

statewatch

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SWEDEN

The Leander case: challenge to European court decision

On 20 August 1979 Mr Torsten Leander started work as a carpenter at the Naval Museum in Karlskrona, Sweden. On 3 September he was sent home during the working day and on 25 September he was told by the Museum Director that he had failed the obligatory state security vetting procedure. Mr Leander took his case to Strasbourg with the help of his lawyer Professor Dennis Töllborg from Gothenburg University. On 17 May 1985 the European Commission on Human Rights decided, by 8 votes to 7, that Mr Leander had been unable to "clearly substantiate that the registration on him did relate to his freedom to express opinions" (Report of the Commission, adopted 17 May 1985, p84) but agreed that the case could go forward to the European Court of Human Rights.

In March 1987 the Court decided against Leander by 4 votes to 3, those voting against were the Swedish judge, Mr Lagergren, the Turkish representative, Mr Gülcüklü, the UK judge, Mr Evans, and the German judge, Mr Bernhardt.

On 4 April 1997 Leander's lawyer, Professor Dennis Töllborg, referred the case back to the European Court of Human Rights (see *Statewatch*, vol 7 no 2).

Over ten years after the judgement of the Court, on 29 October 1997 Dennis Töllborg, Leander's lawyer, was allowed to see the whole file concerning the Leander case (see ECHR appl 9248/81). They showed Mr Leander had been put on file merely because of his political opinions and that the government completely misled the Commission and the Court.

On 27 November 1997 the Swedish government stated officially that neither in 1979, nor now, were there any grounds

to label Mr Leander a "security risk" and that he was wrongfully dismissed from his job at the Naval Museum. As compensation for the unjust infringement of his rights the government gave him 400,000 Swedish crowns. Dennis Töllborg commented:

This case might now, without exaggeration, be seen as the biggest scandal in modern history not primarily concerning the Swedish security police, but the whole judicial establishment in Sweden. We should remember that all reforms of security and intelligence services have always resulted from scandals.

The Leander decision has been used as a benchmark in other cases in Strasbourg. In the UK "effective remedies" are said to exist through the Tribunals set up to cover telephone-tapping and the security and intelligence agencies. The new evidence uncovered by Töllborg shows that the Commission and the Court reached their decision by accepting the "word" of the Swedish government that Leander was not on file because of his political opinions or legal, democratic activities.

With this assurance, and because the right of appeal (effective remedy) was in place and had been used and had come to the same conclusions as the government (that Mr Leander's vetting showed he should not be employed), they found that Mr Leander could not prove his case.

Background

Torsten Leander was born and raised in Karlskrona, a small town in the south-eastern part of Sweden. In January 1979, Leander was 28 years old when he and his wife met an old friend, Mr Warfvinge, in Stockholm who was working at the Naval Museum of Karlskrona.

Mr Warfvinge said that a vacancy was coming up at the museum in the autumn and, after he contacted the director of the Naval Museum, Mr Leander was promised employment as a

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carpenter for a period of 10 months. In the summer of 1979 the Leanders moved to Karlskrona - where his parents still lived - and in August the same year Mr Leander started work at the museum.

The Naval Museum is open to the public, photography is permitted and there were more than 50,000 visitors every year. All appointments at the museum were however security classified according to the regulations of the Swedish Personnel Control Ordinance (amended 1996, nowadays Säkerhetsskyddslagen; the Law for Protection of Security). All job applicants had to be (and still are) checked against the files of the Security Police before being employed. If the check is unfavourable employment in reality will not be possible - even though the law allows the employer to take an independent decision.

In 1979 there were two security classifications: security class 1 supposed to cover appointments of vital importance to the security of the state, and security class 2, supposed to cover other appointments of importance to the security of the State. Leander's appointment was classified as belonging to security class 2 (today there are three security classifications; 1A, 1B and 2).

On 9 August 1979 the Museum requested that Mr Leander be subjected to personnel "control" (check) and on the 20th of the same month he began work. Applicants are not supposed to be employed until after the check, but in this case Leander was in post so it was not possible to keep the result of the vetting procedure from him.

A full week after he had started work the Head of Security at the naval base told the Director that no one could start work until the check had been carried out, so on Monday 3 September the Museum Director told Leander that he had to go home, pending the result of the personnel control. On 25 September the Director told him that he had failed the vetting procedure - but as the Director had not been allowed to see the information and could not tell Mr Leander why. The Head of the Security refused to give any reasons whatsoever and when Mr Leander lodged an appeal with, first, the Commander-in-Chief of the Swedish navy and subsequently with the Swedish government, both refused to state the grounds on which they had based their decisions. There were, and still are, no possibilities of appeal against the decision of the National Police Board to hand out information on him.

Against this background Mr Leander went to the European Commission of Human Rights, who later passed the complaint to the European Court for Human Rights. Leander claimed that the procedure was in conflict with Article 13 of the Convention, which states that everyone has the right to an "effective remedy". Later, the Commission added Article 8 - the right to privacy and family life - and Article 10 - the right to freedom of expression.

The judgement of the Commission and the Court

In the Commission Mr Leander lost by 8 votes to 7, because they considered he was unable to "clearly substantiate that the registration on him did relate to his freedom to express opinions" (Report of the Commission, adopted May 17, 1985, p. 84). In the Court Leander lost by 4 votes to 3 with the majority claiming that "the aggregate of the remedies" (the control procedure by the National Police Board, the control by the Chancellor of Justice and the Parliamentary Ombudsman and the possibility of making an appeal to the Government) satisfied "the conditions of Article 13 in the particular circumstances of the case". It should be noted that **all** these organisations either at the time or afterwards had looked into Mr Leander's files without finding in his favour.

The central questions were: was the Swedish vetting system in practice a) strictly necessary regarding national security and b) in accordance with the law? Where the Swedish government and Mr Leander diverged was in their description of the system in practice. The issues were first, what information had been supplied, and second, the scope of the vetting procedure.

The scope of the vetting procedure

Mr Leander claimed that the vetting procedure went way beyond

the limits of what fairly could be said to be necessary for defending national security. He said that the vetting procedure covered more than 185,000 different jobs and that more than 100,000 controls (security checks) were carried out each year - a remarkably high figure for a total population of around 8 million citizens. The government insisted that the real figures had to be kept secret in the interests of national security (*Verbatim record from the Hearing October 10 1983, tape 15/4*).

The Swedish government presented its arguments to the Commission and the Court in secret hearings and, until now, they have remained secret. The government lawyer, Mr Corell, presently Under-Secretary-General for Legal Affairs and United Nations Legal Counsel with a special responsibility for guarding human rights, said in the secret hearing to the Commission on 10 October 1983:

The applicant's Counsel has indicated that there are three weaknesses in the personnel control system - in the security safeguards. Firstly, he says that the number of personnel controls is a very high number indeed... [he] refers to an article in Der Spiegel where they claim that over 100,000 controls are made every year. Mr President, I am not authorised to give the number of personnel controls every year, but this figure, as I have been informed, is an exaggeration.. The system which we have concerns only a relatively-speaking small number of posts, and the criterion here is that the posts should be of importance for the national security..

In a secret, and until now undisclosed letter (12 April 1984) to the Commission, the government commented on Töllborg's figures:

It is true, however, that some statements made by Mr Töllborg on various occasions concerning the extent of the personnel control can be described as exaggerations. They are, at least partly, founded on assumptions on his part. He stated that every year c. 1000 persons are not being appointed to classified posts or being dismissed from such posts because of information handed out in accordance with the personnel control system. This figure is quite wrong and incongruous. Not even the total number of matters concerning appointments (initial personnel control as well as renewed control) per annum and where information is handed out amounts to anywhere near this figure.

On 20 June 1990 the so-called Sepo-commission published the real figures: in 1989 more than 410,000 jobs were subject to vetting procedure, following Swedish personell control ordinance, and more than 120,000 controls (checks) were made in the same year. In 1991 there were 87,816 controls, 1992, 215,251 and 1993/94 133,249. In 1992 information was supplied covering 2,351 personnel control applications, and in 1993/4 on 2,306 applications (*Governmental Official Reports, SOU 1990:51 and 1994:149*).

Leander asks - what could be the grounds?

Mr Leander in his application form to the Commission, dated 8 January 1981 says:

What kind of information it concerns is still unknown to me. I have only once been convicted and then fined a small sum (10 SEK) for being late for a military disposition. Since I have been told that this is not the reason behind my dismissal.. I am compelled to investigate my own background for a possible motive. I was a member of the Swedish Communist Party; a member of a radical publication - FiB/Kulturfront; during my National Military Service I was active in the soldiers' union and a representative at the soldiers' unions conference in 1972, where the Security Police had infiltrated agents to record the political views of those present. Furthermore, I have been active in the Swedish Building Worker's association and also travelled a couple of times in Eastern Europe. Responsible officials and politically elected members of both the Security Police, the National Police Board and the Departments of Defence and Justice, firmly deny that any of the above mentioned should have caused my dismissal.

The government wrote to the Commission on 18 May 1982 (the letter was secret according to the rules of the ECHR) invoking Article 17 of the Convention which makes reference to "any activity.. aimed at the destruction of any of the rights and

freedoms set forth in the Convention.. " thereby suggesting a sinister reason for banning Leander from public service.

A second government letter to the Commission on 15 February 1983 (the letter was secret according to the rules of the ECHR) said that:

...in regard to the Swedish personell control procedure, every effort has been made to avoid the register containing any information which is not strictly necessary for the purpose for which the register has been established... The fact that members of parliament from different political parties are represented on the National Police Board, which is responsible for the personnel control procedure and for the register, is an important guarantee that the very stringent rules of the Ordinance are also observed in practice... It is made perfectly clear in the Personnel Control Ordinance that personnel control is carried out in order to safeguard national security. Section 2 of the Ordinance also prescribes that only information required for that purpose may be entered in the secret register and, as stated above, various measures have been taken to ensure that no abuse occurs.

At a secret hearing before the Commission on 10 October 1983 the government's lawyer, Mr Corell, again alluded to sinister features associated with Leander. This time it was that of "subversive" activity and "attempts to undermine the democratic system in our country". He said:

I would like to draw your attention to Section 2 of the Ordinance - ... - since this section specifically provides that the security police is not allowed to make any entry in its register about the mere fact that a person has expressed a political opinion by joining an organisation or in any other way...

He then referred to further instructions, issued to the National Police Board on 22 September 1972:

I would like to draw your attention to a quotation from these instructions... "there are organisations and groups engaging in political activities which involve the use or the possible use of force, threats or compulsion as means to achieve their political aims". It is against such organisations that the whole security police operation is engaged.

... If, on the other hand, the post comes under security class 2, the police may only supply certain specific kinds of information. Such information may concern convictions or suspicions of offences against national security or the democratic institutions. The following examples could be given: convictions for or suspicions of espionage, sabotage, unlawful intelligence activities etc... I would again like to stress that no entry may be made in the police register by reason of the mere fact that a person, by joining a certain organisation or otherwise, has expressed certain political opinions...

Mr President, of course it would be much easier to defend this case if I was free to disclose the full information, but I am not authorised to do this...

When the case went to Court the present social-democratic Minister of Justice Wickbom, who had read the file on Mr Leander, stated before the main hearing: "Obviously it is impossible to let Mr Leander or other persons in his situation read their files. Such a procedure would have detrimental impact on national security."

At the main hearing in the Court on 26 May 1986 it was again Mr Corell representing the government. He said:

It is with regret that one must state that a system of this kind has become indispensable in a democratic society. Consequently, the system must also be protected against being revealed. Therefore, it has not been possible for the Government to furnish either the Court or the Commission with full information as to how the Swedish personnel control system functions.

The judgement of the Court in March 1987 said that the fact that "parliamentary members of the Board... provide a major safeguard against abuse... the Parliamentary Ombudsman constitutes a further significant guarantee against abuse..."

Mr Leander's files - what they said

On 1 July 1996, the law on the police register was adapted with a new paragraph - no 9a - allowing for government to let scientists and others, if there are "extraordinary reasons", to look at the files of the Security Police. In April 1997 Dennis Töllborg, a professor in legal science and a specialist in the field as well as the lawyer for Mr Leander, asked the government for access to Mr Leander's files. In a decision, dated 10 October 1997 the government decided to let him see the files with the only restrictions being that the sources of information should be kept secret and that the files not were to be reproduced by technical equipment. On 29 October he read the files and systematically typed all the information in the files on a portable computer. Töllborg and Mr Leander held a press conference on Friday 31 October 1997.

The content of the files on Mr Leander revealed that he had taken part in the the FNL - the movement against the Vietnam war, the largest and broadest mass movement in Swedish history. The files said:

Torsten Leander, Stortorget 14, telephone 104665, is selling the FNL's school publication in his school and account to the FNL-office"[and] "According to B I Leander was no longer a member of the FNL-movement. (Question from A IV 13/9-70/SA)

Second, that he had been a member of Clarté, an old cultural leftist organisation, counting distinguished members such as the former social democratic Prime Minister Tage Erlander, as well as many others. He had also been a member of the KFML, a China-inspired communist party during the 1970s. It later changed its name to SKP, the Swedish Communist Party. The party was mainly comprised of intellectuals, many of them today having distinguished posts in business and industry, some even having ministerial posts in the government:

A Torsten Leander, who has claimed to be a member of the Stockholm department of Clarté, has ordered 8,000 copies of the KFML election appeal and posters. He is going to work in the Karlshamn area with propaganda until the election. [The local department in Karlshamn is aware of the situation]

and:

Torsten Leander from Stockholm, who temporarily has been visiting Karlshamn, has applied for a membership of the KFML. He had previously been a member of the Clarté.

It also should be mentioned that Mr Leander was at the time no longer a member of the party having been expelled together with two thirds of all the members, after a discussion about "proletarianization". (The town Karlshamn is also wrong - he was living in Karlskrona).

1970 in August LEANDER contacted the office of KFML (nowdays SKP) in Stockholm, ordering 8,000 copies of the KFML election appeal and posters. He claimed that he was a member of the Stockholm department of Clarté, but he is temporarily residing in Karlshamn, to which he wanted the material sent. He was going to work in the Karlshamn area with propaganda until the election. In October 1970 it came out that he had applied for membership in the Stockholm department of KFML.

1978, during the period April 29-30, FiB/Kulturfront had its annual meeting in Norrköping. In all probability LEANDER participated in this meeting, since his car was seen parked on the playground to the school where the meeting was held. The playground was used as a parking place only for participants in the meeting. The association FiB/Kulturfront, which gives out a publication with the same name, is an association where SKP have important influence.

Parts of this section, in [...], are drawn over with some kind of pen, which might mean that this information was not handed out by the National Police Board, only filed by the Security Police.

Conclusion

The disclosure of the grounds on which Mr Leander was labelled

a security risk, had a huge impact in the mass media. It has been one of the major items in all the newspapers and on television following the press conference on 31 October. A special two hour long debate was held in parliament with calls for a "truth-commission" on all the intelligence activities concerning the registration of political opinions. The Government (the social democrats), together with the conservatives, refused to support an investigation into the activities of the Security Police but have accepted a special investigation into military intelligence. The Minister of Justice has at the same time claimed that what was registered about Leander cannot be considered as filing a person and labelling him as a security risk simply because of legal, political, activities. On this issue the government are now supported only by the conservatives. In the new registration committee, which will deal with registration matters for the security police, only the social democrats and the conservatives are represented. There has also been a huge debate on how the Swedish government representative in the European Court of Human Rights, Mr Corell together with other distinguished so-called "high jurists", could have misled the Commission and the Court so blatantly. It has been asked how these persons could be awarded such distinguished posts. Now, everyone blames each other, Corell saying that he only followed orders.

On 27 November the Government made a statement (as a result of negotiations between Töllborg and the Justice Department) officially stating that there was not, in 1979 nor now, any ground to label Mr Leander a security risk, that it was wrong that he was dismissed from his job as a carpenter at the museum and, as compensation for the unjust infringement of his rights awarding him compensation of 400,000 Swedish crowns.

asylum-seekers back to countries of embarkation under "safe transit country" policies and increasingly under bilateral or multilateral readmission agreements. These arrangements will continue pending the coming into force of the parallel Dublin Convention, which will bring the "buffer states" surrounding the Community, and other friendly states such as Canada and Australia, into the global asylum-seeker swapping network. Ironically, the coming into force of the Convention has made it more difficult for Britain to get rid of its unwanted asylum-seekers, as it has seen an end to the "gentleman's agreement" between France and Britain whereby France took back asylum-seekers who had come through Calais to claim at Dover. So, when groups of Czech Roma travelled overland through Europe to claim asylum in Dover, the French government disclaimed responsibility and in some cases the Roma were removed by air to Hungary, while others are having their claims dealt with here.

The procedures under the Convention for requesting the return of an asylum-seeker to the "responsible" state, for acceding to the request and for the person's removal to the responsible state, are subject to strict time limits which may be difficult to comply with, particularly if the government fulfils its election pledge to restore the in-country right of appeal to asylum-seekers rejected on "safe third country" grounds. It remains to be seen how it will work out in practice. But the exchange of information provisions are already causing concern, as personal information is exchanged but the Home Office is refusing to tell asylum-seekers exactly what is being exchanged. It is saying that the only information on which the asylum-seeker has a right of veto (and therefore a right to be informed of the proposed exchange) is the basis of the asylum claim. This is likely to result in litigation before long.

IMMIGRATION

UK

Dublin Convention

The Dublin Convention came into force on 1 September 1997, seven years after it was signed in order to prevent multiple asylum applications in the member States of the European Community and to regulate which country was responsible for determining any claim. The Convention provides that if an asylum-seeker has a spouse or minor children who are recognised as refugees in a member State (or, if the asylum-seeker is a child, has parents there), the member state which accorded recognition to the family member should deal with the claim. Otherwise, the state which granted the asylum-seeker a residence permit or visa, or allowed him or her to stay on the territory, or the state through which he or she gained illegal entry to the Community, or where a previous asylum claim has been made, is responsible for determining the claim, although another state may process it at its discretion. The asylum-seeker's wishes, the presence of other family members or of a large refugee community from the same country or region, or language or cultural links are not taken into account.

Apart from determining the state responsible for deciding the claim, the Convention's other main provisions are to do with information exchange. States are expected regularly to exchange general information on refugee numbers, flows and routes of entry as well as on conditions and the human rights situation in countries of origin. The Convention allows them to exchange information personal to applicants, and details of any claim made in another member state, with the consent of the subject.

For the past five years, despite the fact that the Convention was not in force, member states of the Community, of the European Economic Area (EEA) and beyond have bounced

Work ban

The Home Office announced that it was appealing the High Court decision in July that its work ban on asylum-seekers is "irrational, draconian and unlawful" (see *Stawatch*, vol 7 no 4). But immigration officers have been instructed that they should not normally refuse applications from asylum-seekers. They are expected to argue that the policy, which applies equally to asylum-seekers and others awaiting entry to or removal from the UK including illegal entrants and deportees, should stay in place to protect the UK's labour force, and that immigration officers can waive it in cases where it would cause hardship. Prior to the July ruling, it was being applied across the board, with no flexibility, and causing enormous hardship to asylum-seekers with no other means of support.

Travel documents

The government's announcement of a pilot project to speed up the acquisition of travel documents for rejected asylum-seekers so they can be removed faster has caused anger among refugee groups. The Home Office will no longer wait until the end of the asylum process, including appeals, before approaching the authorities of the asylum-seeker's home state to obtain travel documents to enable the asylum-seeker to be sent home, but will apply immediately they refuse the asylum claim. The pilot covers Algeria, Eritrea, Ethiopia, Iran, Jamaica, Morocco and Sri Lanka. The worry is that the application for documents will let the embassy know that the person is in Britain and is on his or her way home, and most embassies will infer from the lack of documents that the person is a rejected asylum-seeker.

This is because asylum-seekers frequently destroy the passport on which they travelled. Since the combination of visa controls, carrier sanctions and the safe country rule has made refugee smuggling big business, most asylum-seekers rely on

agents to get them in, and the agents usually instruct asylum-seekers to destroy the passports (with forged visas to get them on the plane) once safely on the plane.

For some states, such as Algeria or Iran, claiming asylum is held to bring the state into disrepute, and the knowledge (or strong suspicion) that one of their citizens has applied for asylum is itself likely to result in serious reprisals to them or their families at home, and possible harassment by embassy officials here. The Home Office say there is no evidence returned asylum-seekers suffer reprisals, but they have carried out no systematic monitoring of rejected asylum-seekers. It is particularly worrying since the Home Office is becoming increasingly hardline on Iranian asylum-seekers, and retains its hardline stance on Algerians who claim to fear persecution from the state, and so it is necessary for more and more asylum-seekers from those countries to go through the appellate procedure to have their claims recognised (and sometimes, not even then). Meanwhile, in September the UN High Commissioner for Refugees warned that members of Islamic groups, as well as journalists, artists, intellectuals, judges and security forces and westernised women, were at serious risk if returned to Algeria.

PRAGUE CONFERENCE

Conference on illegal migration

On 14 and 15 October, the Interior Ministers of 32 European countries, the USA and Canada as well as representatives of international organisations discussed measures to combat illegal migration. This Conference of Ministers follows the Budapest process which was initiated by Germany with the Berlin conference on illegal migration in 1991 and the Budapest conference in 1993. One of the main objectives of the Prague conference has been the integration and support of east and central European countries in the fight against illegal migration and trafficking in human beings. The linkage between illegal migration and organised crime was emphasized by the participation of Interpol and the United Nations Commission of Crime Prevention. According to the Ministers, illegal migration and trafficking of people constitutes a threat to public security. The conference adopted 55 recommendations including prison sentences for illegal border crossings, harmonisation of visa policies and readmission agreements. In the future states refusing to readmit their citizens have to expect countermeasures. The recommendations are mainly aimed at countries of origin and transit. All the recommendations have already been implemented in Germany. The German delegation has campaigned successfully for compulsory country reports and the formulation of a timetable for the implementation of the recommendations.

die tageszeitung, 16.10.97; *Recommendations and Conclusions of the Conference of Ministers on the Prevention of Illegal Migration*, Prague, 14-15 October 1997.

