

Statewatch bulletin

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IMMIGRATION

'Illegal' immigration drive

On 13 October the Home Secretary Michael Howard announced that the government is setting up a study to track down illegal immigrants in the UK. The study will be carried out by three officials from the Home Office, the Department of Social Security and the Immigration and Nationality Department. They will be looking at the present arrangements for coordinated action and the 'exchange of information' between the Immigration Department and 'the police, the Department of Social Security, the Employment Service, the Health Service and housing authorities'.

In a statement Mr Howard said that the Immigration Service is 'detecting and removing more such people [illegal immigrants] than ever before' but that national and local government bodies should make the 'most efficient use of the information available to us'. He says that is necessary to prevent 'the drain on public funds' by illegal immigrants.

This move follows the decision of the EC Trevi Ministers in Copenhagen in June to initiate national measures for the expulsion of illegal immigrants from the EC.

The *Campaign Against Racism and Fascism* said:

This will lead to a witch-hunt in the community with the harassment of black people who will have to prove to all kinds of agencies their right to be here. There will also be more deportation raids by police and immigration officials like the one in which Joy Gardner was killed.

Home Office press release, 13.10.93.

Asylum Act in force

The Asylum and Immigration Appeals Act came fully into force at the end of July 1993 - and the first test case on the Act's provisions was heard in the High Court in September. Issues being litigated, or likely to be in the near future, include Home Office powers to certify a claim as being 'without foundation'; the rights of housing authorities to provide more than temporary housing for asylum-seekers; and so-called 'third country' cases. This last issue has become a live one since Amnesty International produced its report on the devastating effects on asylum-seekers of the policy, which allows the Home Office to send anyone arriving by sea back on the boat to Calais or Ostend, and anyone arriving by air from a European airport back on the plane, without looking at the asylum claim. Following the publication of the report, the United Nations High Commission for Refugees (UNHCR), not noted for its willingness to intervene on behalf of refugees, has suddenly declared the 'third country rule' illegal and in breach of the Geneva

Convention - three years after the policy was announced in parliament and the Dublin Convention was signed.

The Act is part of a package which includes new procedural and substantive rules for asylum claims. Under the new provisions, appeals against refusal of refugee status must be lodged within 10 days and heard within six weeks. If they are certified 'unfounded', the time limits are 2 days and seven days respectively. This compares with an average time from refusal to appeal of a year to eighteen months before the Act came into force. The new provisions have caused chaos and confusion in the immigration appeal centres, with none of those professionally concerned - Home Office civil servants, adjudicators, or lawyers - having much idea of how the system works.

As its name indicates, in addition to provisions on asylum - criteria for deciding a claim, appeals, fingerprinting and restriction on housing provision, the Act modifies appeal rights for other immigrants - largely by removing them. The best known of these is the abolition of the right of appeal for visitors and short-term students. But others have had their appeal rights removed, without any public outcry. They include those who can't produce necessary documents such as visas, and those who want more than the rules give them. In the past, the right of appeal gave a forum to those whose circumstances called for a sympathetic approach.

Another forum abolished with the Act is the right of appeal to the High Court, against unfair decisions by the Immigration Appeal Tribunal, whose decisions are now only appealable on strict points of law. Inserted by a late amendment into a sleepy House of Lords, the provision was condemned by immigrant groups as yet another curtailment of immigrants' legal remedies, likely to result in poorer decision-making at the lower levels of the system.

Asylum and Immigration Appeals Act 1993, HMSO, July 1993.

Asylum Appeals (Procedure) Rules 1993, 1993 No 1661, HMSO. *Statement of changes in the Immigration Rules*, HC725, HMSO, July 1993.

Tougher rules for immigrants

A consultation paper issued by the Home Office in August proposes stricter new rules for students, family members and others seeking to come to or stay in Britain, under the guise of consolidation of the immigration rules. Proposed changes include withdrawal of the right to stay from students whose governments stop paying their fees; abolition of the concession allowing unmarried women under 21 to join parents in Britain; and refusal of entry to anyone convicted of a criminal offence carrying a maximum penalty of 12 months or more. Immigration officers would also be able to refuse entry to anyone in respect of whom they 'possess information suggesting that exclusion would be conducive to the public good'. The wording of this rule is significantly wider than previously, and the amended provision would enable use of intelligence put on to

the computerised European Information System by officials and police of other EC states.

DoE orders 'illegal watch'

The multi-agency approach to immigration control has gathered pace, with the issue by the Department of the Environment of revised guidance for local housing authorities on its duties towards immigrants.

The guidance comes in the wake of a Court of Appeal decision in April 1993 declaring unlawful its advice to local authorities that everyone should be treated equally, regardless of their immigration status (see *Statewatch* 3:2 May-June 1993).

The DoE refused to appeal to the House of Lords, in a decision which left many mystified and angry in the light of the department's argument in the Court of Appeal that the changes would have a damaging effect on race relations, and it has now advised authorities that they may seek proof of lawful status, and should pass on their suspicions to the Home Office. UNISON, representing local government workers, has resolved not to implement the guidance, which also includes requirements to cooperate with the Home Office in identifying asylum-seekers and advice on the new restricted housing provision for them under the Asylum and Immigration Appeals Act.

From 'regrettable' to 'intolerable'

In a report on delays in the Home Office Immigration and Nationality Department (IND) the Home Affairs Committee finds some improvement from the position at the end of the eighties, but slams the delays of almost two years in dealing with naturalisation applications as 'intolerable and morally wrong'. The nine months which applicants in the Indian sub-continent have to wait between applying for permission to come to Britain and their first interview is characterised as 'unacceptable', while the 18 months taken to process asylum applications is merely 'regrettable'. The committee is 'concerned about the possible hardship' arising from the six-week delay sometimes experienced by asylum applicants in obtaining a Standard Acknowledgment Letter (SAL) - an identity card with photograph and details without which applicants cannot obtain benefits.

The report indicates that there have been improvements in efficiency since the Information Technology Division (B7) was set up in April 1990. Systems put into place since then include the B4 Nationality system, the INDECS system, which deals with landing and embarkation records, the Refugee index, the Port Administration System and the Suspect Index. In addition, a Screening Unit was set up in November 1991 for identification of asylum-seekers. Fingerprints of all asylum-seekers are now being added to their records.

But the committee expresses its concern over the 'apparently arbitrary way in which exceptional leave to remain is granted' and recommends that staff in the Asylum Division of the Home Office have adequate time for training and use to the full the 'essential' help of organisations such as Amnesty International and Africa Watch. It is also concerned that asylum-seekers wait up to five years before being granted exceptional leave to remain, and then have to wait a further four years to bring their families to Britain. This is 'unacceptable' and the committee recommends a review of the procedure. Indeed, it comments that 'delays in the asylum division and appeals process ... may give rise to the suspicion that delay is a means of control'.

Delays in the IND: Report, proceedings, minutes of evidence and appendices, HC Home Affairs Committee, Session 1992-93, 2nd report, No 320, 15.2.1993.

Asylum statistics 1992

Figures produced by the Home Office show that applications were reduced in 1992 by almost half, to 24,600, of whom 34% were from Europe, 31% from Africa and 25% from Asia. Of the 34,900 applications decided in the same year, less than 3% (1,100) were given full refugee status, while another 44% (15,300) were granted exceptional leave and around 53% (18,500) were refused (all but 3,500 for failing to provide information). In the ten years to 1992 Britain has accepted a total of 19,000 refugees (including dependants) and has granted exceptional leave to a further 45,000 (including dependants). It has refused 47,000 in the period.

The Bulletin does not give a total figure for asylum-seekers detained throughout the year, but shows that 230 asylum-seekers had been detained for more than a month on 3 April 1993, of whom 72 had been detained for between one and two months, 34 for over six months and three for over a year. 1,346 rejected asylum-seekers were removed or left voluntarily during the year.

Asylum statistics UK 1992: Home Office Statistical Bulletin, 15 July 1993.

Asylum-seeker unlawfully killed

The jury on the inquest into the death of Omasase Lumumba, who died in Pentonville prison under restraint by six prison officers, returned a verdict of unlawful killing when the inquest resumed on 27 July. The inquest was adjourned in April for counsel for the family to challenge the coroner's direction to the jury that they could not consider an unlawful killing verdict. The High Court decided in May that the coroner's direction was unlawful. The Home Office then obtained another adjournment when the inquest reconvened, claiming that the papers needed to be seen by the DPP. It was suspected that this was a ploy to cause too long a delay for the inquest to be resumed with the same jury, who had clearly been moved by the evidence they had heard, particularly that given by Lumumba's brother. In the event, however, there was no application to discharge the jury, who left the coroner and the Home Office in no doubt as to their views on Lumumba's death.

Guardian 28.7.93; *Independent* 21.9.93.

Lords confirms contempt ruling

The House of Lords delighted constitutional and immigration lawyers by confirming on 27 July that Kenneth Baker was in contempt of court when he defied a court order preventing him from deporting a Zairean asylum-seeker.

The asylum-seeker, referred to as 'M', had arrived in Britain from Zaire in 1990, having escaped arrest for opposition activity against president Mobutu Sese Seko. His application for political asylum was rejected, and on 1 May 1991, the day he was due to be removed, his solicitors lodged an application for judicial review of the removal. The Home Office representative in court told the judge that M would not be removed pending a hearing of the challenge. However, the aircraft took off for Paris with M on board and, despite intervention from M's solicitor and his MP, he was put on a flight to Kinshasa and there handed over to the Zairean authorities. He has not been heard of since he rang his solicitor from Nigeria in July 1991.

The High Court decided in July 1992 that the Home Office could not be guilty of contempt of court. Its decision was overturned in November 1992 by the Court of Appeal.

The House of Lords ruling means that it is now possible to take out injunctions against government departments, something which it had previously ruled impossible. In 1991 the anomalous situation arose that injunctions could be granted in cases involving EC law, but not in those turning on domestic law. This was after the European Court of Justice ruled that an injunction could be obtained against the Crown to stop the implementation of legislation incompatible with EC law.

Kenneth Baker was found guilty of contempt in his capacity as Home Secretary, which he was at the time, and was ordered to pay the costs of the case.

Guardian 28.7.93.

France: Conseil backs government

The Conseil d'Etat (State Council) in Paris has ruled that the French constitution must be changed in order for the French government to be able to ratify the Schengen Accord. The ruling also overturns a previous decision by the lower Constitutional Council which stated that eight of the clauses in Interior Minister Charles Pasqua's new law against immigration were unconstitutional. The clauses chiefly referred to the right of asylum, and also to family reunion.

The original ruling was greeted with sighs of relief by many French, who were alarmed at the hard-right plan to introduce 'zero immigration' into a country where a third of the citizens are immigrants or have a parent or grandparent of immigrant origin. However, the Constitutional Council's decision angered Pasqua who stated that it 'blocked the government from applying its policies'.

For several days it was unclear whether Prime Minister Edouard Balladur would agree to the necessary changes set out by the Constitutional Court. But early in September, a top level meeting had been held between President Mitterand and Balladur to discuss the impasse. The President agreed, as part of his pro-Europe policy, that the constitution would have to be changed. Mitterand's decision negated the need for a referendum to be held on the question. The matter then passed to the Conseil d'Etat for final approval.

The Constitutional Council's original ruling held that immigrants could not lose their right to remain in France while their case was examined, even if that request for entry was incompatible with another state's laws according to the Schengen Accords. This affected asylum seekers who had already had their applications examined in another country and those arriving for family reunion as recognised under international law. The Constitutional Council had referred to the clause in the 1946 constitution that guaranteed the right to asylum.

