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EU: SIS II in crisis: SIS I reloaded?

by Eric Töpfer

The planned shift from SIS I to SIS II has been delayed by lack of “stability” and “flaws” in the new system and MEPs are not amused to learn about the problem through the press

When Jacques Barrot the European Commission’s vice-president, and as Commissioner for Justice, Freedom and Security the person in charge of the development of the central unit of the second generation Schengen Information System (SIS II), admitted on 11 March 2009 during the European Parliament’s debate on the state of play of SIS II, that the project had “not met the contractual requirements”, MEPs complained about not having been informed earlier. They said that they had learned about the problems through media reports. (1)

On 18 December 2008 the Commission informed the Article 36 Committee (CATS) that significant problems had become apparent when the central system (C.SIS II) was tested under operational conditions by a limited number of Member States in November and December. One particular problem was the data consistency between the central unit and the national systems (N.SIS II) but also the overall performance and stability of the system did not meet up to expectations. Whether these problems are of a technical or political nature is contested. At the 12th European Police Congress held in February in Berlin, a representative from Mummert Steria, which delivers key components for the C.SIS II, insisted that the central unit was running faultlessly. (2)

Whatever the nature of the problems, they became public for the first time at the informal Justice and Home Affairs Council meeting on 15/16 January 2009 in Prague. Commissioner Barrot was sharply criticised by ministers from the Member States when he reported that it is no longer realistic to complete the transfer from the current SIS I+ to SIS II in September 2009. With the Commission having allegedly invested more than 70 million Euro in the new system, (3) the Czech presidency took the initiative - “business as usual is not an option” - and drafted a crisis plan which was transformed into a formal conclusion at the JHA Council meeting on 26/27 February in Brussels. (4) Its conclusion reaffirms “that the rapid entry into operation of SIS II remains the absolute priority”.

A “root cause analysis” will locate fundamental flaws and guide the formulation of a “repair action plan” which should be in place by May at the latest. Parallel to these efforts an alternative scenario will be examined which would see the

upgrading of the current SIS to make it fit for the accession of the UK, Ireland, Cyprus, Romania, Bulgaria and the non-EU Member State, Liechtenstein. Moreover, the feasibility of integrating biometric data (as planned for SIS II) into the old system should be studied as well as the costs and effects that such an alternative approach would have for the implementation of the Visa Information System (VIS) and the N.SIS II that are already in operation. To improve the coordination between the SIS II Task Force and the Member States, a “global programme management” has been put in place aiming to draw key national experts to Strasbourg. Based on the progress over the next few months the JHA Council Meeting on 4/5 June is expected to make a final decision on the future of SIS II.

90% of SIS entries made by France and Italy

Meanwhile the old SIS is still busy, with the Slovenian EU presidency claiming in late 2008 that it was “the most effective tool in international police cooperation”. (5) With nearly 930,000 entries on individuals and more than 26 million entries on objects and vehicles it has reached a new peak (see table below). Interestingly, input into the SIS is still very uneven: Italy alone is responsible for one third of the total entries, and only two Member States (which are unnamed in the recent statistical analysis but are likely to be Italy and France given the 2007 Schengen Joint Supervisory Authority’s report on the Article 99 inspection) provide 90 per cent of the entries

Over the last eight years the number of data entries has tripled which is partly due to the accession of new Member States to the SIS. (7) Thus, the number of entry alerts for objects and vehicles shows an increase of around 10 million items of data after the Schengen area was expanded to nine Member States in September 2007. Alerts for the purpose of refusing entry dropped by more than 50,000 in 2008 as entries on EU citizens had to be deleted. However, this number has now almost reached the 2007 level once again.

Ironically, it seems that increased data entries and the rise in “hits”, which increased by 60 per cent in 2008 compared to the previous year, is becoming a problem for the SIRENE offices in countries where staff have not increased significantly. The 652

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Deaths at the borders: the effect of EU policies in Morocco see page 13

Statewatch, PO Box 1516, London N16 0EW, UK

Tel: (00 44) 020 8802 1882 Fax: (00 44) 020 8880 1727 E-mail: office@statewatch.org Website: <http://www.statewatch.org>

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SIRENE officers in the then 24 Schengen area countries had to digest 122,115 hits in 2008. In Germany with its 66 SIRENE officers at the Federal Criminal Police Office (BKA), for example, the number of “hits” increased from 14,508 in 2007 to 19,264 hits in 2008. (8) Thus, a recent report of the SIS II Task Force identified (alongside budget and contractual difficulties) “serious problems in resources” in nine Member States as the main risk for their participation in SIS II. (9) Hence, the migration from the old to the new systems is likely to be the next bottleneck in SIS II implementation even if the technical problems are solved.

With the prospect of more data categories (including ships, containers and airplanes) being entered onto the new system the rebirth of the pan-European police computer system will remain

at the top of the European justice and home affairs agenda for some time to come.

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- 3 *heise online, 17.1.09*
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- 5 *EU Council doc. 15934/08, 18.11.08.*
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- 7 *ibid.*
- 8 *EU Council doc. 5171/09, 19.2.09.*
- 9 *EU Council doc. 7789/09, 19.3.09.*

Article Convention Implementing Schengen Agreement	Purpose	C.SIS 1.1.2006	C.SIS 1.1.2007	C.SIS 1.1.2008	C.SIS 1.1.2009
95	Wanted for arrest or extradition	15,460	16,047	19,119	24,560
96	Refusing entry	751,954	752,338	696,419	746,994
97	Missing persons	39,011	42,500	47,501	48,559
98	Communicating place of residence or domicile	45,189	50,616	64,684	72,958
99	Discreet surveillance or specific checks	31,013	33,275	31,577	34,247
	Total entries on persons	882,627	894,776	859,300	927,318
100	Banknotes	252,442	241,062	177,327	168,982
100	Blank official documents	403,900	386,440	390,306	360,349
100	Firearms	297,021	294,490	314,897	332,028
100	Issued ID papers	11,353,906	13,752,947	17,876,227	22,216,158
99/100	Motor vehicles	1,469,378	1,731,115	3,012,856	3,618,199
99/100	Trailers or caravans	3,153	3,063	2,984	Inc in above
	Total entries on objects and vehicles	13,779,800	16,409,117	21,774,597	26,695,716
Source		Council doc 5239/06	Council doc 6178/07 13.2.07	Council doc 5441/08 30.1.08	Council doc 5764/09 28.1.09

EU agrees rules for remote computer access by LEAs - but fails, as usual, to mention the security and intelligence agencies

by Tony Bunyan

The issue of state agencies getting “remote access” to computer hard drives came to light in June 2008 when the German government proposed a new law to give it main police agency this power in terrorist investigations. The German Ministry for the Interior proposed amending the Federal Criminal Police Office Act to allow authorisation to conduct online remote computer hard drive searches (and video surveillance in private homes) in “cases of terrorist threats”. This allows:

the surveillance of private homes and telecommunications as well as remote searches of computer hard drives

The technology might be used when accessing a hard drive is Trojan software or more specifically “Rootkits” (which remain quietly hidden from the computer owner while accessing and spying on the content) or more likely what is called “Remote

Forensic Software”[1].

The position in Germany is public but what is happening elsewhere? The lack of legal powers has never stopped security and intelligence agencies in the UK (or the USA) from exploiting new technologies - if it is technologically possible then use it is the agencies’ rationale.[2] For decades British Telecom gave details of phone-calls to MI5 (internal security agency), MI6 (external intelligence service) and Special Branch on request – a power only made lawful under the Regulation of Investigatory Powers act (RIPA 2000). Under RIPA police and security agencies can get access to communication data (“traffic data”) for example, a listing of e-mails sent and received and who they are from – but not the content which requires separate authorisation through a specific case warrant. However, they

have the technical ability to enter any service provider, search for a “target” and get access to traffic data and the *content* – which of course they do, even though it is not lawful. Moreover, in the UK the agency which would handle remote computer access is GCHQ (Government Communications Headquarters), which works closely with the USA’s NSA and is part of the Echelon network.

So the question is who else is using “Remote Forensic Software” to remotely access computer hard drives through which state agencies can both “spy” on the user and also add or change content?

The EU initiative on remote access

On the 11 July 2008 the EU Council Presidency circulated a Note on a: “*Comprehensive plan to combat cyber crime*” to COREPER - the Council committee of Brussels-based high-level representatives of each Member State (EU doc no: 11784/08).

Under the sub-heading “The emergence of new issues” it said that there were some: “projects already in existence” which require “common approaches” including:

the area of remote computer searches, which are a delicate issue because of their cross-border nature. (emphasis added)

Reading between the lines the phrase: “projects already in existence” implies that state agencies in some Member States are already conducting cross-border remote computer searches both in their home countries and across borders in other states.

This Council Presidency Note of 11 July was very swiftly transformed into a proposal for formal Council “Conclusions”. The penultimate version (EU doc no: 13567/08) refers to:

measures to facilitate remote computer searches, allowing investigators rapid access to data

The adopted version, which slipped unnoticed, and un-reported, through the November Justice and Home Affairs Council as an “A” Point (adopted on the “nod” without discussion, EU doc no: 15569/08) is more diplomatic saying:

facilitating remote searches if provided for under national law, enabling investigation teams to have rapid access to information, with the agreement of the host country

There is no mention of the “*delicate issue*” of “*cross-border*” searches, nor would anyone reading this adopted version (and not having seen the two earlier documents) necessarily realise that “remote searches” refers to “remote computer searches”.

The caveat that these searches have to be “provided for under national law” and be carried out “with the agreement of the host country” suggests lawfulness and accountability. However, these “Conclusions” explicitly concern Treaty-based EU “police and judicial cooperation” *not* the security and intelligence agencies who are nowhere mentioned (see below). The “Conclusions” are not limited to terrorism but extend to the whole field of police and judicial cooperation.

The concept of “cyber-crime” currently covers scams such as “phishing” (getting confidential information from victims); terrorism; child pornography and attacks on information systems. However, the stated intention is to extend these categories to “other areas” - one such extension is to cover “material [that] glorifies violence and terrorism”.

Council “Conclusions” are policy statements which lay down markers for any future policies put forward by the European Commission. They are non-binding (“soft law”) but they do enable (legitimate) any or all EU Members States and their agencies to introduce measures to “facilitate” remote computer searches at will.

G6 plus USA

Remote access to computer hard drives came up again at the G6 meeting in Bonn on 26-27 September 2008. G6 is an

intergovernmental group comprised of the Interior Ministers of the six largest states in the EU – the only documents ever released are Press releases or set of Conclusions.[4] At the Bonn meeting they were joined by the Secretary of Homeland Security from the USA.

Arguing that the terrorists’ use of modern technology required effective counter-measures:

The interior ministers note that almost all partner countries have or intend to have in the near future national laws allowing access to computer hard drives and other data storage devices located on their territory. However, the legal framework with respect to transnational searches of such devices is not well-developed. The interior ministers will therefore continue to seek ways to reduce difficulties and to speed up the process in future (para 13).

Let’s break this statement down. First, “almost all partner countries have or intend to have” laws allowing remote access to computer hard drives - the only country to have a law, passed after this meeting, is Germany. “Almost all” suggests most of the six intend to bring in such laws. If “almost all” intend to introduce laws allowing remote access this means they all have the technological capacity to carry out such searches now. How many are already carrying these out?

Second, we are told that the “legal framework” for “transnational searches” is “not well-developed”, shorthand for non-existent. “Transnational searches” of computer hard drives do not require the physical presence of an officer/agent to enter a property as they are carried out “remotely” through the ether. The norms of traditional police cooperation, where one EU state requests information or data from another state, are to be put in place – but the security and intelligence agencies have few, if any, legal restraints placed on them compared to law enforcement agencies (LEAs).

Third, as the US Secretary for Homeland Security was sitting at the table it might reasonably be assumed that US agencies have exactly the same technological capability, indeed it would be extremely naive to assume otherwise. This leads to an obvious conclusion, if an Italian security agency can remotely access a computer hard drive in Spain, then US agencies can remotely access any computer in the EU.

How security and intelligence agencies avoid the limelight

In the UK remote computer hard disk searches are not covered by the Regulation of Investigatory Powers Act 2000 – it does allow the physical entering of premises/vehicles/offices to place “bugs” (listening devices) but not remote computer access by security and intelligence agencies.

This glaring “gap” is reflected in the EU where there is hardly any mention of internal security agencies in the 27 member states.[5] The Framework Decision on data protection for the exchange between member states of information/intelligence expressly *excludes* internal security (and intelligence) agencies. Nor is there any reference to them in the Schengen Information System (SIS) or SIS II rules or indeed any of the EU/EC Treaties. “Out of sight” goes hand-in-hand with lack of accountability.

A few changes are happening in the post 11 September 2001 world where a limited degree of visibility legitimates their surveillance of “suspect communities” across the EU which, in turn, has led to LEAs working more closely with internal security agencies.

If the Lisbon Treaty is adopted a new EU Standing Committee on internal security (COSI) will be set up to deal purely with “operational matters” – a sure sign that its deliberations will be kept secret. More ominously Article 61 F of the Lisbon Treaty says:

It shall be open to Member States to organize between themselves and under their responsibility forms of cooperation and coordination as

they deem appropriate between the competent departments of their administrations responsible for safeguarding national security.

In the longer term the Lisbon Treaty (if adopted) would see the creation of a European External Action Service with EU embassies gathering intelligence – leading to an enhanced role for the Council's Joint Situation Centre (SITCEN).[6]

Conclusion – on the road to “total tyranny”

There are two broad categories of surveillance: *mass surveillance*, for example, the gathering of travel details on all air passengers in the EU or mandatory data retention of everyone's communications and *targeted surveillance*. Initially at least the use of remote access to computer hard drives will be used by the security and intelligence agencies against specific targets. However, as the scope of targets is extended to those who present a perceived danger to the state this could include lawyers working on contentious cases spied on or journalists working on sensitive stories or protest groups planning a demonstration.

A quote from Senator Frank Church who headed a seminal inquiry in 1975 into the surveillance of the peace movement in the USA (the “Church Committee report”) seems pertinent:

If a dictator ever took charge in this country, the technological capacity that the intelligence community has given the government could enable it to impose total tyranny, and there would be no way to fight back because the most careful effort to combine together in resistance to the government, no matter how privately it was done, is within the reach of government to know. Such is the capacity of technology.

And that was more than 30 years ago.

1 *This feature re-caps on and updates the story “EU: Remote searches of computer hard drives” (Statewatch vol 18 no 3, p1).*

2 *See on Rootkits: <http://www.5starsupport.com/tutorial/rootkits.htm>*

3 *The “security and intelligence agencies” (SECINT) are quite distinct from the “law enforcement agencies” (LEAs which include police, immigration and customs) in powers, remit and “need to know”.*

4 *The first meeting of the G5 – Germany, France, Italy, Spain and UK (before Poland joined the Group in 2006) was held in France in October 2003.*

5 *A rare exception is the measure on who can access the Visa Information System and for what purpose.*

6 *SITCEN was set up in 2005 on the authority of Mr Solana, Secretary General and High Representative of the European Council.*

EU-IRAQ: The forgotten casualties of the war

by Max Rowlands

Based on an unreleased Commission report this article exposes what is happening to an estimated 2 million refugees living in Syria and Jordan - and the EU's response

The European Commission presented a confidential report detailing the conditions in which millions of displaced Iraqis now live to the 27 November 2008 Justice and Home Affairs (JHA) Council.

From 1-6 November, the Commission had conducted a fact finding mission to Jordan and Syria, in close cooperation with the UN refugee agency (UNHCR), to ascertain the resettlement needs of the estimated two million refugees currently residing in those countries. The report reveals that many Iraqi refugees are living in deteriorating and increasingly precarious circumstances due, in part, to the depletion of their savings and to the growing intolerance of their presence by local communities. It identifies a significant number of vulnerable Iraqis for whom resettlement is the only viable option and calls for greater intake from the international community, specifically the European Union. It reveals that only 13,122 Iraqis were resettled between January 2007 and November 2008, and that EU Member States were responsible for admitting less than 10% of that number. In response, the JHA Council announced that Member States would accept approximately 10,000 Iraqi refugees on a purely voluntary basis. It is to be regretted that no timeframe was given for reaching this target and that by April 2009 little progress has been made.

