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EU: The “principle of availability” takes over from the “notion of privacy”: what price data protection?

The Hague Programme adopted at the EU Summit on 5 November 2004 says that from 1 January 2008 the "principle of availability" - which simply means if data is held then it can be shared between law enforcement agencies - will become the guiding light for access to personal data held by national law enforcement agencies in other EU member states.

The European Commission is charged with preparing a proposal to implement "the principles of availability" including the following key conditions: 1) exchange of data can only take place so that "legal tasks may be performed" - "legal tasks" is extremely broad and is clearly intended to extend beyond gathering evidence for presentation in a specified court case; 2) "the need to protect source of information"; and 3) "individuals must be protected from abuse of data and have the right to seek correction of incorrect data" - but how will individuals be able to correct law enforcement agencies' files unless they are given full access to them and know who has accessed their data and how it has been used?

The Hague Programme says that "new technology" must be fully employed and the means of "exchange" of personal data between agencies could be through:

- a) "reciprocal access to... national databases"
- b) "the interoperability of... national databases" (all agencies have access to each others data)
- c) "direct online access.. to existing central EU databases such as the SIS"

European Data Protection Commissioners

On 14 September 2004 the European Data Protection Commissioners met in Wroclaw, Poland and adopted a Resolution to set up a "joint EU forum on data protection in police and judicial cooperation matters (data protection in the third pillar)". The Resolution says that in contrast to the "first pillar" (economic and social issues) where the Article 29 Working Party is in place, there is no equivalent to cover the "third pillar". The three joint supervisory bodies covering Europol, Schengen and Eurojust have specific mandates and "a

broader approach is required to secure a uniform level of data protection safeguards for the whole area of police and judicial cooperation".

The creation of a parallel group to the Article 29 Working Group covering the "third pillar" would fill a gap in the role of data protection commissioners. However, it is only part of the answer as the Opinions of the Article 29 Working Party are often simply ignored by the Council and Commission. European Parliament reports do take notice of the Working Party's Opinions but at present their views on "third pillar" issues are also routinely ignored.

The three supervisory bodies (Europol, Eurojust and Schengen) have submitted evidence to the UK House of Lords Select Committee on the European Union's inquiry into EU counter-terrorism activities. They say that "large quantities of personal data for intelligence and law enforcement agencies" are being processed "in the fight against terrorism and serious crime". Recent proposals involve the:

processing of personal data from different sources on an unprecedented scale

The retention of communications data and the passing of passenger data to the USA are examples of a "new trend involving the collection of information on individuals (and not only suspects)".

The EU supervisory bodies say that the gathering of data on individuals is not isolated to one or two agencies but "involves a huge number of agencies throughout the EU". Their experience in trying to assess the Europol-USA agreement showed that trying to limit the number of agencies who have access to personal data is difficult if not impossible: "in the USA some 1,500 authorities on Federal, State and community level are involved in dealing with criminal offences including terrorism".

The exchange of data on the scale proposed: "often involving processing of information on those who are not suspected of any crime" requires, they say, "purpose restriction" (ie: that data collected for one purpose cannot be use for another) and supervision to ensure compliance with legal instruments. These limitations do not exist at present.

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They conclude that a "specific set of data protection rules for police and intelligence authorities" has to be put in place. There needs to be a common legal basis in every member state - as existing national data protection authorities "have different competencies in the field of law enforcement" - and sufficient funds and staff to ensure they have the capacity to do their work.

How will the Council and Commission respond?

The Council of the European Union (then 15 governments) set up a working party on data protection in the "third pillar" in May 1998. The "Action Plan of the Council and the Commission on how best to implement the provisions of Amsterdam establishing an area of freedom, security and justice" (13844/98) said that data protection issues in the "third pillar" should be: "developed within a two year period" (IV.47(a)). Not until August 2000 was a draft Resolution drawn up by the Working Party, this was revised five times, the last being on 12 April 2001 under the Swedish Presidency of the EU (6316/2/01) when agreement appeared to have been reached and the Article 36 Committee was asked to address outstanding reservations. From this point on there has been silence - and the Working Party was abolished in 2001 when the Council was restructured to "streamline" decision-making.

The European Commission has produced a Communication on "enhancing access to information by law enforcement agencies" (COM (2004) 429) - this was presented to the full Commission meeting (14.5.04) with the addition to the title of "and related data protection issues" which was dropped. The Communication says a Framework Decision will be presented to establish common standards for Title VI (TEU, "third pillar") but these will be not to establish the rights of individuals but to:

empower access to all relevant law enforcement data by police and judicial authorities.. for the purpose of cooperation to prevent, detect, investigate and prosecute crime and threats to security

and to: "reduce the practical difficulties in information exchange between Member States on the one hand and Member States and third countries on the other"

All this is to be "in accordance with fundamental rights" - which on the evidence of measures taken since 11 September 2001 is an empty promise.

Mr Franco Frattini, the new Commissioner for "Justice, Freedom and Security" (the new Commission euphemism for the "Area of Security, Freedom and Justice"), addressed the issue at a meeting on the EU Joint Supervisory authorities at a meeting in Brussels on 21 December. He said the Commission was committed to safeguarding "the commitments" to data protection in the Charter and the Treaty and "cooperation with the agencies safeguarding these rights" - and asks the question: "What new balances will it be necessary to find between privacy and security?"

He agreed with the authorities that a new framework was needed, taking "account of the times we are living in". The current lack of "coherence" had led to:

some of the supposed obstacles thrown up by the notion of privacy

The Tampere Summit (1999) stressed the need for "coherent action to promote access to available databases and information sharing between the authorities concerned" and now the "Hague Programme" had introduced "the principle of availability".

The questions to be tackled include:

1) "adapting the principles to the objectives pursued, for example, in the case of information sharing the principle set out in the Hague Programme" (ie: availability)

2) "developing special rules governing the transfer of data to third countries and other bodies, incorporating the principle that information received may be passed on with the prior consent of the party forwarding it"

This would mean, under the "principles of availability", that any

agency in the EU could agree with the USA that it can pass data on to all the agencies it wants (some 1,500) to use for their own purposes. The "principle of availability" and the "principle that information received may be passed on" utterly undermines any concept of data protection which requires that data can only be collected for a specific, stated, purpose and cannot be used or added to for any other purpose. Once this principle is breached the rights of the individual (and of privacy) disappear because there is no way to track who has data on them and how it has been used or amended.

A multitude of measures have been put in place under the "third pillar" since 1976 - the Trevi acquis (1976-1993), then the Maastricht acquis (1993-1999) and currently the Amsterdam acquis (1999 ongoing) - and still there are no data protection provisions or meaningful supervision. Now new measures are on the table to enact the so-called "principle of availability" (Hague programme) and the "principle that information received may be passed on" (Commission, Mr Frattini).

When the Commission and the Council finally get around to "data protection" it will be tailored to ensure the smooth-running of the powers, practices, databases and "data exchanges" of security and law enforcement agencies not those of the individual. In the "times we are living in" data protection is becoming a meaningless concept.

CIVIL LIBERTIES

GERMANY

Internet service providers to intercept customers

From 1 January 2005, German telecommunications providers will have to have the necessary technical and organisational equipment installed for the interception of their communications. The relevant regulation on interception of telecommunications (*Telekommunikationsüberwachungsverordnung* - TKÜV) was passed in October 2001 (see *Statewatch* Vol. 11 no. 5), but providers were given three years to put the regulation into practice. The ISPs have to install and pay for the necessary interception equipment themselves and some of them have issued a one-off extra payment from their customers, in effect to pay for their own possible interception. The cost of the purchase and installation of the necessary interception box ranges from 10,000 to 50,000 Euro. The ISPs are also responsible for repair and servicing.

An interception box, which is connected to the servers (computers) on which customers' e-mails or personal data are stored, functions as an interface that allows law enforcement agencies to intercept at the push of a button, without the service providers noticing. Internal and external secret service agencies as well as the military defence authority (*Militärischer Abschirmdienst*, MAD) do not require an order from a judge for the interception. They merely need to have a "concrete indication" of a crime or the planning thereof, to carry out the interception. Some service providers are excluded from the general obligation to pay for and install the boxes (but still have to cooperate on request), for example, those that have less than 1,000 customers, those that only provide for friends and employees, or service providers that only connect their customers to the internet without providing mail or other telecommunications services. If the providers have not installed the interception boxes by 1 January 2005, they could be fined 500,000 Euro.

Implementation of this regulation will provide the German

state with the technical infrastructure for the effective, fast and wide-scale interception of telecommunications. Due to the limited control possibilities, it is likely to lead to an increase in interception. The only protection from interception that remains, some argue, are encryption programmes such as PGP (Pretty Good Privacy) or GnuPG (Gnu Privacy Guard). With this compulsory implementation imposed on service providers, Germany follows the EU Council Resolution on Law Enforcement Operational Needs with Respect to Public Telecommunication Networks and Services (20 June 2001, document number 9194/01).

Jungle World 8.12.04

UK

BMA warns that "ethnic weapons" are approaching reality

In October the British Medical Association (BMA) warned that the science required to target biological weapons at specific ethnic groups "is now approaching reality". The BMA report, entitled *Biotechnology, Weapons and Humanity 11*, and written by Malcolm Dando, head of Peace Studies at Bradford University, argues that recent discoveries make it feasible to identify genes that are more common to certain groups and to target them. Dando says that recent developments in human genome analysis "showed the incidence of small mutations called single nucleotide polymorphisms varied considerably between populations." He added that a new targeting technology, RNA interference, "could be used to shut down a biologically important gene in a given population".

While many experts have doubted that it is possible to use human variability to target specific populations because no suitable "ethnic" genes exist, the possibility was explored by apartheid-era South African scientists. In the 1980s, the apartheid regime ran a biological weapons program called Project Coast that was designed to develop a "black bomb", via genetic engineering research, that would kill black people but not whites. In a similar fashion, Israel's Institute for Biological Research, which is involved in DNA sequencing research, has repeatedly been accused of trying to create an ethnic-specific weapon with which Arabs could be targeted. In 1998 the *Sunday Times* newspaper reported that Israel, which has never signed the Biological and Toxin Weapons Convention, was close to completing an ethnic weapon.

In the BMA's first report on the subject, published in 1999, it found that ethnic weapons were a "theoretical" possibility. However, the BMA's head of science, Vivienne Nathanson, said that "The situation today is arguably worse than five years ago" and "the window of opportunity" to tackle developments was rapidly shrinking. She added "The very existence of laws to protect us is being questioned" and warned there is a danger "that legitimate research, often conducted to find potential therapies for debilitating diseases, could be perverted to develop weapons of mass destruction". Dando was critical of the reluctance of the United States to agree to a multilateral approach to biological monitoring. The BMA believes that urgent action is needed to strengthen the Biological and Toxin Weapons Convention, which currently lacks adequate verification provisions.

Nathanson warned of the following scenarios if the development of biological and genetic weapons is not curtailed:

- * *weapons that target specific ethnic groups*
- * *imitation viruses*
- * *crop control viruses*
- * *bio-regulators (agents that attack an individual's immune/nervous system)*

- * *genetically engineered anthrax*
- * *modified smallpox immune response*
- * *Synthetic polio virus*

Malcolm Dando *Biotechnology, Weapons and Humanity II* (ISBN 0954861507), price £9.99. Order at: info.science@bma.org.uk

Financial Times 26.10.04; *Times* 26.10.04; *Medical News Today* 25.10.04.

UK

Identity Card Bill being rushed through parliament

The Identity Cards Bill entered the committee stage in the second week of January, where it will be examined clause by clause. However the level of scrutiny that MPs will be able to give the bill is limited. The government is rushing the bill through parliament following a programme motion (in effect, a "guillotine") that means the committee stage must be completed by 27 January. MPs did not return from Christmas recess until Monday, 10 January, so that leaves just two and a half weeks to examine a lengthy and controversial bill that has enormous costs and major constitutional implications.

The committee will then produce a report, which will be allowed just one hour of debate in the commons. The Third Reading of the bill is limited to a single day. The low turnout for the Second Reading of the Bill (173 MPs were absent or abstained) suggests that there could be a more sizeable back bench revolt at Third Reading. NO2ID, the campaigning group, has compiled a list of MPs who publicly support NO2ID as well as those that are opposed to ID cards in principle. After the Third Reading it will go to the House of Lords.

The Bill will introduce compulsory finger-printing for the five million people who get a new passport every year who will also get an ID card at the same time. The government says that by 2012/3 some 80% of the population will have an ID card at which point it will become compulsory to have one.

See: www.no2id.net/about/mp_supporters.php

GERMANY

Big Brother Awards 2004

The Big Brother Awards have been organised in Germany since 2000 by the "Association for the Promotion of Public Moved and Unmoved Data Traffic" (*Verein zur Förderung des öffentlichen bewegten und unbewegten Datenverkehrs e.V.*). This year's awards, which are given to companies, organisations and individuals responsible for personal data violations, took place in Bielefeld on 29 October. The winners were:

- * *justice minister Brigitte Zypries (for proposed bugging law),*
- * *health minister Ulla Schmidt (for a law on the "modernisation" of public health insurances),*
- * *the Nuremberg Federal Employment Agency (for imposing inquisitive questionnaires on the long-term unemployed),*
- * *the director of the university of Paderborn (for installing CCTV cameras in lectures theatres and computer rooms to "prevent crime"),*
- * *the supermarket chain Lidl (for keeping its employees in "slavery-like" conditions and putting its branches under surveillance),*
- * *the Armex company (which is selling the mobile tracking service TrackYourKid)*
- * *Tchibo direkt (for violating privacy through passing on customers' data to third parties).*

The printing company Canon won the "technology" category, for numbering customers' photocopies with invisible serial numbers that link the copy to the photocopy machine and, through shop records, to the person who made it. Canon shop owners have reported requests from the police to implement this practice.

The jury includes, amongst others, the International League for Human Rights, the Chaos Computer Club and the German Association for Data Protection.

www.bigbrotherawards.de for more details (also in English).

Civil liberties in brief

■ **Germany: First anti-discrimination law.** In December 2004, the coalition government agreed a law allowing for compensation of victims of discrimination in the services, employment and commerce sectors on grounds of their gender, race or religion. The legislative proposal marks Germany's first anti-discrimination law; it is anchored in civil and criminal law and enables damage claims but no criminal sanctions and was implemented according to EU anti-discrimination standards. Homosexual couples have also gained more rights in law, through legislation passed in the Upper House at the end of November 2004. The regulation gives homosexuals the right to adopt their partner's children, to claim their partner's pension rights and to financial support after separation. *Süddeutsche Zeitung* 13, 14, 27, 28.11, 16.12.04.

■ **Spain: Al Jazeera journalist back in prison.** Tayseer Alouni, a correspondent in Spain for the Qatari television station Al Jazeera, and nine others accused of belonging to a Spanish-based al-Qaeda cell, were detained in preventative custody on 19 November 2004 on orders from the prosecuting magistrate Pedro Rubira, who deemed that there was a high risk that they may flee before their trial. Four other suspects have had the charges against them dropped due to lack of evidence. The accused were placed in preventative custody because of the seriousness of the charges against them, "membership of a terrorist organisation of an Islamist nature", and because the investigation process is over and a trial imminent "which is why the risk of an escape increases for these types of crime, especially when the charges regard a terrorist organisation that has sufficient mechanisms [in place] to prevent their militants from being at the disposal of the justice system, and thus preventing them from being tried". All of the accused claim that they had no intention of fleeing and that they are innocent. They have social and family links in Spain, where most of them have already been living for 20 years. Alouni and another of the accused, Jamal Hussein, also have health problems that may worsen in prison. In fact, Alouni, who was arrested on 11 September 2003, was subsequently released on 23 October 2003 (see *Statewatch* Vol. 13 nos 5 & 6) as a result of his heart condition. His lawyer also has documents to show that he is suffering from a depression. *El País*, 20.11.04.

