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EU governments to give law enforcement agencies access to all communications data

- existing EU laws on data protection and privacy to be reviewed to meet the demands of the "agencies"
- "ENFOPOL 98" to go through EU Justice and Home Affairs Council at the end of May
- documents refused because disclosure "could impede the efficiency of the ongoing deliberations"

The Council of the European Union (the 15 EU governments) is about to back the demands of EU "law enforcement agencies" for full access to all telecommunications data to be written into all Community legislation in the future, and for existing laws to be re-examined - a move that is even more far-reaching than the decision on 17 January 1995 to sign up to the the FBI plan for the interception of telecommunications. At the centre is the issue of "data retention" (the archiving of all telecommunications for at least seven years). By backing the law enforcement agencies' demands the EU governments will be coming out in direct opposition to the strongly-held views of the Data Protection Commissioners.

The January 1995 decision by the EU meant that it adopted "Requirements" for interception agreed with the FBI. In September 1998 an attempt to update the "Requirements" to cover the internet and satellite phones was shelved because of a public outcry ("ENFOPOL 98"). Instead EU member states started amending their national laws on interception. But last year two proposals from the European Commission on personal data protection and privacy and "combating computer-related crime" threatened to undermine the demands of the law enforcement agencies for access to all telecommunications data. Six EU governments lead the opposition to the erasure of traffic data - as required under current community law: Belgium, Germany, France, Netherlands, Spain and the UK.

The "Council Conclusions" (ENFOPOL 23, 30.3.01) say:

1. The obligation for operators to erase and make traffic data anonymous "seriously obstructs" criminal investigations;
2. It is of the "utmost importance" that "access" be "guaranteed" for criminal investigations;
3. It calls on the European Commission to: a) take "immediate action" to ensure that law enforcement agencies now and "in the future" get access in order to "investigate crimes where electronic communications systems **are or have been used**" (emphasis added); b) the "action" should be "a review of the provisions that

oblige operators to erase traffic data or to make them anonymous" (emphasis added)

In short, existing EU laws on data protection and privacy have to be reviewed to enable the retention of traffic data for the investigation of "crime" (not serious organised crime, but any crime). All future laws, including the proposals currently being discussed on the protection of privacy and computer-aided crime should ensure the retention of data. All the protections for personal freedom and privacy put in place through international data protection rules and privacy Directives would be fatally undermined at a stroke.

ENFOPOL 98 updated (ENFOPOL 29) is scheduled for adoption at the next meeting of the Justice and Home Affairs Council on 28-29 May, together with a Resolution emphasising the great importance of ensuring that the redefined "Requirements" are built into community measures under the "first pillar". The adoption of the Conclusions, if agreement can be reached on the text, has been "pencilled in" for the meeting of the Telecommunications Council on 27 June - at the same meeting where this Council will adopt a "common position" on the new data protection and privacy Directive.

Statewatch was refused access to these documents by the Council on the grounds that it could "impede the efficiency of the ongoing deliberations". Tony Bunyan, *Statewatch* editor, comments:

Authoritarian and totalitarian states would be condemned for violating human rights and civil liberties if they initiated such practices. The fact that it is being proposed in the "democratic" EU does not make it any less authoritarian or totalitarian.

In the USA, the American Civil Liberties Union (ACLU) has taken out full page ads against similar proposals (www.aclu.org/privacyrightrights). *Statewatch* is launching an "Observatory on Surveillance in Europe" (www.statewatch.org/soseurope.htm) See feature on pages 18-20

IN THIS ISSUE

European Parliament "deal" on access to EU documents page 21

Germany: International alarm at prosecutions see page 24

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NETHERLANDS - UK

Questions ask whether the death of 58 Chinese immigrants was a "controlled delivery"?

The British trial is over, the Dutch trial has just started and already it is clear that the "Dover-case" is not only about the death of 58 migrants in a truck of a human trafficker. Journalists and defence lawyers have started to ask questions such as: why did the Dutch police declare that *P & O Stenaline* informed them about suspicions regarding the lorry which, the company asserts, it did not. And why did the British police claim that the inspection of the truck was a routine check, if it only took place shortly before the truck was about to leave the customs area. It remains to be seen during the course of the Dutch trial how much more evidence will be presented to suggest an involvement of Dutch and British police forces, possibly with the support of Europol.

