

# statewatch

monitoring the state and civil liberties in the UK and Europe

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EU

## Lomé Convention used to impose repatriation on the world's poorest countries

- EU Council of Ministers by-pass parliamentary scrutiny
- proposal "non-contentious" says UK Home Office Minister

The negotiations between the EU and African, Caribbean and Pacific countries (ACP) on a new Lomé Convention, begun in 1998, were completed in February. The agreement contained, for the first time, draconian rules on the repatriation/expulsion of people "illegally present" in the EU. The ACP countries had little choice but to accept the EU terms as these proposals were only introduced into the negotiations, involving £8.5 billion aid and trade, at the last minute.

The European Commission, which conducted the negotiations, described this proposal of the new Lomé agreement as:

*a balanced agreement enshrining the principle of cooperation on this issue. (Information Memo no 10)*

How were the clauses in the agreement obliging some of the poorest countries in the world to take back people expelled from the EU agreed? How was it that the EU could lay down that these "readmission agreements" covering not only nationals of the third country but also: "an obligation for the readmission of nationals of other countries and of stateless persons"?

### The Lomé negotiations

The negotiations began in 1998 and four meetings were held. At the second, on 29-30 July 1999 in Brussels, there were substantial disagreements on many of the central issues on the table - aid, the "liberalisation" of trade (which unequally benefits the EU over the ACP countries), return of cultural goods etc. It was officially described by the EU as: "All in all a disappointing conference". The only mention of the issue of readmission was: "An exchange of views was held on migration and negotiators

were asked to look into the issues involved in greater detail." (Information Memo 8, 1999).

The first mention of readmission/repatriation was at the EU-ACP meeting on 7-8 December 1999, just two months before the agreement had to be signed - as the *Guardian* commented one of the "sticking points" was "the immigration clause which the EU threw in at the last minute." The Commission reported:

*A thorny issue still has to be settled, however: in the cooperation on migration, the clause on the readmission or return of illegal immigrants is still under discussion. (Information Memo 9, 1999).*

At the fourth and final meeting of EU-ACP countries the Commission's view was:

*Remaining on the agenda for the February meeting was the new dialogue on migration, and in particular the proposed EU arrangement to repatriate illegal immigrants to the country of origin. The ACP were willing to accept readmission of their own citizens, but rejected readmission of non-nationals or stateless persons who transit their territory. They held the view that the proposed clause had no basis in international law.*

*The European Community was mandated by the Tampere European Council in October 1999, and by the recent Justice and Home Affairs (JHA) Council's decision to include standard clauses in agreements with third countries on the question of readmission. This issue gave rise to protracted bargaining, delaying discussion on other remaining questions. The Commission was firm on the principle, but not inflexible. Agreement was finally reached on a framework agreement - which provides a basis for negotiated bilateral agreements with each ACP state. (EU-ACP Bulletin, 10.2.00, emphasis added)*

In other words, to get the overall deal through the world's poorest

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

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

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countries had to accept the "EU arrangement" on readmission/repatriation.

The ACP's view that the obligation to accept non-nationals and stateless persons had no basis in international law is almost certainly correct. Indeed, the opinion of the Council's own Legal Service, dated 10 March 1999, goes further, it says:

*it is doubtful whether, in the absence of a specific agreement to this effect [readmission] between the concerned states, a general principle of international law exists, whereby these states would be obliged to readmit their own nationals when the latter do not wish to return to their State of origin. (para 6., doc no: 6658/99)*

The implication of the Council's Legal Service view was that unless an agreement of readmission was in place there was no obligation in international law for non-EU countries to accept back their own nationals, third-country nationals or stateless persons. (The Legal Service Opinion also makes clear that readmission agreements, under the TEC Article 63.3.b., would cover not just those found to be "illegally" resident but also asylum-seekers whose application has been turned down: para 11).

### Article 13 of Lomé

The EU-ACP Lomé IV Convention agreed in February includes Article 13 on "Migration". The Article starts with a number of generalisations about "reducing poverty" and "normalising migratory flows". It politely refers to repatriation suggesting how "illegal immigrants" benefit: "the authorities concerned shall extend to them the administrative facilities necessary for their return."(5.b.)

Article 5.c. reads as follows:

*(i) each Member State of the European Union shall accept the return of and readmit any of its nationals who are illegally present on the territory of an ACP State, at that State's request and without further formalities;*

*each of the ACP States shall accept the return of and readmit any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State's request and without further formalities;*

*The Member States and the ACP States will provide their nationals with appropriate identity documents for such purposes...*

*(ii) At the request of a Party, negotiations shall be initiated with ACP States aiming at concluding in good faith and with due regard for the relevant rules of international law, bilateral agreements governing specific obligations for the readmission and return of their nationals. These agreements shall also cover, if deemed necessary by any of the Parties, arrangements for the readmission of third country nationals and stateless persons..."*

At a stroke the EU got through a deal which allows any EU member state to require of an ACP country to sign an agreement accepting the expulsion from the EU and return of its nationals and any third-country national or stateless persons who came to the EU from that country (passed through, "transitted", from the ACP country), and any rejected asylum-seekers.

It was critical for the EU to get a deal on the expulsion of "illegals" with the ACP countries as the new Lomé agreement covers the years 2000-2007. To do this the EU, which holds all the main cards in the negotiations, used typical diplomatic sleight of hand by introducing the proposal at the very last minute. So when and how did the EU decide on this new policy?

### EU intent set from 1998

An examination of the decision-making process shows that the EU intended to get readmission clauses (if not on the model agreement on readmission itself) into agreements with third countries from 1998 onwards - before the Lomé negotiations started.

In 1996 the EU adopted a set of "Conclusions" setting out clauses to be included on a bilateral basis in mixed agreements (an agreement between an EU member state and a non-EU state). The wording and effect of the three clauses in the document are exactly the same as those that were adopted by the EU in December 1999. These "Conclusions" were not binding on EU member states and were not discussed by the European or national parliaments.

It was the Netherlands Presidency of the EU which oversaw a decision to gather information within the EU on "voluntary repatriation" in May 1997. A month later the Amsterdam Treaty included, in Article 63.3.b., the adoption of measures within five years to cover: "illegal immigration and illegal residence, including repatriation of illegal residents". During 1998 there was much discussion in the Council Migration Working Party (Expulsion) over drafts of a letter (drawn up by the Austrian and German EU Presidencies) to be sent to third countries on a "standard [EU] travel document for the expulsion of third country nationals." (see *Statewatch European Monitor*, vol 1 no 2).

The "Action Plan establishing an area of freedom, security and justice" adopted in December 1998 spelt out a timetable for "a coherent EU policy on readmission and return" (36.c.ii, within two years) and "improved EU coordination implementation of readmission clauses" (38.c.i, within five years).

It was the report of the High Level Group on Migration adopted in January 1999, just two months later, which spelt out the need for a "cross-pillar" approach to combatting "illegal immigration". This entailed, for the six selected countries, not just readmission clauses in agreements with non-EU states and the use of economic (aid and trade) and diplomatic pressure to achieve EU objectives - just the approach taken in the EU-ACP negotiations. The Tampere Summit on October 1999 confirmed this view (Conclusions 26 and 27).

Beneath these general decisions there were two issues on the table of the Council's working parties:

a) a proposal from the Austrian Presidency before the Migration Working Party (Repatriation) for a single multilateral agreement between the EU Member States (the "Community") and third countries. Two reports detailing a draft agreement with 17 Articles, dated 13 July 1998 and 21 December 1998, clearly underline the intent of the EU (this is still under discussion);

b) another, linked, proposal before the Migration Working Party on Readmission to put readmission clauses in agreements with third countries ("mixed agreements").

In April 1999 the German EU Presidency put a report to the Migration Working Party (Expulsion) which stated:

*the incorporation of readmission clauses in association and cooperation agreements concluded by the Community with third countries.. [has] a major role to play in a comprehensive policy with regard to expulsion... [a] coherent policy with regard to expulsion... may include all areas, but especially economic, development and foreign policy aspects.*

A month later, in a report dated 11 May 1999, the German Presidency put before the Readmission Working Party a report which simply replicated the 1995 "Conclusions" but now, in the context of the Amsterdam Treaty, to produce a formal EU decision. Why the German Presidency did not simply process this report and put it through a Council of Ministers meeting is not at all clear as there were no changes to the text between May and December.

On 15 September, the now renamed Migration Working Party (Expulsion), adopted the position put forward in May and the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) nodded it through at its meeting on 21 October. COREPER discussed the proposal at its meetings on 16 and 24 November 1999 recommending the Council adopt it as an "A" Point. It was not on the circulated "A" Point agenda of the Justice

and Home Affairs Council scheduled for 2 December. Indeed the UK Home Office informed parliament that the draft Decision:

*has never previously been produced as a depositable document and has suddenly appeared as a Council Decision for agreement at the Council. We expect that this will be dropped as other Member States are likely to be similarly concerned at the appearance of this item as an "A" point. (emphasis added)*

But it was slotted in and adopted by EU Ministers without discussion - in time to be sprung on the ACP countries on 7-8 December 1999.

### **Council by-passes parliamentary scrutiny**

The original report 1996 "Conclusions" was discussed and agreed at the JHA Council on 23 November 1995 and formally adopted as an "A" Point (without debate) by the Environment Council on 4 March 1996 under the intergovernmental processes of the Maastricht treaty. The European Parliament was not consulted, national parliaments had few powers (and were rarely consulted) and civil society left quite ignorant. The 1996 "Conclusions" were adopted by the EU Council of Ministers by a process which was totally undemocratic.

The Amsterdam Treaty set out new procedures. New measures have to be published in the Official Journal in advance of adoption. The European Parliament has to be consulted under the new provisions of Title IV of the Treaty establishing the European Communities (TEC) covering asylum and immigration policy under Article 67.1 and in such cases national parliaments have to be consulted too.

National and European parliaments were not consulted, nor was civil society informed, of the "Conclusions" adopted by 2 December 1999 by the JHA Council. The European Parliament registered its objection to not being consulted in a Resolution in February.

In the UK the House of Lords Select Committee on the European Communities expressed its concern at not being sent the document for parliamentary scrutiny - especially having been informed that it was unlikely to be adopted.

On 21 January the Immigration and Nationality Directorate (IND) replied to the Select Committee. Their letter said that initially the UK (and other Member States):

*were concerned that, not having seen the document concerned, it appeared to be a proposal which had not previously been discussed at working group level...*

*Subsequently, we were informed that the item referred to an issue which simply involved the updating of standard wording dating from 1995 relating to readmission, to be inserted in future Community agreements. This updating was required as a result of the entry into force of the Amsterdam Treaty. The Council Legal Service did not regard this as a formal measure and, having considered the text, we concluded that it was non-contentious and caused the UK no difficulties.*

To suggest that the UK (and other Member States) did not know of this document is incomprehensible. It was discussed at EU meetings, attended by officials of all EU member states, in Brussels on 15 May, 15 September, 21 October, 16 and 24 November 1999. Moreover, to suggest that it was not a "formal measure" (Council Legal Service) is quite erroneous.

On 26 January the Chair of the Select Committee, Lord Tordoff, wrote to Barbara Roche, Home Office Minister. Lord Tordoff said he found the explanation "unsatisfactory" especially as the:

*covering Note from the Council General Secretariat states that the text of the Decision was agreed by Coreper on 24 November. The content of the draft Decision must have been known to officials some time in advance of the Council meeting...*

He went to say that to suggest the draft Decision should not be sent to parliament for scrutiny was "surprising" and regretted that

the Select Committee "did not have the opportunity" to look at the report as: "Your officials considered the text to be non-contentious."

Barbara Roche, Home Office Minister responsible for EU matters, replied to Lord Tordoff on 21 February. The Minister's letter reiterated all the points in the previous letter from the IND official. It "appeared to be a proposal which had not previously been discussed at working group level...", "we were informed [it] simply involved the updating of standard wording dating from 1995...", "this updating was required as a result of the entry into force of the Amsterdam Treaty", and:

*we concluded that it was non-contentious*

The Minister goes on to say:

*The Council was advised that this was neither a formal measure expressly provided for in the Treaty, nor an informal measure (such as a negotiating mandate) which was directly linked to such a measure...*

So, if it was not a "formal" measure and not an "informal" measure what was it? As to the Ministers' arguments:

1. the proposal had been discussed at least five times within the Council prior to 2 December;

2. it was not simply "updating of standard wording" as "technical amendments", it was seeking to turn Council Conclusions of 1996 into a measure adopted under the terms of the Amsterdam Treaty - it was not a "technical" issue but a constitutional one.

3. As the Minister recognised Article 63(3)(b) of Title IV of the Treaty establishing the European Communities allows the Community to conclude readmission agreements with third countries including the "repatriation of illegal residents". But the same Treaty in the same Title IV says in Article 67.1 the Council can only adopt a proposal after "consulting the European Parliament."

4. The real flaw in the Minister's argument, based on the opinion of the Council's Legal Service, is that under the new Treaty the "transformation" of a pre-Amsterdam measure into an Amsterdam measure has to follow a set procedure. This process is known as the "Amsterdamisation" of measures adopted under the previous Maastricht Treaty and "the Council must consult the European Parliament on the transformed initiatives.." for Title VI issues still under the Treaty on European Union (TEU). No less a standard can apply when a decision involves a measure whose legal base has been transferred from the TEU under Maastricht Treaty to the TEC under the Amsterdam Treaty.

This official account, which tries to construct a plausible justification for by-passing parliamentary accountability, is a classic example of the closed (to the public and parliaments that is) world that officials and Ministers inhabit on justice and home affairs issues in the EU.

### **Conclusion**

Officials in the Home Office in the UK (and their counterparts in Interior Ministries across the EU) clearly knew a proposal to "transform" the 1996 Conclusions on readmission clauses to a Decision under the Amsterdam Treaty was on the table. It appears though that none knew until it "suddenly appear[ed]" on the agenda of the JHA Council on 2 December 1999 that it was to be adopted at that meeting. This left no time at all to consult either national parliaments or the European Parliament. The JHA Council of Ministers just nodded it through, without any discussion. The imperative to railroad the measure through before the Lomé meeting just five days later was the overriding consideration.

*"Consequences of the Treaty of Amsterdam on readmission clauses in Community agreements and in agreements between the European Community, its Member States and third countries (mixed agreements)", ref:*

7292/99, MIGR 20, 11.5.99, ref: 11052/99 MIGR 58, 23.9.99, 12134/99 MIGR 64, 21.10.99 and 13409/99 MIGR 69, 25.11.99; "Model agreement on readmission between the Member States of the European Union, on the one part, and third countries, on the other": Advice of the Legal Service, ref: 6658/99, JUR 95 ASIM 8 MIGR 13, 10.3.99; "Draft Readmission Agreement between the EU Member States, on the one part, and third countries, on the other part", ref: 10338/98, ASIM 184 MIGR 8, 13.7.98 and 10338/1/98 REV 1, ASIM 184 MIGR 8, 21.12.98; Commission Information Memos 8, 9 and 10, dated 29-30.7.99, 7-8.12.99, 2-3.2.00 and EU-ACP Bulletin, 10.2.00;

## MILITARY

### ITALY

## Big increase in army bullying

Six soldiers from Pisa's *Gamerra* parachute regiment barracks have been charged by Emanuele Scieri's parents in connection with their son's suspicious death in August 1999 (see *Statewatch* vol 9 no 5). Evidence has emerged from Mario Ciancarella, a pilot and officer in Italy's airforce who resigned in 1983, who claims to have received an anonymous phone call from someone who had been serving with Scieri. He revealed what he was told to investigating prosecutors, and later to a *Rai* news television programme on 30 March, which included a reconstruction of events on the night of Scieri's death.

Ciancarella's account suggests that a group of "elders" (long-serving officers) forced Scieri to climb a tower, and that the leader of the group stepped on his hand when he threatened to report them. Scieri's father, Corrado, reiterated his intention to discover the truth, accusing the military of hindering investigations: "The military have been ordered to keep quiet about this story. But it is clearly a homicide." Pisa public prosecutor Enzo Iannelli announced that the persons found guilty of Scieri's death will face charges of premeditated murder. Four soldiers who served in the *Gamerra* barracks at the time of the murder are officially under investigation. These include General Calogeno Cirneco, former barracks commander, who is charged with not fulfilling his duties as commander, and soldiers who failed to report that Scieri was missing until the morning after his death.

The military general prosecutor, Vindicio Bonagura, announced that magistrates serving under him have had to deal with 861 instances of *nonnismo* (the bullying of conscripts), of which 411 took place in Rome and 235 in Turin. He stressed that victims of bullying should be allowed to denounce their attackers, and that the military code should be changed to include *nonnismo* as a defined crime. Specific definitions which he argued should be included in the changes stress the fact that the bully uses the intimidatory force derived from his longer service to threaten or use violence against another member of the armed forces; that the act occurs repeatedly, or that more than one soldier takes part in the abuse.

There was a new suspicious death in the armed forces on 18 January, when Nicola Farfuglia, a sailor, shot himself while he was posted as a guard at the *Altare della Patria* (Altar to the Fatherland) in central Rome. His brother Giovanni contradicted early reports relating Nicola's suicide to love problems, explaining that Nicola was being given a hard time by longer-serving soldiers for refusing to carry out an order. Giovanni claimed that his brother told him of his concern about his posting, as he would be in company of older soldiers. He wanted to take a screwdriver with him, and allegedly said "If they touch me I'll stick it in their stomach".

Bonagura, the military general prosecutor, described the problem of *nonnismo* as a "widespread and worrying

"Strategy on migration and asylum policy", ref: 6097/99, MIGR 18, 12.4.99; "Council conclusions on clauses to be inserted in future mixed agreements", ref: 4272/96, ASIM 6, 22.1.96; Letter from Immigration and Nationality Department (IND) to House of Lords Select Committee on the European Communities, 21.1.00; Letter from Lord Tordoff, Chair of the House of Lords Select Committee on the European Communities to Home Office Minister, 26.1.00; Letter from Home Office Minister, Barbara Roche, to Lord Tordoff, 21.2.00; *Guardian*, 5.2.00.

phenomenon which must be fought with every effort", while soldiers' parents associations argued that the number of cases would be far higher if it was possible to count the victims of *nonnismo* who failed to report intimidation. Green MP Athos De Luca says that the military general prosecutor's figures contradict lower estimates provided by the defence military sources, and accused former Defence Minister Carlo Scognamiglio of failing to act in any way to prevent violence in army barracks. This is surprising in view of the criticism received and assurances given by Scognamiglio following Emanuele Scieri's death that measures would be taken to protect the victims of *nonnismo* in the armed forces.

*Corriere della Sera* 24.2.00, 31.3.00; *Il Manifesto* 12.2.00; *La Repubblica*, 28.1.00, 14.2.00, 31.3.00, 12.5.00.

### EU

## Rapid reaction force agreement

EU defence ministers agreed the outlines for a future European rapid reaction force during an informal meeting in Sintra, Portugal, on 28 February. The ministers reaffirmed their commitment to the formation of a 50,000-60,000 strong force by 2003. The force will consist of 15 brigades of which presumably two or three each will be German and British. The ministers were vague about financing of the project but there was a French proposal on the table that said that all the members should pay 0.7% of their gross national product for military investment.

National contributions to the force, funding and location of the force's headquarters still need to be determined. A "force-generation conference" will be held before the end of the year in France when Paris holds the EU's presidency. Earlier on 14 February the EU foreign ministers decided to create the interim organs for security policy that have already started their work at the beginning of March:

- \* an interim political and security committee of ambassadors that will meet on a weekly basis.