■ **France: Anti-nuclear protester dies during nuclear transport.** In November, 21-year old Sebastien Briat died near the French city of Avricourt after being hit by a train carrying nuclear waste. Briat and his friends were protesting against the freight company Castor Transport, which dumps nuclear waste near the German city of Gorleben, by shackling themselves to the train tracks. However, the train was travelling at such a speed that Briat was surprised by the air vortex and thrown onto the tracks. Earlier reports claimed he was unable to free himself from the shackles before the train reached him. The French rail trade union *Sud Rail* criticised the fact that the train was travelling at almost 100 km per hour, whilst the dangerous cargo and winding route demanded a maximum speed of 30 km per hour. Sebastien's death has led to some questioning of the blockade as a form of protest. These have been countered by representatives from the environmental movement and local

farmer's organisation who point out that the authorities failed to ensure a safe speed for the cargo. In the USA nuclear waste transport is only allowed to travel at walking speed. Further, the standard procedure of sending a helicopter to check the tracks in front of the train had been interrupted because the helicopter was apparently taking petrol at the time. Despite decades of protest in the German area of Wendland, the Gorleben nuclear waste repository is likely to remain. *Jungle World* 17.11.04.

Civil liberties - new material

Anti-social behaviour orders: case-law reviewed, Nic Mudge. *Legal Action* (December) 2004. Reviewing the rapidly developing case-law in this field, the article first outlines the legal basis and general principles behind the use of ASBOs before focusing on the procedural side of their application. Mudge then focuses on the considerations involved in the making of interim ASBOs and the publicising of recipients. He finds that the latter "may infringe rights under article 8(1) of the convention, especially if photographs taken under the powers of the Police and Criminal Evidence Act 1984 are used by the media". He then looks at the naming of children and the use of Section 39 of the Children and Young Persons Act in cases brought against them, particularly at the interim ASBO stage where there should be a presumption of innocence. A recent case has also highlighted a conflict of interest where local authorities apply for ASBOs against children in their care. Finally he addresses the appropriateness of orders on conviction ("bolt-on" ASBOs) issued in addition to a prison sentence. He outlines two cases heard in the Court of Appeal. In the first it was found to be problematic to decide in advance that an ASBO was necessary, as "it should be assumed that custody would have some beneficial effect". In contrast, in the second case a two-year bolt-on ASBO was approved largely due to the frequency of the defendant's offences.

"Il Corriere avvelenato" (The poisoned Corriere). *L'Espresso*, 21.10.04, pp 90-92 & **"Capolinea Mentana"** (End of the line for Mentana), *L'Espresso*, 25.11.04, pp 40-43. The replacement of Enrico Mentana, the founder and director of the *Canale 5* (one of the private channels owned by Berlusconi's *Mediaset* holding company) news programme *TG5* since 1992, added a new chapter to the debate over media freedom and the conflict of interests involving prime minister and media mogul Silvio Berlusconi in Italy. It had already led to the disappearance of a number of journalists singled out by the prime minister (Enzo Biagi, Enrico Luttazzi and Michele Santoro) from prime-time television programmes on *RAI* channels (*RAI* is the Italian public broadcasting company), and to the resignations of the director of Italy's leading daily newspaper, *Il Corriere della Sera*, on 1 June 2003, and of Lucia Annunziata, the director of *RAI 1*, on 4 May 2004. Annunziata stated: "I resign against the occupation of the company", adding that "the limits of pluralism have been overstepped and that this council (the *RAI* management council) operates in a condition of illegality". These two articles are an interview with Mentana about his dismissal and his time in charge of *TG5*, and extracts from a chapter on De Bortoli's resignation in a book about "censorship and lies in Berlusconi's Italy". Mentana was replaced by Carlo Rossella, the erstwhile director of *Panorama* magazine on 5 November 2004, and he talks of his "long farewell", claiming that after the *Gasparri* law on the regulation of telecommunications "*Mediaset* was no longer forced to display a pluralist appearance". "What really hurts me", said Mentana, "is that the company did not clearly say what the situation was, that is, that it was appointing Rossella because he was considered... to be more coherent with the *TG5*'s editorial line". The other article, relating to the run-up to De Bortoli's resignation, describes a number of clashes between the *Corriere della Sera* director and Berlusconi's lawyers Gaetano Pecorella and Niccolò Ghedini over the newspaper's coverage of the trials involving the prime minister and former defence minister Cesare Previti, with accusations levelled at De Bortoli of following "a precise and unmistakable line" against Berlusconi. *Statewatch news online*, June 2003; *Repubblica*, 4.5.04.

Risky spaces and dangerous faces: Urban surveillance, social disorder and CCTV, Sean P. Hier. *Social & Legal Studies* Vol 13 no 4

(December) 2004, pp 541-554. This article is on the increase in the use of CCTV surveillance in Europe and North America and considers the emotional and affective dimensions of the phenomenon.

US accused of "torture flights", Stephen Grey. *Sunday Times* 14.11.04. This piece starts from an examination of the shocking "prisoner transfer mission" that saw US intelligence agencies fly Ahmed Agiza and Mohammed Zery from Sweden to Egypt so that he could be tortured with impunity. It goes on to describe how planes are being used by US defence and intelligence officials "to fly terrorist suspects to countries that routinely use torture in their prisons". Among the victims of US justice mentioned in this article are Pakistani journalist, Massod Anwar, Indonesian, Mohammed Saad Iqbal and British citizen, Wahab al-Rawi.

EUROPE

EU

Laws on Joint Investigation Teams in a mess

The European Commission has published a report on the compliance by the 25 EU member states to the Framework Decision on Joint Investigative Teams (COM(2004)858, 7.1.05).

Its conclusion is that:

only one Member State adopted transposing measures which are fully compliant with the Framework Decision (Spain)

The report opens with the statement that:

informal teams are already operating

The initiative to allow for the creation of Joint Investigation Teams (JITs) is based on Article 13 of the 2000 Convention on Mutual Assistance in Criminal Matters - which has only been ratified by eight member states (Denmark, Estonia, Spain, Latvia, Lithuania, the Netherlands, Portugal and Finland). Due to the slow ratification the Framework Decision on JITs was adopted on 13 June 2002 with a deadline for compliance of 1 December 2003.

By August 2004 only fourteen member states had sent relevant legislation, four sent the text of a Bill and two said that a draft was in preparation.

Framework Decisions are binding on member states but leaves to the national authorities the choice of "form and method". The "form" in which member states incorporated the Framework Decision differs greatly. The UK, for example, said it had complied by "means of a Circular" to which the Commission report comments: "As the circular is not legally binding, the relevant provisions have been considered as not complying with the Framework Decision".

The "method" differs greatly too. Most member states have transposed Article 1 however only two member states (Spain and Austria) have fully transposed Article 1.3 on the "leadership" of JITs, four have transposed some of the powers but eight have not in their legislation. Only three member states have listed specific powers to be given to "seconded members" of JITs (from countries other than the one where the team is operating; Article 1.5 and 1.6).

Article 1.7 deals with the case where a team want investigative measures (surveillance, phone-tapping, search of premises etc) to be carried out in one of the member states comprising the team. For example, a JIT may be operating in France but want the its Italian member to get an "investigative measure" carried out in that country. At present, and unless repealed, this requires "letters rogatory", namely a formal request. Only three member states have complied with this provision (Spain, Finland and Sweden), indeed most of the enacting national legislation does not deal with it (Denmark, Germany,

France, Lithuania, Hungary, Malta, the Netherlands, Austria and Portugal).

Similarly, the provision in Article 1.8 covering requests for assistance (another term for investigative measures) from a member state not participating in the JIT or from a third state (non-EU) have only been fully transposed by Spain and Portugal and other member states "have no relevant legislation in place".

Only Spain, Portugal and Sweden have complied with Article 1.11 on the "use of the information gathered" and Austria and Finland partially. While the option to allow officials other than from member states, that is from third states, to take part in JITs is provided for by Spain, Latvia, Hungary, Austria, Portugal and Finland.

On criminal liability (Article 2) only six member states have made provision for this and on civil liability (Article 3) only three member states.

Note: A letter rogatory is a formal request from a court in one country to "the appropriate judicial authorities" in another country requesting compulsion of testimony or documentary or other evidence or effect service of process.

Report from the Commission on national measures taken to comply with the Council Framework Decision of 13 June 2002 on Joint Investigation Teams, COM (2005) 858, 7.1.05.

SPAIN

Aznar government backed Venezuela coup

On the *59 segundos* (59 seconds) television programme on RTVE (the Spanish public broadcasting company) on 22 November 2004, Miguel Ángel Moratinos claimed that under the Aznar government "the Spanish ambassador [Manuel Viturro] received instructions to back" the coup attempt in Venezuela that began on 11 April 2002 and tried to topple the democratically elected president, Hugo Chávez. Following an outcry by the opposition *Partido Popular* (PP) which called for his resignation, Moratinos appeared in the *Congreso de los Diputados* (parliament) to offer his apologies, describing his declarations as "unfortunate" because it was neither the "appropriate" place nor the "right moment" to voice them. He stood by the truthfulness of the claims, and brought documentation, including correspondence between the government and the ambassador in Venezuela and official statements, to prove them.

Moratinos' documents showed that the then Spanish government adopted the language of the insurgents straight away, ordered its ambassador to meet with the coup leader, the businessman Pedro Carmona, when it was clear that a coup was taking place. The government described the illegal authorities as a "provisional government" before the EU, and failed to condemn the coup attempt until 14 April, when it had failed. Moratinos added that he was not suggesting that the Aznar government had "instigated or participated in the preparation and execution of the *coup d'etat*, but rather that it had "backed" it by "not condemning" it, "endorsing and trying to offer [it] international legitimacy".

The events on 11 April 2002 saw Chávez confined in the presidential palace by the insurgents, who claimed that he had renounced power after relieving the vice-president from office. It was an argument which sought to provide a legal basis for recognising the coup leaders. In fact, there must be a pre-existing "vacuum of power" in order for an unelected government to be recognised. Carmona dissolved parliament and proclaimed himself president, claiming that there was a "vacuum of power". However, Chávez later denied that he had ever resigned from power, and even if he and the vice-president had resigned, the president and the vice-president of the National Assembly (parliament) would have been next in line to take the reins of the government, and they both opposed the coup.

Nonetheless, the Spanish ambassador was instructed to meet Carmona alongside the US ambassador in Caracas and on 12 April, and in its role as the holder of the EU Presidency, the Spanish government expressed its hope that the "transitional government" would respect democratic standards. A joint US-Spanish statement (to which Argentina, Brazil, France and Mexico refused to subscribe) was issued encouraging "the Organisation of American States (OAS) to assist Venezuela in the consolidation of the democratic institutions" without voicing any condemnation of the coup. The OAS rejected the new government and condemned Carmona's coup attempt on 13 April, as did the US, while Spain only followed suit the next day, when the coup attempt was over. It also surfaced that the then Spanish prime minister José María Aznar had a telephone conversation with Carmona on 13 April.

The PP MP Gustavo de Aristegui described the allegations as "very serious", "slandorous" and as "defamation". He accused Moratino of "insulting democracy", adding that he had "not proven anything". De Aristegui's claim that the government attempted to meet a request from Cuba to allow Chávez to be taken into exile there, was met by Moratino's reply that this amounted to "moving president Chávez and trying to take him out [of Venezuela], not to saying that he should stay as the constitutional president". *El País* 2.12.04.

MILITARY

EU

Battle groups plan adopted

At a foreign ministers meeting in Brussels on 22 November, also attended by the defence ministers, EU nations formally committed themselves to having 13 military battle groups ready by the end of 2007. The battle groups, each 1,500 strong, will operate on a rotating basis to respond to international trouble spots. The units will be formed by individual or groups of nations. They will each be associated with a force headquarters and with pre-identified operational and strategic assets such as strategic transport and logistics and be reinforced with combat support elements. France, Italy, the UK and Spain will form the one-nation battle groups next year, giving the EU one available rotating group at any time from late 2005. The other (multinational) groups will be formed by 2007 and after that two groups will be simultaneous on call at any time. They will have five to ten days notice to deploy and be self-supporting for four months. For a decision to deploy EU consensus is required. However constructive abstention is possible. A EU military official was quoted in the *Independent* as saying that the groups "can conduct expeditionary operations, something that can, at short notice, mount flash to bang operations when the Council of ministers says so." The short notice for deployment makes national parliamentary control in advance difficult (this differs from country to country).

EU battle groups:

- * France
- * Italy
- * UK
- * Spain
- * France, Germany, Belgium Luxembourg and Spain
- * France and Belgium
- * Germany, the Netherlands and Finland
- * Germany, the Czech Republic and Austria
- * Italy, Hungary and Slovenia

- * Italy, Spain, Greece and Portugal
- * Poland, Germany, Slovakia, Latvia and Lithuania
- * Sweden, Finland and Norway (non EU member)
- * UK and the Netherlands

Independent 22.11.04 (Stephen Castle); *Scotsman* 22.11.04; *Jane's Defence Weekly* 1.12.04 (Luke Hill)

GREECE

Conscientious objector imprisoned

Giorgios Monastiriotis, a 24-year-old sailor in the Greek navy, was arrested on 13 September 2004 for refusing to take part in military activities in Iraq, and was subsequently sentenced to three years and four months in prison by a Naval Court in Piraeus for desertion. On 8 May 2003, when his frigate, the Navarino was sent to the Persian Gulf as part of Operation "Enduring Freedom", Monastiriotis publicly refused to serve in Iraq and offered his resignation from the armed forces, stating that "I refuse on grounds of conscience to participate in, or contribute in any way to the relentless massacre of the Iraqi people...My refusal is also a minimal act of solidarity with the Iraqi people, as well as to the peaceful sentiments of the Greek people". Amnesty International (AI) has described him as a "prisoner of conscience", calling for his "immediate" and "unconditional" release. AI has also highlighted the shortcomings of Greek legislation with regards to conscientious objection, arguing that although Law 251/97 allows the possibility of alternative civilian service, this option "both in law and practice, continues to be of a punitive nature and to discriminate against conscientious objectors". In a letter from Corinth prison on 15 September, Monastiriotis noted that "on the morning of 13 September 2004, I voluntarily presented myself to the Naval Court in Piraeus, in the hope of clearing up this whole affair. I was arrested, tried and received a sentence of three years and four months imprisonment. On the same morning, I read in a newspaper that a member of the American army who had admitted to torturing Iraqi prisoners had been sentenced to 8 months in prison".

Amnesty International press release 23.9.04; *Indymedia Athens*, 22.9.04; *Indymedia Paris*, 23.9.04.

Military - in brief

■ **Austria: Allegations of violence and abuse.** Parallel to the serious torture allegations in German prisons (see prison section), similar incidents have surfaced among the Austrian military. Three commanders have been suspended from service pending further investigations after reports of physical and psychological abuse during training. The public prosecutor is investigating the claims. The Austrian Defence Minister has strongly criticised the incidents which are being debated in parliament. In this case, around 80 army recruits were involved in a mock hostage-taking exercise and abused. The incident which took place at Freistadt Army Barracks in October 2003, was videotaped. Investigations have also been initiated into an incidents of mock executions at the Walgau army barracks in Bludersch in December 2003. There have been more allegations among several battalions, all of which belong to the 6th division of the Austrian fighter brigades. <http://derstandard.at> 20.12.04, *Süddeutsche Zeitung* 4-5.12.04

■ **UK: Inquiry says "Gulf War syndrome" is real.** The Lloyd inquiry into Gulf War Syndrome has concluded that there is "every reason" to accept that thousand of veterans of the first

Gulf war had suffered ill health as a result of the conflict. The inquiry, which was headed by the retired judge, Lord Lloyd of Berwick, was set up after government reluctance to pursue the issue (see *Statewatch* Vol. 14 no. 5). The Ministry of Defence (MoD) has consistently denied that Gulf War Syndrome exists and the report advocates that it set up a special fund to pay compensation to the victims. The MoD refused an official inquiry and did not cooperate with the Lloyd inquiry. A US government report concluded that combat-related stress was probably the cause in 1996. The Lloyd report says that scientific studies demonstrate that the illness was likely to be due to a number of causes, including multiple vaccinations, the use of organophosphate pesticides to spray tents and the inhalation of depleted uranium munitions. It urges the British government to acknowledge the illness. There are thought to be 6,000 former soldiers who are suffering with undiagnosed symptoms such as chronic fatigue, loss of muscle control, diarrhoea, dizziness and loss of memory. Summary of the findings can be found at: www.gulfveteransassociation.co.uk/Files/lloydreportresume171104.pdf

Military - New material

Die nukleare Frage in den deutsch-französische Beziehungen [The nuclear question in German-French relations], Peter Schmidt. *Europäische Sicherheit* 11/2004 pp. 57-61.

Die Europäische Verteidigungsagentur - ein grosser Schritt in Richtung Europäische Verteidigung [The European Defence Agency - a big step towards European Defence], Nannette Bühl. *Wehrtechnik* III/2004 pp. 134-136.

