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UK:

Legitimising surveillance

the Regulation of Investigatory Powers Bill (the R.I.P. Bill)

In June 1999 the Home Secretary put out a consultation paper on the interception of telecommunications prior to publishing a Bill to replace the 1985 Interception of Communications Act (IOCA) (see *Statewatch*, vol 9 no 3 & 4). This dealt primarily with state agencies intercepting phone-calls, e-mails and faxes.

On 9 February the "Regulation of Investigatory Powers Bill" (RIP Bill) was introduced. The title of the Bill can only be described as deliberately misleading, placing the emphasis on the "Regulation" rather than on the extensive new powers of surveillance being legitimised. It covers:

- the interception of telecommunications (including the exchange of data with third states/agencies)
- intrusive surveillance (on residential premises and vehicles)
- covert surveillance
- the "use of covert human intelligence sources" (agents, informants, undercover officers)
- power to demand communications data (eg: billing details)
- power to order the handing over of encryption "keys"

Home Secretary, Jack Straw, said: "None of the law enforcement activities specified in the Bill are new. Covert surveillance by police and other law enforcement officers is as old as policing itself; so too is the use of informants, agents and undercover officers." The Home Secretary is thus, at a stroke, seeking to legitimise all the current practices of the "law enforcement agencies" which are currently unregulated and in most cases not covered by law.

There may be nothing "new" but there are certainly practices in the Bill which should have been the subject of democratic control and scrutiny. There are a host of new surveillance powers in the Bill which have not been put out to consultation but simply added to the proposed legislation.

The scope of the new surveillance powers reflects the changing nature of "policing", not just in the UK but in most EU countries. Over the past ten years secret and clandestine methods of gathering "intelligence" previously employed in the days of the Cold War by internal security agencies have permeated policing practice. According to the Home Office the Bill will enable the law enforcement agencies to conduct systematic targeting of an individual over a period of time in order "to obtain a picture of his life, activities and his associates."

Another driving force behind the provisions in the Bill is the EU draft Convention on Mutual Criminal Assistance (which covers interception and covert operations) and the "requirements" set out in the EU-FBI telecommunications surveillance plan adopted by the EU in January 1995.

Liberty has commented that:

> *the clandestine nature of the operations regulated by the legislation heightens the care needed to ensure that necessary official activities impinge as little as possible on citizens' rights. Against that background, the current criteria for authorising interception and surveillance are objectionably vague and overboard.*

One of the most objectionable aspects of the Bill is that it will allow the executive - politicians and officials - to authorise themselves to conduct surveillance rather than on the basis of a court order.

It may offer some comfort to know that the Home Secretary has, as required by Section 19 of the Human Rights Act 1998 (which incorporated the European Convention on Human Rights) formally made the following statement: "In my view the provisions of the Regulation of Investigatory Powers Bill are compatible with the Convention Rights."

When the Home Secretary says the R.I.P. Bill will secure "a better balance between law enforcement and individual rights" it is certain that it is the former's interest he has in mind and not the latter's. **See feature on pages 25-27.**

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CIVIL LIBERTIES

UK

Prison for charity workers

Two drugs workers jailed for failing to prevent heroin dealing at a day centre for the homeless are awaiting a date to appeal against their sentences. In a case that caused outrage across the voluntary sector, Ruth Wyner and John Brock, both 49, were sentenced in December to five and four years respectively after they were found to have failed to take "reasonable steps" to prevent drug-dealing on the premises. Charges against the two followed an undercover surveillance operation by Cambridgeshire police at the Wintercomfort day centre that began in February 1998. Three months later police arrested eight people on charges of dealing together with Wyner and Brock, Wintercomfort's director and manager. The latter were to receive harsher sentences than the convicted dealers.

An "exemplary drugs-policy" or "a haven for heroin-dealers"?

The two were charged with "knowingly permitting or suffering the supply of a class A drug on the premises" under Section 8 of the Misuse of Drugs Act (1971). Although Wintercomfort banned anyone found or suspected of dealing in drugs, Cambridgeshire police wanted them to pass-on the details of any suspects to them. Wyner and Brock's refusal to do so, in line with the Wintercomfort's confidentiality policy, led Judge Jonathon Haworth to call them creators of "a haven for heroin dealers" and in effect instruct the jury to find them guilty. In January the two were refused leave to appeal against their convictions.

Estimates of drug use among homeless people have been put at 20-70% and most users will be involved in some small-scale dealing with other users to reduce the cost of their own drugs. Any organisation offering support and assistance to homeless people are faced with people bringing their problems to that organisation.

In his sentencing statement, Haworth criticised Wyner and Brock for issuing only nine or 10 bans to people for actual drug-dealing over a 16 month period. He failed to mention that during that time there were also 162 bans for suspected dealing or other drug offences. Greg Pouter (then deputy director of *Release*, a drugs and legal advice group) described *Wintercomfort's* drugs policy as "exemplary" and suggested the number of bans even verged on the harsh. The police, however, were not satisfied and demanded access to the names of anyone in receipt of a ban. Wyner and Brock refused. The charity had a clear confidentiality policy that had been approved by its trustees (without which it would be impossible to gain the trust of those people it sought to help). Furthermore, the vast majority of the bans were for suspected dealing, unsubstantiated by solid evidence. Consequently, Haworth went on, "the police had no alternative, but to mount a covert surveillance operation at considerable expense in manpower resources". Despite police representatives being on the day centre's advisory committee, the apparent alternative of approaching the trustees to discuss the confidentiality policy or warn management staff that they were at risk of arrest was never pursued.

A new zero tolerance?

There are major implications for organisations and individuals who work with drug-users. Homeless people with drug problems may now face the prospect of being turned away by the few organisations capable of providing help while all those who work with drug-users are apparently at risk of arrest. These organisations are now calling on the government to produce clear guidelines to allay their fears, yet the "Drugs Czar" and "Homeless Czar" created by the government have both been silent.

Kevin Flemen, of *Release* - who have issued emergency advice - is concerned that "some organisations have over-reacted by disclosing too much information to the police". No organisation is obliged to hand over the names of those who take or possess drugs on its premises, he said.

It is now up to the Court of Appeal to decide on Wyner and Brock's sentences.

While Ruth Wyner is serving her time in Highpoint prison, she is putting her 20 years experience of helping people to good use in a scheme run by the Samaritans. As a "prison listener", she is, however, bound by the very rules that saw her jailed: a confidentiality policy that forbids her disclosing any information to the authorities without a prisoner's agreement. She has also found time to write to Home Secretary Jack Straw, who is responsible for the prison service, to warn him about the drugs which she says are dealt openly in Highpoint. "As you live under the same laws I do, I believe you are liable to arrest. Or would you like me to perform a citizen's arrest on the governor?" she enquired.

Nick Cohen, The Observer 2.2.00; The Big Issue, 21.2.00; Reply to sentencing statement, Justice for the Cambridge Two Campaign, www.wintercomfort-justice.org/

UK

New law on DNA profiles

The amendment to Section 64 of PACE (the Police and Criminal Evidence Act) will permit the police to keep and check all profiles that are given voluntarily and which should be destroyed under current rules. PACE was previously amended in 1994 (by the Criminal Justice and Public Order Act) to allow DNA samples to be taken under largely the same circumstances as fingerprints - from anyone suspected, charged or convicted of a recordable offence. However, profiles from people who are not prosecuted or are acquitted must be destroyed (unless the investigation with which they were connected results in a conviction, in which case the sample can be kept in case the matter is subsequently reviewed). Samples taken from anyone convicted of a recordable offence are put into the national DNA database.

Taking DNA samples from large populations ("mass-screenings") during the course of the investigation of a serious crime is a celebrated tool of police forensic science - 110 such operations had been conducted in the UK by mid-1999. At present, consent is given by those asked to provide a DNA sample on the basis that their profile be destroyed following the conclusion of the investigation. If people face their profiles being "retained" (meaning added to the national DNA database) and put to further use, it has been suggested by *Liberty* that people might well be less likely to consent. They are also concerned that people who refuse to give a sample may be viewed by the police and the community as a suspect, and that this possibility may be in the minds of people asked to volunteer their profile.

The UK rules in context

Britain offers an individual's DNA less respect for privacy than any other EU country, even without the new proposals. The police's far reaching powers to take a sample by force came as a shock to one privacy advocate - a visitor to the UK who joined a protest against the AFCEA (Armed Forces Communication and Electronics Association) arms fair held in London last October. Forty demonstrators gathered in front of a Heathrow hotel in which many of the conference participants were staying. Their

entirely non-violent action lead to inevitable arrests: their symbolic mass-die had resulted in criminal damage - water-paint (fake blood) the offender, the pavement the victim. One of the offenders described being arrested at around 5pm and interviewed some nine hours later. She was charged and detained to appear before magistrates the nest day. A short while after an officer returned to say to say that something had been forgotten: a DNA sample was required. As a Dutch national, this procedure was somewhat alien - the authorities in the Netherlands have no such powers and she refused to co-operate. She says five officers subsequently restrained her so as to allow the obligatory two swabs of saliva to be taken from her mouth. Having pleaded guilty to the charge (a decision she now regrets taking), her DNA profile may well be on the UK's national database.

In a ruling in Massachusetts, USA, the State Superior Court found that a 1997 law enabling state authorities to take samples involuntarily from anyone in prison, on parole or on probation was unconstitutional. The ruling invalidated the state's "DNA Seizure and Dissemination Act" in finding it in violation of the probable cause statement in the Fourth Amendment of the US Constitution. In contrast to this interpretation of forced DNA sampling, one can return to the UK's Police Superintendent's Association who have already called for every child to be profiled at birth and placed in the national database (at present there are around half a million samples from suspects in the system).

The European DNA database

The legislation proposed by the Home Office also includes a call for statutory powers to search foreign sets of DNA data. This proviso relates to EU moves to create a European DNA database by linking national systems. A 1997 EU Council Resolution on the "exchange of DNA analysis results" called on member states to establish national databases using standardized technology. The concept of an internationally accessible databank was attributed by the EU to a 1996 conference in Stockholm: the "World Congress against Commercial Sexual Exploitation of Children". It was suggested that the database could include data on sexual crimes against minors - including DNA profiles - and that the system could be located at Europol. However, documents obtained by *Statewatch* show that work on such a project had begun in earnest at least as early as 1988 with the creation of the *European DNA Profiling Group*. Experts from 14 countries participated in *EDNAP*, with the aim of "informally pursu[ing] the aim of exchanging DNA profiles". Progress made here will certainly have paved the way for the 1998 agreement within the *European Network of Forensic Science Institutes DNA working group* (which meets under the aegis of the *EU Police Cooperation working party*) on the harmonised use of DNA markers in the member states. The gusto with which the law enforcement community has pursued an international database can also be seen in a Recommendation from an *Interpol* conference in 1995.

National responses

Legislation on taking and storing DNA profiles varies greatly through the member states. In 1996 only four had any legislation at all, although five had proposals on the table. By 1998, Holland and Austria had joined the UK (1995) in creating national databases, and Spain had a database of crime scene samples; by 1999, eight of the remaining 11 member states were in the process of creating one. The UK's soft laws make its database the pace-setter - at the other end of the scale one can place the Netherlands, who's current legislation only allow the authorities to take samples from suspects of offences carrying a statutory custodial sentence of eight years or more (although new legislation is being proposed).

A forthcoming EU Council of Justice and Home Affairs ministers (either in March or May) is likely to agree a framework decision on the exchange of analysis results. This will place an obligation on the member states to use the harmonised DNA markers in the framework of their criminal justice systems and national databases. A system to exchange analysis results in the EU will then be established as a precursor to a European database. At present, the scope or function of the EU databank has not been discussed. This is perhaps better seen in terms of no limitations having yet been suggested on the use or capacity of the system.

As for the peaceful arms-trade protester, who ironically found herself in London after venues in Holland and Belgium (the AFCEA's previous hosts) refused to stage the arms fair, she now faces the prospect that other European states may in the future be able to access her DNA profile despite the fact authorities in her own country lacked the powers to take it. (Realistically, some of her other personal details are probably already being shared among the EU''s law enforcement club through the network of *National Coordination Centres on Law and Order and Security*).

The UK's Forensic Science Service (FSS) is custodian of the national DNA database. Last July it said that the technique used to compare individual profiles with crime scene stains had been bettered - the chances of someone else sharing the same profile (the industry's margin of error) had decreased from one in 50 million to one in a billion. This improvement in failsafedness comes too late for Brian Easton. A 49 year old with Parkinson's disease, he was taken to a police station for questioning following a DNA match to a burglary scene some 200 miles away. Refusing to accept that the database could have made a mistake, Greater Manchester police charged Easton four months later. The charges were dropped after his solicitor demanded that the profile be re-checked using the new standard. Mr. Easton, who did not receive an apology after the match failed the new test, is now suing the police.

FSS Press Releases, 2.7.99 & 24.2.99; Campaign Against the Arms Trade News, July 1999; American Civil Liberties Union Press Release, 14.9.98; The Daily Mail, 11.2.00; Proposals for revising legislative measures on fingerprints, footprints and DNA samples, UK Home Office, 1999 & Response by Liberty, 1999; Cooperation on DNA technology, 11853/1/96 ENFOPOL 195 rev 1, 11 February 1996; EU Council resolution on the exchange of DNA analysis results, 8247/97 ENFOPOL 122, 28 May 1997; Reports to the Council on the implementation of the resolution of 9.6.1997 on the exchange of DNA analysis results, 7471/98 ENFOPOL 47, 7 April 1998 & 10763/99 ENFOPOL 59, 8 September 1999; Draft framework decision on the exchange of DNA analysis results, 11634/99, 7 October 1999.

Civil liberties - new material

Liberty, Autumn 1999, pp8. This issue contains pieces on the ECHR ruling that the MOD's investigation into the sexuality of four armed services personnel contravened Article 8 of the European Convention of Human Rights and government proposals on encryption in the Electronic Communications Bill. Available from Liberty, 21 Tabard Street, London SE1 6BP.

Rights, Scottish Human Rights Centre, January 2000, pp4. The latest bulletin contains articles on "the first steps to Scotland's own Freedom of Information Act" and the outlawing of the use of Temporary Sheriffs in Scottish courts which contravened the European Convention of Human Rights. Available from SHRC, 146 Holland Street, Glasgow G2 4NG, Tel 0141 332 5960

Spy TV, David Burke (ed), *Slab-O-Concrete Publications* 2000, pp160, ISBN 1 899866 25 6, £5.00. The editor is the founder of the UK section of White Dot, an anti-television campaigning group. His book considers the arrival of interactive, digital television and the ability of the service providers to record viewing patterns and lifestyle preferences to create psychographic profiles of users. "They sell you a society, you end up buying an identity" he suggests.

The effect of closed-circuit television on recorded crime rates and public concern about crime in Glasgow, Jason Ditton et al. Scottish Office Central Research Unit, (HMSO) 1999, £5.00. The authors, who include some of Britain's best known researchers on CCTV, considered various effects of the introduction of cameras into Glasgow city centre. Findings included one-third of 3,000 respondents to a public survey expressing "some or other civil libertarian reservations"; that the system "has been a qualified success" in its effect on crime rates but that CCTV's "contradictory" goals mean that "evidence of `success' usually relates to one goal at the expense of others"; and that civilian camera monitors "adopt police categories of suspicion when viewing the screens."

Warning! Strange behaviour, Duncan Graham Rowe. *New Scientist*, 11.12.99, pp25-28. Considers the development of intelligent surveillance systems that predict when a crime is about to be committed. Motion sensors are cross checked against patterns of "normal behaviour" (such as "the mathematically predictable" pathways people follow in car-parks) to highlight deviations (like people hanging-around, running or lurking in the shadows). The technology may also allow the possibility of tracking persons if used in conjunction with CCTV systems, as it would apparently be "relatively easy to tail people remotely" as they move from one camera to the next.

Parliamentary debates

Parliamentary Ombudsmen *Commons* 19.10.99. cols. 326-351

Home Office Issues *Commons* 26.10.99. cols. 813-868

Statutory Instruments and Human Rights *Lords* 10.1.99. cols. 470-485

EUROPE

NETHERLANDS

Basque prisoner faces extradition

For over a year Basque political prisoner Esteban Murillo Zubiri has been jailed in Haarlem awaiting his possible extradition to Spain. Last year Murillo unsuccessfully attempted to argue to the Haarlem court that his extradition would be unlawful and unjustified, but on 24 August the court ruled against him. His final legal appeal is to the High Assembly, which will con-sider whether legal procedures were correctly observed. Spain has requested the extradition of Murillo for his alleged involvement in a murder and membership of ETA. His car was used as an escape vehicle during the ETA killing of a police officer in Irunea in 1980. Murillo admits lending his car, but he says he did not know what it would be used for. The charge of ETA membership, Murillo says, is false. He fears that it will be impossible to get a fair trial.

Last year demonstrations were organised to protest Murillo's innocence. On 13 March, 40 people demonstrated in Haarlem and on 27 June there was another demonstration in Haarlem, called by *Jarrai*, a Basque youth-organisation. Court hearings were also attended by sympathisers and a solidarity committee was set up. If the High Assembly finds no procedural errors, the final decision on his extradition lies with the Minister of Justice.

Murillo has been, since the Franco dictatorship, an active member of the left-nationalist union LAB. While he worked for them, he was arrested three times and allegedly tortured. The fear of further detention and torture forced him to flee to France. When he faced arrest there, he fled to Mexico but because of their policy of returning Basque refugees to Spain, he moved on to the Netherlands. That his fear of torture is justified is supported by the European Committee for the Prevention of Torture and Amnesty International who, in numerous reports, have condemned Spain for their treatment of Basque prisoners.

The Esteban Murillo Solidarity Committee hopes to stop the extradition and organised a demonstration in Haarlem which was broken up by the police. They also plan to organise a hunger strike and a large demonstration in the Hague.

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BASQUE COUNTRY

Crisis in the peace process

On 21 January the Basque armed organisation ETA assassinated a lieutenant- colonel in the Spanish Army, finally breaching the ceasefire it had formally abandoned two months before, on 28 November. Since the announcement of the end of the ceasefire there had been many efforts to persuade both the government and ETA to resume the peace process. One of the most significant initiatives was a demonstration in Bilbao on 15 January, bringing together 55,000 people. The demonstration had been called not only by parties supporting the regional government but by the parties of the Basque "patriotic left"; the two contingents marched separately. During December 726 people took part in a one-week hunger strike demanding respect for the rights of Basque political prisoners. Prisoners themselves have also been staging hunger strikes, some lasting more than fifty days. It is expected that the run-up to the March general election will see a general hardening of attitudes so that any progress towards a negotiated solution is unlikely.

ITALY

Patent application upsets EU

Italy has registered its opposition to a patent application for a telephone-tapping system by KPN (Royal Dutch Telecom) that could have massive financial implications for the proposed EU-FBI global interception system (see *Statewatch* vol 7 nos 1, 4 & 5; vol 8 nos 5 & 6; vol 9 nos 2 & 6). The Institute for Communications and Information Technology, part of the Italian Ministry of Communications, has said that the invention, filed at the European Patent Office (EPO, Munich) in April 1996, lacks novelty. Through the EU's Police Cooperation Working Party Italy hopes to foster European wide opposition to the grant of the patent. Their delegation "stressed that the scope of the patent was so wide and discussed in such terms that it covered the entire content of the EU Council Resolution of 17 January 1995, which describes in detail all the features which telecommunications interception systems must have if they are to be used by the police". The Resolution, drawn up with the American FBI and other western nations, paves the way for an international interception system. Germany had also addressed the patent application during their Presidency of the EU (first half of 1999), suggesting that EPO approval would mean that any other company introducing a similar system in the European "sphere" would face increased costs arising from the intellectual property rights "with a knock on effect for the judicial and police authorities requiring the interception". Italy has asserted that the KPN system is described in such general terms that it can be compared to the automatic switching systems used by authorities in Italy as early as 1992.