NETHERLANDS

Gümüs family to be deported

The Gümüs family, whose campaign against deportation led to discussions at cabinet level on their future, has lost a vote in the Dutch parliament that would have reversed their having to leave the country. The Gümüs's have lived in the Netherlands since 1989, he now runs a small business and his family are completely integrated within Dutch society. However he never officially registered himself and cannot prove that he has had legal work for six years (see *Statewatch*, vol 7 no 3).

Junior Justice Minister Schmitz, has stated that the Gümüs family must leave the Netherlands. The mayor of Amsterdam, who has been active on the family's behalf, has stated that he will

not authorise any deportation before September 16. The last hope of the Gümüs family rests with the courts, where there are still two appeals pending.

NRC Handelsblad Weekeditie, 9.9.97

Government reacts to UNHCR asylum critique

The Dutch government has rejected criticisms levelled at the new "Aznar protocol" by the UN High Commission for Refugees (UNHCR). The government's statement came in response to a written question from Paul Rosenmoller, of the Groen-Links (Green-Left) parliamentary group.

The protocol states that asylum requests from EU citizens can only be considered "in exceptional circumstances", namely when the constitution of the member-state has been suspended or it has been noted that there are "serious and continuous violations of human rights". The UNHCR claims in an analysis of the protocol that it is potentially in conflict with the Geneva Convention on Refugees.

The Dutch government claims in response that the protocol "does not remove the right of member-states to unilaterally decide to consider requests of citizens from other member-states under article (d) of the protocol. Although the member-state must start from the principle that these requests are clearly unfounded, the protocol does not remove the authority of the member-states to consider the individual merits of the asylum request."

The government did however refuse to back Belgium in stating that it would "treat every asylum request from a subject of a member-state on an individual basis". It stated that all Belgium was doing was confirming its obligations under the Geneva Convention, which the Dutch government also endorses, therefore "confirmation through means of a statement is not necessary".

Amnesty and UNHCR criticisms

The Protocol on asylum for citizens of the European Union member states, the so-called Aznar Protocol, is a clear violation of the Geneva Convention on Refugees. It defines all EU member states as "safe countries", implying that there are no human rights violations in any member state of the EU. Asylum applications from EU citizens will be automatically rejected as manifestly unfounded. The Geneva Convention on Refugees, however, forbids discrimination on the basis of nationality. UNHCR and Amnesty International have criticized the Aznar protocol for laying down standards within the EU which fall short of international standards, thus giving a wrong signal to other regions such as the CIS or Asia. On the eve of the Union's enlargement to eastern Europe, this protocol erodes the system of international protection for refugees. By excluding international organisations such as the UNHCR in the formulation of the common EU refugee definition and the interpretation of the Geneva Convention, EU member states have been undermining international organisations and international minimum standards.

Amnesty International: The Amsterdam Treaty and the protection of refugees, 7.11.97; *UNHCR press release*, "UNHCR concerned about restricted access to asylum in Europe", 20.6.97; *Written Answer Parliamentary Report of the lower chamber of the Dutch Parliament*, 26.9.97.

Screw tightens on refugees

The Dutch government is aiming to tighten the rules for people claiming asylum in the Netherlands. Under new proposals people who arrive without valid papers will have to prove that they did not deliberately destroy them in order to avoid being deported to their country of origin.

According to junior Justice Minister Schmitz those who enter the Netherlands without papers will still have their cases considered. Under present legislation, the Ministry of Justice has to prove to the courts that an asylum seeker without papers lost or destroyed them. The new legislation will place the onus on the asylum seeker to prove that they did not destroy their papers in order to slow down the deportation procedure. This will require a change in article 15c of the *Vreemdelingenwet* (Aliens Law). Asylum seekers who cannot demonstrate that they did not deliberately lose or destroy their papers will be deported immediately under the new law. The proposals follow an increase in the number of asylum seekers coming to the Netherlands without papers - over 70% according to government statistics.

This is not the only change planned by the government. Dutch embassies in countries through which asylum seekers travel to the Netherlands will be supplied with immigration officials who will check that those applying for residence under rules which allow asylum seekers to be reunited with their families are genuinely related to them. The government's new proposals follow a parliamentary debate in which a majority supported opposition proposals calling for deportations to be speeded up along these lines. Over 23,000 asylum seekers came to the Netherlands between January and October 1997, as compared to under 16,000 in the same period last year.

NRC Handelsblad Weekeditie, 25.11.97.

SWEDEN

Iraqi doctor on the run

In June 1997 the Swedish government, after receiving reports from the Swedish security police, decided to expel the Iraqi medical doctor Zewar al-Dabbagh to Iraq. Al-Dabbagh arrived in Sweden in September 1986 with his three children, and is to be expelled for 10 years for spying. In Iraq he risks torture and the death penalty for refusing to take part in the Kuwait war as an army doctor.

The first indication that he might be expelled was in March 1994. He was then working as a specialist at a hospital in Stockholm and applied for political asylum and a permanent residence permit, having received temporary permission between 1986 and 1993. The Swedish security police opposed it. As is common in Sweden, no explanation was given to al-Dabbagh nor his lawyer. This started the struggle to find out what information the security police based its decision upon.

Now, this information has leaked out. The main accusation is that he had been working closely with the Iraqi intelligence service. This is based on a claim that in 1989 in Gothenburg he was on a mission for the Iraqi intelligence service and met a female Iraqi agent who handed over an envelope to him. The envelope is said to have contained information about civil and military harbours in the south of Sweden. Al-Dabbagh strongly denies this. He admits that in October 1989, together with a colleague from the hospital, he was invited to a medical course in Gothenburg. Before going there, in his capacity as a foreign student with an Iraqi scholarship, he went to the Iraqi embassy to get money for the train ticket, hotel and food. At the embassy the information attaché, Abdul Hussein, asked him if he would bring a book back from Gothenburg to Stockholm. This book was to be handed over to him by an Iraqi woman. Al-Dabbagh agreed. When he met the woman in a Gothenburg cafe, the "book" turned out to be an envelope containing a set of documents. This led to a row between al-Dabbagh and the woman, ending in al-Dabbagh refusing to take the envelope. He consequently never gave anything to the Iraqi embassy. It should be noted that all this happened 8 years ago and al-Dabbagh did not have any problem after receiving a continuous temporary residence permit nor did it affect him getting work.

Another accusation against him is that in a European capital he met Iraqi agents who tried to make him spy on Iraqi refugees. This is true, al-Dabbagh admits, but he always refused and the Swedish security police do not claim that he ever accepted. At the end of the 1980s al-Dabbagh had gone by train from Stockholm to Uppsala with an employee from the Iraqi embassy - escorting him to a dissertation presentation in Uppsala by an Iraqi research student. He met the same person again in 1990 at a party at the embassy. In July 1994 he visited the embassy with a friend in order to find out the Iraqi law on deserters after the Kuwait war.

Helena Nilsson MP, a member of the National Police Board, says that not one member of the Board was or are prepared to check the accuracy of the information handed out by the security police. "This is not my task - all we are to do is to discuss budget, legislation, new methods for *modus operandi* and new threats against Swedish national security, all in general terms. At the end of the day, we must show faith in the Swedish security police and its work."

The European Commission for Human Rights rejected al-Dabbagh's complaint in September this year as manifestly ill-founded. Immediately after this decision al-Dabbagh left Sweden to go to the middle-east where he tried to get jobs at university hospitals. However, he was always turned down because he could not provide a residence permit for Sweden for the previous ten years and had to admit that he had been expelled by the Swedish security police. Finally, he went to the Swedish press which wrote his story showing that he could not get work, permission to stay anywhere and had no chance of being reunited with his family. On 27 November the Swedish government decided to give al-Dabbagh a new 6 month temporary permit to live in Sweden while his case was re-examined. This decision was based on the fact that "since al-Dabbagh has made so many anti-Iraq public statements his life would be in danger if he was sent back to Iraq". The Swedish government and the security police however still claim that he is a spy.

Svenska Dagbladet & TT.

SPAIN:

CEUTA & MELILLA

New cooperation with Morocco

Morocco is increasingly co-operating with the Spanish authorities in policing the Ceuta and Melilla borders. In the first six months of this year the Spanish government processed 271 applications for the repatriation of immigrants, in accordance with the Spain-Morocco Readmission Agreement. Of these, Morocco accepted only one and rejected 200. That attitude has since changed significantly, according to the Spanish government delegate in Melilla, Enrique Beamud: "They are now readmitting every Central African person detected at the border". Meanwhile, works are continuing to seal the border around both towns. In early October the army started patrolling the Ceuta border, as it has been doing in Melilla for some months, to facilitate the completion of the works. In Melilla a border ring road has now been completed and a double fence two metres high is being built, along with a one-metre wall, lighting and video surveillance. The works are due to be finished in January 1998.

SPAIN

Thermal imaging camera in Strait

The sub-delegate (Interior Ministry official) for Cadiz set out in a press conference the government's plans to instal a thermal imaging camera to monitor the Strait of Gibraltar, to facilitate the interception of, among others, immigrants using small craft. The camera detects body heat, allowing it to be used even in complete darkness. However the installation of the equipment would

depend on budgetary approval.

Immigrants detained

On 23 November the Guardia Civil detained 94 North Africans who were attempting to land on the coast near Algeciras. Some 70 of them were on a fishing boat and 24 in a rubber dinghy, the two most common types of vessel used in the crossing from Morocco to Spanish territory. While recent tragedies have highlighted the use of dinghies, quite a number of fishermen have turned to transporting migrants to supplement their incomes. The 70 detained on this occasion had each paid Ptas 500,000 (about £2,000). Their arrests brought to 3,100 the total of undocumented immigrants detained this year in Andalucia alone, to which must be added over 2,000 detentions in Ceuta and Melilla.

The latest recorded incident in which immigrants died was when a dinghy foundered was on 22 October, seven were known to have died and another 10 were listed as missing.

Draft law to permit extradition of political refugees

The Spanish government presented to Parliament in October a draft Organic Law on International Judicial Co-operation in Criminal Matters, which would allow the extradition of persons recognised as refugees, and of those accused of political offences. The draft was immediately criticised by members of the Council of State and of the General Council of the Judiciary. Non-governmental organisations claimed that the law would violate the 1951 UN Convention on the Status of Refugees. All the parliamentary parties came out against the draft and have announced their intention to make substantial amendments during its debate. Needing to secure a minimum level of support to bring the bill forward, the government accepted a number of modifications proposed by the Catalan nationalists, most notably one establishing that in no circumstances could a person granted refugee status be extradited to his or her country of origin, and their extradition to a third country would depend on that country guaranteeing that the person would not be returned to the country of origin.

Immigration - in brief

■ **Spain: Algerian citizens expelled:** Since June the Spanish authorities have been routinely expelling Algerian nationals, notwithstanding the dangerous conditions, amounting almost to civil war, in that country. A number of non-governmental organisations have mounted a campaign against the expulsions.

■ **Norway: Kosovo refugees to be returned:** In Norway there are around 300 Albanian refugees from Kosovo in Yugoslavia. All have had their applications for asylum rejected by Norway. For several years they have not been returned because the Serbian government will not take back citizens who have applied for asylum abroad. In November it was reported that an agreement had been reached for their return but fears for their safety have been expressed. *Klassekamen*, 5.11.97; *Dagsavisen/Arbeiderbladet*, 30.10.97.

■ **Germany: Collaboration with Turkish authorities:** Turkish police officers tortured a Kurdish asylum seeker after his deportation from Germany. German police accompanied the man to Turkey and passed on to Turkish officers not only asylum documents but also the man's briefcase with personal papers and PKK documents. The man is now serving a long prison sentence under the Turkish Anti-Terrorist Law. *Frankfurter Rundschau*, 8.11.97.

■ **Germany: Border police cashes in on immigrants:** The German border police take money from migrants who have tried to enter Germany illegally (see also *Statewatch*, vol 6 no 6). In an answer to a question tabled by the PDS, the government stated that depending on the rank of the officers, migrants had to pay between 63,- and 122,-DM per hour. The money would be used to help financing police border controls. *die tageszeitung*, 1.8.97; *CILIP*.

■ **Germany: Detention centre closed:** The detention centre in Eisenhüttenstatt (East Germany) has been closed after clashes between asylum seekers and officers. According to the Interior Ministerium of Brandenburg, violence broke out after detainees set furniture alight to express solidarity with an asylum seeker from Ghana who resisted his deportation. Asylum seekers disputed the official version and said that the police did not help them to leave the burning building. The refugees had to use bits of furniture to force their way out of the building. *die tageszeitung*, 22.11.97.

■ **Denmark: Neo-nazis patrol border:** A group of about twenty neo-nazis carried out patrols along the Danish-German border in order to prevent refugees from entering the country. They wrote in a statement that they want to "close the border to Germany for immigrants of a foreign race". *die tageszeitung*, 22.9.97.

■ **Slovakia: Minority exchange:** The Slovak Prime Minister has announced publicly that "obstinate minorities" can leave the country. Around 600,000 people of Hungarian origin live in Slovakia and many have complained about discrimination due to restrictive government measures. *die tageszeitung*, 9.9.97.

■ **Serbia: Refusal to admit deserters:** Serbia has refused to admit around 2,000 deserters who fled to Denmark. The Danish Interior Minister Birte Weiss has said that Serbian conditions for the readmission of the refugees were unacceptable. *die tageszeitung*, 16.10.1997.

Immigration - new material

Review: Afschrikken en Afschuiven (Scare 'em and Shift 'em) **European asylum policy in the Last Twelve years.** Jelle van Buuren and Wil van der Schans. *Stichting Eurowatch* (In Dutch).

This is a well written and informative analysis of European immigration and asylum policy, starting with the creation of the Schengen treaty and finishing with the Treaty of Amsterdam. The writers aim to show how the apparently attractive idea of a Europe without internal borders has been perverted into an increasingly repressive and unaccountable system of internal control, as well as how migrants and asylum seekers became the target of increasingly draconian measures aimed against them.

As a Dutch language text it contains a bias towards analysing the Dutch input into European asylum and immigration policy. Yet this too is useful, demonstrating how the liberal reputation that the Netherlands enjoys throughout the world did not stop the Dutch government from being instrumental in the creation of the undemocratic structures condemned in the pamphlet. "*Afschrikken en Afschuiven*" is available from: *Stichting Eurowatch Postboys 365 2300 AJ Leiden, priced at florins 15*

France. Towards a just and humane asylum policy, *Human Rights Watch*, October 1997, pp29. Evaluation of French asylum policies and analysis of reform proposals, the Weil report, that have been transposed into draft legislation. In particular, Human Rights Watch has found deficiencies in access to the asylum procedure, in procedural rights and in the restrictive interpretation of France's obligations under the Geneva Refugee Convention. The report concludes that the current draft law does not adequately address the identified problems.

Recent developments in immigration law, Jawaid Luqmani, Chris Randall & Rick Scannell. *Legal Action* November 1997, pp21-25. Latest

update of developments in immigration legislation, practice and case-law.

Control of Immigration: statistics United Kingdom, First Half 1997, Keith Jackson & Andy Bennett. *Statistical Bulletin* 26/97 (Home Office) 1997.

How Britain imprisons Refugees: Information on Campsfield, Andrew Hornsby-Smith, Sarah Woodhouse & Suke Wolton. *Campaign to Close Campsfield* 1997, pp22. This useful pamphlet is produced by the Campaign to Close Campsfield which monitors the privately run Group 4 detention centre near Oxford. It contains useful chapters on: Immigration procedure in Britain, detention and a history of immigration legislation plus a case study, useful addresses and a brief history of the campaign. Available from: CCC, c/o 111 Magdalen Road, Oxford OX4.

Exile: Newsletter of the Refugee Council, No. 99 (July-August) 1997, pp4. This issue contains pieces on asylum myths, the introduction of a visa requirement for Colombians coming to the UK and the "ignorance, discrimination and bureaucratic petty-mindedness" that prevents skilled refugees from finding work.

NCADC Newsletter, Issue 8 (October-December) 1997, pp12. Latest issue contains updates on campaigns and articles on "Women and immigration controls", asylum seekers in Holland, and pieces on France, Austria and Canada.

Positively racist: HIV/AIDS and Immigration control. *No One is Illegal* No. 21 (Summer) 1997, pp2-3. This article tackles the myth of AIDS as the "new global black plague" and considers the history of racist immigration controls from the Commonwealth Immigrants Act of 1962.

The Netherlands: A Critique of Policies and Practices regarding asylum seekers, refugees and illegal aliens. Human Rights Watch/Helsinki, September 1997, 70 pages.

Walls to the East. *Euroviews*, Spring 1997. Annual publication by the Danish School of Journalism. This issue contains useful articles on Fortress Europe. Available from: Danish School of Journalism, Olaf Palme Allé 11, DK-8200 Aarhus N, Denmark.

Parliamentary debate

Special Immigration Appeals Commission Bill *Commons* 30.10.97. cols. 1053-1074

EUROPE

NETHERLANDS

Eurotop demonstrators cleared

Three hundred and seventy one of the protestors, arrested during the demonstrations surrounding the Intergovernmental Conference held last June in Amsterdam, have now been informed by the Department of Public Prosecutions that they will not be prosecuted. The demonstrators, who were held under Article 140 of the Dutch penal code, had been accused of being "members of a criminal organisation". (see *Stewatch*, vol 7 no 3).

The decision apparently led to furious responses from the government and the four large parliamentary parties. The right-wing Volkspartij voor Vrijheid en Democratie (VVD) condemned the decision as "weak", while the social democratic Partij van de Arbeid (PvdA) together with the liberal Democraten '66 (D'66) argued for a prosecution in the hope of having a judicial review into the use to which Article 140 could be put. Justice Minister Winnie Sorgdrager stated that she was "saddened" by the decision of the public prosecutor.

Lawyers for the 371 are however planning civil actions for damages against the police following a report by the Schalken

Commission in Amsterdam, an official body set up to investigate complaints against the Amsterdam police, that stated that the arrests had no legal basis. The report also claimed that the arrests were "unnecessary and arbitrary" as they had been carried out without any advance warning.

Other criticisms of police and judicial behaviour focused on the deportation of 150 Italian demonstrators, who were not even allowed to leave the train that they had arrived on, as being based on an "incorrect judgement". The Commission concluded that there was insufficient consideration of the possibility of serious disruption during the Eurotop and that a number of arrestees were treated "unnecessarily severely".

The mayor of Amsterdam, Patijn, and the Chief of Police, Vrakking, both criticised the report's conclusions. In what the NRC Handelsblad weekeditie described as a "hastily called press conference" Patijn justified the police action as follows: "You can look at the Eurotop from two perspectives, as a judicial problem or as a matter of preserving public order". According to him the Amsterdam authorities placed the emphasis on the public order aspects. Patijn concluded by saying: "If we are not allowed to use Article 140 in such circumstances then we must have other laws".

Other politicians are not so sanguine about the events surrounding the Eurotop. The Groen links (Green Left) fraction in Amsterdam council has already condemned the police action, while Socialist Party MP, H. van Bommel, called the Schalken report "a stain on the reputation of the most respected mayor in the Netherlands". Others who now feel vindicated are the Autonoom Centrum and Stewatch contributors Jansen and Janssen, whose Black Book on the events surrounding the Eurotop was described by the Schalken commission as "thoroughly grounded".

EU Demo Inquiry Call

Increasing concern about the policing of the demonstrations surrounding the Intergovernmental Conference, held in Amsterdam last June, has led Dutch civil liberties organisations to call for the National Ombudsman to hold a public inquiry. Over 600 people were arrested during the demonstrations; so far only 11 people have been convicted.

Complaints from protesters from across Europe has led the Autonoom Centrum, hitherto known primarily for their campaigns against asylum centres in the Netherlands, together with the civil liberties watchdog Buro Jansen and Janssen, to compile a "Black Book" collating over 230 complaints from protesters detained or injured during the demonstrations.

Charges against the police operation are varied. Complaints listed include those who were held in Amsterdam Central Station before being transported to the maximum security "Bijlmerbajes" prison after graffiti appeared in a train carrying protesters from Milan to Amsterdam. Others claimed that they saw Dutch police physically abuse people detained during the demonstration.

The Autonoom Centrum and Buro Jansen en Janssen claim that complaints against police behaviour during the Eurotop have been lost due to bureaucratic feet dragging by both the police and others. They "are committed to putting every effort into changing this."

Denmark: Amsterdam arrests

During the Summit as the limit because of the limited number of police "holding places" for those arrested was just over 500 a decision was taken to "deport" the "foreigners" being held. Among these were 27 people from Denmark.

Four of the Danish people arrested were picked up on Sunday 15 June because they were close to the "Vrankreijk" (squatters house/cafe) where people had gathered. They were "attacked" from behind by a group of men in civilian clothes who placed dark hoods over their heads and drove them away in fast cars to the police station. Here they were held until Tuesday 17

June when they were sent back to Denmark, together with others from Sweden, in a Dutch military aircraft.

Other arrested Danish people were arrested and then held in a prison in the suburbs of Amsterdam. Two of these were journalists who were held despite presenting their press credentials. The men were held in the prison but the women were kept in the bus overnight. On several occasions the women were given intimate body searches by male officers.