The Source Duelfer didn't Quote, Scott Ritter. *Guardian* 9.10.04. Ritter, a UN weapons inspector between 1991 and 1998 and the author of the book *War on Iraq: What Team Bush Doesn't Want you to Know*, which explained why it was impossible that Saddam Hussain's Iraq possessed "wmd" in the run-up to the US invasion, considers the work of the Iraq Survey Group (ISG). He observes that the ISG report, delivered by its head Charles Duelfer in the week of the US election, "provided a convenient escape from criticism by concluding that Saddam Hussain in fact fully intended to convert his "dual use" factories into wmd production facilities once UN weapons inspectors left." Ritter finds the "intent" argument - invoked by Bush in the USA and Straw in the UK - spurious, pointing out that Duelfer "has to date provided no documentation to back up his assertion regarding Saddam's "intent."" He notes that Duelfer "is not an unbiased observer" and says that "The US Congress and British parliament should insist on full declassification of the ISG report" because "the American and British people deserve to know the whole truth, and nothing but the truth, about the *casus belli* that got us into the ongoing quagmire that is Iraq today."

Le ombre di Nassiriya (The shadows of Nassiriya). *Carta*, n.45, pp.82, E 2.60. This issue looks retrospectively at issues related to the insurgent car-bomb attack on the Italian *Maestrale* military base in Nassiriya, Iraq, on 12 November 2003, in which 11 *carabinieri* and two civilians died. It includes the death of Stefano Rolla, a film producer and screenplay writer who was shooting a film with backing and funding from the Defence, Foreign Affairs and Culture ministries, recounted by his colleague on the project, Aureliano Amadei, who was also injured by the explosion. Amadei believes that the film was supposed to "to minimise dangers and to portray security", but he found that the situation in Iraq was very different from the one described in the Italian media. He now describes the project as a "veritable folly" and claims that the survivors of the attack are "very pissed off", because they haven't received compensation. They feel that more attention should have been paid to ensuring the security of the base. Available from: *Carta*, Via Gran Bretagna, 18, 00196 Roma (Italia); e-mail: carta@carta.org.

"I was skating on thin ice, but I made damn certain I was not going to fall through", General Sir Mike Jackson. *Independent* 22.11.04, p. 29. In this interview the UK army's Commander in Chief discusses

restructuring and the war on Iraq. On restructuring he implies that a brother unit of the SAS is "under review". On Iraq he says that British troops will be sent to support the US in conflict zones anywhere in Iraq as the resistance escalates.

PRISONS

UK

Deaths in custody - "We are sending people to die"

A total of 95 inmates, including 13 women, killed themselves in jails in England and Wales in 2004, equalling the record set two years earlier. In the last week of 2004, Carl Dunn, 38, was discovered hanging from sheets at HMP Bullingdon, and Dennis Williams, 23, was found hanging in his cell at HMP Bedford. The number of self-inflicted deaths in jail is now running at a rate of one every four days. One third of suicides occur within a prisoners first week in custody. Nearly two-thirds of those who commit suicide have a history of drug mis-use.

In November 2004 the UN Committee on Torture criticised the unsatisfactory conditions in British prisons, and expressed particular concern at the "substantial numbers of deaths in custody, inter-prisoner violence, and overcrowding." In December 2004, the Joint Committee on Human Rights condemned the "serious failure by the state to protect the right to life" in relation to deaths in custody, and called on the government to establish a task force to address the issue as a matter of urgency. Frances Crook, of the Howard League, commented "Its political. We have three parties now competing to be tough on crime. Its a punitive debate of hate and fear. The line goes directly from the noose to the Home Secretary. We don't have capital punishment, but we are sending people to prison to die." For the Prison Reform Trust, Juliet Lyons said "These tragic deaths should shock but not surprise. The suicide rate will not be brought down unless and until schemes are developed to divert the most vulnerable from courts into health settings rather than prisons."

Among his last acts before resigning, Blunkett declined to hold a public inquiry into the abuse of inmates at Wormwood Scrubs (following a call from the family of John Boyle, found hanging in his cell at the Scrubs in 1994, after being "restrained" by officers) and refused to meet Pauline Campbell, Pauline Hart, Mel Buckley, Nalini Kotecher and Janet Wade, mothers of some of those who had died under Blunkett's care. (A copy of the text of their open letter to Blunkett can be obtained from Pauline Campbell at: paulinecampbell1@tiscali.co.uk)

Guardian 2.12.04; *Independent* 1.1.05; *Howard League for Penal Reform; Prison Reform Trust*.

GERMANY

Privatisation, outbreaks and prisons for the elderly

The German branch of the British company *Serco* will take over the partial running of the newly built Hessian prison, providing 99 of the future 231. It is planned to open next year in Hünfeld. Private staff will be responsible for cooking, maintenance and drugs and debt advice and not, as in the UK, for security. North-Rhine Westphalia wants to follow suit and build a partially privatised prison in Düsseldorf. Baden-Württemberg on the other hand is trying to reduce its outbreak quota and has been called an "escape paradise for criminals" by some regional MP's.

The Mannheim prison has seen several complaints lodged by inmates against prison guards for stealing. An investigating into the complaints has been launched. Lower Saxony has other problems and is planning prisons for the elderly to deal with the dramatic increase of senior criminals. The regional justice ministry in Hanover is investigating possibilities to build a prison accommodating the needs of the elderly, such as wheelchair access, nurses and a leisure programme. Although some crimes committed by the elderly do make the headlines, (such as the three 63-74 year old bank robbers who stole around 400,000 euros in three robberies using pistols, hand grenades and sledgehammers or the 70+ "bank robber granny" who committed three successful bank robberies in Düsseldorf before vanishing), most crimes committed by senior citizens are due to poverty: collapsing pensions force many to improve their incomes through shoplifting or fare dodging.

Süddeutsche Zeitung 10, 15 & 29.11.04.

SPAIN

ECHR - torture claims not effectively investigated

On 2 November 2004, the European Court of Human Rights (ECHR) in Strasbourg found that the Spanish authorities failed to effectively investigate allegations made by 15 members of *Terra Lliure*, an armed Catalan group that carried out a campaign for independence involving small-scale bombings against banks and other businesses between 1979 and 1991, that they were tortured in the *Guardia Civil* headquarters in Madrid following their arrest in July 1992. Spain was ordered to pay 8,000 euros compensation to each of the plaintiffs, six of whom were convicted in 1995 of links to an illegal armed group, possession of weapons and terrorism. They told a judge in Madrid in 1992 about the torture and their case before the European Court of Human Rights began in November 2003, with the lawyer Sebastià Salellas accusing the Spanish courts of "refusing to investigate the incidents of 1992, under the control of Judge (Baltasar) Garzón" of the *Audiencia Nacional*.

The Strasbourg court noted that Garzón's report on the claims only made reference to "physical ill-treatment, without excluding the possibility of psychological ill-treatment". Spain was found to have violated Article 3 of the European Convention of Human Rights, which prohibits torture and inhuman and degrading treatment. It was cleared of torture because the allegations "were not sufficiently supported by the evidence submitted to the court".

EFE, Expatica, 3.11.04; El País 19.11.03, 29.1, 3.11.04

Prisons - in brief

■ **UK: H-wing at HMP Lindholme "amongst the worst".** A report by HM Chief Inspector of Prisons Anne Owers in July 2003 said that H-wing at HMP Lindholme prison was "amongst the worst" in the country. An unannounced inspection in June 2004 revealed that the wing remained open despite calls for its urgent closure. Inspectors said the wing remains beset by intimidation, assaults and poor discipline, as well as drug and alcohol abuse. *BBC News 26.10.04; HM Prisons Inspectorate.*

■ **UK: "Archaic" YOI condemned.** Although "slopping-out" officially ended in 1996, when inspectors recently visited HMP YOI Portland in Dorset they found young offenders forced to slop out every morning. Inmates were forced to throw parcels of excrement from their cell windows because sanitation at the jail was so poor. Inspectors also observed racial tension and considerable distrust between Muslim inmates and staff. Describing the institution as a "crumbling island fortress" the

inspectors said that it "harks back to a more authoritarian way of dealing with young people." *Guardian 30.11.04; BBC News 30.11.04; HM Prisons Inspectorate*

■ **UK: The death of John Carmody.** John Carmody arrived at HMP Liverpool on 17 January 2001, while serving a five month sentence for two attempted thefts. He complained immediately of severe stomach pains, but was told he was probably constipated and prescribed laxatives (which were never issued.) After a month left in agony John was transferred to the health care centre on 20 February 2001, and was witnessed by other inmates "moaning in pain." He was placed in a strip cell and received no further treatment, apart from laxatives. He collapsed and was transferred to hospital but pronounced dead on arrival. Health care staff had not even recorded his blood pressure, pulse or temperature. He died from peritonitis and a gastric ulcer. An inquest jury in November 2004 found his death was "due to natural causes in part because the seriousness of his condition was not recognised and appropriate investigations and treatment were not carried out." *INQUEST*

■ **UK: Tooling-up with pepper spray.** Control and restraint instructors are testing the use of Pava (synthetic pepper) sprays for use in serious disturbances. The Prison Service has denied that any decision has been taken to use pepper sprays, but control and restraint instructors are piloting them. Meanwhile, staff at HMP Ranby and HMP Pentonville are testing new extendable batons with a view to them replacing the eight inch truncheons currently issued. *Times 24.12.04*

Prisons - new material

"I have served my time", Jason Bennetto. *Independent Review 12.10.04*, pp 2-3. Article on 68-year old Harry Roberts who received a life sentence, with a 30-year tariff, for shooting dead two police officers in 1966. Roberts "knew that he would spend most of his life locked up for such a crime" but expected to be paroled and released back into the community when the tariff expired in 1996. However, in 2001 a recommendation for parole was rejected after he was accused of unspecified criminal behaviour that, according to Home secretary, David Blunkett, must remain secret. This has led to a number of unsuccessful challenges against the Home Secretary and the Parole Board, "which has raised the prospect of Roberts staying in jail until he dies."

Scandal of society's misfits dumped in jail, Trapped in a cycle of self-harm and despair for want of a psychiatric bed & Wasted lives of the young let down by the system, Nick Davies. *Guardian 6-8.12.04*. Three part series that examines "the scandal of the mentally disordered dumped in jail". It considers the mentally ill and suicide and self harm, the severely ill and children with mental health problems.

POLICING

UK

Nafis crashes

In November 2004 the collapse of the National Automated Fingerprint Identification System (Nafis), which is said to be the most sophisticated system of its type in the world, hit almost all of the 43 police forces in England and Wales. Nafis, crashed on 24 November and police officers were unable to check the fingerprints of suspects for up to a week when more than four million records on the database were rendered inaccessible. The system, which cost £96 million to set up in 1999 and is run by the US defence and electronics company Northrop Grumman

(formerly TRW), uses Livescan, which captures fingerprints by direct scanning and transmits the digital image to a central database for checking. The crash was the latest in a string of IT collapses involving government agencies. Recent breakdowns have involved the Passport Agency, The Department of Work and Pensions and the Child Support Agency. This latest "major failure" throws into doubt the government's plans to introduce a national identity card system that will include biometric details such as fingerprints, (see *Statewatch* vol. 9 no 5).

Independent 3.12.04.

UK

Tasers for firearms officers

Within weeks of the Commissioner of the Metropolitan police, John Stevens, calling for the police use of the Taser to be expanded the government announced in September that electronic stun guns are to be issued to police firearms officers in England and Wales. The former Home Secretary, David Blunkett, approved the move following a pilot study in which five UK forces tested the weapon (see *Statewatch* vol. 13 no. 2). His decision followed on from a wave of criticism over their use as weapons of torture (Amnesty has documented this use in 87 countries, including three EU nations) and fears for their general safety. At the end of November Amnesty International produced a report, *USA/Canada: pattern of Abuse Suspend use of taser guns*, which says that "More than 70 people in the USA and Canada have died since 2001, after being electro-shocked with taser guns." (see *Statewatch* vol. 14, nos. 3/4)

UK

"45 Minutes Mr B-Liar"

The Leader of the House of Commons, Peter Hain (a former anti-apartheid protester) has announced that the government will introduce a new clause in its Organised Crime Bill to remove a demonstrator who has been protesting outside Parliament since the summer of 2001. Ironically, Brian Haw, a 55-year christian peace campaigner, set up camp to protest at the government's attempts to crush freedom of speech. Since the invasion of Iraq his chants of "45 minutes Mr B-Liar" (a reference to the prime minister's Iraq dossier which misled the public by wrongly claiming that Saddam Hussein could launch wmd within 45 minutes) and the dozens of home-made placards have become a regular feature of the Westminster "village". Haw's protest has attracted visitor's from across the world and he has a group of helpers and supporters who sometimes join him; they include an Iraqi girl, Zenab, who had a leg amputated after a bomb in Basra. Mr Haw has won legal battles with Westminster council and earlier this year police attempted to remove him before the visit of the Chinese premier, destroying his placards and peace banners in the process. Hain, who implied that the protestor was harassing MPs, said that the new clause in the Organised Crime Bill would mean a permanent ban on daytime demonstrations and megaphones in Parliament Square.

UK

Morris report finds "bias against black and Asian police officers"

Twenty years after the Policy Studies Institute found endemic racism in the Metropolitan police force and five years since the MacPherson inquiry uncovered institutional racism, another investigation has reported racism among the ranks of Britain's

largest police force. The new inquiry, which was chaired by Bill Morris, the former general secretary of the Transport & General Workers' union, was called after the case of Superintendent Ali Desai, who was subjected to a £5 million investigation into allegations of corruption. Desai was cleared after two trials and reinstated with a reprimand in 2003. The Morris report found that Black and Asian officers in the Met. are facing serious discrimination and that "there is no understanding of diversity" within Britain's largest police force. It remained "at worst a source of fear and anxiety, and at best a process of ticking boxes." The report, *The Case for Change: People in the Metropolitan Police Service*, which was published in December, found "a clear disproportionality in the way black and minority ethnic officers are treated in relation to the management of their conduct" with black and Asian officers more than twice as likely to be investigated. It also found discrimination among the lower ranks against women, Muslims, Christians, Jews and the disabled. The report makes more than 100 recommendations. It is available on:

news.bbc.co.uk/nol/shared/bsp/hi/pdfs/14_12_04_morrisreport.pdf

FRANCE

Use of firearms and "less-lethal" weapons by police

The French internal security ministry has published figures for 2003 on the use of firearms by the police and *gendarmerie* (France's paramilitary police force), which show that they fired their weapons 706 times, killing 18 persons and injuring 51. The figures, which do not cover activities by the *Corps Républicains de Sécurité* (CRS, a special corps), also show that the non-lethal "flashball" gun was being used more often (412 times) than live ammunition (294 times, a figure that is decreasing). The flashball gun fires rubber bullets that squash on impact, and its use was extended in May after several police officers came under attack. Amnesty International wrote to the interior ministry in June, expressing concern over reports that the bullets could "cause serious and even lethal injuries when fired at close range", and over the possibility that officers may "begin to rely on such weapons instead of applying non-violent means". The minister replied that the only criminal investigation into the application of these weapons was set aside by the prosecutor.

Libération 8.10.04; *Amnesty International Report 2003 France*.

Policing - new material

The Mast Crusaders, Terry Kirkby. *Guardian Review* 23.11.04., pp1-2. Article on the Terrestrial Truncated Radio (Tetra), the new police communications network that is replacing their VHF system and the health fears that surround the masts that they utilise. "The system gives police officers a mobile phone and two-way radio in the same handset and is being implemented around the country by O2 Airwave, previously part of BT, which has a £2.9 bn, 15-year contract with the Home Office to supply all 51 forces in England, Wales and Scotland, through a network of around 3,500 masts. Around 40 forces have been supplied so far, but the system will not be operational until May 2006."

Crisis Control, Eve Pertile. *Police Review* 29.10.04., pp22-23. This article discusses the initial phase of the first Police National Mobilisation Plan which "aims to implement rapid mobilisation and common standards of operational practice in incident management" in public order policing.

Ring Leaders, Gary Mason. *Police Review*, 1.10.04. A report on how the police service is adapting to and utilising forensic telecoms as an investigative tool; particularly new 3G phone technology. Many forces already use specialist companies to help them retrieve and present evidence in their investigations, but have also found it to facilitate

greater levels of "proactive detection". Mason provides the example of police in the Netherlands who have recently been granted extra powers to obtain information held on telecoms networks. It is estimated that 70 per cent of Britain's population have given their details, including phone numbers, to credit companies providing greater scope for police investigations.

