment in Iraq torturing Iraqi prisoners. He says: "I witnessed four beatings when people were punched and kicked. One corporal went up to a suspect who had a sandbag over his face and poked his fingers in the guy's eyeballs until he was screaming in pain." Elsewhere in the article Soldier C describes how "the Iraqis were bagged, zip-tied and had ten kinds of crap beaten out of them."

Europäische Verteidigungsagentur [European Defence Agency], Wolfgang Hermann. *Wehrtechnik* 1/2004 pp. 56-59

One year on the human rights situation remains dire. *Amnesty International* AI Index: MDE 14/006/2004. This report, published a year after US-led forces launched their war on Iraq, considers the "promise of improved human rights for Iraqis", concluding that: "Most Iraqis still feel unsafe in a country ravaged by violence." While the US-led invasion is estimated to have been responsible for more than 10,000 civilian casualties the occupying forces have deemed these to be non-people, not even worthy of recording as statistics. The report notes some positive developments in the fields of freedom of expression, association and assembly, but the overall picture is as bleak as opponents of the war predicted before the invasion. As Amnesty notes: "Every day Iraqis face threats to their lives and security. Violence is endemic, whether in the form of attacks by armed groups, abuses by the occupying forces, or violence against women. Millions of people have suffered the consequences of destroyed or looted infrastructure, mass unemployment and uncertainty about their future. And there is little or no confidence that those responsible for past and present human rights abuses will be brought to justice." Available on: [http://web.amnesty.org/library/Index/](http://web.amnesty.org/library/Index/ENGMDE140062004)

ENGMDE140062004.

Moving Targets, Seymour Hersh. *The New Yorker* 8.12.03. Although perhaps in some areas a little out of date, this article offers a comprehensive report on US military operations in Iraq and its changing approach in response to a worsening guerrilla war undertaken by Baathist insurgents. Of particular note are his profiles of two of Donald Rumsfeld's favoured personnel involved in US military policy and operation: Stephen Cambone (Under-Secretary of Defence for Intelligence) and General William Boykin (Special Forces).

The past Porton Down can't hide, Rob Evans. *Guardian Life* 6.5.04, pp4-5. Article on Porton Down's "voluntary" experiments in which human guinea pigs were duped into taking part in experiments that may have damaged their long-term health. The article was prompted by the opening of the inquest into the death of Robert Madison, a young airman who died after liquid nerve gas was applied to his arm in May 1953. Evans concludes: "...the conduct and ethical standards of tests in the past will be under unprecedented scrutiny in the inquest over the coming weeks."

POLICING

UK

Film prompts new demands for Alder public inquiry

On 14 April the BBC documentary programme, *Death on Camera* revealed the shocking last minutes of the death of Christopher Alder when it showed CCTV footage of the 37-year old former paratrooper choking to death on the floor of Queen's Gardens police station in April 1998. The harrowing footage showed Christopher, face down on the station floor with his

trousers around his knees and his hands handcuffed behind his back, struggling to breathe as police officers speculated on whether he was feigning illness for up to ten minutes. He received no assistance throughout. The decision to release the video was made by Christopher's sister, Janet, who described it as an "extreme measure" designed to win a public inquiry into her brother's death. She added "It was not an easy decision to make but we feel that ordinary people need to know what's going on" (see *Statewatch* Vol 8 no 6, Vol 9 no 5).

Following the programme Home Secretary, David Blunkett, asked for a review of the investigation into Christopher's death. Rejecting a request to meet the Alder family personally to hear their arguments for a public inquiry he said: "I am asking the new Independent Police Complaints Commission to have another look at this and report" adding "Public inquiries...cannot be triggered by TV footage of material which was already known during the investigations."

Janet Alder, who is supported by the Justice for Christopher Alder Campaign, INQUEST, the United Families and Friends Campaign and the Monitoring Group North in her demands, said that she was "disappointed, but not surprised" at the home secretary's decision. She added: "We do not want a review - we want a public inquiry. A review is another blockade, another obstacle towards finding the truth". The family will take their case to the European Court of Human Rights.

In June 2000 five police officers were cleared, before they gave any evidence, of Christopher Alder's manslaughter and misconduct after a judge directed a jury to find them not guilty. An inquest into Christopher's death in August 2000, at which the police officers involved refused to give evidence, recorded a finding of unlawful killing (see *Statewatch* Vol 10 no 5, Vol 11 no 2). Hull police officers failed in a legal attempt to have the unanimous unlawful killing inquest verdict overturned in April 2001 (see *Statewatch* vol 11 no 2).

The Christopher Alder Campaign can be contacted on 01282 832319

UK

Worrying legal changes accompany new "British FBI"

On 29 March, the Home Secretary, David Blunkett, published a White Paper entitled *One Step Ahead: A 21st Century Strategy to Defeat Organised Criminals*. In it he outlines government plans to bring together the National Criminal Intelligence Service, the National Crime Squad and the investigative arms of the immigration service and customs and excise under a new 5,000 strong Serious Organised Crime Agency (SOCA). Already dubbed the "British FBI", SOCA represents the largest reform to British policing since the re-drawing of force boundaries 40 years ago. It is designed to tackle organised criminal networks in the areas of drug trafficking, people smuggling and fraud.

The creation of SOCA seems to have been well received within the policing community, but accompanying new legal powers outlined in the White Paper have caused widespread concern. Perhaps the most obvious is the plan to compel professionals such as lawyers and accountants to cooperate with police enquiries and testify if necessary, even if it were to mean the breaking of traditional boundaries of client confidentiality. Attempts will also be made to utilise plea-bargaining (in order to speed up the trial process) and "Queen's Evidence" whereby "grasses" will be offered reduced sentences or even immunity for informing on their bosses. Previous experiments with this system proved to be absolutely disastrous. Throughout the 1960s and 1970s British police employed a notoriously corrupt system exemplified by police dealings with Soho informants. Even worse was to follow in Northern Ireland. There, between 1983

and 1985, 65 of 200 defendants were successfully prosecuted on the basis of uncorroborated "paid perjurer" testimony. All but one of which had their convictions overturned at the cost of millions of pounds of compensation to the taxpayer. How the government will ensure the credibility and accountability of sources under this system is unclear.

Another proposed change to the law is to make intercept material, such as phone calls, e-mails, and other forms of electronic data, admissible in organised crime trials. A Home Office review, commissioned by the Prime Minister, is expected to conclude in June, but Blunkett claims now to be "much more convinced that, in a limited range of cases, intercept evidence would make sense." It has been widely reported in the media that he has faced opposition to this from within the British intelligence community; members of which are reluctant to reveal to criminals their sophisticated surveillance techniques. Talking in February about the use of intelligence information in terrorism trials he claimed

It needs to be presented in a way that does not allow disclosure by any of the parties involved, which would destroy your security services. It is about the threshold of evidence and the nature of those involved being accredited and trusted not to reveal sources (see Statewatch vol 14 No 1)

Hope voiced, among some defence lawyers, for greater legal clarity could well prove somewhat misplaced. It seems far more likely that if sensitive intercept material were to be made admissible it would be accompanied by a system of vetted judges and lawyers. It is also likely, as in terrorism cases, that defendants would not be privy to the details of intelligence based prosecution evidence.

Indeed, indications are that the government views organised crime and terrorism trials in very much the same light (when introducing the bill to the House of Commons, the Home Secretary emphasised the former's financing of the latter). In February, to immense media criticism, Blunkett announced his intention to reduce the burden of proof in terrorism cases from "beyond reasonable doubt" to "the balance of probabilities". A week later, the Prime Minister, Tony Blair, suggested that the standard of proof in organised crime trials may be lowered to help secure a higher rate of convictions. "To require everything beyond reasonable doubt in these cases is very difficult...I think people would accept that within certain categories of case, provided it's big enough, you don't take the normal burden". It is hardly surprising these proposals do not feature in the White Paper given the onslaught of criticism the government received. Yet with all the Paper's proposals aimed at facilitating a higher rate of convictions, it would seem to be the next step.

Guardian 9.2.04, 29.3.04, Scotsman 29.3.04, 13.4.04, One Step Ahead: A 21st Century Strategy to Defeat Organised Criminals, Cm 6167, £11.25, http://www.homeoffice.gov.uk/docs3/wp_organised_crime.pdf

SPAIN

Clashes between police and striking shipyard workers

Demonstrations by shipyard workers of the *Grupo Imaz* shipbuilding company, run by the *Sociedad Estatal de Participaciones Industriales* (SEPI, State Company for Participations in Industry) saw violent clashes between policemen and workers in several Spanish cities. The workers went on a fifteen-day rotating strike in protest at the failure to reach agreement in their year-long negotiations over pay, contract renewals and the company's failure to secure any contracts. While the company argues that the workers are making unrealistic wage demands, the workers claim that the main problem is the failure by management to secure any new contracts in the last eighteen months, which they see as an

indication of incompetence, or even lack of will to secure the contracts. Negotiations are currently at a standstill, although they have not been called off.

On 10 February there were clashes in Cádiz, as workers closed down a bridge on a main road and a railway line, while there were protests and barricades were erected in the three factories in the province. The police had armoured vans, and fired rubber bullets during clashes near the bridge. Workers reacted by throwing missiles, including bolts, at the police officers. On 12 February, demonstrations were held in Cádiz, Seville (both in Andalusia), Ferrol (in Galicia) and Sestao (in the Basque Country). Clashes took place between police and workers from the three factories in the province of Cádiz (in Cádiz, San Fernando and Puerto Real), which saw 16 persons injured as police fired rubber bullets and gas canisters at workers after they had blocked off traffic on a road, as well as railroad tracks. In Cádiz, over a hundred police officers surrounded the perimeter of the factory when around 1,000 workers were holding an assembly inside. In Sestao, there was around an hour of clashes in the morning of 19 February, which saw around 30 workers injured following clashes with the police. A press officer from the metalworkers' section of *Comisiones Obreras* (CCOO) trade union noted that in spite of the danger that rubber bullets represent, they are being used frequently when police are called upon to disperse demonstrations. He also said that CCOO has filed a lawsuit in relation to the surveillance and video recording of workers' assemblies by the company. Grupo Imaz and police sources criticised the workers for using violent methods of protest.

Trade union officials have criticised the "repressive and provocative" policing, and the government representative was accused of treating the workers like "terrorists". The workers' committee representative Ramón Linares was critical of the surveillance and recording of workers' assemblies, for which he blamed the government envoy in Cádiz, Maximiliano Vilchez. He is considered responsible for "ordering the installation of facilities [including cameras] to spy the workers meetings and conversations between members of the [workers'] committee in the trade unions" meeting rooms. Manuel Chaves, president of the Andalusian regional government announced that he would report the company and the government envoy for allowing such practices.

Comisiones Obreras (www.ccoo.es); El País 31.1, 11, 13, 20, 21.2.04.