Patent Application for a telecommunications interception system PCT/EP96/01611 filed by the Dutch company KPN, NOTE from Italian delegation to Police Cooperation Working Party, 12032/99 ENFOPOL 67, 21 October 1999.

Europe - new material

Recent developments in European Convention law, Philip Leach. *Legal Action* January 2000, pp10-14. Summary of cases at the European Commission and the Court of Human Rights that have relevance to the United Kingdom.

New World disorders: Bilderberg, Trilateral and the European Union, Robin Ramsey. *Lobster* 38 (Winter) 1999, p32. Short piece on "the relationship between the European Union and members of various elite management groups, notably the Trilateral Commission and the Bilderberg Group." Lobster, 214 Westbourne Avenue, Hull HU5 3JB; http://www.lobster-magazine.co.uk

Europe Inc.: Regional and global restructuring and the rise of corporate power, Belen Balanya et al., Pluto Press (in association with Corporate Europe Observatory) 2000, ISBN 0-7453-1491-0. Researchers from the CEO provide a much needed study of corporate power in Europe and the influence of transnational corporations and their vast lobbying mechanisms on the workings of the EU and its global counterparts.

Crimes without frontiers. *Policing Today*, December 1999, pp32-34. Jurgen Storbeck, Director of Europol, calls for a shift in resources to target organised crime: "less on local policing, more on national and international criminal intelligence and investigations - not all of it necessarily police centred...For at this level we need to engage all the relevant services including customs and immigration". He also suggests a strong link between "simple forms of crime" ("street violence, domestic burglary, thefts of cars and bicycles, or if a family member is addicted to drugs") with criminal organisations.

Marches europeennes/NEWS. European Marches against Unemployment, Job Insecurity and Social Exclusion (Euromarch Liaison Committee), No 20 (January/February) 2000, pp8. This is, sadly, the last issue of the bulletin. It contains articles on an unemployed activist demonstration in Paris in December and a planned demonstration to coincide with the French presidency of the EU (2 December 2000). Other stories report progress in Mummia Abu-Jamal's fight against the death penalty and the Seattle demonstrations in protest at the World Trade Organisation.

Parliamentary debates

Special European Council (Tampere) *Commons* 19.10.99. cols. 253-265

European Union *Commons* 1.12.99. cols. 314-404

Enlargement of the EU: ECC Report *Lords* 7.12.99. cols. 1191-1242

Helsinki European Council *Commons* 13.12.99. cols. 21-39

European Council: Helsinki, 10-11 December *Lords* 13.12.99. cols. 20-34

IMMIGRATION

IRELAND

Immigration policies mirror EU

In December 1999 the Irish government announced a new Immigration Bill, a package of measures on asylum and migration which mirrors limited European standards. Fingerprinting, the introduction of a voucher system, dispersal without choice and increased powers to deport are all part of Ireland's new approach to immigration, despite two years of pressure and criticism by refugee support groups and human rights organisations. An Illegal Immigrants (Trafficking) Bill was introduced to the *Oireachtas* (parliament) by the government on 18 November 1999. Here also, Ireland has adopted aspects of European asylum and migration law, allowing a ten year imprisonment of those aiding entry of refugees and migrants into Ireland, irrespective of possible humanitarian motives or the future acceptance of the concerned immigrants as asylum seekers (see *Statewatch* vol 9 no 3 & 4). The bias in the Irish asylum procedure, which has been described by Progressive Democrat Party member Liz O'Donnel as "a shambles", has also led to the resignation of a leading barrister from his post on the Independent Asylum Appeals Authority.

The government's approach marks a distinct break with the generous Refugee Act of 1996. The Refugee Act, despite having been passed by the *Oireachtas* two years ago, was never properly implemented: under the Irish legal system, most legislation is only "enabling" and needs Ministerial Orders ("Statutory Instruments"), that is, political will, to bring the legislation into effect. Its implementation was delayed by the then "rainbow" coalition, consisting of the Fine Gael-, Labour- and Democratic Left parties. The following Fianna Fail/Progressive Democrat coalition government which took office in 1997, also did everything in its power to delay the Act's implementation. As a result of this implementation failure, which did not hinder the appointment of more officials to speed up the asylum procedure, applications and deportations were processed without the existence of an independent asylum procedure. First applications were, and still are, heard by officials of the Department of Justice. Legal experts who are responsible for appeals, can only make "recommendations" to the Minister, although the latest changes are supposed to introduce an independent appeals process.

The situation led to a challenge to the Minister's deportation powers in the High Court, which decided in favour of the appellant in January 1999: in the Laurentiu case, Mr Justice Geoghegan ruled that Section 5(1)(e) of the Aliens Act 1935, from which the Minister's powers to make deportation orders had derived, was unconstitutional. Left with no powers to deport, the government quickly published the Immigration Bill, also dubbed the "Deportation Bill", in order to allow deportations to restart and also announced it wanted to get it passed by the *Oireachtas* "within weeks".

The Bill allows for deportations before rejected asylum seekers have exercised their right of appeal. The criteria which underlie the issuing of deportation orders have been criticised as vague and therefore incorporating minor criminal acts, the failure to pay a debt, for example. Deportations are possible if the Minister deems them to be "conducive to the common good", or in the interest of "national security" or "public policy". The Bill provides for detention centres, a new phenomenon in Ireland. A duty is also imposed on asylum seekers not to endanger their, or anybody else's safety during deportation, a corresponding duty for state officials who carry out such deportations however, is lacking - a lack which is deemed unsustainable given the increasing number of deaths during deportation all over Europe, says the *Irish Council for Civil Liberties* (ICCL).

The recent package has also been criticised by human rights organisations and refugee and migrant support groups. The *Irish Refugee Council* remarked that it regretted that the government's announcements did not include changes to ensure that asylum seekers would have "fair and full and proper legal representation", a criticism which was echoed by one of the longest-serving members of the Independent Appeals Authority, Peter Finlay. Finlay, who has been a practising barrister for 14 years and has heard 400 appeals in the last 19 months, criticised the asylum process. Asylum seekers' rights, he commented, were being trammelled and the Refugee Legal Service which provides free legal aid to asylum seekers, was not truly independent as it is an offshoot of the Legal Aid Board whose executive is appointed by the Minister of Justice, John O'Donoghue, whose restrictive views on asylum and migration are well known.

The undermining of asylum seekers' rights starts from the moment the applicants enter the Refugee Application Centre in Dublin, Finlay argues. Despite the fact that they are entitled to free legal aid, most of the asylum seekers complete the initial questionnaire without legal advice. The subsequent interview at

the Department of Justice is also carried out without a solicitor or a legal adviser present, except in exceptional circumstances. Many of the interviewers are retired police officers, the interviews consequently "have all the hallmarks of a *Garda* interview in a station. But the one main ingredient is missing: these people are not being accused or charged with any offence". Applicants are rarely aware of the importance of this interview.

The outcome of some of the decisions following initial applications have also been widely scrutinised: given the fact that Department of Justice officials only approve around 4% of first applications whereas 35-40% of the following appeals are successful in front of the Independent Appeals Authority, the quality of first application decisions is highly questionable. Finlay, who has also strongly criticised government's plans to fingerprint asylum seekers older than 14 (in line with the EU's proposed EURODAC Convention) and replace cash payments with food vouchers, resigned on 18 January from his position in the Appeals Authority, commenting that he could no longer serve in a system he did not believe in.

Despite minor successes following pressure from *the Asylum Rights Alliance* coalition in its campaign for an independent asylum procedure and the right of asylum seekers to work, the new measures are seen as "cobbled together" and unjust. Donncha O'Connell, director of the *ICCL* said the new measures were:

> *vague on potentially progressive elements and specific on the deterrent aspects such as fingerprinting asylum seekers and tackling trafficking...The anti-racism measures are tokenistic when compared to other parts of the policy which appear to be strongly informed by anti-foreigner sentiment*

ARASI (the Association of Refugees and Asylum-seekers) also described the newly introduced right to work for some asylum seekers as "farcical" in that it only encompasses those with children born in Ireland and in the light of the absence of any rights for language training, for example.

Finally, activists have continuously stressed that the Immigration Bill which, apart from the deterrence aspects, mainly concentrates on a quota based work visa programme for non-EU nationals, fails to distinguish between asylum and immigration. This has led to discrimination against certain groups of immigrants over others: the government is targeting software technicians from Central Eastern Europe with view to issuing around 5,000 work permits for the year 2000. Yet is trying to stop the entry of increasing numbers of Roma refugees from Eastern Europe, who arrive for very different reasons.

The Irish Times 15.12.99, 18.1.00; Migration News Sheet, December 1999; ICCL News 11:1 (April) 1999; The Focus - Development Education Supplement 1999/2000; Leathanach 15.7.99.

GERMANY

New law for immigrants

It has long been recognised that the blood principle (*Jus sanguinis*), which has always underlined Germany's interpretation of citizenship, can lead to disparate definitions of immigrants. Since Germany embarked on the repatriation of eastern European and Russian citizens with German ancestry politicians have increasingly found problems with their eastern European relatives. The policy towards this group of immigrants, which up to now has been treated with considerably more financial generosity than their "non-German" counterparts, is to change.

In future, under the new government *Aussiedlerprogramm 2000* (Exiles programme 2000) the yearly quota of "German immigrants" will be reduced to 100,000 and "integration work" will be the focus. The programme has cost 74m DM (£24.6 million) in the last two years. This immigrant community, like all immigrant communities in Germany, is still marked by high unemployment, a low level of German language knowledge, social deprivation and related crime rates - the budget for the year 2000 has been increased to 45m DM (£15 million).

It is the first time that the Interior Ministry (BMI) has made a concerted effort to implement a functioning support network for (some) immigrants, giving them the right to German language courses and the support of a plethora of governmental and non-governmental institutions. "From now on," the journal *Migration und Bevolkerung* notes, "instead of mass projects, specifically directed help measures are going to be supported in order to remove the present disadvantages of German minorities and to improve the relations between the minority and the majority".

For a summary of the government report see pp.1-2 in Migration und Bevoelkerung, no.8/99, Bevoelkerungswissenschaft, Humboldt-Universitaet Berlin, Unter den Linden 6, 10099 Berlin, Tel: 0049(0)30-20931918, Fax: 0049(0)30-20931432, e-mail: MuB@sowi.hu-berlin.de, www.demographie.de/newsletter or order the report "Aussiedlerpolitik 2000: Integration in Deutschland - Hilfen in den Herkunftslaendern" directly via Deutsche Vertriebsgesellschaft, Postfach 1149, 53333 Meckenheim, Tel: 0049(0)22251-926-0, Fax: 0049(0)22251-926-118.

SPAIN

New Aliens Law comes into force

On 1 February the new Aliens Law came into operation, having been adopted in December despite the opposition of the (conservative) Popular Party (PP). The PP has promised to amend the legislation if it wins the parliamentary elections in March. The Law requires the government to set out a procedure whereby foreigners who have lived in Spain since before 1 June 1999 can obtain legal residence, if they can show that they have applied at least once for a residence or work permit, or have held one within the previous three years. It is expected that the regularisation process will run from late March until the end of June. Under the previous 1985 Aliens Law there were three processes of special regularisation, in 1986, 1991 and 1996.

The new law also envisages a method of dealing in the longer term with the issue of regularisation, by granting temporary leave to remain to any foreigner who completes two years' uninterrupted residence in Spanish territory, is registered with their local authority and has sufficient means.

In an early application of the new law, the authorities have released a large number of immigrants who had been detained in holding centres with a view to deportation. Those affected were detainees who no longer meet the criteria for expulsion.

GERMANY/TURKEY

Refugees deported to Turkish "torture chamber"

At the beginning of 1998, the Lower Saxony Refugee Council started to systematically collect and verify reports that Kurdish refugees who had been rejected as asylum seekers and deported from Germany had been tortured, imprisoned and killed in Turkey. Together with the German asylum support group *Pro Asyl* and the Turkish Human Rights organisation *Insan Haklari Denergi* they undertook extensive research which is documented in their pamphlet, *Von Deutschland in den tuerkischen Folterkeller -zur Rueckkehrgefaehrdung von Kurdinnen und Kurden*.

It includes 19 well-documented cases where Kurds deported from Germany have suffered imprisonment, torture and in one reported case a death sentence on their return to Turkey between 1992 and 1999. The research also found the German Federal Border Guards played a dubious role in the deportations, allegations ranging from physical abuse to accusations (ie "He is a separatist") made in front of Turkish officials, leading to

imprisonment and torture. It is not only the human rights abuses of the Turkish state that are criticised, but also the asylum practises of German courts and authorities which have consistently disregarded allegations of torture or claims that political involvement led to persecution in the home country.

German authorities have, and still are, portraying genuine documentation as false and openly use the same arguments as the Turkish authorities themselves: in the case of Mehmet O., the Federal Authority for the Acceptance of Foreign Refugees (BAF) declared that the threat of imprisonment in Turkey due to alleged support of the PKK was not actually political persecution, but "lawful prosecution of criminal injustice". Mehmet O. was deported, tortured and, after the issuing of another search warrant by security forces, now lives in desperate conditions underground. His wife has been forced to undergo at least two "gynaecological examinations" in order to establish if she has been in contact with her husband.

Von Deutschland in den tuerkischen Folterkeller - zur Rueckkehrgefaehrdung von Kurdinnen und Kurden [From Germany into the Turkish torture chamber - on the dangers of returning Kurdish refugees], Foerderverein PRO ASYL e.V & Foerderverein Niedersaechsischer Fluechtlingsrat, October 1999, pp31. Order free via www.proasyl.de, e-mail: proasyl@proasyl.de, Tel: 0049-69-230688 or Fax: 0049-69-230650.

Immigration - new material

National Coalition of Anti-Deportation Campaigns. Issue 17 (January-March) 2000, pp12. Latest issue of the newsletter contains pieces on the *sans papiers*, the attempt to deport John Quaquah, the Surinder Singh campaign and an account of November's demonstration at Campsfield detention centre. Available from: NCADC, 110 Hamstead Road, Birmingham B20 2QS; email - ncadc@ncadc.demon.co.uk

Taking refuge, Sean Howe. *Police Review* 28.1.00., pp16-18. This article looks at the creation of the National Asylum Support Service, under the new Immigration and Asylum Act, from the perspective of Kent constabulary. DCCC Robert Ayling describes how Kent police "have lived with the problem of asylum communities...for two years now" and discusses the "many problems and tensions."

Criminal prosecution and Article 31 of the Refugee Convention, Frances Webber & Stephanie Harrison. *Legal Action* February 2000, pp22-24. Following the Divisional Court's recent condemnation of the prosecution of asylum seekers for offences connected with their entry, this article considers the criminalisation of those assisting their entry to the UK for humanitarian reasons.

Emigration and services for Irish emigrants - towards a new strategy plan, Brian Harvey, EPCE/ICPO 1999, ISBN 0 9525158 6 5, pp67. This research paper analyses current trends in Irish emigration and the policy responses towards it, on a national and European level. It includes research on the situation of Irish prisoners abroad, where the author detects "a pattern of problems and difficulties, principal of which are isolation, lengthy pre-trial detention, poor health, the desire for transfer, access to legal advice, and poor conditions". Most Irish prisoners abroad (1,200 at any given time) are held in Britain. Available from: Irish Episcopal Commission for Emigrants and the Irish Commission for Prisoners Overseas, 57, Parnell Square West, Dublin 1, Ireland, Tel (IECE): 00353-1-8723655 (ICPO): 00353-1-8722511, Fax (IECE) 00353-1-8723343 (ICPO): 00353-1-8723343, e-mail: iece@indigo.ie or icpo@iol.ie.

ARC Newsletter, Issue 2 (June/July) 1999, pp8. This issue of the Irish anti-racist newsletter includes information on deportations in Europe and campaigning strategies against them (such as the Dutch occupations of aviation companies) which led to *Martinair* halting deportations. It also looks at a study conducted under the auspices of the African Refugee Network (Ireland) aimed at identifying the needs of African refugees and asylum seekers in Ireland. "Racism was a major theme to emerge from the findings", including racist press coverage, police harassment and institutionalised racism in general. Available from: ARC c/o Comhlamh, 10, Lower Camden Street, Dublin 2, Tel: 00353-88-2129770.

Fuer eine grosszuegige Altfallregelung [For a generous outstanding case regulation], Foerderverein PRO ASYL e.V, October 1999, pp4. Pamphlet outlining the German government's promise for an "outstanding case regulation" for asylum seekers which foresees the regularisation of refugees whose cases have been pending since 14 May 1996. The government has continuously delayed the implementation of the regulation by adding restrictive clauses, thereby excluding the majority of asylum seekers from the process. Order free via www.proasyl.de, proasyl@proasyl.de or Tel: 0049-69-230688.

Travellers' Times Newsletter. Traveller Law Research Unit (Cardiff Law School) Issue 8 (January) 2000, pp11. The newsletter compiles news and information on Travellers' issues relating to law, education and Traveller resources. This issue contains the transcript of the controversial interview Jack Straw (UK Home Secretary) gave to Radio West Midlands: "...there are a lot more people who masquerade as Travellers and Gypsies, who trade on the sentiment of people, but who seem to think because they label themselves as Travellers that therefore they've got a license to commit crimes". Available from Rachel Morris (coordinator), Traveller Law Research Unit, Cardiff Law School, PO Box 427, Cardiff CF 10 3XJ, Tel: 0044-1222-874580, Fax: 0044-1222-874097, e-mail: tlru@cf.ac.uk, www.cf.ac.uk/uwcc/claws/tlru/

Bundesdeutsche Fluechtlingspolitik und ihre toedlichen Folge(n) - Dokumentation von 1993-1999 [Germany's refugee politics and their deadly consequences - documentation 1993-1999], Antirassistische Initiative Berlin (AIB), pp127. This annually updated documentation reports that: "At least three people died at Germany's eastern borders in 1999. Thirty-six refugees suffered severe injuries during border crossings. Six people committed suicide in the face of their deportation or died in an attempt to escape their deportation. At least 25 people harmed or tried to kill themselves and survived, often with severe injuries. Two people died during their deportation; 34 persons were injured through restraining measures or physical abuse by authorities. Two refugees died after their deportation from Germany. At least 14 people were tortured and abused by police or the military in their home countries after deportation. Three refugees were killed in arson attacks against asylum seekers homes and 65 people were injured this way, some of them severely". From *Antirassistische Initiative e.V*, Yorckstr.59, 10965 Berlin, Tel: 0049(0)30-785-7281, Fax: 0049(0)30-786-9984, e-mail:ari@ipn.de http://www.berlinet.de/ari/publikat/folgen4.htm

Anmerkungen zu Medien und Justiz, [Notes on the media and the justice system]. Sudanese Association in and around Hamburg, *Off-limits*, no 27/99, pp5-7. Article exposing the racist media coverage which surrounded the death of the Sudanese asylum seeker Aamir Ageeb at the hands of the Federal Border Guards during his deportation. Ageeb, after his death, was labelled as a criminal by the press. The authorities are accused of gross misconduct in their obstruction of the post-mortem examination which would have clarified the exact cause of death. *Off-limits*, Hospitalstr.109, 22767 Hamburg, Tel: 0049(0)40-3861-4016, Fax:0049(0)40-3861-4017, e-mail: Redaktion@offlimits.de; http://www.offlimits.de

kein mensch ist illegal - ein Handbuch zu einer Kampagne, [no one is illegal - a handbook about the campaign], Cross the Border (eds) 1999, pp144, ISBN 3-89408-087-6, 15 DM. The *no one is illegal* handbook presents important aspects of practical support work for illegalised refugees and migrants. With 13 articles and interviews, this book is a useful contribution for those who want to develop practical strategies to counteract the dominant discourse on refugees and migrants. It includes marriage guidelines, accounts from church asylum, an analysis of European migration politics and a critique of the criminalisation of so-called human traffickers. From *ID* Verlag, Postfach 360205, 10972 Berlin.