RACISM & FASCISM

GERMANY

Far-right unites as state attacks anti-fascists

After the success of the German National Democratic Party (*Nationaldemokratische Partei Deutschlands*, NPD) and the *German Peoples' Union* (*Deutsche Volksunion*, DVU) in regional elections, the far-right parties have formed a pact (that incorporates nazi skinheads) to maximise their chances of winning seats in the 2006 general elections. At last September's regional elections the NPD gained 12 seats (9.2 per cent of the vote) in the eastern state of Saxony; in Brandenburg near Berlin, the DVU increased its seats from five to six (6.1 per cent of the vote).

At an NPD party gathering in Leinefelde, Thuringia on 1 November, NPD chairman Udo Voigt and DVU chairman Gerhard Frey said that they would not compete with each other at elections. They would stand on a single list under NPD leadership at the 2006 general election and under DVU leadership at the European Parliamentary elections in 2009. The parties will also not stand against each other at the forthcoming regional elections in North-Rhine Westphalia and Schleswig Holstein in 2005.

The NPD has ceased to distance itself from the nazi skinhead scene and has started actively recruiting among them. At the Leinefelde gathering, the NPD voted Thorsten Heise onto their national executive with over 64% of the vote. Heise has convictions for serious bodily harm, coercion and breach of the peace for which he spent one and a half years in prison. He leads the right-wing *Kameradschaft* (comradeship) *Northeim*, which is active in Lower Saxony and initiated a recruitment drive involving 60 far-right groups and production and distribution companies that targeted schoolchildren with CDs of far-right music and propaganda (see *Statewatch* Vol. 14 no. 3 & 4).

The NPD survived a crisis of sinking party membership in 1996 and steadily became more powerful through recruitment drives and links to the fascist skinhead scene. The government attempted to ban the party last year but failed because it infiltrated the party leadership with informants to such an extent that it became unclear what was initiated by the party and what by the informants (see *Statewatch* Vol. 12 nos. 1 & 3 and Vol. 13 no. 2).

Norman Bordin, who was convicted for a racist attack a few years ago and founded the militant *Kameradschaft Süd* (whose members are currently on trial for planning a bomb attack against a synagogue in Munich, recently joined the NPD. He wrote on the internet site "Free Resistance" (*Freier Widerstand*):

I would welcome more revolutionary forces joining this party... This is precisely what the system fears. A legal structure which is practically impossible to ban.

The far-right's electoral success while recruiting from the skinheads, appears to have shocked the mainstream media and political parties. However, anti-fascist activists and research groups have long pointed out ongoing nazi violence, the failure of the state to prosecute the perpetrators and the presence of far-right ideologies within mainstream society. In the face of the far-

right's success and its competition with the mainstream parties' for votes, it is all the more significant that anti-fascists continue to be harassed and prosecuted for trying to counter violent nazi demonstrations and recruitment drives.

After the *Kameradschaft Northeims* schools recruitment drive, anti-fascist groups started the *Schöner leben ohne Naziläden* (Life is better without nazi shops) campaign. As one of the strengths of the far-right lay in its promotion of "alternative" youth culture, an anti-fascist group in Chemnitz held a protest outside two nazi shops (*Backstreetnoise* and *PC Records*), demanding that their landlords, (the German Federal Property Office, *Bundesvermögensamt*), end their rental contracts. The protest led to an end to the contracts in late 2004. While the closure of the shops is seen as a success, the 400-strong demonstration was violently attacked by around 200 fascists, with the police unable or unwilling to intervene. A police spokesperson said they did not have more officers at their disposal, a claim questioned by a member of the *Antifa Chemnitz* who said that during talks with the police, it was clear that the secret service had told them to expect the neo-nazis.

After Chemnitz, anti-fascist groups called a nationwide demonstration in Pirna, directed at two nazi shops and a youth centre, that is dominated by far-right ideologies. On this occasion the police presence was overwhelming with the media and politicians predicting violence by the protestors. Local MP Kerstin Köditz (*Partei des Demokratischen Sozialismus* PDS), who registered the demonstration with the police, faced verbal attacks by Mayor Markus Ulbig (*Christlich Demokratische Union* - CDU). The conservative head of the district authority Michael Geisler (CDU) wanted to ban the demonstration because "violent radical left-wingers from Berlin, Cologne and other parts of Germany" were frightening the local population; this is ironic, considering that Pirna lies in the *Sächsische Schweiz*, home to the notoriously violent *Skinheads Sächsische Schweiz* (SSS), which was recently banned. Before the demonstration, Geisler organised a "meeting against extremism" to "promote discussion instead of violence"; half of the participants were local neo-nazis. Geisler benignly refers to members of the SSS as "the boys".

At the Pirna demonstration on 27 November, around 1,000 anti-fascists faced police checks and were continuously penned in by police. The demonstration route was cut short. Antifa members who are used to travelling on trains to demonstrations reported skinhead attacks on the way. The working group of critical lawyers (*Arbeitskreis kristischer Juristinnen und Juristen* - AKJ), who are based at Berlin Humboldt University, attended the demonstration to monitor violence and criticised the badly organised police checks, which led to confrontations and finally to the shortening of the route. Despite the police presence, the local anti-fascist group *Afa 13* declared the demonstration a success and pointed to the low attendance at a rally, which had been registered by the regional MP Uwe Leichsenring (NPD) and granted by Geisler. Demonstrators fought off two neo-nazi attacks on trains leaving Pirna.

The campaign against nazi shops marks an important move against increasing far right violence and their higher public profile. Fascists recently demonstrated in Duisburg, where anti-fascists blocked parts of their march but had to face arrest and prosecution. Police forces are limiting attendances at anti-fascist demonstrations by disrupting transport arrangements. In Halbe police confiscated buses that were to be used for transport; when they eventually arrived, demonstrators found themselves encircled by police officers, preventing their participation in the demonstration and the distribution of information.

The prosecution and conviction of the former concentration camp inmate Martin Löwenberg for organising a rally to counter a nazi demonstration in Munich last year is one of the more prominent cases of anti-fascist persecution in Germany (see *Statewatch* Vol. 13 no 5). The Berlin demonstration had been

registered with the authorities by the right-wing terrorist Martien Wiese who was arrested in September 2003 in connection with planned bomb attacks on a synagogue and other institutions in Munich (see this issue).

Jungle World 10.11.04, 1 12.04

UK

BNP leaders arrested

In December the leader of the British National Party (BNP), Nick Griffin, was arrested on suspicion of incitement to commit racial hatred following a BBC television documentary, *The Secret Agent*, which was broadcast last July. Griffin is the twelfth BNP member to be arrested following the programme, in which an undercover reporter infiltrated the organisation and covertly filmed footage showing activists boasting of racist attacks and other crimes. Seven of those rounded up by police are suspected of racially aggravated public order offences, conspiracy to commit criminal damage and possession of a firearm and have been bailed. Among those detained is founding chairman, John Tyndall, who was arrested at his home in Brighton on suspicion of incitement to racial hatred following a speech he made in Burnley. Tyndall will challenge Griffin for the leadership of the party in 2005.

The BNP, was infiltrated by journalist Jason Gwynne in December 2003, after being contacted by Bradford organiser Andy Sykes who had become disillusioned by the organisation's politics and criminal activities. He agreed to introduce Gwynne to the party leadership in order to gain evidence against them. "I heard the BNP leader Nick Griffin give a speech inciting racial hatred and the founder, John Tyndall, inciting racial hatred and I heard some awful anti-Semitic remarks", Gwynne said. His evidence includes one BNP member, Steve Barkham, confessing to a violent assault on an Asian man and a prospective election candidate admitting to pushing dog excrement through the letterbox of an Asian restaurant. Other members are filmed discussing attacking a mosque and fire bombing a vehicle being used by anti-fascists.

Racism & fascism - new material

A Follow Up Review of CPS Casework with a Minority Ethnic Dimension. *HM Crown Prosecution Service Inspectorate* April 2004, pp. 74. This report, based on Crown Prosecution Service (CPS) casework, concludes that racists are escaping with lenient sentences because prosecutors "reduce sentences inappropriately" before they reach court or because they are handed to inexperienced practitioners at court. The Inspectorate observes some improvement over the situation in their previous report (April 2002), when they found that cases were being discontinued.

IMMIGRATION

GERMANY

Kaplan arrested after premature deportation to Turkey

On 12 October, the self-proclaimed "Caliph" and Islamic fundamentalist, Metin Kaplan, was deported to Turkey after years of legal battle. On his arrival in Istanbul, he was arrested by Turkish authorities and is awaiting trial on grounds of treason. Kaplan was the leader of a banned organisation, the "Caliph State", and although the organisation is clearly anti-democratic,

Kaplan has not committed a criminal act which would justify his deportation. Even when he was jailed in November 2000 for four years, for incitement to murder, the prosecution was unable to provide hard evidence against him. He had made the demand that "if a second caliph rises, he should be beheaded", and one year later a religious rival was shot dead by unknown people.

Kaplan was released in May 2003. Initial attempts to deport him to Turkey failed when the Cologne administrative court ruled in August 2003 that there was a possibility that Turkey, which had lodged an extradition request on the grounds of treason, could force him to give statements under duress. Several appeal procedures were initiated but the decisive judgement was made by the Cologne administrative court when it decided on 12 October that Kaplan could be deported despite an outstanding appeals procedure with the Federal Administrative Court.

Lawyers and civil liberties organisations argued that the appeals procedure should imply a safeguard from deportation. The court is deciding on paragraph 35/1 of the Aliens Act, which holds that "a foreigner cannot be deported to a state in which there is a concrete danger that this foreigner be subjected to torture". However, if an accelerated deportation order is granted priority in the courts, the foreigner in question can be deported before the decision on the substantive procedure is made. In Kaplan's case though, even this accelerated procedure had not come to an end before he was deported in a private jet to Turkey at the cost of around 26,000 euro. The government argued that he was a "representative figure for Islamic fundamentalism", which justified his "immediate removal".

The deportation of non-Germans despite outstanding legal procedures has its precedent in a decision by the Federal Constitutional Court in 1996, which held that an asylum seeker could be deported before the asylum application or appeal procedures were decided, with the argument that they could always return if the procedure was successful. This was the start of the erosion of democratic principles with regard to non-Germans. The accusation of Muslim "fundamentalism" or "terrorism" can overrule legal procedures and defence rights. In practice, many more deportations are taking place without guarantees, such as the one Turkey gave the German authorities, that the deportee will not be subjected to torture or an unfair trial.

Süddeutsche Zeitung 14.10; Migration & Bevölkerung issue 8 (November) 2004

SPAIN

Immigration deaths

On 28 November 2004, two sub-Saharan migrants drowned and 14 disappeared when their dinghy capsized in the sea near Antigua on the island of Fuerteventura (in the Canary islands archipelago), as 28 others were rescued by the *Guardia Civil* (Spain's paramilitary police force). As is becoming increasingly frequent in Spanish waters, the accident occurred during rescue operations (see *Statewatch* vol 14 no 5). The migrants tried to board the *Zodiac* (a low rubber vessel with a wooden frame and an engine) that had been lowered into the sea to take them to a patrol boat after rough waters made it impossible to carry out a standard rescue operation. The dinghy was one of two vessels that were spotted by the island's electronic alert system at around four am.

The other vessel, which carried 45 would-be migrants was shepherded by a *Salvamento Marítimo* (Sea Coast Rescue service) boat to a port in El Castillo where its occupants disembarked, after the crew had ruled out attempting a rescue operation at sea. A *Guardia Civil* maritime service officer was quoted in *El País* newspaper as saying that the patrol boats they use are "not appropriate to rescue people arriving in dinghies". He argued that they should be "lower, like those used by *Salvamento Marítimo*". He also stressed that rescue operations

are "very complicated" because of the waves, the fragile vessels and the number of people in the dinghies.

El País 29.11.04.

Immigration - new material

Mugak. Nos. 27/28 (April-September) 2004, E8, pp 92. This double issue focuses on a topic that is underestimated when talking about development programmes, immigration and improving conditions in migrants' countries of origin: the role that migrants who reside in our societies can play. The *Mugak* editorial staff comments: "It is a matter, in this as in many other issues, of ceasing to look at migrant people as though they were invalid. If we look at them without prejudice, it is easy to realise that we are talking of people who, among other things, have a very good knowledge of the place that they left behind; that they have an average academic education that is superior to ours; overall, they are people who have a contribution to make in more than a few fields". Available from the Centro de Documentación e Investigación sobre racismo y xenofobia, Peña y Goñi, 13 1, 20002 San Sebastian.

Primer Informe sobre los procedimientos administrativos de detención, internamiento y expulsión de extranjeros en Catalunya, Observatori del Sistema Penal i els Drets Humans (OSPDH), Universitat de Barcelona, Virus Editorial, October 2003, pp.78. This report analyses the administrative procedures for the arrest, internment and expulsion of foreigners in Catalunya, and the roles played by judges, lawyers and police officials. It examines the *Ley de extranjería* (Spain's immigration law), noting that it establishes "a special administrative law [system] for foreign migrants" and laments that police and government authorities denied its authors access to the La Verneda detention centre for migrants, claiming that "the Administration's opacity when dealing with any information concerning detention centres and the living conditions of the foreigners who are detained therein, only augments existing doubts over the respect of the latter's human rights". Questionnaires are used to allow judges and lawyers to explain the functions they undertake, and their views on the legal process. One of the study's conclusions is that 90% of lawyers and 48% of judges feel that these administrative proceedings cause a high level of defencelessness for foreigners, as they fail to guarantee the full exercise of the right to defence and of effective judicial control. OSPDH website: www.ub.es/ospdh; e-mail: observsp@dret.ub.es

Harm on Removal: Excessive Force against Failed Asylum Seekers, Dr. Charlotte Granville-Chapman, Ellie Smith & Neil Moloney. *Medical Foundation for the Victims of Torture* 2004, pp. 60. This report presents the findings of research on incidents of harm inflicted by state or private detention guards on unsuccessful asylum seekers who were

detained pending their removal. The study was in response "to growing concerns amongst human rights organisations, refugee agencies, immigration detainee visitors groups and legal practitioners about a small but worrying number of allegations of harm occurring in detention, during transfers and on attempted removal." Section I covers the medical findings and indicates the various methods of force and "the application of seemingly excessive or gratuitous force" identified by 14 detainees who were interviewed and medically examined by a doctor. Section II assesses the human rights law implications of the abuse of detainees, while Section III provides an assessment of the criminal and civil law implications. In conclusion the report finds that "the medical data indicate that the degree of force used during the process of removing an unsuccessful asylum seeker from the UK may be excessive. The injuries documented... suggest that in some cases the force employed cannot have resulted from either the use or misuse of any recognised or established control or restraint technique." With this in mind the authors make nine recommendations that they hope will go some way to improve their "extremely worrying" findings. Available on <http://www.torturecare.org.uk/publications/reportAsylum/htm>

"Oggi tredici, domani ventidue. E i CPT diventano affare militare" (Today thirteen, tomorrow twenty-two. And the CPTs become a military issue). *Carta*, no. 44, 8.12.04, pp 22-23. This article looks at plans by the Italian government to expand the country's detention centre infrastructure by establishing nine new immigrant detention centres (CPTs, *Centri di Permanenza Temporanea*) around the country. This plan is justified on the basis of migration being a problem which is unlikely to decrease in the short term, and as a cost-cutting exercise, because moving people from one part of Italy to another where there is a detention centre is expensive. The author highlights an interesting development, namely that a proposal approved by the parliament regarding plans to identify a location for the establishment of a new CPT in the north-eastern *Veneto* region, envisages a new legal status for CPTs as a "structure destined for military defence". The significance of this change lies in the fact that the sites will become the exclusive competence of national authorities, excluding local institutions from the decision-making process. Maurizio Saia, the *Alleanza Nazionale* (AN) MP who drafted the proposal, explained that this change will "allow the government to act through preferential channels, overcoming possible opposition from town or regional authorities". One such instance saw the mayor of Bettona in Umbria) refuse to allow a CPT to be built in the small town for "humanitarian" and "environmental" reasons.