Balladur asked the Conseil d'Etat to intervene and make a final ruling, so that the decision could be seen to have been arrived at independently, and not by politicians bargaining with each other. The Conseil d'Etat is the supreme juridical body for both administrative and legislative matters. The ruling means that the necessary changes will now be made by simple majority in the Assemblée Nationale, the elected chamber. As the government commands a large majority in the parliament, this will only be a formality.

When the changes to the constitution have been adopted, France will be able to fully adopt the Schengen Accord and apply it in line with the other signatory countries. It also means that immigration into France, for whatever reason, will become almost impossible -

the idea behind Pasqua's call for 'zero immigration'. Pasqua is now reported to be planning new legislation on asylum rights which will match the constitutional changes.

Reflex, Paris.

Austria: Residency Act in practice

As the Residency Act (1 July 1993) took effect, a large number of 'hardship' cases were documented. Any non-nationals who unwittingly applied for welfare benefits were in many cases arrested and threatened with deportation. In cases in which immigrants' visas had run out, the individual applicants were forced to leave the country and apply in their country of origin, even if Austrian government officials were responsible for the delay. The city of Vienna and the Province of Tyrol even threatened to deport minors who were technically illegal aliens because their parents had neglected to include them in their passports after the children were born. The case of the impending deportation of a seven year old Turkish girl brought this policy into the media limelight. The government was again and again forced to grant stays of deportation, the exception became the rule.

What seemed at first to be evolving into a major policy sandal has, however, already blown over. Between the middle of August and the beginning of September several leading members of the Social Democrat (SPÖ)/Christian Democrat (ÖVP) government coalition called for the reform of the new Residency Act on humanitarian and constitutional grounds. But using the supposed threat of an impending wave of mass migration from Eastern Europe the Chancellor (SPÖ), Vice- Social Affairs (SPÖ) were able to bring into line the critical members of the cabinet and party hierarchies who had demanded changes in the new law. The trade unions too played a role in this process. The Minister of Social Affairs (SPÖ) is also the federal president of the Unified Construction and Lumber Workers Trade Union (Gewerkschaft Bau/Holz).

Opposition remains limited. A meeting of provincial governors (Landeshauptman) came out in favour of the new law. The Greens, the charity organisation of the Catholic church (CARITAS) as well as national anti-racist and anti-fascist coalition 'SOS-Mitmenschen' are the only organised groups actively opposing the new law. The Mayor of the city of Salzburg, Josef Dechant (ÖVP), surprisingly spoke out in support of his Vice-Mayor, Johann Padutsch (Greens), who is the only official now openly boycotting the legislation. The law case against Padutsch is still pending (see *Statewatch* vol 3 no 4).

In conclusion it now seems that the Minister of the Interior Franz Löschnak (SPÖ) is now waiting for media coverage to 'calm down' so that the law can again become effective. The aim of reducing Austria's non-national population remains the official government doctrine.

Research Group Ludwig-Boltzman-Institute/Karl-Steinöcher-Foundation for Labor History

Greece: the Greek-Albanian case

The presence of Albanian migrants in Athens has led to them being stereotyped as 'dangerous Albanians', young, male, penniless, unskilled, predatory, violent, untrustworthy and being responsible for most of the serious crime in the capital.

Earlier this year the Albanian government deported an active priest of the Greek Orthodox community located in southern Albania (northern Epirus). The government claimed he was acting

against the interests of the Albanian state. The Greek minority in Albania is 400,000 out of a total population of 3 million.

The Greek government responded by rounding up 20,000 Albanian migrants and deporting them back to Albania over one week. The Minister of Public Order said that Albanians were responsible for creating unemployment and called on citizens to help the police by informing them of 'illegal' migrants. Shortly after this confrontation the normal pattern was restored: any crime being committed by an Albanian getting headline news and racist attacks on Albanians. These events have taken place in the context of Balkan nationalism, by Greece over the name of the former Yugoslavian Republic of Macedonia, and Albania over Serbian treatment of its minority community in Kosovo.

The Greek conservative neo-liberal government (which lost office in October) made no attempt to regularise the position of 'illegal' Albanian migrants. It did not choose to legalise their presence or to effect its threat to deport them and close the border. Their present state of 'semi-illegality', to which the other political parties offered no alternative, suited the government which used them to justify increased legal powers.

Taken from a talk by Vassilis Karydis, lecturer in the Faculty of Law at the Democritus University of Thrace (56 Sina Str., 10672 Athens, Greece) at the 21st Conference of the European Group for the Study of Social Control and Deviance in Prague in September 1993.

Greece: Macedonian human rights

The Aegean Macedonian Association of Australia have produced a pamphlet detailing the denial of human rights to Macedonians living in Greece. The pamphlet focuses on a number of cases. Hrsitos Sideropoulos and Tasos were sentenced to five months in prison for stating in a magazine article that a Macedonian minority exists in Greece. Archimandrite Nikodemos Tsarknias, a well known Macedonian human rights activist, has been charged with talking back to his archbishop and his trial is set for April 1994. Michael Papadakis, a 17 year old school boy, who was sentenced to a year in prison for distributing anti-nationalist leaflets at a rally.

The pamphlet also includes an Amnesty International report and a classified report from the Greek National Security Service on the elimination of the Macedonian language and consciousness.

Human Right Abuses Against Macedonians in Greece is available from: The Aegean Macedonian Association of Australia, PO Box 409, Kingsgrove, NSW, 2208, Australia.

Germany: applications fall

The number of refugees applying for asylum in Germany has dropped significantly since its new asylum laws were introduced in July. The numbers were down from 31,123 in June to 20,685 in July and 14,521 in August. In an interview with the *Bild* newspaper Interior Minister Manfred Kanther urged German regional states to deport rejected refugees more quickly. 'The figure is still far too high', he said, 'the efficient deportation of rejected asylum seekers is of great importance if the new asylum laws are to work'. The new law automatically disqualifies refugees who enter through countries considered 'safe' which includes all of Germany's neighbours.

The number of 'ethnic' Germans returning to Germany is also declining. The German constitution grants citizenship to East Europeans who can prove German ancestry - 230,000 'ethnic' Germans from Eastern Europe and the former Soviet Union settled in Germany in 1992.

ESMV newsletter, September 1993; *International Herald Tribune*, 2.9.93; *Bild* 7.9.93.

Germany: Murder of a Tamil girl

Twelve days after she had disappeared, on the afternoon of Tuesday the 7 September, a cyclist saw a fire in the forest in Mindergangelt, which was later found to be the remains of 13 year old Sujitha Puvaneswaran's burnt body. The forensic examination had shown that Sujitha had been killed just before being burnt on 7 September.

On the 26 August, the parents of Sujitha Puvaneswaran went to the school (in Linich, Nordrhein Westfalen) to find out why Sujitha had not returned home from school. When they were told that she had not come to school at all, the parents became extremely worried and immediately informed the police. The police treated the parents with contempt and dismissive of the disappearance their daughter saying that she had probably gone somewhere with a friend. Extremely worried the parents informed their neighbours and started searching for their daughter.

As the days went by the parents and friends feared the worst. The police had not even taken the elementary step of putting her photo or a notice in the local newspapers. The editor of the *Juelicher Volkszeitung*, Reinhold Handke, said that they receive notices and photos for much less serious matters from the police, all the time. When a week of searching by the Tamil people achieved nothing, on the 2 September Sujitha's parents went to a lawyer to try to force the police to take some serious action - even at that stage Sujitha was still alive, and action by the police may have saved her life. But when confronted day after day by the parents the only response of the police was to try to construct a story that would provide an excuse for their negligence.

In the TV programme 'Explosiv' on 13 September the police's message was: Sujitha had a boyfriend that the parents disapproved of and because of this, most probably, the parents killed her and according to Hindu custom burned her body. This crude racist stereotyping has a resonance in German society that the police counted on in order to hide their negligence. *Kampagne fuer Menschenrechte in Sri Lanka und in Tamil Eelam* commented that a few months ago the German government removed its 'deportation stop' for Tamil people because of its important trade links with Sri Lanka. The group says: 'The German police are more accustomed to threatening Tamil people with deportation than giving them any kind of assistance'.

Kampagne fuer Menschenrechte in Sri Lanka und in Tamil Eelam, Dritte Welt Haus, Buchstrasse 14-16, D-28195 Bremen, Germany.

EC: seminars on racial attacks and racial discrimination

Seven seminars are being organised to look at legal remedies in respect of racial attacks and racial discrimination, looking at national and international law and European Convention. The dates are: *Netherlands*: 5 November, contact: Mr A Woltjer, Dutch Section of the International Commission of Jurists, Rijks Universiteit, Leiden, Hugo de Grootstraat 27, Postbus 9520, Leiden, Netherlands; *Spain*: 12 November, contact: Dr C Gortazar, Association para le Solidaridad con los Trabajadores Immigrantes and Universidad Pontificia Comillas ICAI-ICAIDE, Alberto Aquilera 23, 28015, Madrid, Spain; *UK*: 19 November, contact: Ms S Rowlands, Immigration Law Practitioners Association, 115 Old Street, London EC1V 9JR; *Ireland*: 26 November, contact: Ms S Green, Free Legal Advice Centre, 49 South William Street, Dublin

2, Ireland; *Greece*: 11 December, contact: Ms I Babassika, Bar Association of Athens and Medical Foundation for Rehabilitation of Torture Victims, 9 Lycabettous Str. GR-106, Athens, Greece; *Germany*: 28 January in Bonn, contact: Ms C Frosch, Europäische Rechtsakademie Trier, Dasbach 10, 5500 Trier, Germany. *France*: date to be decided.

Immigration: In brief

Gardner report delayed: The Police Complaints Authority, which is conducting an investigation into the death of Joy Gardner (see Statewatch 3:4 July-August 1993), announced on 1 October that its report would be delayed because further forensic tests on the cause of death needed to be conducted. *Independent* 2.10.93.

Russia: police deport people from the Caucasus republics: Under an official order police and security forces in Moscow have been stopping people they think are from the Caucasus republics of Russia - Armenians, Azerbaijanis, Georgians and Chechens - and deporting them if they do not have residency papers to live in Moscow. A spokesman for the police, Mr Schavelev, said the measures were intended to 'rid the city of all illegal residents, most of whom happen to be from the Caucasus'. According to Mr Schavelev the order singled out people from the Caucasus because unlike other nationalities 'they are easy to identify because of their physiological and facial features'. Since the order was imposed 24,000 people had been stopped and questioned and 3,540 had been sent 'home'.
Moscow Times, 13.10.93.

Belgium tightens controls: The Belgium Interior Minister Louis Tobback has drafted in an extra 220 officials to speed up asylum applications and the fingerprinting of refugees to determine if they have made more than one request. Mr Tobback is also setting up an investigation to establish whether 'organised networks' are advising refugees on ways of increasing their chances of staying in Belgium. *European* 7.10.93.

Slovakia's President criticised: Vladimir Mecair, President of Slovakia, has been strongly criticised for making racist remarks. Meciar said that gypsies were 'social and mentally ill citizens' and proposed stopping child benefits for gypsy children. Another proposal to ban gypsies from going out at night was overturned in the courts. Austrian Nazi-hunter Simon Wiesenthal said such views had justified the deportation of gypsies to concentration camps in World War Two. The Central Council of German Sinti and Roma have called on the German government to declare Mecair 'persona no grata'. *ESMV newsletter*, September 1993.