Parliamentary debates

Immigration and Asylum Bill *Lords* 18.10.99. cols. 747-819; 20.10.99. cols. 176-257; 2.11.99. cols. 724-800, 819-870; 10.11.99. cols. 1366-1387

Asylum Seekers: Accommodation *Lords* 20.1.00. cols. 1238-1241

European Asylum Seekers *Commons* 25.1.00. cols. 1WH-21WH

Immigration (Regulation Period for Overstayers) Regulations 2000 *Lords* 31.1.00. cols. 57-66

LAW

DENMARK

Ban on masks at demonstrations

A majority in the Danish parliament favour the reintroduction of a ban on the wearing of masks before and during demonstrations. It "will prevent riots", said the Minister of Justice, Frank Jensen. There has not been a ban on wearing masks, or other items that can disguise a persons identity, during public gatherings or demonstrations since 1967. It is expected to be passed with a large majority (the coalition government supported by the Liberal Party, the conservatives and the extremist Danish Peoples Party).

The Minister of Justice has argued in favour of the proposed amendment to the Penal Code says that it will, "...in certain situations improve the capability of the police to - before unrest starts - prevent violence, wanton destruction of property and other offences connected with demonstrations...If unrest has already broken out, a ban could give the police a better basis for intervening with participants who appear masked". This is a new position for the Minister. Until recently official policy had been to reject proposals by the opposition to reintroduce a ban. Now, under pressure from senior police officers, and a general "tough-on-crime" criminal justice policy, the social-liberal junior partner in the government coalition has accepted the Social Democrat's position.

However, it is not just being masked while participating in a demonstration that will be covered by the new amendment. The mere possession of material that can be regarded as a potential mask can lead to confiscation and perhaps arrest (although religious clothing and carnival processions are not included). Indeed, if police officers observe a group of people they think are about to participate in a demonstration - however peaceful they may be - the new amendment opens up the possibility for the police to search the group and also to disperse the gathering, demonstration or event that they were on their way to join. If found guilty a sentence ranging from a fine to six months imprisonment can be imposed.

With this amendment the Danish Penal Code will be brought in line with similar directions in the United Kingdom where, since the 1998 Crime and Disorder Act, police have had the right to ban the wearing of masks. The same is true for Germany, where the so-called *vermummungsverbot* (disguise ban) has been effective since 1989. In the Netherlands there are no specific provisions in the law that prohibit mask wearing, but city mayors' can issue provisions for public gatherings and demonstrations which can include a mask ban. Of the Scandinavian countries, Norway is the only one which has a ban on masks included in the Police Law.

Law - new material

Inquest Law Issue 3 (Winter) 1999, pp8. This edition has pieces on the inquest into the death in police custody of Richard O'Brien and Roger Sylvester, coroners, the inquest into the death of Mark Bell and referring prison custody deaths to the Parliamentary Ombudsman. Available from INQUEST Lawyers Group, Ground Floor, Alexandra National House, 330 seven Sisters Road, London N4 2PJ.

Statistics on race and the criminal justice system: a Home Office publication under section 95 of the Criminal Justice Act 1991. Home Office (Research, Development and Statistics Directorate) 1999, pp64 (http://www.homeoffice.gov.uk/rds/index.htm) ISBN 1 84082 389 5. Contains chapters and statistics on "ethnic monitoring"; PACE and stops and searches; arrests and cautions; prosecutions and sentencing; prisons; racist incidents; police complaints and practitioners in the criminal justice system.

Briefing by Liberty on the Terrorism Bill. Liberty, December 1999, pp30. Comprehensive briefing by Liberty (National Council for Civil Liberties) on the main clauses of the Terrorism Bill, which results from a review of terrorism provisions ("The inquiry into legislation gainst terrorism", Cm 3420, October 1996) and a government paper "Legislation against terrorism", Cm 4178, December 1998. Available from Liberty, 21 Tabard Street, London SE1 4LA, Tel. 0171 403 3888.

Two steps backwards: The Criminal Justice (Terrorism and Conspiracy) Act 1998, C Campbell. *Criminal Law Review* December 1999, pp941-959. This article reviews the main provisions of the Act. It argues that measures introduced to combat terrorism are likely to prove ineffective and that convictions based on these measures may be incompatible with human rights legislation.

Rights issue, Neil Addison & Chris Taylor. *Police Review*, 10.12.99, pp17-20. Looks at the background and the potential effect of the incorporation of the European Convention on Human Rights (ECHR) into UK law (via the Human Rights Act which enters into force in October 2000). The authors' suggest that the reality of the Act is likely to be rather less exciting than the "spin", but notes that the guarantee of a fair trial (Art. 6, ECHR) will override the discretion currently exercised by the Crown Prosecution Service in the disclosure of documents to the defence. "That will probably mean disclosing everything which could conceivably undermine the prosecution case". Also considers the relevance of the recent ruling in Scotland that found that Temporary Sheriffs (who dealt with around 11% of Scotland's criminal cases) do not constitute an "independent and impartial tribunal" (as required in Art. 6(1)). To prevent England's part-time judicial system facing a similar challenge, the article calls for the establishment of a form of judicial council based on the Canadian system.

Gaining Ground: Law Reform for Gypsies and Travellers, Rachel Morris & Luke Clements (eds.), Traveller Law Research Unit (Cardiff) 1999, pp150. Covering issues (and their related legal "problems" and solutions) such as education, accommodation and site provision, eviction and criminal justice, planning and health and social services, the authors point out the neglect, discrimination, disenfranchisement and criminalisation Gypsies and Travellers face in all areas of life. Whereas, "there is huge infrastructure of land and housing development, mortgage systems, tax subsidy and a liquid housing market to meet the needs of settled people", Travellers are faced with eviction and settlement in dangerous, polluted areas. Contrary to the belief that the public provision of Traveller sites is too costly, the Traveller Law Research Unit in Cardiff has found that the cost of eviction (which amounts to £3.5 million for some local authorities) is by and large the same, if not more expensive than the provision of sites. But rather than remaining critical as to pointing out the existing injustices, this book provides detailed law reform proposals for each section dealt with, making it an indispensable resource for activists, lawyers as well as local authorities. Another positive contribution this collection makes, is its interdisciplinary approach and the fact that it positions Gypsy and Traveller issues within the wider social and political framework of poverty and institutionalised racism. It therefore addresses crucial areas such as media racism and popular prejudice, democratic decision making and community development, exclusion from schools and the disproportionate number of ethnic minorities in the criminal justice system. In the context of the Traveller Law Research Unit recently having joined with the Commission of Racial Equality to improve standards of journalism in these fields and given the recent uninformed and prejudiced remarks by the UK Home Secretary, *Gaining Ground* highlights the need for more research in this area as well as a joining of forces with other groups dealing with racism, exclusion and disenfranchisement. Available from the Traveller Law Research Unit, Cardiff Law School, PO Box 427, Cardiff CF 10 3XJ, Tel: 0044-1222-874580, Fax: 0044-1222-874097, e-mail: tlru@cf.ac.uk, www.cf.ac.uk/uwcc/claws/tlru/.

Parliamentary debates

Public Inquiries *Commons* 24.11.99. cols. 727-734

Crown Prosecution Service Inspectorate Bill [H.L.] *Lords* 13.12.99.

cols. CWH17-CWH20

Legal Advice and Assistance Regulations 1999 *Lords* 13.12.99 cols. 80-90

Legal Aid (Prescribed Panels) (Amendment) Regulations 1999 *Lords* cols. 90-97

ECHR Judgement: Thompson and Venables *Lords* 16.12.99. cols. 329-339

ECHR Judgement (Thompson and Venables) *Commons* 16.12.99. cols. 397-408

Electronic Communications Bill *Commons* 29.11.99. cols. 39-119

Senator Pinochet *Commons* 12.1.00. cols. 277-286

Electronic Communications Bill *Commons* 25.1.00. cols. 159-183

Criminal Justice (Mode of Trial) Bill [H.L.] *Lords* 20.1.00 cols. 1246-1298

MILITARY

Military - in brief

■ **Germany/France: Another step towards a European defence force**: Germany and France are seeking to set up a European military air transport command that would work to pool all of Europe's available military sources to deploy troops and equipment to future crisis zones. The new command could be organised early in 2000 and would make Europe less dependant on US logistic support. It is their transport equivalent of the Air Group that France and the UK established in 1994 for fighter aircraft, which has since been joined by Belgium, Germany and Italy. The command would marshal not only military transport but also make permanent arrangements to charter or requisition civil airliners and cargo aircraft to assist in force-projection operations. The Germans and French hope that the UK, which boasts Europe's biggest military aircraft capability, will join the command along with others. They see it as another step towards creating a European defence force that could operate separately from NATO. *Jane's Defence Weekly 8.12.99.*

Military - New Material

EU military manoeuvring, JAC Lewis. *Jane's Defence Weekly* 8.12.99, p27. On the move by the UK and France to establish a multinational corps able to act in a crisis which could strengthen the EU's role on the world stage.

EADS structures itself for different futures, Paul Beaver. *Jane's Defence Weekly* 15.12.99, p22. The new European Aeronautic Defence and Space Company (merger of Aerospatiale-Matra, Dasa and CASA of Spain) has a complex ownership structure to meet German concerns over French state ownership and French worries over workforce security.

European Defence: Momentum Regained, Edward Foster. *Newsbrief* No 12 (Royal United Services Institute) December 1999, pp86-88.

La restructuration des forces speciales belges [Reorganising Belgian special forces], Thierry Charlier. *RAIDS* no 165 (February) 2000, pp18-25.

Von Pflugscharen zu Schwerten: EU bekommt Interventionsarme [From ploughshares to swords: the EU gets an intervention army]. *AMI* January 2000, pp22-26.

Europaeische Sicherheits- und Verteidigungspolitik - Ergebnisse der deutschen Doppelpraesidentschaft in EU und WEU [European Security and Defence Policy - Results of the German dual presidency in EU and WEU], Peter-Michael Sommer. *Europaeische Sicherheit* 12/99 pp14-18.

Swiss security policy and partnership with NATO, Martin Dahinden. *NATO Review* No 4 (Winter) 1999, pp24-28. Article by the deputy head of the Swiss Mission to NATO which notes that while "There is no question of abandoning their neutrality,...the Swiss now seek to strengthen their security policy through cooperation with other nations and with NATO, in particular through Partnership for Peace."

Review of events concerning 32 Field Hospital and the release of nerve agent arising from US demolition of Iraqi munitions at the Khamisiyah depot in March 1991. Ministry of Defence, December 1999, pp25 (+ Annex A-H). Review of the US demolition of Iraqi rockets containing sarin and cyclosarin at the Khamisiyah ammunition storage facility in 1991 which concludes: "Even if troops had been exposed to the nerve agent at the exceptionally low levels modelled...There would have been no biologically detectable effect."

British chemical warfare defence during the Gulf conflict (1990-91). Ministry of Defence, 1999, pp40 (+ Annex A & B). This paper considers "the suite of measures to defend British forces against the threat of chemical weapons" since the first world war and "further defensive measures...developed during the Gulf conflict."

CAAT News Issue 159 (January) 2000, pp16. Has articles on Arms to Zimbabwe and Pakistan, the lifting of the embargo of arms to Indonesia and the Export Credits Guarantee Department.

NORTHERN IRELAND

Northern Ireland - new material

Conspiracy to murder: death lists, British military intelligence and an Orange lodge, Laura Friel. *An Phoblacht/Republican News* 11.11.99., pp10-11. This article documents the seizure of a loyalist intelligence cache from Stoneyford Orange Hall on the outskirts of Belfast. The British army documents profiled about 300 republicans and nationalists placing "the covert activities of British Military Intelligence centre stage in the collusion controversy."

Just News. Committee on the Administration of Justice, Volume 15 no 11 (November) 1999, pp8. This issue contains articles on a visit to Northern Ireland by the UN special rapporteur on freedom of opinion and expression, a Relatives for Justice conference on state violence, an update on developments in the Pat Finucane murder in light of the Stobie and Maloney cases and new guidelines for delivering equality.

Gender and the transition from school to work in Belfast, M Leonard. *Women's Studies International Forum* Vol 22 no 6 (November-December) 1999, pp619-630. Article based on interviews carried out in 1991 with 122 pupils between the ages of 15-18 from a Catholic working class area characterised by high, long-term unemployment located in Belfast. It focuses on three main aspects of young people's lives: intended career aspirations, involvement in term-time employment and their participation in paid work within the household. Leonard suggests that the transition from school to work plays a crucial role in the reproduction of gender relations.

Policing Ireland, Jim Smyth. *Capital & Class* No 69 (Autumn) 1999, pp101-123. This article situates the Royal Ulster Constabulary "within a context of policing which deviates significantly from other Western European countries." Smyth argues that the "centralised, armed and paramilitary force" is "culturally, politically and organisationally locked into its role as a counter-insurgency force" and is a "dysfunctional element" within the context of the Good Friday Agreement.

Parliamentary debates

Political Progress in Northern Ireland *Commons* 22.11.99. cols. 345-359

Northern Ireland *Commons* 30.11.99. cols. 253-276

Northern Ireland Act 1998 (Appointed Day) Order 1999 *Lords*

30.11.99. cols. 723-752

The Patten Report *Lords* 19.1.00. cols. 1162-1177

Terrorism Bill *Commons* 14.12.99. cols. 152-234

Disqualifications Bill *Commons* 25.1.00. cols. 184-290

Disqualifications Bill *Commons* 26.1.00. cols. 291-552

POLICING

UK

Police censor critical report

A highly critical report by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) into "the efficacy of existing legal remedies in cases involving allegations of ill-treatment by police officers in the United Kingdom" has been censored by solicitors representing the Metropolitan police. In an unprecedented act, empty boxes have been used to replace the deleted text in the section on civil proceedings against the police, where advice from the solicitors to the Met's Complaints and Investigation branch on disciplinary proceedings should have been. The CPT report criticises the lack of openness and transparency governing complaints against the police and the ensuing criminal and/or disciplinary proceedings, which raise "serious questions about the independence and impartiality of the procedures presently used to process complaints about police misconduct."

Although the report is based on an investigation carried out in 1997, its publication is only the latest in a number of highly critical reports following on from the Macpherson inquiry into the death of Stephen Lawrence. The police action is seen as an attempt to limit the publication of findings that are critical or propose disclosure of misconduct. The CPT visited a number of police stations (Brixton, Peckham and Streatham in south London and Notting Hill, west London) and two prisons (HMP Dorchester and The Weare). The report notes, "many victims of police misconduct may have little realistic prospect of other than pecuniary redress". The CPT observe that the lack of "independent" examination of the evidence "does little to dispel the impression that police officers who engage in conduct involving the ill-treatment of detained prisoners are frequently not brought to account for their actions."

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) "Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 17 September 1997"

GERMANY

Criminalisation of anti-racist groups

At 6am on 19 December, around 1,000 police officers, federal border guards, the anti-terrorist unit (GSG 9) and other special forces stormed the *Mehringhof* cultural centre in Berlin-Kreuzberg. They spent 12 hours searching the 5,000 square metre complex, which houses over 30 social projects, leaving damage estimated at 100,000 DM (£33,300). Simultaneously, three people were arrested in Berlin and Frankfurt, accused of the "formation or membership of a terrorist organisation" under Paragraph 129a of the Criminal code. Two of the accused are supposed to have taken part in a series of attacks by *Revolutionaere Zellen* (RZ) and *Rote Zora* between 1986-7 against individuals and buildings connected with the implementation of "Germany's racist refugee policies".

The recent arrests were apparently based on statements made by a suspected former RZ member, Tarik Mousli from Berlin. Mousli was arrested on 23 November 1999 on the basis of incriminating statements made by former RAF member Hans-Joachim Klein who in turn was arrested in France in 1998. Mousli had already given evidence earlier in November 1999 which led to nine house searches in Berlin and Frankfurt/Main. The arrests of 19 December followed specific allegations made by Mousli against Axel H the caretaker of the *Mehringhof* centre and Harald G, activist and founding member of the *Forschungsgesellschaft Flucht und Migration* (Research Centre on Flight and Migration, FFM), which is also located in the *Mehringhof* complex. Sabine E, the partner of another suspected RZ member was arrested on the same day in Frankfurt/Main.

Sabine E and Harald G are accused of the attempted bomb attack on the Social Security Centre for Asylum Seekers in Berlin on 6 February 1987 as well as the attack on Guenter Korbmacher, the then presiding judge of the Federal Administrative Court, on 1 September 1987. Sabine E is further alleged to have taken part in a similar attack on Harald Hollenberg, the former chairman of the Berlin Immigration Authority, on 28 October 1986. The charges are not only lack of evidence but they are outdated and therefore not be prosecuted as the public prosecution has admitted. According to the *Bundesanwaltschaft* (Federal Prosecutor's Office, BAW) in Karlsruhe, the attacks "portray the dangerous nature of the terrorist organisation RZ", despite the fact that it officially declared an end to its activities over a decade ago. Para 129a was introduced in 1976 to criminalise not only the formation and membership but also the proselytising of terrorist organisations. The provision has enabled authorities to prosecute and investigate activists despite the lack of specific allegation, ie: the lack of any crimes. Allegations under Para 129a also allow for the immediate detention of the suspects without having to establish if they have committed a specific crime and they are always refused bail. The recent allegations have also allowed the authorities to raid a plethora of social organisations entirely unconnected to the criminal spectrum, leaving damage which the small organisations will not be able to recover.

Mousli had also contended that there was an RZ depot of weapons and explosives hidden in the *Mehringhof* complex, apparently referring to an incident on 4 July 1987, when "unknown "RZ"-members stole over 100 kilograms of the industrial explosive Gelamon 40 as well as other explosives in Salzhemmendorf...The majority of this explosive has not been recovered up to today" (BAW press release). Silke Studzinsky, the lawyer representing Harald G, is not surprised about the far-reaching nature of Tarik Mousli's statements as he was giving evidence under the crown witness regulation (*Kronzeugenregelung*) which was due to expire on 12 December 1999. The regulation, also enforced during the 1970's RAF period, gives lesser penalties to those accused of "membership in a terrorist organisation" if they denounce others and give evidence. This provision has been criticised by civil- rights activists for inviting false statements: given the severity with which accusations under Para 129a are treated in Germany, the giving of "evidence" can considerably lessen the sentence. It appears that the authorities wanted to take advantage of the last months that the regulation remained in force.

