

# statewatch

monitoring the state and civil liberties in the UK and Europe

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## New Convention to legitimise surveillance - group of "20" implementing EU-FBI plan

The EU-FBI plan to create a global system for the surveillance of telecommunications - phones calls, faxes and e-mails - has taken three major steps forward. The first is a new group of "20" working outside EU structures to effect the global system, the second are plans for all interceptions to be routed through just 3 or 4 EU states, and the third is a new draft EU Convention to "legitimise" surveillance by "law enforcement agencies" (see *Statewatch*, vol 7 no 1).

Earlier this year the K4 Committee minutes noted that work on interception was being developed "outside the third pillar" structures. *Statewatch* has learned that the plan is being developed outside the structures of the European Union by a group of 20 countries - the 15 EU member states plus the US, Canada, Norway, Australia and New Zealand.

The group of "20" is not accountable through the Council of Justice and Home Affairs Ministers or to the European parliament or national parliaments. Using the "Memorandum of Understanding", signed on 23 November 1996 by individual EU members states, they are now cooperating with the five non-EU states on a multilateral basis to ensure that the new satellite-based service and network telecommunications providers put telecommunications under surveillance at the request of "law enforcement agencies".

The Australian government introduced legislation to fall in line with the EU-FBI plan on 2 October. It claimed that the lack of legal powers had been delaying new systems because there was no obligation on service providers to allow police and security agencies to intercept communications. The police and security agencies have also had to pay the service providers to help them, under the new law the cost will be borne by the companies.

The EU will "legitimise" its participation through a new Convention on mutual assistance in criminal matters which was

re-written after the report by the High Level Group on Organised Crime (see *Statewatch*, vol 7 no 2) and a secret seminar in the Hague on 25-26 November 1996. Conventions, such as this one, adopted by the EU under Article 3.2.c of Title VI of the Treaty on European Union once agreed have to be ratified by each EU national parliament - but the parliaments are not allowed to amend or change a single "dot or comma".

The introduction of the surveillance of telecommunications in the EU has four elements:

a) the initial agreement between the US (in effect the FBI) and the EU Member States (which adopted the "Requirements" laid down by the FBI) to cooperate. The US Congress adopted the provision in October 1994 and the EU hastily followed by adopting the same provisions - without discussion in the Council of justice and Home Affairs Ministers - by "written procedure" in January 1995.

b) the "Memorandum of understanding" built on the joint EU-FBI "Requirements" by providing a mechanism to create an initial group of "20". A report to the K4 Committee in April report notes that the Council of Europe is working on "nearly identical instruments on mutual assistance" so it can be expected that the six EU applicant countries will have to adopt the new Convention as another condition of entry.

c) with agreement to cooperate on the basis of the "Memorandum" the group of "20" can work together to ensure that the major providers of the new satellite-based telecommunications systems adhere to the "Requirements" - in effect to ensure compliance by multinational companies.

The new era of satellite-based telecommunications will see just four companies - Iridium, Globalstar, Odyssey and ICO - controlling the "global network of mutually co-operating satellites". In the EU it is expected that there will only be 3 or 4 "ground stations" linked to these systems - "in France and Italy

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and perhaps Finland, the UK and Germany". All requests for interception orders are, under the draft Convention, to be effected through these "ground stations" and therefore through the countries hosting them.

d) the final element is the need, within the EU, to ensure that the "law enforcement agencies" cooperation to intercept telecommunications has a legal basis. The draft Convention on mutual assistance in criminal matters in Articles 6-8 sets out the terms of this cooperation.

Although the new Convention is being presented as dealing with "organised crime" the provisions on "controlled deliveries" and on the surveillance of telecommunications are a direct result of the "Action Plan on Organised Crime" drawn up by the High Level Group on Organised Crime its effect is much wider. The 1959 Council of Europe Convention, which the new Convention seeks to "supplement and facilitate", says in its Explanatory report that the objective is that the Contracting Parties:

*afford each other the widest measure of mutual assistance in proceedings in respect of offences the punishment of which falls within the judicial authorities of the requesting Party. Provision is thus made for minor offences as well as for other, serious matters..*

There is no limitation in the 1959 Convention to "organised crime" or to "serious crime", it simply concerns any punishable offence however minor.

The feature in this issue (page 14) examines the changing content of the draft Convention on mutual assistance in criminal matters, the reports on the interception of telecommunications and the implications these have for civil liberties.

## EUROPE

### EU

## Amsterdam Treaty signed

The Amsterdam Treaty agreed in June was signed in Amsterdam on 2 October by the EU Foreign Ministers - not by the Prime Ministers as had been expected. The "official line" was that this was because it was not a "major" Treaty like the Maastricht Treaty and that citizens were not very interested because it was all about the way the EU institutions work. In fact there was far more interest by citizens, national and voluntary groups across Europe, by national parliaments and the European Parliament than in the Maastricht Treaty. There appears to be an attempt to "play down" the Amsterdam Treaty so that it will not face opposition when it has to be ratified by national parliaments.

Perhaps the EU governments had another reason. The Amsterdam Treaty is so complex that few of them understand how it is going to work in practice. This has been compounded by an extraordinary exercise in "simplification" - a new 314-page version has been published by the Council of the EU which puts the provisions in the order they will appear as amendments to the Treaty of European Union (TEU) and the Treaty establishing the European Communities (TEC). This means that, unlike the version produced on 19 June by the Dutch Presidency, all the provisions have been separated from the numerous Protocols and even more numerous Declarations (each in different sections). And, there is *no* index. *Statewatch's* analysis of the provisions on the new Title (immigration and asylum), the revised Title VI and on transparency will be in the next issue.

Declarations 44 and 45, on pages 295 and 296, try to deal with the problem created for the UK and Ireland if they wanted to "opt-into" any of the current or future provisions of the Schengen *acquis*. The Declarations, which do not have the same status as the Treaty provisions, say every attempt should be made to allow

the two countries to participate and that the "opinion of the Commission" should be sought prior to any decision. However, the provision in the Protocol on the Schengen *acquis* still requires the unanimous agreement of the 13 Schengen member states.

*Draft Treaty of Amsterdam, Council of the European Union, August 1997.*

## Nordic fingerprint database

A network of fingerprint databases, covering Norway, Denmark, Sweden and Finland, is to be created by the US company, Printrak International. A contract, worth US \$1.8 million, has been signed between the company and Norway's National Bureau of Crime Investigation. Printrak "supplies biometric identification systems used primarily in law enforcement applications such as welfare and immigration control. It [also] provides networked fingerprint, photo imaging and automated records management systems..." Printrak, who installed fingerprint equipment for the Belgian Service d'Appui Policier in 1991 has also won a \$1.7 million contract for an updated automatic Belgian system with a capacity of five million prints.

### SCHENGEN

## Draft Manual on public order

The Schengen Working Group I on Police and Security has prepared a "Draft Schengen Manual on police cooperation in maintaining public order and security" with the objective of: "averting dangers to public order and security which may concern one of more Schengen State..." The draft Manual says:

*Cooperation pursuant to this manual shall apply, inter alia, to events where large numbers of persons from more than one country congregate in one or more Schengen States and where the main purpose of the police presence is to maintain public order and security and prevent criminal offences. Examples of these are sports events, rock concerts, demonstrations or road blockades.*

*This cooperation shall not be confined to large-scale events but can also apply to the movement and activities of concentrations of persons, regardless of size, which may pose a threat to public order and security. Cooperation shall not be confined to neighbouring Schengen States, but may also take place between Schengen States which do not have a common border and Schengen States of transit.*

A list of "central authorities" is to be set up and maintained who will act as the liaison points in each Schengen State. These "central authorities" are asked whether "bidden or unbidden" to send information "if circumstances arise or sizeable groups of persons that may pose a threat to public order and security move through or towards other Schengen States."

The "Checklist of information to be exchanged" is:

1. Type of occasion or event;
2. Group of persons: number;
3. Group of persons: type and composition of the group;
4. Group of persons: motivation, propensity for violence, likelihood of a disturbance;
5. Meeting places and times;
6. Routes and stops;
7. Mode of transport;
8. Other pertinent information;
9. Reliability of information.

Liaison officers from the Schengen State supplying the information can attend and work with the police of the other Schengen State and if necessary "police authorities from Schengen States concerned may, with a view to coordinating operations, set up joint command and coordination centres."

This initiative by the Schengen countries will supplement the Joint Action on cooperation in the fields of public order and safety adopted by the EU Council of Justice and Home Affairs Ministers in May (see *Statewatch*, vol 7 no 3).

*Draft Schengen Manual on police cooperation in maintaining public order and security, Working Group I on Police and Security, SCH/I(97) 36 rev. 5, 11.6.97.*

## GERMANY

### Report on Schengen 1996

The annual report on the workings of the Schengen Agreement for 1996 adopted by the Standing Conference of the Interior Ministers and Senators of the *laender* in Germany gives an insight into its workings. Overall, it says the "migration and crime situation" is not showing any "negative effects". This is a summary of the main points.

In 1996 there were 135 cross border observations: Belgium 8, France 6, Luxembourg 3, the Netherlands 118. There were 39 instances of cross border pursuit: Belgium 2, France 6, Luxembourg 0, the Netherlands 31.

As a result of checks at internal land borders 23,406 people were returned to Germany - 21,011 of these from the Netherlands. In comparison Germany only returned 2,421 people to other Schengen States - 1,053 to the Netherlands.

Concerning the readmission of third country nationals: In 1996, 59,010 "foreigners" had been deported from Germany either to neighbouring states or to their countries of origin. 2421 people were deported to France, Belgium, Luxembourg and the Netherlands; 1698 to Austria and 251 to Denmark.

26,599 people were deported back to Germany in 1996; 23,406 from the other Schengen states (Netherlands 21,011; France 1895; Belgium 337; Luxembourg 163). The report says:

*Foreigners living illegally in one of the Schengen states are deported to Germany on the basis of readmission agreements with Germany dating from the 1960s. These foreigners are not deported to their countries of origins in accordance with Article 23 para 4 SSA... The objective of German readmission policy is, however, to get the Schengen partners to agree to joint readmission operations to the countries of origin of the foreigners concerned.*

The exclusion of migrants at Germany's external borders in 1996 was: 27,024, the number arrested after "illegal entry" was 25,551, the number refused entry at airports was 4,286 together with a further 7,364 "arrested for illegal immigration".

#### Schengen Information System

The report says that: "it has been decided to redesign the SIS completely in order to integrate the five Nordic states. The integration of the Nordic states will follow in a second technical generation of the SIS. This new SIS II will be designed in a way that the integration of future member states (eg within the framework of an enlarged EU) will be technically possible at any time."

The following table shows the number of searches of the Schengen Information System in 1996 by total searches by the Schengen States using the SIS (only seven) and the numbers for Germany:

Subject of search	total	German part
<i>arrest/extradition</i>	<i>5,103 persons</i>	<i>1,528 persons</i>
<i>Article 95</i>		
<i>entry refusal/</i>		
<i>deportation, Art.96</i>	<i>413,054</i>	<i>321,301</i>
<i>residence inquiry</i>		
<i>Art.97</i>	<i>17,486</i>	<i>1,378</i>
<i>(missing people/minors)</i>		
<i>residence inquiry</i>	<i>31,324</i>	<i>1,042</i>
<i>witnesses Art. 98</i>		
<i>police observation</i>	<i>9,424</i>	<i>356</i>
<i>Art.99</i>		

"searches for things"

Art. 100

- vehicles	827,516	317,273
- arms	168,421	106,955
- bank notes	535,754	235,062
- blank documents	33,034	31,825
- identity papers	2,200,968	1,215,842

*German Interior Ministry, Report on the Schengen Agreement 1996, adopted by the Standing Conference of the Interior Ministers and Senators of the laender on 5/6 June 1997.*

### Europe - new material

**The "Yugoslav" crisis in international law, Part I, General Issues**, edited by Daniel Bethlehem and Marc Weller. Cambridge University Press, 1997. This volume is an important contribution to the literature on the former Yugoslavia. It places on record under one cover the responses of the United Nations to all aspects of the "Yugoslav" Crisis" between January 1989 and 30 April 1994. The tome (over 700 pages) contains a useful chronology of events during the period drawn from Keesings Archives cross-referenced with the UN Resolutions, Statements, Debates and Reports reprinted in the body of the work. It chronicles a mass of contradictory responses to the "crisis" from the "international community" and will be an invaluable resource for researchers attempting to understand events during these five years in the area of the former Socialist Federal Republic of Yugoslavia. Future volumes are planned to bring the record up to date.

**Report to the Slovenian government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 28 February 1995.** *Council of Europe* June 1996, pp49.

**Interim report of the Slovenian government in response to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Slovenia from 19 to 28 February 1995.** *Council of Europe*, June 1996, pp36.

**Speaking, writing, thinking: conquest and repression of freedoms. FIDH report on a fact-finding mission on freedom of opinion and expression in Turkey.** *International Federation of Human Rights Leagues*, June 1997, No.232/2, pp38.

**False appearances. FIDH report on a fact-finding mission on the freedoms of expression and opinion in the Republic of Croatia.** *International Federation of Human Rights Leagues*, June 1997, No.243/2, pp23.

**The European Ombudsman. Annual report for 1996.** *European Union*, April 1997, pp122.

**Tatort Europa. Asyl und innere Sicherheit in der EU** (Scene of crime Europe. Asylum and internal security in the EU), *Initiative gegen das Schengener Abkommen*, Bonn, 1997, pp44. This is the third brochure by the "Initiative against the Schengen Agreement" examining the implications of the Schengen Agreement and European cooperation in home affairs on migration and internal security policies. This brochure includes articles on the Schengen Agreement from a Scandinavian point of view, implications of Schengen on Poland, Europol, police cooperation with east European states and the EU extradition agreement.

**Enhancing Parliamentary Scrutiny of the Third Pillar.** Select Committee on the European Communities, House of Lords. HL Paper 25. HMSO, 31.7.97, 160 pages, £16.70. An excellent report which makes a series of Recommendations for the Home Secretary to respond to. Covers parliament's access to draft measures before they are adopted by the EU Council of Justice and Home Affairs Ministers; its powers of scrutiny; and a summary of powers of other EU parliaments.

**The European Ombudsman.** Select Committee on the European Communities, House of Lords. HL Paper 18. HMSO, 22.7.97, 20 pages, £5.60. Recommends that more publicity should be given to increasing awareness of the Ombudsman's powers.

**The Amsterdam Treaty.** Select Committee on the European Communities, House of Lords. HL Paper 17. HMSO, 22.7.97, 44 pages, £8.60. Compares a report by the committee made in 1995 with the provisions in the Treaty. It does not include a full summary of the Treaty.

**Recent developments in European Convention law,** Philip Leach. *Legal Action* July 1997, p13-17. This piece summarises cases at the European Court of Human Rights which are relevant to Britain and Northern Ireland.

**Report to the Bulgarian government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 26 March to 7 April 1995 and Responses to the Bulgarian Government.** *European Committee for the Prevention of Torture* March 1997, pp147.

**Report to the Danish government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 September to 9 October 1996.** *European Committee for the Prevention of Torture* April 1997.

**Call in the experts,** Keith Nuthall. *International Police Review* September/October 1997, p35. Short piece on a "directory of specialist expertise in the combatting of terrorism" compiled at the behest of the EU's Council of Ministers for Justice and Home Affairs and maintained and operated out of the UK. The EU is also planning a directory on "policing expertise in the fight against drugs and organised crime."