Statewatch European Monitor

see: www.statewatch.org/monitor/monitor.html

UK: Government to bolster CSOs and ASBOs

More "hobby-bobbies", more civil law orders, more jail for non-imprisonable offences

The *Serious Organised Crime and Police Bill*, published in November 2004, includes significant legal changes to the government's two main strategies for dealing with low-level nuisance and anti-social behaviour: Community Support Officers (CSOs) and Anti-Social Behaviour Orders (ASBOs). CSOs are set to have the scope of their role and powers significantly increased, while legal safeguards protecting the anonymity of children involved in criminal proceedings for breaching the terms of their ASBO have been removed to facilitate their "naming and shaming". In addition the Bill provides for an extension of the "relevant authorities" able to apply for an order which the government says will encourage greater proactive public involvement.

CSOs are police authority employed civilian staff, designed to provide greater police visibility and presence within communities, performing non-specialist functions and thus freeing up resources. The Home Office has always emphasised their role as a supplement to police officers, not a replacement on

the cheap. At the end of September there were 4,098 employed across the country, a figure projected to rise to 24,000, by the end of March 2008, in the Home Office strategic plan, *Confident Communities in a Secure Britain*, published in July. Until now, other than the piloting, in six areas, of the power to detain an individual for 30 minutes pending the arrival of a constable, their legal powers have remained very limited. This is reflected in the brevity of their training, taking as little as three weeks (See *Statewatch*, vol 14 no 1). Despite this the power of detention was extended to all police forces on 23 December following a positive evaluation report of the trial.

Furthermore, the Bill includes plans to grant CSOs powers to stop and search suspects for dangerous articles and concealed alcohol and tobacco, deter begging, direct traffic, enforce certain licensing offences and enter licensed premises, access the national police computer and issue fixed penalty notices for a greater range of offences. To facilitate this they could be equipped with pepper spray, batons and handcuffs.

This has evoked a hostile response from rank-and-file police leaders, many of who have expressed reservations about CSOs since their introduction. According to Jan Berry, head of the Police Federation, "by giving them more powers we are effectively taking them away from the community they are there to serve and [it] also now begs the question what is the difference between a CSO and a police officer." Arguably there has never been a straightforward answer to this given CSOs can only use those powers specifically conferred on them by the Chief Officer of their force. Indeed, a 29 September Home Office press release confirmed that "at least one force has" designate[d] CSOs without any powers". The reality is that with no uniform national training programme or selection process currently in place, and the scope of their powers left to discretion, referring to CSOs as a homogenous group is problematic. The potential inconsistency from one county to the next is striking.

For those CSOs conferred these new powers, should the Bill become law, the main concern would be that people with three weeks training carrying pepper spray and instigating confrontational situations when they force people to undergo body searches. Already, in September, the Police Federation warned the Home Affairs Select Committee that CSOs are being misused and placing the public, themselves and police officers at risk when asked to work 5pm-3am shifts and handle people coming out of pubs and clubs. Hazel Blears, a Home Office minister, draws on these kind of conflicts in her justification of the proposed legal changes when she claims "there is nothing more frustrating to find that something happens and they haven't got the power to deal with it." This may be true but equally it can be argued that it instead indicates a need for a police presence rather than a massive extension of the role and powers of poorly trained CSOs in transgression of their initial remit.

A recent two-year study, by researchers at Leeds University, indicated that many CSOs are unsure of their role beyond "walking their beat as a 'reassurance beacon' or 'mobile scarecrow'." A 27 September article in *The Times* referred to a Scotland Yard report that showed CSOs to be taking 17 days off a year on sick leave, over double the average for police officers, and voiced fears that the "root of the problem could lie with job design (routine, monotony)". In April the *Evening Standard* revealed details of a confidential report by the Metropolitan Police's internal inspectorate evaluating the first year of CSOs. It found that training courses have "no pass or fail criteria", some candidates speak poor English, others have exceeded their powers, most "were reluctant to use their radio for fear of ridicule" and that there is no clear requirement for literacy skills or fitness levels. The wisdom of announcing a 400% increase in CSO numbers and then significantly increasing their legal powers without waiting for the national evaluation report to be published in August 2005 is certainly questionable.

ASBO's on the increase

One cause of this hasty recruitment drive is the need for somebody to enforce the growing number of ASBOs. They are civil orders which can ban an individual from entering certain areas or carrying out specific acts for a minimum period of two years if found guilty of "anti-social" behaviour. Home Office guidelines stated that "ASBOs will be used mainly against adults" but increasingly children (as young as ten) are being targeted (see ASBOwatch website).

Here the government has run into a legal quandary, well publicised by *Media Lawyer*, arising from a clash between civil and criminal law. The application process takes place in a civil court, where there are no automatic restrictions on reporting, but should a child violate the terms of their order they would then appear in a juvenile court to face criminal charges where they enjoy anonymity (under section 49 of the Children and Young Persons Act 1933) unless the court decides to waive the

restriction. This leads to problematic cases where the press can name a child when an order is made, but not later should they appear in court accused of breaking it. As local community awareness of who has been served an order is fundamental to the theory of its effective enforcement, and "naming and shaming" in the local media is used to this end, this legal difficulty has assumed added significance.

Clause 127 of the new Bill effectively reverses this presumption of privacy for all children involved in criminal proceedings following a breach of their ASBO. To preserve their anonymity the onus is now on the court to make a discretionary order under section 39 of the 1933 Act, and it would have to "give its reasons for doing so". Not only does this contravene Article 40 of the United Nations Convention on the Rights of the Child - which provides to all children facing criminal charges a guarantee "to have his or her privacy fully respected at all stages of the proceedings" - but it creates a striking legal inconsistency. As *Liberty* highlights, "there is no justification for the privacy rights of children and young persons in ASBO related criminal proceedings receiving less protection than those in other proceedings."

Moreover, the lifting of automatic anonymity restrictions only in cases involving ASBOs has not fully remedied the legal difficulties faced by the media. More and more often when a child is convicted of a criminal offence an application for an order on conviction is made in addition to any sentence. Section 49 would then apply to the criminal proceedings (unless the judge decides to waive the restriction) but not for the additional hearing for an ASBO. If the criminal proceedings did not involve the breach of an ASBO it would be unaffected by clause 127 of the new Bill and the legal conflict remains intact. Any journalist wishing to cover the case would now be faced with a choice between reporting either the details of the criminal trial (without naming the child) or the subsequent serving of the ASBO, in which case the offender can be named.

"Communities" to recommend ASBOs?

When announcing the government's strategic plan, in July 2004, the then Home Secretary, David Blunkett, emphasised the proactive role he would like local communities to take in combating anti-social behaviour: "I want to empower people to be able firstly to ask for information, second to meet, and third to act." Clause 125 subsection 3 of the new Bill enables the Secretary of State to add to the list of "relevant authorities" that may apply for an ASBO. Currently this stands at police forces (including the British transport police), local authorities, housing action trusts and registered social landlords. No examples are provided of whom the Home Secretary might choose to empower, but the implication gleaned from earlier rhetoric is that the power will be used to channel public concern through government sponsored bodies and quangos such as neighbourhood watch schemes and parent-teacher associations. Equally worrying is Clause 128 which provides for the contracting out of local authority ASBO functions to profit-orientated private companies.

Not only can breaching an ASBO result in a five-year prison sentence, but as civil orders their application process is subject to a lower burden of proof and hearsay evidence is admissible. This has led to an incredibly high rate of success (for the 2,455 orders issued to the end of March, only 42 requests were turned down by the courts). On top of this is the fact that ASBOs drastically alter peoples' lives, affecting where they can go and who they can associate with. These represent fundamental restrictions to individual liberty and should not be made lightly. In December the probation union, Napo, called for a re-evaluation of ASBOs on the grounds that "far too many people are being jailed where the original offence was itself non-imprisonable" and that a "geographical lottery" exists with massive inconsistencies across

the country. The wisdom thereof of placing such powers in the hands of untrained, unaccountable private contractors and community groups is extremely suspect.

Sources: 1. *Serious Organised Crime and Police Bill*:
www.publications.parliament.uk/pa/cm200405/cmbills/005/2005005.htm

2. *ASBOwatch*: www.statewatch.org/asbo/ASBOwatch.html;
3. "Plural Policing: The Mixed Economy of Visible Security Patrols",
4. *Liberty's* briefing for the second reading in the House of Commons
5. *Evening Standard* 2/4/04
6. *The Times* 27/9/04

Netherlands: Religious violence and anti-terrorist measures after the murder of Theo van Gogh

On 2 November, Theo van Gogh was shot dead in the streets of east Amsterdam. The perpetrator, who was arrested shortly afterwards, was a 26-year old with both Dutch and Moroccan nationality. Mohammed B. had left a letter on the film-maker's body which called on Muslims to engage in *Jihad*. Van Gogh had made a series of provocative anti-Islamic and anti-Semitic statements in the past, claiming that he was defending his "freedom of expression". His most recent provocation was a short film, made with the Somali-born Dutch MP Ayaan Hirsi Ali, which claimed to be criticising domestic violence and misogynist behaviour within Islamic communities. The fact that it gratuitously showed women behind transparent burkas with Koranic verses projected onto their naked bodies was seen as a calculated insult by many Muslims.

A series of arrests followed the murder. On 5 November, several houses and a restaurant were searched in Amsterdam and Bergen op Zoom and computers and documents were confiscated (on suspicion of being the source of a death threat against the anti-Islamic MP Geert Wilders). Two young men were arrested and accused of having been involved in the murder of van Gogh and having planned others. They are charged with membership of a criminal organisation with terrorist intent and conspiracy to commit murder.

The detention of two more suspects in Den Haag a few days later revealed that the AIVD (security service) had known of a connection between Dutch and Moroccan fundamentalists, (in particular the Moroccan Abdeladim Akoudad, who is accused of the Casablanca bombing of 16 May 2003). The suspects Jason W. and Ismail A. were arrested in The Hague after a tense 14-hour stand-off with Dutch police special forces; four police officers had been injured earlier in the day when a grenade was thrown. The men were arrested after police fired tear gas into the suspects' house in the Laak district. The AIVD were to later claim the men were planning to kill anti-Islamic MPs Ayaan Hirsi Ali and Geert Wilders.

The same day, police also arrested four other suspects in Amsterdam and one in Amersfoort. Authorities claim they are part of the *Hofstadgroep* (Den Haag Group) and possibly linked to Mohammed B. The group is also allegedly linked to 18-year-old Samir A., who is being held on suspicion of planning attacks against high-profile targets such as Schiphol Airport and the Dutch Parliament.

Dutch police also put out an international search warrant for Redouan al I., (alias Abu Khaled), who is alleged to be the "brains" behind the so-called *Hofstadgroep*. Redouan al I. was deported to Germany, where he is claiming asylum, earlier this year after having been arrested several times in the Netherlands. Information given by police after the arrests in Den Haag indicates that the security services and police had known of the network since at least in 2003.

Accusations by parliamentarians that the police had ample indication that an attack was planned and could have done more were rejected by police sources and by Justice Minister Donner and Interior Minister Remkes. In a letter to the *Tweede Kamer* (Upper House) they said that the security services did not know that Mohammed B. was planning an attack, that he was not a key

figure in the network and that the threats against van Gogh had been of a "general character". Their letter says the AIVD first became interested in Mohammed B. in August 2002 due to articles he wrote in a local community bulletin. Members of the so-called *Hofstadgroep* then met in his apartment and he is alleged to have participated in internet discussions on how to make explosives. In late 2003 five members of the group were arrested but were released for lack of evidence.

Anti-Islamic attacks follow murder

The aftermath of van Gogh's murder saw a series of anti-Islamic attacks against mosques and schools and some on Christian churches and schools. Within two weeks more than 20 attacks had taken place, but no one was injured. Some of these attacks include:

3.11.04. A mosque in Veghel is sprayed with white power symbols and swastika's.

6.11.04. Amsterdam: Moroccan migrant meeting place painted with red paint.

6.11.04. Breda: attempted arson attack against mosque.

6.11.04. Huizen: attempted arson against An-Nasr mosque (3 juveniles arrested).

7.11.04. West Rotterdam: Mevlana mosque, attempted arson.

7.11.04. East Rotterdam: mosque leafleted with insulting anti-Islamic text.

7.11.04. Groningen: two incidents at mosques. Attempted arson attack on one mosque, a second is daubed with statements linked to the death of Van Gogh.

8.11.04. Eindhoven: Tariq Ibnoe Ziyad primary school. Bomb goes off at 3.30 am and destroys the front door. The school was attacked (attempted arson and Molotov cocktail respectively) twice before in the last two years. The earlier Molotov cocktail attack led to the arrest and conviction of two men who declared that they "hate foreigners".

8.11.04. West Rotterdam: attempted arson at two churches.

9.11.04. Urden: arson attack against Islamic school, which is burned out.

13.11.04. Mosque in Helden burns after arson attack.

13.11.04. Herleen, 2 Molotov cocktails thrown at school.

Apart from attacks against their institutions, Muslims are also reporting physical attacks and racist abuse on the streets. Some say that white people are demanding, under threat, an explanation for the murder of van Gogh. Multi-cultural organisations have experienced a wave of racist e-mails: one young man working for the Utrecht based Turkish youth organisation ULU pointed out that an invitation by the local mayor for his organisation to meet for a dialogue was an indication of racist stereotyping of Muslims. Alpay Demirci explained that:

Through such an invitation I am indirectly made to feel that we are responsible for the problem of extremism. I find that painful. Were all animal rights groups invited after the murder of Pim Fortuyn? I think: let this society find out for itself why it's possible that a young person born here can isolate himself to such an extent that he can commit such an atrocity.

The scale of anti-Islamic outbursts at the popular but also political level after van Gogh's death indicates a much deeper problem of Islamophobia in Dutch society. Right-wing politicians had been making anti-Islamic statements long before, often in relation to women's oppression and, typical for the European debate on Islam, the headscarf. Leading this "debate" were members of the liberal party VVD, namely Geert Wilders and his party colleague Ayaan Hirsi Ali who criticised Muslims living in the Netherlands for failing to integrate and adhere to western values; they both attacked the wearing of the veil. On 2 September this year, Wilders left the party after a continuing dispute over his extreme comments. Other party members, such as parliamentary leader Jozias van Aartsen and Finance Minister Geert Zalm, are known for their right-wing views. Zalm, for example, was widely criticised for declaring "war" against Islamic extremism and elevating van Gogh's murder to an "attack on the rule of law". His comments were seen by some to have fuelled the attacks that followed shortly afterwards.

Wilders, now an independent MP, is intending to set up a new right-wing movement. The organisation is specifically intended to "tackle Islamic extremism". A recent poll suggested that public support for Wilders would secure him 24 seats in parliament if national elections were to be held today.

Van Gogh was also known for his anti-Muslim racism. He had called Muslims "goat fuckers" and referred to them as a "fifth column". The film he made with Hirsi Ali was widely criticised for its gratuitous insults. Before van Gogh's death, the Dutch *Amnesty International* branch had asked correspondents in different countries to show the film *Submission* to Islamic scholars, Islamic film critics and social workers supporting battered women in their respective countries. The personnel from a women's shelter dealing with battered women in Casablanca, Morocco, was shocked at the film and said its content was inappropriate. Talking about the results of the poll, Nicolien Zuidgeest (*Amnesty International*) said that workers at the Moroccan shelter were afraid that the women they work with would lose trust in the centre and said "the women would not identify themselves with the film as [they] did not make a connection between domestic violence and their Islam." The Moroccan sociologist Soumaya Naamane-Guessous said that women's oppression had much more to do with a patriarchal society than one religion, also indicated by the high level of domestic violence against women in Spain and Portugal, both Christian countries. The *Amnesty Bulletin*, entitled *Wordt Vervolgd*, will be published this month.

Legal and procedural measures proposed

Van Gogh's murder was followed by an array of legal and procedural measures at local and national level. The Amsterdam local authority *De Baarsjes* asked three mosques in their district to sign a "contract" on anti-extremist measures where mosque leadership and authorities cooperate on fighting fundamentalism. However, the local authority's draft contract also contains anti-discrimination clauses and social security regulations: it lays down that anti-Islamic and homophobic comments can lead to criminal prosecution. It further stipulates that anyone violating the contract and separating from "mainstream society" (*samenleving*) can expect enforced sanctions in the form of reduced social security benefits.

In July 2004 the Netherlands introduced a "data pool" where intelligence, police and immigration agencies share their information on border controls and terrorism at a very early stage of preliminary investigations. Based on the data collected the agencies decide how to act, for example, whether a person is to be arrested, expelled, put under surveillance or "controlled" in such a way that their activities are disrupted. It is said that about 150 people are currently in the CT-infobox.