ITALY

Police charge striking FIAT workers in Melfi

On 26 April 2004, the police charged workers from the FIAT-Sata factory in San Nicola di Melfi (Basilicata, southern Italy) who had been striking for a week over their low pay and longer working hours, compared with other Fiat factories. The charges, during which truncheons were used against picketing workers, resulted in ten injured metalworkers and three policemen. Police tried to clear the road into the factory that was being picketed by workers, allowing two buses of workers to enter the establishment (out of a total of 4,000 workers) in the morning. Another busload of workers was turned back in the afternoon. In response to the police charges, the *Federazione Italiana degli Operai Metalmeccanici* (FIOM-CGIL), the metalworkers branch of CGIL trade union, called a strike in the sector, and workers also struck in many factories belonging to the FIAT group, including in Mirafiori, in its Turin backyard.

The interior ministry undersecretary, Alfredo Mantovano, told parliament on 27 April 2004 that the strike was not unanimously backed by all the trade unions (it was supported by FIOM-CGIL, UGL, Cobas and some autonomous unions, while

it was opposed by FILT-CISL and UILM-UIL), and that the police had to guarantee the right to work of those who chose not to support the strike. Mantovani claimed that peaceful attempts by the police to protect these workers' right to work encountered "hard resistance", such as lying down on the road, and through "quick and continuous movements" that made it difficult to clear the road. He reported that some demonstrators threw stones at the police, injuring Amalia Di Rocco, the official responsible for public order; and that it was only then that the police charges took place.

On the other hand, workers argued that from the very start, they had said that they would allow workers to cross their picket lines if they went on foot, and that Amalia Di Rocco was injured by the charging policemen, rather than being the flash-point that caused the charges. They claimed that a video recording supported their view. In subsequent days, when the police ensured that workers who did not support the strike could enter the factory, it was semi-deserted nonetheless. Interior minister Giuseppe Pisanu called on workers to resume negotiations and to isolate the "provocateurs".

Interior ministry undersecretary, Alfredo Mantovano, reported on the police intervention in Melfi, Parliament 27.4.04; www.cittadinolex.it; Il manifesto, 27-30.4.04.

GERMANY

To catch a thief...

The Federal Crime Police Authority (*Bundeskriminalamt* - BKA) has started a scheme for citizens to register with a BKA text messaging service to help with police searches. Now not only the police units but also those registered will receive a text message on their mobile phone, which could, according to the specially created BKA "Text Messaging Search Portal" website, read as follows:

Bank robbery, police searching for two 30-year-old men, jeans, black jackets, fugitive in brown BMW, Dortmund license plate. Clues phone 110 (<http://www.sms-fahndung.de>)

The practice is targeting public transport drivers and was agreed by Interior Minister, Otto Schily, on 15 February this year. Schily declared that "the quick and direct involvement of citizens allows for new forms of cooperation between police and public." One Social Democrat MP accused the Interior Minister of "block leader mentality" (block leaders were used in Nazi Germany to spy and report on neighbours). The leader of the police trade union, Konrad Freiberg, pointed out that involving the public in searches was only "helpful to a very limited extent" because those seeking attention usually bombard police with tips, creating more work than delivering helpful clues. According to a recent report in the weekly newspaper *Spiegel*, the messaging practice has not been very successful. Only the Bielefeld police station, where 450 people allegedly registered, is using the service and most regional *Länder* have refrained from taking part, despite the claim by Schily that a nationwide pilot project in 11 police stations in September 2002 had led to "considerable search successes."

Süddeutsche Zeitung 18.2.04;

<http://www.heise.de/newsticker/meldung/46262>

<http://www.heise.de/newsticker/meldung/44723>

http://www.bmi.bund.de/dokumente/Pressemitteilung/ix_94232.htm

Policing - in brief

■ **UK: X-ray machine used in Operation Montignac.** At the end of April, more than 600 police officers took part the Metropolitan police's biggest drugs raids, in Newham, east London. The raids saw police officers, backed by officers from

the SO19 firearms unit, search private homes, public houses and shops over a two-day period as part of Operation Montignac. Up to 30 people were arrested in the operation and 15 guns were reported to have been found as well as a quantity of crack cocaine, cash and mobile phones. Suspects were initially patted down in an inflatable tent before being walked through to a second tent and stood in front of a Rapiscan Secure 2000 x-ray machine. The Secure 2000 is an electronic imaging system used to detect concealed weapons by displaying a digital image on the operators computer screen. It operates by scanning the suspect with a narrow beam of x-rays, some of which penetrate a few millimetres into the body. The system is mainly used in the United States and some South American countries. It is only the second time the machine has been used and it is owned by the Police Scientific Development Branch. *Times 26.4.04*

■ **Spain: Policeman shoots shopkeeper in Navarre.** Following the 11 March bomb attacks in Madrid, as the country was still feeling the aftershocks, an off-duty police officer killed Ángel Berroeta, the 61-year-old owner of a baker's shop in Pamplona (Navarre) shooting him four times. The shooting reportedly took place when the officer went to the shop with his wife, after the baker and the officer's wife had a strong argument over the authorship of the Madrid attacks, and Berroeta refused to allow her to put up a sticker that read "No to ETA, no to terrorism". The officer was arrested after he called the police. *El País, 14.3.2004.*

Policing - new material

A new system for police complaints, Stephen Cragg. *Legal Action* April 2004, pp7-9. This article considers the major changes between the Police Complaints Authority and the new Independent Police Complaints Commission, which replaced the old body on 1 April. The author considers the major areas of independent investigation, appeals, disclosure, conduct, public hearings and inspections as well as "practicalities" such as transitional arrangements. Cragg concludes that: "...there have been few changes to the disciplinary procedures that would follow a successful complaint. Many feel that these procedures are over-protective of police officers, and that the role of complainants is too limited...Perhaps this should be the next area of reform - to ensure that errant police officers are disciplined properly."

Greece: Highly irregular police investigation into the ill-treatment of Romani men by police officers, Panayote Dimitras. *Roma Rights* No 4, 2003 pp138-142. Detailed account of the ill treatment of two Romani youths at the hands of police. Dimitras argues the case to be important as it is a typical example of the "problems Roma and their advocates face in accessing effective redress for ill-treatment, injury or death at the hands of law enforcement officers in Greece" (p142). Despite multiple requests the Greek Ombudsman has yet to investigate any of the multiple alleged breaches of police discipline and authority. In addition lawyers have shown an increased unwillingness to handle cases involving allegations of police ill treatment (p141). Available from 1386 Budapest 62, P.O. Box 906/93, Hungary, office@errc.org

Police station law and practice update, Ed Cape. *Legal Action* April 2004, pp11-14. Latest update on developments in law and policy affecting police station practice. Cape discusses the provisions of the Criminal Justice Act 2003 that amend the Police and Criminal Evidence Act 1984 and significant changes to extradition, including the implementation of the European Arrest Warrant introduced by the Extradition Act 2003.

Recording of stops and implementation guide in response to Recommendation 61 of the Stephen Lawrence report. Home Office 2004, pp28. This report considers implementation of the MacPherson report's recommendation that: "The Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all "stops" and "stops and searches" made under any legislative provision...Non-statutory or so called "voluntary" stops must

also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped." It considers, among other areas, the effectiveness of recording of stops in tackling crime, data collection and storage and the police authority role. The phased implementation of recording stops and searches began in 2003 and all police forces should be recording them by April 2005. The Home Secretary envisages "electronic communication" as the preferred option for recording the data.

Stop and search complaints (2000-2001): Summary, Siobhan Havis & Dr David Best. Police Complaints Authority (March) 2004, pp23, ISBN 0-9543215-5-3 (£5). This study is based on two research studies and raises "questions that require considerable further investigation." In particular, "the finding that black people experience a different kind of dissatisfaction about stop and searches than do white people, and that the incidents they complain about are intrinsically different. This compounds the finding that there is a disproportionality in complaints about stop and search from black complainants markedly in excess of what would be anticipated as a result of the Home Office data on overall rates of stops by ethnicity."

The lottery winner, the gangster turned MI6 agent and a £4m sting, Keith Dovkants. *Evening Standard* 18.3.04, pp18-19. Interesting article on £8m lottery winner, Thomas Papworth, who was robbed of his winnings in the Costa del Sol by a London villain, Jo Wilkins. Wilkins was jailed for 10 years for drug smuggling in 1987, but walked out from an open prison shortly after beginning his sentence. "It has long been suspected that the authorities conspired in his escape because once on the Costa del Sol, Wilkins acquired an apparently legitimate passport...and then set to work for MI6 and Scotland Yard." Papworth became friends with Wilkins and shortly afterwards was framed on drugs charges up by undercover Spanish police officers. He pleaded guilty to avoid a long sentence and on his release from prison found that his bank account and other assets had been cleaned out. Papworth is now "consulting lawyers about whether Scotland Yard and MI6 should be held accountable for allowing Wilkins to remain at large and able to operate his scam."

RACISM & FASCISM

UK/FRANCE

Le Pen pelted with rotten fruit

Jean Marie Le Pen, the leader of the France's far-right *Front National*, was ambushed by protestors in Greater Manchester at the end of April and pelted with rotten fruit and other rubbish. Le Pen's visit was planned to cement ties with the UK's main fascist organisation, the British National Party (BNP), at the launch of their European election campaign. Both parties had attempted to keep the venue of their meeting secret, because of the "threat of Muslim terrorists" according to BNP press officer David Jones. As Le Pen, guarded by BNP stewards, left the Cresta Court hotel in Altrincham his car was surrounded by protestors and eggs, fruit and rubbish were pelted at him before he was barricaded in his car by police officers.

Le Pen's visit to the UK followed his exclusion from the French regional elections after his registration in the Cote d'Azur-Alpes assembly was found to be invalid because he did not pay taxes in the region. In 2002 Le Pen's racist demands for "national preference" received nearly 30% of the votes cast in the region and the FN leader had predicted that he would become the next regional president. In the event the FN's campaign was led by Le Pen's daughter, Marine, and the party polled 15% nationwide, considerably down on previous results. Just before his departure the French far-right leader was convicted of inciting racial hatred for remarks made to *Le Monde* last year. He

received a fine.

Home Secretary, David Blunkett, had told journalists that he was powerless to intervene in Le Pen's visit. However, critics have pointed out that he has banned the Nation of Islam leader, Louis Farrakhan, because of "his anti-semitic and racially divisive views" and because he would "pose a significant threat to community relations and public order." All of this is true of Le Pen, who also has a string of convictions for racist and anti-semitic incitement as well as for assaulting a female socialist candidate during local elections in 1997.

ITALY

Web activists and social centre win libel case

On 19 January 2004, a judge in Rome found in favour of the web server *Isole nella Rete* and of the *La Strada* social centre in Rome, the defendants in a libel case brought by former *Movimento Sociale Italiano* (MSI, the predecessor of *Alleanza Nazionale*, which is part of the current governing coalition) MP Giulio Caradonna. Caradonna, who was ordered to pay *Isole nella Rete* 3,000 Euros for litigation costs, had sued the web server and social centre in May 2001 for 250 million Lire (c.125,000 euros). A dossier drafted by *La Strada*, which examined the development of neo-fascism in Italy after world war two, and was posted on its website, hosted on the *Isole nella Rete* server, stated that "in via Torino vi era un'altra sezione del MSI (sede principale dei mazzieri della banda Caradonna) da cui partivano le spedizioni contro gli studenti del Giulio Cesare, del Tasso, dell'Avogadro, del Righi e del Plinio" ["in via Torino there was another MSI party office (the headquarters of the club-wielders of the Caradonna gang from where the expeditions against students from the Giulio Cesare, the Tasso, the Avogadro, the Righi and the Plinio [schools] were launched)]. Caradonna filed the lawsuit, arguing that the news in question was libelous, harming his honour, career and public profile, lacking in current public interest, and that it contravened privacy legislation and his right to oblivion (forgetting about events in the past). *Isole nella Rete* was also accused of failing to adequately control the contents hosted on its server.