**The European Institutions in the fight against racism: Selected texts.** *European Commission* 1997, pp121. This book publishes "key" Community texts on racism, xenophobia and anti-semitism.

#### Parliamentary debates

**Turkey: Human Rights,** *Lords* 18.7.97 cols. 1164-1186

**European Council, Amsterdam,** *Lords* 28.7.97. cols. 11-73

## CIVIL LIBERTIES

### EU

## Peace train

Another attempt to publicise the situation in Kurdistan and European governments' collusion with the Turkish authorities was the Musa Anter Peace Train, which planned to travel from Brussels through European countries and Istanbul to Diyarbakir, the "capital" of Turkish Kurdistan, in the last week of August. The train (named after the murdered Kurdish writer) was filled with people from all European countries and all walks of life who condemn Turkish destruction of the Kurdish people, villages, language and culture, and the political incarceration of peaceful Kurdish activists such as Kurdish MP Leyla Zana, lawyers, trade unionists and journalists. All the way along the route solidarity activities were planned, culminating in a festival in Diyarbakir. But the Turkish authorities did not allow the train to enter Turkey, and when delegates boarded coaches instead, these were mercilessly harassed and the progress of the delegates across Turkey was thwarted by security police. Although the train and its occupants did not reach Diyarbakir, the efforts of those trying to draw attention to oppression in Kurdistan were welcomed there. Demonstrations in south-east Turkey protesting against the interference with the Peace Train were violently

suppressed. Regrettably, the British press paid very little attention, preferring to devote pages to sensationalist "revelations" of alleged Greek collusion with PKK bomb campaigns.

*For more details of the Peace Train, contact Kurdistan Information Centre (KIC), 10 Glasshouse Yard, London EC1A 4JN (Tel: 0171-250 1315).*

### SPAIN

## Video Surveillance Act

On 6 August the new Video Surveillance Law came into effect, regulating the use of video cameras in public places by state security agencies. The installation of fixed cameras will now require a permit from the local interior ministry office, issued only on the basis of a report from a commission chaired by a justice of the High Court of the relevant Autonomous Community. In urgent cases images may be recorded on a portable camera without a permit, but the commission must be informed within 72 hours. The Interior Ministry will be obliged to give details of the areas covered by cameras, and the police will have to inform a magistrate within 72 hours of having viewed recordings. All recordings not to be used in legal proceedings or for other valid reasons must be erased within a month. Every citizen will have the right to view any tapes on which they are recorded, and to demand their erasure if no charges have been brought against them, but the police can refuse to erase tapes on grounds of national security or defence.

### UK

## MoD to contest gay soldiers case

The Ministry of Defence is still committed to contesting the case brought by Terry Perkins, a former navy man sacked because of his sexuality. This is despite a renewed commitment by Defence Secretary George Robertson to allow a free vote in the House of Commons on the issue.

A spokesman for the MoD told the *Pink Paper*: "There is nothing anomalous in us holding either position. There is an Armed Forces bill in every parliamentary session and in Perkins case we have been asked to respond and we will."

The growing contradiction between the position of the Secretary of State for defence and that of his department was further accentuated by an interview given by Robertson to the *Daily Telegraph* where he announced a commitment to a free vote on the gay ban in the military in the next five years. When probed on this issue he stated: "It bothers me more that we are judged to be unfair, prejudiced and unreasonable by the public...than it does whether we win or lose fights in the European Court. A very tough message is going down the line that sexual, racial and other harassment will not be tolerated."

The MoD has however denied that this new commitment to equal opportunities in the armed forces had anything to do with the ban on gays in the military: "What George Robertson has pledged to do is extend equal opportunities to all who work in the military. Gays don't work in the military, because we sack them as soon as we discover them."

*Pink Paper* 1.8.97

## Stalking act used on activists

The new Protection from Harassment Act - originally designed to protect people from harassment by stalkers - has been used to serve injunctions against animal rights activists. Two injunctions were granted by the High Court on July 16. One put a 24 hour exclusion zone around the headquarters of the British Field

Sports Association, while the other barred three named activists and "all individuals and organisations holding themselves out as animal rights activists" from interfering with a cat-breeder and his family.

The new law was originally introduced last year after increased concerns about stalking sparked a press outcry. Civil liberties campaigners had been concerned that the law was broad enough to cover demonstrators and investigative journalists. A spokeswoman for Liberty commented: "It's always depressing to see our worst fears come true. Using the new act in this way will detract from the aim of protecting genuine victims of harassment whilst adding to the arsenal of criminal sanctions already available against legitimate protests." Senior police officers are apparently recommending that anyone charged under the act should be refused bail. The net result of this could be that activists who are charged under the new act could face instant imprisonment and months on remand while waiting for their cases to be heard. One activist told the *SchNews*: "This could be the thin end of the wedge. If they get away with using these laws against animal rights activists then it will give carte blanche to attack anyone involved in the direct action movement". Anyone convicted twice under the act could face a five year jail sentence.

*Schnews*, 18.7.97.

## Civil liberties - in brief

■ **Netherlands: Prison telephone tapping banned:** The Geniepoort prison in Alphen aan den Rijn has temporarily stopped recording telephone conversations made by prisoners. Lawyers acting for the prisoners had earlier discovered that all telephone conversations made by prisoners were routinely being recorded and had asked for a judicial review. When queried the Dutch Ministry of Justice admitted that all new prisons were now being equipped with telephone tapping systems. *NRC Handelsblad Weekeditie* 29.7.97

■ **Netherlands: E-Mail not covered by confidentiality law:** The Dutch Ministry of Justice recently declared that e-mail is not covered by laws that protect the confidentiality of letters. According to the ministry e-mail will be treated in the same way as postcards, which have no protection in law as they are not sealed in envelopes. According to Joop Verbeek, a Researcher for the *Nationaal Programma Informatietechnologie en Recht*, the consequences of this decision would be that any person could access other peoples' e-mail without any fear of either criminal or civil proceedings being taken against them. This subject arose with the discovery that some football hooligans are using e-mail to communicate with each other. The ministry of Justice now plans to use these e-mail communications as evidence in forthcoming trials. *NRC Handelsblad Weekeditie*, 29.7.97.

## Civil liberties - new material

**E-Mail Moet Vallen Onder Het Briefgeheim**, Joop Verbeek, *NRC Handelsblad Weekeditie* 29.7.97 Dutch language analysis of the confidentiality of e-mail in the Netherlands, includes an appeal to change the Dutch constitution.

**Resistance with relish.** *Red Pepper* No. 39 (August) 1997, pp 13-16. A number of articles, including an interview with the McLibel 2, Helen Steel and David Morris, on the McLibel Support Campaign.

**The £48-million blunder...and the people who refused to foot the bill**, Edward Platt. *Big Issue* No. 241 (July 14) 1997, pp6-7. A tale of Council incompetence and corruption involves rival tenders for the building of a shopping centre.

### Parliamentary debates

**Freedom of Information** *Commons* 9.7.97. cols. 902-910

**Nuclear explosions (Prohibition and Inspections) Bill** *Lords* 24.7.97. cols. 1544-1555

**New age travellers (Harborough)** *Commons* 16.7.97. cols. 367-376

## IMMIGRATION

### UK

## Kani Yilmaz extradited

In mid-August, Kurdish spokesman Kani Yilmaz was finally extradited to Germany to face charges of organising attacks on Turkish businesses and properties, after home secretary Jack Straw ignored campaigners' pleas and upheld the court order for his extradition. Yilmaz had spent almost three years in detention in Belmarsh prison. The decision, following the House of Lords' rejection of his petition against the extradition, was a slap in the face to supporters who believed that Straw would carry his opposition convictions into government; Straw was one of several Labour MPs who protested strongly when Yilmaz was arrested and detained for deportation on "national security" grounds on his way to a meeting at Westminster in October 1994. The arrest caused embarrassment to the Tory government because Yilmaz had been allowed into the country freely days beforehand; the German government's action in seeking his extradition was widely seen as too convenient, particularly since Yilmaz, a refugee from Turkey, had spent much time in Germany, where he had stayed quite openly, and there was never any attempt to charge him with criminal offences.

In a letter to Yilmaz' solicitors, the head of the extradition section of the Home Office's Organised and International Crime Directorate, Clare Checkfield, defended the original decision to detain Yilmaz who, she claimed, had been allowed to enter the UK "in error" after the Home Secretary had decided that he should be excluded on national security grounds. The letter defended the German authorities' failure to charge Yilmaz while he was in Germany on the ground that evidence linking him to the offences only became available in 1994. It adds that the German authorities aim to move quickly to trial once Yilmaz is back in Germany and have agreed to set off the time spent in Belmarsh prison awaiting extradition "against any prison term he may receive in Germany".

In a statement of 6 August, Kani Yilmaz thanks everyone involved in the campaign for him and says that western governments must recognise the PKK as the legitimate representative of the Kurdish people if they want peace in Kurdistan.

Kani Yilmaz spent nearly three years in prison in Britain, having come to discuss finding a peaceful solution to the war in Kurdistan and self-determination for the Kurdish people. He has said he will not seek judicial review of the Home Secretary's decision, having had his confidence in the British judicial system severely undermined by the courts' passive endorsement of the extradition request. But he will use the German courts as an opportunity "to present the case of the Kurdish people and to expose the collaboration of Europe's governments with the Turkish state".

### SPAIN

## Work permit applications halted

On 11 July the Spanish authorities decided to stop accepting applications for work permits. The decision by the Ministry of Labour and Social Affairs was condemned as illegal by ten immigrant organisations, since the authorities had previously undertaken to issue 15,000 permits and to accept applications up

to the end of the year. To date around 46,000 applications had been received and 4,000 permits issued. After the protests the Ministry said that it had not ruled out an increase in the immigrant quota in September, once the planned 15,000 permits had been processed.

## Moroccan migrants die on raft

The continuing flow of migrants attempting to cross the Straits of Gibraltar on rafts and other small craft increases at this time of year, with new reports every week of the detention of dozens by the Spanish police. There are also frequent reports of drownings, although it is likely that recorded deaths are greatly outnumbered by those that go unnoticed. Among the worst of the recent tragedies was the drowning, off Tangiers, of some 25 Moroccans on 14 June. This figure represents only the bodies recovered: it is almost certain that more died, since it is thought that there were around 40 migrants on the boat, and to date only two are known to have survived. On 16 September another seven bodies were found near Cadiz, presumed to be victims of the capsizing of another raft, and it is reckoned from missing persons reports that on this occasion as many as 30 may have died. Since 1988, the total number of deaths exceeds 200.

## GERMANY

### Carrier sanctions for taxi drivers

42 investigations against taxi drivers suspected of supporting illegal immigration have been carried out in the federal state Brandenburg alone in the last years. Figures for the border states Mecklenburg-Vorpommern and Saxony are not available. In Zittau (Saxony), two taxi drivers have now been sentenced to 16 months and 22 months respectively. The crime they committed was to transport non-German looking persons from a town near the Polish border to another one 25 miles west. The persons were later detained as illegal immigrants. An analysis of the court ruling basically shows that internal "carrier sanctions" have been introduced. The two men who have appealed against the decision, have been found guilty of supporting illegal immigration by the district court in Zittau. The court argued that the taxi drivers should have become suspicious as the foreigners travelled without luggage. A civil servant from the Foreigners' Office (Auslaenderbehoerde), as a witness for the prosecution, explained to the court that out of the 1,000 foreigners living in the district of Loebau-Zittau, 600 were asylum seekers and about 400 students. Therefore, according to the court, all foreigners travelling in this area are suspicious as asylum seekers are usually not allowed to leave the district, and thus not likely to go on long distance journeys. Moreover, it was "highly unlikely" that foreigners had enough money to travel such a long distance by taxi.

The prison sentence was especially severe as the court believed that the taxi drivers are involved in organised illegal immigration. After all, by the judge's reasoning, they had "realized that their passengers were foreigners". In response to the taxi drivers defense that they had no right to control travel documents, the court stated that they could have informed the Bundesgrenzschutz (German border police) about their "suspicious passengers". At meetings between district state prosecutors, the border police, taxi companies and car hire companies in Dresden and Goerlitz, taxi drivers have been asked to report any non-German looking passengers via a code word to the border police. Otherwise, if their passengers were later found to be not in possession of valid travel documents, they would be charged with supporting illegal immigration. Polls among taxi drivers in Zittau have shown that they either do not transport any non-German looking persons at all or report them to the border police. The district magistrate's office has promised leniency if any "legitimate passenger" reports to the police being refused

transport by a taxi driver which is an offence under German law. Since 1994 the border police has started to include different groups of the population into its surveillance system at the German-Polish and German-Czech borders. First, a "citizen's telephone" was launched to encourage people to denounce suspicious looking persons; now, taxi drivers are coerced into "cooperation" with the border police.

*Frankfurter Rundschau, 15.8.97; press release Forschungsgesellschaft Flucht und Migration, 18.8.97.*

## NETHERLANDS

### Police to repatriate Moroccans

The Amsterdam police plan to launch a repatriation project for Moroccans found guilty of crimes who do not have residents permits. The first pilot project is set to be launched later this year.

The aim of the project, according to police spokesman K. Wilting, is to end the problem of "illegal criminals causing problems through street robberies and theft in the city centre" by offering them work in their country of origin. According to statistics gathered by the Centraal Bureau voor Statistiek, 60 percent of youths currently incarcerated in institutions are from ethnic minorities, up from 50 percent in 1991.

*NRC Handelsblad Weekeditie, 19.8.97.*

### Campaign forces rethink

An attempt by the Immigratie en Naturalisatie Dienst (Immigration and Naturalisation Service, IND) to deport a Turkish family has led to discussions at cabinet level. The plans to deport the Gümüs Family led to an active campaign on their behalf, organised by staff at the school where the Gümüs children were being taught which involved, among others, the mayor of Amsterdam.

The Gümüs family applied for residency two years ago. The IND rejected their application because they had originally entered the country illegally and had only worked legally for five of the six mandatory years before they applied for permanent residency. A representative of Amsterdam council described the original decision as "very sad, because the Gümüs family are completely integrated within the community". The IND commented: "this family does not meet the criteria, therefore they must leave the country. We make no exceptions."

The campaign has now apparently forced politicians to change their minds. Junior minister Schmitz of the Ministry of Justice has stated that as a result of the pressure she is prepared to reconsider the position, "if parliament wants to do things differently, we will have to change our policy."

*NRC Weekblad, 26.8.97.*

### Iranian hungerstriker wins deportation delay

The Iranian asylum seeker Majid Nasseri has ended a 31 day hunger strike. Although his appeal against deportation was rejected by a court in the Hague, the Dutch government has agreed to re-examine the position of asylum seekers from Iran, following pressure from campaigning organisations.

The Dutch government used to allow asylum seekers from Iran to stay in the country even if their asylum claim had been rejected. However the Ministry of Foreign Affairs recommended a change in the policy claiming that Iran had recently began to show more respect for human rights (see *Statewatch*, vol 7 no 3).

The cabinet now appears to be revising their position again, with Prime Minister Wim Kok wishing to re-examine the foreign

ministry's judgement of Iran. Mr Nasserri will in any case be allowed temporary leave to remain, owing to his enfeebled physical condition.

Another Iranian asylum seeker who is currently on hunger strike, Amir Amiry, will also have a stay of deportation. The immigration and naturalisation service wish to speak to him again about his case. Mr Amiry has now agreed to drink water and take mineral supplements, although he continues to refuse solid foods.