Conditions of Iraqi refugees in Syria and Jordan

The delegation consisted of members of the European Commission and officials from ten EU Member States (Cyprus, Finland, France, Germany, Italy, Luxembourg, Netherlands, Poland, Sweden and the United Kingdom). They held meetings with, among others, Syrian and Jordanian government officials, UNHCR representatives working in the region, international and local NGOs, EU Member State, Canadian and US embassies, Iraqi refugee outreach workers, and Iraqi refugees.

Syrian and Jordanian government officials told the delegation that there are in excess of 1.5 million Iraqi refugees in Syria and between 450,000 and 500,000 in Jordan. According to

UNHCR, most Iraqis living in Syria are middle class with professional backgrounds. Many initially relied on their savings to support themselves but have increasingly been forced to seek financial assistance. The depletion of savings has led to an increase in homelessness, child labour, forced prostitution, child marriages and domestic abuse.

Both countries emphasised that they provide free access to health care and education to all refugees. This claim was largely backed by UNHCR but the report notes that in Jordan:

refugees themselves did not describe the situation in such positive terms and also pointed to the number of Iraqi children attending schools, which seems low compared to the estimated total Iraqi population in Jordan. According to them this raises questions with respect to the effective access to schooling for Iraqi children.

Further, government officials in both countries stressed that their generosity has placed a heavy burden on public budgets and led to increases in costs, “such as the need for increase in the number of police and border guards”. Accordingly, government officials from both countries called for increased support from the international community. The report notes that in Syria there is “...a serious problem with capacity of the current infrastructure and some alternative services, provided by the UN agencies and NGOs, have had to be established.” Worryingly, UNHCR suggests that this has placed a strain on relations between Iraqis and Syrians:

UNHCR said that the Syrian hospitality toward the Iraqis is wearing thin, and that the population is increasingly questioning whether Syria should continue bearing this large burden. According to UNHCR, Syrians point to all sorts of negative consequences of the presence of Iraqis (increase in prices, in criminality etc).

Despite this, and the fact that neither country is a signatory to the 1951 Refugee Convention and its 1967 Protocol, UNHCR maintains that there have not been any major incidents and that good “protection environments” exist in both countries. In Syria this has been aided by the lifting of restrictions on international

NGOs; 12 have now obtained authorisation to work with the country's refugee population.

However, in Jordan the delegation received conflicting reports over the deportation of refugees back to Iraq. Government officials claimed that they would deport individuals only on the basis of national security and that there have been merely a "handful" of cases. UNHCR said that they believed there to have been only a few deportations since 2007, but other NGOs and Iraqi refugees that the delegation spoke to indicated that the practice is more widespread and gave the impression that "Iraqis do not feel secure about their situation in the country."

The Jordanian government and UNHCR signed a memorandum of understanding which stipulates that Iraqis who register with UNHCR are to be classified as asylum-seekers rather than refugees. But only 53,500 Iraqis have registered with the organisation; less than a ninth of the total number. UNHCR reported that only 219,690 of a possible 1.5 million Iraqis have registered with them in Syria.

Further, at the request of the Iraqi government, both Syria and Jordan now require Iraqi nationals to obtain a visa before entering either country. To enter Jordan a visa must be applied for within Iraq, but to enter Syria visas can be acquired at the border. The report says that it is unclear exactly how visa requirements are applied or who is eligible to be granted entry. It also acknowledged that the neediest Iraqis are not necessarily the ones admitted. Generally businessmen, those with family ties, and those with medical needs have the greatest chance of being granted entry. But while the Jordanian government claims to admit two thirds of applicants, the delegation received conflicting reports as to how difficult it now is for Iraqis to enter the country.

Iraqi Palestinians

Since the fall of Saddam Hussein's government, Palestinians living in Iraq have been subjected to sustained violence and persecution. Most have been forced to flee the country; many to Syria which already has a large Palestinian population of around 450,000. The Syrian government denied entry to all Iraqi Palestinians. While some were able to enter using false Iraqi passports before visa requirements were imposed, most of those who sought refuge there are now held in camps between the two countries' borders. The delegation visited a camp at Al Tanf; situated in the desert on a short strip of sand between the main road into Iraq and the Syrian militarised zone.

The location is totally unsuitable for human habitation due to the extreme climate (heat, sandstorms, floodings). There are no facilities or space for sports or recreation, and poor medical facilities. There is a tent-school for children until 15 years old. At the moment there are 800 Palestinians in this camp of whom 300 are children under 17 years old.

A further 300 Palestinians are held in similar conditions in the north-east at Al Hol, and 1,400 are held in a camp at Al Waleed on Iraqi soil. The report emphasises that:

The situation in which these Palestinian refugees live is extremely bad, and is compounded by their isolation and the hopelessness of their situation, given they can not return to Iraq and are not allowed to enter Syria...These refugees are urgently in need of protection. As protection is not available in Syria, resettlement is the only option.

The need for resettlement

Local integration into Syrian or Jordanian society is not an option for the vast majority of refugees because they are not permitted to work in either country. UNHCR reports that very limited categories of Iraqi nationals, such as businessmen, can seek permission to remain. Those the delegation spoke to (i.e. representatives of the Syrian and Jordanian governments, UNHCR, other NGOs and refugees themselves) believe voluntary return to Iraq to be the only feasible long term solution for the majority of refugees. Is it clear, however, that the present

situation is not conducive to this. This is emphasised by the fact that there are still more Iraqis entering both countries than leaving. At present, those who return to Iraq do so at great risk:

It appears that some Iraqis are returning to Iraq because they can hardly survive in Syria, due to impoverishment. However, some Iraqi refugees were forced into secondary displacement or were obliged to come back to Syria, with dramatic stories about what happened to them in Iraq. The Iraqi refugees met by the delegations stressed that return is not currently a possibility because of security concerns.

UNHCR recognises that, even in the long-term, return to Iraq is not feasible for some refugees. These vulnerable individuals are in urgent need of resettlement. UNHCR uses the following criteria to identify those most at risk: victims of severe trauma, detention abduction or torture; members of minority groups; women at risk; unaccompanied and separated minors; persons in need of family reunification; older refugees at risk; high profile persons; persons perceived as sympathisers of the international military presence in Iraq; persons with severe medical problems; persons at risk of refoulement and stateless persons.

UNHCR offices in the region mainly identify refugees in need of resettlement through their registration procedures, but this is problematic given the low percentage of Iraqis who choose to register; many incorrectly think that doing so may lead to detention on the basis of illegal stay. Outreach programmes have therefore been established in an attempt to reach particularly vulnerable individuals. In UNHCR's 2008 Global Needs Assessment the organisation estimates that of the refugees registered with them at the time, 10,000 needed resettlement from Jordan, and a further 65,000 from Syria. They emphasise that "needs are constantly evolving" with refugees becoming increasingly vulnerable. UNHCR also highlights the plight of the 2,400 Iraqi Palestinians living in refugee camps for whom there is no alternative to resettlement.

UNHCR calls for a significant change in approach from an international community that accepted only 13,122 refugees from Jordan and Syria between January 2007 and November 2008. Of that total, EU Member States resettled only 1,196 people and Sweden, which already had a sizeable Iraqi population, admitted 539 of these refugees. The fact that only 9% of UNHCR submissions are currently being made to EU Member States has led the organisation to call for increased quotas and a broadening of the resettlement base to reflect a "truly international effort, and to demonstrate burden sharing." This would also provide alternative destinations to refugees who are either inadmissible for resettlement in the US or have valid reasons for not wanting to relocate there. Further, some refugees wish to be reunited with family members in European countries. Others are in urgent need of healthcare and specialised services such as psycho social assistance and trauma counselling.

The EU's response

The 27 November JHA Council acknowledged the findings of the Commission's report. While stressing that the main objective should be to create conditions in which Iraqi refugees can safely return home, it noted that there are "easily identifiable" vulnerable people in need of resettlement. While the Council welcomed the fact that some Member States are already accepting Iraqi refugees as part of national resettlement programmes, it recognised the positive implications of increased intervention:

a greater effort towards resettlement in the countries of the European Union would send a positive signal of solidarity to all Iraqis and of cooperation with Syria and Jordan for the maintenance of their area of protection.

Accordingly, the Council invited Member States agreed to take in particularly vulnerable refugees, albeit on a voluntary basis:

In the light of the resettlement objective established by UNHCR and taking into account the number of persons already taken in or planned to be taken in by Member States, in particular under their national

resettlement programmes, the objective could be to receive up to approximately 10,000 refugees, on a voluntary basis.

France's immigration minister, Brice Hortefeux, who chaired the meeting, explained that the scheme has to be voluntary because there "would not have been an agreement if it had been based on a constraint." But only eight EU countries have formal resettlement schemes for Iraqi refugees (Denmark, Finland, France, Ireland, Netherlands, Portugal, Sweden and the UK) and to date Germany is the only country without one to commit resources towards the Council's target. Wolfgang Schauble, Germany's Minister of the Interior, announced that they would accept 2,500 refugees, but as of April 2009 only 122 Iraqis have been admitted. Malta, Cyprus and Greece voiced their dissatisfaction with the Council's decision arguing that they have already hosted a large number of refugees in proportion to their populations. It should be noted that no timescale for reaching the figure of 10,000 has been given. In addition, Hortefeux confirmed that all Iraqis who have previously been resettled in EU countries will count towards the target.

In March 2009, UNHCR's High Commissioner, António Guterres, called on European governments to accept 60,000 Iraqi refugees, this despite minimal progress having been made towards the Council's initial target of 10,000. In a memorandum to the JHA Council that met on 26 February 2009, the European Council on Refugees and Exiles (ECRE) called for the EU to go from "words to action" and suggested that only refugees resettled after 27 November 2008 should count towards the figure. The organisation voiced concerns that no indication has been given as to how many of the 10,000 refugees would be Iraqi Palestinians and urged Member States without resettlement programmes to initiate one. In addition ECRE stressed that for

resettlement to be a truly durable solution, refugees must always be given permanent legal status in order to provide a secure basis from which they can build new lives. This is not currently standard procedure for all Member States; Germany issued the 122 refugees it recently received with three-year extendable residency permits.

The JHA Council's target is conservative given the scale of the displacement and the deteriorating conditions in which many Iraqi refugees are living. Further, the absence of a deadline, and the fact that Member State participation operates on a voluntary basis, means that there is no guarantee it will ever be met. Greater commitment to the plight of Iraqi refugees is urgently required.

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EU: Statewatch wins complaint against European Commission over its failure to maintain a proper public register of documents

by Tony Bunyan

The European Ombudsman and the European Parliament call on the Commission to maintain a proper public register but it refuses to comply and reacts by trying to change the definition of a "document". There are indications it is creating new system to "vet" documents before they are placed on its public register

On 16 October 2006 *Statewatch* registered a complaint against the European Commission with the European Ombudsman for its failure to maintain a proper public register of documents under Article 11.1 of the Regulation. This Article says:

To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.

The definition of the "documents" to be placed on the public register "without delay" is set out in Article 3.a:

'document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;

These obligations have to be seen in the context of Article 1 of the Regulation which obliges the institutions "to ensure the widest possible access to documents". And Recital 2 says access to documents: "enables citizens to participate more closely in the decision-making process".

We said the Commission's register of documents does not fulfil the requirements of Regulation 1049/2001 because it contains only a fraction of the documents produced and received by the Commission in the course of its activities.

Furthermore, as four years have now passed since the deadline set down in the Regulation, I believe that the Commission's failure to implement Community law by ensuring the widest possible access to its documents via a public register is a case of maladministration.

Article 11.3 of the Regulation says that each of the three main EU institutions was obliged to "establish a register which shall be operational by 3 June 2002".

Finally, the question was asked why could not the documents registered on the Commission's Adonis information system be placed on the register?

The complaint was forwarded to the Commission and Mr Barossi, the President, responded on 22 May 2007 with the comment:

A fully comprehensive register requires a precise definition of what is a "document" that has to be included in the register.

It was hard to see how much clearer Article 3.a had to be. The Commission also argued that Article 11:

does not stipulate that public registers should include references to all documents.

Again Article 11 could not be clearer: "References to documents shall be recorded in the register without delay." Its response repeated its long-stated position:

The Commission will continue to gradually extend the scope of its

public registers and other information tools available to the public. (emphasis added).

On the question of why the Adonis system could not feed through documents into the public register the Commission replied:

Adonis is the common software used by the Commission services for the internal registration and follow-up of mail and documents. Each Directorate General or administrative unit has its own internal register of documents. In the near future, a new centralised document management system should replace the Adonis software.[1]

On 27 June 2007 we responded asserting the clarity of the definition of a “document” and of the intended content of public registers of documents. As to the content of the public register the Regulation:

does not say some documents or certain documents, it clearly refers to all documents. Since the Regulation contains a number of express exceptions to its rules, it follows that if the drafters of the Regulation wanted Article 11 to apply to some documents only, they would have specified this expressly.

As to the possibility that a “new centralised document management system” might provide an answer we said:

in the light of their contention that:- the definition of a "document" in the Regulation is not acceptable to the Commission: there is no obligation under Article 11 to include references to all documents and there is no guarantee whatsoever that a new "centralised document management system" will lead to a proper public register of documents being provided.”[2]

Ombudsman seeks clarification

On 5 July 2007 the Ombudsman wrote to the Commission, on his own initiative, to seek clarification on a number of points.

In its earlier reply the Commission had claimed that the Regulation had “a particular focus” on legislative activity (Article 12) and in its 2004 report on implementation that documents “other than” the latter would be “gradually extended”. However the extensions in the register’s coverage until now (ie: 2003–2007) “would essentially appear to be limited to the Commission’s activity concerning legislation” and:

Could the Commission therefore please specify if it considers that its register(s) only need to list documents concerning its involvement in the legislative process of the Communities and, if so, what the reasons for this belief are?

The same 2004 report recognised that most applications for access to documents concerned not legislative matters but:

rather the monitoring of the application of Community law.

and in the light of this:

Could the Commission please explain why it nevertheless considers that its present approach to Article 11 of Regulation 1049/2001 is in conformity with the letter and the spirit of that Regulation?

Six months later, on 10 January 2008, the Commission replied. They said that because of the “wide” definition of a “document” in Article 3.a it was “impossible” to operate a comprehensive register. However, it admitted that each DG (Directorate-General) had its own “internal register of documents”, why could these not be used to extend the scope of the register under Article 11?

The Commission claimed that it operated a number of “registers” (the public register, one on comitology and another with the Commission President’s correspondence) but *Statewatch* said Article 11 does not refer to registers in the plural but rather to “the register” (singular).[2]

The Commission agreed that the Regulation does not only cover legislative documents but then reiterated the view that it placed “particular emphasis” on them. On the second point the Commission simply repeats its position, it does not agree with the definition of a “document” (Article 3a) and that is

“impossible to set up a fully comprehensive register”. And it rejected the view that Article 11 referred to a single register.

The most revealing aspect of the Commission response concerned “Internal registers” and whether they could be transposed into the public register. In the Directorate-Generals:

There are common rules for the registration of documents and all administrative units use common software. However, these registers do not have a uniform data format. Furthermore, these registers were set up for internal administrative purposes and their content cannot be simply transferred to a public register. The data contained in the internal registers would have to be screened, selected and reformatted through interfaces before they could be fed into a public register. This would require important investments, which would be useless since the current system will be replaced with a new single registration system.

Let us break this statement down.

- All DGs have “common rules” and use “common software” (Adonis).

- However, “these registers” were set up for “internal” purposes and their content “cannot be simply transferred” to a public register.