Background

On 18 June 2000, 58 migrants from China died in a container on a journey on a *P&O* ferry from Zeebrugge to Dover (see *Statewatch* vol 10, no's 3/4 and no 6). As it later emerged, the migrant group had earlier been held in Belgium, and were told by the police to leave the Schengen area. Asked whether the Belgian authorities would have accepted the migrants entering the UK, the latter simply replied, "that counts as leaving the Schengen space" - although the UK has joined Schengen, it opted out of measures on immigration and border controls. On 22 June, Perry W., the Dutch truck driver, was charged with 58 counts of manslaughter and five of conspiracy to smuggle illegal immigrants into Britain. Ying G., a Mandarin interpreter, was charged with conspiring to facilitate the entry of illegal immigrants. The court case took place at the Maidstone crown court in the UK between 26 February and 4 April, when the jury found the truck driver and the interpreter guilty. Perry W. was sentenced by Judge Alan Moses to 14 years imprisonment and Ying G. to six years.

Parallel to the UK trial, 8 people have been charged with trafficking related offences in the Netherlands. But there, the prosecutions are surrounded by more controversy. On 14 December, the Dutch court in Rotterdam granted a request by the prosecutors for the investigation period to be extended by three months. On 5 March, the court case was postponed again because the defence lawyers received the relevant files only one and a half weeks before the initial starting date and wanted to investigate the possibility that the police had knowledge of the smuggling and were conducting a "controlled delivery". Nine people are on trial in the Dutch courts, eight of whom are charged with accessory to manslaughter, human trafficking and membership of a criminal organisation, the other for forgery. The court case began in Rotterdam on 19 of April 2001, with defence lawyers, Doedens and Boone, suggesting that the trafficking operation had been part of a controlled delivery. Back in November 2000, questions about this possibility were raised in the Dutch parliament. This came after journalists, on the basis of police surveillance reports, had reported that the police stopped their observation of the suspected traffickers on 16 June 2000, two days before the fatal journey.

The British case

The British court case appeared clear-cut and was widely covered in both the British and the Dutch press. In some Dutch

newspapers however, Judge Alan Moses was said to have been biased in trying to influence the jury on several occasions. He openly indicated that he believed Perry W.'s statement to be unreliable, *de Volkskrant* commented on 3 April 2001: "during the summary of testimonies on Monday 2 April, Judge Moses made clear to the jury, after summarising the testimony of Perry W. that the jury should not hesitate to dismiss it as not credible. And on the penalties, he gave a statement to the effect that greedy human traffickers were feeding prejudices about asylum seekers, thereby generating calls for a tougher immigration policy". Perry W.'s lawyers, O. Kirk and M. Lawson, further complained about the fact that they received the relevant files only four days before the start of the trial. They emphasise that there was no reason for the delay because the Dutch police started with the investigations directly after W.'s arrest. Moreover, the river police in Rotterdam observed the main Dutch suspect Gursel O. before the Dover trip on suspicion of human trafficking.

On 1 March, the two survivors of the deadly journey from Zeebrugge to Dover were put on the witness stand. They were interrogated behind a screen, due to fears of reprisals from the 'Snakehead' gang against them and their families in China. The Chinese mafia organisation is held widely responsible for the trafficking of Chinese immigrants to Europe. One of the two survivors, Mr Su Di K. advised his family to tell the Snakeheads that he had died during the journey, otherwise the family would still have to pay for it. During police interrogations, the other survivor, Su Di K., said that the truck was driving fast when its air-vent was closed, causing those inside to suffocate. However, given that the 58 counts of manslaughter were based on the fact that Perry W. must have shut off the air vent - if the truck was in motion at the time, how was this possible? When the public prosecutor, C. Temple, discovered the inconsistency he pleaded for a renewed interrogation of Mr Su Di K. which was granted by Judge Moses. Mr Su Di K. then said that the truck had "stopped" when the vent was closed.

Augusta Pearson, a Flemish interpreter who interpreted for Perry W. during the trial, said in *de Volkskrant* on 4 April that since the Dover tragedy, truck drivers who are discovered with illegal immigrants in their truck deny any knowledge of their cargo, whereas in the past, some had told police that they were paid for human trafficking. In 20 of the 25 cases where she was asked to interpret this year however, the British authorities had to let the drivers go because of a lack of evidence. Some of the drivers were clearly afraid of repercussions from trafficking organisations.