Germany: 'foreigners stay home': The Federation of Greek Communities (FGC) in Germany has reacted strongly to a directive issued, in eight languages, by the North Rhein-Westphalia regional authority's Interior Ministry and local police. The directive urges foreigners to stay in their homes to offset racist attacks, 'draw the curtains of your windows at dusk and lower the blinds' it says. FGC President Kostas Pappas said in a letter to the Interior Minister, Herbert Schnur that the advice: 'pits immigrants and aliens against racist and neo-Nazi anti-social elements, with the former defending themselves in their homes with the blinds down and lights switched off and the latter attacking and dominating the streets'. *Athens News Agency*, 10.9.93.

Immigration: new materials

Secret instructions on deportation, *JCWI Bulletin*, Vol 5 no 3, Summer 1993.

The struggle against the 1905 Aliens' Act, *No One is Illegal*, No 14, Summer 1993.

Migration and population change in Europe: *UNIDIR Research paper* No 19, 1993. A demographic survey of immigrants in Europe, looking at 'stocks and flows', labour requirements and supply and projections of population.

Migration and population change in Europe, John Salt. *United Nations Institute for Disarmament Research Paper 19* 1993, pp 86.

Asylum and Immigration Appeals Act 1993, Rick Scannel. *Legal Action* August 1993, pp4-7. A detailed description and commentary on an Act which will fundamentally change asylum law and practice.

Defying the repatriation plan. *CARF* 16, 1993, p3. Discusses the move towards repatriation now that the doors of Fortress Europe have been sealed.

Chronicles: is published every 2 years by the Faculty of Law of the Democritus University of Thrace. Volume 5, December 1992 includes: The imminent corrective reform in Greece: Beyond punishment?; Vassilis Karydis on: The fear of crime in Athens and the construction of the 'dangerous Albanian' stereotype; and an article on prisoners' struggles. Contact: Vassilis Karydis: 56 Sina Str., 10672 Athens, Greece.

Parliamentary debates

Immigration services (Prestwick airport) 27.5.93, *Commons* cols 1072-1078

Asylum & Immigration Appeals Bill 7.6.93, *Commons* cols 26-86

NORTHERN IRELAND

Doherty and McKee Lose Time

Joe Doherty has lost his case in Belfast High Court to have his nine years in a U.S. prison count towards his life sentence. Doherty escaped from Crumlin Road prison in June 1981 along with Michael McKee. A few days after the escape, Doherty was sentenced in his absence to life with a recommendation that he serve a minimum of thirty years for the murder of SAS Captain Herbert Westmacott. McKee was likewise sentenced in his absence and given 20 years for firearms offences on the word of a 'supergrass'. According to his wife, McKee is the only prisoner in the North whose conviction rests exclusively on uncorroborated supergrass evidence.

Doherty was arrested in New York in 1983 and there then began a protracted extradition battle. He was finally extradited in February 1992. Both Doherty and McKee applied for a judicial review of the Secretary of State's decision not to take into account the years each of them had served in prisons outside of Northern Ireland. In McKee's case the refusal appeared to directly contradict an undertaking given by the Secretary of State for Northern Ireland to the Irish Supreme Court during McKee's own extradition battle.

Shortly after his escape, McKee was arrested in the Republic and given 10 years for the Northern prison escape. Shortly before his release, extradition proceedings began which led to the Supreme Court hearing. It was at this hearing that the Secretary of State gave an undertaking that, in the event of McKee returning to the North, his time served in Portlaoise prison would be taken into account. McKee beat the extradition application but then secretly re-joined his family in Belfast. The RUC raided the house and discovered him hiding in the roofspace in November 1991.

While Lord Justice Murray rejected Doherty's claim, arguing that he only had himself to blame for the delay in getting down to serving his sentence, he ruled that the present Secretary of State should take account of McKee's time in Portlaoise and was bound by the undertaking given to the Irish Supreme Court by a past Secretary of State. Murray described Mayhew's decision not to consider McKee's previous time served as 'illogical and capricious'. His ruling meant that McKee was due for release on 23 August (1993). The Secretary of State appealed against Murray's decision and Crown lawyers successfully argued that the undertaking to credit McKee with time served in the South was not a general undertaking but one which applied only in the case of McKee's extradition. This had not taken place so, agreed the Lord Chief Justice Sir Brian Hutton and Justices Kelly and Higgins, the undertaking lapsed. McKee is now due for release in 2001. Doherty is to appeal.

Gun Licences

Under the Firearms Order 1981, the Chief Constable may grant a firearms certificate provided he is satisfied that the applicant has a good reason for having a weapon, that the applicant can be trusted with a firearm and will not be a danger to public safety or the peace. Although there is a sustained assassination campaign against Sinn Fein local councillors and other members of the party, applications for certificates from party members are routinely turned down. It was thought that RUC policy was never to grant certificates to party members but it was revealed in Belfast High Court on 17 September that five Sinn Fein councillors hold firearms certificates relating to shotguns and air rifles. Former Belfast City councillor Gerard McGuigan has been the subject of three murder attempts by Loyalist groups and was applying to the Court for a review of the Chief Constable's decision to refuse him a firearms licence. McGuigan also applied for the disclosure of any policy documents or standing orders relating to the issue of firearms certificates, but this has been refused.

At the end of 1992 there were 129,250 authorised firearms in private hands in Northern Ireland. There are 144 registered firearms dealers within the North and more than 40 authorised firearms clubs.

(*Chief Constable's Annual Report*, 1992; *Irish News* 18.9.93, 16.10.93)

McAliskey's Assassin not Censored

Although the BBC sees fit to replace Bernadette McAliskey's voice with subtitles (see *Statewatch* July/August 1993) it has no qualms about broadcasting the voice of Ray Smallwood who was convicted for attempting to murder her in 1981. Smallwood appeared in a Spotlight documentary which looked at the current loyalist campaign against Gaelic Athletic Association premises. Loyalist groups have declared that when it comes to murder targets it is now 'pan season' in terms of 'pan-nationalism'. Civil servants involved

in cross-border co-operation, including the Maryfield Secretariat for the Anglo-Irish Agreement, have been specifically threatened by the UFF. Smallwood appeared in the Spotlight programme as a spokesperson for the Ulster Democratic Party. McAliskey said afterwards, 'I was sickened when he appeared on that programme. It was as if my life didn't matter.... If the shoe had been on the other foot and a republican appeared on the television after trying to kill a unionist politician, there would have been a whole furore about it'. *Irish News* 18.9.93

Smyth Extradition Hearing

A San Francisco court is considering an application to extradite Jimmy Smyth (see *Statewatch*, July/August, 1993). His main defence is that his life would be threatened if he were to return to Northern Ireland. Ironically, one of his defence witnesses, Bernadette McAliskey, was warned by the RUC that should she go to San Francisco in support of Smyth, her life would be in danger. Another witness, Ken Livingstone MP, told the court that 'any British Member of Parliament will be willing to say off the record, yes there had been an unofficial shoot-to-kill policy'. Witnesses for the prosecution have included John Chilcot, Permanent Under-Secretary for State for Northern Ireland, Special Branch officer Woolford Monahan and Brigadier Alastair Irwin who, as commander of the 39th Infantry Brigade, currently has responsibility for the greater Belfast area. These three witnesses have had some difficulty answering questions, in effect claiming a right to silence under the British Official Secrets Act. Chilcot has replied on seventeen occasions: 'I am not authorised to answer that question'. Keeping an eye on the proceedings are three dark-suited Englishmen who will only admit to the court that they are 'government observers'. As Phil Reeves reporting for *The Independent* observed, 'in a nation where the Secret Service hands out visiting cards, such tactics do not win many admirers'.

Independent 1.10.93; *Irish News* 8.10.93; *Belfast Telegraph* 8.10.93

Review: Civil Liberties Handbook

The Committee on the Administration of Justice (CAJ) has published the second edition of its handbook *Civil Liberties in Northern Ireland*. As Lord Scarman points out in the foreword, this is not a campaigning book but a guide to 'the scale of law governing civil rights and liberties and the provision of essential social services'. The Handbook is more than this, however. As Brice Dickson's introduction makes clear, the book is written in the spirit of a human rights tradition which regards a Bill of Rights for Northern Ireland as 'a prerequisite to permanent peace and justice'. CAJ believes that the European Convention on Human Rights is not an adequate basis for the protection of human rights. It has therefore produced a draft Bill of Rights for Northern Ireland on the understanding that this will increase people's confidence in the administration of justice. The handbook, then, has a critical edge to it which gives the reader a good sense not only of the limitations of existing legal positions but also of the current points of friction and contest.

The handbook is an impressive collection. Eight of the chapters cover social rights and legal provisions regarding discrimination. Given that many provisions in these fields are unique to Northern Ireland, for example Fair Employment law, it is important to have a single, accessible source. There is a case, however, for gearing the social rights chapters more towards both what is unique about Northern Ireland law and situations which typically arise in the

jurisdiction and for people from the jurisdiction, particularly for those on the receiving end of the criminal justice system. For example, the social security chapter could usefully discuss the rights of Irish citizens to British social security and vice versa, and go into financial assistance for such things as personal security and prison visits in British and Irish jurisdictions. There is a case for having a chapter devoted to children's rights although bits and pieces do appear under other headings. The rights (or lack of them) of unemployed people on various 'training' schemes, some of which are again unique to the North, is a significant omission given the path-breaking work of the London based Unemployment Unit in this area. Similarly there is little in the handbook on rights in relation to health services and mental health.

The strength of the book lies in the chapters on the powers of the British Army and the RUC, the questioning of suspects, prisoners' rights, remedies and complaints procedures, meetings and demonstrations, freedom of expression and access to information. The only criticism in these areas is that some topics could be more developed. Given the centrality of electronic media, for example, more could be said regarding the provisions of the Independent Television Commission's code of practice. In future editions it would be useful to have appendices carrying relevant extracts from PACE and Emergency Powers Act codes of practice, and prison Standing Orders however vague these may be. On a more general point, the bibliography is narrow and legalistic and could be expanded to include more analytical and campaigning literature. This would broaden the book's readership and help human rights activists to identify how various powers and provisions mesh together, as well as getting to grips with the underlying politics of the law.

CAJ's handbook is essential reading and a key source of reference for anyone concerned with human rights in the North of Ireland and how developments in this jurisdiction relate to the Irish Republic, Britain and the broader European picture. At £6.00 for 390 pages, it is exceptional value. It is available from CAJ at 45-47 Donegall Street, Belfast BT1 2FG (0232 232394/333522).

Northern Ireland - new material

Beechmount 5: what interrogators, doctors and the DPP can do to you..., Michael Ritchie. *Just News* September 1993, pp4-5. Further evidence of ill-treatment in Castlereagh detention centre.

The time to talk is now, Paul Johnson. *Guardian* 18.9.93. Paul Johnson talks to Sinn Fein's Martin McGuinness about 'finding a solution to the troubles'.

Justice Irish style: the framing of Peter Pringle, Peter Pringle Support Group 1993. (Available from Peter Pringle Support Group, PO Box 3625, Dublin). Peter Pringle has been imprisoned since 1980 serving a 40 year sentence for a murder he did commit. His case has been compared to that of Nicky Kelly and is supported by the CAJ and Amnesty International, among others.

Interference on the Airwaves: Ireland, the Media and the Broadcasting Ban, Liz Curtis and Mike Jempson. Campaign for Press and Broadcasting Freedom, 8 Cynthia Street, London N1 9JF, price £4.50 including postage. Five years after the broadcasting ban on people from Northern Ireland was introduced this pamphlet includes a list of programmes censored, banned or delayed since 1959.