- Why not? Because the documents in the internal registers would have to be:

screened, selected and reformatted through interfaces before they could be fed into a public register (emphasis added)

- The Commission cannot use the *present system* because documents would have to be **selected and vetted**

- this would be too expensive and “useless” as the present system is to be replaced with a “*new registration system*” (this is called “Ares”, see below)

- so is the “*new registration system*” being constructed so that it can “screen” and “select” the documents to be placed on the public register?

On 7 March 2008 *Statewatch* responded contesting the Commission opinion that it was not obliged to create a single public register (Article 11) and observed:

Moreover, if the other institutions took a similar stance access to EU documents would become partial and piecemeal as each could pick and choose what to include in its register.

The same, it was argued, goes for the Commission’s continued rejection of the definition of a “document”. We also asked why “internal” documents had to be “screened” and “selected”.

Ombudsman’s Draft Recommendation and the Commission’s response

On 7 April the Ombudsman issued his Draft Recommendation which, having examined all the arguments was:

The Commission should, as soon as possible, include references to all the documents within the meaning of Article 3(a) that are in its possession in the register foreseen by Article 11 of this regulation, to the extent that this has not yet been done.

The Commission and the complainant will be informed of this draft recommendation. In accordance with Article 3(6) of the Statute of the Ombudsman, the Commission shall send a detailed opinion by 15 July 2008. The detailed opinion could consist of the acceptance of the Ombudsman’s decision and a description of the measures taken to implement the draft recommendation.

Strasbourg, 7 April 2008

The Ombudsman’s finding and Recommendation could not have been clearer – the Commission had to list all the documents in its possession on the public register.

The Commission did not respond until 18 August 2008 by which time – on 30 April – it had proposed that the definition of a “document” should be changed! (see below).

In its response the Commission simply repeated its rejection

of the definition of a “document” and that it was obliged to list all documents held on the public register. And it concluded:

it regrets that it is unable to accept the Ombudsman's draft recommendation as it is formulated since it suggests that the register has to contain the references to all documents as defined in Article 3(a) of the Regulation.

Indeed, it is logically impossible to combine a wide and imprecise definition of documents with a fully comprehensive public register.”

What was illuminating in this final response from the Commission was a bit more detail on why the current Adonis registration system used by the DGs cannot be used to load up lists of documents held. We are told that:

There are common rules and common software for the registration of documents but no single data base.

The Commission is in the process of phasing out the existing system and introducing a new centralised registration system. Some Directorates-General operate the new system (Ares). This new system will gradually be introduced in the whole of the Commission. Substantial financial and human resources are being invested in this huge project (migration period 2009 to 2010).

The reason why under the current system (Adonis), there is no single Commission-wide database is the lack of security levels in this system. Therefore, each administrative unit operates its own local register. The data in Adonis has been entered under the assumption that it would only be seen by a limited number of people, usually the members of the relevant administrative unit. Therefore, the records in the Adonis registers contain information which legitimately must be protected. For this reason the information contained in the Adonis registers cannot simply be transferred into a public register. Before transfer to a public register, every single Adonis record would have to be vetted, and possibly edited, by a person who is familiar with the subject matter.

Such a screening and editing exercise of all existing Adonis records would require considerable resources. The Commission intends starting transferring records into a public register once the new internal single registration system (Ares) has become operational.

The argument for not using the current Adonis system is again stated to be “the lack of security levels”. Why, because “every single Adonis record would have to be vetted, and possibly edited, by a person who is familiar with the subject matter.”

The clear implication is that the new Ares registration system will have “security levels” built in and that only documents that have been “vetted” and possibly “edited” will go on to the public register of documents.

Statewatch responds and Ombudsman issues Critical remarks”

Statewatch responded to the Commission’s letter on 6 October 2008. Opening with the remark that:

The Commission response is very disappointing. Its response adds little to the views it had already expressed prior to the Ombudsman’s Recommendation.

We observed that the Commission has invested in a “huge project” (Ares) and that:

it would appear that the Commission is actually constructing a registration system (over the period 2008-2010) designed to ignore the Regulation and Articles 3.a and 11 in particular.

And asked the question:

Could there be any connection between the new “Ares” registration system being under construction from 2008 (which appears to presume the “vetting” and “editing” of documents to be made public), the Ombudsman’s Recommendation on 7 April 2008 and the change to the definition of a “document” agreed by the Commission on 30 April?

This echoed a speech to a hearing held in the European

Parliament on 2 June 2008 where Professor Steve Peers observed in relation to this *Statewatch* complaint that:

it seems that the Commission has proposed changes to the rules in order to avoid complying with a pending ruling of the Ombudsman against them.

On 18 December 2008 the Ombudsman found it an instance of maladministration by the Commission and issued “Critical remarks” and said:

The Ombudsman remains unconvinced that it would be impossible, or logically impossible, to maintain a register of all documents that are in possession.

As to the new Ares document registration system the Ombudsman notes that:

*the Commission has not provided any explanations as to which documents will be added to these registers” [that is, DG registers] ... and that the effect of the introduction of the new registration system on the contents of the Commission’s register **remains far from clear.** (emphasis added).*

It should be noted that before issuing his “Critical remarks” the Ombudsman discussed with the Commission its response to the complaint – which makes his comment that the effect of the new Ares system “**remains far from clear**” all the more worrying.

On 14 January the European Parliament adopted a Resolution on the implementation of Regulation 1049/2001 (Rapporteur: Cappato) which:

Urges the Commission to follow the recommendation of the European Ombudsman (Complaint 3208/2006/GG) on the Commission register as regards its obligation to “include references to all documents within the meaning of Article 3(a) that are in its possession in the register foreseen by Article 11 of [Regulation (EC) No 1049/2001], to the extent that this has not yet been done.

The Ombudsman said that the case “raises important issues and that making a special report would therefore be justified” but that as the European Parliament was about to adopt a Resolution a special report was not needed.

How Statewatch's complaint led the Commission to try and change the law

In a perverse turns of events it appears that Statewatch's successful complaint instead of leading to lawful compliance by the Commission has lead instead to it trying to change the law, to propose amending the Regulation by changing the definition of a "document". Let us go back in history to see how this occurred.

In December 1993 the Council of the European Union and the Commission both adopted a Code on access to documents, following the implementation of the Maastricht Treaty. The Code contained the following definition of a "document":

"Document" means any written text, whatever its medium..

After the Amsterdam Treaty the definition of a "document" in Article 3a of 2001 Regulation was the same.

In April 2007 when the Commission put out a consultation paper on the Regulation it might have been thought that if it wanted to change the definition of a "document" the paper would have included this question - it did not. When the Commission reported back on the results of the consultation in January 2008 it noted that:

The concept of a document: As regards the concept of a "document" the general feeling was that the current wide definition should be maintained.

So in January 2008 some 15 years after the definition of a "document" had been in place there was no demand to change it by the Commission or anyone else.

Yet just three months later, on 30 April 2008, the Commission proposed that it should be changed and narrowed down:

«document» shall mean any content whatever its medium (written on

paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered, or received by an institution;

At a stroke a "document" would not be a "document" until it is "formally transmitted".

What changed between January and April 2008? Quite simply on 7 April 2008 the European Ombudsman made his Recommendation saying all documents held had to be listed on the Commission's register of documents. The Commission had lost the argument so it sought to change the law.

This was not all, the *Statewatch* complaint revealed yet another question.

Is the Commission installing a new information management system to "vet" which documents are listed on its public register?

The Commission's proposal to change the law by re-defining what is a "document" may have had an even more disturbing reason than simply its view that the definition is too wide. The Commission has argued since at least 1998 that each of its 20+ Directorate-Generals had their own document registration

systems. But with the Amsterdam Treaty, and its commitment in Article 255 to greater openness, coming into force in 1999 and the Regulation on access to EU documents in 2001 the Commission could have been in no doubt as to its legal obligations. The Regulation clearly stated in Article 11 that public registers "shall be operational by 2 June 2002".

In its penultimate and final representations the Commission said that documents held under the current "Adonis" information management system cannot be put on the Commission's public register as they would have to "be vetted, and possibly edited, by a person who is familiar with the subject matter. This is said to be due to "the lack of security levels" in Adonis. The Commission goes on to say that it will:

start transferring records into a public register once the new internal single registration system (Ares) has become operational.

This implies that the new "Ares" system has "security levels" built into it and that only certain documents – those which have been "vetted" or "edited" or otherwise cleared – will be placed on the public register.

Conclusions

Access to documents is the life-blood of a democracy. It allows citizens, civil society and parliaments to find out what is being

Sixteen years ago John Carvel, then the *Guardian* newspaper's Brussels correspondent, made one of the first requests to the Council of the European Union under the newly adopted Code of access to documents (December 1993). John asked for copies of all the documents put before the first meeting of the new Justice and Home Affairs Council meeting in November 1993 and when the Council refused access he took a case to the European Court of Justice (ECJ). He won the case in November 1995 and received a thick package of documents from the Council. John rang me so that he could come round to my home to look at the contents. Sitting at my kitchen table the package revealed a grand total of eight documents and the press release.

I too had been at the November 1993 JHA Council in Brussels and just about the only document we did get hold of was the Agenda of the meeting so I rushed upstairs to my study and managed to find it.[1] This revealed that he should have received 49 documents plus the Minutes and the press release. After the threat of a further court case by 23 May 1996 all the documents were handed over. It had taken nearly two and a half years to find out what had been decided back in 1993.

This tale is recalled partly to show how far we have come over the past 15 years – with the Council, European Commission and European Parliament having voluminous numbers of documents available – and partly to highlight that one of the fundamental issues back then is back on the table again.

At the heart of access to documents, a basic democratic standard, is that citizens, parliaments and NGOs have a right to know what is being discussed – what are the options on the table, which ideas are accepted or rejected and why?

And just as fundamental in a democracy is the principle that we know what is being discussed **before** a decision is taken and the measure adopted, so that there can be a public debate and people can make their views known. It is so obvious it should not even arise.

Imagine what would happen at national level if a government did not publish a Bill, then discussed and adopted it in secret sessions or without any of the documents being available - what an outcry there would be. Of course today not all EU documents are withheld from public view but many of the most crucial ones are. The Council now gives direct access to around 70% of the documents listed on its public register of documents

which sounds very high, the problem is with the 30% it does not give access to. These are largely documents where the measure is still under discussion, precisely the ones that the public need to see to know what is going on.[2] In 2000 the Council refused *Statewatch* access to proposals on the proposed Regulation on access to documents because it could embarrass "the Council's partners" and:

could fuel public discussion on the subject

Access to documents is the life-blood of a healthy, vibrant, democracy and this means that every "document" produced and received by EU institutions is a "document", that every document must be listed on a public register and be accessible full-text. Any exceptions to giving full access to the text of a document should be extremely restricted to instances where "life and limb" could be threatened and should **not** extend to documents "under discussion" (Article 4.2) or documents from EU Member States (governments, Article 4.5) and certainly not documents from "third parties" (especially those involving the USA, Article 4.4).

A classic Commission response to diligent researchers – like *Statewatch* – who monitor a specific area of EU activity (ie: Justice and Home Affairs) – was given in its 2004 Report on the implementation of the Regulation:

Some systematic and repetitive applications can constitute unfair use of the Regulation. For instance applications that are obviously being used on a regular basis to fuel campaigns that are systematically hostile to Community policies.[emphasis added]

Since 1996 *Statewatch* has taken ten complaints to the European Ombudsman concerning the EU Regulation on public access to documents (1049/2001) against the Council of the European Union and the European Commission. All 10 have been successful - and nine of them have led to an increase in the right of access for all.

1 *Later Statewatch would have to take a successful complaint to the European Ombudsman to stop the Council's practice of destroying Agendas after one year.*

2 *Under Art 4.3 of the Regulation (1049/2001) the Council and Commission can refuse access to a document where "the decision has not been taken" and if disclosure would "seriously undermine the institution's decision-making process".*

proposed so that they have an informed debate and make their views known before measures are adopted or implemented.

Throughout the 26 months of correspondence the Commission has been utterly intransigent. It says it does not agree with the definition of a "document" as set out in EU law and does not agree that is obliged to list all documents on its public register as set out in EU law. The European Ombudsman and the European Parliament have called on the Commission to act on its obligations under EU law yet it refuses to do so.

This refusal is compounded by the fact that the Commission is charged under the Treaties with enforcing the implementation of EU law, especially EU Regulations. If the Commission, the custodian of EU law, can simply ignore the law why should not other institutions and agencies covered by the Regulation do the same? The Commission's refusal to act is simply unlawful, they have to be called to account.

Chronology

29 January 2009: European Ombudsman: Press release: The European Ombudsman criticises Commission for inadequate register of documents

14 January 2009: European Parliament adopts Resolution: Resolution on public access to European Parliament, Council and Commission documents (implementation of Regulation 1049/2001: Rapporteur: Marco Cappato)

18 December 2008: European Ombudsman: Issues detailed Critical Remarks

6 October 2008: Statewatch response to Commission's final response

18 August 2008: European Commission: Final response to Ombudsman's Recommendation

30 April 2008: Commission adopts proposal to amend the Regulation and to change the definition of a "document"

7 April 2008: European Ombudsman: European Ombudsman issues Draft Recommendation giving the Commission until 15 July 2008 to

[1] accept the Ombudsman's decision and [2] to provide to the Ombudsman a "description of the measures taken to implement the draft recommendation".

7 March 2008: Statewatch responds to Commission

22 January 2008: the Commission finally responds - given that it did not budge an inch it is hard to see why it took over six months to reply to the Ombudsman.

- The Ombudsman did not hear from the Commission by 15 December and on 10 January 2008 wrote to the Commission asking for a response to the letter of 5 July 2007 by 31 January 2008.

25 October 2007: Letter from the European Ombudsman stating that the Commission have asked for a further delay until 15 December 2007 in responding to the Ombudsman's letter of 5 July below

5 July 2007: Letter from the European Ombudsman states that the further complaint on Article 12 cannot be taken up in this context but attaches a three-page letter from the Ombudsman to the Commission seeking clarification of their position

27 June 2007: Statewatch responds to the Commission's letter

22 May 2007: after six months the Commission sends in its response to the complaint

11 October 2006: Statewatch lodges complaint against the Commission for its failure to maintain a proper public register of documents (Article 11 of 1049/2001)

Footnotes

1 In this letter we raised that additional issue that the Commission was not giving full access to the content of many, many documents under Article 12 (legislative documents) – the Ombudsman later said this should be the subject of a separate complaint.

2 The Ombudsman notes that the much-vaunted register of documents of the President of the European Commission had been discontinued.

Italy: The never ending emergency

by Italo di Sabato (Osservatorio sulla Repressione)

We are witnessing a continuous and ceaseless (re)definition of the public enemy in a persistent search for and creation of a state of emergency.

In Italy, from the 1970s onwards, the method of governance has consisted of a succession of emergencies. The quintessential emergency, the one represented by the fight against "terrorism", was born in response to the struggles that began with the so-called *Autunno Caldo* [the Hot Autumn of 1969, a season of many student and labour mobilisations]. From 1975 (and the passing of the Reale Law, no. 152/1975), laws on public order, detention in police custody, the interrogation of suspects, telephone and "social scene" interceptions or special imprisonment regimes have been presented as indispensable to defend the "public democratic order" from "political violence" and "terrorism". In truth, the Reale Law was little more than a useful symbolic watershed - it was the moment of the overt emergence of what would become "special legislation". However, in the previous year with Law Decree no. 99 of 11 April 1974, preventive imprisonment had been extended to up to eight years. In October 1974 Law no. 497 re-introduced interrogation by the judicial police with the sole safeguard of the presence of a defence lawyer, thwarting the effects of Law no. 932 of 5 December 1969, which had stripped the police of the

right to interrogate people who had been arrested or held in custody.