They were not allowed to contact the Danish embassy for 24 hours and even then the vice-consul had great difficulty in finding out where they were being held. After two days they were sent back to Denmark, without their luggage, in commercial or military planes.

Autonom Centrum Nieuwsbrief, September 1997.

COUNCIL OF EUROPE

Germany takes over Presidency and several tricky tasks

At the start of the German Presidency of the Council of Europe in November, the German Interior Minister Kanther (CDU) announced that the government would not sign the Convention on facilitated naturalisation of foreigners. The head of the German delegation Schäfer (Liberal Party) remarked that this refusal was not definite and intimated that the pressure on German domestic politics and the coalition partner CDU suits him. The main task of the German Presidency will be the implementation of the October summit conclusion to promote human rights and democracy - a political minefield in particular in eastern Europe. The appointment of an Ombudsman for human rights and the establishment of a new permanent human rights court for citizens' complaints are uncontroversial. The 40 judges of the human rights court start working in November 1998. A different issue is the "adherence to obligations entered by member states". The German Foreign Minister Kinkel intends to use the Presidency to expand the democracy programmes for the new east European member states and has mentioned necessary control mechanisms. This diplomatic formulation hides a tricky problem. Earlier in the autumn, the Austrian Vice-General Secretary Leuprecht had to resign after he had criticised the Committee of Ministers for being too lenient towards democracy deficits and human rights violations in eastern Europe. Among the controversial issues are censorship, suppression of opposition and national minorities in Croatia and Slovakia, the situation in Russian prisons, torture in Turkey, and the abolition of the death penalty.

die tageszeitung, 13.10.97; *Frankfurter Rundschau*, 10.11.97.

DENMARK

Case against Schengen

The newly-formed Organisation "Grundlovsvaren" (Protection of the Constitution) took out a court case against the Danish Prime Minister, Poul Nyrup Rasmussen, on the grounds that he had violated the Constitution. The action, launched on 24 September, is based on the rule in the Danish Constitution which says that in exercising its executive power the government cannot give away power to other countries (eg: Germany and Sweden under Articles 40 and 41 of the Schengen Agreement), it can only give powers to international organisations.

Europe - in brief

■ **Schengen Agreement:** On 26 October the Schengen Agreement came into force in Italy and Austria. While passport controls at Italian airports have been abolished for citizens of

Schengen member states, controls at border check points and sea ports will be abolished by 30 March 1998. Greece joined the system in early December but demands that all applications for a Schengen visa by Turkish citizens should be subject to Greek approval could disrupt the scheme. It could further interfere with the EU-Turkey customs union and is likely to inflame relations with Turkey. *die tageszeitung*, 27.10.97; *Financial Times*, 13.12.97.

■ **Schengen Information System (SIS):** Saxony Interior Minister Hardraht (CDU) has called for quick accession of Poland, Hungary and the Czech Republic to the SIS. He said that in light of increasing cross border crime, this would constitute a second security border for the EU and would facilitate accession of these countries to the EU. The three countries could be integrated into the SIS within 18 months. *Süddeutsche Zeitung*, 24.10.97.

■ **Minsk: Human rights group founded:** Around a hundred politicians from the opposition, journalists and writers have founded the human rights group "Charter 97" in Minsk. They have called for the protection of human rights and a referendum on the re-establishment of democracy and legality across their region. The group claims that the citizens' right to elect their own representatives has been disregarded. *die tageszeitung*, 12.11.97.

■ **CEECs: Cooperation against vehicle trafficking:** Representatives of twelve east and central European police authorities have met in Germany to discuss cooperation against increasing cross-border crime. The "working group for police cooperation" has decided to establish a project group under the responsibility of the German Federal Criminal Office (BKA). This project group will deal with international vehicle trafficking. *die tageszeitung*, 19.11.97.

■ **Netherlands: Supporters "not in criminal organisation":** Eight football supporters have been jailed following the manslaughter of an Ajax fan during a confrontation between Ajax supporters and their Feyenoord counterparts. However the prosecution failed in their attempt to label those convicted as being members of a criminal organisation, the court rejecting the case as not proven. In the light of the fiasco surrounding attempts by the Dutch authorities to apply the "criminal organisation" tag to demonstrators during the recent Amsterdam Summit, this is a further setback in their attempts to apply the now notorious article 140 of the Dutch penal code. *NRC Handelsblad Weekeditie* 2.9.97.

Europe - new material

Report to the Government of the Slovak Republic on the visit to Slovakia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 June to 7 July 1995, *Council of Europe*, April 1997, pp83.

Interim and follow-up reports of the Government of the Slovak Republic 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 Slovakia from 25 June to 7 July 1995, *Council of Europe*, April 1997, pp105.

Reports to the Government of Cyprus on the visits to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 9 November 1992 and 12 to 21 May 1996, *Council of Europe*, May 1997, pp124.

Rapport au Conseil fédéral suisse relatif à la visite effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumaines ou dégradants (CPT) en Suisse du 11 au 23

février 1996 et Réponse du Conseil fédéral suisse, *Council of Europe*, June 1997, pp209.

Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 26 April 1996 and Interim report of the German Government in response to the CPT's report, *Council of Europe*, July 1997, pp125.

Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 21 March 1997, *Council of Europe*, September 1997, pp21.

Agenda 2000 - the enlargement perspective, Hans Van Den Broek, *European Access* 1997, No.5, pp9-10. Extracts from a speech by EU Commissioner Van Den Broek to the European Parliament.

Integration, October 1997, No.4. Special issue on the Amsterdam Treaty. Articles include analysis of the reform of the EU institutions, of the changes in justice and home affairs, and on the common foreign and security policy.

Dossier Europol, ed. *Buro Jansen & Jansen*, May 1997, pp36. Collection of articles on Europol 1993-1997, in Dutch.

European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT). 7th General Report on the CPT's activities covering the period 1 January to 31 December 1996. Strasbourg, 22 August 1997, CPT/Inf(97)10, 30 pages.

Consular protection against injustice: evidence to the Foreign Affairs Committee, House of Commons inquiry on government implementation of human rights policy. Fair Trials Abroad, October 1997, 14 pages from: Fair Trials Abroad, Bench House, Ham Street, Richmond, Surrey TW10 7HR.

Europe - parliamentary debate

European Parliamentary Election Bill *Commons* 25.11.97. cols. 803-878

LAW

UK

Green Anarchist journalists jailed

Three editors of the *Green Anarchist* (GA) magazine, Steve Booth, Sax Wood and Noel Molland, were jailed for 3 years each at Portsmouth crown court, Hampshire, in November. The men received the lengthy prison sentences after a controversial twelve-week trial at which they were found guilty of publishing information liable to "incite persons unknown" to commit criminal damage.

All three men have lodged an appeal. A fourth GA defendant, Paul Rogers, will have his case heard in the new year while Simon Russell, a former editor of the *Animal Liberation Front Supporters Newsletter* was acquitted.

The Gandalf (an acronym of Green Anarchist and Animal Liberation Front) trial centred around the *Green Anarchist* magazine which regularly reports environmental and animal rights actions by groups such as ALF and the Earth Liberation Front. The charges, laid by Hampshire police, resulted from an extensive police investigation - Operation Washington - into animal rights groups that targeted the ALF.

However, following the acquittal of ALF spokesperson Robin Webb last December, the case proceeded with conspiracy to incite charges against the GA editors, which presume that merely listing offences committed by animal rights activists is illegal and will incite people to commit criminal damage.

The prosecution and jailing of the three men has been described as "an outrageous intrusion on press freedom" by the

magazine *Index on Censorship* and condemned by John Wadham, director of Liberty, who commented that "People should be convicted on the basis of what they have done, not what they have agreed to do." Critics have also noted that members of far-right organisations have never been charged with this offence, despite publishing explicit calls to attack or kill named Jewish, Black and Asian people and anti-fascist activists, complete with photographs and personal details. The jailing of the journalists has serious freedom of speech implications and is widely perceived as an attempt to gag sympathetic reporting of direct action protests.

The Gandalf Defendants Campaign can be contacted at PO Box 66, Stevenage SG1 2TR; Tel. 0956 694922.

Green Anarchist No. 49/50 (Autumn) 1997; *Gandalf Defendants Campaign* press release 13.11.97; *SchNEWS* 143 14.11.97; *Big Issue* 24.11.97; *M. Lynas* "Publish and be jailed..." 18.11.97.

(available at:

http://www.one.world.org/news/reports/nov97_gandalf.html).

Law - new material

Police station advice: defence strategies after Condon, Ed Cape. *Legal Action* October 1997, pp17-20. This piece considers the Law Societies Criminal Law Committee new guidance to solicitors on advising clients at the police station.

Socialist Lawyer No. 28 (Winter) 1997. It has been some time since the last "Socialist Lawyer" appeared. The new issue contains a number of important articles covering the European Convention (Francesca Klug), the bugging provisions of the Police Bill (Philip Leach) and a piece on "Terrorism, national security and immigration".

Scenes from the show trial: the Gandalf trial and its implications. *Green Anarchist* 49/50 (Autumn) 1997, pp9-11. This is an account of the Gandalf trial "compiled by the defendants" while in the dock "just short of the end of the prosecution's case."

Parliamentary debates

Criminal Justice Lords 23.10.97. cols. 855-874

Magistrates' Courts Lords 29.10.97. cols. 1057-1067

Magistrates' Courts Commons 29.10.97. cols. 901-914

Special Court (Offices) Bill Commons 6.11.97. cols. 407-454

Civil Justice and Legal Aid Commons 21.11.97. cols. 531-606

NORTHERN IRELAND

Northern Ireland - new material

The substance of the negotiations, Martin McGuinness. *An Phoblacht/Republican News* 21.8.97, p9. Sinn Fein spokesman, Martin McGuinness, outlines the areas that the republican movement wants to see on the agenda during peace talks.

Principles and requirements. *An Phoblacht/Republican News* 16.10.97., pp10-12. This piece reprints Sinn Fein's "submission to Strand One of the Peace Talks at Stormont." It proposes the "principles and requirements as necessary elements of a new democratic accommodation and settlement...acceptable to all the people of Ireland."

Orangism: Myth and Reality, Peter Berresford Ellis. *Connolly Association* 1997, pp12. This pamphlet contains a talk by the author, presented in Dublin in 1995, and outlines the history of the Orange Order. It laments their current sectarian bigotry, fuelled by a mythological history that hides "the reality of a common past".

Just News Vol. 12, nos 9 & 10 (September-October) 1997. The two latest issues of *Just News* contain articles on the Labour Party's largely symbolic decision to drop internment without trial from the Emergency Provisions, proposals for a Bill of Rights, the Police & Criminal

Evidence Act in Northern Ireland, European Convention on Human Rights, equality law and community policing. Available from CAJ, 45/47 Donegall Street, Belfast BT1 2FG.

Parliamentary debates

Northern Ireland, *Lords* 22.10.97. cols. 759-798

Official Report of the Grand Committee on the Public Processions etc (Northern Ireland) Bill *Lords* 12.11.97. cols CWH1-52

Official Report of the Grand Committee on the Public Processions etc (Northern Ireland) Bill *Lords* 13.11.97. cols CWH53-86

Northern Ireland (Emergency provisions) Bill *Commons* 18.11.97. cols. 168-219

CIVIL LIBERTIES

UK

Schools fail gay children

Teachers are refusing to tackle lesbian and gay topics in the classroom for fear of falling foul of the infamous Section 28, of the Local Government Act (1988), which makes it illegal for a local authority to "intentionally promote homosexuality" or to promote the teaching within schools of the "acceptability of homosexuality as a pretended family relationship".

Research carried out by the University of London's Institute of Education revealed that over 50% of schools claimed that they had difficulties when addressing the needs of lesbian, gay and bisexual children because of Section 28. The demand for addressing lesbian and gay issues was demonstrated by further research showing that 30% of schools stated that they were aware of lesbian, gay and bisexual pupils, while over 80% of schools were aware of verbal or physical homophobic bullying.

In response to the report, published in November, Ivor Widdison of the Council of Local Education Authorities pointed out the need for urgent action: "given that the government is not far from lowering the age of consent for gay men to 16 then it really must address the issues that affect young lesbian and gay schoolchildren", he said.

Campaigners want the government to go further. Angela Mason, of the gay rights group Stonewall, has called on the government to issue guidelines to schools on dealing with homophobia. She goes on to state that "more importantly Section 28 needs to be repealed without delay so that teachers are free to provide gay kids with help". In response a spokeswoman for Education Minister Estelle Morris said that the minister would "study the new report's findings closely".

Pink Paper 17.10.97

GERMANY/NETHERLANDS

"Radikal" raid legal

The district court in Maastricht has decided that the police raid in the Netherlands against a journalist of the German journal *Radikal* was legal. The journalist's case has been rejected as unfounded and confiscated computer disks will be handed over to the German police. Miguel Diaz' flat in the border town Vaals was raided in December 1996 by Dutch and German police officers. As the production and distribution of *Radikal* is illegal in Germany but not in the Netherlands, the cross border police cooperation has caused quite a stir (see *Stawatch*, vol 6 no 5). The Dutch Green party as well as the Liberal party VDD have questioned the legality of the raid. Several days after the raid, the responsible investigating judge in Maastricht was relieved of his

duties. His successor has refused to take political responsibility for the raid or to transfer the disks to Germany. Finally, the Dutch Justice Minister Sorgdrager has complained that she was not informed of the raid and stated that she could not understand how Diaz had committed a political offence. The district court was of a different opinion: the German reproach that Diaz' alleged contribution to *Radikal* constituted membership of a criminal organisation and in that giving publicity to a terrorist organisation (the Red Army Fraction) was also a criminal offence according to Dutch law. A decision by the regional court of appeal in Koblenz in August that *Radikal* is not a criminal organisation has been ignored by the Maastricht court. *die tageszeitung*, 4.11.97.

Civil liberties - new material

New brains behind the scenes. *Labour Research* Vol. 86, no. 11 (November) 1997, pp9-11. This piece examines the effects that the change of government will have on the role of "think tanks". It considers the right-wing Centre for Policy Studies, Politeia and Social Market Foundation and the free-market Adam Smith Institute and the Institute of Economic Affairs. It also looks at the Institute for Public Policy Research and the centre-left Demos.

Access to government information, Tim Treuherz. *Legal Action* October 1997, pp24-25. This piece surveys existing statutory and non-statutory provisions, focusing on *The Code of Practice on Access to Government Information*.

The ultimate invasion, John Griffith. *Guardian*, 10.11.97. Griffith argues that the incorporation of the European Convention on Human Rights into UK law is no guarantee that the judiciary will become any more progressive in their decisions.

Parliamentary debates

Human Rights Bill, *Lords* 3.11.97. cols. 1227-1312

Human Rights Bill, *Lords* 18.11.97. cols. 466-481

Human Rights Bill, *Lords* 18.11.97. cols. 490-527

Human Rights Bill, *Lords* 18.11.97. cols. 533-562

Human Rights Bill, *Lords* 18.11.97. cols. 1139-1170

Human Rights Bill, *Lords* 24.11.97. cols. 771-816

Human Rights Bill, *Lords* 24.11.97. cols. 823-858

Human Rights Bill, *Lords* 27.11.97. cols. 1091-1121

Human Rights Bill, *Lords* 27.11.97. cols. 1139-1170

PRISONS

UK

Jail unnecessary for 70% of women prisoners

70% of women prisoners, currently numbering 2,700 in England and Wales, represent no security risk and could be held in open conditions or given community penalties, according to the Chief Inspector of Prisons, David Ramsbotham. The female prison population has leapt by 76% in the four years as increasing numbers of women are jailed for debts run-up on catalogues, store cards or for money owed for Council Tax or to the DSS. The number of women jailed for serious offences has dropped by 16%.

In a highly critical report, *Women in Prison*, Ramsbotham also expressed concern at the number of women prisoners held

on remand awaiting trial and the facilities made available for women with children. It noted that 61% of women in prison were the primary carers of children and with their imprisonment the burden of child care fell on their mothers or family.

Among the 160 recommendations in the Ramsbotham review is a call for the Prison Service to appoint a director with responsibility for managing the fifteen women's prisons in England and Wales. This was supported by Paul Cavadino, of the National Association for the Care and Resettlement of Offenders, who commented that: "For decades women's prisons have been treated as an afterthought tacked on to the needs of men."

The primitive conditions in women's prisons was emphasised in August when a 16-year old won a High Court ruling that the Home Office policy of jailing young women, aged between 15 and 21, in adult jails should be stopped. The young woman, who claimed that she had been locked up 24 hours a day, has now been found a place at Styal women's prison which is one of only 7 jails with units for juveniles. The others are Brockhill, Low Norton, Drake Hall, Eastwood Park, Bullwood Hall and East Sutton Park.

The barbaric practice of using chains and handcuffs on pregnant women prisoners, on the unlikely pretext of preventing them from escaping from hospital while in labour, was relaxed at the beginning of 1996 after a storm of protest. A recent Prison Reform Trust review of the practice makes it clear that shackling will continue where women have been released to attend funerals or custody hearings. The Trust has called for a review of security procedures for women to reflect the low security risk that they represent.

Chief Inspector of Prisons "Women in Prison" (HMSO) July, 1997; The Law July-September 1997; Times 18.7.97; Independent 18.7.97; Guardian 20.8.97.

Child prisons planned

The Home Office is planning to set up a network of jails for offenders between the ages of 15-18, following a highly critical report by the Chief Inspector of Prisons, David Ramsbotham. Ramsbotham argued that: "The Prison Service is better suited to, and more appropriate for, dealing with adults and that children should no longer be its responsibility...The Prison Service should relinquish responsibility for all children under the age of 18." The Director General of the Prison Service, Richard Tilt, responded to the Chief Inspector's report, *Young Prisoners: a thematic review*, by announcing plans for a national network of juvenile jails.

The Ramsbotham review, published in November, said that the conditions faced by teenage inmates caused them damage and increased the likelihood of their offending. The rising numbers, combined with stringent government cost-cutting, long hours - up to 23 hours a day - in crowded cells with minimal educational facilities resulted in conditions that are "far below the minimum conditions in Social Services Department secure units required by the Children Act 1989 and the UN Convention on the Rights of the Child." The Home Office plans, announced the day after the publication of Rowbotham's report, envisage a network of seven or eight converted juvenile jails across England and Wales, which will house 2,600 inmates at a cost of £18 million. They will be based on the young offenders intensive programme at Thorn Cross institution, near Warrington, which costs £23,000 a place for a year. Under the Warrington regime young offenders have a daily sixteen-hour programme which begins at 6am. It includes cleaning duties, drill education, anger management courses, physical education and working for charity.

Young prisoners: a thematic review by HM Chief Inspector of Prisons for England and Wales, HM Inspector of Prisons. Home Office (October) 1997; Times 20.11.97.

Prisons - in brief

■ **Nationwide hunger strike:** A 48-hour nationwide hunger-strike, staged by more than 60 inmates at 20 prisons, took place in November. The prisoners were participating in the action to protest their wrongful imprisonment and to draw attention to the role of the Criminal Cases Review Committee (CCRC), a statutory body set up under the Criminal Justice Appeal Act 1995. The body took over its caseload from the Home Office in March and, in the 9 months since becoming operational, it has received details of over a thousand alleged miscarriages of justice. Only 5 of these cases have been referred to the Court of Appeal confirming observations that its function was to staunch the flow miscarriages of justice rather than facilitate them. The hunger-strike was supported by a picket of the CCRC offices in Birmingham, West Midlands, and other activities coordinated by "Action Against Injustice" (PO Box 858, London E9 5HU), and "Birmingham Prisoners Solidarity" (PO Box 3241, Saltley, Birmingham B8 3DP).

Prisons - new material

The prison system: some current trends. *Penal Affairs Consortium* October 1997, pp12. This report notes a rapidly rising prison population (an increase of over 50% since the end of 1992) due to harsher sentencing and juxtaposes this against cuts in the Prison Service budget.

House of the dead, Deborah Coles & Helen Shaw. *Prison Report* No. 40 (Autumn) 1997, pp10-11. This article regrets the fact that the Prison Ombudsman "is precluded from looking into complaints made by the families of those who die in custody." It calls for an extension to the Ombudsman's remit which "would go some way to redress the strong impression that these deaths do not matter and...are an accepted feature of prison life"

Coping abilities and prisoners' perception of suicidal risk management, Kevin Power, Joe McElroy & Vivian Swanson. *Howard Journal of Criminal Justice* Volume 36, Number 4, 1997, pp378-392. This article is based on interviews with 200 prisoners identified as "at risk" of suicide. "Prisoners reported the main difficulties of location on suicidal supervision as sensory deprivation, degrading aspects of the regime, negative emotional effects and social isolation."

Mentally disordered offenders in the prison setting, Edward E Tennant. *Police Journal* Vol. LXX, No. 4 (October-December) 1997, pp291-301. This article is based on a study of 222 defendants who had pleaded guilty to manslaughter on grounds of diminished responsibility. It notes the "lack of commitment, or even interest" shown by successive governments and proposes a new assessment process.

Prison Privatisation Report International, no 14 (October) 1997. Contains an article on a court case by a former Corrections Corporation of America employee who alleges the company bugged a member of staff, violated narcotics law and sacked staff when they refused to cover-up, and reports on trade union opposition to the privatisation of industrial functions at Coldingley Prison in Surrey.

Prison Watch press release 208. *Prison Watch* 21.10.97. This release covers the inquest of 31-year old Sean Goddard who, while on remand, was found hanging at HMP Highdown and later died in hospital. It notes that while the national suicide rate is 1:10,000 per annum it is 1:200 at Highdown and it criticises the secretiveness of the institution.