Parliamentary debates

Ulster (Bombings) 27.5.93, *Commons* cols 1035-1044

Northern Ireland (Prevention of Terrorism) 8.6.93, *Commons* cols 149-198

Northern Ireland Act 1974 24.6.93, *Commons* cols 467-501

LAW

Right of silence to go

On 6 October Michael Howard became the last in a long line of Tory Home Secretaries to rally flagging public support and buy back police loyalty with a law-and-order package. But Howard's proposals go further than locking up more people in prison, giving the police new powers and creating new offences - although all these are proposed - to abolition of the right to silence in mainland Britain.

The right to silence was adopted in the seventeenth century, as a safeguard against oppression by the Star Chamber. In recent years it has been eroded little by little. In all cases where an alibi is relied on, defendants are required to provide details, and names and addresses of supporting witnesses, a week after their case is committed to the Crown court, so that police can interview alibi witnesses. Miscarriages of justice have resulted from improper pressure being put on alibi witnesses to retract or change their evidence, and from police going to illegal lengths to disprove the alibi; this happened in the cases of the Guildford Four, the Cardiff Three and the Taylor sisters. As well as alibi details, any scientific or expert evidence to be relied on by defendants must be produced in advance of trial. In specialist investigations, the right to silence has already been abolished: the Serious Fraud Office (SFO) and the Department of Trade and Industry (DTI) investigators can require suspects to answer questions. Despite these erosions, however, the basic right remains - that a suspect is not required to answer questions, either under questioning by the police, or at trial: it is for the prosecution to prove the case against an accused, not for an accused to disprove guilt. The caution a suspect is given on arrest embodies the right in the words: 'You are not obliged to answer questions'. And no judge or prosecutor may comment on a suspect's refusal to answer questions in the exercise of this right.

In Northern Ireland the right to silence was abolished by the Criminal Evidence (NI) Order of November 1988. Tom King, then Secretary of State for Northern Ireland, caused a furore by making the announcement, and justifying it by the alleged habit of 'terrorists' to remain silent under questioning, in the middle of the trial of the Winchester Three; the announcement was believed by many to be deliberately timed to affect the trial, and the Court of Appeal subsequently quashed their convictions for conspiracy to murder because of the prejudice King's announcement had caused.

Under the 1988 Order, a defendant must account for his presence in a particular place, explain marks on his clothing and give an explanation of his actions at the police station. rather than for the first time at trial. Failure to do so is corroborative of guilt. Although the Order does not say that an accused must give evidence in court, in 1992 the House of Lords in effect said that this was implicit, holding in the case of *R v Murray* that the 1988 order had changed the common law regarding the comments and inferences which could be drawn from an accused's silence at trial. They said that if the prosecution has made out a *prima facie* case and the defendant refuses to testify, a judge or jury may draw any reasonable inference, including one of guilt.

There is now a real fear of a return to supergrass trials, abandoned in the early eighties because of the lack of independent corroboration of accomplices' evidence. Once corroboration is provided by an accused's silence in the face of the testimony of a supergrass, there is a frightening prospect of indefinite 'internment-by conviction', where suspected terrorists are put away for decades on the basis of no evidence of crime other than a fable concocted for favours.

Many observers believe that the Northern Ireland Order is in breach of the European convention on Human Rights, Article 6 which gives the right to a fair trial and places the presumption of innocence at its heart. To demand that a suspect explains himself undermines that presumption. The order was used to secure convictions in the Casement Park trials, and a challenge to its provisions is due to be heard by the Human Rights Commission in January 1994.

At the time of the Northern Ireland order, and indeed some months before, Home Secretary Douglas Hurd said he proposed to abolish the right on the mainland, and a working party was set up to examine the implications. Its report, in July 1989, recommended that juries and courts should be able to draw reasonable inferences from a suspect's failure to mention something later relied on in his defence, but stopped short of proposing that silence could constitute corroboration of guilt. The report was quietly shelved, and the issue only re-emerged with the setting up of the Royal Commission on Criminal Justice in 1991, when Lord Chief Justice Peter Taylor made public comments appearing to favour abolition or at least modification (he has remained silent on Howard's announcement.) The Royal Commission report, issued in July 1993, recommended retention of the right.

Analysing the effect of abolition in northern Ireland, Professor John Jackson of Queens University, Belfast told a conference in July 1992 that it had increased the risk of false confessions, created procedural unfairness for defendants and encouraged courts and juries to be less cautious about drawing inferences than they should be. Solicitor Gareth Peirce warned the same conference that defendants had to be protected against the police propensity to criminality, and should not be forced to undergo 'at best, badgering and unintelligent and at worst, bullying and oppressive questioning, in conditions not fit for human endurance in which suspects are left to get into a state of increasing terror'.

The police have been calling for abolition since Sir Robert Mark said in the early seventies that 'it has done more to obscure the truth and facilitate crime than anything else this century'. In 1987 another Metropolitan Police Commissioner, Peter Imbert, called for abolition, and in October 1990 Sir John Dellow, in his farewell speech as President of the Association of Chief Police Officers (ACPO), blamed the system for police perjury. All claim that the system operates to let the guilty go free.

Howard's announcement, coming as it did at the Conservative party conference, and less than ten weeks after the Royal commission rejected abolition, raises the inference that the proposal was designed not so much to further the ends of justice, as to meet more immediate concerns. Quite apart from the government's general unpopularity, and the evergreen appeal of hanging-and-flogging measures to shire Tories, the police have been up in arms about the Sheehy report all summer, and their anger turned to apoplexy when, in late September, the latest attack on them was unveiled: abolition of their right to silence (and to legal representation) in disciplinary proceedings.

A mere two weeks later, the announcement came from Howard's lips like an olive branch extended, and for the time being peace

reigns with the police, who have overwhelmingly welcomed abolition of everyone else's right to silence.

Independent 7.10.93, 23.9.93, 2.10.90; *Guardian* 19.5.88, 21.10.88, 26.7.89; *Legal Action* August 1992.

Law - in brief

Maguire acquitted: Patrick Maguire was acquitted by magistrates in the record time of five minutes on charges of assault on police at a hearing on 20 September 1993. Maguire, one of the Maguire Seven, had been arrested in April by officers from Harrow Road police station, Paddington, on the day before the trial of officers involved in the Guildford Four inquiry. Witnesses said that as Maguire walked home he was called over by an officer in an unmarked car and then five or six officers arrived in a van, handcuffed him and bundled him into the back of the van, where he was kicked and stamped on. Magistrates dismissed the police account of Maguire drunkenly punching officers, saying that there were 'grave doubts about the evidence they have given'.

Mr Maguire said he had been subject to continual harassment since his release and the acknowledgement that his conviction on bomb charges had been wrongful. 'I feel I am still paying the price of being a Maguire', he said. *Independent* 21.9.93.

Work-to-rule by court clerks? The Justice' Clerks Society is planning possible industrial action in an attempt to persuade the Lord Chancellor's department to withdraw proposals for the reorganisation of magistrates' courts. Proposals for performance-related pay and an administrative shake-up would 'threaten the independence of the magistracy and the independence of the justices' clerks in giving advice', according to a motion supported by over 180 of the country's 250 justices' clerks. The clerks rule out strike action, but are considering withdrawing their 'goodwill', by stopping magistrates' training courses and other tasks which are not technically part of their duties. *Guardian Gazette* 90/34 22.9.93.

More jail: The government completed its U-turn on sentencing by its amendment of the 1991 Criminal Justice Act in July abolishing means-related fines and allowed magistrates to consider defendants' previous convictions in sentencing. Magistrates responded by publishing tough new guidelines recommending imprisonment for burglary, violent disorder, assaults on police, taking cars and driving whilst disqualified - days after prison governors urged an amnesty for petty offenders to keep the prison population from surging out of control. *Independent* 18.9.93.

Commission for Protection Against Unlawful Industrial Action: Gill Rowlands, 63, has been appointed the first Commissioner for Protection Against Unlawful Industrial Action under the government's Trade Union and Employment Rights Act. Her job entails assisting, through funding, individuals who wish to take action against Trade Unions who lose goods or services through unlawful industrial action. Mrs Rowlands was previously part-time Commissioner for the Rights of Trade Union Members which helped officials and members take action against their unions. She will now combine both roles. *Guardian* 18.8.93.

No change in provocation law: The government rejected proposals from a cross-party group of MPs and the Law Commission for changes to the law on provocation to provide a defence for battered women who killed their violent husbands. Despite the Home Affairs Select Committee urging the change, the

government said the current law was adequate, although Home Office minister David Maclean promised new measures to deal with domestic violence. *Independent* 30.6.93.

Law: new material

Preventing miscarriages of justice: A summary and initial response to the report of the Royal Commission on Criminal Justice. This pamphlet puts the Royal Commission's recommendations into the context of an analysis of the causes of miscarriages of justice, and thereby shows how inadequate and wrong-headed the Commission has been. All the main recommendations are set out and critically examined, and there is an extremely useful chronology at the end, taking in miscarriages and associated events from October 1989 on.

Legal Action Group, August 1993. £3.50. 17pp.

An error of judgement, Mike McConville. *Legal Action* pp6-7 September 1993. Edited version of McConville's presentation at the LSEs 'Criminal Justice after the Royal Commission' debate.

The Royal Commission on Criminal Justice, Viscount Runciman (Chair). HMSO (Cm 2263) 1993, pp261, £21.50.

Monitoring of the Criminal Justice Act 1991 - data from a special data collection exercise, Home Office Statistical Bulletin 25/93, 1993.

Parliamentary debates

Criminal justice 13.5.93, *Commons* cols 939-951

Reinsurance (Acts of terrorism) Bill 13.5.93, *Commons* cols 969-1011

Legal Aid 8.6.93, *Commons* cols 245-252

Criminal Justice Bill (Lords) 29.6.93, *Commons* cols 837-929

Bail (Amendment) Bill 2.7.93, *Commons* cols 1235-1267

POLICING

UK and the Netherlands agreement

A bilateral agreement was signed between the UK and the Netherlands on 15 September allowing cooperation in investigating and prosecuting drug traffickers and other criminals. It also enables cooperation in the tracing, freezing and confiscation of the proceeds of crime. The agreement was made under the Council of Europe convention on money laundering, search, seizure and confiscation of criminal proceeds. This is the 29th bilateral agreement undertaken by the UK with other countries under its Drug Trafficking Offences Act.

Home Office press release, 15.9.93.

Czech Republic: clampdown on security firms

The Czech Prime minister Vaclav Klaus has announced that the government is to introduce legislation to restrict the number of private security firms, currently 3,860. The number of firms has mushroomed because they have been issued licences to start a business with few restrictions. Now the government says it will introduce a law to restrict the issuing of guns licences and prevent former members of the secret police (StB) or military services from

being employed within two years of terminating their previous jobs. *Prague Post*, 29.9.93.

Police National Network

Mr Martyn Hart has been appointed as the Director of the Police National Network (PNN) which is due to begin operating in early 1994. PNN will link together the telephone and computer networks of police forces and improve access to the Police National Computer (PNC2).

Home Office press release, 6.8.93.

European Police Information Centre

The European Police Information Centre (known as EPI-Centre) is being set up by the UK Police Scientific Development Branch of the Home Office Science and Technology Group. EPI-Centre is an online computer database covering: an international police equipment and technology database; conferencing and electronic mail facilities; access to other databases; and access to international advice. It is available free to all European Police forces.

Annual report of the Police Scientific Development Branch 1992/3.

Germany: shooting cover-up?

The German Interior and Justice Ministers have presented a 142-page report to a parliamentary committee on the shooting of Wolfgang Grams, an alleged terrorist, by member of the GSG-9 anti-terrorist squad. The report acknowledges 17 mistakes were made in the operation and confirmed that Grams had been fatally shot at point-blank range. Two witnesses - a woman working in a newspaper kiosk and a member of the GSG-9 unit - have spoken of Grams being 'executed' by member of the unit. GSG-9 officially deny one of its members shot Grams, possibly using Grams' own gun. They prefer to suggest that Grams shot himself although there is no evidence to support this. The magazine *Der Spiegel* has commented that suicide now seems 'very doubtful'.