Other proposals that have been made in parliament are to:

- * ban TV and radio stations spreading hate against the West,
 - * reduce immigration,
 - * deny residency permits to Imams without Dutch nationality,
 - * double the budget for the security service AIVD,
 - * introduce new laws against "violent radicalism",
 - * close down mosques disturbing the public order.
- Specific proposals already detailed by the Ministry of Justice include the following:

1) Stricter parole regulations: Convicted prisoners will be released before the prescribed sentence (currently after two thirds of the sentence has been served) only under special conditions. Up to now the release date could not be retracted - now the freed person can be re-arrested without being tried if they commit a criminal offence. Other codes of conduct can be linked to the release, such as banning the person from entering a certain area, alcohol or drugs prohibition or reporting obligations. However, preconditions can also be "programmatic" and would include the precondition to follow a specific course or compulsory social work. If necessary, the adherence to these measures "may be controlled through electronic supervision".

2) Police powers to share personal data: Police powers to pass on and share personal data will increase and some regulations will be scrapped to "reduce administrative burdens". The time frame for sharing personal data within the entire police force (everything ranging from data on convicted persons to the public passing on names to the police) will be increased from four months to one year, also if persons are not suspected of a crime. Further, police will be able to use personal data collected during an investigation of one particular case in other procedures, which up to now was only allowed under specific conditions. Also, police officers will be able to share personal data collected with third parties such as local organisations dealing with youth crime, housing associations or even shop owners "if this is necessary, (for example, in relation to cooperation in the fight against crime)". The ministry press release claims that "too broad" a use of this regulation is prevented through authorisation procedures and different control mechanisms, without detailing them.

3) EU list of terrorist organisations. All groups on the European terrorist list will be outlawed, even if they are not active within Dutch jurisdiction. Partaking in such an organisation's activities (recruiting new members or appointing board members) will be punishable by law. They include the PKK, Hamas, Association Al-Aqsa Holland, Al-Takfir and the NPA (New Peoples Army), amongst others.

4) Special investigation powers. Special investigation powers such as surveillance, infiltration and tapping will apply if there are "indications" of a terrorist attack; up to now, there had to be "reasonable suspicion" for these powers to take effect. The special powers have to be authorised by the public prosecutor. Further, preventative policing will be made legal with relevant stop and search operations and powers to detain. In "security risk areas", such as airports, industrial complexes, stations or public buildings, these special powers apply without the prosecutor's authorisation. Also, in preliminary investigations into groups possibly planning an attack, the public prosecutor will be able to collect data such as names, addresses and bank account numbers and can order the comparison of personal data from public and private organisations to uncover "hidden patterns" in people's behaviour. Finally, minister Donner is planning to restrict the defence's access to files in terrorist trials.

5) Revocation of Dutch citizenship: The Council of Ministers has agreed the proposal by Immigration Minister, Rita Verdonk, to introduce powers to revoke Dutch citizenship if a person with dual nationality has been sentenced for a crime "seriously damaging essential state interests". The relevant person is thereby made a foreigner and can be expelled. The crimes in question concern state security and terrorism, (also if the person in question has "conspired" to commit these crimes).

The revocation is not allowed to leave the person in question stateless. Up to now, the revocation of citizenship was only legal if a person wrongfully obtained citizenship or if they did not fulfil the obligation to give up the original citizenship. Further, the Council of Ministers accepted the proposition to restrict dual nationality in general.

6) Expanding security service: Apart from the announcement to double the budget of the security services, the service is likely to undergo far-reaching changes. Last year, an independent commission, at the request of Justice Minister Donner, started preparing a situation report on the security service AIVD, which was published in November this year. The report demanded more resources for the service, more communication with national agencies, but also better defined control regulations. The AIVD is expected to work more closely with regular police forces and given the new approach to information exchange, AIVD information will be more widely available also to local authorities.

Before they enter into force, the legislative proposals will be presented to the Council of State (which advises the Dutch government and parliament on legislation and governance and is the country's highest administrative court) and then go to the parliament for approval.

Civil liberties concerns

The measures proposed by the government are focused on repressive measures. Although ministers promised to fight racial discrimination and support moderate Islamic forces within Muslim communities, these aims are not specified in draft legislation. A proposal by Justice Minister Piet Hein Donner to penalise offensive and blasphemous statements was strongly

opposed by the Immigration minister Verdonk, who is known for her right-wing remarks and policies. She had a problem with a law primarily intended for Muslims, and claimed it would lower the level of tolerance that Holland was so famous for.

Another serious concern is the stigmatisation of the Muslim community as a whole and the profiling of socially disadvantaged Muslim communities. Apart from calls to reduce social security if claimants do not fulfil a certain social behaviour laid down in local authority contracts, it has been reported that headmasters have started reporting families to the police for supposed "fundamentalist" views. Although this practice was only mentioned in parliament and has not been passed in law, at the local level there already seems to be an exchange of personal information between schools and police forces on Muslim families, typically those with social problems. One social worker reported that the headmaster of a school she was working with gave the details of one family to the police "because he [the headmaster] has problems with the family". The pupil has social problems and the father has shown aggressive behaviour towards the school, which is why the social worker was called in to support the family. However, the social worker says there are no indications that the family has anything to do with Islamic fundamentalism. Such dangers of social profiling/stereotyping were not debated in parliament, and control mechanisms to check the proposed measures against their probable violation of civil rights are lacking.

For an overview of Dutch terrorist legislation see Buro Jansen & Janssen under www.xs4all.nl/~respub/; Ministry of Justice press releases: 10, 11, 16, 26.11.04; De Volkskrant 11 & 13.11.04; NRC Handelsblad 8, 13.11.04, Expatica News 15.11.04, Süddeutsche Zeitung 9.11.04.

France: Police brutality escapes punishment

Study finds a "strong over-representation" of "visible minorities" among victims of police violence and in the context of identity checks

A "national commission on the relationship between citizens and members of the security forces, and on the control and treatment of this relationship by the judiciary", called "Citizens Justice Police" (CJP) and coordinated by the *Ligue des Droits de l'Homme* (LDH, the French League for Human Rights), published a report on its first two years of activities. The *Mouvement contre le Racisme et pour l'Amitié entre les Peuples* (MRAP, Movement against Racism and for Friendship between Peoples), the *Syndicat des Avocats de France* (SAF, Union of French Lawyers) and the *Syndicat de la Magistrature* (SM, Magistrates' Union) are also involved in this commission, which has been active since July 2002.

The report, which does not claim to be exhaustive, is based on a sample of 50 cases in which members of the community filed complaints to the CJP commission about violent incidents involving members of the French security forces (the police and *gendarmerie*). It is divided into three parts: the first part analyses the circumstances surrounding the violent incidents that have been reported and their investigation; the second focuses on three in-depth investigations carried out by the commission and the third part looks at the work of one of the commission's branches, in Toulouse.

Finally, a number of recommendations are made, calling on magistrates to exercise an effective control over police actions, especially "not to systematically grant complete credibility to the testimonies made by public order services over that of the victims of police violence". Political authorities are asked to reflect on the "culture of results" that is being applied for police services, which has led to an increase in charges filed for offences such as "insulting" or "resisting" officers in the absence

of any other offences. Moreover, the commission calls for special training on relations with the community for officers, especially about the risk of discriminatory attitudes, and reminds the police and *gendarmerie* that any complaints, including those against fellow officers, must be properly filed and investigated, and that support must be offered to the victims. Other aspects that are highlighted include concerns over the practice of "placing the least experienced officers in the most difficult neighbourhoods, particularly at night"; the need for police interventions to be "proportional" to the situations in which they take place; the need for a re-assessment of the legality of pre-emptive identity checks "whose multiplication often gives rise to public order disturbances"; victims must be "effectively" assured of the possibility of recurring against violations of their rights by "members of the security forces"; and the *Commission nationale de déontologie de la sécurité* (CNDS, National Commission of Deontology in Security) must be allocated sufficient funds to usefully carry out its function, consisting in investigating and evaluating police actions.

An examination of the incidents on which the report is based shows that 58% of the cases relate to instances when one person claimed to have been on the receiving end of police violence, in 22% of cases it was directed at two people and in 20% of cases at groups of more than two people. In over three quarters of the cases the victims were men, the average age of the victims was 31, although minors were involved in two of the cases, and in 60% of the cases the victims were foreigners (French nationals of foreign origins made up a considerable part of the remaining 40%), leading the commission to note that there is a "strong over-representation" of "visible minorities" among the victims of

police violence, and that members of "foreign populations or [those] with foreign origins", are stopped more often "in the context of identity checks".

All the cases relate to incidents that took place in urban centres (52% in Paris or the surrounding region), half of them were at night, and 56% of the incidents took place in the street (24% were in police stations). With regards to the dynamics of the incidents, most of them occurred in the context of routine identity checks, and 28% of them followed some kind of remark by the victim which displeased the police officer(s), sometimes in the absence of any prior offence. This incident, without necessarily amounting to an offence of "insult" or "resistance", sometimes gave rise to a disproportionate reaction by a police officer. In 78% of the cases, some kind of physical violence is alleged, including punches, kicks, blow with a torch, strangling or banging a victim's head on a car bonnet. Verbal violence is not reported as much, but often involves insults and racist or xenophobic comments. As for psychological and material violence, the report highlights instances when threats are aimed at victims to dissuade them from filing complaints, and that, apart from the destruction and confiscation of property, comments such as "street vendor" are sometimes written on migrants' residence papers.

In 15% of the cases the policemen were in plain clothes, and this sometimes contributed to the subsequent incidents after the victims failed to recognise them as police officers. Elements such as the fact that victims may not have been in full possession of their faculties (due to drunkenness, or an attack of diabetes, for example), or that more than one officer may have been on the scene (or involved), make it difficult for the perpetrator to be identified, especially as officers tend to cover up for each other. In 26% of the cases, the violent incidents are a result of aggressive behaviour by a single officer, and the report expresses two concerns: firstly, that the violence often results "from aggressive or arbitrary behaviour by a police officer who, following a minor incident, causes the situation to degenerate" and subsequently alleges insults or resistance by the victim to justify his violent acts; secondly, that other officers are often passive onlookers when these incidents occur.

An analysis of attempts by citizens to get judicial redress for offences committed by officers that contravene their rights indicates that it is a path that is fraught with difficulties. The first of these is the issue of evidence unless there is a witness who is unrelated to the victim, where it is a matter of the victim's word against that of a police officer, a figure in whom public authority is vested. The problem is heightened by the fact that the victim is sometimes made to sign a statement during their detention which does not reflect their version of events, and that officers often file charges against the victim for "insulting" or "resisting" a public officer, thus further undermining the victim's position as s/he appears as a defendant rather than a plaintiff in court.

Monitoring groups lack resources and powers

Most of the cases in question were not reported to the local police or *gendarmerie* stations, but rather to bodies that are responsible for monitoring the behaviour of security forces, such as the *Inspection générale de la police nationale* (IGPN) at a national level, or the *Inspection générale des services* (IGS) for the Paris area, or directly to the public prosecutor. The report highlights that in spite of an increase in the volume of work carried out by the *Commission nationale de déontologie de la sécurité* (CNDS), its funding levels are falling. The CNDS is an independent body to investigate ethical aspects of the activities of security forces created in 2000, whose remit was extended in 2003 to allow it to be used by an MP, the prime minister or the children's ombudsman. It dealt with 70 cases in 2003, 16 of which fall under the scope of this report, taking place during ordinary police activity. In 12 cases, it heard evidence from the

two parties, whereas in four others, it only based its opinion on the reports filed concerning the incidents by the police officers in question. Furthermore, the report notes that although the CNDS has the power to report cases to the public prosecution services, it has only done so in one occasion in 2002 (resulting in disciplinary sanctions against an officer), and that its warnings or recommendations rarely produce effects.

The CJP commission carried out follow-up work regarding three of the incidents brought to its attention (usually after complaints have been filed with bodies mentioned above): one involved the situation of Roma people; the second related to an incident in a Parisian restaurant; and the third concerned a tear-gas attack on a Moroccan-owned bar in Paris which resulted in the death of one of the people inside it.

In the first investigation, the CJP, alongside the doctors' NGO *Médecins du Monde* (MDM) noted that the occupants of caravan sites were sometimes evicted and/or expelled in a forceful and intimidatory manner and were unable to recover their belongings and sometimes medicines, disregarding the fact that some of them suffer from serious diseases. The issue of violent or insulting conduct by police officers against Roma also surfaced in relation to busking on public transport, including instances in which they damaged their instruments, searched them vigorously or voiced racist insults at them.

The second investigation shows how victims of violence by police officers can end up becoming defendants. On 5 December 2002, the failure to pay part of a restaurant bill by one of several tables occupied by people who had attended an advertising event resulted in the waiters locking the doors to stop anyone from the other tables from leaving. After negotiations and the refusal by the customers to pay the outstanding amount because they did not know the people who should have paid it, three policemen arrived. During the ensuing argument, two customers who tried to calm down matters were struck by officers with their torches, and were then handcuffed and detained overnight. Doctors deemed them unfit to work for seven and ten days due to their injuries, but they were later fined 90 euro for drunkenness in public (although no alcohol test was carried out, and in spite of having one of the restaurant's waiters as a witness that they were not drunk, but his evidence was not heard by the court), and they were also charged for damaging tables in the restaurant, for committing violent acts against public officers causing injuries warranting up to eight days' leave from work, and for insulting public officers. These charges were later dropped at the request of defence lawyers because the defendants had not been notified that they had been placed in *garde à vue* (detained under observation) after their arrest. This was one of the cases submitted to the CNDS in which this body issued an opinion after relying solely on a report filed by the police officers in question (see above). The CJP report notes that no crime had been committed when the police arrived on the scene, although it could be argued that the customers were kidnapped by the waiters who closed the doors; that the version given by witnesses, including a waiter, suggest that they did not throw any chairs at the police officers, or act violently, whereas the officers did strike and throw chairs at them; that the complaints filed against the officers will not be followed up.

The third investigation relates to an incident in a bar in Paris on the night of 31 December 2003, when the bar was shut to the public (with its shutters lowered not to disturb the neighbours) and its Algerian owner (M.A.) was having a dinner party with friends and family, some of whom had come from Algeria. As the evening wound down at around 3 a.m., two brothers who were among the guests left the bar, which is opposite a police station. They were arguing, but M.A. and one of his brothers calmed them down, although two police officers from the station appeared after hearing the noise, and held one of the brothers, releasing him soon afterwards. The next guests who left made some noise as they raised the shutters, leading the police officers

to return, asking M.A. to close the establishment. His reply, explaining that the bar was shut and that it was a private family party, resulted in him being thrown against the shutter and beaten (a truncheon was also used) on the street. A guest who was carrying a child and intervened was also struck with a truncheon and had teargas fired in his face. The owner managed to free himself and return inside the bar and went to wash in the toilet in an effort to prevent his guests from noticing his wounds. Some back-up officers arrived, and blows were struck against the shutters causing the frightened guests to hold the door shut until one of the guests (a woman holding a child) returned. She entered the bar and the police fired teargas canisters into the bar, amid racist insults and continuous banging, according to witnesses. When M.A. tried to go outside to talk to the officers, he was dragged outside and shaken, while another load of teargas was discharged into the bar. The owner, who was arrested alongside one of his brothers, warned the police that there were women and children inside. While the guests left the bar, one of them (G.C.) felt ill and had problems getting out, and he was helped out by one of M.A.'s brothers until he said that he could walk home on his own. G.C. died before reaching his flat, on the staircase of his building. M.A. and his brother were charged for

violent conduct against police officers and received a two-year suspended prison sentence against which they have filed an appeal. Legal proceedings involving the man who died are underway, but experts called upon by the plaintiffs indicate that he died of a heart attack caused by the inhalation of teargas. The CJP commission's report highlights the disproportionality of the police intervention in relation to the initial incident that gave rise to its intervention (described as either "noisiness" or "drunkenness"). Five people filed complaints to the IGS as a result of having been "teargassed", although the resulting IGS report concluded that "it has not been possible to establish who was responsible for spraying gas inside the bar".

Source:

"Citoyens Justice Police: Commission nationale sur les rapports entre les citoyens et les forces de sécurité, sur le contrôle et le traitement de ces rapports par l'institution judiciaire". Rapport d'activité de juillet 2002 à juin 2004.

Available on

<http://www.ldh-france.org/media/actualities/rapportcjp.pdf>

EU: Attacking the citizens' right of access?