MILITARY

NETHERLANDS

Army in UN abuse

Ten Dutch soldiers serving with the United Nations (UN) in Angola have been convicted of sexual abuse, smuggling and

drunkenness. Although these incidents occurred in the summer of 1994, the Ministry of Defence only recently revealed the extent of the incidents.

The scandal was eventually revealed in a report presented to the Ministry by Vice-Admiral J. Van Aalst. It revealed widespread indifference to the soldiers' activities, with punishments being restricted to administrative measures. The then commander-in-chief of the Army, General Couzy, was aware of the events in 1994 but he chose not to inform either the Ministry nor Prime Minister Wim Kok.

The report condemned the higher echelons of the Dutch army for "failures of leadership", pointing out that there were many warning signs. The UN, on the other hand, were relatively sanguine about the soldiers' abuses, stating that "that's the way it goes with operations such as these." Wim Kok, however, described both the incidents and the army response to them as "shocking", calling the affair "very serious".

This is the latest in a series of scandals to have beset European UN troops. Belgian soldiers in Rwanda and Somalia have been accused of atrocities including the slow roasting of a child over a fire. Italian troops have also faced accusations of abuses including rape and torture (see *Statewatch* Volume 7 no. 3).

NRC Handelsblad Weekeditie 9.9.97

UK

MoD gay dismissals up 30%

The Ministry of Defence (MoD) has announced that the number of people dismissed from the armed forces on account of their homosexuality went up by 30% in the last year. Sackings are now at their highest since 1990. The news was released during the same week that the UK presented its legal defence of the gay ban in the services in a case where the government is being taken to court by former service men and women who were dismissed.

The news that the MoD is pressing ahead with its defence came at the same time as it announced a major initiative to stamp out racial and sexual discrimination. Entitled "British Army sets the standards for equal opportunities", it boasts that Chief of the General Staff, Sir Roger Wheeler, "will be promoting equal opportunities and eradicating all discrimination." The MoD does however retain its unique interpretation of equal opportunities, stating that: "our policy of barring homosexuals from serving in the military is not discrimination."

Pink Paper, 17.10.97.

NATO

Negotiations completed

The negotiations on the accession of Poland, Hungary and the Czech Republic have been completed after the east European governments agreed to the budget contributions on the basis of the NATO proposals. Hungary will carry out a referendum on NATO membership.

die tageszeitung, 12.12.97.

Military - new material

Undercover at the arms fair, Diane Taylor. *Big Issue* 8.9.97. pp6-7. Account of the Royal Navy and British Army Equipment Exhibition '97, at Farnborough which has 130 stalls with weaponry for sale - but not to "those who would use them for internal oppression or external aggression", according to the MoD.

Shocking business, Jim Carey. *Red Pepper* No. 42 (November) 1997, p27. This piece examines the export of electro-shock batons and other

instruments of torture yet to be confronted by the Labour Party's "ethical foreign policy" and finds their "compassion with a hard edge" lacking.

Hungary: In search of a secure future. *Jane's Defence Weekly*, 16.7.97 pp21-25. Briefing on the Hungarian Defence Forces.

Plans for Apache repair centre in Europe lift off, Joris Janssen Lok. *Jane's Defence Weekly*, 23.7.97 p13. GKN Westland Helicopters has launched an initiative to establish a European repair and maintenance centre for Apache attack helicopters.

NATO navy forces put crisis response to test, Hans Nijhuis. *Jane's Defence Weekly*, 6.8.97 p27. The naval exercise "Linkes Seas" was held by 13 NATO countries and Brazil to test "peace support" (intervention) disciplines.

The Warsaw doctrine: co-operate, integrate. *Jane's Defence Weekly*, 27.8.97 pp21-27. Briefing on the Polish Defence Forces.

Denmark, Germany and Poland in joint corps bid, Ian Kemp. *Jane's Defence Weekly*, 10.9.97 p23. Defence ministers of these countries announced plans to establish a joint army corps headquartered in the Polish city of Szczecin.

Turbulent times for forces in transition. *Jane's Defence Weekly*, 10.9.97 pp39-48. Briefing on the Turkish army

USAFE evolves for rapid deployments, Joris Janssen Lok. *Jane's Defence Weekly*, 24.9.97 pp 21-27. The US Air Force in Europe is embracing the concept of air expeditionary forces.

Spanish-Italian force to be active next year. *Jane's Defence Weekly*, 8.10.97 p20. A combined Spanish-Italian Amphibious Force of brigade-size should become operational next year for deployment on both NATO and Western European Union missions.

Europeans strive to match the US giants, Nick Cook. *Jane's Defence Weekly*, 22.10.97, pp26-27. Article on the European aerospace manufacturers.

Euro talks stress risks of transatlantic trade war, Joris Janssen Lok. *Jane's Defence Weekly*, 5.11.97 p18. US officials have expressed concern about a potential European protectionist defence industry policy.

Anglo-German giants seize Siemens defence. *Jane's Defence Weekly*, 5.11.97 p19. British Aerospace and Germany's Dasa have snatched the defence electronics assets from the reach of France's Thomson CSF.

Le bataillon de deployment rapide slovaque [The Slovak rapid deployment battalion], Jean-Jacques Cecile. *RAIDS*, no 137, October 1997 pp28-33. Elite unit of the new Slovak army.

La 11e brigade aeromobile neerlandaise [The Dutch 11th airmobile brigade], Yves Debay. *RAIDS*, no 138, November 1997 pp6-17. Organizational details about the unit that was involved in the fall of Srebrenica.

Kommando Spezialstreitkraefte - ein Jahr nach Aufstellung [Special Forces Command - one year after formation], Peter M. Baierl. *Europaeische Sicherheit*, 8/97 pp50-54. Overview of the Special forces unit of the German Bundeswehr and the division of tasks with GSG 9.

The Eurofighter Debate: A British Perspective, Susan Willett. *International Security Information Service (ISIS)* Briefing Paper no 13, Brussels October 1997. The reason why successive UK governments have supported the Eurofighter program is its perceived importance to the UK aerospace and engineering sectors whereas the military usefulness is questionable.

The Role of the High Commissioner on National minorities in OSCE Conflict Prevention. An Introduction. Foundation on Inter-Ethnic Relations, The Hague June 1997. Updated document based on a report at the request of the Japanese Government but aimed at a broad audience.

Parliamentary debates

Defence Policy *Commons* 27.10.97. cols. 609-680

POLICING

UK

Ibrahima Sey unlawfully killed

In October an inquest, at Snaresbrook crown court, into the death of Ibrahima Sey, a Gambian asylum seeker who died after being sprayed with CS gas and restrained by police officers at Ilford police station, returned a verdict of unlawful killing. Following the verdict family members and campaigners called for the prosecution of the police officers involved. Concerns about the safety of CS sprays were raised by the coroner, Dr Harold Price, who recommended that its use by the police should be "urgently reviewed" (see *Statewatch* Volume 6, nos. 2, 3 & 4).

Ibrahima Sey died on March 16, 1996, after being sprayed with CS gas and "restrained" by several police officers while handcuffed at Ilford police station in east London. Evidence to the inquest established that while Ibrahima was:

on his knees, with his hands cuffed behind his back, and surrounded by over a dozen police officers in the secure rear yard of the police station, he was sprayed with CS gas, and then, upon being taken into the police station, he was restrained face down on the floor for some 15 minutes or more until he had stopped breathing.

Deborah Coles, co-director of INQUEST, an organisation that monitors deaths in custody, described Ibrahima's treatment as "abhorrent, brutal and inhuman". This treatment was compounded by the fact that one of the officers involved, PC Saunders, told the inquest how he had swapped the handcuffs he had placed on Mr Sey with those of a colleague because he did not want to do the overtime involved in accompanying the prisoner to hospital. Ibrahima was probably already dead at this time.

The outcome of the inquest, which returned a verdict of "unlawful killing", was welcomed by Ibrahima's family. His cousin, Kura Njie, said:

We are delighted with the verdict because we never believed that Ibrahima's death was a simple accident. It is an outrage and a crime that he was treated so brutally by those who are supposed to defend the public. This is merely the end of the first chapter in our struggle for justice; we demand that the police officers responsible for Ibrahima's death face criminal charges.

The Crown Prosecution Service, which has been repeatedly criticised for the way in which it handles deaths - particularly black deaths - in custody, has said that it will review the case following the verdict. The Metropolitan Police will also submit a report to the Police Complaints Authority. However, neither measure is likely to carry much conviction, and Piara Powar, of the Newham Monitoring Project which has campaigned on behalf of the Sey family, commented:

There can be no excuse for Barbara Mills, the Director of Public Prosecutions, to avoid instigating criminal proceedings against the officers involved in Ibrahima's death. Public concern at the increasing numbers of black people dying in police custody is being consistently ignored as officers remain outside the law. It seems that police officers are free to kill with impunity.

The Home Office's response to coroner, Dr Harold Price's, request that "The use of CS gas should be reviewed by all police forces", was predictable. Within a fortnight Home Secretary, Jack Straw, informed an Association of Chief Police Officers' dinner:

I have read all of the pathologist's reports and other medical and toxicological evidence submitted to the Ibrahima Sey inquest. The coroner's recommendations might lead one to think that the inquest had seen evidence which casts doubt on the acceptability of CS spray but I am satisfied that this is not the case."

Within weeks CS spray was introduced across the country in what *Police Review*, in an editorial entitled "CS sprays and the Sey inquest", described as "a refreshing example of force management refusing to bow to political and judicial pressure".

It should be noted that there have been numerous other controversial cases of police misuse of CS spray including incidents where it is alleged that they sprayed CS into a crowded coach and closed the doors, and another where CS was used during an incident at a children's home. In December CS was deployed at a football match for the first time in the UK and a woman spectator was injured.

INQUEST press release 2.10.97; Newham Monitoring Project press releases 8 & 17.9.97, 1 & 2.10.97; Home Office press release 16.10.97; Police Review 7.11.97.

UK

Stoke Newington - £1 million damages in 4 years

Stoke Newington police station in north London has a long history of corruption, racism and brutality which has seen officers jailed for involvement in drug dealing and even stealing property from corpses. Two recent cases mean that over £1 million in awards and damages has been paid out in court cases involving officers from the station in the past 4 years.

Elsewhere, in west London the Metropolitan police paid out £80,000 after police assaults on 3 men in two separate incidents while in south London two police officers were jailed following a racist assault and damages of £45,600 was paid in another case.

North London: In November, after a ten week trial, PC Paul Evans was found guilty at the Old Bailey of assaulting a student, Ben Swarbrick, who was attending a music festival for the homeless in May 1994. Mr Swarbrick told the court that PC Evans kicked him at least twenty times and beat him with his truncheon in the street and later at the police station. Described as "a coward and a bully" by the judge, Evans was convicted of assault and affray and jailed for 6 months. Six more police officers, some of whom were named, but not prosecuted, in the Operation Jackpot inquiry into corruption at the police station, were acquitted of conspiring to pervert the course of justice, assault and false imprisonment. They will remain suspended pending disciplinary hearings which will decide if there are any matters outstanding against them.

Within two days of Evans' conviction the Metropolitan police was forced to pay out £38,000 compensation over the arrest, by officers from Stoke Newington, of two black men, Wayne Taylor and Leroy McDonnell, who suffer from sickle cell anaemia. They were detained, in February 1995, and say they were told it was for being "in a drugs-area" (Hackney) and racially abused; when no drugs were found they were charged with threatening behaviour. After they were acquitted in May 1995 they won a civil action against the officers claiming wrongful arrest, false imprisonment, assault, trespass, malicious prosecution and negligence.

West London: In August the Metropolitan police paid out £80,000 for assaults on three men by officers who are still serving as policemen. Mark Thomas accepted £30,000 after being kicked and punched by officers at a demonstration in west London in April 1989; they falsified a case against him and he was charged with affray but acquitted in March 1990.

In the second incident, Timothy Murphy and John Racz

were in a public house in Notting Hill when they were assaulted by police officers as they cleared it at closing time. Murphy was punched and kicked, needing hospital treatment, before the two men were arrested. The police officers then, according to the mens' statement, "maliciously fabricated a false account...[and] put it forward to justify their own unlawful conduct, knowing the defendants were innocent".

South London: In south London 2 policemen were jailed and a third received a suspended sentence, at the Old Bailey, after an horrific attack on a black man. Harold Benn was stopped by officers in Tooting, south London, in 1990, and accused of being a car thief; when he protested his innocence he was thrown into the back of a police van and subjected to a torrent of racist abuse before being beaten beyond recognition. PC Alec Mason, nicknamed "King of the Beat", was jailed for two and a half years and PC Alec Mason was jailed for 4 months; a third officer, PC Toby Fletcher, was given a suspended sentence.

In another incident, in Brixton, police have paid out £45,000 damages to a student, Earl Hill, after he was falsely imprisoned and maliciously prosecuted. He was charged with obstructing police and using threatening behaviour, but was acquitted at Camberwell Green Magistrates Court.

The Met have paid £20 million in compensation and costs since 1986. Many of the officers involved retire on medical grounds to avoid allegations of corruption and malpractice; between 1995-96 more than 70% of Metropolitan police officers under investigation, or facing disciplinary charges, retired on medical grounds. Retirement on medical grounds costs some £330 million a year. On the other hand, the Court of Appeal, last February, imposed a ceiling on the amount a jury could award for police brutality as settlements spiralled out of control.

Independent 30.10.97; Guardian 21.8.97, 18.9.97, 19.11.97; Standard 21.11.97; South London Press 23.9.97, 4.11.97.

BELGIUM

P. Committee condemns "shameless" police

The Police Committee of the Belgian Parliament has condemned the "shameless attitude" of the Belgian police, noting that complaints against them have risen for the third year in succession. They also criticise the lax attitude towards disciplining police officers who step out of line.

In their report the Committee note that "most officers go unpunished. In the last three years there have been only 78 prosecutions against police officers, mostly for drunk driving and other traffic misdemeanours". At the same time the list of registered offences by police officers looks very different, with 918 crimes being registered in the last 3 years. Violence against civilians accounted for 38% of all complaints, arbitrary acts for 11%, while threatening behaviour was good for 9% of the total complaints. Yet the prosecution statistics reveal that only 9% of all prosecutions of police officers fall into this category. The Committee is scathing in its critique: "The Judiciary is not acting [against the police], while disciplinary measures generally leave unruly police officers unscathed."

Gazet Van Antwerpen 22.9.97.

Riots follow police shooting

The death of a Moroccan youth at the hands of the Rijkswacht (Gendarmerie), in November, led to riots on the streets of Brussels. Anderlecht, an inner-city area, erupted as youths accused Rijkswacht officers of deliberately shooting Said Charki, 24. Home Affairs minister Johan vande Lanotte claimed that the police officers acted in self-defence.

The Rijkswacht version of events is that they had been following Said, who they suspected of being a drug dealer, for some time. Having lost him on Thursday, November 6, they picked him up the following day. He then made a quick getaway and attempted to ram two police cars in the chase that followed, whereupon he was shot.

However, local witnesses tell of a different train of events. They suggest that the police cars were already in position when Said left his house and that they could have prevented him from leaving as he was driving calmly rather than racing away. Other sources claim that forensic evidence suggests that Said was shot from behind and that the car he drove into, after being shot, was hardly damaged. A witness claimed: "I saw them shoot without warning, and they certainly weren't shooting at the tyres".

The riots that followed raged for the whole of the weekend of the 8/9 November, leading to the arrests of over 120 youths. Vande Lanotte claimed that the riots were the work of drug dealers, who had been targeted by the police forces during the last months. Local community workers pointed to the high levels of unemployment in the area to explain the violence.

Local youths, on the other hand, claim that the death of Said is only the latest incident in the continuing targeting of their area by police forces combining high handed tactics with an often overtly racist attitude. One youth, quoted in the NRC Handelsblad, said that Belgium "is a police state, without any rights for immigrants". Another, interviewed by Solidair, stated: "we are sick to death of the murders and the Rijkswacht. This is the third migrant they've killed in this neighbourhood alone."

NRC Handelsblad Weekeditie 11.11.97. Solidair 12.11.97

NETHERLANDS

Police bugged and burgled

During the early 1990s police officers, stationed in the Dutch province of south Limberg, repeatedly broke the law while investigating drug dealing, without being prosecuted. Their offences included falsifying statements, break-ins and illegal phone tapping. The Ministry of Justice has asked the High Court to re-examine verdicts reached through these methods, according to a statement by the Department of Public Prosecutions.

Chief Officer of Justice, H.W. Overbosch, claimed that it would not be appropriate to prosecute the officers because the evidence is too old or unreliable. He also asserted that the activities of the officers were not in conflict with rules which were in use at the time. However, he did not reject the possibility that some of the officers involved might face disciplinary proceedings.

The illegal practices were revealed after one officer, who was removed after objecting to the methods being used by his colleagues, blew the whistle on their techniques. According to him, he and his fellow officers were guilty of falsifying statements, illegal bugging, phone-tapping and surveillance operations, break-ins at suspects' residences, unauthorised activities in foreign countries and illegal extraditions.

Of the forty-two separate incidents reported by the police officer eleven were eventually investigated. One of those incidents resulted in someone being sent to prison for 7 years.

NRC Handelsblad Weekeditie, 18.11.97.

Government "to tackle black criminals"

The Dutch cabinet has decided to focus attention on black youths with criminal records. Ministers Zorgdrager and Dijkstal, of the justice and home affairs departments, have combined to produce a series of measures to counter levels of "black youth crime"

which they describe as running at least three times that of white youths of the same age.

The ministers recognise that such high rates of ethnic minority crime is largely due to "socio-economic and socio-cultural deprivation". They go on to state that "youths need to be offered a programme that is made to measure for them and takes their background into account as well as their potential".

However, according to the NRC Handelsblad, the main proposal consists of forcing "problem" youth to sign a "citizenship contract", committing them to work with a "route partner" who will supervise their progress. If they break any part of their citizenship contract unmentioned punitive consequences will then follow.

The only overt concession made by Zorgdrager and Dijkstal to the above mentioned "socio-economic and cultural deprivation" is to introduce a school programme that targets childrens' language difficulties. This will be combined with more attention being placed on ethnic minority childrens' school attendance records, including regional monitoring.

NRC Handelsblad Weekeditie, 11.11.97.

Policing - in brief

■ **Spain: Proposed changes to Penal Code:** The 100 penal law experts who form the Crime Policy Study Group have called for the elimination from the Spanish Penal Code of the offence of provoking hatred and discrimination, and have proposed alternative means by which the criminal law could protect marginalised social groups. However, SOS Racismo has opposed the elimination of the xenophobia offences.

■ **Spain: new police squads:** The recently established police Drugs and Organised Crime Units (UDYCO) will have a total of 1,200 officers from 1998. The intention is to provide these units with the most modern equipment and to centralise under a single command the fight against organised crime. The three areas on which the Units are to concentrate in the short term include Chinese illegal immigration networks, South American networks involved in illegal immigration and drug trafficking, and the settlement of Russian citizens with wealth of dubious origin. On 10 November the Bilbao High Court sentenced three members of the Guardia Civil for torture, jailing each of them four years, two months and one day, and depriving them of civil rights for six years, and requiring each to pay the victim Ptas 500,000 damages.

■ **UK: Director Generals for NCS and NCIS:** Roy Penrose, the national coordinator of the Regional Crime Squads in England and Wales, was appointed as the first director general of the National Crime Squad (NCS) in September. Penrose will take up his position before the establishment of the NCS in April 1998. The NCS will be responsible for "tackling serious crime across regional and national boundaries and collecting and developing intelligence." Also in September, John Abbot was confirmed as director general of the National Criminal Intelligence Service (NCIS); he succeeds Albert Pacey. Abbot has been deputy director general for the past 12 months. He was only offered the post after John Hamilton, chief constable of Fife police and a former member of the RUC, turned it down. Hamilton had been assistant director general of NCIS with responsibility for the UK division which manages the Scottish/Irish liaison unit in London, during 1995. NCIS' brief is to "collect, develop and analyze criminal intelligence to assist police forces and other law enforcement agencies in the UK and abroad." *Police Review* 19.9.97; *NCIS News release* 29.9.97; *Home Office press release* 12.9.97, 19.9.97.

■ **UK: PITO to get statutory functions:** Home Office minister Alan Michael has announced that the Police Information

and Technology Organisation (PITO) will take on statutory functions from 1998. PITO was established last year on an interim basis and is "responsible for working with police and the IT and communications industry". It supplies police with information from the Police National Computer and also oversees the Police National Network. A board with representatives from the police service, police authorities, the Home Office and the Scottish Office will be appointed in the autumn. *Policing Today*, vol 3, no 3 (September) 1997.

■ **Belgium: Police chief quits:** Christian de Vroom, chief of the judicial police, has announced his intention to retire. This follows criticism of his performance by the parliamentary commission set up in the wake of the Dutroux affair. De Vroom is the first high-level victim of the inquiry. *Independent*, 3.9.97.

■ **Netherlands: Police officers convicted:** Two former police officers have been found guilty of drug smuggling after attempting to smuggle 760 kilos of hashish into Canada. One of them was also convicted of receiving stolen goods after a stolen Harley-Davidson motorcycle was linked to him, as well as breaching Dutch state and professional secrecy laws. The drugs were found by Canadian police close to Montreal airport. They followed the trail back to a company in Hoofddorp that turned out to be owned by one of the two police officers. He claimed to know nothing about the drugs and blamed his colleague, who had just left the police force to set up his own company. *NRC Handelsblad Weekeditie*, 16.9.97.

Policing - new material

Talking shop, Carol Jenkins. *Police Review* 26.9.97. pp20-21. Interview with the new ACPO president David Blakey who advocates "a national layer of policing" citing "the formation of NCIS, National Crime Squad, national training and PITO as prime examples of this idea being put into practice."