Independent 19.8.93.

Policing - new material

On the border of a police state, Hackney Community Defence Association/Hackney Trade Union Support Unit 1993, pp54, £2. (Available from HCDA, Colin Roach Centre, 10a Bradbury Street, London N16 8JN). This pamphlet looks critically at three government reports - the White Paper on police reform, the Sheehy Report into police responsibilities and rewards and the report of the Royal Commission on Criminal Justice - and outlines their proposals and implications. It proposes a twofold strategy for campaigning against recent developments.

Police shooting, Vincenzo Ruggiero. *Inquest Bulletin* pp1-3 August 1993. A look at the background of the arming of police.

Inquests into police shootings: the case of Ian Gordon, Terry Munyard. *Inquest Bulletin* pp4-6 August 1993. Considers the case of Ian Gordon and the conduct of the inquest into his death.

Battle-lines of policing in London. *CARF* 16, 1993, pp4-5. Discloses disturbing reports of police violence across London and compares developments with the worst excesses of the 1980s.

When they come for you in the morning. *Agenda* (Liberty), Summer 1993, p6,7 & 9. An account of her arrest and treatment under the PTA by Sarah Cohen. In July the police conceded that she had been wrongfully arrested and offered damages.

Parliamentary debates

Juvenile crime 10.5.93, *Commons* cols 624-632

Young offenders (detention) 23.6.93, *Commons* cols 326-328

Police Reform (White Paper) 28.6.93, *Commons* cols 665-675

Law and order 1.7.93, *Commons* cols 1131-1206 & 7.6.93, *Commons* cols 118-124

EUROPE

European Information System (EIS) = Schengen Information System (SIS)?

Statewatch has learnt that it is increasingly likely that the Schengen Information System (SIS) - set up by the nine EC states who have signed the Schengen Agreement - is going to become the European Information System (EIS) which has been discussed by all 12 EC states. The EIS is enthusiastically supported by the UK which refuses to join the Schengen Agreement because the basic requirement of membership is the dropping of internal border controls - which the UK says it is going to maintain 'indefinitely' (a position which also ties the hands of Ireland because of its common travel area with Britain). Denmark, the third non-Schengen country, does not take a principled position against ending border controls but wanted to see the Dublin Convention and the EIS in place first.

The Schengen countries are insisting that the Convention on the EIS must be totally synonymous with the provisions of the SIS. Not just broadly the same, but exactly the same. This is because several Schengen governments - notably in Holland, Germany and France - faced vocal opposition over the creation of the SIS because of its unaccountability and inadequate data protection provisions. For this reason they are not prepared to take back to their parliaments any proposal which extends the role of the SIS (under UK pressure) or incorporates more liberal provisions (by governments trying to meet previous objections) or by changes in the line of accountability. They are also insisting the EIS is based in Strasbourg, the headquarters of the SIS. After the lengthy process of ratifying both the Maastricht Treaty and the Schengen Agreement the nine are determined not to be faced with yet more battles over EC agreements.

When the Schengen countries announced in September that the three non-Schengen countries were to be excluded from using the computerised Schengen Information System (SIS) the UK Home Office said that it would not be effected because it would anyway be part of the European Information System (EIS) to be set up by all 12 EC states. Mr Ron Hadfield, Chief Constable of West Midlands and chair of the International Affairs Committee of the Association of Chief Police Officers, took the same view. 'We have a policy which is not compatible with one of the objectives of Schengen', he said, 'which is to do away with internal borders'.

The scope of both systems are however virtually the same covering both policing and immigration. The SIS formed part of the Schengen Agreement which has now been agreed by the nine countries. The SIS has been working for several years setting up and testing the linking computer system between the nine countries which is due to come on line on 1 December 1993. Initially it will link France, Germany, Belgium, the Netherlands and Luxembourg

with Spain and Portugal joining a few months later. Greece and Italy will join later.

The EIS on the other hand has been discussed by Trevi working groups for over two years. The necessary draft Convention on the European Information System is due to be discussed at the Council meeting of Justice and Internal Affairs Ministers at the end of November. Moreover up to now it has been impossible for the 12 states to agree the site for Europol to which the EIS would be directly related.

Schengen Information System

The nine Schengen countries in the EC have set up the SIS as part of their agreement to remove internal borders and to institute 'compensatory measures' covering policing, the law, immigration and asylum.

The purpose of the SIS is 'to maintain public order and security, including state security' (Article 93). It is made up of 'national sections' of information and intelligence to which each of the other countries has access. The categories of information include: those wanted for extradition; aliens who have been refused entry; those posing a threat to public order or national security; and data on 'discreet surveillance'. No criteria is laid down to distinguish information from 'intelligence' (which may be based on speculation or opinion). There is no central right of subject access which is through each state's national laws. But access will be denied if 'it may undermine the performance of the legal task specified in the report' and in cases of 'discreet surveillance' including public order and national security.

Accountability is solely through the Central Negotiating Committee (CNG.SIS) comprised of state officials. No mechanisms are laid down for parliamentary accountability or judicial review. The European Parliament has passed several resolutions criticising it as undemocratic.

Conclusion

If the SIS does indeed become the EIS then the UK, Ireland and Denmark will be forced to accept a Convention which they will be unable to amend in any way, and which they will also have to get ratified by their parliaments.

For the countries set to join the EC - Norway, Sweden, Finland and Austria - this Convention will join a long list of Conventions (Dublin, External Borders, Data Protection, Extradition, Europol), agreements (especially on immigration and asylum) and policy resolutions they are being expected to accept without debate.

Charter for migrants' rights

The European Parliament's Committee on civil liberties and internal affairs has produced a draft charter which recognises the responsibility of European governments in criminalising many immigrants by clamping down on lawful work opportunities in the EC countries, and which contains proposals to harmonise the status of legal residents with that of European citizens in a number of important respects.

The charter calls for the EC's legal third-country nationals (who it estimates to be around 8.5m, an apparent under-estimate according to other reports) to be given a package of rights after five years residence, including free movement throughout the EC, family reunification and protection from deportation on the same lines as EC nationals, protection from race discrimination, rights in education and vocational training, and the right to vote in local elections. It also recommends that children born and educated in a

member state should be entitled to its nationality, and that dual nationality should be allowed. These proposals on citizenship are crucial to the ability of 'second-generation immigrants' to insist on respect for their basic human rights. At present many second- and even third-generation 'immigrants' in Germany, Belgium and other EC countries are denied the right to acquire the citizenship of the country where they were born and brought up. They are vulnerable to deportation if, for example, they attempt to defend themselves against racist attack or to protest workplace conditions or unemployment. Proposals on free movement in the (so far unsigned) Convention on External Frontiers allow such non-citizens movement rights limited to visa-free holidays for three months in EC countries other than their country of residence, unlike EC citizens, who have complete freedom of movement for work, study or retirement, in other EC states. EC citizens are also allowed to bring in far more relatives to live with them than are EC-born or resident 'immigrants'.

The draft Charter is likely to be the subject of battles both over its content and over the EC's jurisdiction to deal with such rights, if it is adopted by Parliament. The working party argues that the Commission is competent to draw up proposals and the Council is empowered to decide measures on the legal situation of third country nationals living in Europe. But so far the EC has refused to assume jurisdiction, limiting itself in the Maastricht treaty to visa requirements, and simply ignoring the position of Europe's 13 million non-national residents. While the new Internal Commissioner, Pdraig Flynn, offers soothing words to groups like the Migrants' Forum, we shall wait and see whether he will be prepared to push against the entrenched positions of member states on the issue.

Working document on drawing up a European charter on immigration; Draft report on the status of migrants in the EC; Draft report on a draft charter of rights and duties of immigrants in the EC; European Parliament committee on Civil Liberties and Internal Affairs, 6.7.93, 15.7.93, 10.9.93.

Extradition to be made easier

An informal meeting of EC Justice Ministers meeting in Limelette, Belgium on 27-28 September instructed the Coordinators Group (senior officials from EC Interior Ministries) to draft proposals for an EC Convention on extradition. The intention is to exclude 'political offences' as grounds for a country to refuse to extradite one of their nationals. Mr Wathelet, the Belgian Minister of Justice, said that: 'The notion of political offences needs to be reconsidered and possibly abolished'. The Ministers argue that as all EC states respect human rights and are democratic there are no longer any grounds for offences deemed to be political to be grounds for refusing extradition requests.

All EC countries with the exception of Belgium are already signatories to the European Convention on Extradition. This Convention abolishes a requirement that an extradition request be accompanied by sufficient supporting evidence to establish a *prima facie* case - allowing extradition simply on the basis of a request, an arrest warrant or a statement of facts. The UK was one of the last to sign, February 1991, as it has relied on the European Convention on the Suppression of Terrorism (1977). The Council of Europe's European Convention on Extradition explicitly excludes offences of a political nature from the list of extraditable offences. The Convention on the Suppression of Terrorism created two categories of offences where the states have to ignore the political nature of an offence (hijacking, kidnapping, the taking of hostages, the use of

bombs and firearms) and a second category where states could, if they wished, ignore the political nature of an offence covering violence and people and property. The intention of the proposed Convention is to exclude all reference to 'political offences'.

The Ministers also agreed that the proposals would allow extradition punishable by life imprisonment in the requesting states' law even if this sentence was not provided for in the requested states' laws. At present courts in France, Belgium, and Italy are unlikely to extradite nationals to stand trial in another country. Another complication is that Belgium still retains the death sentence - Ministers are considering on this and other offences the requested state agreeing to extradite providing the potential length of sentence is defined.

Other measures agreed were ones to speed up legal cooperation in criminal matters by the appointment of magistrates or other legal authorities as a contact point in each EC state to speed up the bringing of charges.

The Ministers also discussed the proposal that the EC should sign the European Convention on Human Rights but felt they could not overcome the 'technical problem' that the EC was not a 'state' and therefore would not be able to be represented in case brought against it.

Communique from the Informal meeting of Ministers of Justice, Limelette 27-28 September; State Research bulletin, October-November 1977.

Europe: in the courts

European Court back MI5

The European Commission on Human Rights has ruled that MI5 has the right to keep files on Harriet Harman MP, shadow chief secretary to the Treasury, and Patricia Hewitt, deputy director of the Institute of Public Policy Research. The Commission though acknowledging that this amounted to interference in their right to privacy nevertheless ruled that: 'it is necessary in a democratic society in the interests of national security'.

The files on Harman and Hewitt were opened when they were the Legal Officer and General Secretary of NCCL (now Liberty). It was in 1985 that Ms Cathy Massiter, a former MI5 official, revealed that files were held on them. The files recorded:

details of passport applications, data from surveillance by local police, Special Branch and by special agents, and references to them or by them on telephone intercepts picked up under warrants issued in relation to other persons...Surveillance of both applicants continued after they had left the National Council for Civil Liberties on the basis that they were both candidates for elected office. (Decision of the Commission, application no 20317/92)

The Commission decision also recorded that intercepts in the case of Harriet Harman 'were likely to include confidential conversations which she, as a practising solicitor, had had with certain of her clients'. In the case of Patricia Hewitt the file 'included information about her personal relationship with a former member of the Communist Party'.