Isole nella Rete (*La Strada* did not defend itself in court) argued that it was not subject to press libel legislation in this instance, which was covered by the right to report information and to express criticism, and that neither the allegation of failing to control contents, nor the alleged contravention of data protection legislation, applied. *Isole nella Rete's* legal counsel also noted that its "raison d'être is to provide Internet service to social and movement groups to favour the right of freedom of expression and, among other things to affirm the principles of the anti-fascist struggle".

The judge of the civil court which heard the case ruled that the damage claim was "unfounded", as under the freedom to report information the statement in question fulfils the criteria to be considered legal "first of all the truthfulness of what is reported", as well as being the result of "A serious documentation work, diligent and accurate, consisting in the acquisition and comparative evaluation of several sources for the news...from the examination of which, it appears reasonable to draw the conviction of the complete veracity, or at least the clear likelihood, of the statement in question". The judgement highlighted that it would have been enough for the news to "have been reported in good faith". It also dismissed Caradonna's arguments in defence of his data protection rights and the right to oblivion, because as a politician, he is a public figure, and the public has a right to know every detail of his political life (past or present). Finally, the judge also found that the tone in which

the news was reported was measured, and that the use of the term *mazziere* (literally "club-wielder" explained by the judge as an expression meaning a violent thug from an extremist political group, particularly of the right) does not appear "exorbitant" when tested against the documentation.

Caradonna was a leading figure in the MSI and an MP from 1958 to 1994, as well as figuring on the list of members of P2 (no. 909), a clandestine masonic lodge with influential members, found to have links with right wing terrorism and conspiracies during the "years of lead" by an Italian parliamentary commission.

Text of the sentence, Tribunale di Roma, Sentenza n. 3687, 2978/04: <http://www.ecn.org/inr/caradonna/sentenza.html>. Dossier on the Caradonna case: <http://www.ecn.org/inr/caradonna>. The report "Da piazzale Loreto a Montecitorio. L'evoluzione della destra in Italia", <http://www.ecn.org/inr/caradonna/destra/index.html>. Isole nella rete website: www.ecn.org

Racism and fascism - in brief

■ **Spain: 14 neo-nazis arrested:** Fourteen alleged members of the Spanish branch of the neo-Nazi Hammerskin-España organisation were arrested in Madrid, Valencia and Barcelona in an operation conducted by the Madrid *Guardia Civil* (the Spanish paramilitary police force), in relation to a series of racist attacks. Several of the detainees have a criminal record or have been previously detained for offences including threats, causing bodily injuries and public disturbances. Searches in 18 houses have resulted in the confiscation of a 6.35mm calibre gun, seven replica air-guns, ammunition, knives, baseball bats, truncheons, axes, machetes, and Nazi pamphlets and paraphernalia. The investigation, code-named Operación Puñal, was launched following reports of a number of attacks in the areas of Villaviciosa de Odón and Arganda del Rey in Madrid. The *Complutense* university in Madrid has also been the setting for a series of attacks on students and acts of vandalism, including the spraying of death threats against the current dean of the university, in the last few months. *El País*, 4.3.04.

■ **France: Papon's appeal considered.** In February the Nazi war criminal Maurice Papon was told that France's highest appeal court, the *Cour de Cassation*, would consider a limited appeal, on points of law, of his conviction for complicity in crimes against humanity. In 1998 Papon was convicted of rounding-up Jews and transporting them to Auschwitz concentration camp in his role as secretary-general of the "Service for Jewish Affairs" of the Vichy government between 1942-44. The facts of the case will only be re-heard by the court if it decides that Papon's trial was faulty in law or procedure. Relatives of Papon's victims have criticised the ruling. Papon has already been released from his life sentence on grounds of ill-health. *Times* 19.2.04

Racism & Fascism - new material

I was a fascist boot-boy, Matthew Collins. *Independent Review* 10.3.04, pp6-7. Interview with Matthew Collins, a former National Front organiser and Combat 18 activist who became an informant for the anti-fascist magazine, *Searchlight*. Collins says he had a political change of heart after participating in a brutal fascist attack on a meeting, mainly attended by Asian women, at Welling library in south London, in 1999. Seventeen people were hospitalised as a result of the assault. After his cover was blown Collins fled to Australia "with a working visa obtained by Special Branch", where he has been living for the past 10 years.

Justice for Andrew Jordan, Richard Price. *Labour Left Briefing* April 2004, p18. Article about the death of Andrew Jordan, a 27-year old black man who died last October after nine police officers entered his

flat in south London. The Police Complaints Authority has told Andrew's family that he was punched three times by one of the officers. He was pronounced dead when he reached Queen Mary's hospital, after several delays, and is reported to have had injuries to his eyes and nose. Labour Left Briefing is available from: LLB, PO Box 2378, London E5 9QU, email: briefing@gm.apc.org

Informe annual 2003. SOS Racismo, April 2004. SOS Racismo has published the 9th Annual Report on Racism in the Spanish State. The report is divided into thematic chapters, which include the attempts at "sealing" frontiers, the criminalisation of migrants as a result of the *Ley de extranjería* (the Spanish immigration law), the longstanding discrimination against the Roma community, police harassment, labour exploitation, Islamophobia and educational segregation. The authors feel that the report illustrates how racism is becoming established in the Spanish state, something that "calls out for a massive and urgent social reaction". Available from SOS Racisme, c/Bou de St. Pere, 3, Barcelona; www.sosracisme.org/sosracisme

SECURITY & INTELLIGENCE

NORTHERN IRELAND/UK

Public inquiries into British state collusion

The Northern Ireland Secretary, Paul Murphy, announced at the beginning of April that there will be public inquiries into three controversial killings in Northern Ireland. Murphy was responding to the publication of the Cory report, an investigation by a retired Canadian judge into allegations of security force collusion in four killings. The decision that an investigation into the murder of the fourth subject, Belfast solicitor Pat Finucane, should be deferred until ongoing court proceedings were completed has been described as "shameful" by Amnesty International. Ten pages of the report had been blanked out by the government.

Strong circumstantial evidence of collusion with loyalist paramilitaries has existed since the early 1970s. However, positive corroboration was not forthcoming until 1998, when BBC journalist John Ware found positive written corroboration stating that the British Army's Force Research Unit practised "assassination by proxy", assisting the UDA with intelligence to such an extent that UDA assassinations would, as a consequence, be made on the basis of what the Army considered to be proper targeting. Cory's inquiry found that sections of the security forces saw themselves as above the law and considered lawyers who acted on behalf of republicans as legitimate targets. He also confirmed that agents had set up murders and supplied loyalists with army intelligence that was probably used to kill nationalists.

The three murders to be investigated are those of:

Robert Hamill: On 27 April 1997, Robert Hamill left a club in the centre of Portadown on foot with two others when they were attacked by a loyalist crowd of around thirty. He was kicked so badly that he died in hospital a few days later. The beating was observed by an RUC vehicle patrol which was parked nearby, but they failed to intervene. The RUC said that they were outnumbered and unable to get reinforcements. Eventually, six people were arrested and charged with murder, but the charges were dropped prompting the Hamill family to launch a private prosecution against the RUC.

Rosemary Nelson: Internationally respected civil rights lawyer, Rosemary Nelson, was killed in Lurgan, Co Armagh, in 1999 when an explosive device was detonated beneath her car by loyalist paramilitaries. Days earlier RUC police officers had issued threats to her life. She had initiated an action against them

after Robert Hamill, had been murdered.

Billy Wright: Wright, the leader of the paramilitary Loyalist Volunteer Force, was shot dead by the Irish National Liberation Army (INLA) while imprisoned in Long Kesh/The Maze at the end of 1997. Three INLA prisoners gave themselves up and were later convicted of the murder.

No decision has been made on holding an inquiry into the 1989 murder of Belfast solicitor, Pat Finucane, who was shot dead in front of his family outside his home in February 1989. This is ostensibly because criminal proceedings are ongoing against a West Belfast loyalist and alleged security force agent, Ken Barrett, who will stand trial in September. Murphy indicated that a decision on whether or not to hold an inquiry in the Finucane killing would be made at the conclusion to the legal proceedings. The failure to establish an immediate public inquiry into his death was criticised by Mr Finucane's widow, Geraldine, who said that the British government: "continue to cover up the truth about the death of my husband with their delaying tactics." Judge Peter Cory, speaking days after his report was published, expressed his "disappointment" that the trial had taken precedent over further investigations arguing that the Finucane case was one of the "rare occasions" where it was more important to hold a public inquiry than a trial. The three inquiries are to start "as soon as possible"

The Cory reports can be accessed on the Northern Ireland Office website <http://www.nio.gov.uk/press/040401a.htm>

SPAIN

Intelligence service directors acquitted

The Spanish Supreme Court has acquitted *Centro Superior de Información de la Defensa (CESID)*, the Spanish military intelligence service, replaced in 2002 by the civilian *Centro Nacional de Información, CNI* general directors Emilio Alonso Manglano and Javier Calderón for the surveillance of *Herri Batasuna* (HB, the forerunner of the recently illegalised *Batasuna*) party in 1998. A court in Alava had sentenced Manglano and Calderón to three years imprisonment, whereas CESID officers Mario Cantero and Francisco Buján, the material authors, had both received two-and-a-half year sentences. The grounds for sentencing the two directors was that the CESID was a "military organisation that is clearly structured and hierarchical", which made them responsible for the officers' actions as "co-authors". The Supreme Court argued that although this is the case when dealing with criminal organisations, it does not apply to CESID, which acts in defence of the state, and that there are only conjectures, rather than evidence, linking the directors to the offence. The court also used recent developments to justify earlier actions by arguing that "it is not surprising that HB should be placed under surveillance and observation, due to the suspicion that they may have held contacts with the ETA terrorist group, as was later found to be the case judicially". Francisco Buján's appeal was also upheld, whereas the original sentence passed on Mario Cantero was confirmed. One judge disagreed with the sentence, arguing that the appeals should have been rejected because "it was an espionage operation" which involved "a serious break with the legal and constitutional framework". Perfecto Andrés Ibañez also argued that it was "unrealistic" that an operation using "plentiful, expensive and sophisticated technical and personal means", outside of regular working methods should be carried out "behind the director's back".

On 29 March a Constitutional Court ruling in another case involving the illegal interception of communications by CESID, in the period running from 1984 to 1991, invalidated a trial which had resulted in Manglano, Juan Alberto Perote (the former

head of the Operative Group) and five CESID officers being found guilty. The grounds for calling for a retrial was that the judges were partial, because of observations made before the ruling that "there appears to be clear evidence that the conversations of many citizens were intercepted...in spite of their irrelevance for CESID...and that they were recorded, filed and stored, although they were of no interest for national security". The case will have to be re-tried with different judges.

El País, 30.3, 17.4.04.