Protesters - heroes or villains? Alan Beckley. *Police* Vol. XXIX, No. 13 (September) 1997, pp28-29. Article by the Chief Inspector, West Mercia constabulary, that observes "that protesters are no-longer the mis-fits of society, they are now middle class and senior citizens who carry the weight of public opinion with them and therefore policing protest incidents requires greater sensitivity."

Continental rift, Alan Beckley. *Police Review* 5.9.97. pp18-19. This piece considers the impact on day-to-day policing in the UK of the European Convention on Human Rights.

Police complaints and discipline: deaths in police custody England and Wales, April 1996 to March 1997, Judith Cotton & David Povey. *Statistical Bulletin* 21/97 (Home Office) 1997. This bulletin records 57 deaths "in police custody or otherwise in the hands of police", which is up 14% on 1995-96. It notes 22,500 complaints cases, 377 disciplinary charges against officers and 77 officers dismissed. It also records the statistics by ethnic origin.

Light Loads, Stewart Goodwin. *Police* Vol. XXIX, No. 14 (October) 1997, p.19. Short piece on "Britain's only permanently armed force", the Ministry of Defence Police, and their firearms training.

Playing it safe? Steve Frosdick. *Police Review* 3.10.97., pp20-21. This article considers the issuing of CS gas sprays to officers policing football matches and asks if "the risks which CS sprays at football ground pose to crowd safety are greater than the benefits it offers for officer safety?"

Police and foreigners: a research project on German police officers' attitudes and behaviour patterns towards non-German citizens, Dr Manfred Murck & Hans Peter Schmalzl. *Police Journal* Vol. LXX, No. 4 (October-December) 1997, pp311-314. This purported "research project" arose out of an ongoing series of racist assaults by German police officers on migrants and "foreigners". It will come as no surprise to find that the authors' failed to find a "systematic behaviour pattern of

the police", but blame "structural conditions" (see AI report "Continuing pattern of police ill-treatment" EUR 23/04/97, July 1997).

Garda brutality in Limerick, Proinsias O'Maolchlain. *An Phoblacht/Republican News* 2.10.97., pp10-11. This article follows-on from investigations into the Gardai in Limerick by the Irish Council for Civil Liberties and Amnesty International. It presents case-studies that range from ill-treatment to outright brutality and supports calls for a public inquiry into this notorious police force.

Complaints and discipline, Police Federation. *Police* Vol. XXIX, No 15 (November) 1997, pp19-23. This piece presents the Police Federation's evidence to the Home Affairs Select Committee, and its disagreements with ACPO and the PCA, over the investigation of complaints against police officers.

The man they love to hate, Winston Silcott. *The Law* (July-August) 1997, p14. While on bail for killing a man in self-defence at a party, Winston Silcott was charged with the murder of a policeman during the Broadwater Farm uprising in north London in 1985. The Broadwater Farm conviction was overturned in 1991, but the Criminal Cases Review Commission is still "not minded" to refer the first case back to the Court of Appeal.

Nordic Criminal Statistics, 1950-1995, edited by Hanns von Hofer. Department of Criminology, Stockholm University, Report 1997:2, 84 pages. Detailed statistical breakdown country by country.

Parliamentary debates

Metropolitan Police *Lords* 12.11.97. cols. 234-244

Youth Crime *Commons* 27.11.97. cols. 1089-1103

RACISM & FASCISM

NETHERLANDS

Racist neighbours face courts

A council is considering legal action against inhabitants living in the Gestelsebuurt area of Den Bosch. They are being accused by Den Bosch council of conducting a racist campaign against a Somali family who were scheduled to move into the area. The mayor of Den Bosch has declared that if the inhabitants refuse to end their campaign they will face charges of racial discrimination.

The case came to prominence last month when a local housing association allocated a house in the area to the Somali family.

The family's neighbours began a campaign of intimidation, which included threats of physical violence, against the family. They also began passing a petition round the neighbourhood including the phrases "full means full" and "we don't want any Somalis". In the light of this campaign the family decided to turn down the house.

The council has been having meetings with the inhabitants in an attempt to defuse the atmosphere. They have agreed to halt their campaign, but have continued to voice their displeasure at the number of foreigners living in the area.

NRC Handelsblad Weekeditie, 2.9.97.

UK

NF chased out of Dover

A National Front (NF) march and rally, planned to whip-up racist violence against Roma refugees fleeing from persecution in the Czech and Slovak republics, ended in a humiliating climb down in November. It saw the small fascist group driven from the town under police protection while anti-fascists held a rally in the town

centre in support of the refugees.

The NF was once the largest fascist organisation in the UK but, confronted by anti-fascists and riven by factional splits and internal dissent, it has dwindled to an insignificant handful of diehards. The most recent split took place in 1995 when party leader, Ian Anderson, announced that the organisation had changed its name to the National Democrats. This was greeted with some amusement since under Anderson's ineffectual leadership they had long ceased to be a "national" organisation and the term "democrat" was not thought to be part of his vocabulary.

A rump of diehard traditionalists, under the leadership of John McAuley, rejected the cosmetic name change and vowed to fly the flag for the dregs of the National Front. Among the most prominent of these was south London nazi, Terry Blackham, recently released from prison on charges related to supplying firearms, and Warren Glass, from west London. Both have close links to Combat 18 (C18) through papersales in west London.

During October the arrival at the port of Dover of Roma asylum seekers became the focus of alarmist and racist articles in the British media. They presented their arrival as an "invasion" or "flood" of a bunch of scroungers attempting to exploit the British public (ie "Bouncing Czechs"). In fact, the Roma have well-founded and legitimate fears of persecution in both Slovakia and the Czech Republic.

Research by the Czech non-governmental organisation HOST has documented 1250 racially motivated attacks, resulting in at least ten deaths, of Roma between 1991-97; the figure is certainly an underestimate as there is little point in reporting incidents to a notoriously racist police force and hostile criminal justice system. As recently as September a Romani woman was killed in a racist attack.

It was against this background, and conscious of the symbolic significance at least half a million gypsies exterminated in the concentration camps during the second world war, that the NF decided to mobilise in November. Lacking the support to attract numbers from their depleted ranks they used their C18 links but still managed to muster less than 50 supporters. Their march, heavily protected by police, went only a few hundred metres before being confronted by an alliance of anti-fascist protesters blocking their path. Despite police attempts to clear the route by setting dogs on the protestors it was the nazis who backed down, abandoning their march and leaving Dover. Six anti-fascists were arrested, two were released without charge and 4 were released on bail.

The facing down of the NF/C18 in Dover was a success, but it should be recalled that the majority of the media effectively endorsed the fascist position, if not the fascists themselves. The role of the police, in protecting them, in order that they be allowed to disseminate their message of violence and hate against people driven to seek refuge after being victimised and tormented in their own land, is not unexpected. Other fascist groups, like the BNP, will not abandon Dover as easily as the minuscule and opportunistic NF; rather they will play a long game, building "rights for whites" campaigns and exploiting the gullibility and sectarian interests of the media.

European Roma Rights Centre press release on events in Great Britain 22.10.97.

GERMANY

31,000 CDs of extreme-right music confiscated

After a year-long investigation into the distribution of extreme-right music, the police in north Germany have confiscated thousands of CDs as well as manufacturing material and t-shirts with right-extreme prints. Three people have been arrested and

further seventeen people are being investigated by the police. Orders for the CDs have been processed via Kiel (north Germany) by a letter box company in Copenhagen. It is assumed that well-known German neo-nazi, Marcel Schilf, is involved in this company and has used the profit to support Danish neo-nazis. According to information from the Berlin antifascist *Info-Blatt*, Schilf is one of the main wirepullers in the Danish nazi-music business and has good contacts with the NSDAP-AO.

The investigations were triggered off after a raid of a record shop in Kiel in 1996 when the police discovered a nationwide network of producers and traders. Meanwhile, there are 90 legal proceedings in other federal states.

die tageszeitung, 22 & 23.11.97; *Antifaschistisches Info-Blatt*, 1997.

Neo-nazi sentenced to life imprisonment

The neo-nazi Kay Diesner (25) has been sentenced to life for the murder of a police officer and the attempted murder of three other people. He has to serve a minimum sentence of 15 years before he can apply for parole. On 19 February 1997, Diesner entered the office of the PDS, the successor party of the SED, in Marzahn (East Berlin), and shot Klaus Baltruschat, wounding him seriously. He later fatally shot one police officer and wounded another when he was stopped by police. A hot pursuit with several police cars and repeated exchange of gunfire followed. The life sentence for Diesner is the highest sentence ever passed in a neo-nazi trial. According to the Interior Minister of Thuringia, neo-nazis have established structures and logistics superior to those in west Germany.

die tageszeitung, 2.12.97.

Racism & fascism - in brief

■ **UK: Stephen Lawrence inquiry:** The preliminary hearing into the murder of Stephen Lawrence, the black youth who was stabbed to death by a notorious racist gang in Eltham, south London, in April 1993, opened on 8 October. The purpose of the preliminary hearing, at Woolwich Town Hall, is "to explain the procedures of the inquiry and to consider applications for legal representation...". Former judge and SAS colonel, Sir William McPherson, said the hearing would focus on the killing, the police investigation and the unsuccessful prosecutions of five white men accused of being Stephen's killers. Witnesses to the murder have been offered limited immunity so that evidence given before the inquiry will not be used in any criminal prosecution against them. McPherson has still to decide if he will instruct the five white men - Neil and Jamie Acourt, David Norris, Luke Knight and Gary Dobson - who are believed to have murdered Stephen to attend court. The full hearing will open in 1998, after the completion of a Police Complaints Authority report. *Home Office press release* 19.9.97.

■ **UK: racist crimes consultation document:** The government has published its proposals to pass heavier sentences for crimes that are "motivated by intentions amounting to racial hatred". The proposals are contained in a consultation document, "Racial Violence and Harassment" and will form part of the Crime and Disorder Bill. This will contain a provision that requires courts to treat evidence of racial "motivation" in any crime as an aggravating factor when sentencing. The Bill is also expected to contain separate, idiosyncratic, powers that Home Secretary, Jack Straw, terms "restorative justice", that will bring teenage offenders face to face with their victims to apologise so that "they can come to terms with the consequences of their crimes." The "Racial Violence and Harassment" consultation document is available: <http://www.homeoffice.gov.uk/rvah.htm>

■ **France: Cultural centre closed in Vitrolles:** The Front National-led council of Vitrolles has closed a cultural centre and meeting place which has fallen out of favour with the Front National. The mayor maintained that the closure was due to security reasons. *die tageszeitung*, 7.10.97.

■ **Germany: neo-nazi meeting:** Around 80 neo-nazis commemorated former SS officer Thies Christopheren who died last year at a meeting. They placed a wreath at his grave in Flensburg, North Germany. Christopheren was known for his book "The Auschwitz lie". He also organised the distribution of fascist material from Denmark where he lived until shortly before his death. After hotels in Flensburg realised the true nature of the "youth choir", two of three hotels cancelled the reservations. There were clashes between neo-nazis and demonstrators. *die tageszeitung*, 24 & 27.10.97.

■ **Germany/Netherlands:** German law enforcement authorities have banned a neo-nazi demonstration as well as a counter-demonstration organised by anti-fascist groups planned for the eve of the anniversary of the *Reichskristallnacht*. A large-scale police presence in Munich prevented any gatherings. The organisers of the counter-demonstration appealed against the ban on their demonstration which they said was unconstitutional. They criticised the authorities for not distinguishing between nazi groups and anti-fascists. *Frankfurter Rundschau*, 10.11.97; *die tageszeitung*, 4,5,8 & 10.11.97.

■ **France: Front National wins election:** Six months before the regional and departmental elections in France, the Front National candidate Gerard Freulet has won a by-election in the industrial town of Mühlhausen, southern Alsace, with 53,6% of the vote. The candidate of the red-green coalition polled 46,3%. The majority vote system for the department's parliament had in the past prevented an election victory of the FN. However, FN politicians are already in the regional parliaments in Alsace which uses the proportional representation system. During the last general election in May 1997, 25% of Alsacian voters voted for the FN which achieved its nationwide best result here. *die tageszeitung*, 30.9.97.

■ **Hungary: Prison sentence for arson attack on synagogue:** Two young Hungarians have been sentenced to two and half years and one year and two months respectively for an arson attack on the synagogue in Debrecen in 1995. *die tageszeitung*, 8.10.97.

■ **Hungary: Roma declared undesirable persons:** The decision of the council of the small east Hungarian town Sátoraljaújhely to evict several Roma families, about 60 persons in all, has caused nationwide protests. The town council has declared that these families present a danger to public security. They would not be able to integrate into the town's life and would cause hygiene problems. The Ombudsman of the Hungarian parliament has called this an apartheid policy against Roma. After the council's refusal to withdraw the decision, the state prosecutor has launched proceedings against the mayor and the council. The Human Rights Committee of the Hungarian parliament has submitted a resolution condemning the council's decision and their discrimination of Roma in general. *die tageszeitung*, 29.9.97.

Racism & fascism - new material

Justice at Last? The Lawrence Inquiry. *CARF* No. 40 (October/November) 1997, pp3-5. While welcoming the inquiry into the death of Stephen Lawrence (see *Statewatch* Vol. 3, No 3; 5:5, 6:3) as an opportunity to correct the failures of the police, CPS and judiciary, this article also warns against the danger of it being hijacked.

European Race Audit, Bulletin No. 25 (November) 1997. Latest issue of the bi-monthly report on the rise of racism and fascism across Europe. Available from IRR, 2-6 Leeke Street, King's Cross Road, London WC1X 9HS.

Scandinavia's new racisms. *CARF* No. 40 (October/November) 1997, pp10-11. This article examines the growth of anti-immigration lobbies in Scandinavia; it examines the extreme-right Progress Party in Norway and the intellectual drift to the New Right among academics in Sweden.

Samora Newsletter No. 5, 1997. The latest issue of the Newsletter contains an English-language round-up of developments related to racist and fascist groups in Norway. Available from: Antiracist Center, PO Box 244 Sentrum, 0103 Oslo, Norway.

Security - new material

"A very clever capitalist class": British Communism and state surveillance, 1939-1945, Richard C Thurlow. *Intelligence and National Security*, vol 12 no 2, 1997, pp1-21.

US "Puzzle Palace" seeks new clues to combat old threats, Barbara Starr. *Jane's Defence Weekly*, 3.9.97 pp35-36. Several organizational changes are underway at the US eavesdropping agency.

CIA plans expanded clandestine operations. *Jane's Defence Weekly*, 24.9.97 p6. CIA director George Tenet announced a resurgence of covert operations against so-called hard targets, assumed to be difficult targets in countries such as Iran, Libya and North Korea.

DIA opposes HUMINT move to CIA. *Jane's Defence Weekly*, 29.10.97, p11. The Defence Human Intelligence Service will not be transferred to the CIA, although close cooperation in two joint bases in the field will continue.

SECURITY & INTELLIGENCE

UK

MI5 "has security Pink List"

The internal security service, MI5, routinely keeps files on lesbian and gay civilians, according to a former Commander in the Royal Navy. Duncan Lustig-Prean, chair of Rank Outsiders, the support group for lesbian and gay service personnel, has stated that the intelligence agencies have created a "pink list" which includes anyone thought by MI5 to be homosexual.

Lustig-Prean is quoted by the Pink Paper as saying: "I know at least two of our members who are involved in security work have within the last month been required to use the pink list as part of their work...the private sexual preferences of ordinary citizens are also listed, cross-referenced to any partners or gay contacts known to the agencies. The list has to my certain knowledge, frequently been used in gay witchhunts which continue in the military." When asked by the Pink Paper for their reaction to the article MI5 declined to respond.

Pink Paper 5.9.97.

SWEDEN

Intelligence investigations?

The former National Police Chief from 1965 to 1977, Carl Persson, has claimed that it was the former Swedish prime minister Olof Palme who, together with the Justice Minister at the time, Herman Kling, personally approved that the security police, in spite of the new law forbidding them to work as a political police, should continue to register communists and leftists. The law was only intended to satisfy public opinion; there was one signal to the public, another order to the security police.

Persson claims that he will now tell the true story, since he is tired of hearing that the Security Police were responsible. They only followed orders, he says.

The Social Democratic government is to give special funding to a research project on IB, the former Swedish intelligence service. There will be no special obligation for the people involved to tell the truth, nor special powers given to the researchers to investigate and reveal information which is secret. In other words, there will be no investigation like the Norwegian Lund-report.

Four parties in parliament (the liberals, the Christian Democrats, the Left party and the Green Party), representing about 40-45% of the MPs have, however, decided to set and fund a special citizens committee, with the purpose of getting to the bottom of the history of the Swedish surveillance-society. It is however still an open question as to how this will materialise.

BOOKS RECEIVED

Women As Asylum Seekers: A Legal Handbook, Heaven Crawley. *Refugee Action, RWLG & ILPA* 1997, 228 pages, £10 pk. Starting from the premise that "women may experience persecution differently from men" this handbook serves as a guide for those who represent women asylum seekers. It contains chapters on the asylum determination process, procedural issues, persecution and "serious harm", the failure of state protection and "establishing the persecution ground."

Self-Determination and National Minorities, Thomas D. Musgrave. *Clarendon Press* (Oxford) 1997, 290 pages, £50 hb. This book examines the relationship between self-determination and minority rights in international law.

Arming the British Police: The Great Debate, Roy Ingleton. *Frank Cass* (London) 1997, 146 pages, £25 hb. This slim volume considers the pros and cons of arming the UK police and concludes that "it would seem that the arming or otherwise of the police has little effect on violent crime." It suggests as an alternative, "better means of non-lethal protection and of subduing violent assailants", such as CS gas.

Justice: redressing the balance, Roger Smith. *Legal Action Group* (London) 1997, 120 pages, £9.95 pk. With the Middleton review of legal aid and civil justice this timely volume examines how the government might reform publicly funded legal services as envisaged in the Labour Party's 1995 statement on policies legal services and civil justice. It examines the history of publicly funded legal services since 1945 and produces a statement of principles to underlie policy.

The European Union and National Defence Policy, edited by Jolyon Howorth and Anand Menon. *Routledge*, 1997, 186 pages, paperback, £15.99.

Britain in Europe: initiatives for the 1998 Presidency, edited by Elizabeth Barrett and Stephen Tindale. *Institute for Public Policy Research (IPPR)*, November 1997, 100 pages, £7.50. Includes a Chapter by Michael Spencer on: "Human Rights in a Developing Union: priorities for the 1998 British Presidency".

Justice and cooperation in the European Union, edited by Gavin Barrett. *Institute for European Affairs*, Dublin, 1997, 244 pages, paperback, £15.00. Series of essays covering all aspects of the "third pillar" from a largely uncritical perspective.

Terrorism and international law, edited by Rosalyn Higgins and Maurice Foley. *Routledge*, 1997, 382 pages, hardback £65.00. Includes chapters on the UK, France and EU cooperation.

Undercover policing and accountability from an international perspective, ed. Monica den Boer. *European Institute of Public Administration*, Maastricht, Netherlands, 1997, 218 pages, pk, NLG 65.00.

The Veil report and the new Commission proposals: contrasting rights for EU and non-EU nationals

The Veil report, the report of the High Level Panel on free movement of persons, was commissioned in January 1996 to find out what obstacles are preventing free movement rights from becoming a reality for EU citizens. It was completed and presented to the European Commission in March 1997. When it was researched, there were 370 million EU nationals in the member states, of whom 5.5 million live in a member state other than their own, and 12.5 million long-settled non-EU citizens.

The panel found obstacles everywhere: internal border checks have not been removed; administrative rules require free-movers to obtain temporary residence cards, on pain of (illegal) expulsion or (illegal) denial of benefits; there is too much bureaucracy, and with it delay, excessive fees, demands for too many documents. There is no protection against expulsion for the self-employed who stop work, or for the long-term unemployed. Those made redundant find it very difficult to get residence cards renewed; and proof of resources is illegally demanded. Access to the labour market in other member states is hindered by the massive delays in the mutual recognition of professional qualifications, no mutual recognition for vocational qualifications, demands for too high a level of language proficiency and reservation of too many public sector jobs to nationals. Free movement for artists, in education and vocational training, for researchers, trainees and voluntary workers is very difficult in practice because it depends on the possession of adequate resources and health insurance.

One of the main obstacles to free movement for EU citizens is the chaos surrounding social security and welfare. Despite almost three decades of regulations and directives, there are no common conditions for the payment of benefits, no harmonisation of schemes, many pre-retirement benefits are not portable, and cross-border health care is inadequate.

The situation of three groups of non-EC nationals with some free movement rights is examined. Non-EC nationals who belong to the family of an EC national have family reunion rights more generous than for long-settled non-EC nationals who want their families to join them. But even EC nationals' family reunion rights still exclude unmarried partners, non-dependent children and elderly relatives, require the head of household to prove there is adequate accommodation, and give no protection against expulsion to a spouse on divorce. The report recommends equalising family reunion rights for EC and non-EC households, and making them accord more with the realities of modern family life. It finds the situation of refugees who try to bring family to join them precarious (which is in violation of international law norms) and recommends that they have the same family reunion rights as nationals of the member state where they live. And it criticises the "burdensome, slow and extensive formalities" affecting working and residence rights of non-EC workers seconded by EC firms to work in another member state. It recommends that all "third-country nationals" legally resident and insured in a member state should have the right to travel freely within the member states and should receive the same level of social protection as nationals.