In a previous case they brought the Commission ruled in 1990 that MI5 surveillance of the two was in breach of the European Convention on Human Rights but added that the complaints tribunal set up under the 1989 Security Service Act should offer them an effective remedy. However, the complaints tribunal said that it did not have the authority to take a view on MI5's decision to

keep records on them. They then went back to the Commission arguing that the tribunal was ineffective.

The Commission in reaching its judgment took into account previous rulings. In the *Klass* judgment it was decided that it was not necessary for an applicant to have to prove the actual existence of a file - as the UK government in its response refused to confirm or deny files existed - because an individual could 'claim to be the victim of a violation occasioned by the mere existence of secret measures...without having to allege that such measures were in fact applied to him' (*Eur:Court H R., Klass judgment* of 6 September 1978, Series A no 28, p18 para 34). Similarly in the *Malone* case the Court had agreed that 'the existence of laws and practices permitting and establishing a system for effecting secret surveillance amounted in itself to an interference with the applicant's rights under Article 8 (the right to private life) of the Convention, apart from any measures actually taken against him' (*Eur:Court H R., Malone judgment* of 2 August 1984, Series A no 82, p31 para 64).

The Commission in its ruling accepted that there was a 'reasonable likelihood', on the basis of the UK government's response, that MI5 had 'compiled and retained information concerning their private lives'. It thus agreed that there had been interference with the applicants rights under Article 8 but then said that this was 'in accordance with the law' and necessary in a democratic society.

Part of the applicants case was the vagueness of the term 'in the interest of national security' in the 1989 Security Service Act. The Commission's decision says that 'many laws...are inevitably couched in terms which are to a greater or lesser extent vague and whose interpretation and application are a question of practice'. There was also the problem of the 1989 Act's wide definition of 'subversion' which extends to actions intended to overthrow parliamentary democracy by *non-violent* means. The fact that in many other countries security service activity is restricted to 'persons and organisations which advocate the use of force' (*Leander* judgement of the Commission) does not, in the view of the Commission, 'thereby render the wider terms of the 1989 Act unacceptably vague'.

The Commission decision legitimates the holding of files on people who are undertaking normal democratic activities and in accepting the surveillance of people engaged in *non-violent* activity sets a dangerous precedent for other European countries.

European Commission of Human Rights, Decision of the Commission, application no 20317/92, 1.9.93; see also Stewatch vol 2 no 1.

European Court of Justice

In March the ECJ upheld the right of shipping companies in member states to employ foreign seamen at lower pay and in worse conditions than EC nationals. *Slooman Neptun Schiffarts AG v Seetriebsrat Bodo Ziesemer*, OJ Vol 36 C104 15.4.93.

In October 1992 the UK government was condemned for failing to implement the directive on information and consultation of workers' representatives on redundancies. *CEE v UK* OJ Vol 35 C316 3.12.92.

The European Parliament flexed its muscles over being by-passed by the Commission and Council in July, bringing a case over the Agreement and Memorandum of Understanding between the EEC and the USA. It argues that the agreement meant parliament would systematically be deprived of its right to participate in the procedure for the adoption of measures in an important sector of

international rules, and would upset the balance of power between the institutions.

This is the second recent case on the issue of parliament's right to be involved in EC decisions, and of the extent of the ECJ's supervisory jurisdiction over the Council and the Commission. At the end of June, parliament sought the annulment of an act adopted by the Council to grant special aid to Bangladesh, and of acts adopted by the Commission to implement the Council decision. The ECJ declared the case inadmissible, saying that the acts were adopted by member state representatives acting as such, not acting as ministers of the Council. They were collectively exercising the competences of member states and were thus not subject to the supervisory jurisdiction of the ECJ. The fact that the proposal came from the Commission, which then implemented the decision, was not conclusive, and member states are entitled to entrust to the Commission the task of ensuring the coordination of the collective action agreed on. The latter case is important for the ECJ's surrender of its jurisdiction over 'inter-governmental' acts even where these are carried out through the Commission and Council of the EC. *EP v CEC (360/93)*, OFJ Vol 36 C232/5, 28.8.93; *EP v Council (21/93)*, OFJ Vol 36 C199 23.7.93.

European Commission/Court of Human Rights

Right to family life: Custody of children was refused on the ground of the mother's religion (she was a Jehovah's witness). The Court held that there was discrimination contrary to Article 14 in conjunction with Art 8 (right to family life). *Hoffman v Austria: Council of Europe ECHR Press release no 260, 23.6.93.*

Deportation: no double punishment: a friendly settlement was reached in a case involving the deportation from Britain of a 19-year-old Moroccan who had lived there with his family since the age of seven. He had an extensive criminal record, including violence. The Commission held the deportation violated Art 8. The British government agreed to revoke the deportation order and allow him to re-enter, settle and apply for naturalisation, and to pay his costs. *Lamguindaz v UK, Council of Europe ECHR Press release no 281, 2.7.93.*

Europe: In brief

Council of Europe: Romania has become the 32nd member of the Council of Europe despite complaints about its human rights record. Its application was accepted at a meeting of 30 member states with only neighbouring Hungary abstaining. *European 7.10.93.*

Openness in the Community: A communication from the Commission to the Council, Parliament and the Economic and Social Committee discusses measures 'implemented and required for greater transparency'. This bland document gives nothing away, emphasising mainly the need for better public relations. Annexes include 'Access to documents': a good start would be made by getting rid of the swathe of numbers appearing after the name of every document.

Openness in the community: 93/C166/04 COM(93) 258 final, OFJ Vol 36, no C166, 17.6.93.

Secret Europe: the *Stewatching the new Europe* handbook lists in the Appendix by group (eg: Ad Hoc Group on Immigration) the secret meetings of officials held in 1991-92. A full chronological

listing of the 227 meetings is available from Statewatch.

Europe - new material

The far right: building its European power base. *CARF* 16, September/October 1993, pp8-9. Survey of the European far Right's electoral strength in the run up to next June's European Parliament elections.

Our Europe in the global village, Jacques Delors. *European Labour Forum* 11 (Winter) 1993, pp1-5. The President of the Commission of the European Communities gives his assessment of the political situation in Europe and the wider world.

Parliamentary debates

European Council (Copenhagen) 23.6.93, *Commons* cols 309-324

The European Parliament

This column lists all the relevant debates and resolutions in the European Parliament over the past year. In future these will be listed in *Statewatch* when they are published in the Official journal of the European Communities (OFJ).

Copies of the OFJ are available from the European Commission offices in each EC country (see below); European Documentation Centres (EDCs) at selected universities and polytechnics and EC Depository Libraries. If you are unable to obtain them copies can be ordered from Statewatch, PO Box 1516, London N16 0EW (cost including postage is 12p per page, eg: pages 244-249 is six pages, cost 72p; minimum order £2.00).

Debates

Free movement of persons, 24.5.92, OFJ 3-431, pages 12-26.

Rostock, 17.9.92, OFJ no 3-421, pages 244-249.

European union and the Maastricht Treaty, 14.10.92, OFJ no 3-422, pages 3-55.

Racism and xenophobia, 28.10.92, OFJ 3-423, pages 148-155.

Immigration, right of asylum and freedom of movement, 17.11.92, OFJ 3-424, pages 52-65.

Schengen Agreements, 17.11.92, OFJ 3-424, pages 65-70.

European Ombudsman, 16.12.92, OFJ 3-425, pages 149-154.

Freedom of Movement, 9.2.93, OFJ no 3-427, pages 56-62.

Free movement of persons, 20.1.93, OFJ no 3-426, pages 140-146.

Europol, 21.1.93, OFJ no 3-426, pages 281-286.

Human rights in the community, 9.3.93, OFJ 3-429, pages 7-15.

Extreme right, racism and xenophobia, 21.4.93, OFJ no 3-430, pages 142-154.

Resolutions

Rostock, 17.9.92, OFJ C 248, pages 99-100.

Racism, xenophobia and anti-Semitism, 30.10.92, OFJ C 305, pages 590-591.

European immigration policy, 18.11.92, OFJ C 337, pages 94-97.

Harmonisation within the European Community of asylum law and policies, 18.11.92, OFJ C 337, pages 97-102.

Freedom of movement, 19.11.92, OFJ C 337, pages 211-214.

Entry into force of the Schengen Agreements, 19.11.92, OFJ C 337, pages 214-218.

European Ombudsman, 17.12.92, OFJ C 21, pages 141-147.

The establishment of the European Community's common foreign policy, 18.12.92, OFJ C 21, pages 503-508.

Setting up of Europol, 22.1.93, OFJ C 42, pages 250-254.

Freedom of movement for persons, 11.2.93, OFJ C 72, pages 136-138.

Human rights in the community, 11.3.93, OFJ C 115, pages 178-189

Racism and xenophobia, 21.4.93, OFJ C 150, pages 127-132.

Free movement of persons pursuant to Article 8a of the EEC Treaty, 25.5.93, C 176, pages 35-36.

Solingen, 24.6.93, OFJ C194, pages 204-205.

Offices of the European Commission

IRELAND: Jean Monnet Centre, 39 Molesworth Street, Dublin 2. Tel. (353-1) 71 22 44; **UK: London:** Jean Monnet House, 8 Storey's Gate, London SW1P 3AT Tel. (44-71) 973 19 92; **Belfast:** Windsor House, 9/15 Bedford Street Belfast BT2 7EG Tel. (44-232) 24 07 08; **Cardiff:** 4 Cathedral Road Cardiff CFI 9SG Tel. (44-222) 37 16 31; **Edinburgh:** 9 Alva Street, Edinburgh EH2 4PH Tel. (44-31) 225 20 58; **BELGIUM: Bruxelles:** Tel.: (32-2) 295 38 44; **DENMARK: Kobenhavn:** Tlf: (45-33) 14 41 40; **FRANCE: Paris:** Tel: (33-1) 40 63 40 99; **Marseille:** Tel: (33) 91 91 46 00; **LUXEMBOURG:** Tel: (352) 43 01-1; **SWITZERLAND: Geneve:** Tel: (41-22) 734 97 50; **GERMANY: Bonn:** Tel.: (49-228) 53 00 90. **Berlin:** Tel: (49-30) 896 09 30. **Munchen:** Tel: (49-89) 202 10 11; **SPAIN: Madrid:** Tel: (34-1) 435 17 00/435 15 28. **Barcelona:** Tel: (34-3) 415 81 77; **GREECE:** Tel: (30-1) 724 39 82/83/84; **ITALY: Roma:** Tel.: (39-6) 699 11 60. **Milano:** Tel: (39-2) 480 15 05/06/07/08; **NETHERLANDS:** Tel: (31-70) 346 93 26; **PORTUGAL: Lisboa:** Tel: (351-1) 54 11 44.

MILITARY

Holland: 'Gladio' dismantled

The *Algemeen Dagblad* daily newspaper has reported that the

several dozen of members of the 'Inlichtingen' (intelligence) and 'Operations' stay-behind units, usually referred to as 'Gladio' since the 1990 exposures, received a letter from Minister of Defence Mr Relus Ter Beek in April 1992 thanking them for their services to the country. The letter states that the 'stay-behind' facilities have become obsolete now that the possibility of a hostile occupation is considered most unlikely. Prime Minister Mr Ruud Lubbers declared in parliament in November 1990 that the resistance network was directed onto a new course, and that its future activities were being looked into. In a reaction to the newspaper article, government spokespersons have admitted that the stay behind networks have been closed down. The Green Left party has asked questions in parliament about the alleged tax evasion in relation to an earlier statement by the Prime Minister that no illegal acts were committed in relation to the Dutch 'Gladio'. The government's decision not to announce the dismantling of the network in 1990-1991, unlike most other European countries, was attributed by observers to a concern over a possible forced disclosure of past arrangements and activities.