Security & intelligence - in brief

■ UK: Terrorism Act suspects' released without charge.

Ten Muslims, arrested under the Terrorism Act 2000 on April 19 in a highly-publicised police operation in Greater Manchester, Staffordshire and the West Midlands, were released without charge a few days later. Hundreds of police officers arrested the nine men and one woman, who are reported to be of North African and Iraqi Kurdish origin, in an operation that involved the surveillance of mobile phones and email traffic. The media reported that the suspects were part of a plot to bomb Manchester United's Old Trafford stadium during a high profile football match against Liverpool after tickets were found at some of the addresses of those arrested. One of them, 23-year old, Rebaz Ali, a refugee from Saddam Hussein's brutal regime, has since told journalists that he was a big Manchester United fan; "I have copies of the fixture list every season. I have followed them since I was a boy. I love Manchester United and hate terrorism", he told the *Times* newspaper. He expressed bewilderment as to why he was detained. Six of those arrested under the Terrorism Act were released and bailed on alleged criminal matters, the tenth was deported to North Africa. *Times* 7.5.04, *Muslim News* <http://www.muslimnews.co.uk/news.php?article=7271>

■ Spain: New telephone tapping technology for police.

Spanish internal security forces (the national police and the paramilitary *Guardia Civil*) have access to a new IT programme, called SITES, that allows the interception of any telephone without the intervention of telephone companies. Police officers could previously have access to information concerning owners of intercepted telephones, but not about the people with whom they were communicating (this data was held by telephone companies), they will now be automatically capable of checking the personal data of the people who they call, and to discover the location of their telephones, including mobiles. This technology results from a competition for a contract to develop this telephone tapping technology that was held by the Interior Ministry in 2001, and it is currently being installed. The name of the firm to whom the contract was adjudicated has not been disclosed. EsCULcA bulletin, n.4, March 2004.

■ UK: Scarlett appointed head of MI6 amid "pay-off" claims.

John Scarlett, the head of the Joint Intelligence Committee, has been appointed head of the Secret Intelligence Service, MI6. The appointment, announced by the Prime Minister at the beginning of May, was criticised by opposition parties who claimed that the government were "paying-off" Scarlett for supporting the government during the Hutton inquiry. They claimed that Scarlett had backed the government in denying allegations that Downing Street had "sexed-up" their dossier on Iraq's weapons of mass destruction. Eric Illsley, Labour member of the cross-party Commons Select Committee on Foreign Affairs which investigated the "weapons of mass destruction" dossier, told the *Independent* newspaper: "I was not surprised about his appointment in view of his defence of the Government's dodgy dossier. His appointment does raise doubts." The nomination was also described as "highly controversial" by Liberal Democrat (LD) foreign affairs spokesman, Sir Menzies Campbell and described as a "pay-off"

by LD parliamentary party chairman, Matthew Taylor. Surprise was also expressed that Nigel Inkster, the current deputy head of MI6 was overlooked. Scarlett, who is 55 years old, will take charge on August 1. He will earn about £165,000 a year. *Independent* 7.5.04

Security - new material

A very British Jihad: Collusion, conspiracy and cover-up in Northern Ireland, Paul Larkin. *Beyond the Pale*, 2004 (ISBN 1-900960-25-7) £10.99. Larkin worked for the *Spotlight* current affairs series from 1988 and the research he carried out then serves as a basis for this book. His thesis is that collusion between loyalist paramilitary groups and British security forces to target republicans in Northern Ireland has been "a central feature of the British response to the conflict in Ireland for more than thirty years". Using extensive interviews and unpublished material, Larkin examines the "dirty war" and investigates "the unsavoury relationships between the intelligence agencies, politicians, the police, the British Army and loyalism" to demonstrate his argument.

For our eyes only? Shaping an intelligence policy within the EU. *JSS Occasional Paper* 50, January 2004.

PRISONS

UK

Deaths in custody

Michael Minsull, 45, from Stoke on Trent, was found hanged in his prison cell at HMP Walton on 16 April 2004, having been recently remanded there on drugs charges.

On 2 April Shahid Aziz, 25, was found in his cell at HMP Leeds with his throat slashed, allegedly by his white cell mate, who has since been charged with his murder. Shahid's is believed to be the first death of a prisoner at the hands of his cell mate since the murder of Zahid Mubarak at Feltham YOI in 2000 (see *Statewatch* vol 10 nos 2 & 6). Given the circumstances of Shahid's death, campaigners have called for a public inquiry to ensure that the screening procedures to be followed with regard to cell sharing, introduced after the death of Zahid Mubarak, were in fact followed by staff at HMP Leeds.

Sheena Kotecha, 22, was found hanged in her cell at HMP Brockhill in Redditch on 2 April 2004, a day after being jailed for 9 years for armed robbery. Despite warnings from her solicitor that she suffered from depression, she was not being treated as a vulnerable prisoner at the time of her death and was not on suicide watch.

On 19 April 2004 Paige Tapp, age 23, was found hanged at Send prison. Louise Davies, 32, serving life for arson, was found dead at HMP New Hall. Gareth Paul Myatt, 15, was found dead at the Group 4 run Rainsbrook secure training centre, having been sentenced three days earlier to a years detention and training order for assault and theft.

On 24 March 2002 Joseph Scholes was found hanged in his cell at HM YOI Stoke Heath, one month after his sixteenth birthday and just nine days into a two-year sentence for street robbery. Joseph had a long history of anxiety and depression, self harm and attempted suicide. Originally placed in a high observation cell fitted with surveillance cameras, he was subsequently, and without explanation or consultation with his family, moved to a single cell with no surveillance cameras. Joseph's mother has been working with INQUEST to call for a public inquiry into his death. To date the campaign, despite considerable support from sitting MPs, has not been granted a

serious response by the Home Office or Prison Service, and the inquest into his death resumed on 19 April. Those campaigning for the full truth about the failings that led to Joseph's death to be made public intend to continue their fight. For more information, contact INQUEST at communications@inquest.org.uk.

Juries in inquests into jail deaths are to be allowed to blame failings in the prison system for contributing to an inmates suicide, following two landmark judgements in the House of Lords. The judgements, (in the cases of Colin Middleton, who was jailed at the age of 14 for murdering his 18-month old niece, and who hanged himself at HMP Bristol 5 years ago, and Sheena Creamer, a single mother-of-two on a heroin withdrawal programme, who was found dead at HMP New Hall while on remand for an offence of dishonesty) were described by INQUEST as "a major breakthrough in inquest law, with the power to open up the inquest system." Five law lords ruled unanimously that an earlier ruling, effectively barring jurors from blaming shortcomings in the prison system for contributing to a prisoner's death, no longer applied. The Human Rights Act 2000, with its guarantee of the right to life, now meant that jurors were entitled to say not only "by what means" but also "in what circumstances" a prisoner had died. In the two cases, juries had delivered verdicts that the prisoners died by their own hands, but were not allowed to add publicly that failings in the system contributed to their deaths. The number of deaths in custody was "shocking", the law lords added, with suicides more than doubling from 1982 to 1998.

INQUEST "A Child's death in custody" Campaign Briefing (November) 2003; Independent 5.4.04; *Guardian* 5.4.04

UK

Prisons crisis

The prison overcrowding crisis has reached its worst point since 2002. As of 6 April 2004, 75,544 people were in jails in England and Wales, seven above the Prison Services' "useable operational capacity" of 75,437. Inmates are being shipped daily around the UK in search of a bed. In March ministers cut the safety "buffer" of cells that are not filled from 2,000 to 1,700 and moved to accelerate the return of 500 cells undergoing refurbishment. The Prison Service now concedes that it may be forced to cut the buffer on a daily basis. In some areas courts are already holding remand prisoners in police cells.

The courts are increasing inmate numbers by, on average, 200 a week. The prison population has grown by a quarter since the Labour government came into office. On 8 March 2004 the governor of HMP Wandsworth raised his concern at the sharp increase in shoplifters in jail at any one time, from 129 a decade ago, to 1,400 now.

The Prison Reform Trust (PRT) has commented:

Prisoners are being shipped around the country in a game of musical cells to avoid the political embarrassment of having to use police cells. This is the worst form of crisis management.

Juliet Lyon of the PRT added "Do we want to live in a society where more young black men go to prison than to university and where the mentally ill rot in jail instead of getting the treatment they need?" Martin Narey, now chief executive of the new National Offender Management Service, in a recent *Guardian* interview talked of ensuring "contestability" in the provision of prison and probation services by attracting new providers into the market through a planned programme of market testing. Narey conceded that the public prison sector may lose management of "prisons if they do not return the best tender in terms of quality and cost" and added that he wanted to see more "providers" enter the British market. "Last summer I visited the US and spoke to two providers who are not yet operating in England and Wales. I have started a dialogue with them about

the possibility of their bidding for future work." Narey refused to name the companies involved. All of this, though, goes to suggest that, at a time when the increase in prison numbers was already giving rise to real fears for the safety of inmates, Narey, on behalf of the National Offender Management Service, was already seeking to encourage more "providers" to seek to explore avenues for profit in the UK.

It is clear moreover that Narey is seeking to tempt private contractors to expand their interests in England and Wales at a time when the private prison industry is facing setbacks in the USA, due to its appalling record of negligence and abuse. By 2000, not a single state in the USA solicited new private prison contracts and many existing contracts were rolled back or rescinded. The US experience of the private prison industry demonstrates it is a potential source of political corruption (\$528,000 federal campaign contributions between 1995 and 2000) and that its network of lobbyists have only one focus - subverting all crime-related public policy to meet the needs of the private prison industry-by taking steps to increase the prison population. Thus, a consequence of seeking to increase the operation of private prison operators in the UK may go hand in hand with increasing the prison population. Further, as US prison activist and co-founder of Prison Legal News, has commented, "Whether private versus public prisons are "better" is largely immaterial and irrelevant. It is like comparing rotten oranges to rotten apples from the prisoner's perspective. But, at least in public prisons, when prisoners are raped due to inadequate staffing, transport vans burst into flames killing the occupants due to no maintenance, or prisoners are held past their release dates, no one can say prison officials did so to line their own pockets and personally profit from the misery of others. With private prisons, most shortcomings can be traced to a conscious decision to enhance the company's bottom line. After all, the purpose of private prison companies is to make money for their owners, and not to promote public safety, rehabilitate prisoners, or protect the public..." Martin Narey, David Blunkett and the private prison industry seem to have common ground against the prison reform lobby in thinking that a growing prison population is inevitable.

FRANCE

CPT criticises overcrowding in French prisons

The Committee for the Prevention of Torture, Inhuman and Degrading Treatment (CPT) published a report on its visit to France in June 2003, which was considered to be "required by the circumstances" due to an "alarming and recent increase in overcrowding and suicides" in prisons. The CPT visited Loos prison, Saint Roche prison (Toulon), Clairvaux penitentiary and the Receipt, Research and Judicial Investigation Service for the 9th and 16th districts in Paris. The report welcomes the absence of allegations of ill-treatment, but notes that it was "a rare source of satisfaction" during the visit. It also highlighted that overcrowding (60,963 detainees for 48,603 places in July 2003) has "very serious repercussions" on prison life, both for inmates and prison guards. Some prisons have an occupancy rate of over 200%, including the two which were the object of the visit (239% in Loos and 240% in Saint Roche) and this results, among other things, in a curtailing of detainees' visiting hours and in growing tension between inmates and overworked prison guards. In Loos, the material conditions of detention are described as "critical" in terms of space, hygiene and health conditions, and a similar situation was appreciated in Saint Roche.