The treatment of those arrested mirrors that of RAF members over 20 years ago, with the important difference that there have not been armed organisations in Germany for decades, with the RZ as well as the RAF having officially declared an end to their armed struggle on the basis that the so-called urban guerilla strategy had failed.

Those arrested were taken from Berlin and detained in isolation in different prisons in Wuppertal, Duesseldorf and Frankfurt/Main. All three are kept in isolation 23 hours a day and

are only allowed visitors every 14 days for half an hour. The visits also have to be arranged with the BAW and a criminal investigation officer records everything that is said. Any mail has to be directed through the BAW and takes two weeks longer than usual, including correspondence with lawyers.

The severity of the police action during the raid triggered off a wave of messages of condemnation from anti-racist and refugee support groups all over Europe: the police drilled holes in the walls, irreparably broke over 50 doors, (despite the fact that a lawyer whose office is in the building offered the police and a public prosecutor who was present at the scene a master key to all the doors) and ransacked the theatre room, where anti-terrorist officers ripped dolls apart and tore plaster off the walls and ceilings. No explosives were retrieved. During the raid, neighbouring houses were cordoned off and residents were only allowed into their homes with identification and a police escort. Twenty people were forced to stay in the building and were refused drink or food, permission to go to the toilet or to speak to each other, some were beaten. Two have been detained pending deportation.

The lawyer Martin Poell, who arrived at the scene at 7am, was not allowed to enter his offices on the order of the public prosecutor Mr Homann, an order which is seen by the defending lawyers to be in breach of Para 106 of the Code of Criminal Procedure. This legal provision gives the owner as well as an independent third party the right to be present during the raid if they can be contacted. The public prosecutor however, contended that Mr Poell was not allowed to enter the room for 30 minutes on grounds of his own safety. Although the stated aim of the raid was to retrieve suspected explosives, computer databases of several offices were also searched.

The police failed to leave behind proper protocols in many rooms, thereby omitting any reference to the presence of third party witnesses as well as to the damage done. By law, every measure taken during searches and raids, including the breaking open of doors, cupboards etc. has to be registered and passed on to the owner so that any unlawful damage can be retrieved from the prosecuting authorities. The lack of protocols makes it extremely difficult for the groups concerned to verify the facts and get compensation. The defending lawyers have initiated a complaint against the three responsible public prosecutors.

Apart from the police conduct however, the raid was even more unexpected in its target: far from organising "subversive" activities, the *Mehringhof* encompasses a variety of public services and organisations. The centre was bought by the groups in 1979 and hosts a publishing company, two theatres, a bicycle shop, a children's education centre and diverse political and social groups and initiatives. They organise household help for sick and disabled people, medical care for refugees and migrants, and psychotherapy and literacy classes for adults. Harald G was one of the most active members of the research centre FFM which has conducted outstanding work on the EU's asylum practices with specific focus on central and eastern Europe and human rights abuses on the EU's external borders.

Harald G is also a member of the Brandenburg Refugee Council. He was responsible for their "borders" working group, giving talks as an expert adviser to church groups and vicars' conferences and was one of the founding organisers of the "Caravan for the Rights of Refugees and Migrants", which toured over 44 cities in Germany in 1998 (see *Statewatch* vol 9 nos 3 & 4, 6) as well as the "UNITED" conference in Potsdam in late 1999. He was active in exposing the criminalisation of taxi drivers for transporting refugees in east Germany and was responsible for keeping important cross-regional contacts both for the Refugee Council and the FFM. Harald G was one of the only close observers of the trial against the neo-nazi youths who hounded and killed asylum seeker Farid Guendoul in Guben 12 February 1999. His arrest leaves a significant gap in the work of important refugee and migrant support groups which have struggled to survive in the past years. Axel H's arrest too is not simply seen by lawyers and activists as a coincidence. He was actively engaged in various campaigns and projects for a long time in Berlin.

As well as the *Mehringhof* raid, preliminary proceedings have been instigated against the *Antifaschistische Aktion Passau* (see *Statewatch* vol 9 no 5) as well as anti-nuclear protesters and anti-racists from Bremen. An anti-racist victim support group from Brandenburg also had to be shut down last year: one member was accused of anti-nuclear actions against the German railway company *Deutsche Bahn AG* between 1996-97 and prosecuted under Para 129a. His house was searched, personal data on the victims of racist violence was confiscated and the groups spending curbed due to the preliminary proceedings.

Paragraph 129a proceedings have long been known to serve a purpose other than the prosecution of a specific crime. People have been arrested, their houses searched and phones tapped and their materials confiscated without any specific charges being brought. Only a few of the prosecutions started end up in court. However, even if the link to a terrorist organisation or other specific accusations are finally refuted, the police and prosecutors have in the process criminalised and hindered the work of political activists, in this case anti-racist and refugee support groups, and gathered a wealth of intelligence information - not only on those arrested but everyone related to their "spectrum".

The campaign for the release of Axel, Harald and Sabine (www.freilassung.de): Martin Poell, "Freilassung", Ktonr. (account number): 2705-104, BLZ (branch code): 10010010, Postbank Berlin. Due to their isolation, the prisoners are asking for messages of support, books, newspapers and other essentials. Post for Axel and Harald has to go via the federal prosecutor's office: Harald Gloede (at the time he is held in the JVA Duesseldorf, Ulmenstr. 95, 40476, Buchnr. 3605/99-0) and Axel Haug (JVA Wuppertal, Simonshoefchen 26, 42327 Wuppertal) c/o BAW, Brauerstr. 30, 76137 Karlsruhe. Bambule July 1999, junge Welt 22.12.99, Press Release of the federal prosecutor's office (BAW) 19.12.99, Press Release of the Brandenburg Refugee Council January 1999, www.freilassung.de

Policing - in brief

■ **ACPO concerned about "inappropriate" use of baton guns**. The Association of Chief Police Officers (ACPO), who issued guidelines relaxing the deployment of plastic bullets (baton rounds) to police forces in England and Wales last August, have expressed concern over the "inappropriate" use of the lethal weapons. ACPO sources, quoted in *Police Review*, warned that the baton rounds "are not appropriate in every situation...The circumstances where they are useful will be limited." Their warning comes after Durham constabulary said it is to "go operational" with baton guns. Durham Chief Constable, George Hedges, stated that the guns will not be used in public order situations. Durham constabulary believes that "the baton gun has the ability to bring some dangerous incidents to a conclusion without loss of life", but ACPO has warned that the baton gun "is not a replacement for a firearm". "If you hit someone with a baton round and they are still armed it can make the situation worse" they added. *Police Review* 15.10.99.

■ **UK: Northumbria constabulary withdraws extendable batons**. Northumbria constabulary have withdrawn expandable batons from general use following criticism from the force ACPO policy group. The decision followed a paper from the group that recommended that its use should be "limited"; the force motor cycle section will continue to use it because they need to fold the baton in order to carry it safely. A report by the Crown Prosecution Service in December 1998 warned of lasting injuries caused by the truncheons, which are commonly used by police in the United States (see *Statewatch* vol 9 no 1). Commenting on his decision, chief constable Crispin Strachen said that the batons had been withdrawn: "...because we did not

see the operational necessity to use them...outweighed the research which was available nationally saying such weapons were responsible for a higher proportion of injuries and damage to people than other kinds of baton." *Police Review* 4.2.00.

Policing - new material

In for the long haul, Sebastian Naidoo. *Big Issue* 14.2.00., pp18-19. Interview with the new Metropolitan police commissioner, John Stevens. He admits that his force may never eradicate racism and is criticised by Asad Rehman of the Newham Monitoring Project who says that: "The problem with their [the Met's] strategy is that they're not attempting to move the institution as a whole. They're saying it's too difficult."

Keep off the grass!, John Weeks. *Police* February 2000, pp17-19. This article takes as its starting point the new Association of Chief Police Officers' guidelines on informants in relation to the Greater Manchester police force. A Manchester police spokesman explains that he prefers using the term "source management unit", rather than being linked with the word informer.

White backlash, Jo Hadley. *Police Review* 4.2.00., pp28-29. This article summarises the author's "academic research into how white [police] officers in county forces, who police a predominantly white public, viewed the importance of 'cultural diversity' following the recommendations of the Macpherson report". It concludes that "Officers need to understand and be able to talk positively, not only about racism and the value of cultural diversity, but also constructively and critically in terms of their own ethnic identities as 'white' ".

An iron fist in an iron glove? The zero tolerance policing debate, M Innes. *Howard Journal of Criminal Justice* Vol 38 no 4 (November) 1999, pp397-410. This article examines the development of zero tolerance policing in Britain and America. It traces the philosophical and theoretical bases of the zero tolerance approach and how they have influenced the practical implementation of a particular view of the police's role in society. It is argued that central to the changes in public policing within the wider remit of social control, is an increasingly influential populist dynamic which is transforming approaches to law and order.

Community Policing, *Buergerrechte & Polizei* (Cilip), Vol 64, No 3/1999, pp110, DM 14. This issue concentrates on different aspects of community policing. Norbert Pütter highlights the vague and inadequate definitions involved in the concept of "policing the community", which is also one of the main reasons for its functioning as a repressive control strategy, rather than a democratic tool for crime reduction. Other articles critically deal with community policing in the USA, the role of police conducted public surveys, communal crime politics and police misconduct in Germany and a serious incident of data protection violation in which "evidence documentation databases" were illegally kept, and in use 15 years later, by police in Goettingen. Available from Verlag CILIP, c/o FU Berlin, Malteserstr. 74-100, 12249 Berlin, Tel: 0049-30-7792462, Fax: 0049-30-7751073, e-mail:info@cilip.de, www.cilip.de

The politics of stop and search, Lee Bridges. *CARF* No 54 (February/March) 2000, p7. In this article Bridges takes on the myth that the recent decline in the use of stop and search in London is directly related to a rise in crime. "Much of the recent debate...is more to do with a campaign to re-establish its [stop and search] political legitimacy as a policing tactic", he observes.

Der OK-Komplex, Organisierte Kriminalität und ihre Folgen für die Polizei in Deutschland [The OC complex, organised crime and its repercussions for the police in Germany], Norbert Pütter. Verlag Westfälisches Dampfboot, Münster 1998, ISBN 3-89691-439-1, pp450, DM 48. This well-researched book analyses the incompatibility of the "rule of law" with the fight against "organised crime", as the police can extend their definition of organised crime without external accountability. Putter analyses the concept of organised crime as "a self-referential and self-perpetuating process". Police and authorities are now targeting important civic institutions with the justification that unspecified "threats to society" are forming behind legal facades. Central to the author's analysis is the ambiguity of the definition of "organised crime" and the police's power to use the term arbitrarily. He points out the organisational changes in the police apparatus concerning suspects, proceedings and database inputting, as well as networking between different databases and undercover operations. The prime suspects for involvement in organised crime networks are ethnic minorities and the author points out that the level of surveillance closely corresponds to gradation in skin colour. In Berlin, even the ownership of a pizza restaurant has been used as a justification for the creation of a police intelligence record. *From Verlag Westfälisches Dampfboot, Dorotheenstr. 26a, 48145 Muenster, Tel: 0044(0)251-6086080, Fax: 0044(0)251-6086020, e-mail: dampfboot@login1.com, http://www.login1.com/dampfboot*

Parliamentary debates

Crime and Police Numbers *Lords* 28.10.99. cols. 380-382

Powers of Entry to Private Premises *Lords* 8.11.99. cols. 1152-1154

Crime Reduction Strategy *Commons* 29.11.99. cols. 21-38

Rural Areas (Policing) *Commons* 2.12.99. cols. 531-538

Criminal Justice (Mode of Trial) Bill *Lords* 2.12.99. cols. 919-1004

Patten Report *Commons* 19.1.00. cols. 845-864

Football Safety *Commons* 25.1.00. cols. 22WH-28WH

Police Complaints (Civilian Employees) *Commons* 27.1.00. cols. 677-684

RACISM & FASCISM

ITALY

Measures against displaying fascist symbols in stadiums

The Ministry of the Interior has decreed that football games will be suspended if violent, racist or nazi/fascist banners and symbols are on display. The failure to remove banners within 45 minutes of the suspension, as decided by a police official, would lead to the automatic loss of the game for the team whose fans were responsible. The move comes in the wake of a proliferation of fascist symbols in Italian stadia, culminating in the display of a large banner paying homage to Arkan the Tiger, the Serb warlord, and a portrait of Mussolini, during a match between Lazio and Bari on 30 January. Investigations led to charges being pressed against a member of the Lazio *Irriducibili* supporters group who is accused of carrying the banner into the stadium for fellow supporters to unroll and display it.

Widespread condemnation from political figures was broken by Alessandra Mussolini, MP for *Alleanza Nazionale* (AN), who praised these fans as the "healthiest" part of football. Following the decree, there was an increased police presence in stadia, particularly at the Olympic stadium in Rome, in order to carry out orders to remove the offending banners. Critics of the measure fear that police intervention could lead to clashes with fans, and to a militarisation of the stadium. Interior Minister Enzo Bianco claimed that there is no intention to provoke fans, that the suspension would only occur in extremely serious circumstances, and there will be an ever-increasing use of CCTV.

Both Roma and Lazio, the capital's two teams, have recently experienced an increase in right-wing activities, with allegations of manipulation of younger fans by fascist activists. A Roma fan from right-wing circles was charged in connection with an attempted bombing on 26 November outside a cinema where

"The Specialist", about Nazi war criminal Adolph Eichmann, was due to be shown, (see *Statewatch*, vol 9 no 6). Two further Roma fans were arrested in connection with a display of Celtic crosses and swastikas during the Roma v Verona match on 16 January. One of these was allegedly also involved in a violent attack by right wing groups on Roma's traditional supporters' group on 12 September. In the last two weeks, Lazio fans have been in trouble for racially abusing black players; they were fined £1,700 for abuse hurled at Bruno N'Gotty, of Venezia, and face further action about the treatment received by Lilian Thuram, Ousmane Dabo and Saliou Lassissi of Parma, on 13 February.

The problem is not unique to high profile professional football. Maccabi Roma, the Hebrew community's team since 1964, competing in Italy's provincial amateur league, withdrew its under-21 team from competition in November, as it had done two years earlier with its senior team, following the persistence of racist abuse they suffered from other teams in the local league. The Jewish community's sport representative, Vittorio Pavoncello explained their decision: "It was no longer bearable. We went to Marino, Albano, Tolfa, Velletri, [towns surrounding Rome] and as soon as the game got physical the insults would start."

The increase in racist incidents has been attributed to the activities of *Forza Nuova* (FN), a group affiliated to the International Third Position (ITP). It is establishing itself as a political party which is vying with Pino Rauti's *Fiamma Italiana-Movimento Sociale*. The FN's two leaders, Roberto Fiore and Massimo Morsello, have returned to Italy from London. They had been on the run from Italian justice, which had sentenced them for being part of an armed group (NAR, *Nuclei Armati Rivoluzionari*), for over a decade. Fiore and Morsello were able to return to Italy because their outstanding charges were annulled due to *prescrizione* (statute of limitation) for Fiore and poor health conditions for Morsello. In England, Fiore had close links with Nick Griffin, who replaced John Tyndall as leader of the British National Party in September, and it is widely believed that he was protected by the British security service MI6 in exchange for giving information on the Italian far-right.

Corriere della Sera 29.11.00; Guardian 15.2.00; Il Messaggero 25.1.00; La Repubblica 7.12.99, 31.1.99, 1, 2 & 4.2.00; Searchlight January 2000; Sunday Times 6.2.00; www.ecn.org. 29.1.00.

SPAIN

Racist attacks in El Ejido

On 5 February a 20-year-old woman in El Ejido, Almeria, died of stab wounds after trying to prevent a robbery by a young mentally-ill North African man, who was detained at the scene. The incident gave rise to several days of violent racist attacks by hundreds of local people against immigrant people living and working in the area. El Ejido has a population of 55,000, including 15,000 immigrants who are facing organised and racist violence. Many immigrants have been beaten up, their cars destroyed and their houses and shacks burnt down. Migrant organisations were also attacked by the racists: the headquarters of Progressive Women and Almeria Welcomes have been ransacked, their files thrown into the gutter and set alight, and their activists confined to their houses for fear of street violence. The police have advised them that their safety cannot be guaranteed.

The police have been criticised for their lack of action. In the first two days of violence they did little to prevent the attacks and made not one arrest, despite the fact that one of the first to be injured was an official of the provincial government, attacked while attending the young woman's funeral. Evidence has emerged of the involvement in these incidents of organised far-right groups. After three days of violence the immigrant community declared a strike, from 9 February, demanding security for themselves, the arrest of those responsible for the attacks, and compensation for those whose cars, houses and businesses had been destroyed. The police, on the same day, arrested dozens of immigrants said to be enforcing their strike by unlawful picketing.

Moroccans form the largest community of non-EU aliens resident in Spain, with 111,100 registered in 1997. According to the Preliminary Report of the UN on Migration, Spain currently needs an average of 240,000 additional immigrants per year if it is to maintain the balance of its adult population (meaning four economically active people per pensioner). Spain currently has the lowest reproductive rate of any country in the world, with just 1.07 children per woman of childbearing age. At the same time, the farming and construction industries require one million legal immigrants to meet their needs over the next three years. Despite all this, the quota approved by government for 1999 was 30,000 immigrants, as against 94,819 applications received.

UK

Police re-investigate hangings

Harold McGowan, 34, was discovered hanged in an empty house in Telford, Shropshire, in July last year after a sustained campaign of harassment by a racist gang. Six months later his 20-year old nephew, Jason, who had been investigating his uncle's death and had also been threatened, was found hanging from railings outside a leisure centre in the town. With disturbing echoes of the institutional racism that riddled the Ricky Reel and Michael Menson police inquiries, family members have accused West Mercia police officers of failing to link the campaign of intimidation with the suspicious deaths, and assuming that they were suicides. Their campaign has forced a new joint investigation, advised by the racial and violent crimes task force (CO24), into both deaths, a tacit admission of the inadequacy of the earlier inquiry.

Harold's death followed an incident while he was working as a pub doorman, when he turned a man away. As a result he was pursued around Telford, abused, taunted and threatened by members of a racist gang that has been linked to Combat 18 (C18); anonymous telephone calls threatened his life and he was informed that he was on a C18 death list. He kept a log of the incidents and reported them to the police on three occasions but, "...they didn't do anything then or when he died" his mother said.

His nephew, Jason, who worked on the production team of a local newspaper, began to investigate the circumstances of his uncle's death and the racist gang that threatened him. He also began to receive death threats. Jason, who had recently married and bought his first house, celebrated the new year with his wife; shortly before midnight he disappeared, and despite searches was only found hanged from railings outside a leisure centre the following morning. The railings were so low that he would have had to kneel to kill himself.

The mothers' of the two men point out that neither of them had any reason to hang themselves and that neither left a suicide note. Their doubts were supported by independent pathologist, Dr Nat Carey, who conducted a post-mortem examination of Jason's body on behalf of his family, and told *The Independent* newspaper:

> *Most aspects of this case don't fit comfortably with a suicide. Particularly with the possibility that racism is involved. We owe it to the family members to investigate this with the same degree of thoroughness that would be expected in a full-blown murder investigation.*

The families believe that the police, as with the Ricky Reel and Michael Menson inquiries, made an assumption of suicide and

failed to investigate the possibility of murder, losing valuable forensic evidence. Six white men, all in their twenties and thirties, and allegedly part of the gang involved in the mens' harassment, were eventually questioned by police, but prosecutions did not follow.