Relatives of the Dover victims from China declared on 9 April 2001, that they had written letters to Dutch and British authorities claiming 27,227 Euro compensation for each victim, because both governments had done nothing to prevent the deaths. The relatives argue, in line with and with reference to the Dutch defence lawyers, that both authorities had knowledge about the journey and therefore should have intervened and prevented the 58 deaths.

The Dutch trial: will a controlled delivery emerge?

The Dutch trial is likely to concentrate on the suspicion of the defence lawyers that the Dover case was a controlled delivery. These operations allow trafficking offences to take place under surveillance, thereby ensuring that prosecutions for more serious offences. They are of particular relevance in the Netherlands, where they were heavily criticised by the Van Traa parliamentary Commission which investigated the conduct of an inter-regional police investigating team during controlled delivery operations. This official enquiry took place in the nineties, when it was discovered that police had used the operations to try to infiltrate criminal organisations. After the publication of the Commission report, the police had to stop these controlled deliveries, but an exception was made for trafficking of human beings, requiring

authorisation by the Minister of Justice.

International controlled deliveries were provided for in the 1990 Schengen implementing convention, requiring the prior authority of each member state involved. Defence lawyers in the Netherlands suggest that the Dover case might have been a controlled delivery, and moreover, an operation coordinated by Europol. According to the Europol annual report for 1999, the agency coordinated 121 controlled deliveries, a significant rise from the 46 in 1998. Of these, 114 concerned drugs and 7 migrants and trafficking in human beings. The annual report for the year 2000 contains no figures at all on controlled deliveries.

Initial suspicions were raised when the police released the observation reports by the Rotterdam river police in which is stated that Gurzul O., one of the main suspects in the Dutch court case, was observed from 25 February until Friday 16 June - just two days before the tragic deaths. The fact that the observation of one of the main suspects took place long before the tragedy, and that this observation was part of operation "Charimedes" - an official research project into the smuggling of Kurds to the UK, is seen by the defence as an indication that the transport was a controlled delivery. In addition to this, Gurzul O. was known not only to the Dutch police, but also to the French and the British. He has a history of trafficking going back to 30 October 1998, when he was arrested at Schiphol airport because the French police had issued an extradition order for him to face charges of trafficking activities in the south of France. Following extradition, he served a six month prison sentence. In the same period, the UK Suffolk police force had sent a fax to the Rotterdam police saying that they suspected Gurzul O. of trafficking.

In the Dutch parliament, the discussion of the possible controlled delivery began on 7 September 2000, when the Minister of Justice, B. Korthals, was questioned. Initially, all the allegations were rejected. In *NRC Handelsblad* (6.9.00), Mr Jansen, Chief of Investigations of the police of Rotterdam is quoted as saying that the police ended the surveillance of the Dover suspects on Friday 16 June 2000, due to staff shortages in the investigating team. Korthals on the other hand, told the parliament that the surveillance of Gurzul O. had stopped on Friday 16 June because of the high demand on police presence during the Euro 2000 football championship. He also said that: "there was no real indication he [Gurzul O.] was involved in the trafficking of human beings". This explanation was fully accepted by the parliament. Only Van der Camp, Christian Democrat (CDA) MP, questioned the fact that the police had ended the surveillance, but was heavily criticised by fellow MP's who accused him of lending himself as a "playball" of the defence.

However, on 9 November last year, the parliament was shocked to hear about an apparent communication failure between the police and the Ministry of Justice: on 13 December 1999, the Ministry of Justice received an extradition order of France to arrest Gurzul O. and to hand him over to the French authorities. It took the Ministry until 22 May to send this request to the public prosecutions office of Haarlem. The office received the order on 29 May. Normally such a request is transferred to the CRI (Central Investigation Service) within two weeks, which informs all the police forces of the outstanding arrest warrant. In the case of Gurzul O. it took the office two months, until 27 July, to put out the warrant. It was argued in parliament that the apparent communication failure was indirectly responsible for the death of 58 immigrants. The possibility of a controlled delivery however, was still rejected: in a long letter to the parliament, justice minister Korthals said that although the ministry and the police were not cooperating efficiently with each other, there was no proof at the time that Gurzul O. was involved in human trafficking.