The report finds that the overcrowding in the prison system

is a recent development, as the prison population had decreased between 1996 and 2001, and that it is not a result of the increase in criminality, as suggested by the government, but rather, as indicated by prison authorities, of a repressive criminal policy, that is expressed through "the introduction of new criminal charges and the widening of the scope of preventative detention, and of its length" - 21,925 detainees are in prison awaiting sentence. The CPT calls on the French authorities to elaborate a coherent policy against overcrowding in the French prison system, reminding them that people must be considered innocent until found guilty in a court, and that preventative arrest must be an "exceptional" measure. In its reply to the report, the French government indicated that overpopulation is not a result of the over-criminalisation of offences and criminal behaviour, but rather of the lack of prison places. To remedy this, it has put in place a plan to build prisons and penitentiary establishments worth 427 million Euros to provide 13,200 extra prison places.

CPT Report: CPT/Inf (2004) 6, Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 11 au 17 juin 2003; French government reply: CPT/Inf (2004) 7, Réponse du Gouvernement de la République française au rapport du Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants relatif à sa visite effectuée en France du 11 au 17 juin 2003.

Prisons - in brief

■ **UK: Child Prisoners.** The report *Juveniles in Custody*, by the chief inspector of prisons and the Youth Justice Board, published on 20 April 2004, showed that 91% of girls and 89% of boys wanted to stop offending, and believed that finding a job was most likely to assist them in this. Only 32% of boys and 44% of girls felt they had done something in custody that would help them find a job on release. The Chief Inspector of Prisons, Anne Owers, stated that this showed that there were still "significant weaknesses" in provision for child prisoners' not least as regards "distance from home and the variation and quantity of education and training." On a visit to HMP Holloway on the same day, David Blunkett, Home Secretary, announced a £316 m. plan to hold jailed teenage girls separately from adult women prisoners. A network of four specialist units is to be built at existing prisons by 2006. There are currently 86 girls held in adult prisons in England and Wales. *"Juveniles in Custody - A Unique Insight into the Perceptions of Young People Held in Prison Service Custody in England and Wales" (April) 2004. see <http://www.homeoffice.gov.uk/docs3/juvenilesincustodyreport.pdf>*

■ **UK: Harry Roberts wins legal aid for appeal.** Harry Roberts, whose 30-year life tariff for murder expired in 1996, has won legal aid to go to the Court of Appeal to challenge a Parole Board refusal to disclose to him "sensitive material" to be used in opposing his parole. Lawyers for Harry Roberts, currently at HMP Channings Wood, say that refusal to disclose such material is unlawful and unfair. *Times* 13.4.04

■ **UK: Prisoners' Race Discrimination Unit.** The Prisoners Race Discrimination Unit is a new national charity set up to give specialist advice and advocacy to prisoners with grievances and/or complaints of racial discrimination. The organisation also intends to set up a £20,000 fighting fund and calls for donations to that end. The Unit can be contacted at: PRDU, Room 12, Winchester House, 9 Cranmer Road, London SW9 6EJ.

Prisons - New material

Prison Nation: The Warehousing of America's Poor. Tara Herivel and Paul Wright (eds.) *Routledge* 2004 (ISBN 0-415-93538-5). Collection of essays edited by prisoners' rights activists in the USA,

both involved in producing the excellent *Prison Legal News*. *Prison Nation* contains articles from serving prisoners on prison conditions and prisoner resistance in the USA, including prescient contributions on organising against prison labour, the malign state of prison medicine, racism and repression in US jails and an overview of prison litigation 1950-2000. *Prison Nation* is essential as a resource both for those inside and out involved in organising/supporting prisoner resistance, and those whose interest in penal issues is an academic one.

Tortura en Euskal Herria, Informe 2003, *Torturaren Aurkako Taldea* (TAT), pp. 267, March 2004. This report collects the testimonies of 78 prisoners who have suffered torture by the Spanish national police, *Guardia Civil* or the *Ertzaintza*, the Basque regional police force. A section is dedicated to the methods of torture that are used, which includes diagrams, and other subjects that are treated are the judicial and medical procedures that are in place to investigate complaints.

"Chaos meets order the result is tragedy", "£400 short of a life" and "How Joey beat the system", Nick Davies. *Guardian* 13-15 April 2004. Three-part investigation by Davies into "the lives of offenders in a London court", showcasing the day-to-day deficiencies in the criminal justice system such that "the boozers, the junkies, the poor" are failed (and jailed) rather than receiving the social interventions they need. As Davies concludes "You could see the whole process of criminal justice as one section of the working class arresting another so the middle class can argue about what to do with them." That the criminal justice system

might therefore objectively operate so that "what to do with them" precludes "effective alternatives" in favour of a deliberate "warehousing" of the poor, appears not to have been considered. Moreover, Davies' conclusion that the "failures" are "everybody's fault" (within the criminal justice system) and arise from "the complex mechanics of gathering the fine detail of so many different kinds of evidence" set against "the demands of a rights-based trial system" actually chimes well with the arguments by David Blunkett that a cabal of defence lawyers and criminals exploit the adversarial system against the interests of "the real victims."

Psychology in Prisons, Charles Hanson. This paper is authored by Hanson - a serving prisoner and miscarriage of justice activist - on offending behaviour courses, Sex Offender Treatment Programmes and their effectiveness. Available from mojuk@mojuk.org.uk

Jail Capital of Western Europe, Enver Solomon, *Prison Report no 63* (March 2004), pp8-9. Solomon writes: "homicide rates in England and Wales are no lower than elsewhere in Europe. Could it simply be that our thirst for retribution is much greater than our European neighbours?"

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EU agrees refugee and subsidiary protection

In March 2004, refugee and human rights groups called for the withdrawal of the draft asylum procedures Directive. This related measure should evoke the same response

The final version of the proposal for an EU directive on qualification for refugee status and subsidiary protection was agreed by the Justice and Home Affairs Council on 30 March 2004, and put out to consultation for all of a fortnight over the Easter holiday. The Directive was five years in the making, from the Tampere Council in 1999, and has undergone significant changes, mostly in the direction of imposing higher hurdles to eligibility, narrowing protection and reducing rights, since the Commission put forward its first draft in September 2001.

The Commission's proposal was prepared after a series of consultations with UNHCR and NGOs such as Amnesty International and Save the Children as well as with Member States, and its guiding principles were the full and inclusive operation of the Refugee Convention (the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol) and a complementary subsidiary protection. The Commission made clear the importance of reducing disparities in the interpretation of the Refugee Convention and rights attaching to protection (without which, it acknowledged, the deprivation of choice in the country of asylum was unfair), as well as ensuring that a minimum level of protection was available in all Member States. It took as its starting point the Joint Position of 4 March 1996 on the harmonised application of the definition of the term 'refugee', and the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. In its recital and 37 Articles, it set out detailed criteria for the grant of refugee status and of subsidiary protection (collectively known as international protection). The proposal was welcomed as generally true to the spirit of international protection, although there were some reservations. The document emanating from the Council after 30 months of hard-headed bargaining is less clear, less principled, in parts arguably inconsistent with international humanitarian law, and more open to conflicting interpretations and inconsistent application. The Preamble, issued as a separate document a week after the main text, is a hotchpotch of forty recitals, ranging from statements of basic principle (such as the centrality of the Refugee Convention or the importance of the

best interests of children) to extremely contentious assertions about the scope of refugee and humanitarian law, and a jumble of recitals about the range and level of welfare rights to be offered to beneficiaries of international protection.

Principles of the Geneva Convention

The Refugee Convention itself (as amended by the Protocol) defines a refugee as someone who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality (or if stateless, of former habitual residence) and is unable or, owing to such fear, unwilling to avail him- or herself of the protection of that country. Article 2 of the proposed Directive adopts the Convention definition of a refugee, and goes on to define those eligible for 'subsidiary protection', who do not qualify as refugees but face substantial risk of suffering serious harm, with the same concept of inability or unwillingness to return. However, both categories of potential eligibility for international protection are restricted to third country nationals or stateless persons, in other words they exclude EU citizens. The EP and commentators such as ILPA (Immigration Law Practitioners' Association) have pointed out that EU member states may produce refugees - in fact large numbers of Roma asylum seekers continue to arrive from Poland, the Czech Republic and Slovakia, bringing horrific accounts of skinhead and police persecution. Most of the 'old' EU member states are taking advantage of transitional arrangements to deny free movement to workers, students, self-employed and retired persons from the 'new' member states for up to seven years, and even then, EU citizenship does not guarantee unrestricted and unconditional access to the Member States. Added to these practical reasons against the restriction to non-EU nationals of refugee and subsidiary protection is the great reason of principle based on the universal character of the Refugee Convention after its 1967 Protocol removed the geographical restriction. It is both offensive and dangerous to assume that all persecution takes

place outside Europe's borders.

Definitions and standards

Article 2 also defines family members of principal claimants, to include unmarried partners where national immigration laws give them equivalent rights to spouses, and adopted children as well as biological ones – but the definition includes only the principal applicant's children, not those of the partner alone (an amendment by the Parliament to add partners' children was rejected), only minor children, not older but still dependent children, or other family members who were dependent members of the family unit before the claimant's departure (although Member States will have a discretion to extend their family reunion provisions to this group), and only members of pre-existing families, not post-arrival partners or children. Further, it only deals with those family members who are present in the relevant Member State 'in relation to the application' – an obscure phrase which presumably excludes those present as migrant workers or students.

Article 4 provides that Member States are free to introduce or retain more favourable standards of protection – an option likely to be taken up only by the Shetland Islands if they gain independence from the UK.

Assessing claims, restricting protection

Chapter II of the proposed directive (Articles 7-10) sets out factors relevant to the assessment of applications for international protection, which are common to refugee status and subsidiary protection. Article 7 sets out the basis for the assessment of claims for international protection, in terms of scrutiny of the claimant's personal circumstances and the conditions of the country of origin including its laws and their application, and requires Member States to consider such matters as whether post-departure activities are self-serving and whether there is another country where the claimant could assert citizenship. It asserts that previous persecution or direct threats provide a serious indication of a well-founded fear of repetition unless there are good reasons otherwise. It is, however, one of the Articles which has been considerably toughened up in its progress from the Commission to the Council. The Council's final text states that 'Member States may consider' that claimants have a duty to submit as soon as possible all the elements needed to substantiate their claim, including statements, all documents at their disposal proving their age, background, relatives, their identity, nationality, country or place of previous residence, previous applications, travel routes and identity and travel documents. These amendments appear to have the UK's fingerprints on them. They are somewhat softened by the final paragraph, which makes it clear that a claim does not need supporting evidence if the claimant has made genuine efforts to substantiate it, by submitting coherent and plausible statements which are not countered by other information, and all documents at his or her disposal, with a satisfactory explanation for the lack of documents and for any delays.