The report calls for far greater transparency in the making and application of the rules, and far more information for those interested in moving, to make them aware of the requirements and the sources of help. The call is for more free movement and rights training at every level, from lawyers and national officials to members of interest groups and members of the public. Ironically, a Commission information initiative, Citizens First,

which was launched in the member states in November 1996, was not introduced in Britain because of the then Conservative government's sensitivity that it would inflame the splits within the party in the run-up to the election. Citizens were deprived of their right to be informed by party political considerations. The panel recommends a single Commissioner to deal with free movement, working with the Ombudsman and the European Parliament Committee on Petitions, and wants to see a treaty right of access to information.

The report's main omission is the restriction on free movement on public policy grounds arising from the work under the Third Pillar such as Europol and the European Information System, and the lack of emphasis on the restrictions placed on free movement by poverty. The small numbers exercising free movement rights make it abundantly clear that what has been created is no more a "People's Europe" than it was three decades ago.

Commission proposal

For a decade, European states have been busy closing their borders to foreigners, whether workers, family members or refugees. The rights of those already settled in Europe, and the extent to which they are to benefit from the open borders envisaged by the drafters of the Single European Act, have been sadly neglected, remaining at the bottom of every agenda since Palma. The European Commission has repeatedly urged member states not to ignore their resident "third-country nationals", who five years ago made up an estimated 16 million people, and in particular to grant them free movement and citizenship rights to prevent the formation of a non-citizen underclass in Europe.

In July, the Commission produced its own draft Convention on the admission of "Third country nationals" to the member States of the European Union, using the right of initiative shared with member states under Title VI of the Treaty of European Union. Although at present under the Third Pillar (matters of common interest), the Commission nevertheless hopes to present the proposals as a directive once the Amsterdam Treaty is in force.

The draft draws up common criteria for entry and residence for non-EEA workers and the self-employed, students and family members, and sets out the rights proposed for long-term residents. Rights to enter for employment (apart from seasonal or trans-frontier work) are severely restricted, short-term and limited to jobs which cannot be filled by EU or EEA citizens or by those foreigners already part of the EEA labour force. Provisions for the self-employed are not so restrictive, demanding only that those entering have "sufficient" resources and benefit employment in the member states, presumably by the creation of more jobs or by the use of local services. Admission for study or training is regulated, and there would be no switching to employment. Those coming in to live on an independent income without working would have to show that their funds were derived from legal activities as well as that they were adequate.

All of the former categories of entrant would be able to bring in family members after a year (except students, who must wait two years), provided that they will remain in the EU for another year. The relatives eligible are spouse and minor unmarried children, with a discretion to admit elderly parents and grandparents, and grandchildren. The range of relatives is significantly less generous than those EU workers can bring in,

who include anyone who was living under the same roof as a dependant. Family members normally would be banned from taking work in the member state of residence for six months.

The Commission proposes that after five years' lawful residence, foreigners allowed to stay for another five years should receive formal recognition as long-term residents, with rights to work, study, set up in business and bring relatives. They should have some protection against expulsion, and equal access to employment, training, housing, education, trade union and association rights as EU nationals. They should be able to move to other member states for employment and study.

What the draft omits is access to citizenship, either of the member states or of the Union. This is a lost opportunity.

Member states should not be free to exclude from citizenship those born on their territory, and should not be allowed to maintain a ban on dual citizenship, which forces unfair and unnecessary choices. The proposal should, too, have put forward common criteria for naturalisation for long-term residents. But at least the Commission has acknowledged that resident foreigners in the EU have rights, and that those rights need to be consolidated and amplified.

European Commission: Rules for the Admission of Third Country Nationals to the Member States of the European Union, proposal under K3(2)(c), 29.7.97.

UK: Human Rights Bill

On 3 November, the Human Rights Bill had its second reading in the House of Lords (where it was introduced). The Bill will incorporate the European Convention on Human Rights into UK law, by making it unlawful for a public authority to act in a way incompatible with rights under the Convention. Victims of violations will be able to bring proceedings against the authority concerned under the Act, or rely on the Convention in their defence. Thus a person facing a criminal charge in which evidence was obtained by illegal surveillance would be able to rely on Article 8 (right to respect for privacy of home and correspondence) to argue that the evidence should not be admitted. An immigrant facing deportation would be able to argue that Article 8 (right to respect for family life) or Article 3 (right not to be subjected to torture or inhuman or degrading treatment) prevented or militated against his or her deportation. And a parent denied contact with his or her child would be able to argue that Article 8 rights were violated.

The Bill's Schedules set out the Convention and the Protocols signed by the UK. These include the right to life (Art 2), to freedom from inhuman or degrading treatment (Art 3) and from forced labour (Art 4), the right to freedom (Art 5) and access to justice (Art 6) and the principle of non-retrospectivity of penalties (Art 7); the right to respect for family and private life (Art 8); freedom of conscience (Art 9), expression (Art 10) and assembly (Art 11), rights to marry and found a family (Art 12), and non-discrimination in their exercise (Art 14). Protocol 1 rights include rights to property, education and free elections. The right to an effective remedy for the exercise of the rights (Art 13) has been omitted; the government claims the Bill itself fulfils Art 13.

The rights enumerated do not include the ECHR's Protocol 4 (which grants rights not to be imprisoned for debt; rights to enter and move freely within the home state and the right not to be expelled from it, and the right of aliens not to be collectively expelled. The Bill's accompanying Command Paper, *Rights Brought Home*, explains that "existing laws on different categories of British nationals must be maintained", which prevents ratification of Protocol 4. Protocol 6, which prohibits the use of the death penalty, is also unsigned and omitted, because the government wants the option to reintroduce the death penalty for murder. It says this is a matter not of constitutional principle but of individual conscience. The final missing protocol, Protocol 7, provides that aliens are not to be expelled without a legal decision and review, that criminal convictions carry rights of appeal or review against conviction and sentence; that victims of miscarriages of justice are to be compensated; there should be no double jeopardy in the criminal law, and spouses should be treated equally. The government says this protocol will be incorporated once legislation guaranteeing

spouses' equality in matrimonial property is in place.

The Bill keeps in place the UK's 1988 derogation from Art 5 which is required to keep the power of detention without charge for up to 5 days under the Prevention of Terrorism legislation. It provides that this and any other derogations can be maintained for five years, and can be renewed by resolutions of both Houses of Parliament. There is also a reservation on the right to religious education in accordance with parental conviction, limiting the right to what is compatible with the provision of efficient instruction at reasonable public expense, which is subject to ministerial review at five-yearly intervals.

The Bill will not allow the courts to strike down legislation incompatible with the rights protected, but the judges of the higher courts will be able to make a declaration of incompatibility, and ministers will then be able to amend the offending law by way of remedial order. Existing legislation will be interpreted in accordance with the Convention whenever possible, while ministers promulgating Bills will in future have to declare whether its provisions are compatible with the Convention. In this way the government hopes to inculcate awareness and respect for human rights in the executive as well as the legislature. However, the idea of a human rights audit in which all legislation currently in force is reviewed for compatibility, is not on the agenda. We can expect a rash of challenges once the Bill is law, on provisions such as those which abrogate the right to silence (in the Criminal Justice and Public Order Act 1994); the removal of bail rights for those with convictions for the offence with which they have been charged (Arts 5 and 6); and the failure of the asylum laws to provide a remedy for those who are not refugees but who fear torture or other inhuman treatment (Arts 13 and 3).

Other concerns expressed by human rights lawyers and organisations are that only victims will be able to take cases under the Bill, excluding pressure groups (Liberty, Public Law Project, Greenpeace, JCWI, CPAG etc) which have to date played an important role in challenging executive action. This is of particular concern because of the failure to create a Human Rights Commission which, like the Commission for Racial Equality (CRE) or the Equal Opportunities Commission (EOC) could provide assistance and representation for court cases, and because of the cuts to civil legal aid which will impose an impossibly high threshold of a 75% chance of success before legal aid is granted. The Lord Chancellor's indication that there will be a public interest fund for this kind of litigation has not been fleshed out and cannot be relied on as the sole source of funding for human rights litigation. Several members of the House of Lords expressed grave concern that the Bill's meaning and effect would be lost if there is no legal aid to enforce it.

Another concern is the narrowness of the rights protected.

As Liberty's briefing paper points out, the ECHR includes no time limit on administrative detention, no minimum conditions of detention, no rights for children or sexual minorities, no right to information from public bodies. Rights against self-incrimination, of access to a lawyer and to jury trial have not been implied. The government's response to the derogation and to the unsigned Protocols is also worryingly indicative of an eclectic attitude which is inconsistent with an acknowledgement of the fundamental nature of the rights. The continuation of the PTA derogation of rights to freedom, in particular, is crying out to be challenged: the criterion for derogation is "a public emergency threatening the life of the nation".

The adoption of a model which does not allow judges to strike down legislation accords with the reluctance of most of the judiciary to trespass on the province of the legislature. Many judges profoundly dislike and distrust the notion of rights-based law. Lord Browne-Wilkinson, speaking at a seminar on the Bill in October, said the English judiciary preferred the "dirty dog" approach to the law: work out who the dirty dog is and don't let him win. He was only partly joking; English judges, conservative virtually to a man, pride themselves on their pragmatism, are

often anti-intellectual and can adopt a distressingly dishonest approach to the case-law if it does not accord with their desire to see the "best man" win. Browne-Wilkinson's admission rang true, and it is alarming. Many victims of human rights violations are "dirty dogs" (or perceived as such by the authorities); it is because they are assumed to be guilty of something that they are tortured, or unlawfully detained, or isolated. It is likely that only the Strasbourg court, or the continued threat of recourse to it, will force the judges into a more rights-oriented framework. (Although the Strasbourg court itself is in danger of succumbing to the "dirty dog" approach, particularly in cases involving immigration or national security.)

Most of the media have become fixated on the freedom of expression v right to privacy debate; but there are far more important issues to be addressed in relation to the Bill. There is a danger that, unless legal aid or other funding is available for proceedings under the Bill, its biggest users will be corporations arguing about planning restrictions as alleged breaches of their property rights; regrettably the Bill follows the Convention in the absurdity of giving corporations, seen as "legal" persons, human rights which should only be accorded to human beings.

New Labour, New Ireland

An analysis of the talks

The British Prime Minister, Tony Blair, has put a May 1998 deadline on the talks over the future of Northern Ireland currently taking place in Castle Buildings, Stormont on the outskirts of Belfast. At that point, he proposes to hold a referendum within Northern Ireland on a package of proposals which he hopes will have been agreed at the talks. The Irish government is prepared to conduct a referendum at the same time in the Irish Republic. The two governments may decide to implement new structures in any event, whether or not supported by the parties and North/South referenda.

Not all parties are participating in the Stormont talks. Ian Paisley's Democratic Unionist Party (DUP) and lawyer Robert McCartney's United Kingdom Unionist Party (UKUP) withdrew once it became clear that Sinn Fein were to be admitted to the talks before any decommissioning of IRA weaponry. It was insistence on prior decommissioning by the Major government which contributed to the breakdown of the first IRA ceasefire. Decommissioning is now being dealt with by the Decommissioning Commission, formally established on 24 September. This body has three members. It is chaired by the Canadian General John de Chastelain who was involved in the original Mitchell Commission, and the other members are the US diplomat Donald Johnson and Brigadier General Tauno Nieminen from Finland.

Under the Northern Ireland (Entry to Negotiations, etc) Act 1996, Sinn Fein were expressly forbidden to participate in the talks in the absence of the restoration of the IRA's ceasefire of August 1994, even though two of the party's talks team, Gerry Adams and Martin McGuinness, were elected as MPs in the British general election in May. Another party member, Caoimhghn Ó Caoláin was elected to the Dail in the Irish election in June and now participates in the British-Irish Interparliamentary Body, a 50-strong forum made up of 25 British and 25 Irish parliamentarians, which has met every six months since 1990. The IRA renewed the ceasefire in August and Sinn Fein were admitted to the talks in September. Also present at the talks are the Women's Coalition and a Labour grouping. Women's Coalition representatives are routinely verbally abused by unionists. The Labour grouping has a negligible profile.

In the absence of the DUP and UKUP, the unionist perspective is represented at the talks by the Ulster Unionist Party led by David Trimble and the two small loyalist parties, the Popular Unionist Party and the Ulster Democratic Party, aligned respectively to the armed groups of the Ulster Volunteer Force and the Ulster Defence Association. Until recently, the loyalist armed groups, including the Ulster Freedom Fighters (UFF), the Red Hand Commando and the Protestant Action Force, were part of a federal structure known as the Combined Loyalist Military Command; the CLMC regularly issued statements about the status of the loyalist ceasefire whenever this appeared to be contradicted by actions on the ground. By January 1997, the RUC were openly stating that all the loyalist groups had breached the ceasefire. This did not, however, result in the ejection of the PUP and the UDP from the talks, nor did it stop the British government from talking to the loyalist parties and inviting them to Downing Street. The CLMC broke up during the summer amidst increasing tensions between the UDA/UFF, UVF and the breakaway Loyalist Volunteer Force. The latter is strongest in the Portadown area, the base of Billy Wright ("King Rat"), widely regarded as the leader of the LVF and who is currently serving a prison sentence. Eight Catholics have been killed by Loyalists since the 1994 ceasefire.

Slow talks progress

At the time of writing (early December) little progress appears to have been made at the talks. The substantive phase of the talks began in the last week of September. Most of October was taken up with the parties tabling position papers under six headings: principles and requirements; constitutional issues; nature, form and extent of new arrangements; relationships with other arrangements; justice issues; and rights and safeguards. There then followed a week of bilateral meetings, with the exception of the UUP and Sinn Fein. Trimble's team refuses to talk to the Sinn Fein delegates. Its position papers in some cases consisted of a few sentences only.

The position papers were then analysed by officials in search of common ground or any proposals which might fit with the Framework document agreed between the Irish and British governments in 1995. Towards the end of November, most

assessments agreed that the talks had made no worthwhile progress. The Ulster Unionists were under some pressure from the DUP to withdraw from the talks which, according to Paisley, involved negotiating away the non-negotiable - Northern Ireland's union with Britain. Paisley, McCartney and a few renegade Ulster Unionists have been holding a series of mass meetings to mobilise opposition to the talks. But without an obvious target in the short term, these rallies are not as yet developing into wider and more disruptive forms of protest. Nationalists began to accuse the Trimble wing of unionism of trying to wreck the talks from within, while Paisley was seeking to wreck them from without. Friends of the Union leader Viscount Cranborne invited up to 100 unionist politicians and sympathisers to his estate in Hertfordshire for the weekend at the end of November, in an attempt to unite the factions of unionism around a common "bottom line".

Meanwhile, the Irish Independent carried a story early in November that there was significant dissension within the republican movement. This was based on reports of a number of resignations from the IRA's twelve-strong executive and the seven-member army council (the IRA's ruling body) during a convention held in the summer, followed by resignations from Sinn Fein in Dundalk in the first week of November. The Dundalk defectors complained that by signing up to the Mitchell principles of democracy and non-violence, the Sinn Fein leadership was in effect giving up on Irish unity and preparing to accept a settlement based on the continuation of British rule and the maintenance of the North/South border. An Irish Times journalist, Suzanne Breen, followed this up with a report that 38 members of the IRA's South Armagh battalion had resigned. The idea of a split within republicanism was given another airing on 5 December in the BBC Northern Ireland current affairs programme Spotlight. Delayed for two days because of a threatened legal action, the programme named Adams and McGuinness as members of the IRA's army council. Such claims have been made repeatedly over the years, yet unionists latched on to the programme as a reason for Blair to cancel his meeting with Adams scheduled for Downing Street on 11 December, the first such meeting between a British Prime Minister and Sinn Fein since the Treaty negotiations in 1921. On 7 December, a new republican group was formed in Dublin called the 32 County Sovereignty Committee.

Unionists reacted to the reports of Sinn Fein resignations by seeing them as a tactical ploy to force the pace of the talks and to get concessions from the British - the republicans were simply preparing their excuses for more war. The Spotlight programme was unable to corroborate the Suzanne Breen story and, if anything, produced evidence which contradicted it. Certainly, whatever the scale and nature of recent republican disaffection, there have been no indications that dissidents have switched their allegiance to Republican Sinn Fein or to the Continuity IRA which has engaged in sporadic bombings during the IRA's ceasefires.

Towards a "settlement"?

Early in December, the British and Irish governments began to make optimistic statements on the likely shape of a settlement. Although the Irish Foreign Affairs Minister, David Andrews, upset unionists by publicly suggesting that cross-border bodies would have executive powers "not unlike a government", the Irish government has made it clear to Trimble that it will hold a referendum to alter Articles 2 and 3 of the constitution. It has been a longstanding objective of unionists to persuade the Irish government to revise article 2 which claims the North as part of "Ireland". The current Fianna Fail Taoiseach, Bertie Ahern, has assured Trimble that any referendum in the South will include a modification of the constitution to include what has come to be referred to as the "principle of consent". What this means is that

there will be no change to the status of Northern Ireland unless a majority within the North wish it. This position has been Irish government policy for many years, but now it is proposed to incorporate it within the 1937 constitution. Ahern is expecting the British to modify their territorial claim over the North through a similar qualification to section 75 of the Government of Ireland Act 1920.

Reviewing the talks' progress on 1 December, Northern Ireland Secretary of State Mo Mowlam admitted to the British-Irish Inter-Parliamentary Body that "we have not so far seen specific, focused deal making on the key issues". She went on, however, to describe "the discernible and possible elements of an overall settlement". She confirmed that it was likely that constitutional modifications would take place in order to recognise the principle of consent. She predicted north-south structures with real responsibility, accountable to government institutions in Northern Ireland and the Republic. Mowlam also talked of permanent "intergovernmental machinery" and also of some wider structures which would include representatives from Scotland, Wales, Northern Ireland, and the Irish and British governments. The latter appeals to unionists because it symbolises the traditional idea of a British Isles-based United Kingdom of Britain and Ireland. This mishmash of governmental structures will in some respects institutionalise existing practices, with the additional element of a reconstructed devolved administration in the North. All of this allows the British to portray the Northern Ireland problem as if it were simply a normal part of its programme for constitutional change - just a variation on Scottish and Welsh devolution. Furthermore, British-Irish relations, whether "East/West" or North/South, can be seen as an extension of European Union intergovernmental and interregional practices. The British hope that Trimble and the minor loyalist parties can be persuaded to go along with this, knowing that Hume's "nationalist" Social Democratic and Labour Party has never proposed anything more radical in terms of cross-border arrangements.

The party most likely to object to the package is Sinn Fein which subscribes to the right to national self-determination as proclaimed in the 1916 Rising and as enshrined in the UN's International Covenant on Civil and Political Rights. On this basis, Sinn Fein rejects the principle of consent because it amounts to a unionist veto against a united Ireland by granting sovereignty to the majority population (marginally unionist) of the "artificially" created entity of Northern Ireland. Sinn Fein supporters are unlikely to swallow the Mowlam/Ahern package because it does little to advance the democratic rights of those who live throughout Ireland to elect an all-Ireland executive, without interference from Britain. They are even less inclined towards the proposed reform of the political system in the absence of progress on a range of human rights questions, from prisoners to policing and anti-discrimination policies. Adams has stated publicly that Sinn Fein will not support a settlement without the release of all political prisoners (republican and loyalist).

Human rights issues

In her December review speech, Mowlam made references to "principles of fairness, justice and equality of opportunity". This mention does at least seem to acknowledge that there is a substantial agenda for change within Northern Ireland itself. In theory, justice issues should be central concerns of the talks; in practice the Labour administration is implementing much of the programme and policies of the previous direct rule team. Although Mowlam has brought a new, friendlier style to Stormont Castle, she is on the record as complaining about the upper echelons of the Northern Ireland Office and, following a number of leaks relating to security matters, of not knowing who she can trust. In other words, even if Mowlam wanted to pursue

different policies, she would have to confront the vested interests and political agendas within the Security Service, the British Army, the RUC and Prison Service, as well as the Northern Ireland Office. As the longest ever serving Minister in Northern Ireland, Sir Richard Needham, admitted in March during the Prevention of Terrorism Act (PTA) renewal debate, "many security issues are clouded in secrecy... one of the most disappointing and difficult aspects of the task that we undertook in the 1980s in bringing people together was our attempt to involve the Army and the Royal Ulster Constabulary in our activities... but the security forces generally followed their own agenda, about which the rest of us knew little".

The most visible change so far within the NIO is the retirement of the head of the Information Service, Andy Wood. The Information Service was widely criticised in January for its plan to screen a series of advertisements comparing Nazi Germany to the North. The idea was to juxtapose pre-war footage of Nazi attacks on Jewish property with images of burnt out schools and churches, the intention being "to draw illustrative parallels between behaviour there and then and behaviour here and now".

Mowlam has emphasised four priorities: guaranteeing human rights, combatting labour market discrimination, the parades issue and making policing more accountable and acceptable to both communities. Both Jack Straw, as Home Secretary, and Mowlam have promised legislative change on the human rights front with the commitment that the European Convention of Human Rights will be incorporated within a UK-wide Bill of Rights. As predicted in previous issues of *Statewatch*, the existing powers of the PTA and the Northern Ireland (Emergency Provisions) Act are being actively reviewed to bring them in line with ECHR rulings. The dropping of the power of internment was one such "rationalisation". In the longer term, Straw has announced, there will be new, permanent counter-terrorist legislation in keeping with the recommendations of the Lloyd Commission. It is not immediately evident how the new legal framework will change the direction of security policies or remove those elements intent on militaristic and covert responses to republicanism, and it is therefore unclear how it contributes to the promotion of human rights.

An area which might have attracted a positive response from New Labour is the reform of the Fair Employment Act of 1989. The Standing Advisory Commission on Human Rights has published the results of its extensive review of law, practice and related socio-economic policies, but again the government's response to date has been lukewarm. Tony Worthington (the Minister responsible) told a New York delegation in August that the "no-change" commitment on public expenditure would make it difficult to introduce new fair employment measures. Mowlam has stated that a full paper, the status of which is unspecified, will be published in the winter and this will reflect what the government intends to do with the New Deal, with or without fair employment considerations.