*NRC Handelsblad Weekeditie, 19.8.97.*

## Foreign divorcees to face deportation

Foreign women who divorce their husbands are to face deportation if they fail to find paid employment within one year. This was announced by junior Minister of Justice Schmitz. The current rules stipulate that women who divorce their husbands within three years of getting married do not have an independent right of abode within the Netherlands. Schmitz has now stated that women who divorce their husbands after three years will be given a temporary residence permit for a year, which will only be extended if they manage to find paid employment for at least one year within this period.

*NRC Handelsblad Weekeditie, 5.8.97.*

## Immigration - new material

**What's love got to do with it? Racism, sexuality and immigration controls**, *Greater Manchester Immigration Aid Unit*, July 1997, pp11, £3. This pamphlet consists of a series of articles examining issues of sexuality and gender within immigration controls and showing how these relate to the fundamental racism and nationalism of controls.

**Ukraine. Vor den Toren der Festung Europa. Die Vorverlagerung der Abschottungspolitik.** (The Ukraine. In front of the gates of Europe. The advancement of the policy of closed doors.), *Forschungsgesellschaft Flucht und Migration*, no 5, 1977, pp139. 12,- DM. ISBN 3-924737-40-1. Kiev airport is for many people from Africa, Asia and the Middle East on the search for refuge the gate to western Europe. However, the integration of central and eastern European countries into Germany's system of readmission agreements means that many refugees are stranded in the Ukraine. Based on interviews with refugees, this publication reports about their daily struggle in Kiev, most of them living in illegality. Included is information about the political situation in the Ukraine, the readmission agreements, detention and cross border police cooperation in Poland. The book stresses Poland's role as a middleman between Germany and several eastern and central European countries.

**Recent developments in immigration law**, Jawaid Luqmani, Chris Randall and Rick Scannel. *Legal Action* July 1997, pp20-24. This article is an update on developments in legislation, practice and case-law related to immigration.

**What's up Jack?** *CARF* no 39, Aug/Sept 1997, pp8-10. This article assesses Labour's performance on asylum and immigration in the first three months since their election.

**Immigration: the politics of compromise.** *CARF* 39 (August-September) 1997, pp6-7. Noting that there has been no change in immigration policy in the UK under the newly elected Labour government, *CARF* looks at developments elsewhere in Europe. Available from *CARF*, BM Box 8784, London WC1N 3XX.

*National Coalition of Anti-Deportation Campaigns* No 7 (July-September) 1997. This issue includes pieces on Campsfield Immigration Detention Centre, the Winson Green Prison hunger strike, reports from Mexico/US and France. Also contains an update of developments in individual cases.

*No one is illegal.* Newsletter 21 (Summer) 1997. Latest newsletter from

the Greater Manchester Immigration Aid Unit. This issue contains a feature article, "Positively Racist: HIV/AIDS and immigration control. Available from: GMIAU, 400 Cheetham Hill Road, Manchester M8 9LE.

**Best practice guide to Asylum appeals**, Mark Henderson. *ILPA, Law Society & the Refugee Legal Group* 1997, pp132.

**Parliamentary debate**

**Special Immigration Appeals Commission Bill**, *Lords* 23.6.97. cols. 1430-1440

## LAW

### SPAIN

## Penal Code changes

The Spanish government has presented the parliamentary parties with a discussion document outlining a range of possible legal reforms, including: 1) Imprisonment for participation in illegal demonstrations with sentences of one to two years, and fines equivalent to six to twelve months' earnings, for participants in illegal demonstrations or gatherings, and for those attending such events while masked, disguised or with painted faces. 2) Fast-track trials. The investigating magistrate's role is dispensed with and the case would go straight to a hearing. 3) Classification as "wanton destruction". Those convicted of wantonly damaging public thoroughfares, buildings or means of transport, offences hitherto regarded as serious crimes only if people's lives or safety was endangered, are to become liable to sentences of 10 to 20 years in prison. Critics say that this would mean that, for example, burning buses, even if no-one was put at risk, would attract a heavier penalty than homicide. 4) Extension of the range of conduct classed as "apology for terrorism". 5) Criminalising of counter-demonstrations.

These measures have initially attracted the full support of the Socialist party and criticism from all other parties. Several associations of judges and prosecutors maintain that the practical application of the measures would be extremely difficult.

The most recent instance of heavier penalties being applied in cases of alleged street violence was on 7 August in the Biskaia Provincial Sessions, when a youth accused of throwing petrol bombs at members of the Ertzaintza (the autonomous Basque police) in Bilbao was sentenced to over ten years imprisonment.

### Lowering of age of penal liability in terrorism cases

The Spanish government is proposing to include in the forthcoming Law on Minors the reduction of the age of criminal liability, for minors accused of terrorist acts, from 18 to 16 years. Some members of the General Council of the Judiciary, an official body which will be required to give an opinion on the proposed law, have already described the step as completely unconstitutional.

### UK

## Green Anarchists go to trial

Four editors of the radical green magazine *Green Anarchist* are set to be tried for "conspiracy to incite persons unknown to commit criminal damage" (see *Statewatch*, vol 7 no 2). The only concrete evidence against the defendants in what has become known as the Gandalf case is that they listed the activities of direct action groups such as the Animal Liberation Front or Earth First.

One of the original defendants, Green Anarchist press officer Robin Webb, has already had his case thrown out. According to the Sunday Independent the magistrate hearing the case described the prosecution conduct as “oppressive and an abuse of process”.

Civil liberties and activist groups are already gathering in defence of the defendants. SchNews, the bulletin of the Brighton-based *Justice?* group, points out that “according to the committal even just reporting the facts about animal liberation or eco-defence action constitutes incitement...under this we are up against a very broad sweeping definition and the implications of this are going to be used against the entire radical press...therefore this is not just a problem for Green Anarchist alone”. John Wadham of the civil liberties watchdog Liberty agrees, saying to the Sunday Independent: “we will be monitoring the trial closely because the use of conspiracy and incitement is something that has concerned Liberty for many years.”

The police and security services will also be taking a close interest in the outcome of the trial. Operation Washington, a six year police campaign targeting animal rights and green activists which launched 55 raids during the cause of 1995-6, culminates in the trial of these five. MI5 also appear to be involved, judging by the issuing of Public Interest Immunity (PII) orders, notoriously used and abused in the Matrix-Churchill “arms-to-Iraq” trial. The defendants believe that they were infiltrated by an agent-provocateur who encouraged them to write the articles which directly led to their being on trial. The issuing of PII orders would appear to give their story some weight.

The trial begins on August 26 at Portsmouth crown court. There are demonstrations being planned in conjunction with the trial. For further information contact: Green Anarchist BM1715 London WC1N 3XX.

*SchNews*, 18.8.97; *Independent on Sunday*, 10.8.97.

## Law - new material

**Judging from on high.** *Labour Research* Vol. 86, no 7 (July) 1997, pp13-15. A new Labour Research survey of the judiciary concludes that they remain an elitist, (70% having been to public school), white male bastion. The survey also found that current judges are likely to be older than in a similar survey a decade ago and that they are more likely to be involved in politics.

**Public order review,** Jo Cooper. *Legal Action* August 1997, pp 13-15. Bi-annual review of trends and significant developments in public order and arrest cases. Available from LAG, 242 Pentonville Road, London N1 9UN.

## MILITARY

## Military - new material

**Europe puts compromise ahead of common security policy,** Marc Rogers. *Jane's Defence Weekly*, 11.6.97, pp39-41. Just before the Amsterdam summit EU member states were still heavily divided on the key issue of merging the Western European Union (WEU) into the EU with UK Foreign Secretary Robin Cook clinging to the traditional British opposition to merger but at the same time indicating that London favoured inclusion in the EU Treaty of the WEU's so called Petersberg tasks (peace-keeping, humanitarian missions and crisis-intervention).

**Fitter, leaner forces for multi-polar world (Country briefing - France),** Jac Lewis. *Jane's Defence Weekly*, 11.6.97, pp68-83. The defence reforms that were announced under the last government are irreversible and the victory of the Socialist Party is not expected to lead to fundamental changes.

**Southern Rim look for answers from summit,** Marc Rogers. *Jane's Defence Weekly*, 18.6.97, p19. Many European countries feel that the

USA insists on maintaining command over the southern NATO forces primarily as a staging area for its national interest in Middle East and Gulf contingencies, rather than to deal with southern Europe's immediate preoccupation with instability just across the Mediterranean.

**Adapting the alliance to modern military roles,** Marc Rogers. *Jane's Defence Weekly*, 25.6.97 p19. The internal adaptation of NATO's military structure with continuing rivalries between Spain and Portugal, Greece and Turkey, the UK and Spain (Gibraltar) and France and the USA, is also part of a long-term plan to change from a Cold War system to a new world order characterised by uncertain threats and missions that require lighter, more flexible forces.

**Sweden may host Apache exercises.** *Jane's Defence Weekly*, 2.7.97, p11. The British Army Air Corps and the Netherlands Air Force are eyeing Sweden as a potential future location for exercises of their Longbow Apache attack-helicopter units, because the two air forces have not sufficient training space in their own countries.

**France cools off on full NATO reintegration,** Jac Lewis. *Jane's Defence Weekly*, 9.7.97, p3. France has postponed its return to NATO's integrated military command as it feels that insufficient progress has been made towards a greater European say in NATO affairs.

**Operation “Alba” lets Albania go to the polls,** Paolo Valpolini. *Jane's defence Weekly*, 9.7.97, pp16-17. Detailed article on the deployment of a 7000 strong European force led by Italy in Albania.

**Du muscle pour l'AMF-Nord [Muscle for AMF-North],** Yves Debay. *Raids*, no 134, June 1997, pp8-15. Article on Allied Mobile Force, the rapid intervention brigade of NATO.

**Le Special Air Service,** Jean-Jacques Cecile. *Raids*, no 134, June 1997, pp22-34. Article on the British 22nd SAS Regiment.

**Le 2e Regiment Etranger de Parachutistes [2nd Foreign Legion Pararegiment],** Yves Debay. *Raids*, no 135 pp6-39. Special dossier on this French elite unit that played a role in Vietnam, Algeria, Chad, Zaire, the Lebanon and several African countries.

**Deadly trade off,** Gordon Crawford. *Red Pepper* No. 39 (August) 1997, pp18-20. This article looks at the “ethical” dimension introduced by the new Labour government into foreign policy and questions how this will effect the “business as usual” approach to regimes like Indonesia, China, Nigeria and Colombia.

**A Comparative study of military involvement in policing in England & Wales and Turkey,** Dr Ahmet Hamdi Aydin. *Police Journal* Vol. LXX, No. 3 (July-September) 1997, pp203-219. Noting that “the police are influenced by the military, and the military in both England & Wales and Turkey are considerably involved in maintaining law and order” the author suggests that “the military is becoming increasingly visible and more interested in politics.”

### Parliamentary debates

**NATO and the Russian Federation** *Lords* 23.6.97. cols. 1440-1460

**Armed Forces** *Lords* 2.7.97. cols. 252-289

**European Fighter Aircraft** *Commons* 9.7.97. cols. 849-871

**NATO summit** *Commons* 9.7.97. cols. 937-949

## POLICING

### NETHERLANDS

## Attempted murder charge

An Amsterdam local government worker has laid charges of attempted murder against the Mobiele Eenheid (Mobile Unit, Dutch equivalent of the UK Tactical Support Group) after he was badly beaten by five ME members during demonstrations surrounding the Amsterdam summit.

J Quakermaat and his wife and daughter were attending the

50,000 strong demonstration against unemployment on Saturday June 14 when disturbances broke out around police headquarters in the Marnixstraat. Quakermaat and his family then decided to leave the demonstration. However according to him the ME members told him to turn back. When Mr Quakermaat refused to heed their instructions he was then set upon by the five police officers. Lawyers representing Mr Quakermaat are insisting that the Police carry out a full investigation.

*NRC Handelsblad Weekeditie, 8.7.97.*

## No prosecution for Eurotop demonstrators

The Dutch Ministry of Justice has formally announced that it will not be pressing charges against 125 people arrested on the night of 16-17 June after they attempted to disturb the sleep of top European politicians, including President Chirac of France and the UK Prime Minister Tony Blair. The 125 were originally arrested on the grounds that they broke an injunction banning them from holding demonstrations in designated areas under articles 5 and 9 of the Algemene Plaatselijke Verordening (General Local Decree).

*NRC Handelsblad Weekeditie, 5.8.97.*

## UK

### Phones cut off in emergencies

The police are secretly disconnecting thousands of telephones during public emergencies. According to a report in the *Sunday Telegraph* this happened during the Brixton uprisings, the disasters at Lockerbie and Hillsborough, the Hungerford massacre and during an IRA hoax bombing of the Grand National at Aintree in the spring. Minutes from British Telecom (BT) says that this is done to protect the telephone network from being swamped by panic calls preventing calls to the emergency services.

Ninety per cent of phones were cut off at the exchanges blacking any outgoing calls but leaving the emergency services, local authorities and senior politicians with a full service.

Non-mobile phones are cut off under the Telephone Preference Scheme developed for the "Cold War" and national emergencies like strikes and public order in the 1950s and 1960s. It is run by BT on behalf of the Home Office. Under the Scheme every phone in the country is secretly classified into one of three preference levels: Category 1, for senior police, military bases and government departments; Category 2 for local government officials, MPs and judges; and Category 3, for everyone else - 90% of the network. In a "war emergency" Categories 2 and 3 are disconnected, in a civil emergency only Category 3 is cut off. The official purpose is to "safeguard essential users" from "unessential" ones.

Mobile phones are cut off by ACCOLC or Access Overload Control - a 1991 memorandum from the Cabinet Office said: "knowledge of ACCOLC must be protected." Each mobile phone is placed in one of 15 categories - Levels 0-9 cover the public, Level 12, the emergency services, Level 13, higher government officials and Levels 14 and 15 are "reserved". An order to cut off Levels 0-9 can be made by the police or the Cabinet Office. Level 12 was invoked during the Aintree bomb hoax cutting off users in north Liverpool below that Level.

*Sunday Telegraph, 24.8.97.*

### Code on "intrusive surveillance"

The 1997 Police Act passed quietly into law - by mutual

agreement between the frontbenches - just after the general election was announced. This meant that considered discussion on the Bill's more controversial clauses were curtailed or not even reached. It fell to the new Home Secretary to issue a draft Code of Practice to cover the new "bug and burgle" powers for the police and other agencies to enter peoples' homes or offices and "interfere" with it (see *Statewatch*, vol 6 no 6 for details on the Bill).

To-be-appointed Commissioners (serving or former high court judges) will be able to give authorisation to the place lawyers and clients, doctors and counsellors, and journalists under surveillance. One of the most controversial sections of the new Act was the definition of "serious crime", referred to in the Code, as including "conduct by a large number of people in pursuit of a common purpose". This confirmed fears that political and trade union activity previously considered as "subversive" and falling under MIS's remit is now to be "criminalised".

There will be little confidence in the complaints procedure to the Commissioners set out in the Code. Not a single complaint to the Commissioner (senior judge) under the 1985 Interception of Communications Act (covering telephone tapping and mail-opening) has been upheld.

Last year chief constables or their deputies authorised over 2,500 "buggings" or surveillance operations according to the national coordinator of the regional crime squads in England and Wales. Mr Penrose said: "The vast majority relate to the use of surveillance cameras, vehicle monitoring devices and the like", which are not covered by the 1997 Police Act or any other Act.