- \* an interim military committee of representatives of the chiefs of staff will meet twice a year.

- \* military experts that will form the core of a future European military staff and planning unit have moved into offices at the EU council secretariat to exercise intervention scenarios.

*Defense News* 6.3.20.; *Jane's Defence Weekly* 8.3.20.; *AMI March 2000*

## Military - new material

**Die neue militaerische Kommandostruktur der NATO** [The new military command structure of NATO]. *Wehrtechnik*, IV/99, p105.

**Imbalance of power**, Ed Foster. *Jane's Defence Weekly*, 5.1.20, pp25-28. NATO re-examines deployment strategies after European "under-performance" in recent conflicts.

### Parliamentary debates

**Military Exports** *Commons* 2.2.00. cols. 181WH-203WH

**Armed Forces Discipline Bill** *Commons* 17.2.00. cols. 1119-1207

**Armed Forces Disciplinary System: Personnel Rights** *Lords* 21.2.00. cols. 123-126

Defence White Paper *Commons* 22.2.00. cols. 1390-1474

Defence White Paper *Commons* 28.2.00. cols. 33-126

Defence *Lords* 8.3.00. cols. 1047-1088

Conflict Prevention *Commons* 15.3.00. cols. 67WH-88WH

European Defence: Policy Scrutiny *Lords* 22.3.00. cols. 265-267

## PRISONS

### UK

## Asian youth killed at Feltham YOI

A 19-year old Asian youth, Zahid Mubarek, was battered to death at Feltham Young Offenders Institution in West London on March 23. Zahid, from Walthamstow, east London, was found in his cell suffering from serious head injuries after an attack that was motivated by racism. He died the following day in hospital. A white inmate, Robert Stewart, has been charged with murder, but Zahid's parents have asked why their son was placed in the cell with a racist who had earlier threatened him. The Prison Service's director general, Martin Narey, has admitted that the Service failed to protect Zahid, who was at the end of three month sentence for a minor offence. In a letter to the family he frankly wrote: "You had a right to expect us to look after Zahid safely, and we failed."

The Mubarek family, with their legal representatives and supporters, met with Minister of State, Paul Boateng, in April to highlight their concerns and request a public inquiry into Zahid's murder. Suresh Grover, of the National Civil Rights Movement, commented: "This case is a litmus test on how the government and prison authorities deal with racism in prisons and young offenders institutions. If the minister listens to the concerns of the Mubarek family and orders the inquiry then this may be an important step towards improving the situation for other black and Asian prisoners."

Feltham YOI has been condemned over the past decade for the bullying and intimidation suffered by prisoners. During 1991 an independent report by the Howard League concluded that the institution "should no longer exist in its present condition" after four youths were found hanged within an eight month period. A "highly critical" inspection of the centre by HM Inspectorate of Prisons in 1996 considered the "depths" into which the institution had sunk and made 180 recommendations, including two on race relations. The Inspectorate's latest report (based on a visit in September 1999) notes that the first of these, that "Young offenders's and juveniles should be represented on the Race Relations Management Team" still has not been implemented. The second recommendation, that "The number of staff from ethnic minority, especially Afro Caribbean, backgrounds should be increased", has only been partially implemented. Nonetheless, the upgrading of security measures and the installation of CCTV cameras persuaded the Inspectorate to give the institution a "clean bill of health".

A report, published in May, by the National Association for the Care and Resettlement of Offenders (NACRO) indicates the extent of the problem in prisons. The NACRO survey records that prison officers believe that race relations within prisons are "good" despite three attacks a day taking place on black and Asian prisoners. 27% of black prisoners and 49% of Asian inmates said that they had been subjected to racially motivated verbal abuse, while 12% of both black and Asian inmates said that they had suffered a racially motivated physical assault by another prisoner or member of staff. Only 7% of all prisoners had reported any racial incident. Following the publication of the report the Prison

Service announced that "new procedures for reporting racist incidents" will be announced; a new governor, William Payne, was appointed to run the institution on 8 May. The National Civil Rights Movement held a public meeting, "Behind Closed Doors: racism in Prisons and Detention Centres", to address the growing problem of racism from prison officers and prisoners on 1 June. For further information phone 020 8843 2333.

*"Report on a short unannounced inspection of HM Young Offender Institution and Remand Centre Feltham, 28-30 September" HM Inspectorate of Prisons (Home Office) 2000; "Race and prisons: a snapshot survey" NACRO (May) 2000; HM Prison Service press releases 5.5.00, 9.5.00*

### ITALY

## "Inexcusable negligence" but no charges at Regina Coeli

On 23 February Rome prosecutor Giuseppe de Falco requested that the investigation into the death of Marco Giuffreda in *Regina Coeli* jail in Rome on 2 November 1999 be shelved, (see *Statewatch* vol 9 no 6). The investigation recognised that the death was caused by "inexcusable negligence" on the part of prison personnel. However, no charges will be pressed because criminal proceedings are pursued in cases of "intentional" negligence. The officers responsible for transferring Giuffreda to house arrest claim that they were not informed about the intended transfer until two days after the court order was issued. The case highlighted the bureaucratic inefficiency, inadequate medical treatment and failure to apply the rule of law in Rome's notoriously overcrowded *Regina Coeli* prison.

*Il Manifesto* reports that Giuffreda, a successful 36-year-old art photographer, a heroin user and hepatitis sufferer, was arrested while he was buying heroin on Thursday 28 October. He was briefly detained at *Regina Coeli* before, two days later, being granted house arrest due to his poor health. The prison's director ordered the Transfers and Supervision Unit (*Nucleo Traduzioni e Piantonamenti*, NTP) to escort Giuffreda home. Members of the NTP claim they only found out about the order on 1 November, and when they carried it out, after two days' illegal detention, they had to take him to hospital.

The prison's medical staff was cleared of any responsibility, although Giuffreda informed them of his heroin use before he had a withdrawal crisis, (*Regina Coeli* authorities are opposed to making methadone available for detainees). He was sent back to his cell after collapsing, and his medical chart stated that he needed to be "kept under control". His second collapse, at 5pm on Monday, had fatal consequences after staff failed to apply a drip to him in the clinic, and four hours passed before he was visited in *Nuova Regina Margherita* hospital, 200 metres away from the prison. Inmates claimed that he had been vomiting, struggling to get out of his bed, not eating and breathing with difficulty since Saturday night. The autopsy found that Giuffreda had bilateral pneumonia, which had not been diagnosed and was therefore not treated, and died of a heart attack.

### Prison number increase

An explanation for such a tragedy may lie in the overcrowding and state of disrepair which characterises many Italian jails, especially *Regina Coeli*, where five inmates have died since July 1999. On 2 November, there were 1011 detainees: the Health Ministry says that its maximum capacity is 660, and the Justice Ministry indicates that it is 845. Italy's prison population had grown to 51,814 by 31 December 1999, according to a prison census published by the Parliament's prisons committee. The figure represents an increase of 4,000 prisoners compared to the previous year, and means that there are 9,027 more prisoners than the prison system's "statutory capacity", and 3,617 more than the

maximum "tolerable capacity". The number of third country nationals in Italian jails, 13,661, has been steadily increasing over the last decade. The head of the *Dipartimento Amministrazione Penitenziaria* (Dap, Penitentiary Administration Department), Giancarlo Caselli, has gone on the record stating that conditions in Italian prisons are "dramatic".

*Lila* (Italian League for the Fight Against Aids) has criticised prison authorities for their failure to implement a law on the incompatibility of Aids within the prison regime, passed in July. Figures from the summer of 1999 indicate that there were 14,264 drug addicts in the prison population, and 1,648 HIV-sufferers. *Lila* submitted a study to the justice and health ministers, and to Giancarlo Caselli, indicating that 40% of inmates who are addicts continue injecting themselves in prison and, disturbingly, that 7% of these first injected themselves in prisons. In November, the death of Marco Giuffreda resulted in a letter to prison authorities with the directive that methadone should be made available to prisoners. The president of *Lila*, Vittorio Agnoletto noted that the directive is being ignored, adding that "The absence of methadone causes drug addicts to look for heroin, even using syringes which have already been used, increasing the danger from hepatitis B, C and Aids."

*Il Manifesto* 5.8.99, 5.11.99, 21 & 25-26.1.00, 8 & 12.2.00, 3 & 15.3.00; *Repubblica* 13.3.00.

## Prisons - new material

**Home detention curfew - the first year of operation**, Kath Dodgson & Ed Mortimor. *Research Findings* (Home Office Research, Development and Statistics Directorate) No 110, 2000. Over 16,000 eligible prisoners were released into home detention curfew, up to 60 days before the end of their custodial part of their sentences, following the introduction of the scheme in January 1999. The report summarises the results of the process.

**The prison population in 1998: a statistical review**, Philip White. *Research Findings* (Home Office Research, Development and Statistics Directorate) No 94, 2000. Analysis of the annual prison statistics for 1998. Recording a 47% increase in the prison population since 1993, the report notes that the average prison population was 65,298 - this was 7% up on the previous year, and saw a 16% increase for female prisoners. The number of prisoners in England and Wales, expressed per 100,000 of the population, was the second highest in western Europe.

**The devil in the details: the case against the case study of private prisons, criminological research, and conflict of interest**, Lanza-Kaduce, et al. *Crime and Delinquency* vol 46 no 1 (January) 2000, pp92-136

**Classification for female inmates: moving forward**, KA Farr, *Crime and Delinquency* vol 46 no 1 (January) 2000, pp3-17. Most state and federal prisons use a single risk-focused classification system to assign female and male inmates to an appropriate security level. Evidence indicates that women pose very little risk to institutional or community security, and that many factors that predict risk in men are invalid predictors of risk in women.

**Drug injectors and prison mandatory drug testing**, R Hughes. *Howard Journal of Criminal Justice* vol 39 no 1 (February) 2000, pp1-13. Mandatory drug testing (MDT) is a policy that requires people in prison to provide a sample to be tested for the use of "illicit drugs". Drawing on qualitative research carried out with male and female injectors this article considers their views and experiences of MDT. Five broad themes arose from the analysis of these data. These themes include people's experiences of the test, their strategies to evade drug detection, punishments for testing positive, the effect of MDT on patterns of drug use, and finally, the notions of power and risk are considered in relation to MDT. The article concludes with a discussion on the worth of this policy.

**Lavorare nel girone dei dannati (Working the level of the damned):**

**Special report from Regina Coeli jail in Rome**, Paolo Petrucci. *Avvenimenti* 9.4.00. The report, which has plenty of photographs, looks at conditions in this Roman jail, where overcrowding and instances of self-harm are the norm. Analyses the roles of different groups within the prison referred to as "hell", including the police, the Transfers and Supervision Unit and educators.

**Can electronic monitoring make a difference?: an evaluation of three Canadian programs**, J Bonta et al. *Crime and Delinquency* vol 46 no 1 (January) 2000, pp61-75. Electronic monitoring (EM) is a correctional program promising an alternative to imprisonment. The present study compared EM programs that differed in setting (corrections-based vs court-based) and the type of supervision (custodial staff vs probation officers). EM offenders were also compared with inmates and probationers matched for offender risk. The results showed that type of program was unrelated to program completion or recidivism and that EM had a net-widening effect. Type of supervision showed some relationship with offender and staff views of the program but, in general, EM added little value to more traditional forms of community control.

**Parliamentary debates**

**Wandsworth Prison** *Lords* 16.2.00. 1308-1334

**Prison Population: Statistics** *Lords* 30.3.00. cols. 906-909

## LAW

### NETHERLANDS

## New public order legislation for Euro Championships

In April the Dutch parliament approved proposals for harsh new regulations on public order, which came into force on 3 May. The new legislation will see the modification of two existing laws and the introduction of a new Act in time for the European football Championships in June. During May the measures will be incorporated into "police city regulations" (APV) which, for Amsterdam in particular, are very restrictive and will give the mayor powers similar to those used at the Eurotop 1997, which were widely criticised. They will undermine individual responsibility for a criminal act to emphasise the collective responsibility of the group (see *Stewatch* vol 7 nos 3 & 6, vols 8 no 1).

The most significant change that will effect demonstrators and activists is in Article 141 which imposes a maximum penalty of four years imprisonment for disturbing public order. Where under previous legislation it had been necessary for the police to prove individual involvement in an act, under the proposed changes it is enough to be "in association with those who disturb the public order." This follows the policing of the Eurotop in June 1997. Then police used an inappropriate law on membership of a criminal organisation to keep demonstrators off the street.

The new legislation will give mayors' the power to hold demonstrators, football supporters or others for up to 12 hours under certain circumstances. It can be used when large groups of people do not keep within limits set by the mayor. For instance, when supporters visit another city for an away match the mayor will have the power to restrict their stay to specific locations. If the supporters do not adhere to these restrictions they will be liable to be detained. Another change that will effect demonstrators is the broadening of the powers of the examining judge to hold those accused of public violence for ten days without trial - which would be contrary to Article 5 of the European Convention on Human Rights.

There has been little opposition to the proposed legislation. With the European Championships approaching nearly all of the political parties are in favour of the changes. Newspapers and legal experts have not voiced criticism despite the fact that three years ago there was widespread criticism of the police, legal system and Amsterdam's mayor for going too far in arresting demonstrators at the Eurotop. There is also a suspicion that the Justice department is using the championship to obtain the stronger laws that it has always wanted.

## UK

### Reform urged by drugs law inquiry

An inquiry commissioned by the Police Foundation has called for reform of England and Wales' 30 year-old drug laws. The Misuse of Drugs Act (MDA) of 1971 classifies drugs as Class A, B or C with punitive measures applied accordingly. The recommendations of the inquiry include:

- cannabis be down-graded from a Class B to Class C;
- ecstasy and LSD be transferred from Class A to Class B;
- heroin and cocaine remain in Class A.

With cannabis offences accounting for the vast majority of cases brought under the MDA (76% in 1997) the inquiry argues that:

*the existing law and maximum penalties against the possession of cannabis produce more harm than they prevent. In addition to the demands placed on police time and resources, it bears most heavily on young people in inner cities - especially those from minority ethnic communities. It also inhibits accurate education about the relative risk of drugs...*

The inquiry also recommends that:

- prison should no longer be a penalty for possession of drugs in Class B or C;
- maximum sentence for possession of Class A drugs be reduced and imposed only where community sentences and treatment have failed or are rejected;
- cautions become the statutory response to possession (these would not be placed on criminal records);
- police powers of arrest following "stop and search" should be removed in the case of Class C drugs.

This last recommendation - which appears particularly pertinent in relation to criticisms of racist discrimination in the operation of stop and search and related police powers - was subject to a sole reservation by the assistant commissioner of the Metropolitan police, Denis O'Connor (one of two police representatives of the 11 (originally 13) inquiry members). The inquiry also called for the removal of the ban on the use of cannabis for medical purposes, endorsing the 1998 findings of the House of Lords science and technology committee, and a strengthening of the law in respect to dealing and trafficking in drugs and the confiscation of dealer's assets.

### Law and order politics and criminal justice

The Police Foundation's inquiry highlights the gulf between consensus on the need for reform and the administration of criminal justice in the UK. Their report suggests:

*If, as we argue, the present classification is not justified, it follows that the response of the law is disproportionate to the drug's harm, and may bring the law into disrepute.*

One month after the publication of the inquiry's report, Home Office statistics showed that the number of people convicted by the courts for cannabis possession continues to rise sharply. Convictions have more than doubled in the past six years, reaching 40,000 in 1998 (the number of cautions issued for cannabis possession also continues to rise, but at a slower rate; 48,000 were issued in 1998). Achieving a sense of "proportion"

in the response of the law seems a distant prospect. The Home Office response to the Police Foundation report was that the government did not support the reclassification of cannabis, ecstasy or LSD. "Drugs czar", Keith Hellawell, ACPO (the Association of Chief Police Officers) and a conservative spokesperson all agreed. Those recommendations the Home Office did consider "worth exploring in more detail" related to law enforcement as opposed to reform:

*the suggestion of a new offence of dealing, greater controls on private prescription of class A drugs and the idea of attaching conditions to cautions.*

*"Report of the Independent Inquiry into the Misuse of Drugs Act 1971" The Police Foundation, March 2000 (148pp, £20) and press release 27.3.00; Home Office press release, 28.3.00; "Cannabis: the scientific and medical evidence" Report of the House of Lords Science and Technology Committee, November 1998; Guardian, 5.5.00.*

## Law - new material

**Public order review**, Jo Cooper. *Legal Action*, March 2000, pp19-22. This article discusses trends and significant developments in public order and arrest cases.

**Ethnic differences in decisions on young defenders dealt with by the Crown Prosecution Service**, Gordon Barclay & Bonny Mhlanga. *Section 95 Findings*, (Home Office) no 1, 2000.

**International comparisons of criminal justice statistics**, Gordon C Barclay & Cynthia Tavares. *Statistical Bulletin*, (Home Office Research, Development & Statistics Directorate) Issue 04/00, 22.2.00, pp24.

**Statistics on the operation of Prevention of Terrorism legislation: Great Britain 1999**. *Statistical Bulletin*, (Home Office Research, Development and Statistics Directorate) Issue 5/00, 3.3.00, pp20.

**Something old, something borrowed, something blue, but something new? A comment on the prospects for restorative justice under the Crime and Disorder Act 1998**, A Morris & L Gelsthorpe. *Criminal Law Review*, January 2000, pp8-30. This article examines the elements of restorative justice introduced by the Crime and Disorder Act 1998. It argues that restorative processes will continue to occupy a marginal place in criminal justice until contradictory values and practices of blaming and punishing are given significantly less emphasis and restorative values and practices are given more emphasis.

**Pinochet and Double Criminality**, M Birnbaum. *Criminal Law Review*, March 2000, pp127-139. Whilst the Pinochet case has generated much discussion on the issue of state immunity, comparatively little attention has been given to the decision in the House of Lords on double criminality. It is contended that the reasoning is fundamentally flawed. There was no justification in law, logic or morality for confining the scope of the case against Pinochet to a few offences alleged to have been committed in the final years of his Presidency. The decision illustrates the inadequacy of national legal systems to deal with alleged atrocities in other states and the pressing need for an International Criminal Court.