The families' campaign has linked up with the National Civil Rights Movement to demand a reinvestigation of the deaths by Scotland Yard's race and violent crimes task force, but the West Mercia force have refused to meet this demand. Instead, at the beginning of February, after a meeting between family members, their legal representatives and senior police officers, West Mercia constabulary announced it would launch a new joint inquiry into both deaths and the allegations of racist harassment. The force will call in the CO24 task force to "advise them" and will disclose all "relevant" documentation to the family. Meanwhile, Jason's family have lodged a complaint with the Police Complaints Authority (PCA) claiming that West Mercia police failed to investigate his death adequately because of racism and that they treated the family poorly.

The new West Mercia inquiry will also liaise with Surrey police officers who investigated the death of 24-year old Akofa Hodasi who was found hanging from a tree in Frimley two days after being racially attacked in April 1998. Police officers concluded that his death was a suicide but last September an inquest recorded an open verdict and at the beginning of February a PCA investigation found that a senior Surrey police officer had "lost control" of the case. Mr Hodasi's family assert that crucial information could have been lost as suspects were not questioned for over three weeks.

The National Civil Rights Movement can be contacted at NCRM, 14 Featherstone Road, Southall, Middlesex UB2 5AA, Tel. 020 8574 0818 or 020 8843 2333. Email - info@ncrm.org.uk. The NCRM has a free race and policing hotline which can be used in the UK for assistance with police racism - 0800 374618.

AUSTRIA

Fascists in power as leader quits

Amid Europe-wide protests the far-right *Freiheitliche Partei Osterreichs* (FPO) entered into a coalition government with the conservative *Osterreichische Volkespartei* (OVP) on February 3. In last October's parliamentary elections the *Sozialdemokratische Partei* (SPO) finished with 65 of the 183 seats, but were unable to form a majority government. The far-right FPO, who ran a virulent anti-foreigner campaign utilising nazi-inspired slogans referring to overpopulation by foreigners (*überfremdung*), finished second narrowly ahead of the OVP. Following the collapse of January's talks with the SPO, the leader of the OVP, Wolfgang Schussel, signed the pact which saw him become the new Chancellor.

During last year's election campaign Schussel pledged that he would go into opposition rather than form a government with the FPO. His talks with the far-right extremists resulted in them gaining ministerial seats: Susanne Riess-Passer (vice-Chancellor), Karl-Heinz Grasser (Finance), Michael Schmidt (Infrastructure), Herbert Scheibner (Defence), Elisabeth Sickl (Social Security) and Michael Krueger (Justice). Two other FPO members were appointed State Secretary for Tourism (Mares Rossmann) and State Secretary for Health (Reinhart Waneck). Two of the FPO's nominations were rejected by President Thomas Klestil who also insisted that Haider signed a declaration - "Responsibility for Austria: a future in the heart of Europe" - stating that: "The Federal Government works for an Austria in which xenophobia, anti-Semitism and racism have no place." However, European Parliament president, Nicole Fontaine, observed:

The fact that President Klestil is getting a declaration from this government on the fundamental values of the European Union will clearly not be able to make us forget the insulting, xenophobic and racist statements of Joerg Haider. The Parliament...will be intransigent as regards respect of the principles of liberty, democracy, human rights and the rule of law.

Indeed, Haider went even further, apologising for the fascist ideology he has vocally supported in the past. He expressed regret at past comments diminishing the Holocaust, and eulogising Hitler's "employment practices" and the Waffen SS. This "u-turn" did not staunch the wave of world-wide condemnation which greeted Haider, and he was forced to resign as leader of the FPO at the end of February. However, many commentators see this as little more than a smokescreen - Haider's base in Carinthia will be maintained and predict he will attempt to re-emerge at the next elections.

The FPO's electoral success led to protests at Austrian embassies across Europe and large demonstrations in Vienna which left more than 50 people injured. Concern has been expressed at governmental level and some MEPs have refused to attend meetings with far-right representatives or have walked out in protest. The Portuguese presidency of the EU issued a statement, agreed somewhat relecutantly by some EU governments, stating that:

" - Governments of XIV Member States will not promote or accept any bilateral official contacts at political level with an Austrian government integrating the FPO;

- there will be no support in favour of Austrian candidates seeking positions in international organisations;

- Austrian Ambassadors in EU capitals will only be received at a technical level"

However, even these limited sanctions created division over how the EU will implement its plan to sever bilateral relations. An invitation to Austria to join an informal meeting of social affairs ministers at Lisbon in February provoked protests from Belgium and threats of a boycott by France. Haider, who has pointed to the similarity between the FPO's policies on issues such as immigration and the UK government's policies, has called for Tony Blair to act as a "peacemaker" between Austria and the European Union. His resignation, however, suggests he will strengthen his base while biding his time until the now tainted Austrian coalition government collapses.

Austrian embassy "Responsibility for Austria - A future in the Heart of Europe" 5.2.00; Austrian embassy "New Federal Government sworn in by Federal President Klestil" 5.2.00. (http://austria.org.uk)

Racism and fascism - in brief

■ **Italy: LN secretary charged with instigating racial hatred.** The public prosecutor's office in Milan charged Marco Bossi, the secretary of the *Lega Nord*'s section in Arese, near Milan, of "instigating racial hatred". The charge is very rarely used in Italy and was applied to Bossi, (who is not related to LN leader, Umberto), after he plastered walls with offensive posters during last year's European election campaign. The posters depicted an immigrant with the words "*Vu' stupra'?*" (Wanna rape?) written on it. *La Repubblica 11.2.00.*

■ **UK: Leeds United players questioned about racist attack**. Two Leeds United football players, Jonathon Woodgate and Lee Bowyer, were arrested and questioned about a violent racist attack which left a 19-year old Asian student with serious injuries in January. Sarfraz Najeib, a student, and five friends were attacked and pursued by a gang outside a nightclub in Leeds city centre. Safraz was knocked to the ground and beaten and kicked unconscious and suffered broken ribs, a broken leg, a broken nose and a gashed leg. His brother, Shazad, was also knocked to the ground and beaten. Police, who acknowledged

that the attack was racist, questioned the footballers before releasing them on bail. Leeds United football club had a notorious racist following on the terraces during the 1980s, but a concerted campaign by anti-racist supporters - initially greeted with indifference by club officials - eventually drove them out. Anti-racist groups have called for the Football Association and Leeds United to "signal their zero tolerance of racism" by suspending the two players. *National Assembly Against Racism news release 19 & 20.1.00.*

■ **UK: Michael Menson convictions**. Mario Pereira and Harry Charalambous Constantinou were jailed at the Old Bailey for the murder of black musician Michael Menson on 21 December 1999. Pereira was sentenced to life for murder and Constantinou received 12 years for manslaughter; a third man was jailed for 21 months for attempting to pervert the course of justice. Ozgay Cevat, who fled the UK after the killing, had already been jailed in Cyprus for his role in Michael's murder. Michael had been racially abused and assaulted before being set alight on the North Circular Road, London on 28 January 1997; he died from his injuries on February 16. Despite overwhelming evidence that he had been murdered, police treated Michael's death as a suicide and only determined campaigning by his family, who refused to accept the police interpretation of events, led to an inquest returning a verdict of unlawful killing in September 1998. Michael's case was taken up by the race and violent crimes task force (CO24) and the suspects were arrested and charged. The family are now demanding that the Police Complaints Authority report, investigating their complaints about the handling of Michael's murder, be made public.

Racism & fascism - new material

Race crime revisited, Sean Howe. *Police Review* 7.1.99., pp19-21. This article covers the decision to reinvestigate 380 "racial and homophobic incidents" by Merseyside police following recommendations by Her Majesty's Inspectorate of Constabulary and the Macpherson report into the racist murder of black teenager Stephen Lawrence.

Demos No 59 (Winter) 1999, pp3-15. This issue includes a round-up of nazi groups and their personnel in Sweden, Blood and Honour in Norway and the "Echelon" system in Denmark. Available from Demos, Postbox 1110, 1009 Kobenhavn K, Denmark; email demos@demos.dk

Race investigations: the families' perspective. *CARF* No 54 (February/March) 2000, pp2-5. A year on from the Macpherson report into the racist killing of Stephen Lawrence, CARF reassesses the policing of racist violence. It contains a table of known/suspected racist murders since 1997.

Das Blood & Honour Netzwerk - Entstehung, Entwicklung und Bedeutung des Nazi-Skin-Netzwerkes, [Blood & Honour - the formation, development and significance of the nazi-skin network]. *Antifaschistiches Infoblatt*, no 49/99, pp22-28. Taking as its starting point Ian Stuart's observation that "Music is the ideal tool to bring youths closer to national-socialism" this article examines the Blood & Honour scene in Germany. It concludes that, "important as the recent development of Blood & Honour in Germany seems to be, it would be rash to talk of a success story. Behind the legendary stories there is...greed, arrogance and self-interest and the consequent quarrels, especially about the distribution of profits." Order from *AIB*, Gneisenaustr.2a, 10961 Berlin, Fax: 0049(0)30-694-6795, e-mail: aib@mail.nadir.org.

Anti-racism: an Irish perspective, M Tannam, S Smith & S Flood, December 1998, pp64, ISBN 0-9534561-0-2, IR£5. "It is only by naming racism as a potential problem that conscious preventative measures can be taken and that monitoring and responsive systems can be put in place. Otherwise, anti-racism is left to chance...". The authors give practical guidelines for anti-racist activists in Ireland today. From *Harmony*, c/o 41 Morehampton Road, Donnybrook, Dublin 4, Ireland, Tel: 00353(0)1-492-5567 or 00353(0)1-843-3141, e-mail: tannam@indigo.ie or suzannes@indigo.ie

The Irish are friendly, but...- a report on racism and international students in Ireland, G Boucher, 1998, pp199, ISBN 0-9523498-6-8. This research paper was commissioned by the Irish Council for International Students and takes a comparative look at racism in Ireland and Europe and concludes that "the recent Irish combination of economic boom, increasing immigration and rise in racism were far from unique, but seemed to follow a similar pattern to events occurring forty years earlier in other EU countries". The report includes the results and analysis of 48 interviews conducted with international students from three Irish universities in 1997 and their experiences with racist discrimination in Irish society. The report can be ordered from the *Irish Council for International Students*, 41 Morehampton Road, Dublin 4, Ireland, Tel: 00353(0)1-6605233, e:mail: office@icosirl.iol.ie.

Act against racism: conference report. Commission for Racial Equality, December 1999, pp10. This report covers a conference held in November 1999 which debated the Race Relations (Amendment) Bill, the government's response to the Stephen Lawrence inquiry report. The bill, which is described as "disappointing", extends the direct discrimination provisions of the Race Relations Act to public bodies, but excludes "indirect discrimination which may leave institutional racism immune from legal challenge."

Straw in the wind, Michael Mansfield QC. National Civil Rights Movement, 22.1.00, pp10. This is the text of a speech given by Mansfield at the first conference of the NCRM. It traces the beginnings of the Movement and considers the impressive activities of its first year in relation "to the state of civil liberties in the wider perspective." Commenting on the "arrogance" of political parties in power, Mansfield argues that the family of Stephen Lawrence "have demonstrated that politicians can be cornered and forced to face reality..."

Parliamentary debates

Ricky Reel *Commons* 20.10.99. cols. 543-552

Race Relations (Amendment) Bill [H.L.] *Lords* 14.12.99. cols. 127-185; 11.1.00. cols 532-600; 13.1.00. cols. 754-788; 27.1.00. cols. 1672-1708; 3.2.00. cols. 351-363

PRISONS

UK

M25 pair denied a fair trial

In mid-February the European Court of Human Rights (ECHR) ruled that two black men, Raphael Rowe and Michael Davis, who were jailed for life after being convicted as part of the M25 Three gang, were denied a fair trial. The gang, which eye witnesses and police described as comprising two white men and a black man, was responsible for a spate of violent robberies and a murder in December 1988. Rowe and Davis (with a black third man, Randolph Johnson) were jailed for life in 1990 and have consistently protested their innocence. The ECHR's ruling in mid-February follows the payment of undisclosed damages by the Prison Service to Rowe in January in compensation for a brutal assault by prison officers in 1993, (see *Statewatch* vol 2 no 6, vol 7 no 2).

The European Court reached a unanimous decision that Rowe and Davis had been denied a fair trial and appeal because the prosecution had withheld important evidence under public interest immunity (pii) rules. The prosecution had failed to obtain the judge's ruling on whether the step was justified. The Court decided that had the judge known this information he could have put the question of disclosure under review. If the defence had

had access to the information they would have been able to question the evidence and credibility of key witnesses. The men's appeal was also tainted by an underestimating of the importance of the undisclosed evidence.

In January Rowe received undisclosed damages from the Prison Service after being repeatedly kicked and punched by prison officers in his cell at Wormwood Scrubs prison in January 1993 and called a "murdering black bastard". His claims formed part of a wider series of allegations against prison officers at the "brutal" prison where 27 officers are facing charges relating to racist abuse and assaults on prisoners (see *Statewatch* vol 9 no 3 & 4). Another 20 prison officers are likely to be charged after a second police investigation into a further 48 allegations of brutality against former and serving officers. Last year the Inspector of Prisons published a report which condemned the systematic abuse, frequent racial abuse and intimidation of inmates at the "evil" and "rotten" prison (see *Statewatch* vol 9 no 3 & 4).

The men's case has been referred back to the Court of Appeal by the Criminal Cases Review Commission, and a new appeal is expected in the summer. However, James Nichol, Rowe's solicitor, has called for Rowe's release. He has asked the Crown Prosecution Service to concede the appeal in light of the ECHR ruling that "...there was an unfair trial, an unfair appeal and it was entirely the fault of the Crown."

Prisons - new material

Equal opportunities and the Prison Service in England and Wales, Jill Enterkin. *The Howard Journal of Criminal Justice* Vol 38, no 4 (November) 1999, pp353-265. This article examines the Prison Service's cross-posting policy, the main plank of its compliance with the Sex Discrimination Act 1975. It concludes that "integration has been strongly influenced by sexual stereotyping and an informal and arbitrary application of the deployment policy."

Projections of long term trends in the prison population to 2007, Philip White & Christopher Cullen. *Home Office Research Bulletin* Issue 2/00 (Home Office, Research, Development and Statistics Directorate) 10.2.00, pp16 ISSN 1358-510X. The paper uses three scenarios to predict prison populations of a. 80,300, b. 74,400 or c. 70,400 by the year 2007. However, it notes that: "No projection made between 1990 and 1994 forecast the relatively [sic] rapid rise in the prison population which has occurred since 1994."

Making the tag fit: further analysis from the first two years of the trials of curfew orders, Ed Mortimer, Eulalia Pereira & Isabel Walter. *Research Findings* (Home Office Research, Development and Statistics Directorate) No. 105, 1999, pp4. These Findings summarise research from the first two years of electronic monitoring trials.

Developments in prison law, Hamish Arnott & Simon Creighton. *Legal Action* January 2000, pp18-24. Latest update on the law relating to prisoners and their rights.

Home detention curfew - the first year of operation, Kath Dodgson & Ed Mortimer. *Research Findings* (Home Office research and Statistics Directorate) No 110, pp4. The Home Office Home Detention Curfew scheme, "one of the biggest electronic monitoring programmes in the world", was introduced in England and Wales in January 1999. Over 16,000 eligible prisoners have been tagged and this briefing summarises the results of evaluation.

Parliamentary debates

Deaths in Custody *Lords* 24.1.00. cols. 1325-1327

Prison Suicides *Lords* 1.2.00. cols. 67-70

SECURITY & INTELLIGENCE

Security & Intelligence - in brief

■ **Europe: Europe doubles its intelligence capability:** Europe's capability to gather space-based intelligence was effectively doubled on 3 December when the tri-nation Helios 1B military observation satellite was launched into orbit from the Kourou space centre in French Guyana. Helios 1A was launched in July 1995 by France, Italy and Spain. The Helios program lessens Europe's dependency on the USA to provide satellite images of conflict zones or early warning of ballistic missile launches. However the capability is limited because Helios cannot operate at night or through cloud cover. Only the Helios 2, due to be launched in 2003 has a infrared capability to take images at night or during bad weather. The Helios 1 project, involving two satellites and three ground stations has cost a total of US $1.5 billion and was 78.9% financed by France, 14.1% by Italy and 7% by Spain. The Helios 2 project is to cost $1.7 billion and France has up to now failed to find European partners to help fund it. *Jane's Defence Weekly 15.12.99.*

■ **Sweden: Human rights committee rejects "bugging" proposals:** Swedish government proposals to extend police powers on bugging, telephone tapping and other forms of surveillance have been opposed in a report by the Swedish Helsinki Committee for Human Rights. The Committee finds serious defects in current legislation and practices, some of which are used regularly by the police despite legal restrictions. Every year hundreds of citizens are subjected to these intrusions with no legal recourse. Those subjected to phone tapping or surveillance have no legal right to complain or appeal, and are often ignorant of the interference in their family and private lives. Accountability is practically non-existent. The measures are supposed to combat crime but in at least 50% of cases they have no impact whatsoever, the report found. *"Buggning och hemlig kameraovervakning. Statliga tvangsingrepp i privatlivet" [Bugging and secret camera surveillance. Government intrusion in private life]. Available on internet: www.ihf-hr.org/shc (in Swedish).*

■ **Sweden: Registration Board:** The annual report of the Swedish Security Police, the so called Registration Board, consists of nine pages. The Board had 23 meetings last year. The number of vetting checks continued to fall: in 1997 there were 68,135 (excluding special terrorist checks because of the enforcement of the Schengen agreement), in 1998 57,723 and in 1999 45,003. In only around 6% of all checks was information held on police registers. Before the Registration Board started work in July 1996 the National Police Board handled the question of whether a file on the vetted person found in the register of the Security Police was to be handed out. In 70-95% of cases the files were given to the authority/company which had requested the vetting. Since the Registration Board started these figures have changed dramatically. In 1997 only in 9.92% of cases where there was a file on the vetted person were handed out. In 1998 the percentage was 9.13% and 1999 only 4.80%. Before 1996 the content of the files was never given to the vetted person. In 1999 all the vetted people except nine were given the contents of the file before the Board took a decision to handed it out or not. On 14 February the Supreme Administration Court ruled that people who want to see their files in the register of the Security Police do not have this right - even though the law was changed on 1 April 1999.

Security - new material

George Orwell and the IRD, John Newsinger. *Lobster* 38 (Winter) 1999, pp9-12. This article examines the nature of the relationship between George Orwell and the Information Research Department.

UK

Limiting the right to jury trial - half truths and false assumptions

In January the newly-reformed House of Lords overwhelmingly defeated the Government's plan to restrict the right of accused persons in many criminal cases to elect to be tried in the Crown Court. In what can only be described as a 'knee jerk' reaction, the Government immediately announced its intention to re-introduce the Bill in the House of Commons and, if necessary, to use its majority there to override Lords' opposition. Home Secretary Jack Straw claimed that the measure (which he previously opposed and wasn't even mentioned in Labour's 1997 manifesto) was central to the Government's plans to modernise criminal justice. The Prime Minister himself weighed in, trumpeting the over £100m saving it is claimed the measure will generate, enough money to pay for many thousands of new nurses or teachers.