*Draft Consultation: Intrusive surveillance: Code of Practice, Home Office, 12.8.97; Times, 29.9.97.*

### Black and white minstrel "farce"

South Yorkshire police have been forced to review their identification procedures after eight white men were "blacked-up" by a make-up artist to participate in an identification parade with a black suspect. Martin Kamara walked free from Sheffield Crown Court in July after his trial was abandoned when the court heard how the mens' hands had not been coloured and their make-up smudged under the bright lights. Judge Michael Astill dismissed the charges describing the identity parade as "a farce". However, South Yorkshire assistant chief constable, Tim Hollis, defended the parade claiming that the force had acted in good faith. He added: "...we got it wrong trying to be as fair as we could to provide the right kind of evidence."

The South Yorkshire fiasco follows on from a decision to allow hundreds of police officers to retake their promotion examinations because "they were unable to deal with black actors pretending to be traffic wardens" during national tests. In previous examinations the Police Promotions Examinations Board decided to stop using black actors because "officers had performed better when dealing with white actors and this may be because race was confusing them." The thirteen black actors who were dismissed following the latest incident have now been reinstated by the Home Office.

It is hardly surprising to note that the 1996/97 Annual Report of the Police Complaints Authority (PCA) notes a "substantial increase" in statistics for complaints of racially discriminatory behaviour by police officers; the figures increased from 397 complaints in 1995/96 to 444. While acknowledging that in previous years "the growth in complaints has not been accompanied by a corresponding increase in disciplinary action" it asserts that 1996/97 "saw a significant change". However, this significant change turns out to be little more than a drop in the ocean, with 5 officers being dismissed or resigning because of racially discriminatory behaviour and a sixth receiving a seven day's pay fine for racially offensive behaviour.

## Policing - new material

Review: **Beyond disaster: identifying and resolving inter-agency conflict in the immediate aftermath of disasters**, Howard Davis and Phil Scraton. Centre for Studies in Crime and Social Justice, Edge Hill University College, July 1997, 122 pages. This research report was written for the UK Home Office Emergency Planning Division. The fact that the report was commissioned represents a significant, welcome and overdue shift in the Home Office approach to emergency planning since the time of the three disasters examined: Lockerbie, Hillsborough, and The Marchioness. The report focuses on inter-agency cooperation and conflict between the emergency services and makes recommendations on a Charter for the Bereaved, central and local government responses to the immediate aftermath, inter-agency cooperation, crisis support and responses to the needs of the bereaved and of the survivors. It includes important and thoughtful sections on the contextualisation of disasters and the genesis, use and contradictions of the concept of Post-traumatic Stress Disorder (PTSD). It is to be hoped that the Home Office will take on board and take action on the recommendations informed as they are by a wealth of experience in the field from the authors, the bereaved and the survivors.

**Watching the detectives**, Peter Knight. *Police Review* 11.7.97. pp22-23. This article argues for an independent legal body to oversee the use of covert and surveillance operations.

**Police cautioning in the 1990s**, Roger Evans and Rachel Ellis. *Research Findings* No. 52 (Home Office Research and Statistics Directorate) 1997. Examines the impact of the 1994 Home Office circular on cautioning.

**Swiss challenges: the response of the police of Geneva**, Dilip K Da & Andre Kuhn. *Police Journal* Vol. LXX No. 3 (July-September) 1993, pp243-257. This article considers papers presented at the International Police Executive symposium in Geneva in May 1994 and goes on to discuss the "structure, leadership, function, community involvement and training programmes" of the Swiss police.

**Federal Republic of Germany: Continuing pattern of police ill-treatment**, *amnesty international*, July 1997, pp43. This report provides further evidence supporting the findings of the 1995 report *Failed by the system - police ill-treatment of foreigners* that there is a clear pattern of police ill-treatment of foreigners and members of ethnic minorities. The report examines in detail individual cases but also includes summaries of the findings of the investigations in to the Hamburg police force, and of the reports by the Human Rights Committee and the UN Special Rapporteur on torture.

**Reform der "Politik Innerer Sicherheit"** (Reform of "Internal Security Policy"), *CILIP*, no 2, 1997. Includes articles on Reforming Security Institutions, Rethinking Legislation, Police and the Community, European Internal Security, Documentation on the Privileges and Immunities of Europol and a literature review on alternatives to the present policy.

Parliamentary debate

**Youth Crime**, *Lords* 2.7.97. cols. 218-252

## NORTHERN IRELAND

### Birmingham 6 - formal apology, but no cash

In July the Home Secretary, Jack Straw, formally apologised to the Birmingham 6 for their wrongful conviction for an IRA pub bombing in 1974, which resulted in their imprisonment for 17 years (see *Stawatch* 1:3). The apology followed a vociferous campaign by the men, which included a picket of the Home Office

on the day before they received the apology. The letter from Mr Straw, in which he refused to meet the men, also promised "further interim payments" in compensation for their imprisonment. Each of the men has received £200,000 to date but recent offers have attempted divide them by offering different amounts. The men plan to refuse any offer that doesn't pay them the same amount. In a letter to Straw they wrote: "Unless there is a substantial improvement in the overall offer of compensation, and serious attempts to settle our claim quickly, we intend to go for a judicial review and take our case to Europe."

*Guardian* 25.7.97.

## Northern Ireland - new material

**Clarity must be the cornerstone of a new peace process**, Gerry Adams MP. *An Phoblacht/Republican News* 3.7.97. pp9-11. Statement by Sinn Fein MP, Gerry Adams, on the steps that need to be taken to rebuild the peace process: "Sinn Fein wants fundamental change, deep and far reaching, especially on constitutional, democratic and economic issues."

**Pride in community response**, Peadar Whelan. *An Phoblacht/Republican News* 10.7.97. pp5-9. Extensive piece on the brutal police/army operation to impose a curfew on the residents of the Garvaghy Road, Portadown, in order to allow a Loyalist march through the area.

**Issues in terrorism research**, John Horgan. *Police Journal* Vol. LXX, No. 3 (July-September) 1997, pp193-202. This academic article focuses on the IRA and promotes "a psychological approach to terrorism", ie. one that necessitates interviews.

*Just News* Vol. 12 No. 6 (June) 1997, pp8. The latest copy of the Bulletin of the Committee on the Administration of Justice contains pieces on policing, human rights and accountability in northern Ireland, a proposed Human Rights Commission and the draft Criminal Justice (Children) (Northern Ireland) Order 1997.

**Backward march**, Kevin Daley. *Red Pepper* No. 38 (July) 1997, pp18-19. Article on recent triumphalist Loyalist marches through nationalist areas of northern Ireland that includes interviews with local residents.

**Cruel, inhuman or degrading treatment: detention of Roisin McAliskey**. *Amnesty International* April 1997 (EUR 45/08/97) 6pp. Report by Amnesty on the detention, without charge, of Roisin McAliskey that amounts "cruel, inhuman or degrading treatment".

**Why I let the parade go through Drumcree**, Ronnie Flanagan. *Police* 12.8.97. pp7-8. The Chief Constable of the Royal Ulster Constabulary gives his reasons for permitting triumphalist Loyalist parades to march through nationalist areas of northern Ireland.

**Northern Ireland: The policing of diversity**. Stephen Ulph. *International Police Review* September/October 1997, p61. Uninformative interview with the RUC Chief Constable, Ronnie Flanagan, in which he claims that the RUC "played a significant role in bringing about the declaration of the ceasefire in 1994 and...today."

Parliamentary debates

**Northern Ireland Commons** 25.6.97. cols. 847-860

**Northern Ireland Lords** 25.6.97. cols. 1578-1591

**Public Order (Northern Ireland)** 26.6.97. cols. 1034-1056

**Northern Ireland Commons** 30.6.97. cols. 50-72

## PRISONS

SPAIN

### ETA prisoner found hanged

Juan Carlos Hernando González, serving a six-year sentence for "association with an armed group", has been found hanged in his

cell in Albacete prison. His was the third in a series of apparent suicides by ETA prisoners over the past year.

UK

## Securicor staff suspended after cell death

Seven Securicor staff who were on duty when a young black man, Peter Austin, hanged himself in his cell beneath Brentford magistrates court, have been suspended from working with prisoners by the Prison Service. The suspension followed an inquest jury's finding that lack of care contributed to the man's death (see *Statewatch*, vol 7 no 3).

Peter Austin died in January after hanging by his T-shirt from a light fitting as Securicor staff, who claimed that he was "faking" it, watched through the cell door for ten minutes. Securicor is one of several private companies contracted by the Home Office to escort prisoners and guard them during detention. It runs a six week course to train its officers which covers legal issues, prisoner management, security, supervision and first aid. The case of Peter Austin provides clear evidence of deficiencies in this training, particularly relating to the treatment of black people.

Concern about the number of black people who die in custody has been a cause for alarm for some years and organisations such as the Institute of Race Relations, who have recorded 7 deaths this year, have consistently drawn attention to this situation. In their recent report "United Kingdom: an agenda for human rights protection" (EUR 45/12/97) Amnesty International also drew attention to this crisis when they called for "the government to establish a wide-ranging and independent inquiry into the significant numbers of deaths in custody due to alleged violence which have occurred in England in recent years." Pointing out the "disproportionate number of deaths [which] have occurred of people from black and ethnic minorities" they go on to urge that:

*The inquiry would need to investigate a wide range of issues including why a disproportionate number of deaths have occurred of people from black and ethnic minorities; the types of equipment used for law enforcement and the controls on the use of such equipment; the training of police and prison officers in the use of methods of restraint and the medical risks of some of the methods. At the same time, the enquiry should examine the procedures used to investigate such deaths and the inadequacies of the inquest system, as presently constituted in England and Wales, to provide a fair and thorough public enquiry into the full circumstances of a disputed death.*

The pressure group, Inquest, have also called for review of controversial deaths in custody.

*Amnesty International "UNITED KINGDOM: An agenda for human rights protection" (EUR 45/12/97); Independent 26.6.97.*

## Prisons - new material

**Curfew orders with electronic monitoring: the first twelve months**, Ed Mortimer & George Mair. *Research Findings* (Home Office Research and Statistics Directorate) No 51 1997, pp4.

**The prison population in 1996**, Philip White & Jo Woodbridge. *Statistical Bulletin* (Home Office) Issue 18/97, pp24.

**A drop in the ocean? The Discharge grant and the immediate needs of prisoners on release from custody**, Karen Rowlingson, Time Newburn & Ann Hagell. *The Howard Journal* Vol. 36, no. 3 (August) 1997 pp293-304. This article, based on in-depth interviews with convicted prisoners before and after release from prison, considers the adequacy of the discharge grant and finds it wanting.

**Privatisation**, Stephen Nathan. *The Prison Report* Issue 39 (Summer) 1997, pp13-16. Round-up of news and views on prison privatisation.

**Control in category C prisons**, Simon Marshall. *Research Findings* (Home Office Research and Statistics Directorate) No. 54 1997, pp4.

**The sentencing of women**, Carl Hedderman & Lizanne Dowds. *Research Findings* (Home Office Research and Statistics Directorate) No. 58 1997, pp4. Noting that the results of this survey "raise as many questions as they answer" the authors' conclude that "The results of this large-scale study suggest the courts treat women differently from men, sometimes by avoiding the use of custody, but, more markedly, in their reluctance to impose fines."

*Prison Privatisation Report International* Nos. 11 & 12 (June-July) 1997. Contains reports on Cornell Corrections Inc (Houston, Texas) and the inadequacies of the Corrections Corporation of Australia at the Metropolitan Women's prison. Also has a piece on UK Home Secretary Jack Straw's "reservations" about privately managed prisons - apparently not strong enough to halt the previous Tory government's building plans.

**Special Security Units: Cruel, Inhuman or degrading treatment**. Amnesty International, March 1997 (EUR 45/06/97), 9pp. This reports examines the SSUs at Whitemoor and Full Sutton prisons and the SSU for remand prisoners at Belmarsh. It notes that "The conditions...have led to serious physical and psychological disorders in prisoners [and] constitute cruel, inhuman or degrading treatment."

**Shattered lives**, Paul Donovan. *Red Pepper* No. 40 (September) 1997, pp18-19. This interesting piece examines the situation of victims of miscarriages of justice who are "abandoned by the system" when released from prison. Relatives of those released note that "the state refuses to acknowledge them" and call for an agency to deal with the aftermath.

**Parliamentary debate**

**The Probation Service**, *Lords* 16.7.97. cols 1046-1074

## RACISM & FASCISM

UK

## Witnesses fail to appear in race attack case

Three men, accused of taking part in an orgy of racist violence, walked free from Southwark crown court after witnesses would not testify against them. The case against the men - James Beaney from Limehouse, east London and two youths who were charged with affray and assault - was halted by the Crown Prosecution Service after they failed to persuade witnesses to give evidence and the prosecution offered no evidence.

The charges followed a violent attack outside the home of Eklas Miah in June 1996 in which his wife had her arm broken. Mr Miah was beaten and needed stitches. The incident was the culmination of months of harassment. After he left court Mr Miah expressed anger and disappointment; he said that he feared for the safety of his family if they left the house.

## "Aryan music fest" ends in disarray

A fascist Rock Against Communism concert, planned for a venue in south Wales on August 9, ended in disarray after a large police operation involving a dozen forces. The police action, under the Public Order Act, took place after the anti-fascist magazine, *Searchlight*, published details of the event and Labour MEPs called for a ban. Two years ago a nazi concert, in Caerphilly, ended in violence after drunken fascists smashed up a public

house and attacked local residents.

The concert was organised by south Wales nazi activist Billy Bartlett and was to feature bands from Wales (Celtic Warrior),

England (Brutal Attack, Squadron, English Rose and White Law), Scotland (British Standard), Germany (08/15) and the US (Intimidation One). The line-up represents the faction of Blood & Honour that is opposed to Combat 18 control of the movement.

Bartlett is lead singer with Celtic Warrior who were deported from Holland in 1995 after being arrested while recording racist material. Previously, Bartlett had fronted another nazi music outfit, Violent Storm, who came to a violent end when their other four members died in a car crash in 1992. Celtic Warrior have recently released a new cd dedicated to the memory of Ian Stuart Donaldson, the founder of Blood & Honour.

Shortly before the concert police raided Bartlett's home in Ely and arrested four people, including Bartlett, his girlfriend and two Americans, and seized CS gas and nazi literature. Bartlett was charged with public order offences before being released on bail.

About 800 nazis who arrived for the concert, including contingents from Germany and Holland, were turned back by South Wales police working with other forces in England and Wales. None of the overseas bands made it into the country - the Portland based Intimidation One being turned back at customs. Anti-fascists mounted protests at railway stations across Wales to counter any fascist invasion.

A police spokeswoman said: "The planned event did not take place in south Wales and there was evidence that the organisers were seeking a secondary venue to hold their event." A rump of about 100 fascists found an alternative venue for a small concert in the Midlands.

*Wales on Sunday 27.7.97; Searchlight press release 25.7.97.*

## C18 arrests continue

The demise of Combat 18 continued in September with the jailing of key west London activist, Mark Atkinson. Another C18 member, Robin Gray, who shares a flat with Atkinson in Feltham, west London, was remanded for reports before being sentenced. The two organisers, who were responsible for a publication called *The Stormer*, which included death lists and bomb making instructions, were arrested at their home in May last year as they prepared to produce the magazine, which was on a floppy disk. At Southwark Crown Court Judge George Bathurst-Norman remarked that he had "never encountered such vile outpourings of hatred and incitement to violence" before sentencing Atkinson to 21 months. The sentence was criticised by anti-racist activists and the Labour MP, Harry Cohen, who said: "...the courts are not taking vicious and dangerous racial abuse seriously enough...A much more severe sentence should have been imposed."