Article 8 accepts the principle that people leaving their countries with the intention of returning to them may later need international protection – '*sur place*' protection in the Refugee Convention parlance. However, it appears to allow Member States to refuse protection if they believe that a claimant has manufactured a risk of persecution by what are called 'self-serving activities' (such as public manifestations of political opposition such as demonstrations outside the country's embassy) which are not an expression or continuation of convictions or orientations held in the country of origin. The Article is expressed to be 'without prejudice' to the Refugee Convention, which would not allow such a claim to be rejected if there was a real risk of persecution, as the parliament's report pointed out when it unsuccessfully attempted to delete a precursor clause from the Commission's draft.

Article 9 clarifies that Member States must afford protection to those fleeing persecution at the hands of non-state actors, where effective protection is not forthcoming in the claimant's country – an issue which has divided Member States in the past. However, a new recital in the preamble asserts that risks to which a population or a section of it is generally exposed do not normally in themselves create an individual threat so as to qualify potential victims for international protection. This is hotly contested in relation to refugees, since racial, religious or ethnic wars may involve sections of or sometimes whole populations (Tutsis in Rwanda, Tamils in Sri Lanka, Muslims in Bosnia, all Somalis during the clan-based wars) and the Refugee Convention expressly protects from persecution for race, ethnic group, religion etc. It is even more hotly contested in the field of subsidiary protection, where the only thing that matters is the reality of the risk of harm, and its motivation is irrelevant. This recital is therefore incompatible with Member States' international obligations under both the Refugee convention and the European Convention on Human Rights, to which all Member States subscribe.

Article 9A contains another very contentious provision – that international protection will not be forthcoming to those who could avail themselves of the protection of non-State bodies such as parties or organisations (including international organisations) which control the State or a substantial part of its territory. As *Statewatch* pointed out in its evidence to the House of Lords Select Committee in March 2002, and as the EP pointed out in its report on the Commission proposals, non-State bodies can't sign international human rights instruments and are not accountable to the populations they control. The Refugee Convention sees international protection as a surrogate protection when the protection of one's own state is not available, and while the UN itself may take on the protection role, clans, parties and movements can't, because of their unaccountability for non-compliance with human rights norms and since they have neither undisputed and continuous control over the territory nor a monopoly of legitimate power – which are the characteristics of statehood. Once again, the Council is attempting to avoid the grant of international protection by giving these bodies a role which they can't fulfil.

Article 10 deals with whether a claimant could have sought protection inside the country. An attempt by the EP to set out clear criteria in this area has been rebuffed in favour of vague generalisations which will allow Member States to return asylum seekers to parts of states deemed 'safe' without any clear minimum standards of safety and security in these areas. A late addition to the text allows the 'internal protection' doctrine to be used to deny protection even where there are what the text describes as 'technical obstacles to return' to the area in question. This is another little addition which bears the fingerprints of the UK, which before the Iraq war was refusing all Iraqi Kurdish refugee claims on the basis that the Kurds could live in the 'safe haven' of the Kurdish Autonomous Area – despite the fact that it was impossible to get to. This meant that no-one was granted protection, even though they could not be removed, so they remained (and remain) in a rightless limbo, rejected but not expelled, for years. The other notable change from the original proposal is a deletion – of a clause which imported a 'strong presumption' against the availability of internal protection where the persecutor is or is associated with the national government.

Qualification for refugee status

Chapter III (Articles 11-14) deals with qualifications for refugee status. Article 11 defines 'acts of persecution' in terms of severe violations of basic human rights, or an accumulation of various measures including human rights violations, and sets out examples such as violence (physical or mental, or sexual), legal, administrative, political or judicial measures which are

discriminatory or implemented in a discriminatory way, disproportionate or discriminatory prosecution or punishment, denial of judicial redress, and gender-specific or child-specific acts. There are traces here of a battle over conscientious objection to military service, which the UK's House of Lords rejected as a basis for refugee status a couple of years ago. The Commission proposal made prosecution or punishment for conscientious objection to military service a ground for refugee status. Parliament added that prosecution or punishment for refusal to perform military service should also qualify someone as a refugee where the military service would have required internationally condemned acts such as crimes against humanity. The Council has put the EP's clause in and removed the Commission's, so that the final text coincidentally reflects the UK government's understanding of the Refugee Convention.

Article 12 deals with the 'Convention grounds' for persecution which must exist to make someone a refugee – race, religion, nationality, membership of a particular social group and political opinion, in reasonably broad terms. Thus, 'race' includes colour, descent and ethnic group; 'religion' includes not only theistic, atheistic or non-theistic beliefs but also participation in or abstention from worship, and conduct based on or mandated through religious belief. 'Nationality' includes not only citizenship (or lack of it) but also membership of a group defined by culture, ethnicity, language, common geographical or political origins, or by its relationship with a population of another state. 'Political opinion' includes the holding of an opinion, thought or belief on a matter related to the persecutors and their policies or methods, whether or not it has been acted on. The definition of a 'particular social group', the Refugee Convention category which has caused the most difficulty, includes groups defined by innate characteristics or a common background which cannot be changed, by shared characteristics or beliefs fundamental to identity or conscience or by perception of difference, and may include a group defined by sexual orientation (but not by acts considered criminal in the EU) or by gender-related characteristics.

Granting and withdrawal of refugee status

Chapter IV (Articles 13, 14, 14A and 14B) deals with granting, revocation and cessation of refugee status and with exclusion from status. A person ceases to be a refugee if he or she returns to or accepts the protection of the country of origin, or takes citizenship of another country, or if the circumstances in the country of origin undergo durable and significant change so that the fear of return is no longer well-founded. The cessation clause mirrors that of the Refugee Convention. The exclusion clause (Article 14) is based on the Refugee Convention exclusion clause, but puts an EU anti-terrorist spin on it. Thus, those receiving UN protection (ie Palestinian refugees), those with another nationality or effective protection elsewhere, and those with another nationality are excluded from refugee status. So are those who before arrival are considered (on 'serious grounds') to have committed war crimes, crimes against peace or against humanity, serious non-political crimes (defined to include particularly cruel acts done for political purposes), or acts contrary to the purposes and principles of the UN are excluded from protection. (The EP sought to replace 'serious grounds for considering', which reflects the language of the Refugee Convention, with knowledge that the person committed the prohibited acts, but the attempt was unsuccessful.) The Council's final text adds to the Recital the obvious comment that terrorism, and knowingly financing, planning and inciting terrorism are all contrary to the purposes and principles of the UN. A careful proviso in the Commission's proposal, that 'grounds for exclusion must be based solely on the personal and knowing conduct of the person concerned' has been replaced by a note that anyone who instigates or participates in prohibited acts is

liable to exclusion from refugee status.

Article 14A deals with the grant of refugee status. The revocation clause, Article 14B, is draconian. It obliges Member States to revoke status if one of the cessation clauses applies, despite the recognition in the Convention and the UNHCR Handbook that there may be compelling reasons arising from previous persecution for not revoking status – a clause the EP sought to insert in the draft. The EP also sought to exempt from revocation of status those whose family ties in the host state made it difficult to envisage return – another clause which was doomed to oblivion. Revocation of refugee status is mandatory if a misrepresentation, omission or use of false document was decisive for the grant of status or if the person should have been excluded under Art 14. Refusal or revocation of status is discretionary if there are reasonable grounds for regarding the claimant as a danger to the security of the Member State or if he or she is convicted of a particularly serious crime and is a danger to the community (these grounds mirror the Refugee Convention grounds for withholding protection).

Subsidiary protection

Article 15 (Chapter V) defines the terms involved in 'subsidiary protection', ie what constitutes 'serious harm', which includes the death penalty or execution (added by the Council), torture, inhuman or degrading treatment or punishment, and serious threats to life or the person of a civilian by indiscriminate violence in the context of armed conflict – a broader definition than acts of persecution constituting someone a refugee. (The addition of 'civilian' was added by the Council, presumably to prevent members of the armed forces from deserting and claiming international protection to avoid return to the risk of death or serious injury.)

The recital points out that subsidiary protection does not cover those who may be allowed to stay on discretionary compassionate or humanitarian grounds not involving deliberate human agency, (such as serious illness, or flight from poverty or environmental degradation) – an omission commented on by the European Parliament in its report on the Commission's proposal in October 2002.

The cessation clause (Article 16) applies when the circumstances leading to the grant of protection have ceased to exist, but the changes must be significant and durable.

Articles 17 and 17B (in Chapter VI), the exclusion and revocation clauses, are some of the most controversial parts of the proposed Directive. They are in very similar terms to Article 14 and 14B, in that serious reasons for considering that the person has committed a war crime etc, a serious crime or an act contrary to the principles of the UN, or constitutes a danger to the community or to the security of the country grounds exclusion. An additional sub-clause allows Member States to exclude those who left their country of origin solely to avoid sanctions arising from crimes which would be punishable by prison in a Member State. This formulation appears to mean that those subject to the death penalty or to execution for shoplifting or drugs offences could be refused subsidiary protection. Member States are obliged to revoke subsidiary protection if the cessation clause or any of the core exclusion provisions applies.

The big difficulty which the proposed Directive fails to confront is that the rights underpinning subsidiary protection – the right to life, the right not to be tortured or subjected to inhuman or degrading treatment or punishment – are in their terms unqualified and underogable, and the European Court of Human Rights in Strasbourg has repeatedly held that a person cannot be expelled to a real risk of such human rights violations no matter how odious or dangerous he or she is. Subsidiary protection is what has historically been offered to those excluded by their behaviour from refugee status. So if the same criteria are now to be used to exclude them from subsidiary protection, what

happens to them? The Directive gives no clue. Crucially, it fails to offer a guarantee of non-refoulement to them, and in this, it is incompatible with the fundamental rights it claims to uphold.

Content of protection

Chapter VII of the proposed Directive deals with the content of protection: protection from refoulement (Article 19); information on rights and obligations (Article 20), family unity (Article 21), residence permits (Article 22), travel documents (Article 23), access to employment, education and social welfare and health care (Articles 24-27); special provisions for unaccompanied minors (Article 28); accommodation (Article 29), movement within the Member State (Article 30), integration facilities (Article 31), assisted repatriation (Article 32). Article 18 enjoins Member States to have regard to the specific situation of vulnerable people, including children, disabled and elderly people, pregnant women, single mothers and victims of torture, rape and violence, requires the best interests of children to be a primary consideration (although not *the* primary consideration) and allows States to reduce the benefits granted to those granted status on the basis of self-serving activities. The non-refoulement provision contains provisos, added by the Council, which make explicit its intention to refoule refugees who are a danger to the security of Member States or who have committed particularly serious crimes and are a danger to the community, where this is permitted by international obligations, and to revoke refugees' residence permits even if they can't be refouled.

The provisions on family unity are designed to ensure that the family members (defined in Article 2) of those eligible for international protection are entitled to receive the benefits set out in Articles 22-32, although they may be conditional provided they guarantee an adequate standard of living, and need not be as generous as those given to a principal on subsidiary protection, so long as they are fair. The benefits may be granted to other close relatives who lived together as part of the family at the time of leaving the country of origin and were dependent on the principal at that time. But Member States may refuse, reduce or withdraw benefits (which include free movement, residence permits and travel documents) for national security or public order reasons, by Article 21(4).