Algemeen Dagblad says that top figures in the civil service, the military and private corporations have been receiving payments of sometimes thousands of guilders per month for their 'Gladio' activities and were under strict instructions not to report these incomes to the Inland Revenue Service. The independent Auditor General charged with Gladio's financial oversight turned a blind eye on these practices. Since the mid-1980s 'Gladio' agents were required to present anonymous bills to document their expenses.

Algemeen Dagblad, 7.9.93.

Military exercises

Over the last three years the UK has participated in overseas military exercises with forces from the following countries: Australia, Bahamas, Bahrain, Belize, Botswana, Brunei, Curacao, Egypt, Grand Cayman, Jamaica, Jordan, Kenya, Kuwait, Malaysia, Martinique, New Zealand, Oman, Saudi Arabia, Singapore, Sweden, Thailand and Trinidad.

Hansard 25.6.93.

Military - new material

Frequency assault: the case of the Varneys, Phil Chamberlain. *Open Eye* 2:28-30 & 51, 1993. Case study and discussion of microwave interference.

RAF Fylingdales EMR survey: second phase, Tim Williams. *Nuclear Free Local Authorities* 1992, pp29. This report contains the results of the second phase of a survey of electromagnetic radiation (EMR) around the Fylingdales radar station on the North Yorkshire moors. It 'confirmed NFLA fears that levels of EMR at ground level would rise after the new phased array radar at Fylingdales became operational last October 1992.'

Resources, commitments and capabilities: the conundra of the defence debate, Malcolm Rifkind MP. *RUSI Journal* August 1993, pp3-5. Based on a speech to the Royal United Services Institute in July.

NATO's changing role - opportunities and constraints for peacekeeping, John Kriendler. *NATO Review* June 1993, pp16-22. On NATO's role in 'peacekeeping' operations.

NATO's future as a pan-European security institution, Douglas Stuart. *NATO Review* August 1993, pp15-18.

Parliamentary debates

No-fly zone (Bosnia), *Commons*, 31.3.93, cols 499-505

The Army, *Commons*, 24.2.93, cols 889-978

Atomic test site (South Australia), *Commons*, 1.4.93, cols 647-654

Rosyth (Nuclear safety) 18.5.93, *Commons* cols 211-222

Statement on the defence estimates 17.6.93, *Commons* cols 1003-1086

Statement on the defence estimates 1992 21.6.93, *Commons* cols 24-120

Armed forces (discipline) 21.6.93, *Commons* cols 121-144

SECURITY & INTELLIGENCE

Switzerland: new intelligence setup

In the first week of September it was announced in Switzerland that plans to form a strategic foreign intelligence service separate from the military intelligence service have been cancelled. A parliamentary subcommission (PUK EMD) in 1990 recommended that the pros and cons should be looked at and a working group led by Mr Darius Weber, proposed that an intelligence agency should be set up with responsibility for collecting information not only on military issues, but also on ecological and economic problems. The government rejected the idea and without consulting parliament any further, directed the military department to work out a new concept. Under this new formula the military foreign intelligence service ("Unterabteilung Nachrichten" = Subdivision Intelligence) will operate under a limited brief, collecting and supplying strategic intelligence from abroad only in relation to 'a possible deployment of the army'. Also the strategic part of the air force intelligence service (Flieger- und Fliegerabwehr-Nachrichtendienst, FFND) will come under supervision of the 'Unterabteilung Nachrichten'. Currently a special working group is developing a model which will improve the flow of security-relevant information in the government's departments. It is believed that implementing such a model will be as efficient and productive as forming a new and costly general strategic intelligence service.

Another element of the reorganization is the relocation of the military 'Unterabteilung Abwehr' (Subdivision Defense) from the 'Untergruppe Nachrichtendienst und Abwehr'(Una, Subgroup intelligence and defense) to the 'Untergruppe Front', where the department will function under the new name 'Militrische Sicherheit' (Military Security). Simultaneously, its brief has been revised. From now on, the Military Security is to refrain from active intelligence gathering as well as from preventive counterespionage and countersabotage operations. In peacetime, the police will hold all prerogatives in this field. Military Security has to turn to the Bundespolizei (Federal Police) to obtain all domestically gathered data, eg: for security vetting. New legislation (the "Staatsschutzgesetz") on the domestic security service (currently the Bundespolizei) is to be announced soon.

Der Bund, 8.9.93.

Holland: BVD try to recruit spies

On September 15, it became known that a young woman working

as a cleaner in the local police station in Nijmegen had been asked by the BVD to 'spy' on Irish extremist organizations. She subsequently became involved in the Ireland Komitee Nederland (IKN, a four-man operation) and between 1989 and 1991 made several trips to Northern Ireland and London. A day later, another young woman (20), who is studying to become a journalist, came forward with a somewhat similar story. As a student, she took a course in Dublin between September 1992 and May 1993. On her arrival back home last June she was surprised to be approached by a BVD employee who tried to persuade her to travel to the UK & Ireland to collect information on extremist organizations. Both women said the man identified himself as 'Cor van de Have', claiming to be the BVD's IRA specialist. The journalist/student turned him down on their second meeting, fearing for her own security.

A spokeswoman from the Ministry of the Interior confirmed that the BVD has approached several people to travel to Ireland to collect information, but refused to give further details.

Surveillance warrants increases

For the third year in a row the number of warrants issued for the tapping of telephones and mail-opening has increased. The annual report of the Commissioner, Sir Thomas Bingham, appointed under the 1985 Interception of Communications Act, shows the following numbers of warrants (telephone-tapping and mail-opening) have officially been issued to police forces in England and Wales and the intelligence agencies:

1989: 458 (plus Scotland: 64)

1990: 515 (plus Scotland: 68)

1991: 732 (plus Scotland: 82)

1992: 874 (plus Scotland: 92)

(No figures are given for Northern Ireland)

The figure of 874 for 1992 is the highest since the 1985 Act came into force and according to the Commissioner this is largely due to an increase of warrants issued to MI5 and the Metropolitan Police Special Branch in regard to terrorism.

In his last report, for 1991, the Commissioner said that no warrants were issued for the surveillance of 'subversives' (those considered to represent a threat to parliamentary democracy or national security). The 1992 report confirms this still to be the case but adds that a 'few organisations are currently the subject of interception on that ground'. Warrants issued for serious crime in the UK were previously requested by the Metropolitan Police, but since April 1992 these are submitted by the National Criminal Intelligence Service (NCIS).

The report states that the occasions on which Secretaries of State (eg: Home Office, Foreign Office) refuse applications is 'very few'. In 1992 the complaints Tribunal completed investigations into 53 complaints by the public and in no case found that the 1985 Act had been contravened (this does not necessarily mean the complainants were not under surveillance).

Report of the Commissioner for 1992, Cm 2173, HMSO, 1993; see also *Statewatch* vol 1 no 4 & vol 2 no 5).

Sweden: reforms blocked

The Swedish system of positive vetting (the Personnel Control Ordinance, SFS, 1969:443) has been the subject of strong criticism because of its extensive application, the fact that there is no right of

appeal and no right to be informed what information officials pass on (see *Statewatch* March-April 1993). Three major officials reports have unanimously backed these criticisms, the latest of which prepared by a parliamentary committee consisting of leading representatives of all the major parties was presented in 1990 (SOU 1990:51). When questioned in parliament in March the conservative Minister of Justice, Gun Hellsvik, said that the reason for failing to act on the recommendations was because there had been disagreement on the parliamentary committee on major questions. However, Lars-Erik Lövdén, the Social-Democrat leader of the committee stated in October that: 'The committee was completely in agreement on suggestions about reforming the personnel control system. There were no doubts or reservations what-so-ever from any members of the committee' (letter to Tollberg, 10.10.93).

On 24 June the Minister of Justice announced that all the reports had to be discarded in the light of: 'the system for positive vetting in most of the members of the EC... the conditions [for the Swedish system of positive vetting] have changed since the committee gave its suggestions, among other things because of the Swedish application of membership in the EC'. The Chief of the security police, Mats Börjesson, was told to bring the Swedish system of positive vetting in line with other EC states, which means increasing the number of checks.

On 1 October the personnel control ordinance was amended to give citizens subject to positive vetting the right to be informed about what information is handed out (SFS 1993:984, 13). However, the information will only be handed over if it does not endanger any other, more important, interests of security. A similar right of access to information was in force between 1969 and 1983 but was shown in the Leander case (European Court of Human Rights 1987) to have been consistently ignored by the security police. The response of the Minister of Justice to parliamentary questioning has indicated that no further changes to limit the powers of the security police are likely to be brought forward.

Riksdagsprotokollet 1992/93:85, 30.3.93., p21; *Press release Department of Justice*, 24.6.93; *Kommittédirektiv* 1993:81).

Security & intelligence: In brief

Czech Republic: Justice Minister's phone bugged? A bug found in the telephone of the Czech Republic's Justice Minister, Jiri Novak, was lost by an employee of the state Security Information Service (BIS). The head of the country's commission overseeing the security services said that BIS was not experienced at dealing with bugging investigations. He said that BIS was simply not structured to deal with bugging attempts by individuals or foreign intelligence agencies. The head of BIS denied that the agency had planted the device itself. This revelation was followed by another in which a newspaper reporter asked about an aborted plan to bug an employee of the Ministry of Trade. Under Czech law only the Prosecutor General can authorise either BIS or the police to install a bug. The new investigation is centred on who leaked the information as it is considered a state secret and illegal to reveal it to anyone, including government ministers. The Prosecutor General said that the journalist could face prosecution. *Prague Post*, 29.9.93 & 6.10.93.

France: spying for Bull: the French intelligence service, *Direction Generale de la Securite Exteriure* (DGSE) has been systematically targeting US computer firms in order to pass information to Groupe Bull, the ailing state owned computer company. The techniques

used include offering military deferments to graduate students if they get jobs with high-tech US firms; recruiting senior managers in French subsidiaries of US firms (including IBM); and in one instance stealing prototypes of a 'smart pen' left in hotel room in Paris by visiting American businessmen. The gathering of industrial espionage has become a major responsibility of western overseas intelligence agencies in the post-Cold war period.

Covert Action Fall 1993.

Lobster no 26. There are now two 'Lobsters' - one produced by Stephen Dorrill: 135 School Street, Netherong, Holmfirth, West Yorkshire HD7 2YB (Subscription: £8 for four issues), and the other by Robin Ramsey: 214 Westbourne Ave, Hull HU5 3JB. The first issue of *Lobster* produced by Stephen Dorrill includes: portrait of Spooks; The Pinay Circle Complex 1969-1989; Wilsongate; Iraqgate; Profile of Blinker Hall: Godfather of the secret state?

German foreign intelligence: The publication of a book on the German foreign intelligence service, Bundesnachrichtendienst, has caused quite a stir in Germany. The book has been written by Erich Schmidt-Eenboom, a former Bundeswehr officer who turned peacenik after 12 years of service. He currently heads a peace institute in Weilheim, Bavaria. *Der BND: Schnueffler ohne Nase* (Snoopers without a nose), Erich Schmidt-Eenboom, Dusseldorf: ECON Verlag, 1993, 516 pp., DM 48.-, ISBN 3-430-18004-X.

Security & Intelligence - new material

The same old story: police surveillance of the National Council for Civil Liberties in the 1930s, Simone Burns & Conor Foley. *Agenda* Summer 1993, pp 10-11. Short piece on the Public Records Office file (MEPO 3/551) relating to the activities of the NCCL during the anti-fascist struggles of the 1930s.