The Regulation on access to EU documents was adopted in December 2001. It will have to be amended to cope with the new structures and legal framework under the EU Constitution. The only report on the operation of the Regulation was issued by the European Commission in 2004.

Introduction

The Commission released its report on the application of the Regulation on access to documents of the Council, Commission and European Parliament in January 2004.

This report does not suggest amending the existing legislation and does not appear to accept that the *status quo* entails any limits on the right of access which should be removed. Rather, it points to a number of issues on which the Commission defends the existing limits on the right of access and would like to impose even further limits. More broadly, the Commission appears to have little understanding of the context of the rules on access to documents, which were designed to address public alienation from the work of the EU, to 'ensure the widest possible access to documents' and to facilitate public participation in the EU's decision-making process (Regulation 1049/2001/EC)

Background

The Council and Commission adopted rules on access to documents in 1993 following widespread public concern about the 'democratic deficit' in the European Union, insufficient systems for ensuring accountability of EU bodies and the general lack of openness and transparency in EU activity. Those rules were applied highly conservatively at first, and it took constant complaints to the EU Ombudsman and the EU courts by *Statewatch* and others interested in access to documents to ensure that the institutions lived up to their promise of greater openness. In 2001, the rules on access to documents of the Council, Commission and EP were set out afresh in Regulation 1049/2001, which largely codified the existing principles in the 1993 rules as built up by the decisions of the Ombudsman and case law of the Courts. The Regulation also went further than the previous rules in one area, by allowing access to documents which were not 'authored' by the Council, Commission or EP but which were in such institutions' possession. However, certain provisions in the Regulation still potentially permitted

continued or new unjustified restrictions on access to documents.

Specific problems - Scope

As regards the **scope** of the Regulation, the Commission fails to observe that the **European Council** (the EU leaders' summit meeting) is not bound by the Regulation or by its own access to document rules.

Also, while the Commission notes that the **EU Courts** have refused to adopt rules on access to documents, it fails to comment on this. Why should all documents of the Court automatically be exempt from rules on access? If it necessary to protect some Court documents from access, why is it impossible for an institution with (after enlargement) fifty experienced judges and hundreds of other legal experts to draft rules which distinguish between documents which can be disclosed and documents which cannot? The Commission (or the Council or EP) could commission an analysis of national rules on this issue to establish whether the Court's position is at all justifiable.

The Commission's survey of other EU institutions or agencies fails to mention that Eurojust, the EU prosecutors' agency, still has not yet adopted rules on access to documents. Nor did the amendments to the Decision establishing Eurojust adopted in August 2003 include such rules; this was a missed opportunity for the Commission to propose such rules and the Council to adopt them.

Also, the shadowy **EU Police Chiefs' meetings** are not subject to any rules on access to documents.

Specific problems - Exceptions

First of all, the Commission's discussion of the **data protection** exceptions fails to mention that the EU Ombudsman's investigation into the Commission's position on this issue ruled against the Commission, and that the EP followed the Ombudsman's position in its subsequent special report. On the other hand, the Commission's report consistently refers to cases in which the Ombudsman has backed its position.

The Commission also fails to recognise that EU data protection legislation contains exceptions permitting the disclosure of data to third parties; indeed the Commission fails to refer to a judgment of the EU courts on this very issue (*Fisher* judgment).

More broadly, the Commission's analysis here fails to defend the Commission's refusal to disclose the names of all lobbyists meeting secretly with Commission staff in light of the basic principles underlying the Regulation. Does data protection legislation really aim to protect such secret meetings and can the Commission justify the damage done to the goal of openness of the EU institutions?

Secondly, the Commission's application of the **commercial interests** exception is highly questionable. It explicitly states that this exception should be interpreted in a 'wide sense', even though the Regulation itself and the case law on the prior rules state that exceptions from the Regulation should be interpreted narrowly. Why should the mere 'commercial reputation' of a company be protected by refusing to release documents? This approach by the Commission justifies critics of the new Regulation, who argued that in some respects the Regulation lowered the prior standards applicable to access to documents, as the prior rules referred more narrowly to commercial confidentiality.

Next, the Commission's interpretation of the **legal advice** exception is questionable. Here the EU Ombudsman has ruled against the Council and Commission's interpretation of this exception, but the Commission shows no inclination to change its view. In particular, it fails to take account of the obligation to give access to such documents under the 2001 Regulation where there is an 'overriding public interest' in access.

As regards **infringement proceedings**, the Commission has not taken any steps to improve access to its documents despite numerous complaints and disputes, in particular taking account of the obligation to give access to such documents under the 2001 Regulation where there is an 'overriding public interest' in access. For example, why does the Commission not give access to documents after an infringement action has been definitively completed? Moreover, the report refers to a Commission working paper on access to documents concerning infringement proceedings. But it does not tell the public how to get hold of this paper and indeed the paper does not appear to be accessible on the Commission's websites.

As regards the exception for the **decision-making process**, the Commission entirely fails to discuss the approach which the Council has taken to this issue or to consider it in light of the Regulation's objective of ensuring public participation in EU decision-making. The Commission complains about the difficulty of applying the exception where a decision has already been taken; the obvious solution is to abolish the application of the exception to such cases. The Commission also objects to the higher threshold for applying this exception, but if the exception is to exist at all, there is an obvious reason for the higher threshold given the Regulation's key objective of enlarging public participation in EU decision-making.

As regards the issue of **balancing the public interest** against the refusals to disclose documents, the Commission takes the view that it is for applicants to make such arguments. But how can they when they do not have access to the documents? It is striking that the Commission admits that no argument on these grounds has never been accepted by the EU institutions. The Commission rejects several possible cases where the public interest balancing could apply but fails to identify any where it could. What about the public interest in human rights or in participation in decision-making? Also the Commission rejects the Ombudsman's conclusion that the exception can apply to cases of scientific interest. The Commission argues that the balancing test should be interpreted narrowly as it is an 'exception to an exception'. But since the balancing test

exception is in accord with the underlying objective of the Regulation of ensuring the 'widest possible' access to documents, it should obviously be interpreted widely; it is the exceptions to access that must be interpreted narrowly.

Taken as a whole, the Commission seems to think that there is no case where the public interest override might apply; and moreover, that an argument to apply the override should be impossible to make in practice.

As for documents issued by Member States, the Commission's interpretation of Article 4(5) of the Regulation regarding **documents issued by Member States** is clearly wrong. The Regulation only permits Member States to 'request' the institutions not to release such documents, not to veto their release. The EU Court case to which the Commission refers did not give an unambiguous or definitive ruling on the question of how to interpret this exception. In any event, even if the Commission's interpretation is correct, why not consider amending the Regulation in order to change it to ensure greater openness? The Commission's approach fails to consider the different context of EU decision-making as compared to national systems, in particular the EU legislative process. It is well known that no national parliament is remotely as secretive as the Council when engaged in a legislative process.

As regards the **partial release** of documents, the Commission is wrong to state that the Regulation permits institutions to refuse any release of a document where it would cause too much work. This principle appeared in the case law on the pre-Regulation rules, but does not appear anywhere in the Regulation. In practice, it has not proved impossible for the Council to give partial access to a large number of its documents generated during the legislative process.

Large applications

The Commission has continued its long-standing campaign against applicants who apply for documents on more than a trivial or occasional basis. This approach ignores the Ombudsman's prior rulings against the Council's previous practice on this issue in a number of such cases, and the deliberate decision of the Council and EP to prevent the application of the Regulation in the way that the Commission would like. The Commission admits in effect to breaching the Regulation on this point in practice.

Registers of Documents

The Commission admits that it has put only a relatively small number of documents in its register of documents and does not firmly commit itself to putting more on.

This is despite the apparent obligation of the Regulation to put a listing of all of each institution's documents on a register. The report repeatedly complains about the workload of the Commission (but not the Council or EP) in applying the Regulation, but fails to link this sufficiently to the Commission's inadequate register. But it is obvious that a better Commission register would ensure that the Commission managed documents more efficiently and would enable applicants to identify which documents they wanted to apply for more clearly.

Conclusion

The Commission's report is a highly negative assessment which strikes at the core substantive and procedural issues that concern the right of access to documents. If the Commission's views on various matters are followed, the present unjustifiable restrictions on access would be confirmed and further restrictions would be developed. There is nothing in the report which takes any meaningful account of the underlying objectives of the access to documents rules, the historical and future context of the rules, or the role of access to documents in the EU's Charter of Fundamental Rights.

Northern Ireland: The death of Annie Kelly

Phil Scraton analyses an unprecedented indictment of the endemic failures within the N Ireland Prison Service

The inquest into the death in custody of 19 year old Annie Kelly concluded on 23 November 2004. Detailed and thorough, the jury's narrative verdict was unprecedented in its indictment of the endemic failures prevalent within Northern Ireland's Prison Service. The jury found the 'main contributor' to her death by hanging to be a 'lack of communication and training at all levels'. 'There was' concluded the jury, 'no understanding or clear view of any one person's role in the management and understanding of Annie'. They identified a 'major deficiency in communication between Managers, Doctors and the dedicated team' responsible for Annie's health, welfare and safe custody. There were 'no set policies to adhere to', specifically a lack of appropriate management and staff training. And there was 'no consistency in her treatment and regime from one Governor to the next'.

Given Annie's personal and custodial history these are remarkable conclusions drawn by an attentive jury who heard a mass of evidence presented to the Belfast Coroner's Court. Annie, the tenth in a family of 12 children, first came into conflict with the law when she was 13. Her family, from the Strabane area, saw a significant behaviour change following the tragic death of her brother. A year later she received her first conviction. After being held in St Louis' Training School she was then in Rathgael. In July 1997, following the issuing of a Certificate of Unruliness in Rathgael, Annie was imprisoned in the Mourne House Women's Unit. Mourne House was a high security women's facility managed and operated within the remit of the much larger Maghaberry male prison. Holding a 15 year old child in an adult prison breached international standards, not least the UN Convention on the Rights of the Child.

Even for adult women the Mourne House conditions were unsuitable. The discrete health care facility had closed. Women and girls were treated and accommodated in the male prison hospital. Often transported in prison vans with male prisoners, they suffered appalling verbal abuse. Access to education classes was inconsistent and workshops were permanently closed. The standard regime confined women and girls were locked in their cells for a minimum of 17 hours each day. Following redeployment of prison officers from the Maze, 80% of duty staff were male. It was not unusual for night guard duty to be staffed exclusively by male officers. A deteriorating regime reflected managerial complacency and staff custom and practice that fell far short of providing constructive or creative programmes for women and girls with complex needs. Managers and staff had no training in basic health care for those identified as distressed, disturbed or behaviour disordered. Medical care plans were filed away and ignored.

In May 2002, just months before Annie died, the Prisons Inspectorate visited Mourne House. Its findings exposed serious deficiencies in policy, regime and conditions. There was 'no recognition of the different needs' of women, inappropriately high staffing levels and an unhealthy male-female staff ratio, an extraordinary and unnecessary emphasis on security, lengthy periods of lock-up, insufficient activities, poor record-keeping, shared transport with male prisoners, unexplained strip-searches, insufficient information and support for women on reception and no induction programme. The inspectors were highly critical of the treatment of suicidal and self harming women, particularly the use of the male prison hospital and the punishment and segregation unit. They stressed that the Prison Service should establish a policy and strategic plan for accommodating women in a discrete and self-contained environment supported by a comprehensive staff training programme. Holding children 'assumed to be a significant management problem' in adult prisons was 'specialist work for staff with the appropriate

training, skills and knowledge base'. In the Inspectors' view neither officers nor managers had the ability or capacity required.

These were the conditions in which Annie was imprisoned. From 1997 until her death she was committed to prison on 28 occasions. She presented the Prison Service, and those who managed her daily, with a formidable challenge. She had convictions for a range of offences. The most common were police assault, riotous and disorderly behaviour, criminal damage, theft and common assault. A teacher who worked with her in prison recalls Annie's arrival in Mourne House: "Nobody knew how to handle her. What happened was dreadful. She responded to the more aggressive staff by hitting out. She was held most of the time in solitary confinement. When I taught her our chairs were bolted to the ground." Yet the teacher and her colleagues never felt threatened by Annie.

Throughout her time in Mourne House Annie was admitted to the male prison hospital on numerous occasions. Often agitated and disturbed, she claimed to hear voices. She also self harmed. She lacerated her arms, banged her head, inserted metal objects under her skin and strangled herself with ligatures, losing consciousness. From 1997 the five year record of incidents shows numerous assaults on staff and cell wreckings as well as 40 incidents of self harm. Her formal psychiatric assessment found no 'organic' impairment or mental illness. She was diagnosed as having attitudinal problems derived in a personality disorder. The diagnosis was offered as an explanation for her antagonistic behaviour towards staff, her self harm and her 'suicidal ideation'. Back in the community, she drank heavily. Her medical assessments record a bright and intelligent young woman who suffered from low self-esteem and self-denigration.

The period immediately prior to Annie's death was particularly volatile and traumatic. Because of her violence towards prison officers it was decided that she should remain in segregation, unlocked only when three members of staff were present and protected by riot gear and a full-length shield. In June 2002 she wrecked a punishment block cell equipped with an open toilet, sink and bed. She pulled the ceramic hand basin from the wall, removed the taps and used them as instruments to break through the cell wall. She was removed to a basic punishment regime in a 'dry cell'. Dressed in protective clothing, she was given a 'non-destructible' blanket. There was no mattress and no bed and she slept on a raised concrete plinth. According to officers she considered this cell 'hers' and she became aggressive if she thought another prisoner might be located there.

Without the means to cut herself Annie regularly lay on the plinth and banged her head on the floor. She tore ligatures from the supposedly indestructible clothing and blankets. Her self strangulation was not taken seriously by most officers who felt she was faking or feigning suicide to irritate them. But a clinical psychologist expressed concern that Annie might cause herself an accidental suicide and all 'key' staff were aware of this concern.

Other prisoners also worried that Annie might die. A woman said: 'I talked to Annie. She was a very young girl. She needed a lot of attention and some of the girls upstairs [young prisoners] need the same. But we can't do anything. We know somebody's talking about it [suicide] and we tell staff but we don't know what they do with that. It's not really taken seriously ... some of them take it seriously but others will go, "She's always at it". That's not the attitude to have.'

Not long before her death Annie was transferred to the male prison hospital. She wrote a harrowing account of the transfer to her sister. It was to be her last letter home. 'You wouldn't believe the way I'm treated. You would need to see it with your own two

eyes'. She described how the 'control and restraint team landed over and told me I had to take off my clothes and put a suicide dress on'. She refused and the all male team told her they would hold her down and so she complied. 'Then they all held me out in the corridor. I only had the suicide dress on and I was told I could keep my pants cause I'd a s.t. on. But when the men were holding me they got a woman screw to pull my pants off. That shouldn't have happened. Then they covered me in sellotape to keep the dress closed and handcuffed me and dragged me off to the male hospital.'

The male hospital was a 'dirty kip' and she 'stuck it out for 6 days cause they threatened to put me in the male p.s.u. [punishment and segregation unit] if I smashed it'. She 'wrecked' the hospital cell and was returned to the Mourne House punishment block. 'I'm just relieved to be back'. Still in a 'suicide dress', she had 'hung myself a pile of times. I just rip the dress and make a noose. But I am only doing that cause of the way their treating me. The cell floor is covered in piss cause they took the piss pot out the other night'. She complained of flies in the cell: 'They won't let me clean it. I haven't had a shower now in 4 days. I've had no mattress or blanket either the past few nights'.

Seemingly resigned to the inevitable, Annie told her sister, 'At the end of the day I know that if any thing happens me there'll be an investigation. (I never ripped the mattress or blanket nor did I block the spy). So if I take phenumia it'll all come out'. She wrote that she was not drinking or eating. 'I think you can only last 10-12 days without drinking cause then you dehydrate and your kidneys go. I've no intention of eating or drinking again so their beat there. I know they'd all love me dead but I'd make sure everything is revealed first'. She asked for her sisters to pray for her, to be remembered to the 'wains' and for her solicitor to be told what was happening and visit her 'straight away'.

Official documents indicate that a management plan, scheduled for introduction on 12 August, had been agreed. Annie was to be transferred from the hospital to a normal association landing with other women prisoners where she would have access to standard equipment in her cell. She rejected the plan and demanded a return to the Mourne House punishment block. When told she could not be transferred immediately she smashed the hospital cell. Annie was moved on the 10 August. It appears that between the 10 and 13 August, the day she wrote her letter home, she was held without basic sanitation or bedding. She refused food and water.