In December, Korthals had to appear for the third time in

front of parliament in relation to the Dover case. On 11 December 2000, *NRC Handelsblad* reported that not only had Gurzul O. been under police surveillance but they had actually planted a tracking device in his car. The files examined by the newspaper also showed that the police knew of several meetings Gurzul O. had held with a Chinese woman who is registered on police databases as a "known human trafficker". It also emerged that the ferry company did not in fact tell the police about the transport. Nevertheless, on 13 December, the Minister said that there was no evidence that the Dover trip had been a controlled delivery and that the police did not have enough evidence to suspect Gurzul O.'s involvement in the trafficking. "It becomes very difficult to understand on the basis of all the facts which were then and are now available to the police, to understand why the team stopped with the surveillance," declared A. Rouvoet, a Christenunie MP (a small religious party). MP Dittrich (Democrats 1966) commented: "Step by step we come closer to the point where police will have to tell us there was a controlled delivery".

Another interesting aspect in the case is the fact that on 5 September 2000, Mr J. Boone claimed that the British police had found a phone number of the "Chinese expert" of the Amsterdam police force in the pocket of one of the victims. This "Chinese expert" is being called as a witness. This might point to the fact that the police had an informant on board and that it was monitoring the transport. On 19 April 2001, the first witness in the Dutch trial, Inspector J. Hessel of the Rotterdam river police (who was also head of the "Charimedes" investigation), first declared that Gurzul O. was being observed to "update the Gurzul O. file", indicating that it was merely a routine observation restricted to Holland. However, during his cross-examination, he admitted that in course of the investigation, he had been in contact with his British colleagues on several occasions. Until then, this contact had always been denied by British prosecutors and police. On the other side of the channel, Chief Inspector Nelson declared, that for nine months after the "discovery" at Dover, a team of 61 British police officers worked on operation Mallard (the British term for the Dover case) in cooperation with police forces from Holland, Belgium, Germany and Spain. He said the team only started its investigation after the discovery of the bodies. Nelson coordinated the operation on the British side and also worked closely with the crown prosecution service. When the number of "illegal" migrants entering the UK via Dover notably declined after the "Dover incident", Nelson said that "a stronger anti-propaganda [against irregular entry] doesn't exist".

de Volkskrant 2.3.01, 3.4.01, 6.4.01.

EU

Justice and Home Affairs Council, 15-16 March 2001

The first of two meetings of the Justice and Home Affairs Council (JHA Council) under the Swedish Presidency took place in Brussels on 15-16 March. Much of the substantive work of the Presidency will come through at the next JHA Council on 28-29 May.

The work on *temporary protection* "in the case of a mass influx of displaced persons" continues with the hope of agreement in May.

Reservations by the Netherlands member meant that the required unanimity was not forthcoming for the adoption of Council Regulations "reserving to the Council" for a period of five years the development of *border checks and surveillance* "reflecting the sensitivity of this area, in particular involving political relations with third countries". This means the Council

intends to give itself, rather than the Commission, powers available under the Schengen Common Manual in relation to border controls. This so-called "transitional period" may be extended as the Council has yet to decide "the conditions under which such implementing powers would be conferred on the Commission". Under Title IV of the Treaty establishing the European Communities (TEC), which came into force on 1 May 1999, the European Commission was meant to take over immigration and asylum after five years, ie: in three years time.

Agreement was reached on a "European *crime prevention* policy and its constituent elements" which include "organised crime and prevention" (see *Statewatch European Monitor*, vol 3 no 1).

The JHA Council "took note" of the Commission communication on cyber-crime and will continue the discussion at the May Council (see feature in this issue).

Adopted without debate

The Council adopted a Regulation on a list of third countries whose nationals must be possession of a *visa* when coming into the EU and a "white list" of countries whose nationals are exempt from this requirement (see *Statewatch European Monitor*, vol 3 no 1).

The Council decided that, on the basis of data protection reports submitted by the Europol Management Board:

no obstacles exist for the Director of Europol to start negotiations with Norway, Iceland, Poland and Hungary leading to an agreement, with each of these countries, including the transmission of personal data by Europol to each of them.

Conclusions were adopted on the need for vehicle registrations across the EU to include "the colour and its alphanumeric code" on all vehicle registration certificates.

Under "Any other business" the Council heard a report on contacts with Switzerland "at a technical level" with the Commission concerning that country's request to "participate in the Schengen Agreement and the Dublin Convention".

"Mixed Committee"

In the Mixed Committee, the "Schengen" committee including Norway and Iceland, the JHA Ministers discussed the three outstanding questions on the draft Council Framework Decision on "the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence" and the draft Council Directive on "the facilitation of unauthorised entry, movement and residence". They hope to reach "political agreement" at the May Council. A "consensus" between the 15 governments was reached on making the "offence" of "facilitating unauthorised entry and residence" and extraditable one. Two questions remain for the Council to resolve: first, where a "humanitarian clause" should be included and if so what would be its scope; second, the minimum maximum sentence applicable. The Swedish Presidency is proposing six years but France wants eight years and the UK ten years.