### Parliamentary debates

**Peach Report** *Commons* 2.2.00. cols. 228WH-236WH

**Data Protection Order 2000** *Lords* 7.2.00. cols. 495-504

**Legal Aid** *Commons* 15.2.00. cols. 193WH-202WH

**Electronic Communications Bill** *Lords* 22.2.00. cols. 185-224

**Senator Pinochet** *Lords* 2.3.00. cols. 663-677

**Senator Pinochet: CPS Role** *Lords* 2.3.00. cols. 677-691

**Senator Pinochet** *Commons* 2.3.00. cols. 571-588

**Senator Pinochet (CPS Role)** *Commons* 2.3.00. cols. 589-595

**Regulation of Investigatory Powers Bill** *Commons* 6.3.00. cols. 767-837

**Criminal Justice (Mode of Trial) (No.2) Bill** *Commons* 7.3.00. cols. 886-979

**Electronic Communications Bill** *Lords* 14.3.00. cols. CWH1-CWH28

## CIVIL LIBERTIES

### Civil liberties - in brief

■ **UK: Zoorah Shah has sentence reduced.** Zoorah Shah, who killed Mohammed Azam after suffering ten years of persistent cruelty and violence at his hands, has been informed by Home Secretary Jack Straw that her tariff is to be reduced from 20 years to 12 years (see *Statewatch* vol 8 no 6). In April 1998 Zoorah lost an appeal against her conviction in a decision that her daughter, Naseem, said failed to take into account the cultural issues involved. The Southall Black Sisters (SBS), who have campaigned on Zoorah's behalf, believe that her treatment is an indictment of a criminal justice system that "cannot distinguish between those who kill from a position of power and those who do so out of despair". They condemned the Home Secretary's "lack of moral courage" and pointed out that Zoorah "does not present a threat to the public...". The Home Secretary's decision means that Zoorah, who suffered repeated sexual assaults and feared for the safety of her daughters, will be eligible for parole in 2004. However, a Home Office spokesperson stressed that there was no guarantee that she would be released in four years time. *The Southall Black Sisters can be contacted at 52 Norwood Road, Southall, Middlesex. Tel 020 8571 9595*

■ **Italy: Argentine generals tried:** The second penal section court in Rome will decide to prosecute seven members of the Argentinian armed forces in connection with the disappearance of eight citizens with Italian origins after the 1976 military coup. On March 30, judge Mario D'Andria ruled the admissibility of cases against former general Santiago Omar Riveros, retired naval prefect Juan Gerardi, and junior officers Roberto Rossin, Hector Maldonado, Jose Luis Porchetto and Alejandro Puertas. The judge argued that amnesty decrees such as the one issued by former Argentinian president Carlos Menem in 1989, affecting an investigation into Riveros' activities, have "no jurisdictional value". Riveros was in charge of the greater Buenos Aires region, and was considered one of the ideologues behind the "disappearances" of up to 30,000 of the regime's opponents. Prosecuting magistrate Francesco Caporale spoke of the murder of thousands of Argentinians "who were only guilty of being left-wingers". Riveros and Gerardi are accused of ordering the abduction and murder of Mario Marras and Martino Mastinu, between 1976 and 1978. The junior officers, serving in the Tigre police district, are accused of carrying out the orders. The trial will take place without the accused being present as, unlike Spain in the case of Pinochet, Italy allows for trials when the people charged are not present. *Corriere della Sera* 31.3.00; *Il Manifesto* 31.3.00

■ **UK: Liberty Summer Conference:** "Criminal Justice and Human Rights", Saturday 24 June 10am-5pm at Hamilton House, Mabledon Place, London WC1, fee £35.00. In light of the Auld Review of the Criminal Courts, this conference will include debates on the current criminal justice system and investigate opportunities for reform. For further information contact: Zoe Gillard, Liberty Events Co-ordinator: zoe@liberty-human-rights.org.uk tel: 020 7378 3667.

### Civil liberties - new material

8 *Statewatch* March - May 2000 (Vol 10 no 2)

*Free Press Campaign for Press and Broadcasting Freedom*, No 115 (March-April) 2000, pp8. This issue contains articles on the Freedom of Information Bill and a piece by Stephen Dorril on government efforts to gag and intimidate journalists reporting on cases involving security and intelligence matters.

**The perils of nuance**, H Guldberg. *Index on Censorship* Vol 29 no 2, 2000, pp32-33. Even more than a Freedom of Information Act, the UK needs a change in its biggest gagging device - the world's most draconian libel laws.

**The domestic violence arrest decision: examining demographic, attitudinal, and situational variables**, AL Robinson & MS Chandek, *Crime and Delinquency* vol 46 no 1 (January) 2000, pp118-37. The effects of demographic, attitudinal and situational variables on the domestic violence arrest decision were investigated using official data and officer attitudinal data. The authors examined some variables never before studied in this context (eg the demographic characteristics of officers) and improved on the measurement of many variables (eg victims cooperativeness, victim injury and time of shift).

**Police response to domestic violence: from victim to empowerment:** C Hoyle & A Sanders. *British Journal of Criminology* vol 40 no 1 (Winter) 2000, pp4-36. This article explores the neglected question of why victims of domestic violence call the police and how useful the police response is to them. The authors' found that many women do not seek criminal sanctions because sanctions are unlikely to help to end the violence. This calls into question the value, to victims, of mandatory arrest policies which require prosecution decisions to be based on evidential concerns alone. The authors' argue for an approach which would empower victims to make choices which are less coerced than is usual.

#### Parliamentary debates

**Anti-social Behaviour Orders** *Commons* 1.2.00. cols. 137WH-157WH

**Children's Ombudsman** *Commons* 15.2.00. cols. 923-930

**The Rowntree Report** *Lords* 16.2.00. cols. 1233-1305

**Anti-drugs Co-ordinator** *Commons* 22.2.00. cols. 341WH-350WH

**Drug Misuse** *Commons* 29.2.00. cols. 17WH-24WH

**Protection of Human Genetic Sequence** *Commons* 8.3.00. cols. 1007-1009

**ECHR Judgement (Thompson and Venables)** *Commons* 13.3.00. cols. 21-30

## NORTHERN IRELAND

### Northern Ireland - in brief

■ **RUC receives George Cross:** In April the English queen, Elizabeth II, conferred the George Cross, which is awarded for valour, to the Royal Ulster Constabulary (RUC) in a ceremony at Hillsborough, Co Down. She told the Northern Ireland paramilitary police force that the award was due to their "bravery and dedication" and expressed her confidence that they would "maintain the sense of duty and dedication that is being honoured today." The award comes at a time when evidence of RUC collusion in the assassinations of civil rights lawyers' Rosemary Nelson and Pat Finucane has prompted world-wide demands for an independent inquiry into the sectarian police force. It also coincided with a case brought before the European Court of Human Rights alleging that the RUC practised a shoot to kill policy that had, said lawyer Seamus Treacy, "resulted in the deaths of hundreds of civilians, overwhelmingly and disproportionately Catholic, by forces of the state." He told the court "...the UK government has violated both substantively and

procedurally the most fundamental provision of the human rights convention, the right to life."

## Northern Ireland - new material

**Who murdered Rosemary Nelson?**, Jane Winter. *Legal Action*, March 2000, pp8-9. This article, by the director of British Irish Rights Watch (BIRW), describes the life and work of the solicitor Rosemary Nelson who was murdered by a loyalist car bomb in March 1999. As evidence of RUC collusion in Rosemary's death builds the BIRW are calling for an independent judicial inquiry into her killing. The BIRW can be contacted at 12b Hillgate Place, London SW12 9ES.

**Tapping into the future**, T Geraghty. *Index on Censorship*, Vol 29 no 2, 2000, pp14-18. The bugging of Gerry Adams' car shows how the war against the "terrorist" has turned into a secret war against the citizen.

**Policing history: the official discourse and organizational memory of the Royal Ulster Constabulary**, A Mulcahy. *British Journal of Criminology*, vol 40 no 1 (Winter) 2000, pp68-87. This paper considers the nature and impact of the organisational memories that form the core of the RUC's official discourse. These organisational memories underpin the force's criticism of proposals for radical reform and its denigration of reform proponents.

**Reflecting all shades of opinion: public attitudinal surveys and the construction of police legitimacy in Northern Ireland**, G Ellison. *British Journal of Criminology*, vol 40 no 1 (Winter) 2000, pp88-111. This article examines the role of attitudinal survey data in constructing legitimacy for the RUC in Northern Ireland. It highlights a number of fundamental problems - both of methodology and interpretation - in the use of such surveys. Utilizing unique primary data it will be demonstrated that traditional attitudinal surveys have consistently over-represented nationalist/Catholic support for the RUC and drawn rather tendentious correlations between "quality of service" delivery and issues of legitimation and public acceptability.

### Parliamentary debates

**Northern Ireland Commons** 3.2.00. cols. 311-327

**Northern Ireland Bill (Programme) Commons** 8.2.00. cols. 121-127

**Northern Ireland Bill Commons** 8.2.00. cols. 128-220

**Northern Ireland Bill Lords** 9.2.00. cols. 664-704

**Northern Ireland Bill Lords** 10.2.00. cols. 776-797

**Northern Ireland Commons** 14.2.00. cols. 718-739

**Northern Ireland Lords** 17.2.00. cols. 1428-1446

**Northern Ireland Arms Decommissioning Act 1997 (Amnesty period) Order 2000 Lords** 21.2.00. cols. 94-98

**Prevention and Suppression of Terrorism Commons** 15.3.00. cols. 474-478

**Prevention of Terrorism (Temporary Provisions) Act 1989 (Continuance) Order 2000 Lords** 20.3.00. cols. 81-88

**Northern Ireland Lords** 22.3.00. cols. 341-373

## RACISM & FASCISM

### ITALY

## Opposition alliance shift to right

Alliances formed by *Polo della Liberta* (PdL) with the *Lega Nord* (LN) in the north and Pino Rauti's *Fiamma Tricolore* (FT) in the south, led to it winning 50.7% of the vote in the Italian regional elections in April. PdL leader Silvio Berlusconi and

Umberto Bossi's *Lega Nord* presented a draft law on immigration proposing tough measures against immigrants, including the use of Italian navy boats to search the Adriatic sea for illegal immigrants and permission to shoot at people smuggling refugees at sea. LN President Stefano Stefani said: "Look, the signal that must go out is that tolerance is finished. For me, shooting at an individual who blatantly breaks the law is something right..." Berlusconi and Bossi sought to justify the initiative from a christian and "cultural" perspective, but *Caritas*, the main Catholic charity organisation working in the field, called the initiative "blasphemous". Fini also stated that the PdL would be working to repeal Article 193 of the constitution, which legalises abortion, following the breakdown of talks with the Radicals.

After Berlusconi visited Israel in March to reassure the Jewish authorities that the PdL did not represent a fascist, undemocratic or racist force, his return to Italy has been marked by alliances with fascists (FT), racists (LN) and anti-Semites. In Chieti, the PdL supported mayor, Nicola Cucullo, is a self-confessed fascist who believes "Jews should be fried". He recently commented that: "Fascism is the regime that faced all the problems in our society and solved them all. It could not have done more in 20 years. Apart from a couple of wars."

*Il Messaggero* 25.1.00; *La Repubblica* 27.1.00; *Avvenimenti* 26.3.00, 16.4.00.

### UK

## Leeds players charged over racist attack

More Leeds United football players have been questioned by West Yorkshire police about the racist attack on 19-year old Asian student Sarfraz Najeib and his friends as they left a nightclub in Leeds city centre on January 12 (see *Statewatch* vol 10 no 1). Jonathan Woodgate and Lee Bowyer were charged with affray and grievous bodily harm in March and released on bail in connection with the assault by five white men that left Sarfraz with three broken ribs, a broken leg and a broken nose after he left a nightclub in Leeds city centre on January 12. Sarfraz's injuries were so severe that he has been forced to abandon his university course, although he may apply for readmission in the autumn.

In February three men in their twenties were arrested and questioned about their involvement in the attack after West Yorkshire police obtained CCTV footage of the incident. As a result of their information at the beginning of March the Leeds reserve striker, Tony Hackworth, was questioned about the attack and bailed and the following day a fourth player, Michael Duberry was questioned. Duberry was asked about providing transport for a group of white men at the nightclub where the attack took place. Witness statements have also been taken from two other players, Harry Kewell and Michael Bridges. The police file on the case has been delivered to the Crown Prosecution Service.

The attacks have led to an increase in racist behaviour by Leeds fans, according to club chairman Peter Risdale. In March the club met with representatives of the National Civil Rights Movement and the Kick It Out campaign to discuss how relations with the black and Asian communities can be repaired. The Arc theatre group has cancelled plans to perform an anti-racist play at the ground.

*Yorkshire Post* 4.2.00, 8.3.00; *Guardian* 22.3.00.

## Racism & fascism - in brief

■ **UK: Fascist bomber admits killing three.** David

Copeland, a 23-year old engineer from Cove, Hampshire, pleaded guilty to planting a series of bombs in London in April 1999, including the device which killed three people at the Admiral Duncan pub in Soho on April 30. Two other devices exploded in Brixton, south London (April 17) and Brick Lane, east London (April 24); together, more than 100 people were injured in the blasts. Copeland was a member of the British National Party before involving himself with Combat 18 and its offshoots. He appeared at the Old Bailey in February and admitted unlawfully and maliciously planting the explosive devices but denied charges of murder. He pleaded not guilty to murder but guilty to the lesser charge of manslaughter on the grounds of diminished responsibility. The prosecution have indicated that they may not accept Copeland's reduced plea. His trial is scheduled to commence in June (see *Statewatch* vol 9 no 2).

■ **UK: BNP gains council seat by default:** The fascist British National Party (BNP) has won a council seat in Herefordshire without a single vote being cast. John Haycock was due to contest the seat for the BNP in local elections on May 4, but as only 16 candidates put their names forward for the 18 seats in the Bromyard and Winslow ward the ex-soldier won the seat. Haycock had previously stood for the BNP in the area in 1996 but received a derisory vote. The party won a council seat in Tower Hamlets, east London in September 1993; however Derek Beackon was defeated a few months later when anti-racist activists mobilised to counter his re-election. The organisation also stood a candidate, Michael Newland, in London's elections for mayor: Newland received 33,569 votes (nearly 2%) and came in seventh place. The party received 47,670 (2.87%) "top-up" votes on the Assembly ballot, well below the 5% threshold for getting a seat. The BNP's main reason for standing was to benefit from extensive free publicity.

■ **UK: David Irving - "a right-wing pro-nazi polemicist":** Holocaust denier and nazi sympathiser, David Irving, had his dubious credibility as a legitimate historian destroyed at the High Court in April, when he lost a libel action he brought against the author, Professor Deborah Lipstadt. Irving initiated the case after Lipstadt described him as "one of the most dangerous spokespersons for Holocaust denial" (p181) and a Hitler-admirer in her book *Denying the Holocaust*. At the conclusion to the twelve week trial, Irving was told by Justice Charles Gray that he had falsified history in order to propagate his pro-nazi views. He said that Irving's writing and talks: "...often display a distinctly pro-nazi and anti-Jewish bias. He makes surprising, often unfounded assertions about the nazi regime which tend to exonerate the nazis for the appalling atrocities they inflicted on the Jews...The picture of Irving which emerges from the evidence of his extracurricular activities reveals him to be a right-wing pro-nazi polemicist". Questioned about the outcome, Irving responded in his customary modest manner by telling reporters that Mr Justice Gray misunderstand his arguments because he lacked intellect. *Deborah Lipstadt "Denying the Holocaust: the growing threat on truth and memory" (Plume Books, New York) 1994.*

■ **UK: three men questioned over Stephen Lawrence murder:** Three men were questioned by police in March after they were arrested in connection with the racist murder of Stephen Lawrence in southeast London in 1993. One man, Danny Caetano, who was named in the Macpherson report was detained in southeast London while a second man, Stuart Waite, was held in Glasgow, although he comes from London. A third London man was later questioned. The arrests took place shortly before Stephen's parents took part in a witness appeal on television in which Doreen Lawrence urged the mothers and girlfriends of the men responsible for her son's murder to speak out against them. Also in March, Duwayne Brooks, who was

with Stephen Lawrence on the night he was killed, had all charges against him dropped in a case that alleged he sexually assaulted a young woman. Judge David Stokes halted the trial as an abuse of process as Duwayne accused Scotland Yard of suppressing a crucial witness statement. Duwayne has now been arrested six times by the police since Stephen's murder but has yet to be convicted of any crime.

■ **Spain: Violence against immigrants:** A Moroccan immigrant who has lived in El Ejido for little over a year, was attacked on 11 January by a security guard in the town's health centre when he went to have a bandage replaced, a few days after having an operation. He had to spend six days in hospital. Unknown persons threw an incendiary device against a butcher's shop owned by a Moroccan couple in the Ca n' Anglada district in Terrassa. The molotov cocktail started a fire which did not cause any injuries, but did cause considerable damage. The shop had already been subjected to attacks during the wave of racism which swept through the district last July. El Ejido, in the Andalusia region, which has many migrants coming to work every year saw a wave of racist attacks in February followed by an indefinite sit-in by *sans-papiers* in April.

■ **Spain: gypsies:** The gypsy population is only 1% of the Spanish population. However in women's prisons this percentage rises to 25%, one out of every four, according to the Barani report, financed by the European Commission. The report concludes that the considerable presence of gypsy women in jails is largely a result of poverty, the deep-rooted and constant discrimination suffered by this group and the identification of gypsies as criminals.

## Racism & fascism - new material

*Report, UNITED, 9.11.99., pp8.* This paper commemorates the international day against fascism and anti-semitism last November. It includes reports on events across Europe. Available from UNITED, Postbus 413, NL-1000 AK Amsterdam, Netherlands.

**Quelle curve color nazi (Those nazi coloured stands),** Guido Caldiron. *Avvenimenti* 13.2.00, pp 22-24. An article on the growing right-wing influence on fans in the Italian *curve* (stands). It highlights some of the ideological bases of this phenomenon and the groups identified as being behind the violence which is spreading beyond the confines of the stadium.

*European Race Audit*, Institute of Race Relations, No 32 (March) 2000, pp44. This issue contains a round-up of immigration, racism and policing issues from across Europe and a feature by Mieke Hoppe and Liz Fekete on the Netherlands.

**Second report on Switzerland.** European Commission Against Racism and Intolerance CRI(2000)6, 21.3.00., pp19. ECRI's first report on Switzerland was published in March 1998. This report follows-up proposals made in the earlier report, updates material and provides "a more in-depth analysis" of issues of particular concern - in this case, acquisition of citizenship and the granting of residence permits.

*Demos*, no 60, 2000. The latest issue of the Danish anti-fascist magazine contains articles on the nazi music scene, Blood & Honour Scandinavia and a historical examination of Jonni Hansen and the *Danmarks Nationalsocialistiske Bevaegelse* (DNSB). Available from Demos, Postbox 1110, 1009 Kobenhavn K, Giro 5 686164, Denmark; email - [demos@demos.dk](mailto:demos@demos.dk); Homepage - [www.demos.dk](http://www.demos.dk)

*Samora Newsletter*, Antiracist Center, No 1 2000. Bi-monthly round-up of news concerning racism and discrimination and asylum and immigration in Norway. Available in English from Antiracist Center, PO Box 244, Sentrum 0103 Oslo, Norway.

**Progress on race?**, Sadiq Khan. *Legal Action*, April 2000, pp6-7. Khan examines progress on the implementation of the government's action plan set up by the Macpherson inquiry into the racist murder of Stephen Lawrence. He concludes that it is "too early" to reach a conclusion on

whether the suggested changes have led to an improvement and advocates continued monitoring.

*London Monitor*, The Monitoring Group, Issue 3 (Spring) 2000. Latest issue of the (Southall) Monitoring Group's newspaper covers racist attacks in London's Chinatown, demands for an independent investigation into the suspicious deaths of Harold and Jason McGowan in Telford and has a substantial analysis of the Macpherson report into the racist killing of Stephen Lawrence by Lee Bridges.

*Movement*, National Civil Rights Movement, Issue 1 (Spring) 2000, pp20. The NCRM was initiated over a year ago and has established a network of families who are committed to changing the discriminatory criminal justice system and institutionalised racism that permeates it. This is the first issue of their magazine, which contains updates on a number of the Movement's cases, including the campaigns around Michael Menon, Ricky Reel, Satpal Ram, Christopher Alder and Roger Sylvester. Available from: NCRM, 14 Featherstone Road, Southall, Middlesex UB2 5AA, UK; email - info@ncrm.org.uk; website - www.ncrm.org.uk

*No Pasaran*, no 75 (March) 2000, pp32. This issue covers the Haider affair and related demonstrations, monitors fascist activities, international solidarity actions in support of immigrants. Criticism of policing and security in France is also included, alongside insights into the Algerian conflict, Morocco, and on the anti-fascist movement in Russia. Available from Reflex - No Pasaran, 21 rue Voltaire, 75011 Paris, France, email: reflex@ecn.org

**Aspettando Adolf H.** [Waiting for Adolf H.], Annibale Paloscia. *Avvenimenti*, 2.4.00, pp 8-9. Looks at the increase in racist attacks in Italy, highlighting that the people involved are often viewed as "normal" apart from their involvement in violent racist activities. It focuses on two specific attacks, which led to the deaths of Iqbal, a Bangladeshi immigrant on the outskirts of Rome, and Abdallah Doumi, a Moroccan, in Turin. Includes an Interior Ministry table on legal actions carried out by the authorities against neo-nazis from 1994 to 2000, (503 reports led to 312 searches and 62 arrests).