The Reale Law

The Reale Law expanded the circumstances in which the use of firearms by law enforcement agency officers was deemed lawful. In instances in which abuse was obvious and undeniable a favourable trial regime was introduced for officers that, in practice, guaranteed them impunity: investigations would not be carried out by the competent judge, but rather, by the Court of Appeal's general prosecutor who would decide whether to proceed in person or to entrust the trial to the state prosecution service. This ran contrary to several articles in the Constitution, particularly Article 3 (on equality and equal dignity for citizens before the law), Article 25 (which states that nobody may be removed from the jurisdiction of the natural judge as determined by law) and Article 28 (on the responsibility of civil servants and state employees acting in violation of an individual's rights).

From 1975 to date, there have been 665 victims of the law

enforcement agencies (276 deaths and 389 injuries) and of these cases as many as 218 involved individuals who were not committing, nor were about to commit, a crime. A typical context for these (that applies in 162 cases) occurs at a roadblock or following an order to stop. In 75 cases police forces resorted to the justification of a “shot that was fired accidentally”. But the Reale Law did not only deal with shootings: Article 4 enabled on-the-spot individual searches in the absence of a magistrate’s authorisation, which is at odds with Article 13 of the Constitution. Moreover, Article 4 expanded the definition of an “offensive weapon” permitting an arrest for being caught in the act of carrying “any other instrument [that is] not expressly considered a pointed or cutting weapon, but [that] can clearly be used, as a result of the contextual time and place, to harm a person”.

Article 5 forbade participation in demonstrations while wearing a “protective helmet” or “with one’s face fully or partly covered through the use of any means [that is] suitable to make recognising the person difficult”. This offence is punished with imprisonment of between one and six months and a fine under criminal law. Later, Law no. 533 of 1977 increased sentences (to a minimum of six months), introduced discretionary arrest for those caught in the act [*in flagrante delicto*] and even went so far as to extend the prohibition on covering one’s face beyond the context of demonstrations. It turned “concealing one’s face” (*travisamento*, in Italian) into a “crime of suspicion” that can be incurred by anyone who, on any public occasion, is “difficult to recognise”. Finally, Article 18 re-established the historic fascist practice of “confinement” (a form of internal exile) for political reasons.

Rights of defence and detainees

In 1977, Law no. 534 would also be approved, modifying the penal procedure code by launching a serious attack on defence rights. In fact, Article 6 drastically reduced the grounds on which proceedings could be annulled due to violations of detainees’ defence rights through the formula of “irremediable invalidity”. There was even a possibility that a trial would commence without the defendant and defence counsel having even been informed of the countless acts to instruct the trial that have been carried out without them intervening. Law 534/1977 introduced another important modification to the code of penal procedure, by inserting Article 48 *bis* which provided that charges that are connected to each other (for example, participation in an armed group, weapons possession and murder) may each be ruled upon in a separate trial.

On 6 February 1980 parliament approved Law no. 15 (known as the “Cossiga law”) that represents a further shift by introducing temporary [provisional] detention in police custody, extending search powers without a mandate from the competent judge, further increasing the length of preventative imprisonment, and introducing the criminal offence of subversive association. The Cossiga law also introduced sentencing discounts for “terrorists” who choose to co-operate; this was the first special law on “repentance” that entered the Italian legal order.

Emergency laws were added to the prison reform law (Law 354 of 26 July 1975) that came into force in April 1976, and was modified by Law no. 1 of 12 January 1977. In the same period, the controversy over supposed “easy prison releases” and probation judges began, and it continues to this day. On 20 July 1977, the Chamber of Deputies (the lower house of parliament) approved Law no. 450, which provides that permits authorising prison leave due to specific temporary circumstances (eg. a funeral) would only be granted in “exceptional cases” or for “family events of particular seriousness”.

In 1992, following the Mafia massacres in Capaci and via D’Amelia, Palermo [which resulted in the deaths of judge

Giovanni Falcone, his wife Francesca Morvillo, and three members of his escort, and of Paolo Borsellino and five members of his escort] the code of penal procedure was modified by Law no. 356 of 7 August 1992 (a conversion of the so-called Martelli decree), through which the powers of the judicial police were increased and it was established that preliminary inquiries could be extended for a maximum period of two years. During the early 1990s the so-called “war against drugs” was an integral aspect of the fight against crime that impacted on the freedom of citizens most directly. Law no. 162 of 26 June 1990, the so-called “Jervolino-Vassalli law”, was one of the most vexatious laws ever approved in Italy and its key feature was an ideological-moral statement: “The personal use of proscribed drugs is forbidden”. The Jervolino-Vassalli law placed drug dealing and possession on an even-footing and sentences were extremely high: between eight to 20 years’ imprisonment in the case of hard drugs and between two and six years for soft drugs.

In the first half of the 1990s, a succession of special laws sought to strike at football violence and at sports events in general. Article 6 of Law no. 401 (13 December 1989) introduced the pre-emptive instrument of the “*diffida*” [a sort of banning order or notice] that prohibits entry to “places where competitions take place”. The *diffida* is not issued by a judicial authority, but rather, by the *questore* (police chief in a given city) to people singled out by the police forces. The maximum duration of the “*diffida*” is 12 months. Law decree no. 717 of 22 December 1994, better known as the “Maroni decree” and converted into law no. 45 on 24 February 1995 strengthened the mechanism of “*diffide*” by preventing the recipient of the order from being in the vicinity of sports venues.

Another defining element of emergency legislation in the 1990s concerned migration flows. Law no. 40 of 6 March 1998, known as the “Turco-Napolitano law”, introduced harsh treatment for “illegal” migrants who are excluded from so-called “amnesties” and regularisations. They were forced to reside in “temporary detention centres”, the infamous CPTs (*centri di permanenza temporanea*), while waiting to be escorted to the border.[1]

Reaction to 11 September 2001 and beyond

The new century started with Law no. 78 of 30 March 2000, dealing with the reorganisation of the *carabinieri*, the state forestry corps, the *Guardia di Finanza* (customs police) and the state police.[2] The effects of the law become evident in the repression of April 2001 in Naples and especially during the tragic days of July in Genoa during the G8 Summit.[3]

The attacks in the USA on 11 September 2001 gave rise to a series of legislative measures on the fight against terrorism. The first package of measures was passed a few weeks afterwards, but a qualitative shift in these special laws occurred after the attacks in London in July 2005. On 1 August 2005, parliament approved Law no. 155, also known as the Pisanu decree, which established expulsion on national security grounds, enhanced controls on data transmission, telephone communications and Internet cafes and extended powers for law enforcement agencies when they held suspects in provisional custody.[4] The new wave of terrorist emergencies made sentences harsher for migrants as well. Law no. 189 of 2002, better known after the names of its two proponents, Bossi-Fini, made the previous Turco-Napolitano law even harsher. It contained two new features: the criminal offence of “illegal” immigration that automatically caused “irregular” migrants to enter the criminal justice system, and making CPTs operate to the maximum of their capabilities.[5]

On 28 February 2006, Law no. 49 on drugs, known as the Fini-Giovanardi law, came into force. Article 1 of the “*stralcio*” [a provisional order approving measures deemed urgent from a wider ranging draft law], introduced into the law decree on the

winter Olympics in Turin, reads: "Anyone who, without authorisation, grows, produces, extracts illegal drugs...is punished with detention for between six and 20 years and a fine of between 26,000 and 260,000 Euros". Thus, the distinctions between soft and hard drugs, and drug use and dealing, disappeared. Whoever is caught in possession of a quantity for personal use may incur administrative sanctions such as the suspension of their driving license, their license to carry weapons, their passport or their residence permit for tourist purposes.[6]

Sentences for "ultras" [organised football supporter groups] were further increased. In 2003 the first Pisanu decree, no. 28 of 24 February, introduced the notion of arrest in "deferred flagrancy", which allows the police to arrest a supporter up to 36 hours after the offence they are accused of occurred as if they were caught in the act. A second Pisanu decree, no. 162 of 17 August 2005, introduced turnstiles and match tickets bearing the user's name. After the incidents in Catania that resulted in the death of police officer Filippo Raciti, Law 41/2007 was passed (at the proposal of ministers Amato-Melandri), imposing bans on fans travelling to away games and increasing the punishment for those who throw missiles. The Amato decree on security adopted on 1 November 2007 extended the possibilities of expelling non-Italian nationals.[7]

On the wave of emotion caused by the events that followed the Gabriele Sandri murder, (another victim of the Reale law), when a Lazio football fan was killed on 11 November 2007 by a police officer near a motorway café/restaurant, interior minister Giuliano Amato made Law 41/2007 even harsher.

New government takes authoritarian direction

During its first nine months, the Italian government has displayed an authoritarian character. The norms in the field of security, provided for by law 125/2008 (that converts decree no. 92/2008 into law), undoubtedly represent a further step in the criminalisation of migrants. Hence, there is the insertion of the criminal offence of "illegal" immigration into the legal order, alongside the proposal to increase the maximum time for administrative detention in CPTs to a year and a half. The norms contain a provision for a new "common aggravating circumstance" inserted in the text of Article 61 of the penal code, applicable to cases in which the offence is committed by a foreigner who, at the time of the events in question, is "illegally" in the national territory. By virtue of this aggravating circumstance an increase of one-third of the sentence will be imposed for the author of the crime.

Moreover, there has also been a modification of the norm detailed in Article 656 of the code of penal procedure (the Simeone law) in which people who had a custodial sentence amounting to less than three years passed against them could request the concession of alternative measures to detention in prison before they began serving their sentence. The recent reform means that the application of this sentence, which benefits individuals who have been found guilty, will no longer be allowed in relation to sentences regarding crimes such as robbery, burglary and aggravated theft as well as "crimes involving the aggravating circumstance detailed in art. 61, first point, number 11 bis" [see above] of the penal code. This means that foreigners who have already been sentenced to prison, and to whom the aggravating circumstance of "clandestinity" [illegal/irregular status] has been applied, will no longer be able to ask for alternative measures while they are still free but only after the start of their imprisonment.[8]

Defining the lack of a residence or entry permits as a criminal offence, aside from being a legal aberration and inhumane, means creating the conditions for irreversibly clogging up courtrooms and overcrowding prisons beyond limit.

New powers to localities and military

The government has decided that faced with the impasse of the democratic system caused by the rubbish crisis, the arrogance of the Camorra and the absurdity of a local political class that is unable to heed environmental knowledge with regards to the treatment of the cycle of waste disposal, the solution is for a plenipotentiary to decide everything on his own. This has resulted in the army being deployed to protect waste pits and incinerators which have been declared areas of strategic military interest entailing the measure of immediate arrest for anyone who opposes the devastation of the territory.

In short, the army has been deployed, the territory militarised and sentencing is harsher; these developments are all envisaged in the terrifying security package. Furthermore, interior minister Maroni is due to send a directive to *prefetti* [government envoys in charge of security in a given area] that establishes a general prohibition of demonstrations in the vicinity of places of worship and even in front of supermarkets and shopping centres, monuments and sites of public interest.[9] They are solutions that will inevitably fail, and at an extremely high cost for everyone - the long-term reduction of freedom and rights. Faced by this scenario one cannot be silent. Urgent work is needed to make the absurdity of this drift evident, for mobilisation and social opposition to the government under Berlusconi to overturn this paradigm of intolerance, racism and the criminalisation of social movements.

Italo di Sabato, in charge of the *Osservatorio sulla repressione* (Observatory on repression) of the PRC/SE (*Partito della Rifondazione Comunista/Sinistra Europea*):
<http://www.osservatoriorepressione.org>

Translation by *Statewatch*

Footnotes

1 *Statewatch*, vol. 10 no. 1, January-February 2000, "Italy: Deaths and deportations spotlight detention centres".

2 *Statewatch*, vol. 10 no. 2, March-May 2000, "Italy: carabinieri's new status sparks controversy".

3 *Statewatch*, vol. 18 no. 4, October-December 2009, "Italy: Making sense of the G8 trials and aftermath".

4 *Statewatch news online* August 2005, "Italy: Tough new anti-terrorist laws adopted", available at: <http://www.statewatch.org/news/2005/aug/italy-new-terror-laws.pdf>.

5 *Statewatch*, vol. 12 no. 5, "Italy: Immigration law amended".

6 *Statewatch news online*, February 2004, Briefing: "Italy: New drugs law heralds the mass criminalisation of drug users", [about the entire draft law] available at: <http://www.statewatch.org/news/2004/feb/italy-new-drugs-law.pdf>; *Statewatch*, vol. 16 no. 1, January-February 2006, "Italy: Flood of legislation as term comes to an end - The harshest drug laws in Europe and the toughest internet regulations" [details on the adopted extract].

7 *Statewatch*, vol. 18 no. 1, "Italy: Restricting freedom of movement for EU nationals".

8 *Statewatch*, vol. 18 no. 2, April-June 2008, "Italy: Institutionalising discrimination".

9 *Statewatch news online*, March 2009, "Italy: Interior ministry directive on demonstrations in urban centres", available at: <http://www.statewatch.org/news/2009/mar/01italy-demos.htm>

Deaths at the borders continue the effect of EU policies in Morocco

- Introduction by Yasha Maccanico and articles by Said Tbel and Jerome Valluy

Two articles examining the role of UNHCR and the EU and the pressure on Morocco to follow the securitarian road leading to the exclusion, detention and expulsion of migrants

The *Fortresseurope* blog has reported that 1,502 migrants and refugees died in their attempts to reach Europe in 2008. While somewhat lower than figures from the previous two years – 1,942 in 2007 and 2,088 in 2006 – the continuing high number of deaths illustrates the effects of EU immigration policy. These figures do not take into account many cases when neither migrants' bodies nor the boats they were travelling in were found. Documented deaths in the Channel of Sicily, between Libya, Tunisia, Malta and Sicily have been rising in line with the increase in arrivals in Italy. 36,900 migrants were intercepted in 2008, up from 20,450 in 2007. While 302 people perished in 2006 and there were 556 deaths in 2007, in 2008 the number of fatalities was 642. Sixty more died en route from Algeria to Sardinia (five less than in 2007), 181 in the Aegean Sea (down from 257), 216 in the Strait of Gibraltar (up from 142) and 136 in the Canary Islands (decreasing considerably from 745 in the previous year, with arrivals also diminishing).

Whilst the vast majority (1,235) of migrant deaths occurred in the Mediterranean and off the coast of the French island of Mayotte in the Indian Ocean (27), many (240) also died during overland journeys – four in Calais, 32 were shot by police (25 of them in Egypt), four in Greek minefields in Evros, eight under lorries in Italian ports on the Adriatic coast and a further 75 hiding under lorries elsewhere. Twenty-seven people drowned in border rivers and 90 died of dehydration in the Sahara desert. Furthermore, apart from deaths reported in the European press, there is an increase in information arriving from north Africa. The Spanish newspaper *El País* reported on 21 January 2009 that the Algerian Navy provided a figure of 98 would-be migrants who drowned in Algerian waters in 2008 (up from 61 in 2007).

EU immigration policies continue to reap a bitter harvest in terms of an ever-increasing body count (estimated at 13,413 over the ten years since 1998). The effects in terms of human rights standards in neighbouring countries continues to belie one of the EU's key foreign policy claims, namely to promote human rights worldwide. As 2009 began with another man shot dead (and others wounded) by the Moroccan security forces as he sought to cross the fences topped with barbed wire in Melilla, it is an appropriate time to look at the restrictive immigration regime imposed by the EU in the north African country.

Fortress Europe December 2008 report:
<http://fortresseurope.blogspot.com/2006/01/fortezza-europa-1502-migranti-e.html>; and *El País*, 21.1.09; APDHA press statement, 4.1.09.

The first essay by Said Tbel of the Moroccan Human Rights Association (*Association Marocaine des Droits Humains*, AMDH) views the growing role played by the UNHCR in Morocco as a facilitator of the EU's externalisation of its immigration and asylum policies. The second piece features translated extracts from an essay by Jerome Valluy on the imposition of EU policies on Morocco and their effects.