## DENMARK

### Nazi letterbombers jailed

Three Danish fascists, who were arrested after sending letterbombs to targets in the UK in January, were jailed at the Danish High Court in September (see *Statewatch*, vol 7, nos 1 & 2). The defendants were Thomas Nakaba, Michael Volder and Nicky Steensgaard; Nakaba was jailed for eight years while Volder and Steensgaard received three years. Nakaba will appeal his sentence.

Four letterbombs were sent in January. One was addressed to the former swimmer and television commentator, Sharron Davies, who is married to a black athlete; another went to the Anti-Fascist Action organisation. Two of the letterbombs were aimed at other fascist organisations targeted as part of an internal feud within Combat 18. One was addressed to the Combat 18 post office box while the other was addressed to Scottish nazi, Stephen

Cartwright, after he left Blood and Honour and set up an alternative music outfit, known as "Highlander".

During the course of the trial it was disclosed that the letterbombs, disguised as video cassettes, contained dummy explosives, a fact that Nakaba was unaware of when he sent the devices, although the detonators were genuine. The detonators were powerful enough to have blown off the recipients hand. Nakaba also claimed that he was given the dummy explosives by Will Browning, the leader of one of the warring Combat 18 factions. Browning handed over the material in Autumn 1995 after purchasing it in eastern Europe. He is currently imprisoned after being found guilty of possessing threatening, abusive or insulting material - which included bomb making instructions - at the beginning of the year. Meanwhile, Nakaba has requested special security measures while in prison after receiving threats from members of the opposing nazi camp.

## FRANCE

### Front National - court roundup

Jean-Marie Le Pen, leader of France's neo-nazi Front National (FN), will stand trial in November accused of assaulting a Socialist parliamentary candidate during the National Assembly election campaign last May. He will be tried in a criminal court, probably in Versailles, on charges of violence at a public gathering and public insult. The incident took place in a Paris suburb where Le Pen was campaigning on behalf of his daughter against the Socialist candidate Ms Annette Peulvast. Videotapes of the incident clearly show the portly French fascist tussling with Ms Peulvast and throwing her to the floor. Le Pen was fined 5,000 francs last July by a Paris court after making a racist slur against an anti-racist campaigner. Neither the Front National's violence nor Le Pen's dubious history have prevented the Gaullist right from ardently courting him - recently Le Pen is reported to have dined with former president Valery Giscard d'Estaing, former RPR Secretary General Jean Francoise Mancel and Gaullist MP, Robert Pendraud.

Another senior FN member and mayor of Vitrolles in southern France, Catherine Megret, was given a three-month suspended prison sentence in September for promoting racial hatred after giving an interview with the German daily *Berliner Zeitung*. Megret is the wife of Bruno Megret, Le Pen's deputy, and won the seat in mayoral elections last February after her husband was disqualified from standing for corruption. Megret claimed that she could not remember making the remarks and even suggested that the tape could have been tampered with. The court rejected the prosecutor's plea that she be disqualified from office.

*International Herald Tribune 1 & 9.7.97.*

## SPAIN

### Racist murders in Madrid

After a decline in attacks by Madrid's fascist gangs in recent months, separate incidents in June claimed two lives. On 18 June, a black youth was found dead in the Getafe district of the capital, with a gunshot wound to the head. Five persons were arrested in connection with the killing. On 20 June, a 32-year-old policeman killed a 19-year-old Moroccan youth, shot in the back as he walked with his girlfriend in the centre of Madrid. Before shooting the assailant demanded "Are you Moroccan?"

## BELGIUM

### Court convicts soldiers

A Belgian court sentenced two soldiers to a month in jail after they admitted roasting a Somali boy over a fire. The light sentences have caused an outcry amongst Somalis in the UK and abroad.

There have been persistent allegations made against Belgian soldiers involving torture and over-heavy policing in both Rwanda and now Somalia. Fifteen soldiers from the parachute regiment were investigated in 1995 following allegations made against them. However Belgium is not the only country whose soldiers are alleged to have behaved in an inhuman fashion. Canadian paratroopers are also alleged to have tortured three Somalis to death, while Italian magazines have published photos of Italian soldiers raping and torturing a young Somali girl.

Questions are now being asked about the leniency of the sentences. Prosecutors appear to have only asked for a month's sentence as opposed to the year's maximum that was available to them. Ironically the Belgian soldiers, together with their Canadian and Italian counterparts, were in Somalia as part of the UN operation "Restore Hope".

*Voice 30.6.97*

## NETHERLANDS

### Far-right activists convicted

Five far-right activists, including Joop Glimmerveen, leader of the Nederlands Volks Unie (NVU), and Constant Custers, a leading member of the Arnhem branch of the Centrum Partij '86 (CP'86), have been sentenced to fines and suspended prison sentences for violating bans on holding demonstrations. Long-time observers will notice the heightened profile of Glimmerveen, whose organisation was the leading force on the Dutch far-right in the Seventies, before being eclipsed by Hans Janmaat's Centrum Partij. Reports last year suggested that the NVU and Glimmerveen were playing an increasingly large role in the internal life of the CP'86, which split from the Centrum Partij (now the Centrum Demokraten) in the mid-eighties. Custers and Glimmerveen being arrested during joint activities appears to confirm those reports.

*NRC Handelsblad Weekeditie, 8.7.97.*

### Racism & fascism - new material

**Think-tank running on empty**, Andy Beckett. *Guardian G2* 31.7.97. pp 2-3. This piece considers the Conservative Party "loony"-right and the future of the plethora of think-tanks that proliferated under Thatcher. Includes the thoughts of Tessa Keswick (Centre for Policy Studies) and Madsen Pirie (Adam Smith Institute) who seem lost in admiration of the Blair government and Roger Scruton who is less enamoured of it.

**Blood and Tears**. *Searchlight* No. 226 (August) 1997, pp5-7. This piece looks at the demoralisation that has enveloped the far-right music scene following the split in Combat 18. With Sargent, Browning and Cross all jailed the struggle for control of Blood and Honour and the Hammerskins is well under way.

## SECURITY & INTELLIGENCE

## SWEDEN

### PM "bugged"

Conservative MP Jerry Martinger revealed in the Swedish television program "Svar Direkt" (Direct Answer) that the police had tapped a telephone in a restaurant used by the Social

Democratic Prime Minister during the period he was forming a new government. Martinger did not reveal which Swedish Prime Minister he was referring to but since he was a prosecutor during the 1980s, it is presumed that he was in fact talking about Olaf Palme.

Martinger: "I can tell you that while I was working as a prosecutor in narcotic matters, I was sitting with the police, listening while a Swedish Prime Minister was forming his new government from a slot (coin-operated) telephone. The slot telephone was in a restaurant where serious drug criminals used to meet. From this telephone, the Prime Minister called and discussed which people he wanted, and which he did not want, to have as ministers in his new government."

The Swedish law on telephone-tapping forbids the use of information not directly connected with the investigation, gained via telephone tapping.

*Svar Direkt, 4.9.97.*

## NETHERLANDS

### CIA attempted to infiltrate Dutch socialists

The CIA attempted to infiltrate the Dutch Partij van de Arbeid (Party of Labour, PvdA, sister organisation to the British Labour Party) recruiting a PvdA MP, in the late seventies. This has been revealed by two academics, B de Graaff and C Wiebes in a contribution to a history of the CIA, *Eternal Vigilance*.

De Graaff and Wiebes have not been able to find out who the recruited MP was. They have been able to trace the identity of the CIA agent, who they describe as being a highly experienced member, with postings in Germany, Greece, Poland and the US before working in the Hague between 1979 and 1981. The academics made their discovery while researching into the Inlichtingen Dienst Buitenland (Foreign Intelligence Service), the Dutch counterpart to the CIA, which was abolished in 1992.

PvdA sources claim to be surprised but not astounded by the revelations concerning the CIA operation against them. The PvdA had attracted the attention of the US government by opposing the installation of cruise missiles in the Netherlands, while many of its members had supported unilateral disarmament. Ed van Thijn, now mayor of Amsterdam but at that time deputy leader of the parliamentary party, commented: "We were a large party who were expounding controversial positions. There was great interest in our party at the American Embassy."

*NRC Handelsblad Weekeditie 22.7.97*

### Intelligence report attacks muslim organisations

Muslim organisations have been targeted in the 1997 annual report of the Binnenlands Veiligheids Dienst (BVD), which claims that Islamic groups are opposing their community's integration to Dutch society. According to the report anti-western currents and opinions are gaining ground within Islamic groups operating within the Netherlands.

The annual report, which was published on July 16, states that:

*disappointment concerning the social and economic malaise that has affected large groups within ethnic communities provide an important reason for the growing aversion towards Dutch society". The report goes on to claim that many muslims feel disorientated "by their search for their own religious identity in a secularised - and sometimes disapproving - society.*

The BVD annual report goes on to claim that “the international dimension” within its work has become more and more important. The BVD mentions two groups as examples of the rejectionist attitude of muslim organisations, the “ Milli Görüs movement”, which is said to have links with the Islamic Welfare Party in Turkey, as well as the “Islamitische Schoolbesturen Organisatie”, which the BVD claims is funded by Saudi Arabia. The BVD also mentions a group which they claim are supported by Iran, which they describe as being “rabidly anti-western by tradition”.

The BVD also targets Turkish and Kurdish opposition groups, in particular the Revolutionary Peoples Liberation Party (DHKC-P, formally known as Dev Sol) and the Kurdistan Workers Party (PKK). It claims that DHKP-C supporters were involved in a shooting incident in Bergen op Zoom. It also refers to a link between the PKK and a satellite television company, MED-TV, whilst admitting that a Belgian judicial inquiry into the TV station found no evidence to prove this link.

Dutch academics specialising in the study of muslims within the Netherlands have disagreed violently with the BVD's conclusions. Professor van Koningsveld, who specialises in the religious history of Islam within Western Europe, has called the report “demagogic”. According to van Koningsveld there are traditionalist streams within muslim communities in the Netherlands “but it is incorrect to state that these groups are gaining the upper hand.” The BVD is not the only security service to pick on ethnic groups within their own country. A Belgian army report caused uproar last year when it was revealed

to be making to plans to wage war on its own black and migrant population, describing them as “forming a clandestine threat with a permanent character”(see *Statewatch*, vol 6 no 4).

*NRC Handelsblad Weekeditie*, 22.7.97.

## UK

### Paper names MI5 Deputy Director

The *Observer* newspaper has named the woman who is the new deputy director of the security service (MI5). Eliza Manningham-Buller was appointed deputy to the present director-general, Stephen Lander, at the end of July and is considered likely to succeed him. According to the paper the information was leaked by colleagues “who object to...a triumph of the “old guard” at the secret organisation” and believe that the new regime is incapable of modernising.

Before her promotion Manningham-Buller was principal operations director, controlling surveillance and in charge of telephone tapping. Her father was Attorney-General and Lord Chancellor under Harold McMillan.

*Observer* 10.8.97.

### Security - new material

*Lobster* No. 33 (Summer) 1997. The latest issue of *Lobster* (Ramsey version) contains articles on the origins of New Labour and its “Atlanticist connections” Robin Ramsey, 214 Westbourne Avenue, Hull HU5 3JB.

# New Convention on mutual legal assistance

This feature looks at the 1996 draft, the changes made this year, and the surveillance clauses

## The present situation - Council of Europe Convention and Protocol to Convention

The primary instrument currently governing mutual assistance between the EU member states is the Council of Europe (CoE) Convention on mutual assistance in criminal matters of 1959, which entered into force in 1962. This Convention has been supplemented by an Additional Protocol, signed in 1978, which entered into force in 1982. The Convention is now in force in 30 states, including all 15 member states of the EU. The Protocol is in force in 24 states, including 13 Member States of the EU (Belgium and Luxembourg have yet to ratify it). Once these two states ratify the Protocol, it will be binding on all Member States of the EU.

Both the Convention and the Protocol are instruments of public international law, whose legal effect for individuals is dependent upon how each state decides to give effect to rules of international law in its national legal system. There is no judicial system for reviewing or interpreting the Convention or Protocol, or for settling disputes relating to their application. National rules implementing the Convention or Protocol have to conform to the Human Rights Convention, notably Articles 5 (rights on detention) and 6 (rights to a fair trial). Both the Convention and the Protocol are subject to reservations on any of their provisions by any signatory.

What needs to be emphasised, especially in relation to the new draft EU Convention is that the CoE Convention deals *purely with relations between judicial authorities* - policing and law enforcement issues are entirely outside its scope.

Equally, enforcement of criminal sentences is a matter for separate Council of Europe Conventions, on transfer of prisoners, transfer of proceedings and the international validity

of criminal judgements. These Conventions have fewer signatories than the mutual assistance Convention and have not yet been subject to any attempts to supplement them through the 'third pillar' of the EU.

The 1959 Convention does not apply to political offences or offences connected with political offences, or to fiscal offences. It also contains a very general exception which states can invoke to protect sovereignty, security or public order (*ordre publique*).

In practice the 1959 Convention works by means of “Letters Rogatory” sent by judicial authorities in the state which requests evidence (the “requesting state”) to the state which has the evidence (the “requested state”). The letters rogatory are sent through the Home Affairs ministries.

The 1959 Convention covers physical evidence as well as appearance of natural persons. Witnesses in the requested state can be summoned to the proceedings in the requesting state. However, the summons is not binding upon the witnesses and the requesting state can only enforce the summons against the witnesses if the witnesses cross into the requesting state, receive another summons from the authorities, and then ignore it. The Convention also covers people who are in custody in the requested state, where the requesting state wants them to testify. The person has the right to object to testifying in the requesting state.

The Protocol widens the scope of the 1959 Convention allowing it to be used for fiscal offences and makes it clear that the “double criminality” rule (requiring an offence to be punishable in both the requested and requesting state for the Convention to apply) is to be relaxed for such offences.

The subject of interception of telecommunications is not covered by either the 1959 Convention or the Protocol. The only

relevant provision is Recommendation (85)10 of the Council of Europe Committee of Ministers.

### **The new draft EU Convention: first phase of discussions**

The initial purpose of the negotiations on an EU Convention for mutual criminal assistance was to facilitate the operation of the 1959 Council of Europe Convention and Protocol - not to extend its scope into the field of criminal investigations.

The first drafts (April and July 1996) did, however, include some significant extensions in the powers of the authorities to gather evidence and to get witnesses into court. Article 2 allows requests to be made by "administrative authorities" concerning "infringements of public order provisions", for example, by Germany.

Article 3 provides for an exception to the rule that a person must consent before a transfer (compared with Article 11 of the 1959 CoE Convention, which deals with transfers in different circumstances); the exception is that the person may be forcibly moved if "charged in the course of proceedings for which the investigation has been requested". This provision runs the risk of allowing states to circumvent the guarantees provided for in extradition treaties, or encouraging them to bring additional charges against a person in custody in order to ensure the person's transfer for "use" in another state's proceedings.

Article 6 is a completely new development in international judicial assistance, providing that witness statements may be taken by video conference. The requested state is generally obliged to summon a person to give evidence in this fashion (Article 6(3)), and the summoned person will then be under an obligation to give evidence. An obligation to give evidence does not exist under the present 1959 CoE Convention. The new Convention would provide for a substantial increase in the power of one Member State to compel a person in another Member State to give evidence. In this draft, it would have fallen to the requesting state to conduct the hearing (Article 6(4)), but to the requested state to ensure "due regard for the [witness] fundamental rights" (Article 6.5)).