#### Parliamentary debates

**Austria Lords** 15.2.00. cols. 1063-1069

**Race Relations (Amendment) Bill [Lords]** *Commons* 9.3.00. cols. 1203-1285

**Austrian Ministers Lords** 29.3.00. cols. 799-801

## SECURITY & INTELLIGENCE

### ITALY

## Right-wingers sentenced for "anarchist" bomb

Five people were sentenced for causing an explosion in front of the Milan police headquarters on 17 May 1973 (see *Statewatch* vol 9 no 2). Carlo Maria Maggi, head of *Ordine Nuovo* (New Order) and informer for the American CIA and Amos Spiazzi (a colonel in the Italian army who has been linked to the *Rosa dei Venti* coup plot), received life sentences. Gianadelio Maletti, former head of the *Servizio Informazioni Difesa* (SID, Defence Information Service), received a 15-year sentence for hiding and suppressing evidence. He was identified by prosecuting magistrate Grazia Pradella as the linchpin between state institutions and the neo-fascists who were responsible for the bomb.

The verdict marks a breakthrough in investigations into attempts by several elements including the military, American secret services, masons and local neo-fascists to destabilise the Italian state. Their plan envisaged the establishment of an

authoritarian regime through the so-called "strategy of tension". The use of bombs, subsequently attributed to left-wing or anarchist groups, was instrumental in this strategy.

Material that came to light during the trial will be used in the trial of right-wingers in connection with the bomb exploded in Piazza Fontana in Milan in 1969. According to judge Antonio Lombardi, Interior Minister Mariano Rumor was then targeted for failing to call a state of emergency after the bombing, which killed 17 people. Rumor disbanded *Ordine Nuovo*, a fascist organisation founded by Pino Rauti in 1956, in November 1973 for "reconstituting the banned fascist party", after a trial in which 30 of its members received prison sentences.

The 1973 bombing occurred as a plaque was being unveiled in memory of police superintendent Luigi Calabresi, who was murdered in 1972. Calabresi was widely accused of the death of anarchist Giuseppe Pinelli, who officially committed suicide by jumping out of a window during an interrogation concerning the bomb in Piazza Fontana. The arrest of self-confessed "anarchist" Gianfranco Bertoli, who has always maintained that he carried out the bombing alone, appeared to confirm that anarchists had caused the explosion to avenge Pinelli. It later surfaced that Bertoli was employed by the Italian intelligence services and had links with right-wing groups.

Philip Willan *"Puppet Masters: the political use of terrorism in Italy"* Constable (London) 1991; *Avvenimenti* 19.3.00.

### FRANCE/BASQUE COUNTRY

## GAL "dirty war" arrests

Five senior Spanish officials and policemen have been found guilty of kidnapping and murder in Spain's clandestine "dirty war" against Basque civilians and suspected ETA sympathisers in southern France. A former state governor, general Julen Elgorriaga, and *Guardia Civil* officers, Enrique Rodriguez Galindo, captains Angel Vaquero, and Enrique Dorado, and private Felipe Bayo, were found guilty by the *Audiencia Nacional* of the kidnapping and murder in October 1983 of two Basques, Jose Antonio Lasa and Jose Ignacio Zabala. Galindo and Elgorriaga received 71-year sentences due to the direct participation of the state's armed apparatus in the GAL (*Grupos Antiterroristas de Liberacion Nacional*). The GAL killed 28 people between 1983 and 1987, many of whom were unconnected to ETA.

The conviction for murder of a senior figure such as Galindo is significant. He still faces additional charges, a situation that leaves the door open for more disclosures that could undermine the evidence of former prime minister Felipe Gonzalez - that he took no "illegal action" - when testifying to the Supreme Court in 1998. Gonzalez was accused of orchestrating the GAL death squads by former deputy prime minister Francisco Alvarez Cascos in 1996, but the government refused to declassify secret documents and the court ruled that there was not enough evidence to charge him (see *Statewatch* vol 8 no 3 & 4).

## Security & Intelligence - in brief

■ **Spain: ETA kills Socialist MP:** Fernando Buesa, a Socialist MP in the Basque parliament died in Vitoria in February, alongside the policeman from the Basque autonomous force who was escorting him, in an attack claimed by ETA. This attack is a blow to the strategy of agreements between nationalist forces which resulted from the latest cease-fire called by ETA. The situation in which the Basque government, which was formed due to the parliamentary support of *Euskal Herriarok* (the political organisation of the nationalist (*abertzale*) left) is precarious. ETA's new strategy, blaming their former nationalist allies for the present situation, weakens the stability of the

Basque institutions to the point where it appears inevitable that new autonomous regional elections will take place.

■ **UK: Samar and Jawad decategorised:** After concerted pressure by the Freedom and Justice for Samar and Jawad Campaign, the Prison Service's Review Committee has decategorised the Palestinian prisoners. The Campaign has argued vociferously that their Category A status was unjustified. Samar Alami and Jawad Botmeh, who were sentenced to 20 years imprisonment in 1996 after being found guilty of conspiracy in relation to the bombings of the Israeli embassy and Balfour House in London during 1994 (see *Statewatch* vol 9 nos 1, 3 & 4). Their convictions are contested, having been obtained with the use of public interest immunity certificates, which prevented the disclosure of highly relevant information relating to the role of the Israeli intelligence services. Their case is supported by the Lebanese government and the Palestinian Authority, as well as a number of UK MPs. In February the Campaign presented a petition with over 200,000 signatures from Gaza, the West Bank and Lebanon demanding justice for Samar and Jawad. Supporters held a candlelit vigil opposite Downing Street. The petition was presented by Dr Eyed Sarraj, general secretary of the Palestinian Independent Commission for Citizens' Rights, who had travelled from Palestine, and told the vigil that Samar and Jawad are considered to be political prisoners. *Freedom for Samar and Jawad, BM Box FOSA, London WC1N 3XX; email postmaster@freesaj.org.uk*

## IMMIGRATIO

### GERMANY

## Asylum-seeker shot dead by police

On the night of 21 December 1999 Dr Zdravko Nikolov died after officers from the *Sondereinsatzkommando* (SEK, police tactical support group) shot him at his home in Braunschweig. Dr Nikolov, an asylum seeker who was medically diagnosed as suffering from post-traumatic stress syndrome, was trying to escape from his forced deportation. The Refugee Council condemned the German authorities for failing to provide medical support and has initiated legal proceedings against the Aliens Office.

Dr Nikolov came to Braunschweig from Bulgaria in 1993 with the German Academic Exchange Service and then took up a job with a German firm. Later, he lodged an asylum application because he had been persecuted as a communist in Bulgaria. According to the Refugee Council, Nikolov came from a communist family and was active in the "Dimitrov Youth Group". After the collapse of the Soviet Union in 1989 he was continuously harassed by the police and the newspaper *Trud* described him as a terrorist. On 16 March 1992, the police beat up the then 29-year old in Sofia town hall and subsequently took him to a psychiatric prison where he was tortured. The German courts and the Federal Office for the Acceptance of Asylum Seekers (BAFL) have conceded that there were "flagrant cases of police brutality" but argued that there have been "advances in the democratic process". Nikolov's asylum application and consequent appeal were rejected.

His mental state was attested unstable by the Centre for Victims of Torture in Berlin as well as a doctor in his home town, both of whom diagnosed Dr Nikolov as suicidal and suffering from post-traumatic stress syndrome. Despite this diagnosis, and indications that Nikolov's mental health drastically deteriorated

when his employers made him redundant in 1998, the chair of the Aliens Office in Braunschweig, Edgar Wrobel, ordered a medical officer to re-examine Dr Nikolov. Aware that his mental state was not conducive to a voluntary official examination, the Aliens Office sent two police officers to his home to bring him before the judge to read his deportation order as well as to subject him to a state medical examination. He resisted arrest, locked himself in his flat and threatened to kill himself.

Instead of calling trained medical officers, the authorities ordered an armed police tactical support unit to storm his flat where they shot him dead, supposedly in self-defence. However, asylum support groups have laid the responsibility for the death of Nikolov at the door of the German authorities: "There was no justification whatsoever for the authorities to use physical violence towards a man who was traumatised by his experiences of torture," said the chair of the Refugee Council, Kai Weber. The Lower Saxony Refugee Council and the MP Heidi Lippman (*Partei des Demokratischen Sozialismus*) have initiated legal proceedings against Wrobel, on grounds of bodily harm leading to death.

*junge Welt* 23.12.99, *Rote Hilfe* 1/2000.

## Refugee Congress condemns institutionalised racism

On 1 May, the ten day Refugee Congress, which was called by the Caravan for rights of refugees and migrants, *The Voice, Africa Forum e.V.* and the German *no one is illegal* network (see *Statewatch*, vol 10 no 1), ended with a May Day demonstration through the eastern German town of Jena. The Congress dealt with a wide range of issues: from European imperialism, asylum policy and institutionalised racism, to women and flight/migration, the European networking of the *sans papiers* and the development of European strategies of resistance against deportation. In particular, it called for a campaign against the so-called *Residenzpflicht*, the German asylum regulation which prohibits asylum seekers from leaving their designated district and thereby criminalises their freedom of movement. Two days were set aside for the third European meeting of the *sans papiers* which produced a European Manifesto with a list of demands to be presented to European governments and the European parliament in the near future.

The Congress, situated in the city centre of Jena in front of its historic university, was visited by over 600 people (with a daily average of 200-250) attending public talks and participating in workshops. It was unique in its form as well as content, in that it aimed at a majority participation of refugees and migrants. However, although there was a large participation of refugees and migrants from across Europe (over 40 nationalities were represented), organisers and participants alike felt that it did not live up to the claim to be a grassroots event because many refugees and migrants were prohibited by the German authorities from taking part. Representatives from many European countries were either denied visas or had to undergo a laborious and expensive bureaucratic procedure to receive permission to enter Germany. Asylum seekers within Germany were warned that they would be committing an illegal act by leaving their designated district, leaving them open to deportation.

One of the main issues addressed at the conference was the asylum regulation - *Residenzpflicht* - implemented in Germany in 1982, and thought likely to be adopted by other European countries. In this particular case, and despite the fact that the German official responsible for "foreign immigrants" (*Ausländerbeauftragte*), Marie-Luise Beck, officially recommended that the responsible Aliens Offices' grant refugees permission to take part in the Congress, many were refused

applications for travel permits. In Brandenburg, one of the German *Länder* with the highest quota of racist attacks and far-right activities, the responsible Interior Ministry circulated a letter to its regional Aliens Offices prescribing an outright refusal to grant travel permits and therefore participation in the Congress.

At the Conference, refugees, migrants and activists initiated a campaign calling for the abolition of the *Residenzpflicht* with petitions, a series of nationwide protests and civil disobedience actions which will reach their culmination on 3 October, the anniversary of German reunification. There are plans to organise a European - possibly global - day of action against this law, as well as against Germany's leading role in the restrictive elements of policy making in the area of asylum and migration in the EU and eastern European states applying for accession.

Another of the main themes of the conference was an assessment of the effect of asylum and migration policies on refugees and migrants across Europe. *Sans papiers* representatives from Spain, Belgium, Portugal, France, Britain, Austria and Switzerland reported on their situations and later discussed strategies for a European networking of the *sans papiers* movement and coordinated direct actions. They will publish a *European Manifesto*, its main demands being the abolition of laws that criminalise human beings in Europe, the abolition of detention centres and deportations and full civil rights for the *sans papiers*. This includes the right to work and study, the right to freedom of movement, the right to organise in trade unions, humane working conditions and an end to racist discrimination in its various official and unofficial forms. The Manifesto will be presented to European governments and the European Parliament in time for the French presidency in July.

Many other important themes were tackled in presentations and workshops alike, namely, institutional racism, police harassment, stop and search operations in Germany and the UK, discrimination against women, German family law and the sexual exploitation of female refugees and migrants in Europe. One of the most important developments of this Conference however, is the unification of those diverse groups which constitute the refugee and migrant population as well as political activists in Europe, under a common banner. It strengthened the call for an organised resistance movement against the criminalisation of human beings in the EU through its discriminatory laws, and against the deadly consequences of the EU's migration policy at its external borders.

The death toll, the congress was told, is continuously rising at the EU's eastern borders, and monitoring organisations in Italy and Spain report daily on sunken ships and military action against boats full of migrants seeking refuge on Europe's shores. In the light of an increasing unification of social movements in Europe, be it Germany's refugee population, the homeless and unemployed in France, migrant domestic workers in Britain or the activist movement in Italy, this conference marked an importance step in furthering coordinated action against the denial of human rights in Europe.

*For a detailed conference outline, including transcripts of speeches and photo reports on actions, see <http://www.humanrights.de/congress>. Various participant groups have their own websites on the congress and workshops: Anti-Racism Bureau Bremen (<http://www.tunix.is-bremen.de/arab/>), no one is illegal network (<http://www.contrast.org/borders/kein/>), off limits Hamburg, anti-racist magazine and organisation (<http://www.offlimits.de>), International Human Rights Association Bremen (<http://www.humanrights.de>), Anti-Racist Initiative Berlin (<http://www.berlinet.de/ari>). For information on anti-deportation and aviation campaigns see <http://www.deportation-alliance.com>, nadir, internet provider for various related groups ([www.nadir.org](http://www.nadir.org)). Conference coordinators: The Voice Africa Forum e.V., Schillergäßchen 5, 07745 Jena, Tel: 0049(0)3641 665214/ 449304, Fax: 0049(0)3641 423795/420270, e-mail: [The\\_Voice\\_Jena@gmx.de](mailto:The_Voice_Jena@gmx.de).*

## Immigration - in brief

■ **Spain: Legal Network 2000 created:** Several Spanish NGOs have come together to create *Red Juridica 2000* (Legal Network 2000), which aims to stop the exploitation of immigrants by corrupt state agencies. They say that people have charged up to half a million pesetas for submitting regularisation forms, 230,000 pesetas for a passport or 5,000 pesetas for an official stamp. The main objective of the network is to provide a professional service free of charge to benefit participants in the migration process.

■ **Spain: crossing the Strait:** Late last year, several hundred immigrants left in dinghies from the northern coast of Africa for the Canary Islands. Among those were Moroccan dissidents from the Western Sahara provinces (who are fighting for independence from Morocco). Police sources say that the number of detentions along the Mediterranean coast of Spain in 1999 was around 2,500 persons in over 300 dinghies. The death count has also increased with over 100 fatalities in 1999, according to the *Asociacion Pro Derechos Humanos de Andalucia* (Andalusian Association for Human Rights). The government continues "sealing" the Strait and has allocated another one thousand million pesetas for this in this year's budgets (see *Statewatch* vol 9 no 3 & 4).

■ **Ceuta: border wall completed:** The barbed wire border "wall", built to stop migrants entering the Spanish enclave of Ceuta in north Africa, has been completed after seven years of work and at a cost of over 8,000 million pesetas. The 8.3 kilometre long wall between Ceuta and Morocco was classified as a military secret and is equipped with the latest high-technology devices including closed-circuit television, spotlights and sensory pads to detect migrants. In recent years the Moroccan authorities have been cooperating with Spain in the repatriation of immigrants under the Spain-Morocco Readmission Agreement (see *Statewatch* vol 5 no 6, vol 7 no 6).

## Immigration - new material

**Alien Citizens as a category of crime policy**, Wolf-Dieter Narr. CILIP no 65, 1/2000. The concept of "alien" is used to discriminate and when used in crime policy has grave consequences. "Alien" citizens are infinitely more "suspicious" than "domestics". Issue available in German from: CILIP, Malteserstr. 74-100 Berlin, Germany.

**Compulsory best behaviour**, Anja Lederer. CILIP no 65, 1/2000. Foreign citizens can be expelled from the country if they present a "particular danger" to society. Their political activities can be both constrained and prohibited. Issue available in German from: CILIP, Malteserstr. 74-100 Berlin, Germany.

**Immigration and police data-banks: an unholy alliance**, Heiner Busch. CILIP no 65, 1/2000. Police and intelligence agencies have broad access to the databanks of immigration and asylum authorities. On the other hand, immigrants and refugees are over-represented on police files. Issue available in German from: CILIP, Malteserstr. 74-100 Berlin, Germany.

**Aliens citizens caught up in the net of the dragnet controls**, Martina Kant. CILIP no 65, 1/2000. Police stop and search powers officially aimed at preventing international crime are in practice used against non-German people. Between 50% to 80% of all checks involve alien citizens. Issue available in German from: CILIP, Malteserstr. 74-100 Berlin, Germany. This article is available in English on: <http://www.statewatch.org/news>

**Recent developments in immigration law**, Jawaid Luqmani, Chris Randall & Rick Scannell. *Legal Action* March 2000, pp10-16. Latest developments in legislation, practice and immigration case-law.

*Newsletter* National Coalition of Anti-Deportation Campaigns, Issue 18

(April-June) 2000, pp12. The latest issue contains articles on "The Right to Family Re-unification", the history of British immigration acts (1962-1996) and Rochester prison as well as information on the cases of the Scuka family, Hikmet Bozat and Isaac Macharia and the death by suicide of Robertus Grabys in Harmondsworth Detention Centre. E-mail: [ncadc@ncadc.demon.co.uk](mailto:ncadc@ncadc.demon.co.uk)

**Providing support for asylum-seekers**, Nadine Finch. *Legal Action* April 2000, pp20-24. Looks at measures introduced under the Asylum Act 1999, particularly Home Office responsibility for supporting destitute asylum-seekers and asylum-seekers' applications at their port of entry.

*Bulletin*, Joint Council for the Welfare of Immigrants, Winter 1999/2000, pp27. This issue contains summaries of the new Race Relations Act and the Immigration and Asylum Act 1999. Also covered are the European Commission's family reunion policies, asylum support interim provisions, campaigning news, and recent Home Office and legal decisions. Available from: JCWI, 115 Old St. London EC1V 9RT, Tel: 0207 251 8708, Fax: 0207 251 8707, e-mail: [info@jcw.org.uk](mailto:info@jcw.org.uk), [www.jcw.org.uk](http://www.jcw.org.uk)

*InExile*, Refugee Council, March 2000, pp25. The magazine has introduced a regular feature "disperse!" which "aims to keep tabs on what is happening to asylum seekers and refugees around the UK" under the new government dispersal programme. Comments and information are welcomed. A special feature focuses on refugees and the media with a useful briefing countering the racist tabloid press with hard facts and updating previous briefings of June 1998, January and December 1999. Available from: Beatrice Baiden (magazine orders): Tel: 0207 820 3042, 3 Bondway, London SW8 1SJ.