An international day violated in its essence by Said Tbel

The process of introducing stricter legislation in the field of immigration and the right to be offered refuge in European countries combined with the implementation of policies to close the borders within a securitarian framework has made the

situation worse. The war against migrants and refugees results in hundreds of repatriated people and dozens of deaths, leaving human tragedy in its wake. It increasingly involves the complicity of countries bordering on the Mediterranean. Morocco had briefly abstained from this approach, but now adheres to it. It accepted the guidelines of the new securitarian framework, forced to do so by its interest in improving relations with European countries. In 2003, the United Nations *rapporteur* on the rights of migrants described the vulnerable situation in which irregular migrants, as well as sub-Saharan people (migrants and refugees), who arrived in our countries after fleeing wars, famine and catastrophes in their countries, find themselves. She noted the absence of any specific assistance for these vulnerable people, particularly for women and children. In the same year, Morocco adopted a new law inspired by those of its European counterparts on the entry and residence of foreigners, particularly "illegal" migrants and asylum seekers.

Since then, Spanish-Moroccan securitarian campaigns on both sides of the Strait of Gibraltar are being conducted. This process accelerated in 2005 with the tragic events in Ceuta and Melilla in September and it has grown in intensity over the last three years. All these violations are far from being instances where things "got out of hand" as they are construed in official statements. Rather, they are the result of public policies masterminded by European countries in connivance with countries to the south of the Mediterranean.

Faced with this situation, what role does UNHCR play in the protection of the rights of asylum seekers or refugees?

For 50 years, since 7 November 1956 when the Kingdom of Morocco ratified the Geneva Convention on Refugees until the autumn of 2004, the representation of the United Nations High Commissioner for Refugees in Morocco was symbolic: a mere "honorary delegate" carrying out administrative information work for the international headquarters in Geneva and following the situation of the 272 refugees recognised by UNHCR in Morocco. In November 2004, UNHCR's policy in Morocco, decided at its international headquarters in Geneva, changed abruptly and a new office was opened with assistance from the UN Development Programme (UNDP). In fact, as the UNHCR had not yet signed a "branch office agreement" (co-operation agreement) with the Moroccan state, it has only recently been possible for its work to be recognised by the Moroccan government. In spite of this, UNHCR's activities have been boosted to a higher level than previously. Members of the UNHCR delegation in Morocco claim this situation results from an increase in the number of asylum seekers. They also stress that the UNHCR's mission is to ensure a good application of the Geneva Convention on Refugees (1951). This situation poses questions about the reason for this shift from an "honorary delegation" to a fully functioning "delegation". Why concern itself so much with raising awareness about the right to asylum in a country that, previously, was barely concerned by this subject? Why such a revival after half a century of passivity?

The answers to these questions are as follows. In November 2004, the European Union adopted the Hague Programme that framed the European Commission's security policies in its relations with countries bordering the European Union. The Hague Programme, established for the 2004-2009 period, institutionalised the so-called "externalisation of asylum" policies initiated by Europe at the end of the 1990s. These

policies gained notoriety after proposals by British prime minister Tony Blair, at the start of 2003, to create holding centres in countries neighbouring the European Union for migrants who had already arrived or sought to arrive in Europe. The Hague Programme re-formulated these proposals and set the guiding principles for a policing policy that was largely beyond the reach of national authorities and of the European Commission's Directorate-General for Foreign Relations (DG ReEx). This Programme explicitly linked the UNHCR to an approach by the European Union that aimed to develop the "reception capabilities" of neighbouring countries in order to reduce entries into European territory. In particular, it envisaged the preparation of "EU regional protection programmes in partnership with the third countries concerned and in strict consultation and co-operation with the United Nations High Commissioner for Human Rights". Moreover, it is on this basis that Morocco adopted Law 02/03 on the arrival of emigrants.

UNHCR officials, as well as experts or academics who work for the externalisation of asylum, let it be understood that there was a greater need for the involvement of international organisations including UNHCR. This is an interpretation that preserves the image of the UNHCR as assisting exiles, which is how it portrays itself in its campaigns: enrolment in the externalisation of asylum policy would seek to put a brake on or divert this policy. To analyse this situation, one must look back at the history that has moulded the European Union's current policies with regards to its neighbours, particularly Morocco, which is a key ally in the European fight against migration after being coerced into its securitarian logic. What remains to be identified is the specific role that the UNHCR had in the origins of these policies, particularly in the externalisation of asylum. This will allow us to follow the links that exist between the preparation of this policy in Europe and its implementation in Morocco. That is when we will better understand that the UNHCR has come to work in Morocco within the framework of an anti-migration struggle, far removed from the objective of protection that the Geneva Convention proclaims.

European policies for Morocco

by Jerome Valluy (Abridged translation)

"Protecting European Union countries from migratory invasion, by sending approaching refugees into camps, established, directly or indirectly, by the EU or one of its Member States in neighbouring countries just beyond the common European border."

This is the wording used in 2003 to create a wider public awareness of European neighbourhood policy. After controversy over the word "camps", it was removed from the official vocabulary the following year. European officials now only concern themselves with the development of "reception capabilities" in bordering countries, particularly those in the Maghreb. The implementation of this policy led to the strengthening of borders by the military and the police and the recruiting of neighbouring countries into this process for the repression of migrants.

On the humanitarian side of this policy, organisations concerned with the right to asylum and solidarity actions are politically and financially encouraged by the European Commission to improve reception conditions for sub-Saharan migrants in all the Maghreb countries. Their activities illustrate Bourdieu's concept of the "left hand of the State" [1], which was adapted as the "left hand of the Empire" by Michel Agier [2], to describe the dependency of social-humanitarian logic in relation to the State's forces and goal of a securitarian or repressive kind; the "right hand" refers to the repressive apparatus itself, particularly the police and its activities.

Each hand functions with its own logic and mode of action, but they stand side by side in the dynamics of domination by a

state *vis à vis* its civil society, particularly the working classes, or in cases of intervention by a foreign power in a third country. The financing allocated by the European Union to Moroccan actors over the last few years has mainly benefited the "right hand" involved in policing and, only residually, the "left hand", but the funding that passes through the UNHCR produces some important effects in Morocco and in assistance to refugees, where the financial capacity of NGOs is very weak.

The securitarian dimension: European pressure, Moroccan resistance and conversion

At first the Moroccan government resisted European injunctions, only to later adapt by negotiating its participation in the process. This co-operation, the terms of which were set in late 2004 after two and a half years of discussion (March 2003-November 2004), took the shape of a police campaign against migrants that began at the start of 2005. This intensified in the first eight months of the year until the paroxysmal phase of autumn 2005 involving arrests, police abuse and turning people away at the border.

[... The article now looks at the development of EU policies concerning Morocco since the 1996 association agreement between Morocco and the European Union. It stresses how Morocco was in a weak negotiating position in relation to Europe, on whose aid it is dependent. It was also the time when the EU implemented a "common area of free movement" which, for foreigners, is defined by the "hardening of common European borders". In 1997 and 1998 the fences surrounding Ceuta and Melilla were built and the southern European border surveillance system established, notably in the Strait of Gibraltar. In spite of Morocco's 2000-2001 rejection of the securitarian model (developed by the EU's Austrian and Dutch presidencies in 1998-1999, based on a European world-view involving concentric circles, which was further developed through action plans drawn up by the High Level Group on Migration and Asylum in partnership with the UNHCR and the IOM, and which identifies Morocco as a key partner), a European-Moroccan agreement was signed in March 2002, with extensive funding (115 million Euros) for aspects including "circulation of people" and "border controls"....]

In June 2003, Morocco continued to adhere to European policies with the adoption of law 02-03 on the entry and residence of foreigners. This law was inspired by the French modified Ordinance of 2 November 1945 and was hostile towards immigration, creating "waiting zones" and "detention centres". [...]

Until the late 1990s, this [Spanish] aid officially sought to improve the situation of Moroccans. From 2002-2003 its tone changed: Spanish documents explicitly refer to the subordination of this aid to Europe's anti-migratory goals.[3]

Since November 2003, several Moroccan "repatriation" operations affecting a total of around 2,000 people were organised and immediately welcomed as "successes" by the European Commission. This progressive recruitment translated into the appearance of informal camps of migrants confined by repressive operations, particularly in the forests at Gourougou opposite the Spanish enclave of Melilla and in the Bel Younes forest opposite the Spanish enclave of Ceuta. Since 2003, Cimade has concerned itself with the emergence of these forest camps. In 2004, the association produced the first international testimony concerning the inhuman living conditions of these exiles next to the Spanish border.[4]

The policy adopted by the new prime minister, José Luis Zapatero, head of the Spanish government as of 2004, served to extend the Spanish-Moroccan normalisation that was embarked upon well before the election. Zapatero's visit in April 2004, followed by intense activity by the two foreign affairs ministers, put the finishing touches to this normalisation whose

achievements are in the realm of policing the fight against sub-Saharan exiles. An implicit give-and-take mechanism was implemented: on the one hand, increased repression against sub-Saharans in Morocco, and on the other, increased Spanish development aid and regularisation of *sans-papiers*, largely Moroccans living in Spain.

This give-and-take was made official in the text of the Hague Programme in November 2004:

Insofar as transit countries are concerned, the European Council underlines that it is necessary to intensify co-operation and the strengthening of capabilities at the southern and eastern borders of the EU, so as to allow said countries to better manage migrations and to offer adequate protection to refugees. The countries that demonstrate a genuine will to comply with the obligations that they are responsible for by virtue of the Geneva Convention concerning the status of refugees will be offered aid for the purpose of strengthening their national asylum and border control regimes, as well as wider co-operation in the field of migration. (§ 1.6.3).

In December 2004, co-operation between officers of the Moroccan Royal *gendarmerie* and the Spanish *Guardia Civil* began. This was the first step in the implementation of joint patrols in the strait. This joint police operation was developed in northern Morocco and the Canary islands. On 18 January 2005, the King of Spain officially thanked Morocco for its co-operation in the fight against illegal immigration. In February 2005, Morocco signed a branch office agreement with the International Organisation for Migration (IOM) authorising it to establish an office in Morocco. The goal of the agreement was to “provide an effective contribution to the management of migration issues in the Kingdom of Morocco”. The IOM representative is lodged in the offices of the Moroccan foreign affairs ministry. Its budget allocation allows it to fund aeroplane tickets for exiles wishing to return to their countries.

The long Spanish-Moroccan campaign of 2005

Thus, after pressure and with funding, Morocco was enlisted in the European repression of migrants. This reality was not visible to the wider public until the migrant deaths at Ceuta and Melilla in autumn 2005. The crisis that the mass media covered from 28 September 2005 was nothing other than a phase of the European-Spanish-Moroccan securitarian campaign that had been in preparation for several years. It gathered pace in early 2005 and grew rapidly in the six months that preceded the autumn’s killings. Well before the headlines, Moroccan police violence had reached such a level that the humanitarian organisation *Médecins sans Frontières* felt obliged to renounce its discretion (which allowed it to intervene in Morocco) to testify about the brutality, increasing evidence of which was found on the bodies of the exiles who they treated.[5]

An analysis of the media coverage of this phase of the policing/humanitarian crisis, in September and October 2005,[6] details the interaction between Spanish and Moroccan political authorities and their relation to the police efforts. On 10 September 2005, the announcement of the joint French-Spanish-Moroccan proposals in preparation for the Euro-Mediterranean Summit in Barcelona (scheduled for November 2005) was accompanied by rumours among the exiles about a probable heightening and doubling of the fences in Ceuta and Melilla, as well as the digging of a ditch in front of the fences. This information soon proved well-founded. It created a fear of the impossibility of getting through and, within a context of generalised repression, pushed the exiles to last chance coordinated attempts at entering. Many of these were filmed and broadcast by western television channels. Simultaneously, police pressure on migrants, both in the suburbs of Rabat and in the forest camps, reached unprecedented levels and served to increase the frequency with which attempts at entering occurred. On 27 September 2005 a vast police operation of round-ups and

arrests in the neighbourhoods of Rabat and Casablanca set off a chain reaction of panic.

On 28 September, when the Spanish-Moroccan summit on migration policies started, co-ordinated attempts to cross into Ceuta and Melilla gave rise to unprecedented repression by Moroccan law enforcement forces, resulting in six deaths. This date also marked the beginning of hundreds of deportations to neighbouring countries. This campaign lasted until mid-October. A Moroccan “Auxiliary Forces” camp was established a few dozen metres from the Gourougou forest. During this phase of the crisis, the Spanish authorities stoked the tense climate through repeated announcements, particularly about raising the height of the fences around Ceuta and Melilla and about expulsions of sub-Saharan exiles towards Morocco. As shown by the combination of analyses and testimonies published by the *Migreurop* network in its “Black Book of Ceuta and Melilla”,[7] the deaths in autumn of 2005 in front of the Spanish enclaves were not mere excesses: they were a result of public policies; those undertaken by the European Union for years and later those of the Moroccan authorities that had converted to the repressive logic imposed by Europe.

A new policy of round-ups in Morocco (from December 2006)

The international press used the word “crisis” a lot to describe events in the autumn of 2005, without perceiving the geopolitical depth of the phenomenon. The impression of brevity was strengthened by a calming down following the murderous excesses.

The geographical settlement of sub-Saharan exiles in the north of the country and in the eastern region changed in 2006:[8] the autumn 2005 crisis drew strong media attention to the Gourougou and Bel Younes camps. The first was evacuated by the Moroccan *gendarmerie*, which set up a permanent outpost there and carried out regular patrols of the forest so as to prevent any lasting re-settlement of migrants. This “solution” resembled the one adopted in Sangatte by the French interior minister, Nicolas Sarkozy. Similar to what happened after the closing of the Sangatte camp, the migrants now found themselves dispersed in the surrounding regions, that is, in Nador and Berkane near Melilla, and on the Castiago hill near the forest of Bel Younes near Ceuta. The same development could be observed near the border town of Oujda where the most famous camp remains, on the university campus, but where the exiles are disseminated around the extra-urban countryside (in woods and caves) and in the working class suburbs of Oujda (the Vietnamese neighbourhood). This dispersal makes it more difficult to undertake solidarity actions (providing food, sleeping materials and medical care) for these people.

The exiles and their associations acknowledge the existence of a relaxation in 2006. Another sign of this is that in mid-2006, after months of deadlock with the International Federation of the Red Cross and Red Crescent Societies, the Moroccan Red Crescent, which is dependent on the government, received the go-ahead to take action with regards to the condition of the sub-Saharans. On 18, 19 and 20 December 2006, it organised a presentation of its activities in Oujda [9] where it announced that a thousand blankets would be supplied to sub-Saharans sleeping in the open air in the freezing eastern Moroccan nights. However, shortly before their distribution this humanitarian action was abruptly stopped to be replaced by a securitarian intervention that struck at Morocco’s four corners on 23 and 30 December 2006. This was met with indifference by the media. It saw a vast campaign of round-ups and forced removals to the eastern border region of the country, towards the “closed” border with Algeria.

It was a large-scale operation involving different forces: the police, “security auxiliaries” (local police informers in

neighbourhoods), the *gendarmerie* and the notorious “auxiliary forces” under the direct control of the interior ministry which joins ordinary police forces for operations involving “dirty work”.

These round-ups and forced removals affected the nationals of sub-Saharan African countries in a wide range of legal situations: *sans-papiers*, people in a regular situation (holding a passport and visa that had not expired), asylum seekers who had registered with UNHCR and refugees who were recognised by UNHCR. The indifference to the legal status of individuals conforms to the *modus operandi* of police actions: round-ups in apartments identified in the previous weeks by “security auxiliaries”, leading police to take away all the black people. Documents that were produced were confiscated or destroyed by the law enforcement agencies.