The July 1996 draft of the new Convention is a very good example of the case for national parliaments to be able to scrutinise early drafts of measures. There are no less than 36 reservations or differing views expressed by EU member states. While some of these are simply reservations on minor points, others are not. For example, "Scrutiny reservations on the whole text by German, Irish and United Kingdom delegations" and on the issue of the giving of evidence by video conference Austria, Finland and Portugal said this should not take place without the consent of the person concerned. France, Italy and the UK did not agree as the person would already have been summoned.

### **Second phase: Beyond traditional judicial assistance**

The July 1996 draft of the new Convention had 11 Articles - the May 1997 draft has 20 Articles. Under the Irish Presidency it was decided that the scope of the new Convention should be expanded far beyond judicial criminal assistance as it is commonly understood. The EU Dublin Summit in December 1996 decided to set up the "High Level Group on Organised Crime" which reported back with its "Action Plan to combat organised crime" to the June 1997 EU Summit in Amsterdam. The "Action Plan" report made several recommendations which it was decided to slot into the draft Convention on mutual assistance on criminal matters, and which had implications well beyond any understanding of "organised crime". At the same time the need to legitimise the interception of telecommunications was moving ahead.

New issues were put on the table for the Working Party on Mutual Assistance in Criminal Matters: Controlled deliveries, cross-border use of undercover investigators, cross-border surveillance and hot pursuit, cross-border bugging of vehicles or

monitoring of vehicle movement, cross-border use of private informers or private undercover agents, joint teams, mutual assistance on Internet matters, and the surveillance of satellite communications were discussed.

By April a report was before the K4 Committee. Its conclusions included:

1) the draft Convention "should contain additional provisions" on "controlled deliveries": "all Member States consent to the use of this method". The "method" according to the UN 1988 Convention on drugs is: "the technique of allowing illicit or suspect consignments of drugs to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities". The Working Party recommended the new Convention should extend this beyond drugs to cover "arms, money etc".

2) "cross border use of undercover investigators (law enforcement agents)": "undercover investigators" are "law enforcement agents as opposed to private persons" and: "In some Member States undercover investigators may be used as part of police work without any specific legal basis. In others national law contains more precise and direct provisions on this issue." As the practice varies "no rules" can be established, so current unregulated bilateral cooperation continues.

3) the report says that the draft Convention does **not** need to include: "cross border surveillance and cross border hot pursuit": already covered by Articles 40 and 41 of the 1990 Schengen Convention except for Ireland and UK; "cross border use of technical equipment attached to vehicles or objects for the sole purpose of monitoring movements..": "used in all members states", covered by "existing mutual assistance instruments"; "cross border use of technical equipment attached to or installed in vehicles to monitor communications taking place therein": most member states do not provide for this in "national law", in some "expressly forbidden", but in member states where allowed it is covered by existing instruments"; "joint teams". The Working Party concluded that there was no need for a provision in the draft convention as it was already covered by the 1959 CoE Convention and Article 47 of the 1990 Schengen Convention.

The new draft thus includes in Article 10 that "controlled deliveries" shall be allowed "in the framework of criminal investigations into extraditable offences" - this formula of "extraditable offences" allows the remit to go beyond drugs. Only Portugal has a reservation on this extension (see *Statewatch*, vol 7 no 2 for the wide definition in the Extradition Convention).

Article 4 on searches and seizure would delete the reservations which Member States have attached to Article 5 of the 1959 Council of Europe Convention. Without these reservations property could be searched or seized even if the property owner is accused of an offence which is not a crime in the state in which they reside; and the search or seizure could take place in a manner not authorised by national law.

The new Articles 6-9 on telephone tapping, including the bugging of all forms of telephones, not just satellite calls, are the most remarkable change from the earlier draft (see below).

Article 12 of the revised Convention deals with witnesses' statements in video conferences. Article 12(5) makes clear that the witness will be obliged to appear. Article 12(6) on the procedure is a much expanded version of Article 6(4) and 6(5) in the 1996 drafts. Here there is no longer a woolly reference to the requested state guaranteeing the witness' fundamental rights, but there is no replacement covering the matter in more detail. It is not clear how these clauses will operate in practice. How can the guarantees for suspects' and witnesses' rights within the system of judicial protection of the requesting state be upheld, without substantial additional provisions providing for mechanisms by which the requesting state's disclosure rules will apply to the cross-border provision of evidence and by which the witness has

access to legal advice concerning the requesting state's law?

Article 13 covers the transfer of a person to another Member State, which might be without consent (Article 13(6)). This leaves open the possibility that a person can be moved forcibly to another Member State, albeit temporarily, after procedural protections which might be lower than that provided for under extradition procedures. It is not clear how long the person concerned might be transferred for, with the risk that a remand prisoner might have their pending trial delayed as a result of the transfer; and the prisoner will in any case be forcibly separated from their families for the duration of the transfer.

Article 14, provides for "spontaneous exchange of information". There is no reference to data protection rules. Finally, Article 15 provides for expedited procedural rules for requests between authorities. While it is made clear here that the Convention is not meant to apply to "pure" police or customs cooperation, at least for controlled deliveries (Article 15(6)), it can still cover requests emanating from or to police or customs authorities, as long as one side is handling such requests via the judicial authorities. There is a risk that such a requirement may simply be a formalist restraint covering what is de facto direct cooperation between police or customs authorities in both Member States.

It should be noted that this draft Convention, in Article 18.4, takes a further step down the road to undermine the scrutiny by national parliaments in the ratification of Conventions. The Dublin Convention stipulated that all EU member states had to complete ratification before it could come into force, the Amsterdam Treaty says Conventions can only come into force when a majority of member states (8) have adopted it - this draft Convention allows the first two member states to ratify it to put it into practice immediately.

### **The Convention and the surveillance of telecommunications**

The implementation of the EU-FBI surveillance plan was introduced into the draft Convention on mutual assistance in criminal matters, in Articles 6-9, this year. The May 1997 draft says in an "explanatory comment" that the Presidency believes: "in view of the absence an explicit Treaty basis for the interception of telecommunications - proposes that the Convention under consideration should make provision for investigation of all types of telecommunications".

Article 6.2 says that an "order" from a competent authority of the "requesting Member State" can ask for *either*:

*the interception, recording and transcription of intercepted correspondence or for interception and direct transmission of intercepted correspondence to the requesting Member State for monitoring and for recording and transcription there.*

In plain language the results of an interception are either sent *ex-post* by the "requested" member state after the event to the requesting member state or, if the member state asks, the interception is transmitted *real time* (as it is happening) to the "requesting" member state. The term "correspondence" is taken from Article 8 of the European Convention on Human Rights and taken to encompass "both conversations and fax messages etc." Article 6.3 covers the surveillance of mobile phones and messages in another member state or member states (or another state which is party to the agreement). Article 6.4 sets out that requests between member states should include: "as accurate a description as possible of the subject of the investigation."; "the desired duration of the investigation"; and the "type of investigation" (as in Article 6.2 above).

Article 6.5 is intended to exclude, according to the explanatory comment, the use of information derived "between doctor and patient or client and lawyer and correspondence with religious advisers".

Articles 7 and 8 deal respectively with: "Investigation of

terrestrial telecommunications" and "Investigation of satellite telecommunications". Article 9 is currently blank to provide for additional provisions concerning a third member state (in addition to the "requesting" and "requested" member states).

Article 7.2 would allow the "requested" member state to refuse to execute the request "in view of the nature or non-seriousness of the offence or the personal status of the subject of the investigation" or if it considered the request was "unjustified given the circumstances of the case". Article 7.3 a & b say that the "requested" Member State "may" set conditions that i) prior to the transfer of the data it would "destroy.. those parts of the correspondence which.. cannot be meaningful in the context.." or ii) the "requesting" member state which receives the data "real time" would do the same. The first condition 7.3.a cannot be imposed where the "requesting" member state has asked for interception and transmission (real time). Each member state would operate according to its national law - which may of course be different.

Articles 7.3.c & d say that the "requested" and "requesting" member states shall:

*inform the holder of the network connection number and the subject of the investigation.. that the investigation has been carried out.*

There is, of course, a catch to this provision: "in accordance with those authorities' national law". In the UK, for example, this would never happen (except perhaps where it had to be revealed in court).

Article 8 is almost exactly the same as Article 7 but the explanatory comments regarding satellite telecommunications shows the influence of the report of the High Level Group on Organised Crime. The request for "assistance" is to be made to the member state in which the "ground station" is located - the "ground station" could be located in member state A while the subject may be in member state B (see below for the significance of "ground stations"). The explanatory comment also says that "additional information on the aim of and reasons for the request" cannot be asked for by the "requested" member state when it is for a "real time" interception.

The background reports leading up Articles 6-9 are more revealing. A "preparatory meeting on interception" was held in the Hague on 25-26 November 1996. On 17 January the EU Presidency sent a report on the meeting to the Working Party on Mutual Assistance in Criminal Matters" entitled: "Does the interception of mobile satellite telecommunications require new forms of mutual assistance in criminal matters?" The report contains a series of definitions which expand on those given in the published version of the Council Resolution (Official Journal, 4.11.96). The first link are the "system providers", consortium that:

*provide the global network of mutually co-operating satellites. Up to now Iridium, Globalstar, Odyssey and ICO prepare a network, each servicing between 10 to 100 ground stations world-wide.*

The second link is the "ground station", the "earthly, fixed equipment where a telecom signal of a satellite is received.. each ground station renders this services to a system provider for an area encompassing all the countries of the EU." The report says, as do previous ones, that the interception of mobile phone has to take place at the "ground station".

The report argues that "additional international legal instruments" are need because the 1959 Convention implies that the "requested" member state should check the data before it is transmitted "real time" to the "requesting" member state - whereas they want data to be sent immediately without any check under the laws of the "requested" member state.

In April the EU Presidency presented a report to the K4 Committee summarising the proposed changes to the new Convention. The report says that there is a need to "provide a legal basis for the cooperation between the Member States" on the interception of telecommunications and the "real time

monitoring of satellite telecommunications".

The rights of the individual are referred to as covered by Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 8 guarantees the right to respect for private life and correspondence. The "problem" for EU policymakers is that:

*Traditionally persons located on the territory of a certain state, fall under its jurisdiction. Their freedoms.. are guaranteed under the law of that state. Likewise the infringements on this freedom should be allowed by the laws of that same state. The location of a target is therefore relevant. Exceptions of the principle of sovereignty can only be regulated by a Convention. (Hague meeting 25-26 November 1996)*

These "freedoms" are, by way of this new Convention, being discussed away in the secret meetings of the EU and when the 15 governments have agreed its contents national parliaments have no powers to change or amend any of its provisions.

The April report says that in the near future:

*perhaps within a year. The 3 or 4 systems will be established by large multinational operators.*

And:

*each system will have (only) one ground station in Europe. It is at this stage expected that ground stations will be established in France, Italy and perhaps Finland, the UK and Germany.*

The significance of there only being 3 or 4 "ground stations" in the EU is that, under Article 7 and 8 of the new draft Convention, all requests for interception will go to the member states in which they are based in and be executed according to the national laws

of *that* country.

## Conclusion

It is clear from past experience that the Council's working groups frequently agree a large percentage of a measure before it is discussed by the K.4 Committee, never mind the Justice and Home Affairs Council. The mutual assistance Convention looks set to be a classic example.

The draft Convention abounds with clauses liable to have a substantial impact on individual rights, certainly by comparison with the subject-matter of "traditional" judicial cooperation in criminal matters, including the 1996 drafts of the same Convention.

This is a classic case where public debate is sorely needed, where peoples' rights and protections are negotiated away in secret EU meetings.

*Draft report to the Council on the draft Convention on mutual legal assistance in criminal matters, Presidency to K4 Committee, 7350/97, Limite, JUSTPEN 31, 14.4.97; Interception of telecommunications systems outside national boundaries - Lawful interception of satellite personal communications systems, Presidency to Working Party on Mutual Assistance in Criminal Matters, 12290/1/96 REV 1, Limite, JUSTPEN 150, 17.1.97; Draft Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, 5978/96, 16.4.96; 9268/96, 15.7.96; 7945/97, 6.5.97; Explanatory report on the Convention on mutual legal assistance in criminal matters, including text of 1959, Council of Europe, 1969; Council of Europe press release no 341, 2.6.97.*

# Immigration and asylum: Developments under Labour

## Legislation

The Special Appeals Commission Bill seeks to cure the lack of appeal rights for those excluded or deported from Britain on national security grounds, identified by the European Court of Human Rights as violative of the fundamental right to have detention judicially supervised. The court's judgment came after Sikh dissident Karamjit Singh Chahal had been detained for deportation to India for six years on unidentified national security grounds despite his strong claim to refugee status (see *Statewatch*, vol 6 no 6).

The Bill, introduced in the House of Lords in June, bears the stamp of being drafted by the security services. Rules under the Bill will allow the commission to withhold from the appellant full particulars of the reasons for the decision to deport, and to hold hearings in the absence of the appellant and of his legal representative. Evidence obtained from phone taps is expressly made admissible. Hardly surprising that Lord Chancellor Irvine's bill to incorporate the European Convention on Human Rights into domestic law will not go so far as to allow the courts to overturn primary legislation: if it did, this Bill would be a prime candidate. Despite all the promises, no section of the infamous Asylum and Immigration Act 1996 has been repealed. Not section 1, which established the "white list" of safe countries of origin, bringing the curtailment of appeal rights and the presumption of safety. Similarly, and ominously, the employer sanctions imposed by section 8, fining any employer who hires someone who doesn't have immigration permission to take the job, remains on the statute book, although the Home Office says it will not be enforced.

## Restore benefits

The worst legacy of the period of Conservative government is section 11, which deprives in-country and rejected asylum-seekers of basic subsistence benefits. While the Home Office can argue that other sections of the Act no longer bite, despite remaining technically in force, it cannot say the same of section 11, which affected over 13,000 asylum-seekers in the six months from its entry into force in July 1996, and continues to throw hundreds into destitution and despair every month.

A report from the Refugee Council, *Just Existence*, followed 15 asylum-seekers denied benefits for three months from October to December 1996. They were drawn from most of the main refugee-producing countries. Some were suffering the after-effects of torture; one had shrapnel lodged in his skull. During the survey period, two attempted suicide. Refused benefits, they became the responsibility of their local authority under the National Assistance Act 1948. They lived in hostels for the homeless, most of which had no cooking facilities; one five-months-pregnant woman and her husband were given an unfurnished flat with no furniture (not even a bed), no blankets and no cooking equipment. Some received cash for food (subsequently outlawed by the High Court), some vouchers, some simply soup kitchen addresses. None received any help towards toiletries or sanitary requirements, or fares, or telephone calls.

Most had no idea how to register with a doctor, were afraid to seek medical treatment, and did not know how to claim free prescriptions. One man, refused benefits in error, felt liberated when he began to receive housing benefit and 90% of income support.

Restoration of benefits to asylum-seekers should have been the government's first action in the field of immigration. That this could have been left untreated with over parliament's summer break sends out an ominous signal about Labour priorities.

### Rules

The primary purpose rule is, so far, the only rule to have been abolished by Labour. Its abolition means that a non-EU spouse must show only that the couple intend to live together permanently and that they can support and accommodate themselves adequately without recourse to public funds, in order to be allowed in to Britain. This brings the rules for non-EU spouses of British citizens or those settled here closer to the rule for spouses of EU citizens, although the husband or wife of a French, Irish or German citizen living in Britain can still be admitted more easily than the spouse of a British citizen, since the couple do not have to be living together and under some circumstances they can claim benefits without losing residence rights.