Candidate countries

The Council also held a meeting with the candidate countries (those hoping to join the EU) where the EU emphasised the need for them to implement the JHA *acquis* - the full body of EU and Schengen measures adopted through various *acquis* since 1976 which these countries have to adopt and implement without question or amendment. The EU Ministers particularly emphasised the:

fight against organised crime, asylum abuse and illegal immigration and it was agreed that the "potential security issues" raised by the "external borders of the candidate countries" should be tackled through a "concerted effort" (the issue of the creation of an EU "border police force" is beginning to emerge).

Justice and Home Affairs Council, press release, 15-16.3.01.

IMMIGRATION

UK

Compensation claims for illegal imprisonment of refugees

The first compensation claims by asylum seekers against the government for being illegally imprisoned after entering Britain with false passports were won in February. After a ruling by the High Court in 1999 on a legal challenge by three asylum seekers, which upheld Article 31 of the 1951 Geneva Convention, stipulating that no asylum seeker should be penalised for illegal entry or presence (see *Statewatch Vol 9 no 6*), the government is now facing a wave of compensation claims by asylum seekers who were prosecuted and often imprisoned for six to 12 months for entering the UK on false documents between 1994 and 1999. Criminal proceedings are thought to have been brought against several thousand asylum seekers who entered the country during that time span, some of whom have now won their compensation claims for up to £40,000. One Kosovan couple was sentenced to 6 months imprisonment each, after they were stopped at Heathrow in 1999 on their way to Canada, and, as in most of these cases, advised by their duty solicitor to plead guilty for a lower sentencing as they had no defence to the charge.

Their compensation claim was accepted by the Home Office in February, as was that of another couple from Albania who suffered the same fate in late 1998.

In the 1999 ruling, Lord Justice Simon Brown confirmed the long-standing criticism of immigration detention by asylum rights and anti-racist groups by commenting that "One cannot help wondering whether perhaps increasing incidents of such prosecutions is yet another weapon in the battle to deter refugees from seeking asylum in this country". He also pointed out the present situation where visa requirements and "carrier sanctions" had "made it well nigh impossible for refugees to travel to countries of refuge without false documents". The Home Office will have to pay the granted compensation claims out of its *ex-gratia* scheme for miscarriages of justice or serious default. Solicitors are expecting payments for up to £10,000 for each "typical" case, which refers to a six months prison sentence.

Guardian 7.2.01 & 14.3.01

Charter jets for mass deportations

The Home Office has started to conduct forced removals in large numbers with the use of charter jets. The information, leaked when the National Coalition of Anti-deportation Campaigns (NCADC) received a call from a Kosovan asylum seeker, whose removal order (which has to specify the date, place and carrier conducting the deportation) simply read "charter flight". After questions to the Home Office, *Independent* journalist Ian Burrell learned that the government had been preparing the charter flights for weeks, in an attempt to reach the Home Secretary's desired number of 30,000 deportations by the end of this year.

The first known charter flight of forced removals took place on 20 March this year, flying 50 people to Tirana (Albania) and Pristina (Kosovo). A week later, on 27 March, an aircraft left for Kosovo, to deport a yet unknown number of people to Pristina. "This is something on which we can make considerable savings. It's cheaper to charter a plane than keep people in detention

centres a month or two", a Home Office source commented.

But campaigners say it is not only the detention centres and legally enforced reliance on the voucher and dispersal system for asylum seekers that is expensive. A forced removal with a scheduled aircraft necessitates at least two "accompanying officers", who are granted a return ticket. There is also the added advantage of removing forced removals (which are often characterised by violent restraint methods and the use of sedatives), from the public eye and therefore from public criticism. In the last two years, at least four people have died as a result of restraint techniques in other European countries (Germany, Belgium, Switzerland, Austria). In the UK, five people are known to have died in the last eight years during deportation attempts. For more detailed information on deportations on a European level, see www.noborder.org or www.carf.demon.co.uk *The Independent* 27.3.01, NCADC Press Release.

Anti-deportation protests at airports illegal?