One is left wondering what sort of crude majoritarian theory of democracy Tony Blair and Jack Straw subscribe to, that they would be willing to invoke the Parliament Act to take away a vital legal protection from citizens charged with serious criminal offences by the state. Even more worryingly, their new-found enthusiasm for this measure, and apparent belief that it will save so much money, indicates a triumph of narrow, civil service thinking over political judgement on the part of the New Labour administration.

Forcing the issue onto the agenda

Taking away a defendant's right to jury trial has long been on the agenda of criminal justice professionals and Home Office bureaucrats. In 1989, the Home Office Research and Planning Unit carried out a key research study on the subject, which even today is the primary source of many of the half-truths and false assumptions deployed in favour of the Government's plan. That research was, in turn, fed into the Royal Commission on Criminal Justice, whose 1993 report recommended abolishing defendants' right to elect jury trial.

Fortunately, successive Tory Home Secretaries - Kenneth Clarke and even Michael Howard - had the political sense to sideline this particular recommendation in the face of widespread criticism, not only from the then Labour opposition but also such prominent legal spokesmen as the Lord Chief Justice, Lord Bingham, and Gareth Williams QC, now Lord Williams of Mostyn and Labour Attorney General. The latter describe the proposal when it was put forward by the Royal Commission as nothing short of "madness".

Not to be deterred, the recommendation was subsequently revived by a senior Home Office civil servant, Martin Narey, in a 1996 report on reducing delay in the criminal justice system. It was from this source that the plan found its way, via another consultation exercise, into the current Government's legislative programme.

The Home Office's 1989 research, by Carol Hedderman and David Moxon, has certainly had a shelf life extending well beyond its sell-by date. For example, since it was carried out, the number of defendants electing jury trial has gone down by nearly half. The study involved a survey of over 5,000 court records relating to defendants in either way cases convicted at five (out of nearly 100) Crown Court centres and seven (out of over 400) magistrates' courts in the country. A sample of 666 defendants convicted at Crown Court were also selected for interview, although in the event only 282 (42 per cent) were tracked down.

Tackling delay

The study has been repeatedly misquoted, not least by the Royal Commission and various Government spokesmen, as showing that a large majority of defendants who elect for jury trial eventually plead guilty. This has formed the basis for the Government's argument that the right of election is being widely abused. In fact, as Hedderman and Moxon themselves noted in their original study, no such conclusion can be drawn from it, since their sample excluded those who elected and were eventually acquitted in the Crown Court.

But this has not prevented the Government producing wildly different figures to support its argument. Last May, Jack Straw told the Police Federation that 90 per cent of defendants electing jury trial end up pleading guilty. The latest statistic - drawn from one months cases started in November 1997 at an unrepresentative sample of just six magistrates' courts (the largest being Croydon) - is that 59 per cent of elective defendants plead guilty at the Crown Court. This compares with an 80 per cent guilty plea rate for those on either way charges who are ordered by magistrates to be tried at the Crown Court.

This latter group has hardly been mentioned at all in the debates over the right to jury trial. For every two defendants who elect for jury trial, there are five whose cases magistrates refuse to hear and are ordered to be tried at the Crown Court instead. Since October 1997, under the "plea before venue" procedure, this group, like those who elect, will have indicated an intention to plead not guilty at the start of their cases. In other words, to the extent that late guilty pleas in either way cases are a cause of waste and delay, the bulk of the problem rests with those who magistrates order to be tried in the Crown Court, who will be unaffected by restrictions on the right to elect jury trial.

The problem of delay could be tackled in a more straightforward way. There is actually little difference in waiting times for trial once these either way cases reach the magistrates' courts or the Crown Court. In practice, in the Crown Court they can often be tried very quickly off a "warned list", i.e. to-fill in for other, longer cases that may collapse. On the other hand, listing them at magistrates courts tends to cause difficulties if the trial is to last more than a day. Indeed, this can lead to trials in magistrates' courts going part-heard and having to be adjourned for several weeks, a situation that may compromise the fairness of the trial and cause considerable inconvenience to all the parties involved.

Most of the extra delay when cases go to the Crown Court comes from the time waiting for committal proceedings in the magistrates' court to take place and, after that, in transferring cases to the Crown Court. In 1998 the Government began to address this problem in its Crime and Disorder Act by abolishing committal proceedings for the most serious, "indictable only" offences that have to be tried at Crown Court. This could be extended to all either-way offences going to the Crown Court as well, thereby wiping out any advantage in delay that defendants might gain by indicating a not guilty plea and either electing jury trial or being ordered by magistrates to be tried at the Crown Court.

The other fact often overlooked in the Government's enthusiasm for limiting the right to elect jury trial is that many of those who currently exercise this right and eventually plead guilty, do so to reduce charges. In fact, the latest Government statistics show that in no less than 11 per cent of either way cases

going to the Crown Court, the case against the defendant was dropped altogether. Hedderman and Moxon found that half of those who changed their plea to guilty at the Crown Court did so in anticipation of some reduction in charges, and this was subsequently confirmed in research carried out for the Royal Commission which showed that in over half of late guilty plea cases in the Crown Court the prosecution confirmed that charges had been reduced or dropped.

Cost savings

The Government originally estimated that 12,000 of the 18,500 defendants who currently elect trial in the Crown Court would be denied this right in future, and that this would have entailed savings of £5.4m on avoided remand time and of £12m by not holding committals in these cases. On this basis, extending the Crime and Disorder Act provisions for sending cases straight to the Crown Court to all 62,700 either way cases currently tried there, could result in savings of £28.2m on saved remand time and £62.7m on committals - almost equal to the savings the Government predicted would have resulted from abolishing defendants' right to elect jury trial.

However, the Government had admitted that the bulk of its planned savings - £66m of the original £105m - will be derived from the shorter prison sentences that defendants restricted to magistrates courts will receive if convicted. It is claimed that either way defendants convicted at Crown Court rather than magistrates' courts, even for same offences and with similar antecedents, are three times more likely to receive custodial sentences and that their prison terms will be two and a half times longer. This assumption is drawn, again, directly from Hedderman and Moxon's ten year old research comparing outcomes of cases in which either way defendants elected and were convicted at the Crown Court with those who were tried instead at magistrates' courts. Indeed, they argued that sentencing differentials between the two levels of court were so great - seven times more custody in the Crown Court than in magistrates' courts - as to render the decision to elect the Crown Court irrational in many instances.

The trouble with this view is that it is based on a statistician's understanding of criminal justice, which simply does not ring true with the experiences of many defendants and criminal justice practitioners. In part, the problem lies in Hedderman and Moxon's methodology, which had a number of faults. First, it compared defendants between the two courts who were convicted of similar offences, whereas many of those who elect and go to Crown Court will be convicted on reduced charges to those they originally faced at the magistrates' court. Secondly, the comparison of sentence level did not take account of the higher chances of acquittals in the Crown Court (see below), which would need to be weighed against the longer sentences that may be handed down there to those who are convicted. Nor did Hedderman and Moxon's research sample include those who, having been convicted of an either way offence in the magistrates' court, were then committed to the Crown Court for sentence.

Comparisons between sentencing at the two levels of court can also only be as good as the factors taking into account in the statistical analysis. Hedderman and Moxon considered such variables as the nature of the principal offence, the number of offences, the existence of previous convictions, the presence of a social enquiry report, whether the offender was in breach of a previous court order, the previous highest disposal (custody, fine, etc.), plea, sex and remand status. But they did not consider such issues as the nature or number of previous convictions or the length of previous sentences.

The importance of these latter factors is demonstrated by another finding of Hedderman and Moxon. When defendants convicted of either way offences through the different procedures were compared with each other on a range of variables, those who elected to be tried at Crown Court were found to be very similar, in terms of their background and antecedents, to those who magistrates refused to deal with and ordered to the Crown Court instead, and very different from those who remained to be tried in magistrates' courts. Thus, nearly 90 per cent of both groups of either way defendants at the Crown Court had previous convictions, including a third with ten or more such convictions, and 60 per cent had served previous periods of custody. This compares with only 60 per cent of those tried at magistrates' courts who had previous convictions, including just one-sixth with ten or more convictions and only 40 per cent with pervious terms of custody. In other words, those who elected were half again as likely to have previous convictions and to have previously been in custody, and twice as likely to have a long string of "previous", than their counterparts in the magistrates' courts.

Of course, under present procedures, magistrates are likely to be unaware of a defendant's previous convictions when deciding on where a case is to be tried. But the defendants themselves will know their previous records and the influence this is likely to have on the court when they are sentenced following a conviction. It is therefore hardly surprising that, as well as considering that they would get a fairer hearing, no less than two-fifths of the defendants interviewed by Hedderman and Moxon who elected to be tried in the Crown Court cited as one of their reason for doing so that, if convicted, they were likely to be committed for sentence in any event.

So far, the Government has refused to face up to this factor in the equation. The underlying rationale for giving defendants in either way cases a right to elect is that, if they are at risk of receiving a sentence beyond the powers of the magistrates to impose, they should be given the opportunity of a trial in the Crown Court. It is one thing for a defendant who has voluntarily waived his or her right to jury trial, having been warned of the possible consequences, to be committed on conviction to the Crown Court to receive a more severe sentence. But if that right is to be removed, then the logic would be also to limit the power of magistrates to commit those who they convict of either way offences to the Crown Court for sentence.

This would bring the practice in England and Wales into line with that in Scotland where, as Jack Straw often points out, the prosecution decides by which procedure an either way defendant is to be tried. However, if this is done through summary trial (before a Sheriff, a professional judge, sitting without a jury) then the sentence that can be imposed is strictly limited (usually to no more than three months), and there is no power to send a convicted defendant to a higher court to receive a longer sentence.

Without such a limitation on magistrates' powers to commit for sentence, there can be no guarantee that defendants who in future are denied the right of trial in the Crown Court will not still end up being sent there for sentence. In fact, given their similarities in terms of previous criminal record with those who magistrates order to be tried in the Crown Court, the likelihood is that this will happen in many instances. As well as undermining much of the Government's projected cost savings, this is bound to result in justifiable feelings of unfairness on the part of the defendants concerned, having been told by magistrates that their cases are not deserving enough to be tried in the Crown Court but are still so serious as to require them to be sentenced there.

Fairness in criminal justice

There are even more worrying implications behind the statistical and bureaucratic assumptions on which the Government's plans are based. Can it be right, in the interest of justice and as a matter of public policy, that defendants who are otherwise similar in terms of their crimes and criminal records, should receive such

widely different sentences simply because magistrates decide, on incomplete information, that some should be tried by them and others at the Crown Court? A Government that was truly concerned about the quality of justice and upholding fairness in the system would want to investigate these sentencing disparities, rather than planning its policy and projected cost savings on them.

More importantly, the Home Office is predicting that the cases of those who are forced to be tried in magistrates' courts rather than being able to elect Crown Court, will have the same profile in terms of plea and conviction (as well as sentence) as other either way defendants who currently consent to being tried in magistrates' courts. Thus, it is said that 90 per cent will plead guilty (80 per cent straight away and 10 per cent later) and 10 per cent not guilty. This compares with 30 per cent of elective defendants who Home Office statistics indicate currently plead not guilty and are tried at the Crown Court, half of whom are acquitted, and the additional 11 per cent who have the cases against them dropped. Acquittal rates in magistrates' courts are much lower, at around a third.

In other words, the assumption is that, out of the 12,000 either way defendants who in future it was originally estimated would be restricted to trial in the magistrates' court, only around 400 will end up being acquitted (10% not guilty pleas times 33% acquittals). This compares with 15 per cent (1800) who are currently acquitted at Crown Court and a further 11% (1300) whose cases are dropped. Many of these, according to the Home Office, would be convicted at magistrates' courts following guilty pleas. Yet, it seems completely unrealistic to predict that defendants who would have previously elected for Crown Court and gone on to contest the charges against them through to jury trial will in future, having had their request for such trial turned down by magistrates, then sheepishly submit and plead guilty, often without the benefit of any reduction in charges that would previously have followed from their election.

Indeed, it is far more likely that the refusal of jury trial will stimulate greater resistance among those who feel they have been unjustly treated, leading them to challenge the magistrates' venue decision through the new appeal that is being offered as a concession by the Government, and to even greater numbers of not guilty pleas. There is also the possibility of these defendants, if convicted by magistrates, taking the matter to a further appeal to the Crown Court, where the whole issue of guilt or innocence will be re-tried, requiring all concerned (including witnesses) to go through the inconvenience and trauma of the trial twice over. Such predictable outcomes (at least for those with a working knowledge of the system) would shatter many of the Government's assumptions about both cost savings and delay reduction.

And how are we to interpret an assumption on the part of the Home Office that two to three thousand persons each year, who are currently acquitted following an election for jury trial or have the cases against them dropped at Crown Court, will end up being convicted by magistrates instead. The Government repeatedly claims that trial in magistrates' courts is as fair as that in the Crown Court. Some Government supporters might claim that many either way defendants are wrongly acquitted at Crown Court. But the Home Office figures and assumptions imply that this is happening on such a wide scale - over 80 per cent of the either way cases where the Crown Court currently acquits - as to be hardly credible. The opposite conclusion is that there will be a similar high number of additional wrongful convictions by magistrates if the Government's proposals to limit the right to jury trial come to fruition.

However, the reality probably is that both of these conclusions are wrong, and that it is the Government's cost saving assumptions (drawn from something called the Home Office Flows and Costs Model) that simply cannot be believed. Perhaps this is a matter that should be added to the list of issues for the review of criminal justice which is about to start under Lord Justice Auld. Certainly, anyone who is serious about modernising criminal justice needs to tackle the question of how the reform agenda can be freed from the myopic vision of Home Office statisticians and civil servants and widened to include the views of those working (and researching) on the system first hand, including the much-maligned fraternity of "wooly-minded liberals" and criminal defence lawyers.

This article was written by Professot Lee Bridges, Legal Research Institute, University of Warwick

ITALY

Deaths and demonstrations spotlight detention centres

The death of six detainees in Italy's immigrant detention centres has led to demonstrations in Milan, Florence and Trapani calling for the closure of the centres - first introduced in Italy in 1998. Mohamed Ben Said, a Tunisian, died in Rome's *Ponte Galeria* centre due to a lack of medical care and five more detainees died in a fire during a revolt in the *Serraino Vulpitta* in Trapani (Sicily).

Protests against the centres

Over 20,000 people demonstrated in Milan on 29 January, calling for "a full review of the migration policy adopted to date, the closure of all prison camps for immigrants currently opened in Italy, respect of the rights of free information for the public and of legal assistance for the imprisoned migrants and the issuing of reliable data about the migration phenomena... " They also asked for independent monitoring groups to be allowed to enter the centres by law, as the secrecy which surrounds detention centres is a major reason for abuse.

After minor clashes between the police and demonstrators in Milan a group of 50 people were allowed to enter the *Corelli* detention centre. In Trapani two and three thousand people demonstrated and police attacked demonstrators who were trying to break into the *Serraino Vulpitta* centre. In Genoa's *Principe* train station people who were making their way to Milan for the demonstration were caught on a video showing police charging into people who were simply negotiating to have a cheap "political" train fare.

Interior Minister Enzo Bianco and Interior Ministry undersecretary Alberto Maritati accepted criticism of the detention centres in terms of their conditions, but were adamant that the detention centre system was imperfect but necessary. They confirmed plans to extend the network of detention centres, "at the moment, the reception centres are concentrated in a few regions, and it will therefore be necessary to redistribute them around the country". Centres are due to open in Florence and Bologna. Tuscany's first detention centre is due to open in Sesto Fiorentino (Florence), although the local and regional councils are opposed to the project.

A second round of demonstrations on 26 February brought 4,000 people onto the streets in Rome, and protesters in Bologna twice entered an abandoned army barracks which is due to be transformed into a detention centre in August.

The Interior Ministry has replaced the chief constable in Florence, Antonio Ruggiero. He was seen as being "soft" on immigrants having allowed a group of Romanians and other immigrants under threat of expulsion to lead the rally in Florence without any threat of identification or arrest. The 17 Romanian families were involved in an "integration through work" project sponsored by local (Lucca) and regional (Tuscany) councils to regularise their status, as proposed in the *Turco-Napolitano* law - with former Interior Minister Rosa Russo Jervolino's approval. The government coalition changed in December, and the new Interior Minister, Bianco, stopped the project. The Romanians decided to occupy San Michele church in Lucca, and started a week's hunger strike, with support from the public and local clergy, resulting in their being granted residence permits.

The *Turco-Napolitano* law

There are 11 official detention centres set up following the 1998 *Turco-Napolitano* immigration law. They are the *Brunelleschi* in Turin, *Arcangelo Corelli* in Milan, *Ponte Galeria* in Rome, *Badessa* and *Medelugno* in Lecce, *Serraino Vulpitta* in Trapani, Francavilla Fontana (Brindisi), Catania (shut for restructuring work), Termini Imerese (Palermo), Ragusa and Lamezia Terme (Catanzaro). They are mainly found in the south, the area with the largest immigrant communities from Africa, southeastern Europe and Asia, or larger cities in the north (Milan, Turin) and centre (Rome).

Police are in charge of external security, whereas members of the military Red Cross are in charge of the internal running of the centre - though there have been numerous reports of police intervention within the centres during quarrels between inmates or revolts.

The *Turco-Napolitano* law decrees that the chief constable can decide to detain foreigners "in the nearest temporary detention and assistance centre for the time which is strictly necessary" in cases where expulsion cannot immediately be carried out, due to the foreigners' need for assistance or because further checks are needed regarding their nationality or identity.

Magistrates must approve the detention order within 48 hours, and this can lead to detention for a maximum of 20 days; the police chief may extend this period by 10 days, on request to a magistrate.

Article 14.2 of the law on immigration says: "The foreigner is detained in the centre in such a way as to ensure the necessary assistance and the full respect of his/her dignity. Apart from what is provided for in Article 2.6" (that entry, residence or expulsion decisions be translated into a language which their recipients understand) "in every case, the freedom to communicate with the exterior, including by telephone, must be ensured."

The death of Mohamed Ben Said

On Christmas night, Mohamed Ben Said, a 39-year-old Tunisian who had been detained in Rome's *Ponte Galeria* centre near Fiumicino for 14 days, died due to lack of medical attention. He was a drug addict and had been visibly ill for days according to other detainees, "sometimes his jaw and tongue got so swollen that he could hardly breath". He was treated with Minias, a powerful tranquilliser which is reportedly incompatible with heroin addiction but is the customary medication for most ailments in *Ponte Galeria*. Despite several visits by members of the Red Cross working in the centre, he was never taken to hospital.

Said should never have been detained in the first place as he had been married to Mrs Piras, a Genoese woman, with whom he had a child. He could not be expelled under the law but was nonetheless illegally detained for 14 days so that immigration authorities could check his position. Detainees in the centre and the Red Cross have suggested that Mohamed Ben Said may have had his marriage certificate on him and that they had seen it although police deny this. A police officer, who requested anonymity, told *Il Manifesto* "A Tunisian married to an Italian woman..... if he didn't die, he would surely have been released with many apologies."

Many detained then released

In 1999, 11,269 immigrants were held in the detention centres, 3,987 of whom were repatriated following their detention, and 6,773 of whom were released without repatriation, according to Italian press agency *Ansa*. Of the 979 people interned in January 2000, 157 were released without expulsion, suggesting that many immigrants should not have been detained. Interior Ministry figures indicate that of 8,947 detainees in 1999, 1,116 should not have been detained because they had a residence permit, had requested asylum or refuge, were ill or pregnant. In 348 cases, magistrates refused to validate detentions. Fabrizio Gatti, a journalist for *Corriere della Sera* carried out an investigation which involved him posing as a Romanian, "Roman Ladu". He was detained by the immigration authorities, and reported the routine abuse suffered by detainees. This included being denied the right to communicate with the outside (by telephone), slaps, threats and the denial of ordinary defence rights. He gives an account of an officer trying to make him sign an arrest report saying that he renounces the right to call a lawyer.