[... *harrowing accounts by the victims of these removals to the border follow...*]

Between Christmas 2006 and 6 January 2007, the closing date of my report to *Migreurop* [10], 479 people were rounded up (248 in Rabat, 60 in Nador and 171 in Laâyoune) who were victims of police brutality, injured by truncheon blows and humiliated. Pregnant women were rounded up and one, who was six-months pregnant, lost her child. Parents with young children were also detained and several cases of rape were confirmed medically. Transported in buses across Morocco, the victims were abandoned in groups of a few dozen, in different locations some kilometres away from each other, along the Moroccan-Algerian border. Threatened by shotgun rounds fired in the air, they were forced by the Moroccan security forces to advance towards Algeria, and they were then sent back by Algerian forces that also fired in the air. After a ten-hour stand-off between the two armies, most managed to return to Oujda or the camp on the edges of the forest and the university.

[...] *Simply an occasional end-of-year operation? On Saturday 20 January 2007, new round-ups took place in Rabat: 103 people were transferred towards Oujda. The observations carried out a week later¹¹ showed that it is a continuing policy.* [...]

On Monday 22 January 2007, in Brussels, the Human Rights Commission of the European Parliament placed the subject on its agenda in the presence of the European Commission, UNHCR and the Moroccan ambassador, to hear my report. The ambassador was offended by what appeared to be a charge of institutional racism and sought to create a diplomatic incident, possibly to avoid the rest of the report which he did not reply to. He deplored his country’s situation, trapped between the hammer and the anvil. The European Commission’s representatives denied any responsibility, reaffirming their commitment to respect for human rights and rejected any criticism over what

happened in third countries. To the question posed by the President: “Why do you push Morocco to act like this?” the DG ReEx representative stated that there is no European foreign policy in this field. The representative from DG JLS looked at his notes to avoid answering the question while the UNHCR spokesperson mumbled inaudibly.

Footnotes

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2. Michel Agier, “La main gauche de l’Empire: Ordre et désordres de l’humanitaire”, *Multitudes*, no.11, winter 2003 re-published by TERRA-Éditions: <http://terra.rezo.net/article344.html>
3. On 25 and 26 September 2003, the annual study sessions of the Spanish Agency for International Co-operation on the theme “Co-development and immigration”.
4. CIMADE, “Gourougou, Bel Younes, Oujda: la situation alarmante des migrants subsahariens en transit au Maroc et les conséquences des politiques de l’Union Européenne”, Report by Anne-Sophie Wender with the co-operation of Marie-José Laflamme and d’Hicham Rachidi (AFVIC-PFM), Paris: Cimade-SSI, Oct. 2004, 50 p. Web: <http://listes.rezo.net/archives/migreurop/2005-10/pdfyxWOE6bv9q.pdf>
5. MSF - Report, “Violence et immigration, Rapport sur l’immigration d’origine subsaharienne en situation irrégulière au Maroc”, 29 September 2005 (Note: this report was only made public on this date but was known in the network of associations since July and covers events previous to the summer of 2005) www.msf.fr/documents/base/2005-09-29-msfe.pdf
6. YATA Elias, “Le traitement médiatique de la crise des migrants subsahariens dans la presse marocaine (entre le 27 septembre et le 9 novembre 2005)”, *Memorandum for the Masters’ in Political Sciences (First Year) of Paris 1 University*, Dir. J.Valluy, 2006.
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9. J. Valluy, “Contraintes et dilemmes des actions de solidarité avec les exilés Subsahariens en transit au Maroc oriental dans le contexte créé par les politiques européennes d’externalisation de l’asile”, Communication to the study session “Le Maroc Oriental face à l’émigration subsaharienne”, organised by the Faculty of Law of Mohammed I University (Oujda, Morocco) in partnership with FISCRCR and the Moroccan Red Crescent, Monday 18 December 2006 <http://terra.rezo.net/article432.html>
10. J.Valluy, “Rafles de Subsahariens au Maroc à Noël 2006” - Report to the association Migreurop, 6 January 2007, Paris. Research as part of the ASILES Programme, <http://terra.rezo.net/article432.html>
11. J. Valluy, “Chronique de la banalisation des rafles d’exilés et de l’usure des solidarités au Maroc”, 3 February 2007, Research as part of the ASILES Programme, <http://terra.rezo.net/article432.html>

The need for new alliances of anti-trafficking organisations

by Katrin McGauran

Anti-trafficking organisations should create new alliances and formulate demands to protect migrants from the impact of the global recession

In the wake of the financial crisis, migrant rights groups and international organisations such as the UN [1] and ILO [2] have drawn attention to the increased vulnerability that migrant workers will suffer as a result of the economic downturn. The ILO forecasts that the crisis will result in some 20 million jobs losses - predominantly in low-paid sectors where migrant workers are over-represented. Although there is currently no conclusive evidence to show the precise impact of the crisis on migration patterns, it has been noted that as opportunities for

regular labour migration are expected to decrease, there might be an increase in undocumented migration and an increase in informal working relations. Here also, an increase in trafficking in human beings is a possibility; and root causes, such as increased dependency on employers, are certainly created. We might see an increase or change in pattern in internal and cross-border trafficking as various work sectors are affected differently. All these developments call for an adequate and timely response from anti-trafficking organisations and migrant

support groups. These should include formulating prevention and social support strategies, creating strategic alliances with labour, migrant and social and economic rights groups, and formulating a set of demands to create social and economic welfare protection for migrants to prevent trafficking.

Mapping the crisis and its effect on migrants

In February this year, at its eighth European Regional Meeting in Lisbon, the ILO announced that "the scale, depth and breadth of the crisis in Europe are much larger than even pessimistic commentators expected [...] and the situation has considerably worsened over the last six months." The crisis, therefore, is set to last, and indications show it is also global in reach: whilst Europe is particularly affected by the slowdown in North America, Asia, Africa, Latin America and the Arab world are also increasingly hit. The ILO also reports that consequences of the financial crisis on labour markets are already visible across Europe and Central Asia in the form of rising unemployment figures. Specifically, "starting in the financial services and construction sectors in the most affected countries, job cuts are now spreading throughout the manufacturing and service sectors of virtually all the countries in the region." [3]

Several reports [4] have indicated that next to job losses, migrants will be particularly hit by a reduction in wages and a deterioration of working conditions, as companies and employers will try to make savings. In addition, governments might cut social service provisions. Migrants in their turn are now likely to be forced to accept lower wages and bad working conditions just to keep their jobs and support their families. Moreover, the fact that they are not covered by social and economic insurances and that they cannot go without long periods of unemployment makes them vulnerable to exploitation by employers. Already, undocumented migrants are systematically denied health care, education, are deprived of labour protections and occupy the worst housing conditions in Europe. They live in abject poverty and their "precarious administrative status makes them highly susceptible to systematic abuse within both public and private domains". [5] This situation is now likely to worsen, especially for those who cannot return home or lack skills for self-employment or family and social support networks. The crisis therefore compounds one of the main root causes known to increase vulnerability to trafficking, namely, poverty and social exclusion.

The crisis is also expected to lead to a decline in remittance flows to developing countries as migrants lose their jobs, thus increasing poverty and possibly exacerbating North-South development gaps. Furthermore, the return of unemployed migrants to countries of origin, where they are also likely to face high unemployment rates and poverty could affect economic and social stability.

Racism and anti-migrant policy responses

Another dangerous effect of the crisis is also an increase in discrimination, xenophobia and racism, as migrants are perceived as taking the jobs of local workers. This has already started to be seen in the UK, where workers came out on strikes demanding "British jobs for British workers", echoing prime minister Gordon Brown's earlier public statement to that effect. [6] This development has increased fears of migrant and support groups that the crisis will trigger the adoption of more restrictive immigration policies in a misguided attempt to protect the domestic labour market. Indeed, despite ample evidence that immigration is a stimulant for job creation rather than competing with local jobs, a reduction in the number of labour migrants has already been announced in Italy and the UK and is under discussion in Australia, whilst Spain has introduced financial incentives to encourage unemployed migrants to return home. [7]

Sector- and gender-specific sectors

Anti-trafficking organisations and migrant support groups should pay particular attention to the sectors that are or will be disproportionately affected by the crisis, as well as the gendered impact of labour market changes. Evidence from Spain shows that there might be an increase of irregular work in the construction sector, which increases vulnerability and worsens working conditions: whilst some 25,000 fewer workers were employed in the construction sector between January 2007 and January 2008, other data that includes workers who are not affiliated to the social security system show an increase of 71,000 workers in the construction sector during 2007. It is therefore assumed that "employment in the construction sector grew mainly by means of undeclared work, in other words, outside the social security net, which is predominant among immigrant workers." [8]

Women and men will be affected differently by the immigration policy changes mentioned above, depending on whether sectors dominated by one gender fall under state regulation and/or are affected more by the crisis than others. It is noteworthy that figures are being quoted for the construction sector, whilst no figures are available for the female-dominated service sector, which is also said to suffer disproportionately, but is not regulated and therefore not monitored. The effect of the crisis on migrant women is therefore not properly monitored and researched.

Create alliances and formulate demands

With a view to these developments, now is the time for human rights activists - including anti-trafficking NGOs - to focus their work on protecting the most vulnerable members of society. This could be done in several ways:

Firstly, more research on (the impact of the crisis on) migrants' working conditions - with the aim of formulating improved intervention strategies - is needed. Anti-trafficking organisations could use this evidence to inform their prevention and social assistance work in sectors that are or will be disproportionately affected by the crisis, also with a view to the gendered impact of labour market changes.

Secondly, to achieve more impact anti-trafficking organisations should form strategic alliances with anti-poverty networks, migrant (self-)organisations, and labour organisations and coordinate the positions they take in relevant international and national fora. Cooperation should take place on common areas of concern, such as forced labour and exploitation of migrant labour in general. As anti-trafficking NGOs have continually noted the negative impact of restrictive immigration policy and practice on the rights of trafficked persons, they could consider joining migrant groups in their lobby against, to name but one example, utilitarian approaches to migration control that favour only the highly skilled and do not provide labour protection in low-paid sectors. Anti-trafficking groups should act on the knowledge that a general anti-immigration consensus threatens the identification and adequate protection of potential trafficked persons. Anti-trafficking NGOs can also encourage migrant and labour organisation to join their lobby efforts, for example, to support the demand to provide all trafficked persons' access to support and assistance regardless of their immigration status, and to grant residency status and access to services independent from participation in criminal proceedings. These mechanisms could be extended to cover all victims of forced labour and exploitation. In turn, anti-trafficking NGOs could join others in their demand for labour and discrimination complaint mechanisms for (undocumented) migrant workers, basic income, welfare provisions and active labour market policies supporting low-skilled migrant and native workers, as they might help to protect potential trafficked persons. The recent report submitted by Joy Ngozi Ezeilo, the UN Special

Rapporteur on Trafficking, is hopeful in this respect. She promises to specifically target the demand for “cheap labour” as a root cause for trafficking, and notes that “trafficking feeds on poverty, despair, war [and] crisis”.

Last but not least, a comprehensive response to the crisis requires a new vision for long-term solutions that addresses root causes for trafficking. Dr. Yakin Erturk, the UN Special Rapporteur on Violence against Women, recently stated that “in the neo-liberal era we have lost our welfare state, which no longer took any interest in providing livelihoods or social security services. My hope is that by calling the state back in, we can reintroduce social policy that will benefit women.” This can be said to hold true not only with regard to women, but to all those suffering poverty, exploitation and social exclusion.

An abridged version of this article appeared in the *La Strada International Newsletter* Issue 12, April 2009, <http://www.lastradainternational.org/?main=newsletter>

Footnotes

[1] On 2 December 2008, the International Day for the Abolition of Slavery, UN Secretary-General Ban Ki-moon warned that the financial crisis could drive more people into slave-like conditions and called on governments, civil society, the private sector and individuals to join the fight against slavery, protect victims and raise awareness of the issue. UN press release: <http://www.un.org/apps/news/story.asp?NewsID=29148&Cr=exploit&>

[2] The ILO Regional Office for Europe and Central Asia organised the 8th European Regional Meeting in Lisbon from 9 to 13 February, where government, employers and workers representatives discussed the economic crisis and the policy packages applied by different countries to mitigate its adverse impact. As a background document for this meeting the ILO's Director General prepared the report “Policy responses to the economic

crisis: A decent work approach in Europe and Central Asia”, which includes policy recommendations to governments in the light of the economic crisis. The agenda for the meeting and all relevant documents are available (in English, French, Russian, Spanish and German at: <http://www.ilo.org/public/english/region/eurpro/geneva/what/events/lisbon2009/index.htm>

[3] See “Policy responses to the economic crisis A decent work approach in Europe and Central Asia”, International Labour Office Geneva, Feb 2009, http://www.ilo.org/public/english/region/eurpro/geneva/download/events/lisbon2009/policy_responses_en.pdf.

[4] ‘Migration and the Economic Downturn: What to Expect in the European Union’, Demetrios G. Papademetriou, Madeleine Sumption, and Will Somerville, Migration Policy Institute, January 2009, http://www.migrationpolicy.org/transatlantic/EU_Recession_backgrounder.pdf; ‘Immigrants and the Current Economic Crisis’, By Demetrios G. Papademetriou and Aaron Terrazas, January 2009, http://www.migrationpolicy.org/pubs/lmi_recessionJan09.pdf; ‘Meltdown Leaves Migrant Workers Prone to Abuse’, Prime Sarmiento, IPS News, 23 January 2009, <http://www.ipsnews.net/news.asp?idnews=45516>; ‘The Impact of the Global Financial Crisis on Migration’, IOM Policy Brief, http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/policy_documents/policy_brief_jan2009.pdf; ‘Economic downturn impacts most on migrant workers’, Jessica Duran, IKEI, October 2008, <http://www.eurofound.europa.eu/ewco/2008/09/ES08090791.htm>

[5] ‘What challenges and policy responses concerning the social rights of undocumented migrants?’, Michele LeVoy, European Anti-Poverty Network News, July-September 2008, <http://www.eapn.eu/content/blogcategory/41/31/>

[6] ‘Thousands strike over migrant workers: ‘British jobs’ slogan backfires on Brown in UK-wide action’, <http://news.scotsman.com/latestnews/Thousands-strike-over-migrant-workers.4933228.jp>

[7] IOM Policy Brief, January 2009, *ibid*.

[8] Jessica Duran, *ibid*.

UK: British National Party membership list leaked

by Trevor Hemmings

The leaked list of BNP members included teachers, nurses, members of the armed forces, civil servants and police officers - there were calls to ensure that “racism and fascism have no place in the classroom or lecture”

In November 2008 the membership list of the British National Party (BNP), was posted on an internet blog, identifying thousands of their supporters, including a number of serving police officers and soldiers, businessmen, government employees, immigration service staff, solicitors, religious ministers, teachers, a doctor and schoolchildren. The list reveals that BNP members include around 20 in the USA, a handful in Australia and one in Oman. The list contains approximately 13,500 names (much fewer than the BNP's publicly claimed membership), with home addresses, telephone numbers, emails and in some instances employment details. The membership list appears to have been released by a disgruntled party member or members.

The BNP's leader, Nick Griffin, has acknowledged that the membership list is authentic but claimed that it was out of date as it was compiled at the end of 2007. One irony of the leaking of the list is that it has forced Nick Griffin to rely on the European Convention of Human Rights to prevent its further publication: the party is strongly opposed to the Convention and to the Human Rights Act which incorporated it into British law. The Information Commissioner, who enforces the Data Protection Act, and is investigating the matter with Dyfed Powys police, is looking not only at the posting of the list, but at the amount of information that the BNP holds on its own members.