Article 22 provides that refugees will get renewable three-year residence permits (reduced from five years in the commission's draft), and those on subsidiary protection one-year renewable permits, unless there are compelling national security or public order considerations militating against the grant (which, according to a newly added recital, includes cases where

the person belongs to or supports an association which supports international terrorism).

This proviso might cover those granted status because of their membership of or support for a proscribed organisation on the EU terror list, such as Kongra-Gel (formerly the PKK). Such persons can apparently be left in limbo, having had their entitlement to international protection recognised but without any residence permit, which (another new recital provides) may be the passport to employment, social welfare, health care and integration facilities.

Disparities and shortfalls

Objections at the disparities in the duration of residence permits between the recipients of the different forms of international protection, raised by the EP and by *Stewatch* among others, went unheeded. Similar disparities exist in relation to the grant of a travel document: refugees are entitled by the Convention to the issue of a travel document (although Article 23 purports to make this entitlement subject to a national security/ public order proviso), while those on subsidiary protection are eligible only if they are unable to obtain a national passport, and may, by another late amendment, be refused even then unless serious humanitarian reasons require their presence in another state. The disparity continues in access to the other benefits – refugees get these rights without question; beneficiaries of subsidiary protection get conditional access to employment; the social assistance and health care they are accorded may be limited to 'core benefits' (minimum income support, assistance with illness, pregnancy or parenthood). Only in matters of education, accommodation and movement within the State are beneficiaries of refugee and subsidiary protection status treated equally.

The non-discrimination provision, Article 35 of the Commission's proposal, has been omitted from the final text.

The Directive does not deal with EU free movement rights for those granted international protection, although currently refugees may travel visa-free for up to three months, but those on subsidiary forms of protection have no such rights.

In March 2004, just a fortnight before the proposal was agreed by the Council, its companion Directive on asylum procedures was condemned by leading human rights groups including Amnesty International and Human Rights Watch, Médecins sans Frontières, Save the Children, CARITAS, Pax Christi and refugee legal organisations such as the European Council on Refugees and Exiles, who called for its withdrawal because of the incompatibility of the proposed procedures with international law. The shortcomings in this final version of the proposed Directive should evoke a similar response.

Implementing the Amsterdam Treaty: Cementing Fortress Europe

The five year deadline for agreement on the common EU immigration and asylum policy expired on 1 May 2004. This article examines the key decisions, how they were taken and what they will mean for asylum-seekers

On 1 May 2004 the EU proudly welcomed ten more countries. This date also marked the end of the five year 'transitional period' for the implementation of the Amsterdam Treaty provisions on a common EU immigration and asylum policy. 'Normal' EU decision-making procedures for binding EC Regulations and Directives have been suspended during this time because of the 'political sensitivity' of immigration and asylum issues. The European Commission's role as drafter of EU legislation was shared with the member states, and the role of European Parliament in 'co-deciding' policies was limited to 'consultation' on proposals. To complicate things further, the 1997 Amsterdam Treaty also incorporated the Schengen provisions on visa and border controls agreed under the Schengen Convention. This meant that these could now be

developed by the EU along with the new immigration and asylum policies. The rationale behind the a common European policy was that without minimum standards set by the EU, there would be a 'race to the bottom' over of the treatment of asylum applicants, with member states adopting ever stricter policies so as not appear a 'soft touch'. Commitments were made at the special EU justice and home affairs summit in Tampere, Finland, in October 1999, where governments and the Commission promised they would listen to refugee and human rights groups and safeguard the right to asylum. So what happened?

Asylum policy

The EU's asylum policy is now dictated by a complex series of Directives and Regulations covering temporary protection

(2001/55/EC), reception conditions (2003/9/EC), responsibility for asylum-seekers ('Dublin II', 2003/343/EC) and the definition and content of refugee status (agreed text in 7944/04). Critically, however, the EU failed to adopt the asylum procedures Directive before the 1 May deadline, though it has agreed the 'general approach' (8771/04). These new rules have serious implications for people seeking asylum in Europe.

Primarily, the EU asylum rules need to be seen in the wider context of more and more measures seeking to prevent authorised, undocumented, irregular and 'illegal migration' into the EU (see further below). These measures make no provisions for people trying to reach the EU in order to seek asylum so genuine refugees are forced into the world of false documents, 'traffickers' and organised crime. Rather than incorporate rules on entry for the purpose of seeking asylum into EU immigration and asylum law, the EU has plumped for criminalisation, with overbroad definitions in EU criminal law of 'facilitating illegal entry and residence' and 'trafficking in human beings', even going as far as adopting EU legislation on rewarding asylum applicants and other 'victims' with residence permits if they cooperate with the police (by informing).

A decision to create an EU 'temporary protection' (TP) regime does not even provide for lawful entry into the EU, so on the one hand the EU is saying that crises on the EU's doorstep like Kosovo warrant special measures (i.e. a greatly restricted form of protection for a set period only) but on the other hand is taking measures to prevent the entry of the very people taking flight. The TP Directive also *encourages* the grant of temporary protection as an alternative to refugee status (for alternative forms of protection, read fewer rights). This is indicative of how EU asylum law as a whole has developed: refugees and asylum-seekers derive their rights from the refugee Convention (which only ever envisaged 'temporary' protection) and the European Convention on Human Rights (ECHR). Rather than enshrining these *minimum* standards into EU law, the Council has incorporated all the methods used by the member states to limit, restrict and undermine these rights. In doing so, it lowered many of standards proposed by the Commission, and enshrined the worst of the soft-law developed under the unaccountable Trevi framework more than a decade ago.

Illegal, inadmissible and accelerated

Asylum-seekers arriving or 'intercepted' at the EU's external borders (including airports) are likely to be told to declare their intention to apply or jeopardise any future application; they may also be told that without adequate documentation, they are not entitled to enter. Applications for asylum made at the border are then subject to 'special', accelerated procedures (for special and accelerated, read fewer rights). If applicants are deemed to have transited through a 'safe third country' they may also be liable for immediate return – readmission agreements, the Dublin Convention and Schengen border manual all potentially encourage illegal *refoulement*. Arrivals are also checked

Next, EU law has enshrined a number of highly dubious policies that allow the application to be deemed inadmissible. First, applicants for asylum are subject to the Dublin Convention (updated and replaced by new a EC Regulation) under which the state responsible for the entry of the asylum-seeker is responsible for their application. As ECRE and others point out, this 'clearly has the result of shifting the greater responsibility for asylum applications to those States with extended land and sea borders in the south and east – the principal migration entry points'. This means that those countries with the most under-developed asylum infra-structures in the EU (particularly the acceding states) are liable to greater responsibility – so much for the principle of solidarity between member states, one of the main principles of EU law.

'Safe countries'

Second, EC law has enshrined the 'safe country of origin' concept in EU law, allowing member states to declare applications from certain nationals or regions as 'manifestly unfounded', having the effect of forcing the majority of member states who do not currently apply this principle to lower their standards. Third, the Directive on refugee status (see feature in this issue) also allows people who could have sought 'protection in the region' to be denied protection. This includes, for example, Palestinian refugees (who receive 'UN protection'), and also allows the member states to designate parts of countries safe (i.e. the Kurdish autonomous region could be declared safe for Iraqi Kurds). Fourth, the Directive also asserts that risks to which a population (or section of it) are *generally exposed* do not normally warrant international protection. This is hotly contested in relation to refugees, since racial, religious or ethnic wars may involve sections of or sometimes whole populations (Tutsis in Rwanda, Tamils in Sri Lanka, Muslims in Bosnia, all Somalis during the clan-based wars). It is even more hotly contested in the field of subsidiary protection, where the only thing that matters is the reality of the risk of harm. All of these exclusions undermine a fundamental principle of the refugee Convention: the obligation that each application must be considered on its own merits.

Conditions for asylum-seekers

For those applications that are deemed admissible, the EU has gone to great pains to define the types of persecution that produce refugees. But what it gives with one hand, it takes away with the other, encouraging a continuation of the standard national practise of granting 'temporary' or 'subsidiary' forms of protection in place of full refugee status in the majority of cases (for 'temporary' or 'subsidiary' read fewer rights). The Directives fail to take seriously the fact that for a refugee, 'temporary' is essentially a state of limbo, in which people are often forced 'underground' in order get on with their lives.

Applying for asylum is already an horrific ordeal in most of the member states. Taken together, the EC Directives on reception conditions, asylum procedures and temporary protection allow the member states to detain asylum-seekers in 'processing centres', to order applicants to stay in a specific place, to provide demeaning vouchers rather cash to destitute applicants, to restrict access to health-care to emergency treatment only, to prevent asylum-seekers working, to limit schooling for children to education in accommodation centres, and to limit the situations in which individuals can be reunited with a family members. The procedures Directive will allow the member states to limit the right to a personal interview and services of a qualified interpreter, cut entitlement to free legal assistance during all stages of procedures and fails to guarantee the right to a suspensive appeal against a negative Decision. If an appeal does not have the affect of suspending proceedings (especially expulsion orders) it is useless. There is no guarantee that the applicant will even know what is going on: the member states are only obliged to provide information 'in writing and *as far as possible*, in a language that the applicants may reasonably be supposed to understand'.

Finally, if a person in need of protection surmounts the obstacles placed in their way by national and EC law and obtains refugee status, the Directives make it easy to take that status away. There will be simplified procedures for withdrawing status and in particular, Member States will be free to deny any procedural protection if they claim that refugee status has 'ceased' because of a change of circumstances in the country of origin. The draft procedures Directive still permits access to a court or tribunal, but now member states will apparently be free in any and all cases to deny applicants the right to stay in the country pending decisions on their appeals. The impact of this is that even if asylum-seekers win their cases on appeal – and

increasing numbers win their appeals to the courts in some Member States – this victory will be virtually useless to them if they are already back in the unsafe country which they fled, or another State which might send them there.

The Commission has, as usual, done its best to apologise for the member states, pointing out that the new ‘level playing field’ leaves member states free to introduce or retain more favourable standards of protection. As the article on p17 points out, this ‘an option likely to be taken up only by the Shetland Islands if they gain independence from the UK’.

Registration and surveillance

To prevent ‘multiple applications’ and to enforce the Dublin Convention, a central EU database containing the fingerprints of all applicants for asylum has been created. The ‘Eurodac’ Convention had been agreed in 1988 but the Council decided to wait and adopt the text as an EC Regulation (2000/2725/EC) after the entry into force of the Amsterdam Treaty, mainly to avoid a lengthy ratification process in the national parliaments. During the latter stages of the negotiations it was agreed to reduce the age limit for inclusion from eighteen to fourteen-year olds and extend the scope of the database to checks on illegal immigrants. Eurodac went online on 15 January 2003, in its first year of operations it recorded the fingerprints from a total of 246,902 asylum applications. Importantly, the Eurodac Convention led to the creation of national fingerprint databases in all the member states, many of which have a wider purpose. UK police and immigration services are now equipped with hand held scanners to conduct spot checks for people subject to deportation or criminal proceedings. In Sweden there have been horrific media reports of immigrants mutilating their fingers to render their fingerprints illegible to the new technology with scars from deliberate cuts or burns (ref). After the terrorist bombings in Madrid on 11 March 2004, EU law enforcement agencies renewed their calls for access to the data held on Eurodac, a position apparently supported by the Commission despite its incompatibility with EC law.