Mohamed Ben Said's case is exemplary of the way in which the establishment of detention centres has allowed the creation of what the "Immigration" group *Magistratura Democratica* (Democratic Magistrates) calls a "special law regime" for foreigners. Foreigners, they say, are deprived of their personal freedom without having committed a crime and denied judicial protection. In spite of illegal entry and illegal residence not being a crime in Italy, the stereotype of the "irregular immigrant" is now portrayed as a dangerous subject who should be kept in custody. A report by *Avvenimenti* on Rome's *Ponte Galeria* detention centre in September 1999 states that: "None of the immigrants who are held in the detention centre has pending legal charges against them, none has been caught "in the act of committing a crime"."

Five deaths after fire

On 28 December, there was a rebellion in the *Serraino Vulpitta* centre in Trapani, where up to 15 immigrants share a cell. A Tunisian internee, Fqih Lakhder, set mattresses on fire which resulted in the immediate death of 3 detainees - 2 more died some days later in hospital from burns. A door which was supposed to be open had been locked from the outside, probably due to frequent rioting and protesting in the previous days, and an escape attempt the night before. Rescue attempts at 2am were hindered by the absence of running water in the section and 3 men died of asphyxia. Trapani public prosecutors are investigating and Fqih Lakhder, who was desperate to escape, had previous convictions and had been expelled from Italy more than once. He may be charged with multiple murder, arson and grievous bodily harm.

Critics demand radical rethink

After a visit to Rome's *Ponte Galeria* centre Giovanni Russo Spena, *Rifondazione Comunista* (RC) senator, expressed two major concerns. Firstly, he relates that Red Cross staff members told him "of the problems, the staff shortages, an infirmary which has a skeleton staff" and of their discomfort at the excessive role played by the military in running the centre. In *Ponte Galeria*, the infirmary is open 6 hours every day, rather

than the statutory 24 hours, and the Red Cross units, which by law should number 11, are constituted by 4 members. Secondly, he said that the centres are shrouded in secrecy - when he visited the centre he had to do so alone without his assistants - who would have been allowed to visit a jail. An appeal was launched and signatures were collected to demand access to the centres for "associations, journalists and, most importantly, lawyers who, at the moment, can only intervene if they are named by an imprisoned foreigner".

Following the fire in Trapani, government offered to let charities take part in the administration of the centres. They replied that they wanted to play no part due to the illegal detention of internees, whom the Italian government refers to as "guests".

Ya Basta, a grassroots organisation have been monitoring Milan's *Corelli* detention centre. From September, they were granted access to the centre to interview a small number of detainees for between an hour every Wednesday. They would inform detainees about their legal position, take up appeals against illegal detentions, help to retrieve documents and report on detainees' conditions and accounts. On 1 December, *Ya Basta* members were expelled from the centre, because they had brought a journalist from *Radio Onda d'Urto* (a critical radio station) into the centre and because they found out about an Algerian detainee, Youssef Magry. He had cut himself with a razor blade which he later swallowed to delay his deportation to Morocco. After a further act of rebellion, when he climbed onto the centre's roof threatening to jump off it, Magry was released with an order to leave the country within two weeks.

Giuliano Pisapia, MP for RC and a lawyer, stressed that the detention centres are unconstitutional in an interview to *Corriere della Sera*, citing articles 13 and 24 of the Constitution. Article 13 forbids the limiting of personal freedom unless charged with a crime, undergoing an investigation or being the author of a crime. Article 24 refers to the right to defend oneself, and Pisapia claims that he has witnessed the violation of this right. He says some of the dangers are intrinsic to the regime. People who have the documents needed to avoid expulsion were unable to retrieve them once they are locked up in the detention centres. If they are released without being expelled after 30 days the detention may mean the loss of a job or friends they had previously. Pisapia suggests that immigrants should be detained for no more than 48 hours. He added, "many guests in these centres have given me names of people and documents which could demonstrate their right to remain in Italy. And it is the duty of a democratic state to carry out the checks quickly: it's not as if, because it's difficult, constitutional rights can be violated."

Even formal legal procedures are sometimes disregarded as shown by a report on *Il Manifesto* of a Ghanain citizen, deported before a hearing which a judge had scheduled following his lawyer's complaint that his client was not informed of his legal position. *Ya Basta* members reported the case of a Romanian woman who was detained despite possessing a visa for Switzerland which gave her access to the Schengen area.

The tragedies in *Ponte Galeria* and the *Serraino Vulpitta* have led to public scrutiny of detention centres which were previously run on an extremely secretive basis. The denial of defence and personal rights within the centres and the arrest of people who have not committed a crime breaches basic rights enshrined in the Italian Constitution. The debate, and the willingness of politicians, lawyers, grassroots organisations and members of the public to challenge the Interior Ministry may prevent similar tragedies, an improvement of conditions and a radical rethinking of the detention policy itself.

Avvenimenti, 17.9.99, 26.12.99 Corriere della Sera, 30.12.99, 6.1.00, 30.1.00, 25.2.00, Il Manifesto 25-27.11.99, 1.12.99, 25.12.99, 29-31.12.99, 29.1.00, 31.1.00, 6.2.00, 8.2.00, 10-17.2.00, 23.2.00, Repubblica, 31.1, 8.2.00, www.ecn.org, Giuliano Acunzoli communiques, 2.12.99, 7.1, 13.1, 18.1, 23.1, 26.1, 31.1, La legge Turco-Napolitano, 25.7.98, no 286.

EU SECRECY

Regulation on public access

The European Comission has finally adopted its proposal for a regulation on public access to documents - by redefining what is a "document" it threatens to completely undermine existing practices

When the Amsterdam Treaty was signed by the EU governments in June 1997 the Treaty contained what was widely understood to mean a real commitment to "enshrine" openness (access to documents). Article 255 of the Treaty said:

> *Any citizen of the Union.. shall have a right of access to European Parliament, Council and Commission documents..*

This commitment in the Treaty, plus the new right of citizens to put complaints to the European Ombudsman on access to documents covering justice and home affairs, followed a series of complaints to the Ombudsman (*Statewatch* and Steve Peers) and cases in the Court of First Instance (John Carvel/Guardian, the Swedish Journalists Union and Heidi Hautala MEP) in Luxembourg. Prior to the Amsterdam Treaty the Council (the 15 EU governments) had literally been split in two over the issue of access to documents.

The current codes of access adopted in December 1993 have been refined in practice and the discretion available to the institutions to refuse access limited by the decisions of the Court and the Ombudsman. A *modus vivendi* has in effect been established.

The test for any new code of access is: would it maintain and improve on the existing situation? Or would the "dinosaurs" (as Mr Söderman, the European Ombudsman described the forces for secrecy) use this opportunity to undermine the gains made?

Under the Amsterdam Treaty the European Commission was charged with drawing up a measure to put Article 255 into effect which has to be adopted under the co-decision procedure by the Commission, the Council and the European Parliament. The Commission was necessarily not the best of the institutions to draw up the new measure. It was, after all, the Commission that passed as an "A" Point (without debate) in 1992 a code on access which would have introduced a draconian UK-style official secrets act - this was later withdrawn.

Undermining the Amsterdam commitment

The Amsterdam Treaty stipulates that the new measure on access has to be agreed within two years of the Treaty coming into effect, that is by May 2001.

The Secretary-Generals of the three institutions agreed in December 1997 to set up an informal working party under the Commission's Secretariat-General. Over a year later there was a draft discussion paper (dated 22.1.99, leaked to *Statewatch*) and a revised draft (dated 23.4.99). The draft discussion paper was circulated at a conference held in the European Parliament on 26

April 1999 and was roundly criticised by MEPs, NGOs, lawyers and journalists. The central criticism was that it sought to exclude most documents from access (see *Statewatch* vol 9 no 2).

In June 1999 the Commission decided not to publish a discussion but to proceed straight to the adoption of a regulation by the Commission. The decision not to put out a discussion paper after two years since June 1997 on such a major Treaty commitment was quite extraordinary. By this move civil society had no formal means to make its views known and was exclude from the process.

The incoming Finnish Presidency made its views known - they would not take kindly to a discussion paper, like the "unofficial" draft in circulation, being put out and they wanted a deadline for the proposed measure. The Commission, mindful that the Finnish Presidency had made openness and access one of its objectives did not even circulate a draft regulation inside the Commission until the end of November.

Draft regulation leaked

At the beginning of December a copy of the November draft of the regulation was leaked to *Statewatch*. It was translated and put out on the internet with a press release on 9 December. Hundreds visited the *Statewatch* site including EU governments and NGOs. Before Christmas a number of EU governments had let it be known that the draft regulation was unacceptable, and some said so publicly (including Sweden).

A good deal of pressure was put on Commissioners by their home Member States especially from Sweden, Finland, Denmark and the Netherlands but was to result in only two significant changes.

The date for the adoption of the regulation was finally set for Wednesday 26 January. The previous Friday, 21 January, the *Chefs de cabinet* (the top officials from each Directorate-General of the Commission) were considering the third revision since it had left the initiating DG.

The regulation was adopted at the regular Wednesday meeting of the full Commission and in the afternoon Mr Prodi appeared before the "Conference of Presidents" at the European Parliament. It is hard to believe that Mr Prodi had read the proposal, or if he had he certainly did not understand it. He told the European Parliament:

> *The proposals in the draft Regulation provide for a considerable widening in access to documents... We are in fact already open institutions; now legislation will guarantee it to our citizens, and this will make a big difference.*

The Commission's press release (IP/00/75) spoke of the:

> *necessity of maintaining a balance between a broad access to documents and the need for institutions to have "space to think" in defining policies before they enter the public domain.*

The minute the EU institutions start to talk about "balance" then the so-called "space to think" for officials is considered more important than democratic standards and right of civil society to participate in decision-making. Decisions may be taken in the name of EU citizens but they are certainly to take not part in determining them.

"Space to think"

The Commission in effect used one of the most objectionable concepts in the proposed regulation in the process of adopting a new code on public access to documents. Most documents are to be permanently excluded from public access in order to protect the "space to think" of officials in the institutions. This regulation is a prime example. No discussion paper was produced, civil society only had access at the last minutes through a leaked version. No mechanisms existed for criticisms to be taken into account, the only influence was informal on individual Commissioners (some of whom seemed to be unaware of its contents).

The proposed regulation on access to documents does have some improvements over the existing code(s): a) Incoming documents (from third parties) are to be included but Heidi Hautala, Green MEP, said: "The fact that incoming documents can be declared secret, greatly reduces the value of the whole document." b) partial access to documents is to be allowed, with text subject to one of the exceptions removed or deleted. This is only the status quo as it is already covered by a ruling by the Court of First Instance. c) a list of committees is to be prepared by the institutions. d) If an institution fails to reply to a confirmatory application (an appeal against refusal of access) within a month then it will have to supply the documents (subject of course to their right to extend the time to reply to cope with their "vacational seasons").

These improvements are completely undermined by other provisions. The most fundamental is the definition of a "document". Under the current code(s) an applicant can ask for *any* document subject only to narrowly defined exceptions. Under the draft regulation, in order to protect the right of officials to have the "space to think", the majority of documents will be permanently excluded from the right of access.

Indeed, it not at all clear when documents that can be applied for will be released. The Explanatory Memorandum cites the Committee of Independent Experts to the effect that: "policy made in the glare of publicity and therefore "on the hoof" is often poor policy". This is in line with the sentiment in the unpublished discussion paper which speaks of the need:

> *to delay access to certain documents to avoid interference in the decision-making process and to prevent premature publication of a document from giving rise to "misunderstanding" or jeopardising the interests of the institution (eg: granting access to preparatory documents only after the formal adoption of a decision). (Unpublished discussion Commission paper, 23.4.99)*

"One can only conclude that the present code(s) as modified by practice and the decisions of the European Ombudsman and the Court of First Instance would be more open than what is being proposed" Tony Bunyan, *Statewatch* editor said at a press conference in the European Parliament, Brussels on 27 January.

How the drafts of the regulation changed

The first draft of the Regulation was drawn up in Directorate C of the Secretary-General's department is dated 22 October 1999, a later version (sent out for comment by all the Commission's DGs) is dated 29 November 1999 (this version was leaked to *Statewatch*). It appears that the Commission's Legal Service had some influence on the November version. Another version is dated 21 January 2000 and the final adopted version 26 January 2000. Here some of the changes are examined:

a) The controversial proposal to make EU Member States adopt the same rules as the Brussels institutions underwent a number of changes. It was not in the first draft (October 1999) but in the November draft Article 10 introduced the idea and the Preamble said "Member States must abide by the principles and limits established by this regulation..". The 21 January version referred in the Preamble to "Member States should respect the principles and limits laid down in this regulation.." but Article 10 was dropped. The Preamble in the final version talks of the "principle of loyalty governing relations between the Community institutions and the Member States, [and] the latter will take care not to undermine application of this Regulation." So what had been "must abide by" had become "take care not to undermine", a seeming shift in its effect.

There had however been another, critical, change.

While it had been clear since the beginning of 1999 that the Commission intended to produce a "Regulation" rather than a "Decision" (to replace the existing "Decision") the effect was to

take on a new meaning. The November 1999 version under an Article "Entry into force" says: "It shall be applicable to each institution upon entry into force of its internal implementing rules..." It was thus clear and explicit that the Regulation would only apply to the three Brussels institutions (the Council, the Commission and the European Parliament). However, after strong objections by some governments led to Article 10 being dropped the wording under "Entry in force" changed to: "This Regulation shall be binding in its entirety and directly applicable in all Member States." This change of wording re-established the effect of the original Article 10.

While it is usual for Regulations in Community law to contain such a concluding phrase this was not the terminology used in the November 1999 version (which contained Article 10). Moreover, the officials making drafting changes to the text must have been aware of the implications.

As set out in this Commission proposal the regulation would apply to Member States and seriously undermine the best practice on access to documents in a number of countries. Unless this effect can be removed from the regulation then the proposal should become a "Decision" thus removing the mandatory effect on Member States.

b) the definition of a "document": this concept changed very little between the various drafts and all contained the idea of officials having the "space to think". The November draft was more explicit on when documents were to be released, these would "not be accessible to the public until the formal adoption of a decision" - this point is quite unclear in the adopted draft.

c) By the 21 January version a promise to include documents within the scope of the regulation from outside the institutions had been turned into a hard proposal.

d) exceptions: the new "exception" (grounds on which documents can be refused) on the "stability of the Community legal order" was in all versions.

The new "exception" covering "the deliberations and effective functioning of the institutions" (adopted version) was originally "the proper functioning of the processes of internal consultation, deliberation and decision-making" (October 1999). It was missing completely in November 1999 and re-appeared as "the effective functioning of the institutions" on 21 January.

e) repeat/repetitive applications: this started out as "repeated requests" (October and November 1999) and by 21 January had become "repetitive applications" (the preferred French understanding).

f) Reproduction of documents: the October and November drafts said that: "An applicant who has obtained a document may not reproduce it.." This clearly absurd provision was dropped by January.

ANALYSIS of the proposal - The Explanatory memorandum

Two points in the Explanatory memorandum are worth noting. Under the heading "Documents covered by this regulation" the Commission says that:

> *This legislation will cover all documents held by the three institutions, i.e. documents drawn up by them or emanating from third parties and in the possession of the institutions.*

while under the heading "Definition of the term "document"" the Commission goes on to say that the regulation will only cover "administrative documents" namely:

> *any document on a topic which falls within the institution's remit excluding individual opinions or reflecting free and frank discussions or provision of advice as part of internal consultations and deliberations as well as informal messages such as e-mail messages which can be considered the equivalent of telephone conversations. (emphasis added)*

It seeking backing for this view, which could excludes 60-70% of the documents produced, by quoting the second report of the Committee of Independent Experts (who reported on EU fraud) as follows:

> *like all political institutions, the Commission needs the "space to think" to formulate policy before it enters the public domain, on the grounds that policy made in the glare of publicity and therefore "on the hoof" is often poor policy.*

On many other issues in the regulation the explanatory memorandum is silent.

The REGULATION - Preamble

The Preamble open with the statement that the Amsterdam Treaty "enshrines the concept of openness" (point 1). It even recognises the obvious, that openness enables citizens to take part in decision-making and thus the administration "enjoys greater legitimacy" and is "more accountable vis-a-vis the citizens in a democratic system". The argument for openness could not be put better.

Then the argument is completely undermined in point 9 of the Preamble by saying:

> *The institutions should be entitled to protect their internal documents which express individual opinions or reflect free and frank discussions and provision of advice as part of internal consultations and deliberations. (see Article 3a below)*

The actual intent of the Commission in its proposal is unclear. The "space to think" and "free and frank" references to "internal documents" suggests that the Commission, like in its unpublished discussion papers, is only intending to release proposals once adopted by the full Commission. All the reports and influences on the policy-making outcome (in the adopted decision) are to be excluded from access, and from civil society.

Point 12 invents the concept of the "loyalty" of EU member states to the Community institutions and stipulates that member states should "take care not to undermine application of this Regulation". In other words the operation of national laws on access to documents should be determined by this Regulation in releasing EU documents.

The REGULATION - Article by Article

Article 1: General principle and beneficiaries

Like the beginning of the Preamble this sets out the laudable objective of citizens having the right of the "widest possible access" to documents.

Article 2: Scope

Article 2.1 opens by defining the scope namely, that the regulation will "apply to all documents held by the institutions, i.e. produced by them or received from third parties and in their possession."

Article 2.2 Is meaningless to all except those who have applied for documents. The first sentence says that the regulation will not apply to "documents already published or accessible to the public." "Documents already published" has been used by the Commission not to supply documents in its possession at the cost of photocopying (maybe £2-3) but instead to refer applicants to national Stationery offices who offer to sell the requested documents - in one case at a cost of £30 plus for a copy of an Official Journal. Does "available to the public" mean that the requested document is on the internet? If it does then the Commission is assuming everyone has access to the internet,

which they do not.

Most important of all, a document reproduced in the Official Journal of the European Communities or on the internet is not the same as the document considered by the institution - for example, it will not contain a document reference number or acronym enabling it's progress to traced through the decision-making process.

Article 3: Definitions

Article 3.a which defines the meaning of the term "document" drives a "coach and horses" (several of them) through the present principle that an applicant may apply for *any document* (subject only to narrowly-defined exceptions). It says:

> *only administrative documents shall be covered, i.e. documents concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility excluding texts for internal use such as discussion documents, opinions of departments and informal messages.*

So having said in Article 2.1 that "all documents" will be covered it then excludes up to 70%+ of the documents produced. Moreover its effect is quite unclear and will leave an unacceptable degree of discretion in the hands of the institutions which in turn will lead to complaints to the European Ombudsman or to the Court of First Instance. For example, "Discussion documents" form part of the decision-making process - what options were considered and which were dropped, who submitted views and what did they say? The "opinions of departments" is equally important - how did these influence the final measure, what did they say? As for "informal messages" this appears to refer to "e-mails" which in the Explanatory memorandum are compared to telephone conversation - they are nothing of the sort. Anyone who uses e-mail knows that they are the equivalent of a letter or memo not a conversation - moreover *Statewatch* has learnt that Council and Commission officials use e-mail extensively in the development of policy.