One of the repercussions of the leak was that in January 2009, an official investigation was launched after two

immigration service staff, both of whom work with asylum seekers, were found to have links to the extremists. One of the men resigned after his name was found on the BNP's membership list while the other has been suspended while his employer makes inquiries about his links to the organisation. *The Independent* newspaper, which revealed the inquiry into the immigration employees, commented: “Both cases raise serious concerns about racism within the immigration system, where membership of extreme political groups has long been suspected.” [1]

Reactions: Unions and police

The publication of the list also brought renewed calls from trade unions for a ban on BNP membership in public sector jobs such as teaching and nursing. The list contained the names of around 15 teachers, nurses, members of the armed forces and civil servants as well as police officers. Chris Keates, general secretary of the NASUWT teachers union, told *The Independent* newspaper: “Those who declare their affiliation to the BNP should not be allowed to work in the teaching profession or in public services.” [2] The University College Union (UCU) issued a statement with the National Union of Teachers (NUT), which stated:

The policies and positions of the BNP are incompatible with the ethos and values of teaching. Racism and fascism are the antithesis of the aims of education which strives for the liberation of every learner's

potential, irrespective of age, class, gender, disability, sexual orientation, race or religion.

In common with the mainstream political parties, NUT and UCU find the policies of the BNP utterly unacceptable. We call on the government to take urgent action to ensure that racism and fascism have no place in the classroom or lecture hall, and to give consideration to making membership of the BNP incompatible with registration as a qualified teacher or lecturer, in line with policy for the police.

Both unions find espousal of BNP policies to be incompatible with membership of our organisations." UCU and NUT Statement [3]

However, the University of Cambridge has said that it will not take action against a named design engineer at the university's Centre for Industrial Photonics, Arthur Nightingale, because the political affiliations of members of staff were "a matter for them provided that they do not affect their performance in the workplace."

Nicola Dandridge chief executive of the Equality Challenge Unit (ECU), rejected this arguing that while "primacy of freedom of speech is fundamental", universities had legal obligations to promote good race relations on campus:

It is hard to see how institutions can reconcile their duty to promote good race relations with staff being members of the BNP. This is particularly the case in relation to staff who have contact with students. Institutions may therefore consider that it is inappropriate for BNP members to have teaching and/or pastoral care responsibilities, or other direct contact with students. [4]

Police and prison officers have been prevented by law from joining the BNP since 2004 "because such membership would be incompatible with our duty to promote equality under the Race Relations Amendment Act and would damage the confidence of minority communities", (Peter Fahy, chief constable of Greater Manchester Police and spokesman for the Association of Chief Police Officers).[5] In January two Metropolitan police officers whose names appeared on the list were "cleared" of involvement with the BNP by an internal inquiry. PC Joe Cutting, from south London, and a part-time officer who has not been named, will return to full duties [6].

Merseyside police have investigated PC Steve Bettley for an "alleged relationship with the party" and he was sacked by the force in March. A Merseyside police statement said:

We are very clear - membership of the British National Party is totally incompatible with the duties and values of the police service and Merseyside Police. We will not accept a police officer or police staff being a member of the BNP. [7]

In December Nottinghamshire police arrested two people in

Brinsley in connection with the publication of the membership list as part of an ongoing investigation into the leak that is being carried out with the Information Commissioner. A spokeswoman said: "We can confirm that Notts Police arrested two people as part of a joint investigation with Dyfed Powys Police and the Information Commissioner's Office in conjunction with alleged criminal offences under the Data Protection Act. The arrests followed an investigation into a complaint received about the unauthorised release of the BNP party membership list." [8]

One of those arrested has been named in the media as Sadie Graham, a former BNP councillor who was expelled by the party in December 2007 after allegedly being involved with an internet blog that "attack[ed] and smeared fellow party officials." At the time, she said: "I am absolutely disgusted by the way they have treated me when I have done nothing but work hard for the party and have been responsible for bringing them forward in the East Midlands. I am now an independent councillor for Broxtowe. I would like to assure people that I am still nationalist and still believe in the principles of the BNP, but just disagree with the bad management of the party. I work very hard as a councillor and will continue to do so."

Graham is now an "independent nationalist" on Broxtowe Borough Council. She has said that she has received threats since the list was published and is planning to leave her home and go into hiding. [9]

Sources

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5. See http://www.publicservice.co.uk/news_story.asp?id=7753
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Spain: Draft reform of the immigration law

by Peio Aierbe

Examines prosed changes to immigration law and the regressive impact of European Directives: "It is barbaric to turn the relationship between people working towards regularisation into a crime or offence"

On 19 December 2008 the draft text to reform the Spanish immigration law (*Ley de Extranjería*), which modifies 50 of its 71 articles, was approved by the council of ministers (cabinet). The reform seeks to adapt the law to the economic recession and restrictions at the European level. Simultaneously, elements are incorporated on the basis of legal imperative, whether as a result of decisions reached by the Constitutional Court or by European Directives. Apart from this, issues deriving from the experiences of the last eight years are adapted and adjusted. Two matters stand out in the intentions of the law's reformers: a) they

conceive of immigration as a mere facet of the labour force; b) integration is something that migrants are responsible for doing. Work is the key for integration.

The latest reform of the *Ley de Extranjería*, which was agreed by the Socialist Party (PSOE) and Popular Party (PP) and gave rise to Law 14/2003, denied basic rights to people in an irregular administrative situation. The Constitutional Court rulings 236/2007 (7 November 2008) and 259/2007 (19 December 2008) ruled unconstitutional articles that regulated the rights of reunion, association, trade union membership and the right to

strike by excluding people in an irregular administrative situation. In recognising these rights, the current reform goes no further than to comply with the Constitutional Court's rulings.

A sizeable part of the reforms imposed by European directives are regressive allowing for increased periods of detention in the *Centros de Internamiento para Extranjeros* (CIEs, Detention Centres for Foreigners). There is an increase from a maximum detention period of 40 days to 60 or 70 days. Another hurdle increases the obstacles for people trying to reunite with their older relatives by requiring that the person making the request is the holder of a permanent or long-term residence permit and that the person who will join them be more than 65 years of age.

The new regulation on the situation of unaccompanied minors is also a backwards step despite the kind words used alongside the standard "superior interest of the minor" formula. What the draft law actually does is open the door widely for repatriation which, in practice, is another way to refer to expulsions in co-operation with the diplomatic representatives of the minor's country of origin.

It is barbaric to turn the relationship between people working towards regularisation into a crime or offence. And the same thing happens with regards to registration in the municipal records which certifies someone as a resident with an address and allows them basic rights such as health care, regularisation of their status or the renewal of a work and residence permit.

This is the third reform of Law 4/2000, which reformed law 7/1985, since it came into force. It will be followed by a new regulation or a reform of the current one. In view of its substantial contents, it can be seen that the reform is part of a regressive cycle, both in Spain and across the European Union, which views immigrants in a restricted way, emphasizing their dimension as a labour force that is subject to the vicissitudes of the labour market and as a function of the latter.

Detention centres

As part of the campaign for the right of access to detention centres by the Spanish *Migreurop* network, the organisation arranged a visit to the Madrid detention centre on the 30 January 2009 in the company of the MEP, Willy Meyer. After obtaining interior ministry authorisation for the visit the *Migreurop* representatives were denied access at the last minute, resulting in the MEP's refusal to enter the centre under newly imposed restrictions.

Madrid's *Centro de Internamiento de Extranjeros* remains at

the centre of a storm. On 17 February the *SOS Racismo*, *Ferrocarril Clandestino* and *Médicos del Mundo* NGOs filed a lawsuit alleging ill-treatment, physical assaults, a lack of hygiene and untreated disease at the centre, which is located in the *avenida de los Poblados*, adjacent to the Aluche neighbourhood in southern Madrid. In the matter of the assaults the case of the Algerian national Alí Khamel, who suffered a double fracture to his arm and bruising on 2 February, was raised. Afterwards Khamel was held incommunicado and nothing was heard of him for a week. Both the prosecution services and the ombudsman are aware of these events. As for the medical conditions, "It is well known", says a letter signed by 61 of the detainees, "that there are people with serious problems suffering with tuberculosis and AIDS". The letter also mentioned that hygiene was a problem because of the "lack of disinfectant" for cleaning the bathrooms.

Government "immigrant hunt" criticised

On 18 March 2009, around 200 social organisations filed a lawsuit before the state's general prosecution service complaining about an "immigrant hunt" that was encouraged by the interior ministry. The organisations requested that the prosecution service investigate the selective round-ups used to identify Spanish migrants without a residence permit that started at the beginning of 2008. As is detailed in the lawsuit, four police trade unions have alleged that they received orders to carry out mass and indiscriminate identification stops in the street or at specific establishments, targeting people with physical traits that indicate foreign origins.

The complainants add that in certain areas of Spain the security forces had been set monthly arrest targets using the criteria of physical characteristics. They demand that the prosecution service should investigate whether promises of compensation, either in money or in kind, were made to officers depending on the number of people they detained. They also want to know if specific directives were issued for the detention of immigrants of Moroccan origin to be a priority.

In their lawsuit, the representatives from these associations insist that such activities are contrary to the Constitution and human rights legislation and they insist that the public prosecutor, as the state's legal representative, undertake the necessary actions to guarantee that these principles are complied with.

by Peio Aierbe of *Mugak*

New material - reviews and sources

Civil liberties

Too far and too fast – the laws that make everyone a suspect, Richard Thomas interviewed by Alexi Mostrous and Richard Ford. *The Times* 27.2.09, pp. 18-19. Interview with the Information Commissioner, Richard Thomas, in which he warns once again that the government's "creeping surveillance" risks turning everybody into a suspect. He argues that monitoring the behaviour of millions of Britons risks hardwiring surveillance into the country's way of life: "Our society is based on liberty and democracy. I do not want to see excessive surveillance hardwired into British society." Thomas criticises Section 152 of the Coroners and Justice Bill (which would allow mass data sharing between government departments and the private sector) and says that proposals to database information currently held by internet service providers and telephone companies would be a step too far."

Commentary on the Fourth Periodic Report of the Netherlands on the International Covenant on Civil and Political Rights (ICCPR). *NJCM, August 2008 pp 42*. In advance of an inquiry by the Human Rights Committee (HRC) of the UN in Geneva, fourteen Dutch

NGOs led by the Dutch section of the International Commission of Jurists (NJCM) commented on the human rights situation in the Netherlands. In the report the NGOs criticise the lack of protection of children, the asylum procedures and discrimination on the basis of sexual preference, handicap or chronic illness. The HRC monitors the compliance with the International Covenant on Civil and Political Rights: <http://www.njcm.nl/site/uploads/download/276>

Protecting Individual Privacy in the Struggle against Terrorists: a framework for program assessment, Committee on Technical and Privacy Dimensions of Information for Terrorism Prevention and Other National Goals. *US National Research Council* (National Academies Press, Washington DC, USA) 2008, pp. 252 (ISBN 978-0-309-12488-1). This report, which was commissioned by the Department of Homeland Security and the National Science Foundation, examines the technical effectiveness and implications for civil liberties of data mining and behavioural surveillance techniques. It finds that: "Modern data collection and analysis techniques have had remarkable success in solving information-related problems in the commercial sector; for example, they have been successfully applied to detect consumer fraud.

But such highly automated tools and techniques cannot be easily applied to the much more difficult problem of detecting and preempting a terrorist attack, and success in doing so may not be possible at all. Success, if it is indeed achievable, will require a determined research and development effort focused on this particular problem” (p. 2): http://books.nap.edu/openbook.php?record_id=12452&page=R17

Away from Home: Protecting and supporting children on the move. *Save the Children*, November 2008, pp 30. Drawing on the experiences of children themselves, *Away from Home* provides insights into why children move and the risks they face. It looks at how policymakers and service-providers can support children who are on the move, including tackling the worst forms of children’s movement and exploitation. It argues that child protection systems and other services, such as migration policies, need to be adapted so that they work for children on the move.

Immigration and asylum

Europe’s shame: a report on 105 deaths linked to racism or government migration and asylum policies, Liz Fekete. *European Race Bulletin* no. 66 (Winter) 2009, pp.36. This issue of the bulletin consists of an extended report by the IRR into deaths in the EU in 2007 and 2008 due to either racism or government migration and asylum policies. “Those who died were asylum seekers, migrants, refugees, members of minority ethnic groups or targets of far-Right activity. Though we unearthed 105 deaths, we found that, all too often such deaths are neglected by Europe’s political leaders, as well as its mainstream newspapers. Cases listed here...include murders by members of far-Right parties, racist killings, deaths that occurred in immigration removal centres or after contact with the police. Some people died at the hands of extremists, others because of the climate of racism and related intolerance which blights so much of the continent, and still more fell victim, one way or another, to Europe’s tough, unbending and inhuman asylum and immigration policies.” Contact: info@irr.org.uk

Detention of Trafficked Persons in Shelters: A Legal and Policy Analysis, Anne T. Gallagher & Elaine Pearson. *Asia Regional Trafficking in Persons Project and Human Rights Watch* August 2008, pp 27. This study considers the international legal aspects of victim detention in shelters and weighs up the common justifications for such detention from a legal, policy and practical perspective. It is based on desk research of shelter practices in a number of countries and field-based research undertaken principally in South East Asia. It concludes that routine detention of victims or suspected victims of trafficking in public or private shelters is unlawful. The second part of the Study deconstructs various policy arguments in favour of victim detention by asking: can victims consent to their own detention? Is it indeed true that detention provides the only – or even the best chance of delivering much needed support and protection to victims of trafficking? http://www.artipproject.org/01_aboutartip/ARTIP_Detention-Study_0808_final.pdf

Returns at any cost: Spain’s push to repatriate unaccompanied children in the absence of safeguards. *Human Rights Watch*, 2008, pp26. This report focuses on the lack of legal representation during repatriation procedures of children that has a fundamental impact on their lives and may put their well-being and the exercise of their fundamental rights at risk. Adult migrants, on the contrary, receive free legal assistance. In order to improve the situation, Spain has recently concluded a bilateral agreement with Morocco and Senegal to ensure that children are not repatriated to situations of risk. Spain has also financed reception centres in Morocco. However, according to the report, Spain has repeatedly sent unaccompanied children back to situations of risk in their country of origin. Human Rights Watch urges Spain to improve its safeguards for unaccompanied children who face repatriations: <http://hrw.org/reports/2008/spain1008/spain1008web.pdf>

Recent Developments in Immigration Law - part 3, Toos Chambers’ Immigration Team. *Legal Action* February 2009, pp. 36-40. This piece covers recent developments in immigration case law.

Integration of Female Immigrants in Labour Market and Society. Policy Assessment and Policy Recommendations. *FeMiPol* Policy

Brief no. 3, March 2008, pp 14. Migration flows to EU countries during the last few decades indicate a growth in feminisation, with female migrants increasingly entering informal labour markets in care, health, domestic services and the sex industry. This policy brief by *FeMiPol* examines the impact of integration policies on the position of migrant women within selected EU countries in the last decade, and formulates recommendations for policies which foster integration of new female migrants: http://www.femipol.uni-frankfurt.de/docs/policy_briefs/PB3.pdf

Heathrow 2008-2009. *Independent Monitoring Board* (April) 2005, pp. 35. This report details another government migration scandal, the degrading and negative treatment of detainees: www.imb.gov.uk/annual-reports/09-annual-reports/Heathrow_2008-2009.pdf?view=Binary

Law

Courts and Compliance in the European Union: The European Arrest Warrant in National Constitutional Courts, *Scott Siegel. Jean Monnet Working Paper 05/08* 2008, pp. 36. EU Member States have expanded the tools they use to cooperate in combating transnational crime and terrorism. Chief among these is the Framework Decision on the European Arrest Warrant, which requires judicial and police authorities to bypass all national extradition procedures involving suspects residing in a member state. Only Germany, Poland, Italy, and the Republic of Cyprus experienced severe delays in implementing the required national legislation. Contrary to the expectations of “veto players theory”, national constitutional courts do not veto EU law, but instruct legislatures on how best to redraft legislation: <http://www.jeanmonnetprogram.org/papers/08/080501.pdf>

Fourth Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, Lord Carlile of Berriew QC. 3.2.09, pp. 64. This report claims to be an “analysis” of the operation of the control order system in 2008. <http://security.homeoffice.gov.uk/news-publications/publication:-search/prevention-terrorism-act-2005/lord-carlile-fourth-report.pdf>

Liberty’s Second Reading Briefing on the Coroners and Justice Bill in the House of Commons Anita Coles and Isabella Sankey. *Liberty*, January 2009, pp. 43. There are serious concerns that the information sharing powers in this bill will allow people’s personal data to be shared between government departments and private companies without their consent. Available as a free download at: <http://www.liberty-human-rights.org.uk/pdfs/policy-09/coroners-andjustice-second-reading-briefing.pdf>

Information Law Update, Dr David McArdle. *SCOLAG Legal Journal* Issue 376 (February) 2009, pp.43-44. This article reviews the law relating to data protection, freedom of information and the media. It considers intellectual property, defamation and trademarks.