The parades issue was used by the security establishment to "break-in" the new Secretary of State. She was readily persuaded that the "bottom line" regarding the threatened Orange Order parade from Drumcree church down the Garvaghy Road, Portadown, was some Orange feet on the Garvaghy Road, and that nationalists could be compensated by a march into Portadown. But nationalists are less interested in the latter than being able to go to a bar or do their shopping without being attacked or even murdered, as was the case with Robert Hamill. On 27 April, Hamill left a club in the centre of Portadown on foot with two others when they were attacked by a loyalist crowd of around thirty. Hamill was kicked so badly that he died in hospital a few days later. The beating was observed by an RUC vehicle patrol which was parked nearby. They did not intervene, the RUC explained, because they were outnumbered and unable to get reinforcements. Eventually, six people were arrested and charged

with Hamill's murder. In November, three of the suspects were released because witnesses, presumably RUC officers, had withdrawn statements against them. Days later, two more of the suspects were released, prompting the Hamill family to launch a private prosecution against the RUC.

There have been other conflicts over the RUC in the Portadown area. Relatives of Robert Hamill were caught up in an incident in mid-November in which it is alleged the RUC assaulted Colin Duffy, Vincent Hamill, Sonia Conlon and others as they were leaving a bar in Lurgan. Duffy was arrested and charged with grievous bodily harm. Witnesses offered statements to the RUC but were refused. These witnesses were themselves later arrested. The Duffy arrest triggered a spate of rioting in Lurgan as resentment against RUC and army harassment boiled over. The significance of this latest incident involving Duffy's arrest is that he has been wrongfully imprisoned twice previously. In September 1996, Duffy was released on appeal against conviction for the murder of an Ulster Defence Regiment sergeant in 1993. The main evidence against him was supplied by Lindsay Robb, once a prominent member of the PUP and now serving a 10 year sentence for gun running. The prosecution withdrew the Robb evidence at the appeal and the case collapsed. Nine months after his release, Duffy was arrested and charged with murdering two RUC officers in Lurgan town centre in June of this year. The Committee on the Administration of Justice later called for his release, having identified 12 alibi witnesses. The murder charges were dropped and Duffy released on 2 October.

In addition to pushing the Drumcree parade down the Garvaghy Road, Mowlam promised to put the parades issue firmly in the hands of the Parades Commission with expanded powers. Specifically, she told unionists that new legislation, the Public Processions etc (Northern Ireland) Bill would broaden the Commission's duties to include "the law and practice relating to expressions of cultural identity". The prospect of having a Commission to regulate anything from the flying of flags to the use of the Irish language and the playing of Irish music, was so patently unworkable and dictatorial that this clause in the Bill was withdrawn in November. As if to compensate, she announced the setting up of a one-person Commission consisting of Sir Kenneth Blomfield, retired head of the Northern Ireland Civil Service, to advise on "possible ways to recognise the pain and suffering felt by the victims of violence arising from the troubles of the last 30 years".

Mowlam has not fared much better in the area of the security forces. The government has yet to respond to the demand for an internationally-based independent inquiry into Bloody Sunday, the Army's killing of 14 in Derry, January 1972. The residents of nationalist areas, particularly South Armagh, have been unimpressed by claims of a relaxation in surveillance and patrolling. The much publicised withdrawal of half of the 500-strong contingent of the First Battalion of the Parachute Regiment in November, was a clear attempt to persuade British audiences that the government was engaged in a serious and progressive de-escalation of security measures, but the Regiment was scheduled to end its six-month tour of duty in December anyway. The Ministry of Defence is investing a minimum of £300,000 in each of the nine barracks: Alexander, Abercorn, Shackleton, Kinnegar, Palace, Thiepval, Massereene, Lisanelly and Girdwood (*Hansard WA*, 6.11.97, Col. 322). The British Army has a total of 63 bases housing 100 soldiers or more in Northern Ireland. This does not include the 20 South Armagh hillforts, thought to hold up to forty soldiers. The South Armagh installations are among the official total of 25 surveillance towers in Northern Ireland, the others being on blocks of flats in Belfast and towers in Derry. Only one of these installations (a tower in Derry) has been withdrawn since September 1994. Total troop levels were 17,209 in September 1995 and 17,234 in September 1997 (*Hansard WA*, 6 Nov. Col. 323).

Similarly, the policing agenda is much the same as under the

previous administration. Although Labour policy used to be that plastic bullets should be withdrawn, the new administration has not taken up the issue. Mowlam's response to revelations that 8,500 faulty plastic baton rounds had been used in riot control since 1995 was that this would cause "distrust and worry in the community". More than 200,000 rounds have been withdrawn at a cost of £6 a piece. Campaigners against the bullets, however, have not been concerned whether the rounds travel at 170mph or the "medically recommended" 123-156mph, but that the bullets are fired at all, given the deaths and injuries they have caused. The RUC reacted with particular fury last January when the Inspector of Constabulary, Colin Smith, pointed out that the rules governing the deployment of plastic bullets in Northern Ireland were different from those in Britain. Smith was critical that the RUC guidelines permit the use of plastic bullets for "the protection of property and the detection of crime", recommending that they be used only when there is a threat to life, as in the ACPO guidelines.

More generally, policing policy is dominated by the assumption that the RUC can be made more accountable and acceptable to everyone, especially nationalists. The new Police

Bill for Northern Ireland will contain cosmetic reforms of the oath of allegiance, but the RUC will remain Royal. The position of the Chief Constable as manager will be strengthened, and the Police Authority will be relegated to an advisory function.

The Labour administration may prove to be more flexible on prisoner issues. The Irish edition of the Sunday Times has even carried a claim that all the Irish political prisoners in Britain will be repatriated shortly. But there are no indications of an intention to bring forward measures to decommission the prisons. In the highly controversial case of the detention and impending extradition of Roisin McAliskey, it is the Irish government, after representations by Bernadette McAliskey and Roisin's lawyer, Gareth Pierce, which has moved to persuade the German Foreign Minister, Klaus Kinkel, to drop the extradition demand. An independent investigation of the case has been carried out by former US Attorney General, Ramsey Clarke, and Heidi Bache-wiig, the Norwegian human rights lawyer specialising in extradition. They concluded, "there is no factual basis for the arrest, detention or extradition of Roisin McAliskey".

Austria: New legislation on immigration

The revision of the law on residence, immigration, asylum and access to employment for foreign nationals has turned into a farce on account of its underlying requirements, i.e. to turn away refugees and to strictly limit immigration.

The objective of the 1997 Asylum Law is to carry out asylum procedures at the border itself, and as quickly as possible. The intention is to avoid "abuse of asylum" or to establish that Austria is not responsible for accepting the asylum-seeker. These were also the underlying intentions of the asylum law which has been in force since June 1992 and which has led to a sharp fall in the number of applications for asylum to about 5,000 per year, whereas in previous years there had been a continuous increase with a peak of 27,000 applications in 1991. The impact of the restrictions which have been introduced can also be seen in the fact that this policy of deterrence did not result in higher rates of recognition. Originally the political justification for this policy was "to remain a country that would continue to accept those who were genuinely persecuted". The number of those who had been granted asylum dropped to less than one thousand per year (on average 9 per cent). Before the new law was introduced in 1991 2,500 (13 per cent) had been granted asylum according to the Geneva Convention.

Now border controls are to become so tight that Austria will be able to take an active role in the "sealing off" system of Schengen. The asylum procedure is conceived as one of suspended repatriation and expulsion.

Refugees who apply for asylum at the border will have to wait while a preliminary procedure is carried out prior to being granted entry. Without referring to the asylum authorities, the immigration authorities will reject the asylum applications of and refuse entry to those refugees whose application has already resulted in a negative decision. There is no actual provision for a right of appeal.

If refugees have not previously applied unsuccessfully and if they explicitly ask for an application form and questionnaire at the border, then the immigration authorities are supposed to hand them out. Those asylum seekers who have been turned away will have to wait for the decision of the Federal Asylum Office, either abroad or in no man's land, on whether they are likely to be granted asylum and hence whether they will be allowed entry. In this procedure no written documentation is used except the application form. There is no provision for legal assistance or the help of an interpreter. Hence the refugees are entirely at the

mercy of immigration officials. But only a few asylum seekers are expected to be subject to this immigration procedure which falls short of European minimum guarantees. Hardly any requests for asylum have been lodged at the border in recent years, but most refugees have entered the country illegally instead.

Refugees who have entered the country via the airport or have arrived directly from their countries of origin are not affected by this application form procedure. They are interviewed by the Federal Asylum Office about their personal reasons for leaving their country of origin and about their route, but their expulsion procedure is suspended for the first week after arrival during which time they are not allowed to leave a designated area. Asylum seekers who have been granted a residence permit or who have been given a preliminary residence permit by the Federal Asylum Office are exempt from this kind of detention. The UNHCR has the right to appeal if refugees are turned away under procedures at airports.

The 1997 Asylum Law fully implements international agreements that are aimed at speedily carrying out unlawful asylum procedures (according to a recommendation of the EU-Ministers competent in immigration matters) as well as to pass on responsibility for the examination of asylum requests and the admission of refugees to other countries (Dublin Convention of 15 June 1990).

The Third Country Rule which has been in application for years was amended in the new Asylum Law. Now an application for asylum is not rejected because the applicant has passed through or stayed in a third country which is deemed to be safe. There has been a major improvement in that the application for asylum is "inadmissible" and the procedure is halted if the asylum seeker can benefit from actual protection from refoulement under the Geneva Convention on Refugees in the third host country and if, contrary to the current legal position, this offers protection in the case of return. The authors of the law assume that all countries bordering on Austria are safe third countries. Hence it must be expected that only refugees who have entered the country directly via the airport may stand a real chance of having their application for asylum examined. All the others who have not already been turned away at the border will have to wait for a decision on whether the deportation to a safe third country is impossible in order to be eligible for a normal asylum procedure. Close family members of a refugee entitled to

asylum, as well as EEA citizens, are exempt from the third country rule.

The application is also rejected on account of inadmissibility, i.e. the same procedure is followed, if another country is responsible for the examination of the asylum application on the basis of the Dublin Convention.

With its provision for "manifestly unfounded" applications for asylum, the 1997 Asylum Law implements the objective agreed upon by EU-Member States to "avoid the clear misuse of applications", which is, however, in breach of the Convention. Applications by refugees from so-called safe countries of origin or applications which do not specify the risk of persecution or which cannot be attributed to fear of persecution for religious, ethnic or social affiliation or political ideas belong to this category. A request for asylum is also rejected as being manifestly unfounded if asylum seekers are unable to establish important facts (e.g. because they suffer from a trauma or find it difficult to fill in forms) or if the asylum authorities judge that the information given does not correspond with the facts.

There is fear that many refugees may not be able to benefit from a procedure according to the rule of law because of the intention of avoiding misuse. This fear is due to the current practice by asylum authorities of making arbitrary decisions and excessive use of the third country rule. In the case of manifestly unfounded and inadmissible applications the time limit for appeals is reduced to an unbelievable two days. This is clearly designed to avoid increasing the workload of the appeal authority, the recently set up Independent Federal Asylum Senate. As asylum seekers are to be rapidly returned to a third country or their countries of origin according to existing readmission agreements, the Independent Federal Asylum Senate has to decide on the appeal within four working days. If the appeal is successful, permission to enter the country (if outstanding) is granted and the first authority will again deal with the matter.

With these accelerated procedures it will hardly be possible to organize the support of interpreters, refugee counsellors and lawyers and even they will not be able to prepare a proper appeal within this very short time.

Asylum seekers whose application has not been processed according to the accelerated procedure are granted an extendible residence permit initially for three months.

In future, only those asylum seekers who have not themselves established contact with the security authorities, but have only made their application for asylum after having tried to "escape the clutches of the immigration law" will have to remain in temporary detention awaiting the outcome of their application. Temporary detention is only to be imposed, especially in the case of under-age refugees, if more lenient means, for example detention in private accommodation, do not seem acceptable because of the risk of an escape attempt.

Asylum seekers whose application has been rejected, but who cannot be turned away or deported are granted a limited residence permit, provided that the Federal Asylum Office has not rejected the asylum application on grounds such as a major criminal conviction. This kind of guaranteed admission is probably going to remain an exceptional act of clemency for current non-refoulement refugees or for the victims of armed conflict, as the 1997 Immigration Law does not include the legal right of residence on humanitarian grounds.

A major improvement is the extension of the right of asylum to spouses, under-age unmarried children and to the parents of a minor. However, in terms of humanitarian grounds and human rights there is a problem, since family members can forfeit their right to asylum in the case of divorce or if they come of age.

In accordance with the objective of the complete revision of the Immigration Law the principle of established residence has been introduced for refugees who are entitled to asylum. It will not be possible to revoke the right to asylum more than five years

after it was granted or eight years after the application was made for reasons that no longer apply, e.g. if circumstances in the country of origin have changed.

Any discussion regarding revision of the existing Federal social services system was excluded from the start. That means that the totally unacceptable state of affairs will be upheld whereby asylum seekers are arbitrarily admitted to the Republic's system for providing meals, accommodation or health care. The only change is that asylum seekers and non-refoulement refugees will no longer be banned from seeking employment.

Looking at this bill it is of course not possible to predict the actual consequences of some provisions and how they will translate into practice. But the new law limits legal protection for asylum seekers to such an extent that probably only a few refugees will be able to benefit from the real improvements.

The two years' ongoing debate on the Austrian Immigration Laws was conducted under the heading of "integration package"; the stated principle was "integration rather than further immigration". Over the last few years, the yearly quota set for "new arrivals" of third country citizens (Non-EU- or EEA-citizens) has been far below actual requirements. This quota was further divided between residence permits for workers, for managers, for the purpose of study, for private visit or for immediate relatives of foreign nationals already resident. This system which implied that family members who were entitled to be reunited with their family would have to wait for several years is retained, but as of next year the waiting periods for family reunions resulting from new applications may become redundant.

As it was not politically feasible to find a harmonised rule for right of residence and access to employment, the right of residence remains more or less linked to employment. Residence is considered permanent only after a period of ten years and it can only be revoked in the case of a criminal conviction. Within that period a residence permit is withdrawn if somebody has been unemployed for approximately one year. Within the immigrant's first year of residence and he or she had to fulfil a number of conditions in order to reach this state in the first place, four months of unemployment are sufficient for him or her to lose the hard-earned right to stay. Other reasons may come in as well, for example, accommodation which is deemed to be too small, road traffic offences or if a change of address has not been notified early enough.

The 1997 Immigration Law is characterised by the strict regulation regarding access to the labour market. No real efforts have been made to ensure better integration of immigrants. Persons who have joined their families are granted access to the labour market only after a period of eight years and children over 14 years of age are not entitled to join their families. Only second generation foreign youngsters who have spent more than half their lifetime in Austria enjoy protection from revocation of their residence permit and after having completed compulsory education are also granted a work permit. Apart from the worsening of conditions for young people the situation of women has deteriorated as well. In the case of divorce or the death of their spouse, women can again be expelled within four years of having been reunited with their families, the residence permit being linked with that of their spouse. Over years they are condemned to being dependants as legally they do not have the opportunity of seeking employment. Due to the fact that as of now dependants of Austrian nationals of third country origin are basically treated equally with the third country dependants of EU-nationals and enjoy the right to take up residence, the competence of the immigration police has been extended as regards combating so-called "fictitious marriages". The arrangement of "fictitious marriages" has become an indictable offence. Investigations by the immigration police carry sufficient weight to deprive a person of their right of residence if it was obtained by means of a fictitious marriage.

Apart from some minor improvements, such as measures to

make residence more stable, which are, however, still incomplete, the Immigration Law which will come into force in 1998 is characterised by complicated regulations that are often difficult for the parties concerned to understand. Within four years five different terms for "residence permit" were created, which require a great deal of work to integrate, so that the persons concerned may use the correct term, i.e. "the approval for residence to be granted for any purpose other than seeking employment".

So the bottom line is that there is not much to be said in favour

of this long delayed revision. Border controls have become tighter and anyone who has painfully secured himself or herself a place on the "island of the happy few", as Austria likes to portray herself, remains a foreigner. None of those who have - even in the short term - been ejected from the system of legal residence at some stage on account of the legal regulations introduced since 1992, which are partly unconstitutional, have been taken into consideration.

asylkoordination österreich/Austria

Council of Justice and Home Affairs Ministers

Report on the JHA Council on 4-5 December in Brussels and on new powers for customs officers

It was perhaps as well that the meeting of the Council of Health Ministers took place on the same day as the Council of Justice and Home Affairs Ministers (JHA Council), as few formal decisions were taken at the only JHA Council meeting held during the Luxembourg Presidency. The media in Brussels was totally preoccupied with the Formula 1 "tobacco sponsorship" row. The JHA Ministers agreed a "compromise" over the role of the European Court of Justice in the "Brussels II" Convention on matrimonial matters and agreement to allow the text of the Convention to be finalised in the near future drew little interest. Nor did their discussion of a Convention on the loss of driving licences which ended with the "experts" being asked to undertake further work - a EU euphemism for major differences have to be sorted out.

Indeed there were no final decisions on most of the major issues on the main Agenda: draft Convention on driving disqualifications, draft Convention on mutual assistance in criminal matters, draft Joint Action to create a judicial contact network, draft Joint Action on making it a criminal offence to participate in a criminal organisation, draft Resolution adopting a strategic programme for the customs administrations (third pillar aspects), the "influx of immigrants from Iraq", and the draft Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum.

The JHA Council did agree reports on: a) terrorism (internal and external threats), b) the state of organised crime in 1996, c) reports to be considered by the Luxembourg Summit on the fight against drugs, d) the extension of the role of Europol on the "trade in human beings" to include activities for the production, sale and distribution of pedopornographic material.

Summary of main discussions

Draft Convention on mutual assistance in criminal matters: the provisions of this draft Convention were summarised at length in *Statewatch* vol 7 nos 4 & 5). The JHA Council decided to split the draft Convention into a) the main Convention on which agreement is expected to be reached during the UK Presidency (January-June 1998) and b) the contentious issues on the interception of telecommunications (the EU-FBI surveillance of phones calls, e-mails and faxes), seizure of objects and the controlled delivery of drugs - these are now to be dealt with in a separate Protocol to the Convention with a target date for agreement in 18 months time (during the German Presidency in the first half of 1999).

Draft Joint Action on making it a criminal offence to participate in a criminal organisation: the object of the Joint Action is to replace the multitude of definitions of "organised crime" with one which will apply in all EU Member States. A number of issues are outstanding. First, a disagreement between Spain and the UK which reflects the different legal systems. The UK position is to leave the "offences" covered undefined so that its conspiracy laws could be used where two or more people

conspire to commit an offence or for offences carrying sentences of three years or more. Spain wants the limit to be lowered to only 12 months in line with the 1996 Convention on Extradition. Second, Belgium wanted the definition to include "by using intimidation, threats, violence, fraudulent manoeuvres or corruption", in other words for it to be more strictly defined. This was rejected by the JHA Council and Belgium is maintaining a parliamentary reserve and may, in addition, add a declaration to the effect that this is how it will interpret any definition. Another stumbling block was disagreement over extending "participation" in a criminal organisation to include lawyers and accountants and others where they act intentionally and with the knowledge that they contribute to the "success" of the criminal organisation.

A draft of the Joint Action contained the following Articles:

Article 1

Within the meaning of this Joint Action, criminal organization means the association of more than two persons:

- 1. with a view to acting in concert to commit crimes or other offences, in particular drug trafficking, trafficking in human beings and terrorism, which are punishable by a three-year term of imprisonment or a more serious penalty;*
- 2. to obtain material benefits or to influence improperly the operation of public authorities or public or private enterprises;*
- 3. and using intimidation, threat, violence, fraudulent practice or corruption, or having recourse to commercial or other structures to conceal or facilitate the offence.*

Article 2

To assist the fight against criminal organizations, each Member State shall undertake, in accordance with the procedure laid down in Article 5, to offer effective judicial cooperation in connection with offences based on the following conduct and to ensure that such conduct is punishable by criminal penalties:

1. Conduct by any person which contributes to the activity of a criminal organization acting with the common purpose of committing the following offences:

i. one or more offences in the field of terrorism within the meaning of Articles 1 and 2 of the European Convention on the Suppression of Terrorism,

ii. drug trafficking or

iii. other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons, punishable by deprivation of liberty or a detention order of a maximum of at least three years, even where that person does not take part in the actual execution of the offence or offences concerned and even where the offence or offences concerned are not actually committed.

2. The person's contribution must have been intentional and have

been made in the knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned.

3. The conduct described in paragraphs 1 and 2 may take the form of a conspiracy to commit the offence concerned.

Draft Joint Action to create a judicial contact network: again there was no agreement because of a Spanish reservation over the status of Gibraltar - the long-standing dispute between the UK and Spain. The network would involve the creation of a network of contacts between "judicial authorities" (national interior ministries, police and customs intelligence agencies) to combat organised crime. This is expected to be adopted at the JHA Council in March 1998.

Draft Resolution adopting a strategic programme for customs administrations: again delayed over the disputed status of Gibraltar. Spain wanted the territorial scope of the programme to include the words "Community customs territory" which excludes Gibraltar.