Rules not abolished include the one-year probation rule for new marriages and the strict family reunion rules for adult relatives other than elderly widowed mothers, making the entry of most adult relatives to join family members in the UK virtually impossible.

### Policy and discretion:

#### Unsafe countries

The Home Office has stopped the removal of rejected asylum-seekers to Congo (former Zaire) and to Sierra Leone in the light of coups there, and has made an upheaval declaration in relation to both countries (enabling people from those countries in the UK to claim asylum without losing benefits). Removals to Algeria were briefly stopped in May after the reported death of a returned asylum-seeker, but were resumed despite the unreliability of reports that he had been seen alive.

Visa controls were imposed on Colombians for the first time in June 1997, in a continuation of Tory policy of stopping "flows" of refugees from reaching Britain. There were 1400 political killings and 300 disappearances in the first eight months of 1996, and Colombians were seeking refuge in the UK (where there is a significant Colombian community) in increasing, although still relatively small, numbers.

### Policy and discretion:

#### work ban

The last government's policy of denying asylum-seekers the right to work unless their claims remained pending for over six months was applied unchanged by Labour despite the benefits ban. In July, a High Court judge ruled that the policy was "draconian, irrational and unlawful". The Home Office had still not lifted the work ban weeks after the judgment, and have now appealed the judgement.

### Policy:

#### Detention

A Labour Home Office shows no sign of being less eager to detain asylum-seekers than its predecessor. A month-long hunger strike by fifteen asylum-seekers at Winson Green prison over the conditions of detention ended in June with disillusionment over minister Mike O'Brien's tough line.

This had been signalled by his response in May to a rooftop solidarity protest at Campsfield when an Algerian detainee was removed to Winson Green over an alleged obscenity which he strongly denied. Protesters, who endured chilly conditions on the roof for 34 hours before coming down, were pushed into vans and dispersed to prisons (Winson Green, Rochester, Folkestone) and detention centres (Tinsley House at Gatwick, Harmondsworth at Heathrow).

Home Office immigration minister O'Brien said that: "Immigration detainees must understand that involvement in disruptive behaviour or hunger strikes or other forms of protest will not lead to their release... there will be a firm line and I will not be involved in negotiating." Another protest this time at Campsfield in August, met with a similar tough response.

### Enforcement

In June, the Home Office announced its intention to speed up the removal of failed asylum-seekers and illegal entrants. To reinforce its tough message, Home Office Immigration Minister Mike O'Brien told the public to get their binoculars out and report unusual activity around ports and airports to a freephone line. The second year of Coastwatch, the Customs & Excise anti-smuggling initiative, was given a decidedly anti-immigrant spin by the minister, who emphasised the detection and removal of illegal immigrants and said nothing about the detection and removal of illegal drugs, presumably the purpose of Coastwatch in the first place.

### Campaign cases

A number of high-profile deportation cases have been conceded by the Home Office, including Jay Khadka (the Nepalese orphan de-facto adopted by a British millionaire); Sunday Ogunwobi and his family (who spent three years in sanctuary in a Hackney church); Prakash and Prem Chavrimootoo (a battered wife and her child, who fled her violent husband and fell foul of the one-year probation rule); Atia Idrees (who, having come to visit her grandmother, found herself having to stay to care for her to prevent her being taken into a residential home).

However, one of the most high-profile, on which Jack Straw campaigned while in opposition, was refused. Abdul Onibiyo, Nigerian pro-democracy activist and long-time UK resident, deported to Nigeria in October 1996 after the campaign to keep him here failed, was imprisoned by the Nigerian authorities on his return, handed over by British immigration officers. When he managed to escape to a neighbouring west African country and applied to return to the UK, he was refused in July 1997, despite the fact that his wife and British children are here. His son Ade, sent to Guyana to avoid his father's fate in Nigeria, has also been refused permission to return to Britain. Now his wife and daughter are under threat of deportation too.

### Awaited

Apart from restoring benefits to asylum-seekers, major policy areas currently under review, where legislation or new rules is expected, include:

- revision of policy on family reunion, including rights of entry and non-deportation for those with British partners and children, to include unmarried partners, heterosexual and homosexual

- a new system of asylum determination and appeals, to replace the two-track system which, according to a new report by Justice/ILPA/ARC, is unjust, inefficient and expensive, including the restoration of appeal rights for those shuttled to safe transit countries

- restoration of appeal rights for visitors refused entry

*Abolition of primary purpose, Commons Written Answer, col 218, 5.6.97; Upheaval declarations Congo/Zaire, Sierra Leone, Commons Written Answer, col 3, 16.5.97; Immigration detainees, Commons Written Answer, col 243-4, 19.6.97; "Labour three months on", CARF August/September 1997; "Coastwatch", Legal Action, July 1997; Refugee Council: Just Existence, February 1997; Justice/ILPA/ARC, Providing protection: towards fair and effective asylum procedures, July 1997.*

# UK: Race, policing and the CPS

On 2 October an inquest jury found that Gambian asylum-seeker Ibrahima Sey was unlawfully killed following his arrest in March 1996 and being sprayed with CS gas. The DPP will be under enormous pressure to prosecute the officers involved.

At the end of July, the first ever High Court challenge to a decision by the Director of Public Prosecutions (DPP), Dame Barbara Mills, not to prosecute police officers involved in unlawful killings ended in triumph. On 23 July, the DPP (who heads the Crown Prosecution Service, CPS), and the Police Complaints Authority (PCA) admitted failing to give proper consideration to the evidence in the decision not to prosecute or discipline any officers for their part in the death of Shiji Lapite. The following day, an identical admission was made about the death of Richard O'Brien. And within a few more days, the High Court ruled that the decision not to prosecute officers found by a civil court to have been involved in torturing Kenneth Treadaway was similarly flawed.

Nigerian-born Shiji Lapite was killed on 16 December 1994. He was stopped by police in Stoke Newington for "acting suspiciously"; 20 minutes later he was dead, his face and body covered in bruises. A pathologist counted 45 separate injuries, including a fracture of his voice box, which killed him. An officer admitted kicking him in the head as hard as he could, claiming he was the most violent prisoner he had ever encountered, but officers restraining him had only very superficial injuries. In January 1996 an inquest jury returned a verdict of unlawful killing. Despite the verdict, the DPP decided that there was insufficient evidence to prosecute any officer involved in his death, and the PCA took a similar decision in relation to disciplinary charges (see *Statewatch*, vol 5 no 4, vol 6 nos 1 & 4).

Irish-born Richard O'Brien was killed on 4 April 1994 within minutes of being arrested by police at a dance in south London. He was found to have 31 separate injuries. The last words his wife heard him say were "I can't breathe, let me up, you win." An officer retorted: "We always win." In November 1995 an inquest jury returned a verdict of unlawful killing; the DPP decided that there was insufficient evidence to prosecute.

Kenneth Treadaway won £50,000 damages in the High Court after a judge was satisfied that West Midlands Serious Crime Squad officers had put plastic bags over his head and suffocated him to unconsciousness to obtain a confession to robbery in 1982. The confession he signed to stop the torture resulted in a 13-year sentence, but his conviction was quashed by the Court of Appeal in 1996 when the Crown did not seek to uphold it. The DPP refused to prosecute for perjury and assault, saying there was insufficient evidence.

The three cases represent the tip of an iceberg of apparently blatant police brutality going unpunished despite evidence which convinced a judge and two juries. The two cases which resulted in death point up most starkly the apparent failure of the CPS to do its job. A civil judge or jury may decide "on the balance of probabilities" that an assault took place, ie, that it was more likely than not that it did. But for an unlawful killing verdict to be entered at an inquest, a jury must be satisfied "beyond reasonable doubt", of the same standard of proof required to convict in a criminal trial. Despite this, it is unheard of for an unlawful killing verdict against police or prison officers to be followed by criminal charges; a few weeks after the inquest verdict the ritual announcement comes from the DPP: "There is not enough evidence to warrant prosecution."

Finally, in July, the families of three victims of apparent brutality, and their lawyers, said: "Why not?" The result has been a kind of implosion at the CPS, as reviews of evidence have been

found to be partial and descriptions of the procedure in High Court affidavits misleading. Evidence disclosed in the O'Brien and Lapite cases showed CPS officials fabricating versions of the deceaseds' injuries which entirely contradicted the Crown pathologist's opinions. In the O'Brien case, a CPS official justified the decision not to prosecute officers on the grounds that he might have received some injuries from his son, who was in the van with him at one stage. The pathologist had already ruled this possibility out. In the Lapite case, officials claimed that he might have been accidentally strangled by an officer's arm becoming entangled in his clothing; again, this possibility was excluded by the pathological evidence. The disclosures in both cases point strongly to a conclusion that the CPS sees its role as the protection of officers from prosecution by any means necessary.

## The empress's new clothes

In an apparent attempt to pre-empt more serious action and to head off demands for her resignation, the DPP announced an "urgent" inquiry into the CPS's handling of serious complaints against the police, with particular reference to the Lapite and O'Brien cases. Retired Appeal Court judge Sir Iain Glidewell is already heading an inquiry into the workings of the CPS, and an ESRC-funded three-year study of the impact of race on CPS decisions on bail, discontinuance of cases, mode of trial and reduction in charges is also underway.

Dame Barbara's announcement of an urgent inquiry, while it may have staved off her resignation, did not prevent the DPP from being stripped of her autonomy on decisions over custody deaths. Attorney General John Morris and Solicitor General Charles Falconer are said to have "suggested" to her that in future she must get advice from Treasury Counsel (ie, a senior government barrister) in all such cases, and if she disagrees with it, she must then consult them.

Meanwhile, lawyers and campaigners were not sure whether to be delighted or alarmed at the announcement that His Honour Gerald Butler QC will head the new CPS inquiry. As presiding judge at Southwark until his recent retirement, he was reputed to be very prosecution-minded. Solicitor for the families Raju Bhatt suggested that in addition to examining the Lapite and O'Brien cases and whether changes are needed to the CPS approach to deaths in custody, he should look at cases such as that of Kenneth Treadaway which resulted not in death but in serious injury, and should also consider the quality of information received from the police, a demand echoed by Deborah Coles of Inquest. The CPS is just the culmination of the process of complaints, she said, and the whole process must be properly examined, particularly the role of the police in investigating complaints against their brethren.

## CPS failure

The scrutiny of the DPP and the CPS has fallen short of investigating the too-frequent failure of the PCA to take disciplinary action against police. In July, chief constable Edward Crew of the West Midlands police publicly said that some of his staff would have been dismissed if they worked for a supermarket, but protective practices prevented him from sacking them. He complained that the standard of proof is too high: workers anywhere else can be sacked on reasonable suspicion of serious misconduct, but to justify dismissing a police officer, allegations have to be proved beyond reasonable doubt. The double-jeopardy rule means that evidence used in an unsuccessful criminal prosecution cannot be used in disciplinary action against the same officers. And officers faced with

disciplinary proceedings often simply retire on grounds of "ill-health", with generous pensions intact. The home office says it is reviewing procedures.

### Stephen Lawrence inquiry

The role of the CPS in the fiasco of the prosecution for the death of Stephen Lawrence will also come under the microscope, with the announcement by home secretary Jack Straw of an inquiry into the police and CPS investigation. The inquiry, under s49 of the Police Act 1996, will be headed by Sir William MacPherson of Cluny, the eccentric and tough old ex-High Court judge and SAS commander. Other members include Tom Cook, former deputy chief constable of West Yorkshire police, the Right Reverend John Sentamu, Bishop of Stepney, and Dr Richard Stone, the chair of the Jewish Council for Racial Equality. Unlike the Butler inquiry, it will have coercive powers including the power to summon witnesses, require the production of documents, and take evidence on oath: the first time such powers have been granted to such an inquiry since Lord Scarman's inquiry into the Brixton riots in 1981. The inquiry will start once the Lawrences' complaint against the police has been fully investigated.

Once the CPS has reported, in the autumn, Sir William has said he wants public hearings close to the site of the killing, in Greenwich. An appeal will be launched for people to come forward with evidence, following which decisions will be made about who will be called before the inquiry.

Ever since his death in April 1993, Stephen's parents have been campaigning for the racists who killed him at a south London bus stop to be brought to justice. Incredibly, given that they are known locally, those who killed him still walk free.

From the first, the police response was perfunctory and half-hearted, treating Stephen's death as of little significance. They delayed in investigating and making arrests, so that by the time arrests were made, identification evidence was contaminated by local gossip. Then, the CPS dropped charges against two youths charged with his killing two days before committal (when the Lawrences were burying their son in Jamaica). The following year, the CPS rejected fresh evidence presented by Stephen's family. Then, in 1996, a private prosecution, the first ever for murder, failed when a judge ruled evidence inadmissible. In February 1997, an inquest jury found Stephen had been unlawfully killed by five racist youths, in an unprovoked racist attack. Finally, after the inquest verdict, the Daily Mail named the five youths universally believed to be responsible for Stephen's killing, challenging them to sue the paper for libel. They didn't, but the Mail's unprecedented challenge brought down threats of contempt proceedings from former Master of the Rolls Lord Donaldson.

The inquiry's terms of reference are "To inquire into matters arising from the death of Stephen Lawrence to date in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes". Campaigners are hoping that the terms of reference will be interpreted widely enough to illuminate the role of institutionalised racism in the police and CPS response to racist attacks which has resulted in many miscarriages of justice, rather than focusing narrowly on failures by individual officers.

*Independent, 24-29.7.97; Home Office press release, 31.7.97; CARF no 39 (Aug-Sept 1997); see also Statewatch vol 3 no 3, vol 4 no 3, vol 5 nos 3 & 5, vol 6 no 3.*

## New moves on EU openness

UK & Ireland switch sides on the *Statewatch* case; Swedish case in court; two new codes adopted

### How the Council switched on *Statewatch*'s complaints

On 26 March the EU Council of Ministers rejected a request by the European Ombudsman to respond to six complaints lodged by *Statewatch*'s editor, Tony Bunyan, on access to documents (see *Statewatch*, vol 6 no 6 & vol 7 nos 2 & 3). By 20 June the Council had made a U-turn and sent its comments on the complaints to the Ombudsman.

The issue dividing the Council of Ministers in March was whether the European Ombudsman was empowered to investigate complaints concerning justice and home affairs - the intergovernmental "third pillar" of the EU. Six governments voted in favour of replying to the Ombudsman: **Austria, Belgium, Denmark, Finland, Netherlands and Sweden**. Nine voted against: **France, Germany, UK, Ireland, Italy, Spain, Portugal, Greece and Luxembourg**. On 9 April the European Ombudsman replied asserting that the complaints had been declared admissible under the statute governing his duties and called again on the Council of Ministers to respond.

The Council's Working Group on General Affairs (the GAG group) held four meetings on 28 April, 26 May, 3 June and 6 June. Their report from the 6 June meeting went to COREPER (the committee of permanent representatives of EU member states) on 12 June and was adopted by the Transport Council on 17 June. The result of the meeting of the GAG group on 6 June shows that the UK and Ireland switched sides to join the six already in favour of responding to the European Ombudsman. A number of Declarations brought out the divisions in the Council of Ministers.

One of the substantive *Statewatch* complaints concerns the denial of access to documents where the Council says that we have made "repeat applications" (Article 3.2 of the 1993 Decision) - this means that every new application can be treated as a "repeat application" according to the Council, whereas we maintain that every request is for different documents. Similarly the Council has used the term "very large document" in the Decision on access to mean "very large number of documents" to refuse access. On 12 June only three member states - Belgium, Spain and France - gave an "Explanation" saying: "These delegations share the Council's interpretation with regard to repeat applications". This followed "Explanations" on 10 June by the UK, Sweden and the Netherlands that:

*they recall that they do not agree with the interpretation made by the Council of Decision 93/731/EC with regard to "repeat applications" and "very large documents" and believe the Council should have replied in substance to Mr Bunyan's requests.*

Ireland made an "Explanation" also stating that "it does not share the Council interpretation of Decision 93/731/EC with regard to "repeat applications" and "very large documents".