*Unlocking Asylum*, Karibu, Autumn 1999, pp34, £5.95. Described by the *Campaign Against Racism and Fascism* (CARF) as "one of the most expressive and powerful vehicles of popular writing to be found in London" this anthology of refugees' thoughts and stories gives a unique insight into the reality of life in exile and flight from persecution. Despite the geographical diversity covered - ranging from Ethiopia to Ecuador, from Bulgaria to Colombia - the writings reflect a common search for basic necessities after a harsh reception in Britain. As CARF has already commented, this is "a democratic journal of human truth". Available from the Workers' Educational Association (London), 4 Luke Street, London EC2A 4XW.

*Dossier Immigrazione 1999*. Caritas (Roma), pp19. A detailed, comprehensive analysis of immigration in Italy. It looks at the causes for emigration, routes of immigration and statistical details about immigration flows, mobility, settlement and rejections, as well as indicating where immigrants come from and in which cities or provinces they settle. It includes a study of immigrants' "socio-cultural integration", analysing length of stay, citizenship, schooling, mixed marriages, as well as access to health services, relationship to the judiciary and employment figures. Available from: [www.caritas.it/ambrosiana/dossier99.htm](http://www.caritas.it/ambrosiana/dossier99.htm)

*Mujer e inmigracion* [Women and Immigration]. *Mugak* no 9/10 (September/March) 2000, pp87. Deals with issues of gender and immigration, including research on role-models, experiences and legislation affecting immigrant women, human relations, the condition of sub-Saharan women in Spain and legislation concerning undocumented immigrant women in France. Immigrant women's projects and trends of behaviour are also analysed, and some testimonies are offered. This issue also deals with proposals for equal rights, NGO attitudes to the Spanish Foreigners' Law (*Ley de Extranjeria*), and the ruling party's (*Partido Popular*) plan to reform the law, making it more restrictive. Available from: *Centro de Estudios y Documentacion sobre racismo y xenofobia*, Pena y Goni, 13-1o-20002 San Sebastian, Euskadi/Spain.

#### Parliamentary debates

**Asylum and Immigration** *Commons* 2.2.00. cols. 1049-1103

**Asylum Applications** *Lords* 7.2.00. cols. 510-513

**Stansted Hijacking** *Commons* 10.2.00. cols. 417-430

**Afghan Aircraft Hijack** *Lords* 16.2.00. cols. 1225-1228

**Asylum** *Lords* 23.2.00. cols. 225-227

**Asylum Seekers** *Lords* 1.3.00. cols. 557-605

**Asylum Seekers** *Lords* 22.3.00. cols. 272-274

## POLICING

### FRANCE

## Police killing sparks turmoil in Lille suburbs

The killing of a 25-year-old Algerian, Ryad Hamlaoui, by a police officer sparked two nights of rioting in Lille's southern suburbs, in spite of pleas for restraint by the youth's family and Muslim community leaders. Riot police used teargas to disperse crowds of around 1,000 people who hurled stones, molotov cocktails and set cars and two subway stations on fire. Sixty one people, including twenty-four minors, were detained following the riots, in which eight policemen were injured. Stephane Andolina, the police dog handler who shot Manlaoui in the back of the neck as he was sitting in the passenger seat of a stolen Opel Corsa, was suspended and is being investigated for "voluntary homicide."

Martine Aubry, employment minister and assistant mayor of Lille, said the unrest was a setback for recent attempts to improve community policing in Lille. She said excellent work had been done in attempts to reclaim the suburbs through job creation schemes and *police de proximite*, which involves community work and zero tolerance for minor offences, adding: "the work carried out in Lille-Sud must not just be continued, it must be intensified and go deeper". A youth from the area was quoted expressing resentment towards the community policing programme: "now that [Interior minister] Chevenement has put them [policemen] in the neighbourhood, they look for us, they tail us. You think it's normal."

The charge of "voluntary homicide" is unusual in cases involving police shootings, as the lesser charge of "voluntary violence with a weapon causing death without intent" is usually preferred. The fact that the shot was fired from close range, that the youth had no previous criminal record and that the North African community was up in arms may have contributed. Lille public prosecutor Claude Mathon justified the charges, "The policeman shot him in the neck from close range. If you do that, you can be said to have homicidal intentions." He also assured that Andolina was "devastated" by his action. The officer claimed that he shot after a "sudden movement" by Hamlaoui which caused him to fear for his life.

*Le Monde* 18.4.00; *Guardian* 19.4.00; *Times* 19.4.00; *Independent* 19.4.00.

### UK

## Mayday demonstration clashes

On 1 May, a Reclaim the Streets (RTS) event drew several thousand people (4,000 according to conservative police estimates), and 5,500 police were deployed to oversee what organisers called a "guerrilla gardening" action. Trouble flared after 2pm, when protesters started marching up Whitehall to Trafalgar Square, a few cans and bottles were thrown at police guarding Downing Street, before a small group targeted a McDonald's restaurant, smashing the windows and entering the premises. This was the cue for the riot police, who were present

in numbers and visible from the start, to break up the event.

The police split up the demonstration in Whitehall using two vans flanked by two rows of riot police. Most demonstrators passively stood by as police advanced clearing them towards Parliament Square and Trafalgar Square, where they had sealed the exits. Protesters, tourists and passers-by were held for several hours as police checked video evidence to target "ringleaders" and make arrests. There were reports of further clashes in the early evening in Aldwych and Kennington, where police were escorting the last group of around 300 people they had rounded up, away from the scene.

Ninety-eight demonstrators were arrested in connection with the protest and fifty people have been charged at Horseferry Road magistrates' court, to date. DNA and fingerprint samples drawn from broken glass, blood or part-eaten hamburgers are being studied to track down people responsible for violence against shops and windows. Police sources defended the police response as "proportionate and professional", arguing that the "disorder was obviously highly organised by a small number of people...coordinating events using a system of mobile phones and coloured flags".

Politicians and media commentators condemned the protesters. RTS, despite their refusal to cooperate with police, had issued publicity in the weeks leading up to the demonstration to emphasize that "This is not a protest", encouraging creative forms of resistance. After the action, RTS defended its validity, "celebrating the potential to turn sterile areas of our city into healthy, diverse and useful ecosystems". Furthermore, it denied responsibility for the clashes: "Events that occurred outside Parliament Square were not part of the Guerrilla Gardening event."

When people began marching in Whitehall it was almost predictable that trouble would arise around the prime minister's residence in Downing Street, war memorials such as the Cenotaph and the McDonald's fast-food outlet. However, only McDonald's suffered extensive damage, while monuments and walls were daubed with graffiti. This prompted a massive police response and the widespread use of video cameras, footage of which was selectively used to magnify instances of violence, encouraging criticism of protesters.

### **Criminalising protest**

This approach is proving instrumental in government efforts to redefine "terrorism" in the Terrorism Bill as:

*The use of serious violence against persons or property, or the threat to use such violence, to intimidate or coerce a government, the public, or any section of the public for political, religious or ideological ends.*

The civil liberties organisation, Liberty, has criticised the proposed definition in terms of its inclusion of "political ends", the absence of a definition of what constitutes a "serious threat" or risks to the "health or safety of the public", and "violence" to property, when previous anti-terrorist legislation has been reserved for instances involving deaths or serious injury. Liberty's briefing highlights "that it is capable of encompassing activities which whilst unlawful cannot properly be defined as terrorism". Organisers of demonstrations should, they say, be mindful that even sporadic incidents of "violence" could lead to the use of draconian anti-terrorist legislation against them.

*Independent 3-4.5.00; Guardian 20.4.00, 3.5.00; Times, 1-2.5.00; New Scotland Yard press release 2.5.00; Reclaim the Streets press statement 2.5.00; Briefing by Liberty on the Terrorism Bill, (December) 1999.*

## **Harry Stanley family wait on PCA and CPS**

The family of Harry Stanley, shot dead by police in east London in September 1999, are waiting to hear if officers are to face

criminal charges. Mr Stanley, 46, had stopped in a pub for a lemonade on his way home in the early evening of September 22. He was carrying a two-foot table leg wrapped in a plastic bag, which his brother had just repaired for him. As he left the "Queen Adelaide" pub, someone in the pub called the police to say that an Irish man carrying a shotgun had just left. A short-while later, 100 yards from his front door, Harry Stanley was shot dead by officers from an armed response unit. The shooting has caused widespread concern over the use of force by police and the way that deaths at their hands are investigated.

### **The armed response**

ACPO (the Association of Chief Police Officers) has drawn up guidelines on the police use of firearms. First issued in 1987, the guidelines (which are confidential) are believed to include the following minimum standards:

*- firearms should only be used when there is reason to believe that a police officer may have to face a person who is armed or so dangerous that restraint is impossible without firearms;*

*- only reasonable force should be used;*

*- a proper briefing should be given to armed police before they set off by an officer of appropriate seniority;*

*- firearms should only be used when conventional methods have been tried and failed;*

*- only properly trained officers should bear arms;*

The member of the public who rang police about Harry Stanley was wildly off the mark. His "shotgun" was a table leg and he was not Irish but originally from Scotland. Nevertheless, two officers, reportedly armed with Glock 9mm automatics, approached Stanley from behind, shouting: "Stop. Armed police". Having no reason to expect armed police to be challenging him, he walked on. They shouted again, he turned and they both opened fire. One bullet entered the side of Harry's head, another his left hand.

*There is strong evidence to say that Harry had not even turned round to face the police when they shot him." - Justice for Harry Stanley campaign.*

Freemont Street, Hackney, where he was killed, is a no through road often used as a play area by children. The *Campaign* described the decision to "initiate an armed incident with children around is to say the least reckless and at worst criminal". Last year, similar questions surrounded the decision-making and intelligence underpinning the Sussex police raid in which James Ashley was shot dead (see *Statewatch* vol 9, no 2).

### **The next 18 hours**

Harry Stanley was pronounced dead at the scene, 100 yards from his home. Despite the fact that he had his passport containing his address and other documentation from which he could easily be identified, his family were not informed for 18 hours. The post-mortem on Harry Stanley was carried out the following day. Coroners' enquiries and inquests are conducted in accordance with the Coroners Act 1988 and the Coroners Rules 1984. Rule 7 requires the coroner to notify relatives in advance of a post mortem so that a representative may be present if they wish. However, in a recent Parliamentary adjournment debate, Brian Sedgemore (MP for Hackney South and Shoreditch) alleged that:

*Brian Craddock, the officer in charge of the inquiry, had discovered Harry's identity, but could not be bothered to inform Mrs S that her husband had been killed and that she had the right to a representative at the post mortem.*

### **Investigations and inquiries**

The Police Complaints Authority (PCA) is "supervising" the investigation into Harry Stanley's death (it has no formal powers

of investigation). It is being conducted by senior officers from Surrey police, themselves under investigation for shooting dead unarmed Derek Bateman in Dorking in July 1999 (initially the firearms inspector responsible for the officers in question was advising the Stanley investigation, but was removed after intervention by the monitoring group *Inquest*). Complaints from the family to the PCA about the conduct of Surrey police mean that officers from Suffolk constabulary are now investigating the investigators. The two SO19 (Metropolitan police specialist firearms unit) officers involved in the shooting have been relieved of operational duties - they have not been suspended. According to Brian Sedgemore:

*When something like this happens and a wholly innocent person is killed, the system goes into denial... The inquiry takes for ever, lasting three, four or even ten times longer than a murder inquiry, often exceeding the 120-day deadline set. The papers are sent to the CPS, where they are dealt with at a leisurely pace by the few Treasury Counsel capable of handling them. Charges rarely ensue, and that is that.*

The findings of the PCA investigation (their report is due to be completed in May) will not be made public. It will be passed to the Director of Public Prosecutions. If the CPS (Crown Prosecution Service) decides that no criminal charges are to be brought against the officers, there will be an inquest.

### **Police treatment of the Stanley family**

The police's approach to the Stanley family has been compared to the way in which the Metropolitan force treated the Lawrence family in the aftermath of the death of their son Stephen, suggesting that few lessons have been learned in respect to last year's MacPherson report. The family has made a formal complaint to PCA about what they describe as the hostile attitudes of officers from the Surrey force's investigation (these are now being investigated by Suffolk police). Friends and relatives arriving to pay their respects at the Stanley home were asked for their names and addresses by police. According to Deborah Coles of *Inquest*:

*The family felt that the police were interrogating family members and that they and Harry Stanley were being investigated in an attempt to deflect attention away from police conduct.*

Surrey police's enquiries were to include the incredulous suggestion to Harry's relatives that perhaps he had wanted to die because he had recently undergone surgery for cancer. His family also claim that an initial offer to meet costs of the funeral by the police was withdrawn. The well-supported *Justice for Harry Stanley* campaign is calling for a full, independent public inquiry. In April, *Inquest* reported their concerns over the case to the UN Special Rapporteur On Extrajudicial, Summary or Arbitrary Executions.

### **Accountability and the police use of firearms**

Twenty-two people have been shot dead by police since 1990, the majority of whom were subsequently found to be unarmed or armed with a replica gun. Prosecutions have resulted just twice. In the case of David Ewin, shot dead in 1995, an officer was acquitted at a second trial (the jury failing to reach a verdict at the first), while the trial of PC Chris Sherwood for the murder of James Ashley in Hastings is expected to take place in 2001 - some three years after his death (see *Statewatch* vol 9, no 2). The secrecy surrounding the investigation and complaints processes extends to the ACPO guidelines on the police use of firearms (which are covered by public interest immunity certificate). Critics have suggested that the public should at least be informed of these procedures to ascertain whether they are adequate and how they could be improved to avoid further deaths.

In respect to the PCA, the Home Office is about to publish a consultation paper on reform. This is cold comfort for the

Stanley family who are yet to receive as much as a letter of condolence from the Met, let alone an apology.

*Justice for Harry Stanley, PO Box 29644, London E2 8TS; INQUEST Briefing on Harry Stanley, April 2000 (020 8802 7430, media@inquest.org.uk); House of Commons debate 17.4.00, Hansard cols. 802-808; Jeremy Hardy, Guardian, 6.11.99.*

## **West Mercia police apologise to McGowan family**

At the beginning of April the Chief Constable of West Mercia police, Peter Hampson, apologised to the families of Harold and Jason McGowan who were found hanged in Telford within six months of each other last year. The men had been harassed and received racist death threats, but West Mercia police dismissed concerns raised by the family, treating both cases as suicide. This led the McGowan family to lodge a formal complaint to the Police Complaints Authority, alleging that the police did not conduct a full and proper investigation because of the victims' race. They also complained about the treatment of the family during the inquiry. Hampson's apology, and the appointment of John Grieve, head of Scotland Yard's race and violent crimes task force (CO24) to a new investigation, vindicates the campaigning carried out by the family.

The McGowan family met with Home Secretary, Jack Straw, and Deputy Assistant Commissioner John Grieve at the beginning of March to press their demands that CO24 take over the reinvestigation of the deaths because they had lost faith in the West Midlands force and feared a "cover-up". This led to John Grieve being appointed as a special advisor to the new joint inquiry into the hangings led by West Mercia's Detective Superintendent Mel Shore. West Mercia's chief constable then formally apologised to the family, writing: "I am very sorry that the service we have given you in the past has been less than satisfactory". The family noted that his letter acknowledged that mistakes had occurred in the initial investigation.

The new inquiry means that the inquest into Harold McGowan's death will be postponed until the autumn. The Coroner, Michael Gwynne, agreed to disclose information relevant to the case, including a video of a racist attack on Harold shortly before his death. Six white suspects who had been called to give evidence to the inquest have already been interviewed by the police. Two suspects in the case have admitted to the press that they had been involved in fights with Asian and black people in Telford.

In April, at a joint public appeal with the family, Grieve said that the deaths made him "uneasy, worried and frightened" while Detective Superintendent Shore, called for information on two people who had visited the house where Harold was found dead. Grieve went on to acknowledge the broader significance of the deaths of Harold and Jason when he said:

*There are a series of unanswered questions that the McGowan family have been asking for six months. If we cannot answer those questions, that tells us about the state of race relations in this country after Sir William Macpherson's inquiry into the racist murder of Stephen Lawrence.*

*Independent 7.4.00*

## **ITALY**

### **Carabinieri's new status sparks controversy**

The *Riordino Arma dei carabinieri, Corpo forestale dello Stato, Guardia di Finanza e Polizia di Stato* law, (Law on the reorganisation of the *carabinieri* corps, Territorial Army,

Customs and Excise and State Police), on the reorganisation of police forces, first approved on 24 February 2000 by the Italian parliament, and ratified by the Senate on 30 March against the wishes of some police unions, has resulted in controversy between law enforcement agencies. The law, approved in the Senate by 181 votes to 12 with four MPs abstaining, establishes the *carabinieri* as Italy's fourth armed force alongside the army, navy and airforce.

The *carabinieri* had been a subordinate force within the army. The 111,575-strong paramilitary force, set up in 1814, will now take orders directly from the Ministry of Defence, and from the Ministry of the Interior for matters relating to public order duties. The reform also affects the *Guardia di Finanza* (customs), which "will exercise the functions of an economic and financial police to protect the State's and European Union's finances", and the *Corpo Forestale* (Territorial Army), whose role will include functions as judicial police working alongside investigating magistrate's, and reserve public security duties in remote areas where no other force is present.

The law alters the relationship between the national police force and the *carabinieri*. According to the 1981 law, "the Interior Ministry issues directives to the public security department headed by the chief of police", which in turn liaises with constables and *prefects*. The new law establishes that "The Interior Ministry's directives, with regards to public security coordination, are also addressed to the general commands of the corps [*carabinieri*] and the police force headquarters", changing a practice in which the *carabinieri* acted only after consultation with the police.

The *Associazione Nazionale Funzionari di Polizia* (ANFP, National Association of Police Officers), twice criticised the reform in advertisements in national newspapers. The *carabinieri* were accused of undue political lobbying to obtain the reform, and the law was denounced as "dangerous", granting an excessive concentration of powers to a military corps which should be subordinate to a civilian force in matters of public security. The advertisements also reminded the public of "*Piano Solo*", an aborted 1964 coup attempt by General Giovanni De Lorenzo, who was head of the *carabinieri* at the time, to warn politicians against ratifying the reform.

The ratification of the reform was welcomed by Undersecretary Massimo Brutti as necessary to ensure the "modernity", "innovation" and effectiveness of Italy's law enforcement agencies. However, it was soon overshadowed by a document which surfaced, entitled "Report on the state of the citizens' morale and well-being". It was written by Colonel Antonio Pappalardo, head of Cocer, a *carabinieri* trade union. Pappalardo was promptly replaced, but commentators were perplexed as to why he was not previously disciplined about a document which was incompatible with democratic principles, and had been posted on *carabinieri* station bulletin boards since 19 January.

It expressed hostility for state institutions and businessmen and described the central role, which the Constitution grants the armed forces, as the "Republic's democratic essence". It continues: "Must this force [the *carabinieri*] remain within the institutional framework, or must it make its contribution so that efforts by the new society shall prevail for the establishment of a new kind of State and of a new Europe, which political parties, as they are presently structured... can no longer guarantee?"

*Avvenimenti* 9.4.00; *Corriere della Sera* 24.2.00, 31.3.00; *Messaggero* 13.3.00; *Repubblica* 23.2.00, 24, 27, 30 & 31.3.00, 5 & 20.4.00; *Ddl 6249 - Riordino Arma dei carabinieri, Corpo forestale dello Stato, Guardia di Finanza e Polizia di Stato* ([www.repubblica.it/cittadino.lex/giustizia/giust](http://www.repubblica.it/cittadino.lex/giustizia/giust))

## Policing - new material

*Annual Report 1999-2000*. Home Office (April) 2000, pp116. The

report includes complex expenditure plans on how the Home Office will use the £285 million "cash boost" from the last budget to help build a "modern crime fighting machine". It is available from the Home Office website on [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

**Piggy in the middle**, John Anthony. *Police Review* 11.2.00., pp31-32. Article by a former Metropolitan police officer who compares the halcyon days of 1968 with the plummeting morale following the Macpherson report into the police handling of the racist murder of Stephen Lawrence. "Now", Anthony laments, "the police are caught up in the incredibly convoluted and polite game of keeping within the rules."