Deeply Disturbing, Aisha Maniar. *Labour Briefing* March 2009, p. 4. This article reports on recent developments in the USA to cover up information on the extraordinary rendition process. In Italy the courts threw out key evidence in the case of the CIA’s abduction of the Egyptian, Osama Moustafa Hassan Nasri, on the basis that it was “classified”. Maniar reports on the American Civil Liberties Union’s (ACLU) case on behalf of torture victims against Jepperson Dataplan, a Boeing subsidiary that provided critical support for the rendition programme. For more information on the Jepperson Dataplan case visit the ACLU website: <http://www.aclu.org/>

Liberty’s Briefing on the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009. *Liberty*, March 2009, pp. 15. This briefing was prepared for the Parliamentary debate on the renewal of the government’s control order legislation: “The Government evidently expects the Parliament to renew the control order legislation for the fourth year running. It hopes that parliamentarians will not only overlook this unjust scheme of indefinite house arrest without trial but that parliamentarians will also turn a blind eye to the ineffectiveness of the control order regime. Control orders are both grossly unfair and ineffective.” Available as a free download: <http://www.liberty-human-rights.org.uk/pdfs/policy-09/liberty-s-briefing-on-control-order-renewal-2009.pdf>

Military

Human Rights Situation in Palestine and other Occupied Arab Territories. Report of the Special Rapporteur on human rights in the Palestinian territories occupied since 1967, Richard Falk. United Nations Human Rights Council (A/HRC/10/20) 17.3.09, pp. 26. This report is the advanced unedited version of the UN's Special Rapporteur's report on Israel's contribution to the "war on terror", its invasion of the occupied Palestinian Territories. He concludes: "A total of 1,434 Palestinians were killed. Of these, 235 were combatants. 960 civilians reportedly lost their lives, including 288 children and 121 women. 239 police officers were also killed; the majority (235) in air strikes carried out the first day. 5,303 Palestinians were injured, including 1,606 children and 828 women (namely 1 in every 225 Gazans was killed or injured, not counting mental injury, which must be assumed to be extensive)." Falk observes: "There is no way to reconcile the general purposes and specific prescriptions of international humanitarian law with the scale and nature of the Israeli military attacks commenced on 27 December 2008. The Israeli attacks with F-16 fighter bombers, Apache helicopters, long-range artillery from the ground and sea were directed at an essentially defenceless society of 1.5 million". <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.20.pdf>

Panel urges keeping US nuclear arms in Europe, Walter Pincus. *Washington Post* 9.1.09. A high level task force, appointed by US Defense Secretary, Robert Gates, has advised that the US should keep tactical nuclear bombs in Europe and even consider modernising older warheads on Cruise missiles to maintain credibility with allies who depend on the US weapons for security. The panel, called the Secretary of Defense Task Force on Defense Department Nuclear Weapons Management and chaired by former defence secretary James Schlesinger, said in the report that as long as NATO members rely on US nuclear weapons for deterrence and maintain their own dual-capable aircraft no action should be taken to remove them without consultation. The task force was set up after two nuclear incidents last year involving a nuclear weapon loaded B-52 flying across the US and shipping nuclear missile parts to Taiwan. Report available as free download from www.defenselink.mil/pubs/phase_i_report_sept_10.pdf

Satellite evidence reveals the secret history of CIA airbase, Jeremy Page. *The Times* 19.2.09, pp. 40-41. Images from Google Earth show that the US has been secretly launching pilotless attack drones from the Shamsi airbase in Pakistan's southwestern province of Baluchistan since 2006. The drones' attacks on Pakistan's Federally Administered Areas have caused high numbers of civilian deaths (the precise number is unknown as the US does not do body counts in Pakistan any more than it did in Iraq), as well as taking-out targets in assassinations. This is done with the tacit support of the Pakistan government and army, despite the country's officials repeatedly condemning this violation of its sovereign territory. The US is expected to extend its strikes to the densely populated capital of Baluchistan province, Quetta, in the near future with an inevitable increase in "collateral damage".

"I'm not Proud of What I Did: Breaking the silence", Brandon Neely interviewed by Almerindo Ojeda. *Independent Life*, 18.2.09, pp. 1-6. Brendan Neely is a former Military policeman and Guantanamo guard and this interview gives a taste of Donald Rumsfeld's concept of "justice". Neely describes his lack of training, a process by which he realised that he was "no longer a civilian: I was property of the United States army". He describes the casual beatings and abuse meted out to the "underweight and malnourished" prisoners, or "sand niggers" as the guards liked to address them. He concludes: "I think everyone can agree that, at Guantanamo Bay, Cuba, there are some really bad people. And there are a lot of good people there as well. But – innocent, guilty, black, white, Muslim or Jew, no matter what you are – there is no excuse to treat people in the manner that I and other people did. It's wrong and downright criminal, and it goes against everything the United States of America stands for,"

Conclusions of the Brussels European Council on ESDP available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/esdp/104699.pdf

"I shot him in the head – 11 times", Donald Macintyre. *Independent*

on *Sunday* 1.3.09, pp. 5-7. Macintyre interviews a former member of an Israeli assassination squad who expands on the testimony he provided to Breaking the Silence (an Israeli ex-soldiers organisation) casting new light on the "targeted assassination" tactic used by the Israeli Defence Force and the collateral damage that comes with it. One operation, in which two civilians were massacred alongside two "targets", is said to have "succeeded perfectly" and the anonymous assassin was congratulated by the prime minister and the chief of staff.

Report on the implementation of the European Security Strategy: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/esdp/104631.pdf

"Energy and climate change shape EU security strategy", Valentina Pop. *EUobserver.com*, 10.12.08

"Summit boosts EU security and defence", Valentina Pop. *EUobserver.com* 12.12.08

60 Jarhe Nato (NATO 60 years). *Wissenschaft und Frieden* (Bonn, Germany) 2009/1.: <http://www.wissenschaft-und-frieden.de>

Prisons

Recent Developments in Prison Law – Part 1. Hamish Arnott, Nancy Collins and Simon Creighton. *Legal Action* February 2009, pp. 13-18. This update on the law relating to prisoners and their rights reviews legislative and policy changes relating to the Criminal Justice and Immigration Act 2008 and the Parole Board (Amendment) Rules 2008 and developments in case-law concerning the Parole Board, temporary release, categorisation decisions and challenges to alleged breaches of the European Convention on Human Rights.

Racism and Fascism

Monitor Racisme & Extremisme. Achtste rapportage. Anne Frank Stichting, University of Leiden, 2008, ISBN: 978-90-8555-004-4, pp 304. The Dutch *Racism & Extremism Monitor* finds that Islamophobia has grown considerably in the past year in the Netherlands, not only in terms of negative public opinion but also in terms of the increased violence directed at this community and the growing tendency to turn a blind eye to crimes of expression aimed at them. It finds the right-wing extremist landscape in the Netherlands has undergone drastic change in recent years, caused not only by the sharp increase in extreme rightwing street activism but also by the public stance taken by the Party for Freedom (*Partij voor de Vrijheid*, PVV). According to the study, the PVV can be called an extreme right-wing party, a claim that triggered much public debate. The balance between the freedom of expression and protection against discrimination has become disrupted by a changing political climate says the report, where the former is justifying or denying side-effects of counterterrorism and radicalisation policy: (Dutch) <http://www.annefrank.org/upload/Downloads/Monitor2008-8.pdf>

Security and Intelligence

Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin. *United Nations Human Rights Council*, 4.2.09 (A/HRC/10/3), pp. 26. This report exposes the UK's complicity in the US practice of "rendition", in which citizens are abducted, transferred to "black sites" in failed states such as Afghanistan and Morocco, where they can be illegally tortured to obtain information on the "war on terror". Scheinin observes that the US rendition process required an "international web of exchange of information" which created "a corrupted body of information which was shared systematically with partners in the war on terror through intelligence cooperation, thereby corrupting the institutional culture of the legal and institutional systems of recipient states." Alongside the UK, he names and shames Bosnia and Herzegovina, Canada, Croatia, Georgia, Indonesia, Kenya, Macedonia and Pakistan. Available as a download: <http://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A.HRC.10.3.pdf>

Just News. Committee for the Administration of Justice February 2009, pp. 8. This issue of *Just News* marks the twentieth anniversary of the murder of Northern Irish civil rights lawyer, Pat Finucane, on 12 February, who was shot to death in front of his wife and family.

Finucane's death resulted in the first Stevens inquiry which uncovered the shadowy Force Research Unit (FRU), an intelligence outfit that infiltrated spies into paramilitary groups, such as Brian Nelson who was later convicted on five counts of conspiracy to murder (none of the charges related to Pat Finucane). Twenty years on from the assassination no state actor has been held accountable and the government has stonewalled on its promise to the Finucane family of an independent public inquiry. As *Just News* comments: "It is ironic that Patrick Finucane, who fought so hard to obtain justice for others, is still waiting for justice two decades later." *Just News*, 45/47 Donegall Street, Belfast BT1 2BR, Tel. (028) 9006 1122.

Britain's Hidden Guantanamo, Paul Donovan. *Irish Post* 14.2.09. Article on Britain's "equivalent of Guantanamo", the infamous control order detention regime in which individuals are detained under house arrest (for up to 24 hours a day) without ever having been brought before a court of law. Donovan examines a number of these non-prisoners, such as "U" (although his identity is widely known we are not allowed to name him) who has recently fought a legal battle with the Special Immigration Appeals Commission for the right to take a daily walk in the park – the outcome: "U learned that on his walks, twice weekly, he will be able to speak to his escort – but save for that he must be silent. He can stop for coffee, chocolate, maybe even cake, but on no account can he ask for them." Donovan also interviews "G" who has been detained since 2001 but is still waiting to be interviewed, let alone informed of what he has done wrong. Mustapha Taleb is another of those detained under control order legislation. He did have his day in court and was cleared of all charges in the so-called "ricin plot" (there was no ricin) but this has not prevented his detention nor his being served with a deportation order back to Algeria.

Kenya and Counter-Terrorism: a time for change. *Redress and Reprieve*, February 2009, pp. 63. Excellent report which documents the arbitrary detention of at least 150 people (including children) of 21 nationalities as they fled to Kenya from the conflict in Somalia between December 2006 and February 2007. The majority were first held in Kenya for several weeks without charge, denied access to a lawyer or consular assistance and, in some cases, tortured. In addition at least one Kenyan citizen, Mohammed Abdulmalik, was rendered to the illegal US prison at Guantanamo Bay, Cuba. The report notes that the "common thread in these cases is the invocation of national security and the threat of terrorist attack to justify these detentions and removals." See: <http://www.reprieve.org.uk/documents/KenyaandCounterTerrorism.pdf>

Policing

Snap Judgement, John Ozimek. *Police Review* 27.2.09, pp. 38-41. This article examines "A long and sometimes misguided history of mutual misunderstanding between police officers and photographers [that] came to a head in 2008" when the NUJ's parliamentary group "put forward an early day motion in the House of Commons demanding that the police service observes the law in respect to photographers." For the record, the law gives individuals (journalists or members of the public) the right to photograph what they please but the police have, for many years, taken it upon themselves to arbitrate what is legitimate and what is "illegal". This situation has been exacerbated by the government's "war on terror" and poorly-drafted anti-terrorist legislation seems likely to be used to justify unwarranted interference in journalist's lawful activities. This led to a demonstration in February by more than 300 photographers who gathered outside New Scotland Yard to mark the introduction of the new laws. NUJ, Headland House, 308-312 Gray's Inn Road, London WC1X 8DP. Email: info@nuj.org.uk

Water Treatment, Gary Mason. *Police Product Review* December 2008 / January 2009, pp. 40-41. Article on the use of water cannon to disperse protestors in Germany and Belgium, countries considered as being "at the forefront of developing the vehicles and the water-firing jets into a more effective riot control resource." Early prototypes, which quickly ran out of water, have been replaced by modern vehicles that can be refilled from water hydrants, reservoirs, lakes or rivers. "There is also the option of delivering an incapacitant with the jet of water at a concentration previously set during installation."

Capturing the Criminals, Gary Mason. *Police Product Review* December 2008 / January 2009, pp. 43-44. This piece considers

Merseyside police tests of facial recognition technology systems, particularly the Digital Image Register (DIR), which "takes images of a suspect when they are kept in the airlock or holding cell outside custody and search the images against a locally held data base." If a match is recorded, relevant information is colour coded to comply with data protection requirements: Green (the person is known to the police but there are no markers against their name), Yellow (there is a bail marker against the person's name), Amber (the person is wanted on warrant), Red (the person is wanted and is considered a serious criminal). The DIR is manufactured by DW Group, which is developing the next generation Digital Register.

Europe

Transatlantic Relations – Ongoing Issues with the USA: A "Partially Declassified" document (ie: lots of censored sections) but informative: <http://www.statewatch.org/news/2008/dec/eu-usa-issues-pa-11884-ext1-08.pdf>

European Commission: Proposal for a Council Decision: Concerning the extension of the Agreement for scientific and technological cooperation between the EC and USA: <http://www.statewatch.org/news/2008/dec/eu-usa-technical-coop-agreement-13779-08.pdf>

European Parliament study: **A Review of the increased use of CCTV and video-surveillance for crime prevention purposes in Europe:** <http://www.statewatch.org/news/2009/apr/ep-study-norris-cctv-videosurveillance.pdf>

EU: **Guidelines on the implementation of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union:** <http://www.statewatch.org/news/2009/apr/eu-council-swedish-initiativeguidelines-8083-09.pdf>

EU: **Council Decision on the conclusion on behalf of the European Union of the Agreement on extradition between the European Union and the United States of America and the Agreement on mutual legal assistance between the European Union and the USA:** <http://www.statewatch.org/news/2009/apr/eu-usa-mla-extradition-agreements-7746-09.pdf>

EU: **Europol Terrorism Report for 2009: EU terrorism situation and trend report:** <http://www.statewatch.org/news/2009/apr/europol-te-sat-2009.pdf>

Overview of European and international legislation on terrorist financing, European Parliament Study: <http://www.statewatch.org/news/2009/apr/ep-study-eu-int-legisterrorist-financing.pdf>

European Commission: Access to documents: DG Trade: access to documents, 2009: <http://www.statewatch.org/news/2009/apr/eu-access-vadecum-dg-trade-internal.pdf> and Secretary-General Staff Guide to public access to Commission documents: <http://www.statewatch.org/news/2009/apr/com-sg-internal-guide-access-to-documents.pdf>

Moving Europe: EU research on migration and policy needs EU: European Commission: Directorate-General for Research. Report written by Ann Singleton, Head of the Centre for the Study of Poverty and Social Justice, School for Policy Studies, University of Bristol: <http://www.statewatch.org/news/2009/apr/eu-com-res-policy-review-migration.pdf>

Resources on civil liberties in the EU

- Statewatch database
<http://database.statewatch.org/search.asp>
- Statewatch News Online
<http://www.statewatch.org/news/>

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Contributors

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Statewatch,
PO Box 1516, London N16 0EW, UK.
Tel: (00 44) 020 8802 1882
Fax: (00 44) 020 8880 1727
e-mail: office@statewatch.org

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