According to the official accounts, further negotiations ensued and she moved from the dry cell to an intermediate cell in the punishment block. After six days she wrecked that cell and applied ligatures, demanding a return to the dry cell, 'her' cell. She was moved into strip conditions and continued to rip her clothing and apply ligatures to her neck. On 30 August she was visited by a member of the Board of Visitors. She was refusing to eat and food was strewn about the floor of the cell. She said she had 'no ambition except to die'. The Board of Visitors reported that a 'different approach concerning Annie should be made with some urgency – perhaps a medical approach, assessment and treatment elsewhere'. She was placed on Rule 32, solitary confinement in the punishment block, for a further 28 days. On 5 September she made what was to be her final court appearance at Enniskillen Crown Court. Convicted on two counts of attempted robbery and burglary she was sentenced to 18 months.

The next day Annie was seen by a doctor. It was 'alleged' that she had tied two ligatures around her neck and he noted faint marks. Her care plan was updated and she was classified 'at risk'. The doctor wrote: 'The whole area of what appears to be an increasing number of young disturbed females needs to be looked at with a view to having a regime in place including specialist help and training for staff in an environment which does not come under the standard application of the prison ethos.'

Late at night on 5 September a woman prisoner admitted to a cell above the punishment block heard Annie screaming and shouting. Her account is consistent with a written statement, headed 'A. Kelly Fake Ligatures', made by the prison officer in charge of the Mourne House night guard duty. He was told by staff that Annie had blocked the spy holes. It was agreed 'to open her cell on the chain and clear them'. Minutes later an officer told him that Annie 'was lying on the cell floor with a ligature around her neck tied to the window'. The senior officer called for two additional male officers 'to make up a control and restraint team' and a hospital officer. The officers arrived ten minutes later. As the team was about to be deployed the senior officer 'observed F929 A Kelly get off the floor laughing and get into bed'. He ordered the staff into the cell 'to clear it of anything that could block the spies'. He states that Annie continued to taunt the officers. The team returned to the cell twice within five minutes to remove further ligatures from her neck. 'All the ligatures were made from her suicide blanket ? [sic] one of them being 9ft long. Lack of female officers made it impossible to search or strip Kelly to prevent this.'

According to the woman prisoner the following evening was significantly quieter but in the early hours of the morning of the 7 September she heard noises from Annie's cell. A male voice, she assumed it to be a prison officer, was shouting, 'Come on, Annie, come on'. It then went quiet. During the morning Annie was unlocked, taken to the shower and returned to her cell. Three officers were responsible for Annie and there were no other prisoners held in the punishment block. From prison officers' accounts their interaction with Annie was minimal.

Annie Kelly died in her cell during the early afternoon. A female officer looked through the spy-hole and saw Annie at the window, ligatures around her neck and her tongue out. The other ends of the ligatures were attached to the diamond mesh through a gap between the inner metal window frame and its Perspex cover. The officer walked from the cell to the office and told her colleagues that Annie was using ligatures again. She did not use the emergency button, the assumption being that Annie had staged 'another' incident. Donning riot equipment the officers entered the cell. Annie failed to respond and the officers realised she was dead or dying. The woman officer then pressed the emergency button and Annie was cut free and lowered to the floor. A prison officer and a nurse officer attempted resuscitation but to no avail. She was pronounced dead at 2-58pm.

Following Annie's death a case conference was held to discuss the lessons that might be learnt and actions that might be taken. Minutes of the meeting recorded 'the need for an understanding of the tools to draw on and the appropriate knowledge to deal with prisoners who suffer from acute personality disorders'. Also identified was a 'need for a co-ordinated multi-disciplinary approach and the disclosure of the necessary information to deal with these cases'. These conclusions are instructive. They reveal that the concerns raised, noted and transmitted by the Belfast Coroner to the Prison Service following the inquest into the death of Janet Holmes had not been transformed into a coherent policy or established practice.

An issue of profound and continuing concern was how, given her history and recent behaviour, Annie had the means to commit suicide. She was in a strip cell modified specifically for her use. There were two observation windows in the cell door, a cell window protected by metal diamond mesh in a steel frame covered by Perspex. The ceiling was metal sheeted with no exposed seams. All conduits, ducting and pipes had been removed. There was no integral sanitation or electrical fittings. She was usually dressed in non-destructible, protective clothing, her blanket made from similar material. Officers and managers knew that the blankets and clothing could be torn. Further, the modification to the cell windows enabled access to the diamond

mesh through a gap sufficiently wide to take ligatures and hold her weight. It proved to be an oversight with fatal consequences.

The Prison Service internal inquiry into Annie's death recommended issuing electronic pagers or alternative means of contact to nursing staff for swift emergency response. It called for updating and replacing monitoring equipment and upgrading protective blankets and clothing. It also recommended an inspection of the cell to consider 'modifications that may be necessary as a consequence of this tragedy'. More broadly, the Inquiry Team 'recognises and endorses the general concern ... that an adult institution is an inappropriate place to commit a juvenile female'. It considered that the Prison Service 'should consult with all relevant bodies to consider the provision of a secure community based facility for juveniles with personality based disorders within Northern Ireland'. The Prison Service Suicide Working Group's terms of reference 'should be extended to include the management of juveniles with personality disorders' and staff training should be provided 'as a matter of urgency'.

At Annie's inquest it was the shared view that she should not have been in prison but in a secure community-based facility. Governors and officers, supported by others who worked with her in prison, portrayed her as a deeply disturbed and manipulative young woman beyond management or control. She was a danger to herself, to other prisoners and to staff. Her predicament, they argued, although unacceptable to 'normal' people, was of her own making. The collective view was that Annie chose the strip cell, 'her' cell; she 'faked' suicide to 'taunt' prison officers; she was capable of formidable violence; she could wreck cells and destroy anti-suicide blankets and clothing with her bare hands. As an officer put it, 'She wasn't mad but bad'. It was a representation not universally shared. A teacher who knew her well told us that after Annie died 'a lot of people had to look at their consciences. Some staff [officers] would respond positively to her, put a radio by her door, but other staff ... and things did happen. Annie was goaded and she would hit out'.

The jury was unimpressed by the argument that Annie had brought death on herself. Having established that the Prison Service was institutionally deficient at all levels the jury listed five 'reasonable precautions' that should have been taken to meet minimum standards in securing a duty of care. The anti-suicide blankets were 'deficient' and an 'anti-ligature window should have been installed from the outset'. Given the events of the 5 September, 'clearer guidelines on observation and monitoring' Annie might have removed the 'opportunity of making ligatures'. A search on the day would have discovered the ligatures she used. Finally, 'cell inspection should have been carried out frequently and thoroughly especially in regard to the window'.

The jury identified six further 'factors relevant to the circumstances of her death'. They criticised her 'very long periods of isolation' and the lack of appropriate 'female facilities'. They recommended better 'availability of resuscitation equipment within the Prison' and the availability of first aid equipment 'on every landing'. Responding to evidence concerning the paucity of adolescent mental health care in Northern Ireland, the jury called for the provision of a 'therapeutic community'. Failing this, the 'Judicial system should strive to provide a like environment'. Finally, the 'Northern Ireland Mental Health Order needs to be updated to include personality disorders'. Given the failures in broader care provision, the deficiencies in communication and training 'at all levels' and the inadequate and inappropriate treatment of Annie, the jury decided she did not die 'by her own act'.

The wider context and specific circumstances of Annie's death provide a partial insight into the abject failure of the criminal justice and penal systems in their handling of children and young people in conflict with the law. As the jury noted, the

lack of appropriate adolescent mental health care in Northern Ireland results in the imprisonment of vulnerable children and young people who require care and support relevant to their needs. Whatever Annie's mental health diagnosis, the punishment and segregation unit of a high security adult jail was not an appropriate location. To portray her as a devious manipulator, who voluntarily and eagerly took herself to the point of no return, is disingenuous. It constitutes an abdication of institutional and professional responsibility. Her long-term pain and suffering throughout the most significant years of older childhood left her bereft of rational judgement and trapped in an ever-diminishing world of isolation, containment and punishment.

The warning signs were there but staff and management complacency prevailed, its implications reaching well beyond Annie's treatment to all aspects of the imprisonment of women and girls in Northern Ireland. Yet the Inspectorate already had recorded its considerable concern, its deep dissatisfaction of custom and practice and the absence of a coherent strategy, policies or appropriate professional training. Reflecting on Annie Kelly's death, a governor who knew her well stated that prison officers had a 'mind-set' of 'ordering prisoners to do things' rather than 'discussing the issues' with them. A male prison officer working in the punishment and segregation unit disagreed: 'The prison hospital weren't interested when Annie Kelly was banging her head. It was left to us. I personally don't think I should be dealing with this. I'm not psychiatrically [sic] trained in any way, shape or form. I'm not a counsellor'.

Entering Mourne House in March 2004 to carry out research for the Human Rights Commission, we expected the Prison Service to have learnt by experience. We were shocked to find a 17 year old girl, self harmed from her ankles to her hips, from her wrists to her shoulders. Dressed in an anti-suicide open-fronted dress, no underwear, she lay on an anti-suicide blanket on a raised plinth, no mattress and no bed. There was nothing in her cell except a child's potty and no means of washing her hands. Despite her care plan stressing 'optimal personal contact' she was locked in isolation 23 hours a day. She was in 'Annie's cell' and the gap at the window remained. As a prison officer stated to an engineer inspecting the cell in February, no modifications had been made to the cell since Annie's death.

The day we first visited the punishment block 34 year old Roseanne Irvine died in her cell on the committals landing. She had been disciplined earlier in the day and was deeply concerned that she might lose access to her child. Despite being on an 'active' care plan which classified her as a suicide risk she was held in a cell with multiple ligature points and with access to several ligatures. An officer on duty at the time of her death stated that although staff 'were aware that there was a strong possibility that she was liable to attempt suicide', it could not be averted because 'it was impossible to observe her continually'. A woman officer commented, 'after Annie Kelly we felt it couldn't get worse ... it has'.

Our report makes 41 recommendations. It is imperative that a full, independent and public inquiry be held into the failure of the Prison Service to implement the Inspectorate's recommendations and its consequences for women and girl prisoners held in Mourne House from 2002 to 2004. It should also consider the circumstances of the deaths of Annie Kelly and Roseanne Irvine and the use of the punishment and segregation unit as a location for the cellular confinement of self-harming and suicidal women including girls. The landmark verdict delivered by the jury at Annie Kelly's inquest affirms the urgent need for a more probing inquiry.

Professor Phil Scraton, with Dr Linda Moore, is co-author of The Hurt Inside: The Imprisonment of Women and Girls in Northern Ireland published by the Northern Ireland Human Rights Commission, Belfast

Does the EU need a "Fundamental Rights Agency"?

Tony Bunyan looks at the proposal and wonders if it will be just another "figleaf" for inaction

In November 2001 the European Commission put forward a proposal for a "Council Framework Decision on combating racism and xenophobia" (COM 664, 28.11.01). Numerous drafts of the Council's position on the Commission proposal appeared between November 2001 and 26 March 2003. Since then there has been silence.

In June 1997 - during the "European Year on Racism" - the EU set up the European Monitoring Centre on Racism and Xenophobia (EUMC). An amended mandate for the EUMC in Vienna was circulated by the Council of the European Union on 19 May 2003 and the Council's Social Questions Working Party discussed the proposal. A "recast version" of the Council Regulation on the EUMC was circulated on 10 December 2003.

But at the EU Summit (prime ministers) just two days later on 13 December it was decided "in the margins" that the EUMC should "extend its mandate to make it a Human Rights Agency". "In the margins" means that this decision was taken outside of the formal proceedings (in the "corridors of power" as it were).

These two EU initiatives to combat racism were ditched in 2003.

The consultation document

The Commission's consultation document (October 2004 - COM 693) proposes the setting up of a EU "Fundamental Rights Agency" to replace EUMC. It outlines that the general context (Art 6.1. of the TEU, Charter of Fundamental Rights and the ECHR). As a "given" it says the "Agency" will monitor rights "by area" and "not prepare reports by country" as it would be "strictly" limited to areas of Community competence. The Commission's attitude to the Network of Independent Experts, set up in 2002, is ambiguous asking whether having both structures adds "value". Given the excellent work of this Network it is amazing that the Commission does not envisage a role for them in establishing the new agency. The Commission is uncertain whether the Agency should involve itself in the Community's remit regarding member states under Article 7 (TEU) where action is needed against a member state for a "serious breach" of fundamental rights - the Commission's own proposal for the enforcement of Article 7 says that because all EU governments adhere to the Union's "core values" (which seem to be shifting seemingly inexorably to the right) then it cannot ever imagine taking action against a member state.

On the Agency's "geographic scope" the Commission is adamant that it should *not* cover non-EU countries/issues:

The Commission considered itself to have complete sources of information and advice on the matter and did not consider it convenient to create an implementation agency for the development of projects with regard to third countries

But fundamental rights are surely indivisible, their principles (and monitoring of) should be the same whether inside and outside the EU.

The Commission says that the Agency's role should be "data collection and analysis and the drafting of opinions" and ensure that they are "objective and reliable". Crucial of course is where power and control lies. The Agency must be "independent" but have a:

"lightweight structure in terms of staff and budget"

and as to management:

A measure of the importance attributed to the Agency would be if representatives appointed by the Commission, the European Parliament, the Member States and the Council of Europe were to

participate in its management bodies

Which begs the question of how "independent" could it ever be?

The "Paris Principles" and national Commissions

All EU member states are signed up to the European Convention of Human Rights and most have adopted national Human Rights Acts. However, it is remarkable how few have followed up by creating a national Human Rights Commission - according to an annex in the Commission document, out of 25 EU member states only five have been set up in Denmark, France, Greece, Ireland and Northern Ireland (a Scottish Human Rights Commission and a UK-wide Commission for Equality and Human Rights is being proposed).

The "Paris Principles" sets out standards for national human rights bodies which should be based on "independence and pluralism" and that the composition should be comprised of NGOs and people from civil society, universities and other experts, and parliaments. They expressly state that government representatives (both national and EU in the context of this proposal) should "*participate in the deliberations only in an advisory capacity*" - not on the management bodies as the Commission proposes.

Another critical factor establishing "independence" under the "Paris Principles" is "in particular, adequate funding". Of the five existing Human Rights Commissions in the EU most do not receive "adequate funding" and the Commission's notion of a "lightweight structure in terms of staff and budget" is utterly contrary to establishing an "independent" body.

It might be thought that if the EU was serious about tackling human rights it would be proposing not a centralised "Agency" but a Directive on the creation of national Human Rights Commissions in every member state abiding by the "Paris Principles" (UN General Assembly, December 1993), powerful national "Ombudsman's", meaningful non-judicial complaints authorities covering abuses by state agencies (like the police, immigration and security services), data protection supervisory bodies with the power to *order* institutions to change their practices and amend their legislation and obligatory parliamentary post-legislative scrutiny of implementation (the practice).

And if the EU seriously wanted to enforce "human rights" it would not be actively "aiding and abetting" the USA in the "war on terrorism", it would not be pursuing its long-standing immigration and asylum policies and justifying them with racist rhetoric, it would not be placing the people of the EU under surveillance (through biometric documents, data retention of telecommunications, and monitoring travel) and it would not be giving in to just about every demand from the law enforcement and security service agencies.

Human rights depend on two factors

No "Fundamental Rights Agency" can ever supplant or replace a healthy, diverse, argumentative and pluralistic civil society and media - these are the best checks against the misuse and abuse of state power and the best guarantee of the restoration and maintenance of human rights.

In the end peoples' rights and the accountability of the state, its agencies and officials depend on *laws* and how they are put into *practice* at national and EU levels and whether these practices are consistent with human rights - not on a Commission funded agency.

Statewatch's new searchable database

Statewatch has launched a new searchable database on its main website:

www.statewatch.org

The database contains:

♦ all the material from the Statewatch bulletin (since 1991)

♦ all the stories, features, analyses and news in brief from Statewatch News Online (2000)- including preservation of all the links to documents

♦ all our archived material since 1991

Subscribers to the bulletin get free and unlimited access (historical material is only available to subscribers)

The database has over 23,000 entries and will be updated regularly

If you do not have a username and password please send an e-mail to:

office@statewatch.org

with your name and address.

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Statewatch website

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

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Statewatch's European network of contributors is drawn from 12 countries.

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