Eurodac complements the Schengen Information System (SIS), which went online in 1995. Member states can put records on failed asylum-seekers and illegal immigrants in the SIS under Article 96 of the Schengen Convention and by March 2003, the member states had registered a total of 780,922 people. The EU has now agreed on the creation of SIS II, which will contain more types of data on more people for more purposes; the Commission has conspired with the Council to develop the new database under a veil of secrecy. SIS II will share a technical platform with a new EU Visa Information System (VIS) – a database containing the personal information from every visa application (irrespective of whether the visa was issued or the application refused). VIS will have a ‘capacity to connect at least 27 Member States, 12,000 VIS users and 3,500 consular posts worldwide’. A favourable feasibility study has been completed, based on the ‘assumption that 20 million visa requests would be handled annually’. Again, key issues have been shielded from public scrutiny by the Council and Commission. The scope and function of VIS were set out in Council conclusions but no details were included in the subsequent Commission proposal on creating VIS. It is also proposed that ‘biometrics’ (facial scans and fingerprints) should be incorporated into VIS and SIS II (Eurodac already contains biometrics). The Commission has also made proposals on the inclusion of biometrics in residence permits, visas and passports. In April, the EP voted to reject the VIS proposal and decided leave its opinion on the proposals on biometrics for the next Parliament, saying that the ‘European Parliament is not in a position to endorse the proposals... as long as the commission does not put its cards on the table and fully inform us of its strategy. We need proper democratic scrutiny of this far-reaching legislation...’

Expulsion policy

There is an obvious if often unwritten link between the EU’s policy on registering and placing immigrants under surveillance and its expulsion policy – checks and restrictions on refugees, asylum-seekers, visa residents and third-country nationals are implicitly tied to removing them from the EU and preventing their return. Expulsion policy under Amsterdam began with the French presidency ‘crackdown’ on illegal immigration during its presidency of the EU in the second half of 2000. This included a draft Directive on the EU wide enforcement of expulsion decisions – an expulsion Decision by one member state now effectively applies EU-wide. The adopted Directive (2001/40/EC) promises an appeal, but again it promises to be non-suspensive. The EP also voted to reject this Directive, the Council simply ignored its position. The EP later voted to reject a supplementary Decision on the reimbursement of costs for expulsions carried out on behalf of another member state.

In April 2002 the Commission produced a consultation document on an EU expulsion policy, though the policy options presupposed the fundamental question of whether the EU should even have a common policy (it had been not been included in the Amsterdam or Tampere proposals). Before the consultation period had finished, one important part of the Green Paper was already implemented, when the Council agreed on extending the policy of pursuing readmission agreements with non-EU states to enable returns and expulsions; Germany also proposed a Directive on assistance in cases of expulsion by air. Under the adopted Directive (2003/110/EC) each member state will automatically have to accept the word of the state requesting assistance that there is no risk of torture, death or other inhuman or degrading treatment when carrying out returns for another (the draft Directive at least required the officials of the requesting state to tick a box assuring them this was the case). The Commission has recognised the need for ‘a clear legal basis for the continuation of the removal operation initiated by another Member State, in particular if the use of coercive force is unavoidable’ but has failed to come up with standards to ensure human rights are respected. By the end of 2002, the Council had also agreed two Action plans on expulsion, including one on ‘safe and dignified return’ to Afghanistan (despite huge doubts that it is safe to return people to this country).

Italy marked the start of its Presidency of the EU (July 2003) with two more proposals on expulsion, one on transit for expulsion by land or sea, and the on joint EU expulsion flights. The land and sea Directive was dropped (though the Council still adopted the main provisions of the Italian proposal in the form of ‘soft-law’ Council conclusions), but the Decision authorising joint expulsion flights, which are prohibited under a protocol to the ECHR, was adopted just before the 1 May deadline (6379/04). For what it was worth, the European parliament voted to reject the proposal, its report describing ‘collective returns’ as ‘a deplorable practice’.

Visa policy, Common Consular Instructions and Border Manual

The EU’s visa policy is based on is a common list of countries whose nationals do not require a visa for short-stays (the so-called ‘white list’) and a set of ‘Common Consular Instructions’ (CCI) setting out rules on the application procedure and the grant of the visa. The EU’s first ‘negative list’ of countries requiring a visa to enter the EU (the ‘blacklist’) was agreed under the Maastricht Treaty in 1995, imposing a visa requirement on 98 countries in Africa, central America, the Middle East, Asia, Eastern Europe and the Southern caucasus. However, the European Parliament successfully sued the Council to annul the measure because it not had been properly consulted.

The legal effect of the 1995 Regulation was preserved until the institutions could adopt a replacement. This they did in 1999,

adopting an almost identical text. In January 2000, the Commission drafted a replacement which it revised later in the year following a critical report by the European Parliament. For the first time, the adopted Regulation (2001/539/EC, from which the UK and Ireland 'opted-out') included a 'white list' of 44 countries whose nationals are exempt from the visa requirement (these are central European, Australasian countries, North and some South American countries, Japan, Israel and several others); leaving the rest of the world on the 'blacklist'. There was no objective study to see whether the third countries on the 'negative' list should be there according to the criteria set out by the Regulation, and there is no commitment to review the Regulation (though the Council may amend the list).

In 2001, the Council adopted two Regulations, giving itself sole responsibility for amendment of the Common Consular Instructions (CCI) on visa issue (2001/789/EC) and Common manual on border controls (2001/790/EC) drawn-up in the Schengen framework. This excluded both the Commission and Parliament from further decisions. The EP voted to reject the draft Regulations, while the Commission lodged an application with the Court of Justice to have them annulled. The Advocate General's opinion released last month (Case C-257/01) suggests the ECJ will rule that the Regulations are invalid, along with various amendments to the border and visa rules subsequently adopted by the Council under the terms of these regulations.

Towards an EU Border police

A long awaited draft EC Regulation on the establishment of an EU Border Management Agency was also produced by the European Commission during the Italian presidency. The proposal (EU) aims to provide a basis for the long-term development of an EU Border Police. In context, however, the draft Regulation appeared little more than a window dressing exercise, giving a 'legal basis' to the *ad hoc* development of a whole host of operational bodies and measures that were already in place. A 'Common Unit' of external border practitioners had already been created in June 2002, reporting to the EU Strategic Committee on Immigration, Frontiers and Asylum (SCIFA). Under the supervision of the Common Unit and well before the draft Regulation was tabled, the EU was setting-up 'operational-coordination centres' on land borders, sea borders and airports; a Risk Analysis Centre and a conducted a number of joint operations using EU funds.

From buffer states to global controls

Under the Amsterdam Treaty the EU has also continued its policy of incorporating migration issues into its dealings with third countries. The buffer state approach of the early 1990s is being extended to a new 'circle of friends', part of preparations for the expansion of the EU to the east and south-east and the full accession of existing buffer states. The 'global approach' to migration control, proposed in the notorious Austrian presidency strategy paper of July 1998, and developed in the Action Plans of the High Level Working Group is now a central tenet of EU policy. The shadowy world of liaison officers posted to third countries has been given an EU legal basis and the policy of using aid and trade to secure readmission agreements under the Lome Convention is being extended to more general 'migration management clauses'.

Whether EU financial assistance extends to the establishment of 'reception centres' for illegal immigrants and off-shore 'processing centres' for asylum applicants remains to be seen. These ideas are at the heart of the UK governments 'new vision for refugees', leaked to the press in January of last year. While the EU has distanced itself from the controversial proposals, which would spell the end of any meaningful refugee protection in the EU, the draft constitution ominously includes a provision on 'partnership and cooperation with third countries

for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection'.

Conclusions

EU asylum law can only claim to improve on the least developed asylum systems of the EU member states. It has also not only failed to prevent a 'race to the bottom' in the treatment of refugees, but encouraged member states to enter into such a race, guaranteeing that the 'lowest common denominator' will be the standard for asylum systems in the ten new EU states. The Commission has naively suggested that at least the legislation can be 'improved', assuming that the EU will announce a raft of proposals improving the lot of asylum-seekers at some point in the future. The consultation process may have been a model exercise in lobbying by NGOs, but also demonstrates the extent to which the Council has no intention of listening. The European Court of Human Rights has repeatedly ruled against Member States with low levels of procedural protection for asylum seekers, requiring an effective examination of a claim that expulsion of a person would result in torture or other inhuman or degrading treatment and limiting the ability of Member States to expel a person in the meantime.

Consultation of the European Parliament has been minimal, and its views were all but completely ignored. The Council has so far failed to win the EP's support for a number of its key initiatives - expulsion, VIS, biometrics - while the Commission's role seems to be one of following the instructions of the JHA Council, rather than impartial interpretation of the Treaties. EU legislation developing the Schengen Common Consular Instructions on visa issue and Common Border Manual are likely to be annulled by the ECJ.

Tampere promised an end to the Fortress Europe of asylum policies based on detention, denial and deterrence. The next five years showed these promises to be false, enshrining these principles and developing an ever more sophisticated framework for the registration, surveillance and expulsion of immigrants and refugees (controls, incidentally, that will increasingly employed for general surveillance purposes). Meanwhile, the buffer-state policy now extends to global controls, cementing the neo-colonial relationships between western nations and the 'developing world'.

Three new issues have now emerged. Firstly, calls for 'off-shore protection' and 'protection in the region' are unlikely to go away. Second, we can expect increasing discussions about the need for the temporary, regulated entry of highly skilled and unskilled immigrants to do the work EU citizens are unable or unwilling to do. The racist tone of the debate and restrictions on economic migrants from the ten EU countries has set the tone for any future policy. Finally, under the guise of tackling terrorism, we can expect demands that data collected by the EU on visa and asylum applicants and 'illegal' migrants be shared with the US, Canada, Australia and other nations.

From the 1 May 2004, the EP has co-decision on key issues, including those policies that current parliament has opposed. At the same time, voting in the Council switches to qualified majority on key matters, limiting the kind of principled resistance shown by the Scandinavian countries on important issues. However, despite missing the deadline for agreement on the crucial asylum procedures Directive, the Council has decided that because it has agreed the general approach, it need only 'reconsult' the new parliament. The draft EU constitution promises more powers still for the EP but control over 'operational issues' such as border controls and databases will remain in the hands of the Council and national governments. A lot will certainly depend upon how the new parliament uses its new powers where controversial EU policies are concerned. This in turn depends upon the EP elections in June, which may return an even larger conservative majority.

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EU: *Europol analysis files - 146,183 personal records and counting*

EU issues updated list of "terrorist organisations and persons"

Civil rights groups warn of grave dangers in international biometric passport system

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Statewatch bulletin

Subscription rates: 6 issues a year: UK and Europe: Individuals and voluntary groups £15.00 pa; Institutions and libraries: £30.00 pa (outside Europe add £4 to the rate)

Statewatch does not have a corporate view, the opinions expressed are those of the contributors.

Published by Statewatch and printed by Russell Press, Russell House, Bulwell Lane, Basford, Nottingham NG6 0BT

ISSN 0961-7280

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