**A fair cop**, Robert Crampton. *Times magazine* 8.4.00, pp20-26. Interview with Sir John Stevens, commissioner of the Metropolitan police.

**Neighbourhood Warden schemes: an overview**, Jessica Jacobson and Esther Saville. *Crime Reduction Research Series paper 2* (Home Office Policing and Reducing Crime Unit) 1999 pp44, ISBN 1-84082-349-6.

**An elite force primed for action**, Eitan Meyr. *Jane's International Police Review Update*, February 2000, pp 4-5. Report on Italy's secretive 100-strong NOCS anti-terrorist unit, which was established in the late 1970s. The article highlights the unit's "flexible command structure", "battle-experienced and mature operators", thorough training, and sophisticated weapons and technology as reasons for their effectiveness. The unit has developed into a corps fighting organised crime, drug trafficking organisations, protecting VIPs and key government personnel and assisting law enforcement agencies.

**Turning the corner in Albania**, Dr. Mark Galeotti. *Jane's International Police Review*, January/February 2000, p 21. About reforms the Albanian police force is undergoing to face an increase in organised crime, smuggling and refugee crises. A new generation of officers is being trained to counter the traditional factionalism, corruption, criminality and heavy-handedness which has characterised the force. The military is expected to cooperate in a technical support role. International cooperation with countries enjoying greater resources aiming to prevent Albania from becoming a criminal haven (Italian presence since 1997 and the EU's Multinational Advisory Police Element (MAPE), active since May 1997) is seen as indispensable. Stresses the need to identify and adopt appropriate models from abroad, particularly Italy, which can be fruitfully translated to Albania.

### Parliamentary debates

**Police Commons** 3.2.00. cols. 1222-1266

**Police Funding (Lincolnshire) Commons** 10.2.00. cols. 501-508

**Police Funding (Avon and Somerset) Commons** 16.2.00. cols. 1076-1084

**Police Numbers Lords** 8.3.00. cols. 1039-1041

## EUROPE

### EU

## EU-FBI telecommunications surveillance system: "Negative press" slows progress

An interesting note has appeared which gives the European Commission's report on a meeting of the EU Council of Ministers Police Cooperation Working Party in October 1999. There has been a bit of a mystery surrounding the progress of EU plans to adopt the amendments to the "Requirements" of the law enforcement agencies to intercept telecommunications

(phonecalls, e-mails and faxes) (see *Statewatch*, vol 7 no 1 & & 5, vol 8 nos 5 & 6, vol 9 no 2 & 6). The "Requirements" to be laid on network and service providers to allow the interception of any communication were first adopted by the EU in January 1995. In 1998 it was proposed to amend these "Requirements" to deal with the internet and satellite telecommunications (in ENFOPOL 98). This EU report was, it was thought, almost finalised in a report dated 15 March 1999 (ENFOPOL 19 of 1999). However, since then this report has gathered dust.

The note, from Directorate B, Unit B/1 Police and Customs Cooperation of the Commission, on the Council's Police Cooperation Working Party held on 13-14 October 1999, says that "progress in this matter is being very slow". It says the Working Group had:

*In previous meetings.. discussed that it could be sensible to get some political support from upper instances in the Council for this matter to go forward...*

The main reasons for the delay and the apparent lack of "political support" was:

*the negative press that this issue has received in the media..*

One idea considered to counter this was for the Council to put out a press release of its own but "several delegations.. [thought] this could provoke a chain reaction and further negative press in the media."

### Agreement "within a year"

The EU discussions on the associated development to the EU-FBI system, the draft Convention on Mutual Assistance in criminal matters, have taken another turn. The draft Convention includes provisions on the interception of telecommunications to give a legal basis for the imposition of the "Requirements". On the table is a proposal from the European Commission which says that:

*Within a year after signature of the Convention, but at the very latest by the entry into force of the Convention, Member States and telecommunications service providers concerned shall elaborate a secure system for submission of interception requests and for transmission of intercepted communications... Member States shall provide the satellite service providers granting direct access with the names of service providers on their territory designated to act as intermediary for the purpose of interception by direct access.*

The Convention is expected to be signed on 29-30 May while the entry into force will take 2-3 years.

### Iridium collapses

Iridium, the conglomerate which offered to provide "hands-free" access to the EU of all satellite telecommunications passing through its ground station in central Italy has gone bust. A company executive described as follows: "If you believe in god, Iridium is God manifesting himself through us" (see *Statewatch*, vol 8 no 5).

Sixty-six satellites and \$5 billion had been spent by Iridium but only 55,000 customers had signed up. Started in the early nineties the technology was overtaken by the growth of terrestrial GSM phones. The *Guardian* described the Iridium technology as "laughably old-fashioned".

The EU Council of Ministers had welcomed the offer of Iridium to route all telecommunications without any checks as a "convenient" option. Now the Council will have to wait and see whether the other players still in the field like Globalstar, Teledisc, Skybridge and Spaceway will offer a similar deal.

*Meeting Report Police Cooperation Working Group, 13-14 October, Directorate B, Unit B/1 Police and Customs Cooperation, Directorate-General Justice and Home Affairs, 18.10.99; Draft Convention on mutual assistance in criminal matters between Member States of the European Union, ref: 6836/00, COPEN 18, 10.3.00; Observer, 19.3.00; Guardian, 23.3.00.*

## Europol set to become "operational"?

The Europol Working Party is considering a report on the effect of the Conclusions of the Tampere Special European Council on Europol's role. The report, "First reflections concerning the Tampere Conclusions as far as they relate to Europol" looks at the "necessary or desirable changes that are required to the Europol Convention" to effect the Treaty of Amsterdam as supplemented by the Tampere Conclusions.

The report in setting up joint investigation teams (Tampere Recommendation 44) clearly seeks to avoid amending the Europol Convention as this would require consulting the European Parliament and ratification by national parliaments. "In view of the urgency" it sees a way out by preparing a "framework" decision which could be fast-tracked - the European parliament and national parliaments would be consulted but it would take only a few months rather than years).

In parallel the report seek to set up the European Police Chiefs "operational Task Force" (Tampere Recommendation 44). To set up a permanent body, capable of liaising with Europol would require the Europol Convention to be amended. So it is suggested that it could be set up as a "working party of the [Europol] Management Board." The report then sets out "Scenario for Joint Teams" and defines the terminology. It says:

*Operational" in this context consists of all actions that form part of the operation as such, based on the normal role of law enforcement organisations. This is eg information exchange, collating and analysing of information and intelligence etc*

*"Executive actions" are understood as actions pursued by law enforcement officers in order to facilitate an investigation where specific powers have been granted by national law, such as surveillance, searching, arrests etc. Executive actions may have a direct impact on the constitutional rights of individuals.*

*"Restricted executive powers" means actions pursued during an investigation that do not have an essential impact on constitutional rights of individuals, such as interviewing suspects, examination of files etc..*

The idea that the interviewing of suspects do not involve constitutional rights is highly questionable.

Under the heading: "Members of the operation" it defines "Lead authority" as "Europol or an organisation or body from one of the participating Member States.."

While under the heading: "Member states participating in executive actions resulting from the operation" it sets out:

*A centralised investigation will be based at and coordinated from Europol.*

*Decentralised investigations are based at and coordinated from locations other than Europol.*

These statements more than suggest that under a "centralised investigation" Europol could take part in "executive actions" as defined above. The report ends with the following:

*A further element for reflection in this respect is the validity, under the different legal systems, of evidence gathered by joint teams. It should be ensured that - under certain circumstances - information lawfully obtained by an official while part of a joint investigative team which is not otherwise available to the competent authorities of the Member States concerned may be used for the purposes for which the joint investigation team has been set up as well as other well defined purposes for which the use of the information is needed.*

*First Reflections concerning the Tampere Conclusions as they relate to Europol, ref: 13370/99, EUROPOL 48, 25.11.99.*

# Asylum policy and media blamed for racist attacks

**Ireland has seen a growth in racist attacks fuelled by politicians and the media**

As Ireland introduces EU asylum and migration policies with large-scale dispersal programmes targeting villages and poor inner city areas and the media continues to play on populist sentiments, racist attacks in Ireland are increasing on an alarming scale. Two independent surveys have indicated a dramatic increase in public opposition to immigrants as well as racist attitudes towards settled ethnic minority communities and Travellers. Especially following the implementation of the asylum seekers dispersal programme, there have been a series of verbal and physical attacks on black communities all over Ireland. After the recent, particularly vicious, attack on an African shop in Dublin, Sinn Féin, anti-racist and civil liberties groups are urging the government to take part in round table talks to diffuse increasing racial tensions.

Anti-racist groups have long warned politicians and the media of the dangers of inciting racist sentiments by "playing the race card", especially during the past few years of Ireland's public debates on asylum and migration issues while the country struggles to implement restrictive EU-led policies. Years of anti-immigrant propaganda now seems to have taken their toll, and media attention on the "race issue" is at an all time high.

## Attack on shop and its aftermath

When violence broke out in Dublin's north inner city area the Gardaí cordoned off a section of Parnell Street, located in one of Dublin's poorest districts. Windows of a shop owned by 34-year old Nigerian Kola Ojewale were smashed and women and children narrowly avoided injury during the attack, which was clearly racially motivated and led by around 20 white men drinking in the pub opposite.

The attack, which began at around 10pm and lasted for 15 minutes, is thought to have started with a man shouting racist remarks at a black motorist sitting in a car outside the shop. According to a local resident, after a minor scuffle, "the white guy went into the Blue Lion Pub across the street and came out with two or three others and began hurling bottles and glasses at the *Infinity Ventures* shop. Then bottles and glasses were hurled from both sides of the street." Whilst those attacked retreated and sought shelter in the shop, more people came out of the pub and started smashing the shop windows with pool cues, went inside and assaulted the shop assistant. "Her jewellery was torn off, her arms were twisted and she was shoved around."

Local resident Senator David Norris condemned the attack, called for improved community relations and recommended the closure of several unnamed pubs in the area. Although the attack led Mr Ojewale, father of three, to assess his future life and family's safety in Ireland, he maintained that direct talks offered the best hope of diffusing racial tension. "I hope that this situation can be sorted out if people talk to each other", he said. However, attempts by a journalist to talk to the pub's clientele about the incident, indicate more deeply rooted racist sentiments. The reporter writing for *The Examiner* (2.5.00.) was abused by customers and one man who was willing to discuss the event was called a "scumbag". On leaving the pub the journalist was told, "Go back to your niggers". This experience led him to conclude that "unfortunately, the indications from Parnell Street is that Sunday's attack may not remain an isolated incident."

Indeed, Gabriel Okenla, executive director of the *Pan*

*African Organisation* says that black people in the area have received a number of threats in recent months. Although the incident on Parnell Street was the first serious attack on property in Dublin, the same does not hold for racist violence. On 20 April, 17 year old asylum seeker Paul Abayomi suffered head injuries and severe bruising when he was racially abused and attacked from behind whilst standing in a shop. The attack on this young political refugee from Nigeria led to the first self-organised public anti-racism protest in Ireland, when 70 African refugees and asylum seekers took to the streets of Dublin city centre on 21 April. They said the attack was a culmination of incidents in which pregnant women have been spat at, shots have been fired at African owned shops and vehicles damaged. The day before the incident on Parnell Street, Mr Ojewale had warned in a newspaper interview that tensions in the area were starting to get dangerous: "If this continues, we will have to fight war for war. We can't just sit back and watch our people being destroyed. Attacks are becoming more frequent but nobody ever seems to get caught." Black communities all over Ireland are complaining about the lack of Gardaí action in dealing with the attacks and bringing the perpetrators to justice. Moreover, accusations have been made against the Gardaí themselves, with black people alleging that they have experienced physical and verbal abuse.

## Studies show increase in racist attitudes

Two surveys, one nation-wide poll carried out by *Landsowne Market Research* for the *Star* newspaper, and one by University of Ulster researchers Dr Paul Connolly and Dr Michaela Keenan, found a dramatic increase in racist attitudes amongst the Irish population. The latter found that over a third of the people surveyed opposed the idea of having a member of an ethnic minority as a work colleague, some 57% said they would not accept Travellers as neighbours and the survey also found that people were more than twice as likely to be racist as sectarian. The *Landsowne Market Research* survey found that opposition to people from other races, religions and cultures has risen fourfold in just three years. Around 56% believed "people from minority groups abuse the system of social benefits" and there was a strong rise in the number of people who said Ireland would be "better off" without non-EU immigrants. These attitudes are increasingly expressing themselves in physical attacks, be it on the Chinese community in Northern Ireland or outright hostility towards refugees being dispersed around the country: a suspected arson attack was carried out on a Tipperary hotel on 25 April, forcibly postponing the planned arrival of around 30 refugees at the premises the next day.

Considering the strong correlation between anti-immigrant sentiments in public discussions on asylum issues on the one hand and the racist attacks on the other, it comes as no surprise that the recent violence was laid at the door of politicians and the media alike. "The ineptitude, if not outright racialism in government, is directly to blame for what appears to be growing tension throughout communities in Ireland", Christy Burke, Sinn Féin councillor in Dublin, commented after the events. "The crisis in housing and the determination of the government to ape racist policies in England are the root cause of tensions, which the media gaily report like a pack of dogs chasing a rabbit." After

the attack on Parnell Street, Burke set about liaising with community groups and state agencies to bring the community together and defuse racial tension. "The state agencies have prime responsibility to diffuse those tensions which directly result from their policies".

### **Inflammatory remarks on asylum widely reported**

Several newspapers and civil rights groups have also linked the surge in racist violence in Ireland to the inflammatory remarks made by politicians on issues of asylum which then are widely aired across the media. Whilst reporters and photographers "swarmed over the tiny Nigerian shop in Parnell Street, the media gave widespread coverage" to racist comments made by the South Kerry Independent TD Jackie Healy-Rae. Whilst warning of growing resentment towards immigrants and "civil rumpus" in Kerry and rural areas generally, Healy demanded stricter control of asylum-seekers entering the country, including detention centres and wide-scale deportation of refugees found not to be "genuine": send them "back to where they came from" he demanded. Although supporting John O'Donoghue, the Minister of Justice, in his plans for detention centres and large-scale deportation, Healy also contended that the government did not actually know how many "illegal immigrants" were entering the country. "One person from the Department will tell you there are 8,000 in the country. Another something else. My view is there are 80,000 - twenty times more than we are being told." (*Irish Times*, 3.5.00).

Healy further defended inflammatory remarks made by his son, Cllr Michael Healy-Rae, on RTÉ Radio where he described asylum seekers as "freeloaders, blackguards and hoodlums." Portraying common prejudices about certain nationalities being "worthy" of the asylum process whilst others are not, Jackie Healy-Rae said he had "all the sympathy in the world with Kosovans and genuine refugees, but I'm totally opposed to Nigerians coming in and paying huge sums of money to lorry drivers to be brought here." Indeed, anti-Nigerian sentiments also seem to be linked to the recent violent outbreaks: the landlord of the Blue Lion pub, where the trouble in Parnell Street had started, argued that tensions started to rise in the area when a *Sunday World* article by Paul Williams alleged that Nigerians were running a protection racket. "It would not have happened without the *Sunday World* contribution," he claimed.

Although Healy's remarks received widespread uncritical coverage, they were also severely condemned. The *Irish Council for Civil Liberties* said his comments were "highly inciteful and dangerous, and utterly unworthy of a public representative... They can only fuel violence and hatred." Ruairi Quinn, Labour party leader called on John O'Donoghue to "totally dissociate"

the government from Healy's remarks. He was particularly outraged at his claim that around 80,000 asylum seekers were living in Ireland. "This is four times the total number of all the applications for asylum made since 1992", he said. The well-publicised "numbers" argument often confuses two quite different categories asylum applicants with immigration figures. The Socialist TD Joe Higgins said that the "sudden concern for the homeless and Travellers in need of accommodation in Kerry", which Healy used to whip up nativist sentiments against asylum seekers, "oozes cynicism from every word." Especially as this was the first time after 40 years in Kerry politics that Healy showed apparent concern for Travellers' families.

### **Anti-racists urge action**

Sinn Féin councillor Burke described Healy's comments as "inane" and severely criticised "the government's policy of enforced "dispersal" without any adequate provision, the enforced separation of refugees by denying them their right to work and the discriminatory policy of refusing them their full social welfare entitlements. These are the policies which separate and ghettoise those seeking asylum here, inevitably fanning racial tensions, especially in those areas, like Dublin's inner city, which have been deprived of resources down the years and suffer a scandalous housing crisis that the government has failed to correct."

Following the outbreak of racist violence, the May Day march, organised by the Dublin Council of Trade Unions, took a clear anti-racist stance. A message of support from Nelson Mandela was read out by Mr Gabriel Okenla from the *Pan African Organisation*, in which he recalled the strong support the Irish Anti-Apartheid movement, especially the workers of Dunnes Stores, had given to the struggle for justice in South Africa. "I cannot urge you strongly enough, as a freeman of your city, to work for a multi-cultural society." *Anti-Fascist Action* (AFA) Ireland published an anti-racist May Day leaflet claiming that "every mistake that has been made in European countries in relation to immigration and asylum is being repeated in Ireland... Racist attacks, which have been ongoing in Dublin, are getting worse. It is merely a matter of time before someone is seriously injured or killed." AFA calls on all anti-racists, trade union members and activists to make a stand against racism and complain to newspapers about racist media coverage. AFA also monitors the activity of racists and fascists in Ireland and asks for any information on the issue to be sent to them.

*The Irish Times* 18.4.00, 21.4.00, 1-3.5.00; *The Irish Independent* 19.4.00, 26.4.00, 2.5.00; *An Phoblacht* 4.5.00; *The Examiner* 2.5.00; *Irish News* 12.4.00, 14.4.00.; *AFA can be contacted under Anti-Fascist Action, PO Box 3355, Dublin 7, afa@ireland.com; also see: http://www.geocities.com/CapitolHill/Lobby/8947*

EU

## **EU officials decide on EP's influence**

**Officials on EU Council working groups have been given the job of deciding which amendments put forward by the European Parliament on justice and home affairs should be accepted - and which should not**

A little noticed report by the Finnish Presidency of the EU to the Article 36 Committee (see footnote) in November 1999 set out the guidelines for "consulting" the European Parliament under the Amsterdam Treaty. Under Article 39 of the Treaty on European Union the European Parliament (EP) has to be "consulted" before the Council (usually the Justice and Home Affairs Council) adopts framework decisions (Article 34.2.b), decisions (34.2.c) and conventions (34.2.d).

The procedure to be followed by the Council, according to this report, is that the EP is given the version of the text which is

published in the *Official Journal of the European Communities*. Discussions in the Council and its working parties:

*may continue while awaiting the opinion of the European Parliament taking into account that on important changes the European Parliament may have to be reconsulted.*

The case-law determined by the European Court of Justice says that the EP must be consulted again:

*whenever the text finally adopted, taken as a whole, differs in essence from the text on which Parliament has already been consulted, except in cases in which the amendments substantially correspond to the*

wishes of the Parliament itself.

However, the initiative to reconult the EP lies with the Council.