While Denmark gave a substantial "Explanation" supporting the UK, Ireland, Sweden and the Netherlands and saying:

*Denmark finds it questionable that the Council states its point of view on each of Mr Bunyan's complaints, since they concern matters on which in several cases there has been disagreement between Member States. It may be pointed out in this context that Denmark voted against the Council's reply in the cases relating to complaints 1, 5 and 6. Regarding complaints 1 and 5, Denmark in addition gave explanations of its vote which in both cases concern precisely those*

*circumstances of which Mr Bunyan complains.*

### **Statewatch's response to the Council's comments**

On 24 September *Statewatch* sent a 13-page response to the Council's comments on the six complaints, this response is now being sent to the Council for their further response.

*Statewatch's* response sets out in its introduction the key issues concerning the Council's practice:

1) it questions the Council's contention that the validity of its decisions under Title VI (justice and home affairs) cannot be questioned:

*It appears that, unlike all of the member states of the European Union, the Council of the European Union considers itself to be above the law for its decisions and actions under Title VI. It would be quite unacceptable in member states for government policymaking to be undertaken in secret, with major decisions withheld from citizens' access and for them not to be subject to review by the courts.*

2) *Statewatch* questions the Council's contention that the European Ombudsman:

*is not competent to judge the well-foundedness to the replies given in this context where documents falling under Title VI of the TEU are concerned.*

The Council is arguing that the European Ombudsman cannot investigate whether the grounds for the refusal of a particular document under the 1993 Decision is valid (Article 4.1 & 4.2).

3) *Statewatch* questions the use of a "fair solution" to refuse access to documents because they are "repeat applications" and/or concern a "very large number of documents" (where the Decision says only: "very large documents").

In conclusion *Statewatch* has said:

a) the Council has failed to answer satisfactorily the three substantive complaints;

b) asked the European Ombudsman to examine the Council's refusal of access to eight specific documents;

c) asked the European Ombudsman to consider making seven Recommendations changing the Council's application of the 1993 Decision on access to documents including:

i) to maintain, and make available, an up-to-date list of all measures adopted in each of the Council's areas of activity;

ii) to limit the use of the term "repeat application" to requests for the same document and to strictly apply the term in the Decision to "very long documents" to just that;

iii) to ask the Council to consult applicants before applying a "fair solution" to refuse documents;

iv) to exclude the mention of member states' opinions in a document as grounds for refusing access;

### **Swedish Union of Journalists case in court**

Soon after Sweden joined the EU the Swedish Union of Journalists newspaper "Tidningen Journalisten" applied for 20 documents concerning Europol from the Swedish government. Eighteen of the 20 were provided. In May the Union asked the Council of Ministers in Brussels for the same 20 documents. On 1 June the Council supplied just two of the documents and a confirmatory application was lodged. On 6 July the Council sent a further two documents making, 4 out of 20. At the first stage the Council claimed access was refused on the grounds of the need to maintain the confidentiality of its proceedings, on the confirmatory it claimed disclosure would be harmful to the "public interest (public security)" and were covered by "confidentiality" because the documents mention the views of member states.

The case was finally heard in Luxembourg on 17 September and a decision is expected in about two months. The Council's case was supported in court by France in court (and by written submission from the UK). The Union's case was supported in court by Sweden, Netherlands and Denmark.

The issues which came out were:

a) was the case admissible, the Council asked, because the initial applications for documents had been made by the Union's newspaper not the Union itself. Lawyers for the Union said in rebuttal that they represented the Union of which the newspaper was a natural extension.

b) whether the Court of First Instance has any jurisdiction over the Council's Decision 93/731 on access to documents. The French government's lawyer argued that the court had no jurisdiction. The Union's lawyer argued that: "there is a fundamental principle of Community law that European citizens should be granted the widest and fullest possible access to the Community institutions' documents." On the other hand,

*The Council, supported by the French and United Kingdom governments, does not .. accept that there is a fundamental principle of Community law recognising a general right of public access to the documents of the institutions.*

c) the third issue concerns whether the Council, in refusing access, did so without properly considering each document.

### **Two more code of access adopted**

Two institutions - the European Parliament (EP) and the European Investment Bank - have adopted codes of access to documents. The one adopted by the EP on 10 July is almost word for word the same as that adopted by the Council and Commission. It retains the "fair solution" to "repeat applications" and "very large documents", so it will be interesting to see how the parliament applies this clause. Also kept is the clause where access "might undermine" the protection of "the public interest, and in particular public security.."

The EP code is however better than the others in two respects. First, it writes in the right of the citizen to complain to the European Ombudsman (Article 138e of the Treaty establishing the European Community, TEC). Second, it allows applications to be made to the EP Information Offices in Member States not just to the Secretariat in Brussels. This should allow applicants to get help in framing their requests.

The code adopt by the European Investment Bank (EIB) on the other hand is authoritarian. It can, of course, be understand that many financial dealings need to be kept secret or the financial world would collapse. The EIB code goes much further than this. Requests for access will be "dismissed" if, in the view of the EIB, the applicant has not "adequately identified.. the object of the request as well as the reason.." (Article 3). Article 9 deals with "Illegitimate motives" allowing the EIB to reject requests where, in its view, "the identity of the applicant or the purpose of the request has been misrepresented..". Under Article 7 it is mandatory for the EIB to refuse "any internal preparatory documents" or any whose disclosure "could harm the Bank's legitimate interests". No information which is not in the "public domain" is to be provided where it concerns "Community institutions or international organisations" (Article 6), nor where release of a document "would be contrary to the rules and practices prevailing in the financial markets.."

*European Investment Bank: Rules on public access to documents, Official Journal, no C 243, 9.8.97, pp13-15; European Parliament: Decision of 10 July 1997 on public access to European Parliament documents, 10.7.97; Draft letter to the European Ombudsman concerning his letter of 9 April in which he considers that he is competent to examine Mr Bunyan's complaints, Working Party on General Affairs to COREPER, 8897/97 OMBUDS 15, 6.6.97 & Addendum "I/A", ADD 1, 10.6.97 & Addendum 2 "I/A", ADD 2, 12.6.97; Statewatch response to the European Ombudsman, 24.9.97; Report for hearing, Case T-174/95, Svenska Journalistförbundet, 17.9.97 in the Court of First Instance, Luxembourg.*

**A full dossier of the correspondence concerning Statewatch's complaints to the European Ombudsman is available, cost £5.00 including p&p.**

# Italy: Criminalising victims of racist attacks

Over the summer the “emergenza immigrati”(immigrant emergency), an expression widely used by the Italian media, has once again come into fashion following several episodes of violence against immigrants and another in which they were the alleged perpetrators.

On the night of 19 July at the “Murazzi”, the river front with pubs and discos on the river Po in the city of Turin, a group of Italian “bravi ragazzi” (nice kids) exchanged insults with some Moroccans. A fight ensued which led to Abdellah Doumi, a 26 years old Moroccan, falling into the river and drowning. An eye-witness said it was clear he could not swim and as he vainly tried to get of the water he was hit by several bottles, cans and other object thrown by the Italian gang watching and laughing at him.

The case brought comments from the main newspapers (*La Repubblica* and *La Stampa*, 20.7.97) in the following way: great emphasis was placed on the allegation that the victim was a drug dealer; the area where the episode occurred was described as being plagued by petty criminals (mostly immigrants), and the interpretation of what had happened was simply put down to a drunken skirmish between two groups (Italians and Moroccans) which had nothing to do with racism. Although the prosecution is still under way and one of the “bravi ragazzi” is in prison accused of homicide, the death of Abdellah has attracted little attention. A march against racism organised by the Council of Immigrants Communities of Turin went almost unnoticed in the media.

Just few days later in “La Barona” on the outskirts of Milan, on the night of 23 July, three young Moroccans (17, 19 and 23 years old) were attacked by a group of six or seven Italian youngsters on scooters who threw Molotov cocktails at them. The three Moroccans were taken to the hospital with serious injuries. Again there was an unwillingness to talk about racism in the press. Great emphasis was placed on the notion that the “La Barona” neighbourhood was a rough area now suffering from high numbers of undocumented migrants. The newly-elected mayor of Milan Gabriele Albertini, who had stressed in his election campaign his intention to clean the streets of the city of undocumented immigrant street vendors and petty criminals, expressed a formal condemnation but did not waste the chance to single out undocumented migrants as the most important cause for the attack (*La Repubblica*, 25.7.97). Comment in the press quickly petered out.

There was a completely different reaction in the press in the middle of August when, between the 9th and the 11th, in the well known tourist resort of Rimini four young women (two Italian, one Swiss and one French) were victims of rape or attempted rape by some Moroccans. An anti-immigration campaign was started by local politicians and later picked up at the national level with the opposition forcing Prime Minister Romano Prodi to interrupt his vacation and meet the Minister of Interior Giorgio Napolitano and address the “emergenza immigrati”. This time the topic made the headlines in the press and on TV for four days.

The reasons why the Rimini accident had this impact was because the Mayor of the city, Giuseppe Chicchi, had called for a regional passport to be introduced for immigrants in order to protect towns like his during the summer. Mayor Chicchi belongs to the Partito democratico della sinistra (Pds, the democratic party of the left, descendent of the Italian Communist Party). His views encouraged the mayors of cities administered by the centre-right such as Albertini of Milan who proposed a common front by all mayors to press the government for more severe anti-immigration measures, especially expulsion. Protest against Rimini’s mayor have come from groups such as La rete anti-

razzista(the Anti-racism network) whose leader Dino Frisulli has called on the head of the Pds, Massimo D’Alema, to expel Chicchi from the party.

## Research study

A report was published in the summer on acts of violence against immigrants in 1996. It was commissioned by the Green Party and conducted, under the directorship of Michele Sorice, in the Sociology department of the Faculty of Communication Sciences of the University “La Sapienza” in Rome (1).

The research collected all acts of violence perpetrated against foreigners in Italy in a survey of 20 newspapers. The research showed there were 374 cases of violence against migrants which, in 68 cases (18.2%) resulted in deaths. The most frequent victims were women attacked either by a single individual or by a group. In 36 cases women were victims of rape and in 4 cases of rape and robbery.

**Table: Definition of aggressors**

group of citizens	40
criminals	26
skinheads	24
“bravi ragazzi”(nice kids)	14
employer	79
police	61
in the presence of minor	69
not possible to specify	104
other	128
total	374

The high number of cases without a clear definition comes from the difficulty, inability or unwillingness of Italian newspapers to clearly define the perpetrators. Very often, as some of the episodes of this summer show, when an “extra-comunitario” (this is the expression more widespread to indicate all immigrants who are not citizens of a member state of the European Union) falls victim to violence perpetrated by Italians the newspapers tend to define the case as concerning criminals while reassuring their readership that is not a matter of racism or xenophobia.

The table shows a number of cases where the aggressors are defined as a “group of citizens” patrolling their neighbourhoods or as “bravi ragazzi” (nice kids) - this is the expression used either by the relatives or friends of those accused of being the aggressors and usually reported in quotes in the newspapers.

In the politically charged atmosphere the moderate “left” is increasingly embracing the same anti-immigrant rhetoric as the right which does not bode well for the outcome of the debates on the new immigration Bill before parliament (see *Staterwatch*, vol 7 no 3).

## Footnote

1. The director of the research was Michele Sorice and the title of the research report from which the information and the tables commented here are taken is Più di uno al giorno. Atti di violenza contro gli stranieri nel corso del 1996: analisi di 20 quotidiani italiani.

# SEMDOC

## Statewatch European Monitoring and Documentation Centre on justice and home affairs in the European Union

*Statewatch* is one of the leading groups in the European Union monitoring the decisions of the Council of Justice and Home Affairs Ministers and the Schengen Executive Committee and the effect these have on the rights of citizens, refugees and asylum-seekers.

### Secrecy, democracy and the European Union

Open, transparent and accountable decision-making is the essence of any democratic system. EU governments operating through the Council of Justice and Home Affairs Ministers assume they can legislate without informing the public and without allowing public debate - so does the Schengen Executive Committee. New policies are developed in secret and agreed in secret. Moreover, once policies are adopted the *practices* have to be monitored and made open to public scrutiny and judicial review. Public debate on the measures discussed and adopted by the Council of Justice and Home Affairs Ministers and the Schengen Executive Committee is central to the maintenance of democratic standards and the safeguarding of civil liberties in the European Union. To counter this "culture of secrecy" *Statewatch* has:

- lodged six complaints with the European Ombudsman all concerning access to documents agreed by the Council of Justice and Home Affairs Ministers. This has already produced a change in the Amsterdam Treaty which establishes the right of citizens to put complaints to the Ombudsman about access to justice and home affairs documents.

- published *Key texts on justice and home affairs in the European Union, Volume 1 (1976-1993), From Trevi to Maastricht* which contains 60 full-text documents (September 1997).

- *Statewatch* is now launching the **Statewatch European Monitoring and Documentation Centre on justice and home affairs in the European Union (SEMDOC)**:

**SEMDOC's** objectives are:

- 1) to collect, exchange and disseminate information
- 2) to encourage critical research and investigative reporting

**SEMDOC** will offer:

- a) access to documents, reports and other material
- b) respond to enquiries by phone, fax and e-mail
- c) carry out searches and provide print-outs on specific subjects from *Statewatch's* in-house database

**SEMDOC's** collection includes:

- Books, pamphlets, articles, and journals
- European Parliament: Debates, resolutions, questions, reports from the Civil Liberties and Internal Affairs Committee
- European Court of justice: proceedings and final judgements and press releases and European Court of Human Rights: press releases, bulletins, reports

Documents from:

- The Justice and Home Affairs Council
- The K4 Committee
- JHA Steering groups & Working parties
- The Working Party on Information (applications for access)
- Schengen Agreement and Schengen "acquis"
- A Pre-Maastricht archive on the Trevi group, the Ad Hoc Group on Immigration and the Coordinators of Free Movement

Requests for information should be sent to **SEMDOC**, PO Box 1516, London N16 0EW, UK, or faxed to: (00 44) 0181 880-1727. Documents are supplied for the purposes of research or private study. A charge will be made to cover the cost of photocopying, postage and packing. *Statewatch* is a non-profit making organisation.

**SEMDOC** was launched on 17 October 1997 at the UK offices of the European Parliament in London.

**SEMDOC's** work is being supported by 33 individuals - lawyers, academics, journalists and community activists - and 21 organisations from across the European Union.

## PUBLICATIONS

### Key texts on justice & home affairs: Volume 1: 1976-1993

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#### Amsterdam Treaty

Full text of Chapter 2 on new Title on immigration and asylum, the revised Title VI (policing and legal cooperation) & Chapter 10 on "Transparency" FREE

#### ○ Translators needed

Statewatch is looking for people willing to translate from German to English. Please contact the Statewatch office if you can help.

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### SEMDOC: Statewatch Monitoring and documentation centre on justice and home affairs in the

## Web database

Statewatch has a searchable database on the World Wide Web. The url is: <http://www.poptel.org.uk/statewatch/>

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Statewatch, was founded in 1991, and is an independent group of journalists, researchers, lawyers, lecturers and community activists.

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

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