Access to these documents is excluded not just prior to the adoption of a policy/measure but for all time.

Article 4: Exceptions

In addition to seeking to exclude many documents from access the "Exceptions" have been widened - the grounds on which access may be refused. The first of the entirely new categories is:

> *relations between and/or with Member States or community or non-Community organisations.*

It is not at all clear what this refers to, no explanation is given in the explanatory memorandum and this is covered by other exceptions such as confidentiality.

The second, is:

> *the stability of the Community legal order*

Again, there is no explanation of this new category in the explanatory memorandum. It is unclear whether this is a wide definition embracing criminal and administrative law or a more narrow one - such as ensuring the confidentiality of the opinions of the legal services of the institutions which the Court of Justice has already recognised.

The third new exception covers just about everything:

> *the deliberations and effective functioning of the institutions.*

This appears to be a re-working of the current Article 4.2 which gives the institutions a *discretionary* power (*may* refuse rather than *shall* refuse) to "protect the confidentiality of the Council's proceedings". On the other hand the introduction of the term "effective functioning" suggest a wider purpose which covers the infamous "premature publication of a document from giving rise to "misunderstandings"" in the Commission's unpublished discussion paper.

Article 4.d would allow a "third party" supplying a document to refuse access. This runs counter to the inclusion in the regulation of documents coming from "third parties". If such documents form part of the decision-making process or the implementation of a measure then they should be properly be in the public domain subject only to primary exceptions (like public security).

Article 5: Processing of initial applications

This Article seeks to change the existing code which refers to "repeat applications" to "repetitive applications" which is fundamentally different. *Statewatch* challenged the Council interpretation of "repeat applications" when it tried to refuse documents because *Statewatch's* applications always concerned the same subject matter, namely justice and home affairs. The European Ombudsman upheld *Statewatch's* complaint. Now the Commission's proposal seeks to put the clock back.

The Article, like at present, speaks of the option of a "amicable and fair solution" after consulting the applicant. But applicants are rarely consulted and the "fair solution" means the institution position - this can only be challenged through the lengthy process of going to the European Ombudsman or the Court of Justice. It is thus, in practice, meaningless.

Articles 5 and 6

Both of these Articles allow the institutions "in exceptional cases" to extend the time for replying to a request from one month to two months. This is in the current rules but in practice is abused. "Exceptional cases" is used to cover the so-called "vacational season" of August and often Christmas.

Article 6: Processing of confirmatory applications - Remedies

This Article has one positive improvement. It proposes that the failure of the institution to reply to a "confirmatory application" (an appeal against refusal of access) within the time-limit shall indicate a "positive response" (the document(s) will be supplied).

Article 7: Exercise of the right of access

Includes in Article 7.4 the possibility that "abridged" versions of document will be supplied, with sections "blanked out" if covered by one of the exceptions in Article 4.

Article 8: Reproduction for commercial purposes or other forms of economic exploitation

This Article does now include the provision that a person given a document may not "reproduce" it (a change from the November 1999) draft. However, it does change the current codes which say that document may not be reproduced "for commercial purposes through direct sale" without prior authorisation. It now says the applicant may not reproduce a document for commercial purposes "or exploit it for any other economic purposes". The intent is unclear and there is no reason given in the explanatory memorandum.

Article 11: Entry into force

As the Commission has chosen to present this measure as a "regulation", rather than as a "decision", it includes the following:

> *This Regulation shall be binding in its entirety and directly applicable in all Member States.*

This would ensure the "loyalty" of member states.

Proposal for a regulation of the European Parliament and the Council regarding public access to documents of the European Parliament, the

Council and the Commission, 26.1.00; Draft proposal for a regulation regarding public access to documents of the European Parliament, the Council and the Commission, COM (2000) 30, 21.1.00; Proposal for a regulation regarding public access to documents of the European Parliament, the Council and the Commission, SG.C.VJ/CD D(98) 159, 22.10.99; Proposal for a regulation regarding public access to documents of the European Parliament, the Council and the Commission, SG.C.VJ/CD D(98) 159/2, 29.11.99; Commission press release, 26.1.00; See Statewatch, vol 9 nos 2 & 6. See:
http://www.statewatch.org/secreteurope.html

UK

Bill to introduce far-reaching surveillance

The "Regulation of Investigatory Powers Bill" introduced in February will legitimise existing clandestine practices and introduce controls over encryption on the authority of politicians and officials

The Regulation of Investigatory Powers Bill has 73 clauses and 4 lengthy Schedules plus 357 points in the "Explanatory Notes". It is presented in three main sections: Part I - Interception of communications; Part II - Intrusive Investigation Techniques; Part III - Decryption powers.

Part I - Interception of communications

This section incomprehensibly starts with defining "unlawful interception" which covers interception by anyone not authorised by the state (Home Secretary, judge or a host of others). Though it makes "lawful" real-time interception (as it is happening) if carried out by a person who has the right to "control the operation or use of the system" or who has "the express or implied consent of such a person" (Article 1.6). This proposed lawful power extends to collecting and storing a communication that "is being, or has been, transmitted" or while being transmitted is "diverted or recorded" and to "data attached to a communication" (Article 2.7, 2.8, 2.9).

Article 3 plunges straight into "Lawful interception without a warrant" (both post and communications). It is lawful, without a warrant, if one of the parties (the sender or receiver) consents or if "surveillance.. has been authorised in Part II" (covert investigations).

Article 4 extends the categories where interception is "lawful" without a warrant. It covers prisons, hospitals and patients under the Mental Health Act 1983. It also covers any "business", which can by *authorised* by the Home Secretary by regulation, to monitor or record all communications conducted by that business. "Business" in this section is defined as including government departments, "any public authority" and any person given authorisation.

This Article also makes "lawful" the interception of communications in line with the EU draft Convention on Mutual Assistance in criminal matters without a warrant. It allows the interception of communications of a person in *another* country through telecommunications systems based in the UK due to an interception warrant issued in that country. No limits are placed on the use made of the intercepted material, ie: it does not have to be used for the grounds on which the interception was requested.

Article 5 finally gets around to dealing with instances where a *warrant* is needed for the interception of telecommunications and postal services.

Article 5.1.b. covers intercepting communications (post and telecommunications) at the request of a non-UK state or agency under an "international mutual assistance agreement". While Article 5.1.c. allows the Home Secretary to request interception of communications outside the UK. Article 5.1.d. covers "intercepted material" and "communications data" (electronic communications).

Article 5.1.3 sets out the criteria for issuing warrants: a) "in the interests of national security" (valid for up to six months); b) "for the purpose of preventing or detecting serious crime" (valid for up to three months); c) "for the purpose of safeguarding the economic well-being of the UK" (valid for up to six months, for people outside the UK); d) for international mutual assistance agreements.

Hidden at the back of this lengthy Bill in section 71 (2) and (3) is the definition of "serious crime". This includes:

conduct by a large number of persons in pursuit of a common purpose

The Explanatory note says this reflects Article 8 of the European Convention on Human Rights which refers to "disorder and crime".

The concept of "national security" is as usual not defined and is subject to the changing perceptions of governments, ministers and officials of all kinds. *Liberty*, observes: "If Parliament has not judged an activity sufficiently grave or insidious to justify bringing it within the criminal law, then it should not generally be regarded as a legitimate basis for interception or surveillance."

Article 5.6 says that an interception warrant covers "all such conduct.. as is necessary to undertake in order to do what is expressly authorised or required by the warrant."

Article 6 sets out the agencies which can request an interception warrant: MI5, MI6, GCHQ, NCIS, the police, customs, Permanent Under-Secretary at the Ministry of Defence plus non-UK states and agencies under mutual assistance. For international mutual assistance a "senior official" can issue a warrant where the person under surveillance is outside the UK (including "real-time" surveillance). Where it involves satellite telecommunications (Iridium-like "ground stations") warrants a senior official can issue a warrant "without further formality" as the UK is apparently not concerned with the validity or not of the warrant issued by the non-UK state or agency.

Article 8.3.b. provides that the Home Secretary has to issue a "certificate" setting out a "descriptions of intercepted material" required - this is directly relevant to telecommunications service providers. Article 11 sets out penalties for failure to cooperate: up to two years or an unlimited fine or both on indictment or up to six months or a fine or both in a magistrates court (summary conviction). Article 12 sets out obligations on service providers to assist in interception.

Articles 16 says that no reference or assertion may be made in any legal proceedings to the existence or not of an interception warrant. Article 17 allows exceptions for the prosecution and a judge to be shown the evidence - but not the defence.

Article 18 provides draconian sentences for people who reveal the existence of an interception warrant or the content of a communication or communication data (not the contents but the details of the sender and receiver of a message) revealed by the surveillance, including everyone who works for the postal service or for a telecommunications provider (including ISPs). This information is to be kept "secret" for all time. It provides for up to five years in prison or an unlimited fine or both on conviction.

Obtaining and disclosing "communications data"

Article 20 includes the definition of "communications data" as including "any information which includes none of the contents of a communication". This obscure definition can best be understood by looking at the categories of information set out in an EU document - ENFOPOL 98 (the EU-FBI surveillance plans). This says the law enforcement agencies need: the IP address, customer account no and address, logon ID and password used, PIN number, e-mail address and any credit card details. It would also details of messages sent and received and to/from whom. The Article also covers the postal services.

The Article allows for *authorisations* (as distinct from warrants above) and the serving of *notices* by "a person designated" (see below) on the following grounds:

a) "in the interests of national security"

b) "for the purpose of preventing or detecting crime or of preventing disorder"...

c) "in the interests of public safety"

The test here is quite different and simply defined as "crime" (not serious crime) with "disorder" added. It also covers protecting public health, collecting taxes, and "for *any purpose*.. specified.. by an order made by the Secretary of State" (Article 21.h, emphasis added).

Article 21.3 allows a person in a "public authority" (to be set out by the Home Secretary) to anybody else in the same authority to issue an authorisation/notice on a communications provider for communications data (for a period of up to one month, renewable).

Article 21.4 says that where it "appears" to the potentially thousands of "designated" people in public authorities that a "postal or telecommunications operator is or *may* be" (emphasis added) in possession of communications data they can serve a "notice" on them to obtain and disclose this to them whether "old" data or new data.

The assumption that access to communications data is a lesser intrusion into the rights of privacy that interception is unacceptable.

PART II:
Surveillance and “covert human intelligence sources”

The core of a surveillance state is the combination of intercepting communications and direct sources (informants and listening devices). Part II of the R.I.P. Bill makes lawful previous dubious and "unlawful" practices.

Three types of surveillance are to be "authorised":

a) **"directed surveillance"**: this is so called on the grounds that "surveillance is directed if it is covert but not intrusive" (Article 25.2).

The grounds for issuing *authorisations* for "directed surveillance" include "national security", "preventing or detecting crime or of preventing disorder", and for "any purpose" laid down by the Home Secretary (Article 27.3).

The people able to issue *authorisations* are those "offices, ranks and positions with relevant public authorities" laid down (but not set out here) by the Home Secretary.

b) **"intrusive surveillance"**: surveillance is "intrusive" if it is "covert surveillance". Surveillance is thus "intrusive" if a device (whether to record sound or video) is put in a "residential premises" (but by implication not if it is not a residential premises, like place of work or meeting place). It is intrusive if it involves as it is politely termed "an individual" (ie: undercover agent or informant). It is also intrusive if a listening device is in a vehicle, but it is not "intrusive" if a tracking device is attached to a vehicle to plot its location. However, it is "intrusive" if a "device" outside a premises or vehicle produces information of the "same quality and detail" as might be obtained from a device actually present in the premises or vehicles.

The grounds for issuing *authorisations* for "the use of a covert human intelligence source" include "national security", "preventing or detecting serious crime", and for "any purpose" laid down by the Home Secretary (Article 28.).

The people able to issue *authorisations* are "senior authorising officers" in the police, military or customs. Police and customs have to refer authorisations to the Surveillance Commissioner.

c) **"the conduct and use of covert human intelligence sources"**: covers "inducing, asking and assisting" a source. What the term "inducing" means is not set out ("inducing" could include turning a blind eye to a criminal offence). The "covert" source is exempted from civil liability for "incidental" conduct (Article 26.2.a) and the "conduct" can be authorised for "conduct" outside the UK (the terminology is original). Although not spelt out "covert human intelligence sources" cover undercover agents, paid and unpaid, and "induced" informants.

The grounds for issuing *authorisations* for "the use of a covert human intelligence source" include "national security", "preventing or detecting crime or of preventing disorder" (a lesser standard than for "intrusive" surveillance), and for "any purpose" laid down by the Home Secretary (Article 28.).

The people able to issue *authorisations* are those "offices, ranks and positions with relevant public authorities" laid down (but not set out here) by the Home Secretary.

PART III:
Investigation of electronic data protected by encryption

This Section of the Bill introduces *notices* requiring service providers to disclose encryption "keys", known as a "section 46 notice". The grounds for such a notice include: "national security" and "preventing and detecting crime" (again a lesser standard). Failure to surrender a "key" could land a person in jail for up to two years or an unlimited fine or both. However, failure to keep "secret" the fact that a "key" has been given to a state agency can bring a jail sentence up to five years.

These proposals fail to address the fact that parties (sender and receiver) can encrypt messages "at source", the "key" in these cases would not be in the hands of the service provider. For a more detailed critique of Part III see: http://www.fipr.org.uk

Commissioners and the Tribunal

Two Commissioners are to be appointed, the Interception of Communications Commissioner and the Covert Investigations Commissioner as is a Tribunal (to hear complaints). The Tribunal, along the lines of the existing ones covering interception and the security services, has powers (to hear evidence without the complainant being present and to suppress any evidence which would endanger the "public interest" etc).

Conclusion

A number of overall comments need to be made. First, the concept of "crime" used to justify such surveillance. "Serious crime", used in the powers for interception, includes "conduct by a large number of persons in pursuit of a common purpose" which could be used against political groups and activists and/or demonstrations. In other areas there is the lesser test of simply "crime", any crime however minor. While the provisions on "communications data" and covert, undercover, surveillance are expressly extended to cover "disorder".

Second, the power, whether under warrants or

authorisations, given to state agencies (police, customs, immigration, tax, health bodies and local authorities) to undertake surveillance amount to self-authorisation by politicians or officials. *Liberty* say:

> *Retention of executive rather than prior judicial authorisation of interception is fundamentally objectionable. That the executive should secretly authorise itself to commit clandestine interferences with important rights is neither acceptable or necessary.*

Third, there is nothing to prevent the issuing of a warrant, authorisations or notices to cover an organisation or group and hence for the conducting of general surveillance ("fishing or trawling expeditions").

Fourth, the whole emphasis on the Bill is that the use of all these new legal powers is to be kept secret - and like the Official Secrets Acts the people involved have to take their "secrets" to the grave.

The fact that the Home Secretary has assured the nation that the R.I.P. Bill is in line with the European Convention provides little comfort. Nor will the appointment of two Commissioners, whose role will be defined by the open-ended powers given for surveillance. The Tribunal can be expected to be as toothless as the existing ones - which have never found in favour of a complainant. But then how can people know they are under surveillance, for proper or perverse reasons, if they never find out?

The Data Protection Working Party for the European Commission said in its report in May 1999 that:

> *a person under surveillance [should] be informed of this as soon as possible.*

This would ensure a proper test of whether or not the surveillance was legitimate (see *Statewatch*, vol 9 nos 3 & 4). The government's analysis of the responses to it's consultation paper on interception says this is "an idea that law enforcement felt to be unworkable".

It may be a sad truism but too often this government when it lays down new legislation affecting civil liberties diminishes the rights of the people at the expense of the demands of "law and order" and the "law enforcement agencies", diminishing privacy and freedoms bit by bit and Bill by Bill.

Regulation of Investigatory Powers Bill; R.I.P. Bill Explanatory Notes; Regulatory Impact Assessment, Parts I and III; FIPR press release, 10.2.00; R.I.P. Bill: Second reading briefing, Liberty, 28.2.00; Interception of Communication in the UK, Consultation Paper, Home Office, June 1999; Interception of Communication in the UK: An analysis of responses to the governments' consultation paper (CM 4368), 15.12.99.

RUSSIA

Surveillance of communications

In January the Russian government authorised SORM-2, "System for Operational-Investigative Activities". Under SORM-1 the Federal Security Bureau (FSB, the successor to the KGB) was required to obtain a warrant before obtaining data from service providers. Under the SORM-2 regulation all Internet service providers (ISPs) are required to install a "box", rerouting device, and a high speed communications line to hot-wire the provider to FSB headquarters. A warrant from a court is still needed for agencies to read any of the contents of the messages - though human rights groups suspect this may be by-passed. The FSB says SORM will help law enforcement agencies track down and catch criminals ranging from "tax evaders to paedophiles".

The 1995 Law on Operational Investigations gave the FSB powers to monitor all communications, post and telecommunications (mobile phones, e-mails and faxes) after first obtaining a warrant from a court.

An amendment to the 1995 Law on Operational Investigations signed on 5 January means that not only the FSB but also the tax authorities, Interior Ministry police, parliamentary and presidential security forces, customs and border police are to be given access to all use of the Internet.

While the arguments are the same the proposed UK R.I.P. Bill does not go this far. But perhaps it should be remembered that the EU, including the UK, adopted a set of "Requirements" to be placed on service providers in January 1995 (without any democratic debate). These say that: "Law enforcement agencies require access to the entire telecommunication transmitted.. Law enforcement agencies also require access to call-associated data that are generated to process the call" (Requirement 1.) "Law enforcement agencies require, full-time monitoring capability for the interception of telecommunications.." (Requirement 2.) "Law enforcement agencies require network operators/service providers to provide one or several interfaces from which the intercepted communications can be transmitted to the law enforcement monitoring facility.." (Requirement 3.).

SORM-2 and the EU

SORM-2 allows the *automatic* transmission of *all* communications to the law enforcement agencies. Under the "Requirements" adopted by the EU the transmission of data to law enforcement agencies requires an "interception order" to be authorised by a "legally authorised body" (a court or agency official depending on national laws). But the legal test for authorising an interception order varies from country to country. In some it is strictly limited to "serious crime" in others this is extended to "crime" and "disorder". The draft Convention on Mutual Assistance in Criminal Matters (which includes controversial sections on interception and covert operations) being discussed by the EU Justice and Home Affairs Council covers any crime "however minor".

There are differences between SORM-2, the EU plans and the R.I.P.Bill. In Russia all communications are monitored. In the EU some are monitored depending on whether a person or group has been targeted for surveillance.

"Champion of privacy 1999"

Statewatch was given a "Champion of privacy" award at the annual presentations organised by Privacy International held at the London School of Economics on 18 October 1999.

The award recognised Statewatch's work on civil liberties in the EU and especially its work on exposing the EU-FBI telecommunications surveillance system.

In 1998 Statewatch was given an award by the Campaign for Freedom of Information for its work on access to EU documents.

On Globalisation of Control: Towards an Integrated Surveillance System in Europe

by Thomas Mathiesen,
Professor of sociology of law,
University of Oslo

A Statewatch publication
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Secrecy and openness in the European Union

by Tony Bunyan (October 1999) £9.99 Available from: Kogan Page, 120 Pentonville Road, London N1 9JN, UK

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CONTENTS

Web database

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

Contributors

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

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