The guidelines then set out a most extraordinary procedure for the consideration of the European Parliament's views. They say:

*The opinion of the European Parliament should be examined by the relevant Working Party.*

Only in urgent cases are the EP's opinions to be examined by the Article 36 Committee or "exceptionally, by the JHA Counsellors" (specialist officials based in each of the permanent national delegations in Brussels).

The decision to "consult" the EP is taken at the highest level by COREPER, the Committee of Permanent Representatives of each EU member state, while the decision on which EP amendments to accept is undertaken at the lowest level by the Working Parties which drew up the measure in the first place. Membership of Council Working Parties vary according to the subject matter. For example, on immigration it will be comprised of middle-ranking Home/Interior Ministry officials and Immigration service officials working on immigration issues. On policing there will be a combination of police officers, ministry officials, often a Europol officer and sometimes members of internal security agencies.

### EP's views rejected

A classic case of this procedure in operation is the EP's consideration of the Draft Convention on Assistance in criminal matters (see *Statewatch*, vol 7 nos 4 & 5, vol 8 no 6, vol 9 no 2, vol 9 no 3 & 4). The EP was sent a copy of the draft Convention on 3 August 1999 (during the parliamentary vacation) and a Note on further changes on 3 December 1999. The Committee on Citizens Freedoms and Rights discussed their response at meetings in September, October, November, December and 26 January (some 79 pages of explanation and amendments). The plenary session of the parliament adopted this report on 17 February. It contained over sixty amendments to Council's proposal.

Between the 3 December 1999 and 15 May this year there had been 14 more reports considered by the Council (excluding those on the creation of joint teams which has been removed from the draft Convention). Three weeks after the EP delivered its opinion to the Council a new consolidated version of the Draft Convention was produced (10 March) with major issues still outstanding between the Council members (the EU member states).

The parliament was given just three months by the Council to respond, the explanatory statement says: "The three months allotted are nothing compared to the four years or so for which the Council has been mulling over the proposal..." In the event the parliament took five months under the continual urging of the Council that it was going to be adopted in December 1999 (which it was not) and March 2000 (which it was not because the Council itself was not agreed on the text). The European Parliament's report is thorough and in parts highly critical. This is reflected in the amendments. Substantially these were to:

- (a) place greater emphasis on the fundamental rights of the defence;
- (b) introduce various technical modifications required to make a series of obscure or contradictory passages more readily comprehensible;
- (c) delete Article 18 concerning the interception of telecommunications of persons on the territory of a Member State without the technical assistance of the latter.

The EP report's perspective is summed up as effectively combatting crime "while providing fundamental safeguards for the rights of the defence and the basic principles of human rights."

The EP's report i) approved the draft Convention as amended; ii) called on the Council to "alter its draft accordingly";

iii) called on the Council to notify the parliament if it "intended to depart from the text approved by parliament"; iv) asked to be "consulted again if the Council intends to amend the draft substantially."

The European Parliament's report and amendments were considered on 8 March at the meeting of the Council's Working Party on Cooperation in Criminal Matters - in line with the "guidelines". This Working Party is comprised of officials from the Home/Interior Ministries of EU states and has coordinated work on the draft Convention.

The officials accepted precisely nine (9) "minor textual amendments" from the European Parliament. All of these "minor changes" simply concerned changes to words not policy issues. Four of them were changes like "WISHING replaced by "DESIRING" in the Preamble (Recitals). The same Working Party accepted thirteen (13) "minor" changes from the Council's own Legal Service at the same meeting.

Despite this almost entire rejection of the views of the European Parliament and the now substantial changes by the Council to the draft Convention since the EP's report was adopted, at the time of writing the parliament has not been reconulted. The procedure by which Working Parties of the Council are charged with considering the opinions of the European Parliament is democratically flawed. It is inconceivable that middle-ranking officials after four years of protracted, often difficult, discussions in the working party, the Article 36 Committee (previously the K4 Committee) and the Justice and Home Affairs Councils running over eight different EU Presidencies would accept substantial, principled, amendments from the European Parliament.

### Defining the scope of the Convention

In February *Statewatch* sent seven pages of observations on the draft Convention to the House of Lords Select Committee on the European Communities. The Committee forwarded these observations to the Home Office for comment. Barbara Roche, a Home Office Minister, replied on 9 March. Somewhat disingenuously the Minister, on three issues, says that the opinion offered is the same as that of the European Parliament - which had already been rejected at the meeting on 8 March.

On a substantial objection set out by *Statewatch* that the draft Convention is not limited to serious crimes and could apply to any crime however "minor" (as defined in the 1959 Council of Europe Convention) the Home Office Minister simply replied that this was:

*a deliberate reflection of the perceived needs of modern day international cooperation. In the same way that the 1959 Convention was not restricted to serious crimes, so the new Convention is not so limited either.*

The point, however, is that the current Draft Convention gives the law enforcement agencies (police, customs and immigration agencies) exceptional new powers which will if necessary require changes in national laws. For example, powers to intercept and exchange data on telecommunications (phone-calls, e-mails and faxes) are being carried through at the national level (eg: the R.I.P. Bill in the UK, see *Statewatch* vol 10 no 1). The only justification for such new powers would be if they were limited to specific serious crimes and even then, in democratic societies, it would be expected that new mechanisms would be put in place to safeguard the rights of the citizen.

Footnote: The Article 36 Committee is comprised of senior Interior Ministry officials from each member state dealing with policing, customs and legal cooperation under Title VI of the Treaty on European Union.

*Amsterdamisation of draft instruments under Title VI of the Treaty on European Union, Presidency to Article 36 Committee, ref: 13328/99, CATS 32 JAI 104, 24.11.99; Letter from Home Office to the House of Lords Select*

EU

## Justice and Home Affairs Council, 27.3.00

### A quiet Council meeting but the Gibraltar question has been resolved

Two meetings of the Justice and Home Affairs Council (JHA Council) are held during each EU Presidency, this was the first under the Portuguese Presidency (which goes on to the end of June). Press interest in JHA Council meetings has fallen off in the past year certainly from the international pages of major papers which does not of course mean nothing happened simply that it was not reported.

#### Joint teams

Before the JHA Council meeting it was expected that agreement would be reached on a decision to create "Joint teams to conduct criminal investigations in one or more member state".

The rationale was that the EU member states do not want to wait until the Convention on Mutual Assistance on criminal matters has been agreed (probably May 2000) and then ratified by national parliaments in the EU (two to three years, especially as it contains controversial power to intercept telecommunications). To the EU member states, who have been waiting for four years on the text of the draft Convention, the process of having to wait for national ratification is seen as tiresome and time-wasting. So it was proposed at the December JHA Council that Article 13 of the draft Convention could simply be taken out and speedily put through as a framework decision.

A number of member states were concerned at putting joint investigative teams in place before agreement had been reached on the Convention. Indeed the late move by Luxembourg to change the draft Convention to protect its financial dealing led the Netherlands to block political agreement setting up joint teams.

Officially the JHA Council decided to refer the issue back to its working parties and the Article 36 Committee. In practice it will no surprise if once "political agreement" is reached on the draft Convention the framework decision on joint teams does not quickly re-emerge in another form (doc ref: 5698/1/00 CATS 6 REV 1).

One reason it is expected that there will be a move sooner rather than later on the creation of joint teams of police able to operate across national borders is another proposal (not on this JHA agenda) to create a "European Police Chiefs Operational Task Force". It is intended that the "Task Force" would be an informal high-level group within the EU structure reporting only to the JHA Council via the Article 36 Committee. Among its job would be high-level strategic planning and could initiate investigations. One of the problems for the Council is how to give it access to Europol data analysis files without having to change the Europol Convention (doc ref: 5858/00 CATS 9).

#### Issues discussed

*Draft Convention on Mutual Assistance in criminal matters:* The JHA Council says it has resolved all the outstanding questions except that of data protection and the late proposal by Luxembourg on financial issues (doc ref: 7112/00 COPEN 21 and 7046/00 COPEN 19).

*The Scoreboard:* Commissioner Vittorino presented the

"Scoreboard" which sets out targets and dates for measures and initiatives for justice and home affairs.

*Framework decision on the protection of the euro against counterfeiting:* the JHA Council reached "political agreement" on this framework decision which would supplement the 1929 International Convention for the suppression of counterfeiting currency. The offence of altering or making currency would be punishable by terms of imprisonment of not less than 8 years (doc ref: 7047/00 DROIPEN 10).

*The prevention and control of organised crime: a European strategy for the beginning of the new millennium:* a lengthy report was approved with a series of recommendations including "strengthening partnerships between the criminal justice system and civil society" (doc ref: 6611/00 CRIMORG 36).

*Collective evaluation: preliminary country reports on Czech Republic and Hungary:* the Council took note of a report which outlined "the progress achieved by the two candidate countries but also their shortcomings". For the Commission Mr Vittorino said that Phare funding could be better targeted (doc ref: 6613/00 EVAL 12 ELARG 30).

*Charter of Fundamental Rights:* a report was received on the state of play. The French Presidency, which takes over on 1 July, has indicated that it wants the draft Charter to go to the European Council meeting in Biarritz on 13-14 October and not as originally planned to the December meeting in Nice. The first version of the Charter will therefore be considered at the end of the Portuguese Presidency at the European Council in Lisbon in June. This decision will cut short the time that civil society will have to look at the drafts of the Charter.

*European Refugee Fund:* Much energy is being spent by EU Member States on the Commission's proposal for a European Refugee Fund. The draft decision would set aside 26 million euro for 2000 at the start of a five year programme. It should be recalled that the first draft Conclusions of the Tampere Summit said 250 million euros should be allocated over five years - this was deleted from the final version (see *Statewatch* vol 9 no 5). The Fund is intended to cover the "reception, integration and voluntary return of refugees and displaced persons and provide emergency assistance measures in the event of a sudden mass influx of such persons". Many member states consider that the complex control mechanisms being set up are "too cumbersome for the relatively modest amounts" (doc refs: 5635/00 ASILE 2 and 6888/00 ASILE 10).

*Revision of the Dublin Convention:* Commissioner Vittorino presented the Commission's working document on the proposal to replace the existing Convention with a Community instrument (doc ref: Commission staff working paper SEC(2000)522: Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an application for asylum submitted in one of the Member States).

The Commission also reported on the negotiating mandate for an agreement with Iceland and Norway for a "Dublin parallel agreement". This needs to be operational before the abolition of border check with the Nordic countries expected in the second half of 2000.

*High Level Working Group on asylum and migration:* "The Council noted with satisfaction that this Group had now completed its work on the Action Plan for Albania and the neighbouring region."

*EuroMed:* the Finnish delegation reported on its discussions with the Israeli Justice Minister on the need to set up a "EuroMed forum for Justice Ministers with the aim of increasing awareness of judicial procedures".

*Europol agreements with third States and non-EU related bodies:* the Council "adopted a decision authorising the Director of Europol to enter into negotiations on agreements with third States and non-EU related bodies concerning, in particular, the receipt of information by Europol from third parties" (see feature below).

## EU

### Gibraltar: status resolved

The status of Gibraltar which has been holding up agreement on a series of justice and home affairs measures (for example, the UK application to join parts of the Schengen system) has finally been resolved. The UK and Spain have been at odds over its status since it was surrendered to British forces under the Treaty of Utrecht of 1713.

The deal centres on the position that Gibraltar (a British overseas territory) will not have an independent status within the EU. All communications between Spain and Gibraltar will be conducted through the UK - or rather with the Foreign and Commonwealth Office (FCO) acting as a "post box". Formally the UK will create a UK government/Gibraltar EU liaison office at the FCO.

The effect is that all Gibraltarian documents, diplomatic contacts, financial and judicial decisions have to be rubber-stamped by the UK - an authority that Spain recognises. Left unresolved is the issue of sovereignty with both countries maintaining their ownership.

*Gibraltar authorities in the context of EU and EC instruments and related treaties, ref: 7998/00, JAI 45, 19.4.00; Guardian, 20.4.00; Daily Telegraph, 20.4.00.*

## EU:

### JHA Council authorises Europol to start negotiating the exchange of data

The meeting of the Justice and Home Affairs (JHA) Council in Brussels on 27 March adopted, without debate, a "Council Decision" authorising Europol to enter into negotiations with non-EU states and bodies on the two-way exchange of data (see *Statewatch* vol 8 no 5). The report was on the JHA Council agenda in December 1999 but could not be adopted due to a scrutiny reservation by the Netherlands (that is, it had not been

cleared by the Dutch parliament) - which was later withdrawn. The UK parliament, however, was not consulted over the adoption of the decision nor was the European Parliament.

The UK parliament had been consulted on an earlier draft of the report prepared by the Europol Management Board (see *Statewatch*, vol 9 no 5) but this report differed in one major respect, namely the list of countries to be approached. The first list is mainly comprised of EU applicant countries and also included:

*Canada  
Iceland  
Norway  
Russian Federation  
Switzerland  
Turkey  
USA*

The adopted decision added the following countries (see footnote):

*Bolivia  
Colombia  
Morocco  
Peru*

The addition of these countries to the list of the "first wave" of states to exchange data with Europol is to say the least controversial.

The "Decision" says that negotiations can only begin after the Management Board of Europol (national EU Interior Ministry officials) have "consulted" the Joint Supervisory Body (JSB) for Europol (comprised of national EU Data Protection officials). The Director of Europol will forward these reports to the JHA Council for its unanimous agreement to proceed with opening negotiations for each non-EU state or agency. The UK House of Commons European Scrutiny Committee has expressed some concern over this arrangement:

*There must... however, be a question about the extent to which the Europol Management Board will take account of the JSB's views as expressed to it during consultation.*

This is not the only concern. The sole criteria set by the Council Decision only covers:

*the law and administrative practice of the relevant third States and non-EU related-bodies in the field of data protection... (emphasis added).*

Important though data protection considerations are, there is no mention here (or in the draft "model agreement") for the law and practices of these states (and potentially numerous agencies within them) on human rights and civil liberties - for example, what are rights of "suspects", what are the standards of evidence and what safeguards are there against recording (and transmitting) evidence gained by oppressive means?

The Decision says that the JHA Council has to be satisfied that "there are no obstacles to the start of negotiations.. in the field of data protection.." It is not at all clear what might constitute an "obstacle".

A "Council Declaration" attached to the "Decision" says that priority should be given to Iceland, Norway, Switzerland and Interpol and to the "accession candidates". These new and established democracies are not without potential "obstacles". The recent Commission reports on the accession process express concern at the progress towards meeting "EU standards".

Once the JHA Council has agreed that negotiations should start, the only check laid down is for a six monthly report (starting in January 2001) to the Management Board of Europol.

The draft Model agreement to effect the exchange of data

leaves many loop-holes for the receipt and use of data of a highly questionable nature. For example, Europol itself is to judge whether the data (which may be hard-fact, "soft-intelligence" or suspicions) has been gathered in "obvious violation of human rights" (see *Statewatch*, vol 8 no 5 for a detailed critique of this draft agreement). Data supplied to Europol which is then deleted or corrected by the supplying non-EU state/agency can still be retained and used by Europol if it has "further need" of it.

Footnote: At a meeting of US Senior Officials and the EU Article 36 Committee (which coordinates work on policing, customs and drugs) the US delegation said: "Latin America should be the next area of cooperation" [between the EU

and US]. They then named Bolivia, Colombia and Peru as key targets of US anti-drugs trafficking initiatives (see Minutes of the meeting with US Senior Officials in Brussels on 16 February 2000, ref: 6245/00).

*Council Decision authorising the Director of Europol to enter into negotiations on agreements with third States and non-EU related bodies, COREPER to Council, ref: 13108/99 EUROPOL 46, 23.11.99; Draft Council Decision authorising the Director of Europol to enter into negotiations on agreements with third States and non-EU related bodies, COREPER to Council, ref: 11854/2/99 REV 2, 27.10.99; Council Decision authorising the Director of Europol to enter into negotiations on agreements with third States and non-EU related bodies, ref: 13107/99, EUROPOL 45, 19.11.99; Council Decision authorising the Director of Europol to enter into negotiations on agreements with third States and non-EU related bodies,*

## EU SECRECY

# Prodi attacks European Ombudsman

## Mr Söderman, the Ombudsman, defends his right to speak out on public access to EU documents

A quite extraordinary row broke out in March when Mr Prodi, President of the European Commission, launched an attack on Mr Söderman, the European Ombudsman for airing his views in public on the proposed new measure on public access to EU documents. The proposed "Regulation" on public access was drafted and adopted by the Commission without any public consultation process, even though they had over two years to do it. The proposal has to be agreed by the Commission, the Council (the 15 EU member states and the European Parliament).

Mr Söderman wrote an article in the *Wall Street Journal Europe* on 24 February which repeated the arguments he had made publicly to the "Convention" (the body) drafting the Charter on Fundamental Rights. In the article Mr Söderman said that, after the fiasco of the resignation of the Commission in 1999, one would have expected "less secrecy" and "more transparency, more accountability". Instead:

*When the Prodi Commission released its (secretly drafted) proposal to the public a few weeks ago, no commissioner was present to defend its merits - no surprise, considering how few it has.*

Mr Söderman was particularly critical of the Commission's proposal to permanently exclude many documents from access and the idea of introduced new "exceptions" such as "the deliberations and effective functioning of the institutions." The effect he says would be that:

*there won't be a document in the EU's possession that couldn't legally be withheld from public scrutiny... "the list of exceptions from access [is] without precedent in the modern world.*

Mr Söderman's article would probably have got little attention but the reply by Mr Prodi in the same paper on 9 March. Mr Prodi tried to claim there had been public consultation - which solely consisted of a conference held in the European Parliament organised by the Green Group of MEPs, the Socialist Group on MEPs, the European Liberal and Radical MEPs (ELDR), the European Federation of Journalists and *Statewatch*. At this conference where the draft measure, which had been leaked to *Statewatch* beforehand, was roundly criticised. As to the general arguments it is hard to believe that Mr Prodi understands the issues (see *Statewatch*, vol 10 no 1). For example, he says: "withholding documents would very much be the exception" - which can only mean he does not grasp the effect of defining out of the right of access to most documents and extending the number of exceptions.

But what really brought the disagreement between these two senior EU officials to public attention was the fact that Mr Prodi chose to write, on 3 March, to the President of the European Parliament to complain about Mr Söderman. Mr Prodi said that

Mr Söderman's article was "polemic and extreme", "ill-informed" and "emotional and serious erroneous". He went on to express:

*the concern of the entire body of commissioners in regard to what it views as a questionable use of his functions.*

Mr Prodi was in effect hinting that the European Parliament, which had appointed Mr Söderman, should think again.

Mr Prodi's view expresses a worrying attitude not just to the Ombudsman but also to democracy and the separation of powers. In the letter he speaks of the need for "loyal cooperation between institutions" and says Mr Söderman's action was "extremely detrimental to the normal functioning of the institutions."

Mr Söderman sent a reply to the President of the European Parliament, Mme Nicole Fontaine, on 14 March, strongly defending his right to speak out publicly especially on this issue. He said that when taking up his post "I have sworn to perform my duties with complete independence.. the Statute of the Ombudsman forbids me to accept instructions from any government or other body."

His letter reiterated the points made in his press article and particularly criticised the "unnecessarily general terms" in which the "Regulation" had been drafted, the:

*application of the Regulation would involve the exercise of a large amount of discretion by the institutions. In practice, therefore, citizens would not so much enjoy rights as to be dependent on the good will officials exercising discretion on behalf of the institution.*

In the aftermath Mr Prodi and Mr Söderman were invited to give their views to the "Conference of Presidents" of the European Parliament (a meeting of the party leaders). Later they had a 47-minute "breakfast" together in Strasbourg on 12 April. The upshot was that Mr Prodi accepted Mr Söderman's right to speak out publicly on issues of openness.