Report on influx of immigrants from Iraq: discussion on "the problem being caused by the recent massive influx of asylum seekers and illegal immigrants of Kurdish origin from Iraq". Germany, France, the Netherlands and Spain complained of the number of Kurdish people arriving in their countries from

northern Iraq. Greece and Italy protested that they were not mere "transit countries". The Council's analysis of questionnaires sent out to member states suggested that there were two main routes used: a) Turkey, Greece, Italy, France, Germany, Belgium and b) the "Balkan route" (Turkey, Bulgaria, former states of Yugoslavia, Hungary Slovakia, Czech Republic and Germany). The JHA Council considered several possibilities: to give technical assistance to strengthen the external frontiers especially in Greece and Italy; to conclude a readmission agreement with Turkey, through which most of these migrants first pass (under the guise of the EU-Turkey Association agreement on illegal immigration), to include nationals from third countries other than Turkey; and the examination by Foreign Ministers (General Affairs Council) of returning "Iraqi nationals" (Kurdish people) to areas covered by the US imposed "no-fly" zone.

Temporary protection: the JHA Council discussed a report, referring to a proposal from the Commission, which centres around the issue of apportioning the costs of looking after displaced persons with temporary leave to remain. The issue is being pursued by officials.

EURODAC: the draft Convention on EURODAC, a computerised database of the fingerprints of refugees and asylum seekers who seek to enter the EU, has been under discussion for

NAPLES II: Customs officials given extensive new EU powers

Another issue not on the agenda of the Council of Justice and Home Affairs Ministers was the *Draft Convention on mutual assistance and cooperation between customs administrations (Naples II)* which greatly extends the powers of customs officials and bodies. It is expected to be adopted without debate at the last Council of Ministers meeting before Christmas - the Fisheries Council on 18 December.

"Customs" are an issue covering both the "first" and "third" pillars of the EU. In the "third pillar" it is covered by Steering Group 2 on police cooperation and customs. Moreover, as a political issue it does not attract much attention. It is therefore ironic that the more contentious new policies - the interception of telecommunications and controlled deliveries - in the draft Convention on mutual assistance on criminal matters (see above) have been set aside so as not to endanger the main Convention and are to be the subject of a separate Protocol.

The Convention includes several new powers drawn from the Schengen Agreement and puts them into Community law.

Article 4 includes a definition of "personal data" as including "specific elements which are characteristic of his or her physical, physiological, psychological, economic, cultural or social identity."

Articles 8 and 9 cover the exchange of information between the "requested authority" and the "applicant authority". Article 11 covers "Requests for surveillance" for keeping a "special watch" on persons where there are "serious grounds for believing" they have infringed Community law or national provisions or "they are committing or have carried out preparatory acts with a view to the commission of such infringements". Article 16 covers "surveillance" and Article 17 "spontaneous information".

Title IV (Articles 19-24) deals with "Special forms of cooperation". Article 19 allows customs officials to operate on the territory of another Member State of the EU. Article 19.8 says that customs officers will be treated as coming under the laws of the state they are operating in "as regards infringements committed against them or by them". Quite different to the "immunities" being given to Europol officers (see next feature).

Article 20 introduces "Hot pursuit" into the territory of

another Member State "without prior authorisation". The "pursuing officers shall not have the right to apprehend" but may "apprehend the person pursued until the officers of the Member State in the territory arrive" where the latter are unable to intervene "quickly enough" (Article 20.2). Article 19.4.c says the "pursuing officers" must be easily identifiable and the "use of civilian clothes combined with the use of unmarked means of transport.. is prohibited".

Article 19.4.d says "pursuing officers may carry their service weapons" except where the requested Member State has "made a general declaration". The use of their weapons "shall be prohibited save in cases of legitimate self-defence".

Once apprehended the officers can search a person, use handcuffs and seize objects. If the person arrested is not a national of the Member State where they are apprehended they must be "released no later than six hours after arrest" (not including the hours between midnight and 9.00am in the morning) unless a request for "provisional arrest for the purposes of extradition" has been received "in any form".

Article 21 covers "Cross-border surveillance" and these officers too will be allowed to carry their "service weapons". Article 22 is on "Controlled deliveries". In the most bland and general terms the use of "controlled deliveries" (where the authorities know in advance and have under surveillance the transport or unlawful goods) are introduced. No definition is provided. It is simply stated that each Member State should ensure that "controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences" (22.1). Article 22 should be viewed together with Article 23 which covers "Covert investigations" allowing officers to operate "under cover of a false identity (covert investigators) .. on the territory of the requested Member State". They will be authorised "in the course of their activities to collect information and make contact with suspects or other persons associated with them". Article 24 allows for the setting up of "Joint special investigation teams".

Under Article 31 the Convention will enter into force when all 15 EU Member States have ratified it - but with the now usually qualification that a Member State can sign a declaration to give the Convention effect after 90 days.

Draft Convention on mutual assistance and cooperation between customs administrations (Naples II), report from the Working Parties on Customs Cooperation and Mutual Assistance to the K4 Committee, ref: 11089/97, ENFOCUSTOM 53, Limité, 9.10.97.

a number of years (see *Statewatch*, vol 6 no 4). The project is now entering the final phase where major outstanding issues are being discussed. First, the age at which it be allowed to take migrants' fingerprints is given as 14 years old. Second, whether it will be necessary to hold within the system the fingerprints of those recognised or admitted in one member state in order to prevent them seeking asylum in another. The Council decided that this information should be held for at least 5 years and it would decide at a later date on whether to keep or delete it. Third, it was decided that data would be deleted if an individual acquires nationality of a member state. The ideology of the JHA Council is to suggest that EURODAC will benefit the asylum seeker as they "should no longer have to face a long period of uncertainty regarding the possible outcome of their claim for asylum."

Programme of priorities

One report not on the agenda of the December JHA Council meeting was a draft Resolution on the priorities within justice and home affairs from 1 January 1998 to the entry into force of the Amsterdam Treaty (around 1999). It replaces the agreed programme of priorities of 14 October 1996.

Much of the programme is of a general nature and is already on the table in draft form. However, a number of objectives are of interest: *improving police and customs cooperation*: point c.: "strengthened technical cooperation, in particular with regard to interception of telecommunications" (this is also referred to under the "Horizontal" questions, issues affecting several areas); *improving cooperation with regard to immigration and asylum*: including: "harmonisation of national procedures for granting the right of asylum"; "harmonisation of the conditions of reception of asylum applicants"; "examination of the legal status of third-country nationals residing legally in the territory of the Member States"; "examination of forms of alternative protection (de facto protection and humanitarian residence permit)";

"strengthening measures to combat illegal immigration, especially illegal immigration networks and illegal employment"; "improving exchanges of information and cooperation with countries of origin"; "improving cooperation regarding the expulsion of illegal immigrants; problems of readmission"; "false documents: development of a harmonised image-filing and transmission system"; *horizontal issues*: incorporation of the Schengen acquis and the coordination of the work programmes of the JHA Council and the Schengen Executive Committee; examination of work structures in the light of the changes in the Amsterdam Treaty; developing a "Pre-Accession Strategy" along the lines of the High Level Group report on Organised Crime; developing the programmes under the Transatlantic Dialogue.

Senior Level Group report

Another report not on the JHA Council agenda, but rather on the agenda of the General Affairs Council, was the report of the Senior Level Group of EU-US officials in December. Experts from US law enforcement agencies are to visit the Europol Drugs Unit and EDU experts are to visit the US; "expert level meetings and seminars" have been held on mutual legal assistance, organised crime in Eastern Europe, cybercrime, financing of terrorism, and asylum requests; the first phase of a "joint Caribbean Drug Initiative" has been completed. Discussions are to take place on cooperation on extradition "so that international fugitives have "nowhere to hide"".

Presidency conclusions, Luxembourg Presidency, 12-13 December 1997, Luxembourg; Press release, Council of Justice and Home Affairs Ministers, 4-5 December 1997, Brussels; Draft Council Resolution laying down the priorities for cooperation in the field of justice and home affairs for the period from 1 January 1998 to the date of entry into force of the Treaty of Amsterdam, ref: 10021/1/97, JAI 24 REV 1, Limité, 28.7.97; New Transatlantic Agenda: Senior Level Group report to the EU-US Summit, 5.12.97.

Europol:

Ratification; "immunities" debate in UK; new rules for exchanging with non-EU states and bodies

EUROPOL: Ratification update

The European Convention had, by early December, been ratified by 8 of the 15 EU member states - the UK, Portugal, Sweden, Spain, Denmark, France, Germany, and Ireland. Only the UK and Spain have so far formally completed the process by depositing the instrument with the General Secretariat of the European Council in Brussels. The chances of Europol becoming effective - taking over from the Europol Drugs Unit (EDU) - during the UK Presidency in the first half of 1998 are very unlikely.

Under the Europol Convention (Article 45.3) it can only come into effect three months after the *last* of the 15 member states has formally deposited its ratification instrument.

The process is also complicated by the need for national parliaments to ratify two Protocols attached to the Convention, and, in some member states, the need to also ratify the implementing regulations. The two Protocols cover the role of the European Court of Justice and the Privileges and Immunities of Europol officers. The latter has been the subject of some controversy in the UK (see below) and in Germany.

As of the beginning of October 1997 the position in the other 7 member states on ratifying was as follows: *Belgium*: the Convention, Protocols and implementing regulations were discussed in Cabinet on 29 September; *Finland*: Convention and ECJ-Protocol "soon" to be sent to parliament; Immunities

Protocol and implementing regulations probably put through by government decree; *Greece*: parliamentary procedure to start "soon" on Convention and Immunities Protocol; ECJ Protocol by presidential decree; implementing regulations "probably" will not be sent to parliament; *Italy*: Convention in parliamentary committees; no date set for Protocols or implementing regulations; *Luxembourg*: Convention and ECJ Protocol before parliament; Immunities Protocol submitted early October; *Austria*: Convention and ECJ Protocol in Home Affairs Committee; Immunities Protocol going to parliament in October; parliament "informed" about implementing regulations; *Netherlands*: Second chamber to debate Convention and ECJ Protocol late October; Immunities Protocol "later"; implementing regulations to be put through by administrative procedures.

EUROPOL: UK debate on immunities

The UK was the first EU member state to ratify the Europol Convention on 10 December 1996. This was not surprising as it passed through parliament under the "Ponsonby rules" via the royal prerogative, a relic of monarchical government, so there was no debate or examination by MPs in committee. However, the Immunities Protocol did come before the Ninth Standing Committee on Delegated Legislation on 4 December. On 9 December the Order approving the Protocol passed in the House

of Commons by 286 votes to 60 with the Liberal Democrats and some backbench Conservatives (including ex-Home Secretary Kenneth Clarke) voting against.

The need to agree the Immunities Protocol was presented to the Committee by Derek Fatchett, Minister of State at the Foreign Office. Mr Fatchett introduced the issue in sarcastic terms: "I realise these are gripping matters, and I hope that all Committee members will be able to bear the tension and excitement of our debate".

It appears that Mr Fatchett, presumably speaking to a brief from officials, was unaware of the extension in the role of Europol made in the Amsterdam Treaty signed by the government in June. Europol, he said, "will have no operational powers", it would have a supporting role but this would not cross the line to include "one in which Europol staff themselves would undertake investigations, arrests.." The Amsterdam Treaty in Article K.2 (now Article 30 of the revised TEU) states in para 2.a:

enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out of specific investigative actions by the competent authorities of the Member States including operational actions of joint teams comprising representatives of Europol in a support capacity.

Under Article 2.b Europol will be able to ask:

competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime.

Europol, under the Amsterdam Treaty, will thus have its role (as set out in the Europol Convention) extended from gathering and analysing information and intelligence to setting up investigations, taking part in operations, and possibly simply leaving the arrests to the police of a Member State. A relationship very similar to the traditional division of labour between MI5 (the internal Security Service) and the Special Branch in the UK. MI5 start and conduct the investigation and then call in the Special Branch to make the arrest and then appear in court. To say that Europol will have no "operational powers" or set up "investigations" is incorrect.

Mr Fatchett said that the privileges and immunities in the Protocol to be given to Europol staff "are comparable with those routinely afforded to staff of international organisations." None of the 15 MPs present at the Committee picked up the fact the Europol (when it takes over from the Europol Drugs Unit) will indeed be an international, not an EU, organisation. There is no accountability to national parliaments in the Europol Convention and simply the presentation of an annual report to the European Parliament with no powers of scrutiny or inquiry.

The centrepiece of the 34 minute discussion in the Committee was the informed critique of the immunities to be given to Europol staff by Liberal Democrat MP for Somerset and Frome, Mr David Heath. He quoted Article 8 of the Protocol which grants all Europol staff:

immunity from the legal process of any kind in respect of words spoken or written, and of acts performed by them, in the exercise of their official functions.

While Article 12 places on the director of Europol a duty to waive immunity:

in cases where the immunity would impede the course of justice and can be waived without prejudice to the interests of Europol.

Europol, said David Heath, was not comparable to other international organisations which were largely concerned with the activities of governments, whereas Europol covers the "activities of citizens or groups of citizens". With the power to waive immunity in the hands of the director of Europol it would be, he said, for them to:

determine whether a waiver is in the interests of Europol - not in the interests of justice. That is equivalent to leaving it to a Chief Constable

to decide whether it is in the interests of his constabulary that an officer in this country should be immune from prosecution. That would not be acceptable, so why is it in the case of officers working for Europol?

He might have added that the immunity would also cover the calling of Europol officers into court to give evidence concerning their sources and the accuracy of the information on which a person may be charged. Mr Heath cited the views of Robin Cook, the Foreign Secretary, who told the Foreign Affairs Select Committee on 4 November that:

I would certainly resist any immunity being granted to Europol beyond anything that might be available to the national police.

The response of Mr Fatchett was simply to avoid answering any of the points raised and to accuse David Heath being "on the side of the criminal". Nick Cohen in the *Observer* commented: "Isn't it fantastic to know that our rights and security are in the hands of intelligent and far-sighted statesmen such as this?"

Draft European Communities (Immunities and Privileges of the European Police Office) Order 1997, Ninth Standing Committee on Delegated Legislation, 4.12.97; Observer, 14.12.97; see also the report of the Select Committee on the European Communities in the House of Lords, Europol: Confidentiality Regulations, 17.6.97, HL Paper 9).

EUROPOL: Exchange of data with non-EU states

The JHA Council in Brussels, on 4 December, agreed reports concerning the exchange of information with non-EU member states and non-EU authorities. Three reports were adopted without debate, a fourth on information from non-EU sources was not agreed. The reports, from the K4 Committee were not, as far as can be ascertained, referred to parliament in the UK nor to the European Parliament.

The reports deal with the setting up of "agreements" between Europol and non-EU member states to be agreed by the JHA Council, and "agreements" between Europol and non-EU "authorities" to be agreed by Europol's Management Board. The planned exchange of data covers both "non-personal" and "personal" information. The only accountability set out is to the JHA Council itself - not to the European Parliament nor to national parliaments. Much of the decision-making, and all the day to day practice, is devolved to the director of Europol and to Europol's Management Board (interior ministry officials from each EU state).

The first report covers *Draft rules regarding the external relations of Europol with third countries and authorities not linked to the EU*. This report is based on Article 42 of the Europol Convention, "Relations with third states and third bodies". Article 1 gives definitions. Article 2 says "Europol may conclude agreements with third countries and with authorities not linked to the EU". Under Article 2.2 the JHA Council will agree the states or authorities "with which the agreements will be negotiated". Under Article 2.3 the director of Europol will "open negotiations" on the agreements which have to be agreed by the JHA Council before they can be concluded.

Article 3 allows the "detachment of Europol liaison officers" to third states and third authorities not linked to the EU. It also allows for the "detachment of liaison officers from these countries". The agreement would set terms and conditions. Article 4.1 says the director of Europol must get advance approval before the exchange of officers but once an agreement is in place "the Management Board may decide it is not necessary to give prior notice". Article 5 empowers the director of Europol to set up "periodic meetings with third countries or authorities not linked to the EU". Where such meetings are written into the "agreement" no prior approval of the Management Board is needed.

Article 7 says: "An agreement reached with a third country may provide for the privileges and immunities which may be necessary for Europol as well as for personnel and liaison officers

ent out by Europol". The contentious "immunities of Europol officers with the EU could thus be extended anywhere in the world. Article 8 covers the exchange of personal and non-personal data.

The second report covers *Rules relating to the transmission of data of a personal nature by Europol to third countries and third authorities*. The definitions in Article 1 includes "data of a personal nature" which has the following phrase "one or more specific factors of his or her physical, physiological, psychological, economic, cultural or social identity". Article 2 authorises Europol to transmit data of a personal nature to a third state or third authority where an "agreement" has been signed and, in exceptional cases, where one has not - exceptions include "to safeguard the vital interests of the Member States concerned in relation to the objectives of Europol" (Article 2.1.2).

Article 3 authorises the JHA Council to determine which third countries and third authorities agreements should be negotiated with, but the Management Board is, in addition, on its own initiative authorised to "determine which third authorities the agreements will be negotiated with". Article 4 says the director of Europol will inform the Management Board of "all decisions on the transmission of data of a personal nature". The question of data protection within these third countries and non-EU authorities referred to as assessing "the adequacy of the level of protection" by the director of Europol.

Article 5 attempts to cover the question of to whom information is supplied within the third country. It states that it will be "limited" to "the responsible competent authorities in accordance with national legislation". In other words the circulation of data of a personal nature is governed by the data protection laws, if they exist, and the practices of the state given the information. Article 5.4 allows the transmission of personal data even where the third country is unable to designate "a central authority", "agreements" can be reached on the initiative of Europol with "one or several competent authorities in the third country in question".

Article 6 deals with the "purposes" of the transmission of data and says:

the transmission of data of a personal nature which reveals racial origin, political opinion, religious beliefs or other beliefs, as well as data of a personal nature relating to health or sexual matters, as set out in Article 6 of the Convention of the Council of Europe of 28.01.81, is limited to cases in which it is absolutely necessary, according to the provisions of Article 4.

Articles 4, 6 and 8 of the 1981 Council of Europe *Convention on the protection of individuals with regard to automatic processing of personal data* stipulate that there must be "appropriate safeguards" in "domestic law" which, for example, would allow a person to check the records held on them. There is no EU-wide provision on data protection covering Europol (law enforcement is excluded from the currently planned EU data protection directive). And there is no provision for being able to establish which third state or non-EU authorities hold information on an individual and to what uses this has been put.

The third report adopted covers *Rules relating to the external relations of Europol with authorities linked to the EU*. This authorises the Management Board of Europol to decide which "authorities linked to the EU agreements will be negotiated with" and will "approve" agreements reached by the director of Europol. The bodies covered by this report are set out in the Europol Convention in Article 10.4, paras 1-3: a) bodies governed by public law "established under the Treaties establishing those Communities"; b) "other bodies governed by public law established in the framework of the European Union"; and c) "bodies which are based on an agreement between two or more Member States of the European Union".

Draft rules regarding the external relations of Europol with third countries and with authorities not linked to the EU, K4 Committee to

COREPER/Council, ref: 8034/6/97, Limité, Europol 29 REV 6, 13.11.97; Rules relating to the transmission of data of a personal nature by Europol to third countries and third authorities, K4 Committee to COREPER/Council, ref: 8032/8/97, Europol 27 REV 8, Limité, 13.11.97; Rules relating to the external relations of Europol with authorities linked to the EU, K4 Committee to COREPER/Council, ref: 8031/5/97, Europol 26 REV 5, Limité, 13.11.97.

The Statewatch case

Statewatch has won the first of six complaints lodged by its editor Tony Bunyan with the European Ombudsman against the EU Council of Ministers over access to Council documents.

On 14 November the Ombudsman, Mr Jacob Söderman, wrote to Statewatch to say that the first complaint had been closed as the EU Council had agreed, as a result of Statewatch's complaint, to change its practice of "not conserving" (destroying) the agendas of meetings of Steering Groups and Working Parties held under the Council of Justice and Home Affairs Ministers.

The Ombudsman is now seeking a friendly solution to the two other "minor" complaints: a) the failure of the EU Council to maintain an up-to-date list of decisions for each Council of Ministers (currently the Council is only obliged to compile such a list at the end of each calendar year) and b) the Council's contention that the EU Council and the Presidency of the EU Council are separate institutions.

At the end of November the Ombudsman wrote to the Council inviting them "make it clear that it does not consider its Presidency to be "another institution", separate from the Council, for the purposes of Article 2.2 of the Council Decision". It transpired that the General Secretariat of the Council felt unable to make this commitment and has put the question out to each of the 15 EU Member States for a decision by the end of January 1998.

However, the three "major" complaints remain outstanding. It is expected that the Ombudsman will be writing to the EU Council of Ministers at the beginning of January and that the issues they raise will come to a head during the UK Presidency of the EU.

Statewatch's complaints about the Council's practice in applying the Decision on access to documents has already led to a number of significant changes - these include: no longer requiring applicants to examine documents "on the spot" in Brussels and the inclusion in the Amsterdam Treaty of clause 138e which establishes the right of the Ombudsman to consider complaints concerning denial of access to documents concerning justice and home affairs.

At a Press Conference in Brussels on Monday 8 December to launch the UK Presidency the Foreign Secretary, Robin Cook, said that making the EU more open and transparent, "especially in the field of justice and home affairs", was one of the main objectives of their programme. This would include giving more information to national parliaments and to the European Parliament, and "putting a register of documents on the Internet". It is understood that this register will only include documents which are classified "Restricted" and "Limité" ("Limité" is not a classified category), and exclude "Secret" and "Confidential". Whether the register is made public will depend on the UK's persuasive powers over Spain and France who have always opposed openness. One official from an EU delegation is quoted as saying: "The Council of Ministers is not a public library".

A public register would be a major step forward, but it will still mean applications for access to the actual documents facing the same kind of battles which *Statewatch* has experienced.

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Web database

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