RACISM & FASCISM

BNP victory unleashes racist violence

The openly fascist British National Party (BNP) has gained its first councillor. In the by-election in the Millwall ward, Tower Hamlets, east London on September 16 their candidate, Derek Beackon, won on a recount by seven votes. The last fascist electoral victory in council elections occurred in 1976 when two National Party candidates were elected in Blackburn.

It was an election that will be remembered not only for its violence, but also for its cynicism as the mainstream political parties vied with the BNP for the racist vote. In the post-mortem the Liberal Democrats received much criticism for running an opportunistic, anti-Asian campaign. Party leader, Paddy Ashdown, was pressured into initiating a damage-limitation investigation into the tactics of the local party. In reality the Liberal-Democrats have been running a racist policy, particularly around housing issues, since they won control of Tower Hamlets council in 1986. The Labour Party have also been criticised for their dubious campaign tactics.

The BNP candidate, Derek Beackon, who has said that he will only represent his ward's white voters, has a long track record of involvement with violent BNP and Combat 18 (C18) racist attacks. Euphemistically described as a 'steward' before his election, his campaign, on the Isle of Dogs and the surrounding area, witnessed an alarming increase in racist violence. Many Asians were

intimidated from voting by BNP gangs, armed with iron bars and sticks, who threatened them outside the polling stations.

This follows a pattern established in last years local election when the BNP candidate, Barry Osborne, polled 20% of the vote. Three BNP members, Alan Thompson, Earnst Lukas and Nicky Cooper, who are also involved with the paramilitary C18 group, appeared in court recently charged with violence in connection with the 1992 campaign.

The most horrific incident in the lead-up to the BNP election victory was the violent assault on a seventeen-year old Asian student, Quaddus Ali, in nearby Stepney on September 8. The attack involved up to nine white youths who beat him to the ground and repeatedly kicked him in the head and throat. A month later he is still on a life-support system in a critical condition.

The policing of the by-election has also come in for criticism. A vigil, called to show support for the Ali family and attended by several hundred local people and anti-racists, was broken up by police outside the Royal London Hospital. Eyewitnesses at the vigil described how police moved in to make an unprovoked arrest leading to scuffles. Riot police with dogs followed-up injuring several people and arresting nine others. They have been charged under Section 1 of the 1986 Public Order Act.

The following weekend, at 10pm, up to fifty BNP supporters rampaged through Brick Lane, in the heart of the Bangladeshi community, attacking Asian restaurants, smashing windows and injuring diners. A local youth compared the police response with that of the vigil and described how BNP members 'walked up Brick Lane with the police. The police were letting the BNP do what they want.' Another youth, a friend of Quaddus Ali, described how policemen disarmed five skinheads with baseball bats and then let them go.

The unrelenting violence led young Bengalis from local estates, youth clubs and colleges to form Youth Connection, an organisation that is determined to protect their community against the escalating racist and police violence. They are calling for 'an end to the BNP's right to roam our streets, attacking our community with the...complicity of the police' and the dropping of charges against the Whitechapel 9 who were arrested at the vigil.

Following the election count an eighty strong BNP mob celebrated their victory by launching a series of attacks. They brutally beat a white man unconscious before turning on a Channel 4 television crew. They then turned their attention to an Anti-Nazi League counter-demonstration outside the polling station, lobbing bricks and bottles at it.

On the same day that Beackon was elected another BNP member, Stephen Richardson, from Woolwich, south London, was jailed for a racist assault on a black man in Eltham last November.

The weekend after the poll the BNP (supported by members of Combat 18) returned to Brick Lane to sell papers heavily protected by the police. Supporters of a counter-demonstration organised by Youth Against Racism in Europe and the Anti-Nazi League broke through police lines; fighting broke out and the nazis were chased down the street. Riot police and mounted officers made 33 arrests - eight of them fascists.

A short time later a black man was viciously assaulted outside The Ship public house, a regular BNP haunt. BNP national organiser Richard Edmonds and Combat 18 members Stephen O'Shea and Paul Steele (from east London) and Simon Biggs (from south London) were charged with violent disorder and remanded in custody. Edmonds was Derek Beackon's adviser during his election campaign. When questioned by journalists about the BNP involvement in the attack Beackon replied: 'I am here to support

them because they are members of my party'.

The following weekend the police changed their tactics and prevented the BNP from reaching an Anti-Nazi League rally in Brick Lane. They briefly arrested nearly 60 of them (including C18 leader Eddie Whicker, recently released after being held on Loyalist gun-running charges) as they arrived at Whitechapel underground station and turned others away from the area. A Scotland Yard spokeswoman said the detentions were to prevent a likely breach of the peace, but it is understood that they have informed the BNP to stay away from the area for a few weeks until the situation is less controversial. The BNP have threatened to sue the police over the arrests.

While the election of a fascist candidate is cause for great concern even more worrying is the establishment of BNP political bases across a swathe of east and south-east London. It is not coincidental that this region is where racist attacks have increased most dramatically in London over the past few years. The BNP have promised to build on their victory and intend to stand candidates in neighbouring Newham next year.

Fascist organiser dies in car crash

Ian Stewart Donaldson, 36, the key figure in the fascist Blood and Honour music network, and leader of the band Screwdriver, has died in a car crash in Derbyshire. Stewart had a long and violent record of racist assaults and his death may well prove to be the final nail in the coffin of the European-wide fascist music network.

NF Organiser joins Tories

Mark Cotterill, the former National Front (NF) southwest regional organiser, has defected to the Conservative Party. Cotterill joined the Torbay Conservative Party in January following a disastrous showing by the Front in the 1992 general elections and a drastic decline in support for them across the country. While many NF branches have been incorporated into the British National Party, Cotterill established the Patriotic Forum; while the Forum claimed to reflect 'conservative opinion', all of its key posts were held by former National Front members. The Forum's magazine, *British Patriot*, has advocated 'entryism' of the Tory Party and it is beyond doubt that this is Cotterill's intention.

Racism & Fascism - new material

One safe nazi; one dead Sikh, Tim Kelsey. *Independent* 4.9.93. This is an account of the unmasking of Combat 18 activist John Cato in Gravesend, Kent. It juxtaposes the protection he was given, (hidden security camera and an alarm connected to the local police station), by the police with the total absence of support offered to Sohan Singh Sanghers. Sohan killed himself after being prosecuted for carrying a knife for his protection following a spate of vicious racist attacks.

At war with society, Tim Hepple. *Searchlight*, pp36, 1993. Hepple was a member of the openly nazi British National Party who became disillusioned with its violence and agreed to pass information to Searchlight magazine. It includes his account of working at the BNP HQ in Welling.

Does tomorrow belong to the BNP?, Nyta Mann. *New Statesman & Society*, 24.9.93, pp32-33. On the repercussions of the BNP by-election victory on the Isle of Dogs, east London.

BOOKS RECEIVED

The social dimension of the European community, Ruth Nielson & Erika Ssyzczak. Handelshojkolens Forlag 1993, pp295, hb, no price given.

Europe and international migration, Sarah Collinson. Pinter Publishers 1993, pp189, hb, no price given.

Torschluss: wanderungsbewegungen und politik in Europa, Karl Althaler & Andrea Hohenwarter (eds). Verlag fur Gesellschaftskritik 1992, pp238, pk (no price given).

l'Europe en chemise brune: neo-fascistes, neo nazis, et national-populismes en Europe de l'Ouest de puis 1945. Reflex 1992, pp160, pk 69 French Francs. (Available from Reflex, 14 Rue de Nanteuil, 75015 Paris, France)

Why Germany? National socialist anti-semitism and the European context, John Milfull (ed). Berg 1993, pp257, hb, £35.

The retreat of scientific racism: changing concepts of race in Britain and the United States between the world wars, Elazar Barkan. Cambridge University Press 1993, pp381, pk, £14.95. **Ethnicity & nationalism: anthropological perspectives**, Thomas Hylland Eriksen. Pluto Press 1993, pp179, pk, £9.95.

Prisons in crisis, William L Selke. Indiana University Press 1993, pp156, £8.99 pk.

Civil liberties & human rights in England and Wales, David Feldman. Oxford University Press 1993, pp927, hb, no price given.

Democracy and Difference, Anne Phillips. Polity Press 1993, pp175, pk, £11.95.

A game of moles: the deceptions of an MI6 officer, Desmond Bristow (with Bill Bristow). Little Brown & Co. 1993, pp292, hb, £18.99.

Enemies of the state: a sensational expose of the security services by a former MI5 undercover agent, Gary Murray. Simon & Schuster 1993, pp322, hb, £16.99.

Trail of the octopus: from Beirut to Lockerbie - inside the DIA, Donald Goddard (with Lester K Coleman). Bloomsbury 1993, pp326, hb, £16.99.

RESEARCH & INFORMATION NOTICEBOARD

Alternative European Summit ("TOES"): Brussels, 8-11 December 1993. This is being organised during the EC Council meeting of Prime Ministers and includes a day on: Sustainable development, democracy and citizenship covering the 'third pillar' of Maastricht on policing, law and immigration. Details from: CHARTA 91, Wellingsstraat 89, B-9000 Gent, Belgium.

Campaign Against double punishment: 2nd National Conference: Black prisoners: deportation and the racism of the Criminal Justice System. Saturday 20th November 1993 at: Cheetham Community School, Halliwell Lane (off Waterloo Road), Cheetham Hill, Manchester M8 7FR. Details from: Campaign Against Double Punishment, St Marks Church, Tetlow Lane, Cheetham Hill, Manchester M8 7HF. Tel: 061 740 8600.

Talking Liberties: building a popular culture of rights: Saturday 13 November 1993 at TUC Congress House, Great Russell Street, London W1. 10am - 5pm. Organised by the Liberty (NCCL). Workshops and plenary sessions on the elements of a Human Rights Convention. Details from: Marie Ryan, Liberty, 21 Tabard Street, London SE1 4LA. Tel: 071 403 3888.

Criminal Justice: the way forward: A Legal Action Group Conference. Saturday 6 November 1993 at Oliver Thompson Lecture Theatre, The City University, Northampton Square, London EC1. Speakers include: Chris Boothman (legal director, Commission for Racial Equality), Professor Mike McConville (Warwick University), Lee Bridges (Public Law Project), and Ann Whelan (mother of Michael Hickey of the Bridgewater Three). £25 (some places for £16 for students and unemployed). Details: Conference Administrator, Legal Action Group, 242 Pentonville Road, London N1 9UN. Tel: 071 833 2931.

Peace and Security into the 21st Century: 21st Annual Conference of the Department of Peace Studies at the University of Bradford. 28-31 March 1994. Four days of plenary sessions and workshops. Details from: Pauline Kollantai, Project Officer, Department of Peace Studies, University of Bradford, Bradford,

West Yorkshire BD7 1DP. Tel: 0274 385298. Fax: 0274 385240.

Round table on European Action Against Racism, Xenophobia and Intolerance in Europe: to be held in Oslo, Norway in November 1993. Organised by the North-South Centre of the Council of Europe. Contact: North-South Centre (Bas Klein), 229-4 Av. da Liberdade, P-1200 Lisbon.

Europe and Ireland: European integration and united Ireland: public meeting East London Troops Out Movement, 25 November at 7pm. Speakers: James Goodman (Open University), John McDonnell (LPIS), Jeff Bell (author). Please ring 081 802 1882 for venue.

Manchester Martyrs: 1993 Commemoration: March and Rally for a free and independent Ireland: 20 November, assemble 1pm Platts Fields, Manchester. For details contact: Manchester Martyrs Commemoration Committee, PO Box 5, Southwest P.D.O., Manchester M15 5EZ.

EC seminars on legal remedies in respect of racial attack and racial discrimination: see Immigration section of this issue.

Contributors

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