## European Parliament takes its time

Amidst the row over Mr Prodi's intemperate attack the European Parliament had its own problems deciding which would be the lead Committee on the issue - it is normal for there to be a lead Committee into which other Committees feed their opinions. In the end it was decided, unusually, to use the "Hughes procedure" whereby more than one Committee has the lead. Three Committees will now have an equal say in preparing the parliament's position: the Citizens Freedoms and Rights Committee (rapporteur: Michael Cashman, PSE, Socialist); the Legal Affairs Committee (Heidi Hautala, Green group) and Constitutional Affairs (Ms Maij-Wegen, EPP Conservative group). The timetable for reaching a position is entirely in the

hands of the European Parliament - the measure has to be adopted by "co-decision" by the three institutions by May 2001. With France taking over the EU Presidency in July it will be interesting to see how much of the decision-making process on access to documents falls to the Swedish Presidency which takes over on 1 January 2001.

### **Statewatch v. the European Commission**

*Statewatch* editor Tony Bunyan took part in an online debate with Mary Preston of the European Commission organised by the leading German newspaper *Die Zeit* between 12-27 April (full text on the "Secret Europe" site). The Commission's representative was hard to pin down especially on the issue of how many documents would be permanently excluded from the public right of access (and hence which would be included on a public register of documents).

Mary Preston did agree that the exclusion of "e-mails", which she claimed were the same kind of informal communication as a telephone conversation, did not extend to one concerning official business. She was particularly unfriendly to regular applicants for documents, like *Statewatch* and Steve Peers of Essex University, who were seen as simply "testing" the system. Tony Bunyan replied that *Statewatch* and others were simply pursuing their research interests "rigorously" as one would expect serious researchers to do.

One extraordinary admission, which is reflected in the Commission's draft measure, is that the Commission will not send applicants copies of documents, under the existing 1993 Code, if they have been published by the official Publications Office of the European Communities. Applicants have to buy expensive copies of the *Official Journal* to get access.

For the full-text of all the background articles and letters see *Statewatch's* "Secret Europe" site: <http://www.statewatch.org/secret europe.html>

### **Another victory for access**

The contribution to the cause of openness of challenges to the Council (and Commission's) practices to the Court of First Instance (European Court of Justice) and to the European Ombudsman is immeasurable. In another ground-breaking decision the Court of First Instance has ruled that the Council

On 3 July 1998 Arno Kuijter, researcher from Utrecht in the Netherlands, applied to the Council for copies of: a) reports from 1994-1997 and for 1998, on the situations in 28 third countries in relation to asylum-seekers; b) "joint missions or reports" carried out by EU member states and sent to the Council's CIREA (Centre for Information, Discussion and Exchange on Asylum), "reports drawn up for CIREA"; c) a list of "contact persons" used by CIREA in asylum cases. In July 1998 he was refused access to these documents and told that the CIREA reports (b. above) did not exist. Arno Kuijter made a confirmatory application appealing against the decision and saying that he believed the documents (b. above) did exist. The Council turned down the appeal on general grounds under Article 4.1 of the 1993 Decision saying that disclosure could undermine international relations. Perversely, the Council tried to argue that the 1993 Decision on public access was "to allow the public to have access to the Council's documents, not to the information contained in them".

The decision of the Court in finding against the Council broke new ground. The Court said the applicant should be granted access to the documents with the exception of those parts properly covered by the exception under Article 4.1. The Council should supply the list of contact names (without the fax and phone numbers as the applicant had suggested). An examination of 10 reports supplied showed that the Council had failed to show how Article 4.1. applied to the documents refused and had, in the applicant's words, used "short, identical and ritualistic" responses. The Court said that the content of the documents "varies considerably, not only in nature.. but also in the degree of sensitivity". The critical finding of the Court was where the applicant has put forward:

*factors capable of casting doubt on whether the first refusal was well founded... the institution is obliged.. to state why those factors are not such as might warrant a change in its position.*

This means that the Council has to answer the arguments put forward by an applicant making an appeal - and cannot just ignore them as it often does at present.

*Judgement of the Court of First Instance, 6 April 2000, in Case T-188/98, Arno Kuijter v Council of the European Union.*

## **UK**

# **What difference will the Human Rights Act make?**

## **The incorporation of the European Convention on Human Rights into UK law: its effects examined**

In October of this year the Human Rights Act, passed two years ago, finally comes into force in England and Wales. How will it work, and what impact will it have?

Successive governments' failure to incorporate the European Convention of Human Rights into domestic law meant that UK judges were not obliged - or even, in many cases, permitted - to look at cases from a human rights perspective. Complainants were forced to take cases to the ECHR institutions in Strasbourg, which is expensive and very, very slow. A steady stream of cases has been taken there for the past 30 years, with the number of embarrassingly high-profile adverse rulings increasing year on year. The stated aim of the Human Rights Act is to make the long journey to Strasbourg unnecessary by giving all UK courts jurisdiction to rule on and provide remedies for violations of the rights protected by the Convention, 50 years after it was signed.

### **The mechanics**

The Act incorporates provisions of the Convention into British law. Schedule 1 of the Act sets out the incorporated rights,

contained in Articles 2-12 of the Convention and the first and sixth Protocols. These guarantee to protect the right to life, freedom from torture, from inhuman and degrading treatment and from slavery and forced labour. They guarantee liberty of person, fair trial procedures, and respect for family and private life, home and correspondence. Freedom of thought, conscience and religion, expression, assembly and association are protected, as is the right to marry and to found a family, and the principle of non-discrimination in the enjoyment of the Convention rights. Protocol 1 guarantees rights to education, to property, to free elections, while Protocol 6 abolishes the death penalty.

The cornerstone of the Act is section 6, which makes it unlawful for a public authority to act in a way which is incompatible with a Convention right unless it is required to do so by an Act of parliament. A public authority is defined as including private bodies carrying out public (ie, state) functions, such as Group 4 when it manages a prison, or British Airways or Eurostar when they perform immigration control functions. The definition also includes all the courts, thereby imposing on them a primary duty to give effect to the protected rights at all times.

By section 7, victims of acts (or omissions) by public bodies which infringe a Convention right will be able to bring or defend proceedings in the appropriate court relying on the right. Thus a prisoner or detainee claiming his detention breaches the right to liberty in Article 5 will have a habeas corpus action in the High Court, and a potential damages claim on release. A complaint that allocation to a particular prison hundreds of miles from family members is a disproportionate interference with respect for family life would be heard in the High Court. An allegation of inhuman or degrading treatment on arrest or during incarceration, which might include racial abuse, inappropriate handcuffing or other restraint, or a denial of sanitary facilities in holding cells, will be justiciable in the county court like an ordinary civil action for assault. The criminal courts will hear arguments on the scope of directions to the jury on the right to silence (Article 6:2) and for the exclusion of evidence obtained by an illegal search of a home or an illegal phone tap (Articles 6:1 and 8). In the immigration context, a new "human rights" appeal will allow appellants to claim that a refusal of leave to enter, or a proposed expulsion, will violate rights to family life, or will expose them to human rights abuses in the country to which it is proposed to send them. In the family courts deprivation of custody of or contact with children by local authorities in care proceedings, for example, will give rise to many cases based on Article 8. Discrimination (on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status) is not a free-standing ground of challenge to a decision or action, but can be the subject of claims based on differential access to a Convention right.

Very few Convention rights are in absolute terms: only the right to be free from torture and inhuman and degrading treatment, and from slavery, can never be curtailed or modified or balanced against other interests. The other rights can be interfered with to the extent "necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". Most of the time, the courts will have to perform a balancing act, deciding whether there has been an interference with a protected right and, if so, whether the interference was in accordance with law (ie with predictable legal norms), served a legitimate purpose and was "necessary in a democratic society", ie proportionate to its purpose. Judges will have to decide whether, for example, a search of a person's home (an interference with the right to privacy) was necessary for the prevention of crime, or whether a proposed expulsion which breaks up a family can be justified by the legitimate aim of economic well-being (the stated aim of immigration control). They will have to weigh up these matters for themselves, exercising a primary judgment rather than (as now) merely reviewing an executive decision or action within very wide parameters of "reasonableness".

The courts will be able to provide remedies in accordance with their usual jurisdiction. This means that a magistrates' or Crown court trying a criminal case will not be able to award damages for a home or body search which violates rights to privacy, or for unlawful detention, since its jurisdiction is limited to providing a fair criminal trial. The victim of such abuses who wants compensation will have to sue in the county court, as now. But the High court hearing a judicial review based on breach of Convention rights will be able not only to quash unlawful decisions or issue injunctions to prevent them, but also to award damages, since it already has powers to award damages in judicial review.

In order to give effect to Convention rights, courts will be obliged to interpret legislative provisions in a way which makes them compatible with these rights if at all possible. This crucial "interpretative obligation" set out in section 3 of the Act will

revolutionise the way we read Acts of parliament. In a 1991 case brought by BBC journalists against the broadcasting ban on Sinn Féin leaders (*Brind v Secretary of State for the Home Department*), the House of Lords refused to read the statutes governing broadcasting so as to protect rights to freedom of expression. After October, the courts will have to read statutes as protecting citizens' rights unless they are utterly incapable of bearing such a meaning. All law - past and present - will potentially be subject to judicial scrutiny to see if it complies with the Convention.

But the courts will not be able to strike down Acts of Parliament which they find to be incompatible with the Convention. By section 4 of the Act, the higher courts coming up against incompatible primary legislation will be able only to issue a "declaration of incompatibility". (The lower courts will have no such powers: all they can do is to dismiss the victim's claim on the ground that the "public authority" was forced to act as it did by primary legislation.) On a declaration of incompatibility being made, it will then be up to the government to change the law: there are provisions enabling the executive to "fast-track" amendments to legislation to remove incompatibility, but there is no compulsion to do so. If the government chooses not to do so, the victims of violations will have to go to the European Court of Human Rights to get a remedy. (Even an adverse ruling from the European court does not bind the executive or force it to change the law, but in practice the government has usually done so.)

Section 19 of the Act obliges ministers promoting new Bills to tell parliament before second reading whether they believe they are compatible with the Convention: Jack Straw solemnly declared this for the Immigration and Asylum Bill in the teeth of commentaries from many legal experts telling him that in many respects it was not. But the minister responsible for steering the Local Government Bill through Parliament, John Prescott, has issued a statement under s19 that the Bill does not comply with the Convention after the Lords rejected the proposed repeal of section 28 of the 1988 Act. The government pledged to remove section 28, a Tory measure which banned local authorities from positively promoting homosexuality. But a rearguard action in the Lords resulted in a defeat for the repealing clause. Now John Prescott's declaration says that "I am unable to make a statement that in my view the provisions of the Bill are compatible with the Convention", in the hope that this declaration will eventually ensure the repeal of section 28.

### **The exclusions**

The Act does not protect rights in Protocols to the Convention which the UK has not signed or ratified. Thus, complaints of expulsion or restrictions on the movement of UK citizens, protected by Protocol 4, cannot be heard in the UK; the past usefulness of Prevention of Terrorism Act exclusion orders to the government has meant that it has never ratified this Protocol. Another Protocol 4 right unrecognised in Britain is the prohibition on the collective expulsion of aliens (last used in the Gulf war against Iraqis). The government still maintains the derogation from Article 5 (liberty) to allow for the otherwise unlawful seven-day judicially unsupervised detention of terrorist suspects under the PTA condemned by the European court in the 1988 case of *Brogan v UK*, on the manifestly spurious basis that a public emergency threatens the life of the nation (the only ground for derogation permitted under Article 15). Section 16 of the Act permits derogations designated under s14 and Schedule 3 to continue for five years. The right to education in conformity with parental convictions, protected by Article 2 of Protocol 1, is subject to a reservation on grounds of cost and efficient instruction, by s15.

Also excluded from protection under the Act are rights which are not included in the European Convention: economic

and social rights such as the right to decent housing, to health, to livelihood. Section 11 preserves rights protected by other instruments, but social and economic rights (set out in the UN's 1966 Covenant on Economic, Social and Cultural Rights or the Council of Europe's 1961 Social Charter) have traditionally been held "aspirational" and thus unenforceable. But human rights lawyers look forward to attempting to persuade British judges to follow decisions in other countries, particularly in the Commonwealth, that the right to a clean environment, to minimum health care and to a livelihood are aspects of the right to life.

The Act will not allow public interest groups to bring actions unless they are "victims". So the Joint Council for the Welfare of Immigrants, World Development Movement, Amnesty International or Greenpeace, would have to show that all or a substantial proportion of their members were personally affected by some governmental sin of omission or commission, and would not be able under the Human Rights Act to bring the sort of loosely representative, public-interest challenge which they have done in the past, although they can still bring non-human rights challenges. But to mitigate the effect of this exclusion, the government is proposing to widen the scope of third-party interventions (such as that by Amnesty International in the Pinochet litigation). At present, High Court rules allow such bodies to intervene only in very limited circumstances. The proposed extension would mean that, once the victim of a violation or proposed violation had lodged an action, the third-party could join in and provide assistance.

Victims of human rights violations do not have to be individuals under the European Human Rights Convention, and under the Act too, large corporations can be victims and have human rights. This seems bizarre until one thinks of freedom of expression for news media, which, together with property rights, is the most frequently litigated corporate "human right" in Strasbourg. There is likely to be a rash of litigation testing the limits of the new right to privacy as against competing free expression rights, as well as actions by major tobacco companies complaining that their freedom of expression has been unduly restricted by the ban on tobacco advertising.

### **The impact**

The English and Welsh courts are gearing up for a mass of cases greeting the coming into force of the Act in October, and the High court is clearing the decks and appointing extra judges. It is somewhat shocking that English judges were not trained in, or expected to be aware of, fundamental human rights until this year. In preparation for the introduction of the HRA they are all receiving a day's training. Police and prison officers appear to be receiving even less and in some cases, no training at all in the new Act, although its effects on working practices in those agencies will be profound.

The Scottish experience provides a foretaste of the sort of cases likely to be brought. Under the devolution provisions of the Scotland Act, the Scottish courts have been deciding human rights cases for the past year. The big issues there have been around fair trial rights, or "due process", media freedom, and expulsion of immigrants. The right to silence was upheld in the case of Margaret Anderson Brown v Lord Advocate, in February 2000, in which the requirement under road traffic laws to answer questions about driving a vehicle when police suspect drunken driving was held to violate the presumption of innocence contained in Article 6:2 of the Convention. The guarantee of an independent tribunal for civil and criminal trials (Article 6:1) was held compromised by the appointment by the executive of temporary sheriffs in the case of Starrs and Chalmers v Procurator Fiscal Linlithgow, decided in November 1999. In the area of broadcasting freedom, the BBC has brought two unsuccessful petitions seeking to broadcast proceedings in the

Lockerbie trial. Several cases have been brought claiming breaches of Article 8 (family life) by expulsion of immigrants.

It's likely that these issues will be the most often litigated in England too. Arguments based on the Convention have already become familiar with High court judges dealing with immigration and asylum cases, as a defence in libel cases, and in criminal cases in discussions on exclusion of illegally obtained or other prejudicial and unfair evidence. But in addition, there are already challenges planned to provisions of the Immigration and Asylum Act which condemn asylum-seekers to penury and indignity. Last year there was a pre-emptive strike against provisions inserted into the Prevention of Terrorism Act which reverse the burden of proof, requiring a defendant to prove that items in his or her possession were not for the purposes of terrorism, contrary to the presumption of innocence of Article 6:2. Three Algerians were charged under the PTA for possession of chemical containers, radio equipment, manuals, documents, credit cards and money. The House of Lords accepted that, read literally, the inserted provisions forced the men to prove their innocence and were probably in breach of the Convention, but said that it was possible to read the statute differently, in a way which did not force the defendants to prove anything.

Many of the rights protected by the Convention are already recognised by the common law or by changes in statute law in response to adverse rulings from the Strasbourg court. The Special Immigration Appeals Commission was set up in 1997 to provide appeal rights in national security deportation cases in response to the European Court's condemnation in the case of Chahal, just as routine mental health review tribunals were set up in response to earlier Strasbourg condemnation,

But the Human Rights Act will bring some entirely new rights into UK law, such as the right to privacy, and will greatly expand the breadth of anti-discrimination actions. A victim of repeated racial attack such as Sunderland shopkeeper Mel Hussein will be able to bring proceedings against the police and the local authority alleging a discriminatory failure to protect his life (Article 14 in conjunction with Article 2), property (Protocol 1) and his home (Article 8). Because the right to life includes not just the right to adequate protection of life, but also the right to effective investigation of death and criminal proceedings to bring perpetrators to justice, families of those who died in custody ought to be eligible for legal aid (Christopher Alder's family have been granted legal aid for his inquest in July), and reasons must be given for a refusal to prosecute after an inquest verdict of unlawful killing, according to a ruling in May by the Lord Chief Justice in the case of Alton Manning, a prisoner who died under prison officers' restraint.

There will be some scope for lifting the lid on "national security" and similar excuses for opacity, since effective, fair and open investigation and reasons for executive decisions are aspects of substantive rights. Asylum-seekers will continue to be detained, but they will be entitled to written reasons for their detention, a presumption of bail and two routine bail hearings, for which they will have legal aid.

There will be an explosion of cases as the implications of the Act for so many areas of life and law sink in. Politicians in the new Labour administration are already beginning pre-emptive strikes, accusing the judiciary of intrusion into politics and excessive liberalism (for example, in decisions on asylum). Campaigners and human rights activists are concerned that the judges will, on the contrary, probably seek to get the executive off the hook by misuse of the doctrine of "the margin of appreciation", developed in Strasbourg as an aspect of subsidiarity, to try to slip back into a more deferential approach to the executive. For the Act demands that the judges seize the more active role demanded by their new responsibility for the protection of fundamental human rights from unnecessary state restriction. It is a real opportunity to change the culture of deference and opacity, and the battle is already joined.

On 8 June 2000  
Statewatch is  
launching -



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## Contributors

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

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

Editor: Tony Bunyan. News Editor: Trevor Hemmings. Reviews Editor: Nadine Finch. Lee Bridges, Phil Collins, Paddy Hillyard, Ben Hayes, Steve Peak, Phil Scraton, Joe Sim, Mike Tomlinson, Frances Webber, Stef Janssen, Ida Koch, Catherine Weber, Dennis Töllborg, Francine Mestrum, Kees Kalkman, Helle Hagenau, Christian Busold, Barbara Forbes, Heiner Busch, Peio Aierbe, Mads Bruun Pedersen, Ciáran Ó Maoláin, Vassilis Karydis, Cristiano Codagnone, Steve Peers, Sonia Routledge, Barbara Melis, Katrin McGauran, Yasha Maccanico. The Centre for Studies in Crime and Social Justice (Edge Hill College, Lancashire), Liberty, the Northern European Nuclear Information Group (NENIG), CILIP (Berlin), Demos (Copenhagen), Omega Foundation, AMOK (Utrecht, Netherlands), Jansen & Janssen (Amsterdam), Kommitee Schluss mit dem Schnuffelstaat (Bern, Switzerland).

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**NOTE NEW PHONE/FAX numbers**

**Statewatch,**

**PO Box 1516, London N16 0EW, UK.**

**Tel: (00 44) 020 8802 1882**

**Fax: (00 44) 020 8880 1727**

**e-mail:**

**[office@statewatch.org](mailto:office@statewatch.org)**