On 17 April, Mike Taylor, the Bristol branch secretary of the National Union of Journalists (NUJ), was found guilty at Uxbridge Magistrate's Court under airport by-laws for refusing to leave the airport and organising a demonstration on airport property. Taylor and others had distributed leaflets at the Lufthansa check-in desk at Heathrow airport last August, in an attempt to prevent the deportation of Amanj Gafor, a Kurdish asylum seeker from northern Iraq who had serious mental health problems and, under the Dublin Convention, was due to be deported back to Germany. Taylor and his defence lawyer, Sureya Lawrence, are arguing that the finding is in breach of Articles 2, 10 and 11 of the UK Human Rights Act and have appealed against the decision. Anti-deportation campaigners claim that in the light of the government's drive to increase the number of deportations by air, including the use of charter jets to enable mass deportations (see above), the outcome of the appeal will have an important impact on the handling of future anti-deportation actions at airports.

Taylor was arrested on 3 August last year while leafleting passengers. Protesters, who were falsely led to believe that Gafor was due to be deported on a Lufthansa plane to Germany from Heathrow, unrolled banners and demanded to talk to the Lufthansa manager in an attempt to avert the deportation, which, they claimed, endangered Gafor's life. Germany depicts northern Iraq as "safe" for Kurds. Indeed, Gafor underwent a deportation attempt at Gatwick that morning, but the pilot of a BA aircraft refused to take him when he resisted his deportation. He was later deported by boat and is now in Nuremburg, awaiting deportation back to Iraq.

Tony Benn MP called for support and solidarity for Taylor, and, pointing to the continued sanctions and indiscriminate NATO bombing of Iraq, asserted that :

The protest and its repression brings into question the nature of civil rights in the UK as well as the government's "ethical" foreign policy. We need to seriously ask ourselves how, under these conditions, can Iraq be classified as a safe haven?

Given the danger of *refoulement* in this case, Taylor and Lawrence are arguing that the airport by-laws must be interpreted in the light of Article 2 of the Human Rights Act, Amanj Gafor's right to life. Further, they argued that the charges breach Taylor's right to exercise freedom of expression (Article 10) and freedom of peaceful assembly and association under Article 11.

Police treatment of the media has come under criticism too, particularly from the National Union of Journalists (NUJ). In their magazine, NUJ reporters present at the scene, claim to have been harassed by police and prevented from taking pictures or filming.

One officer even claimed that Heathrow police did not recognise NUJ press cards. The NUJ has taken up the incidents with the Metropolitan police. In a final statement on the Magistrate Court's decision, Taylor commented:

if I had jumped in a river to rescue a British citizen, I would have been celebrated as a hero. When I protest at the return of an asylum seeker to his almost certain death, I am prosecuted as a criminal.

More information from the Bristol Campaign to Defend Asylum Seekers on 0117 973 3869 or 0117 965 1803 or from BDASC, Box 41, Greenleaf Bookshop, 82 Colston Street, Bristol BS1 5BB. National Coalition of Anti-deportation Campaigns Press Release, 17.4.01.

NETHERLANDS

Iraqi refugees on hunger strike

Since 5 February five Kurds from Iraq have been on hunger strike in the Waddinxveen asylum seekers centre in Holland. One has been transferred to a centre in Alphen aan de Rijn. Since the decision by the Dutch government that Kurds from Northern Iraq can be "safely returned", protests have increased.

On 20 November 1998, the Dutch government ended its policy of issuing temporary residence permits for refugees from Iraq. The Court of Justice sanctioned the abolition of this policy on two occasions, 13 September 1999 and 20 March 2000. In an official report dated 12 April 2000, the Ministry of Foreign Affairs said that the human rights situation in Northern Iraq was improving.

On the basis of this report, J Cohen, the former Secretary of State for Asylum and Immigration Affairs, told the Dutch parliament that the abolition of the policy will be maintained. In addition, several judges ruled that Northern Iraq was safe for some refugees from central Iraq with a Kurdish, Turkmenic or Assyric Christian background. The most recent parliamentary debate, on 12 October 2000, did not alter the earlier decisions. In combination with the new Dutch Asylum and Immigration Act, in force since 1 April 2001, Kurds will also be excluded from humanitarian support entitlements from the Dutch authorities. Around 9,000 Iraqi Kurds in Holland are affected by the policies.

In protest against the Dutch policy on refugees from Iraq, a few hundred Kurds demonstrated on 29 March in front of parliament in The Hague. Some threw stones at the windows forcing the parliament to temporarily close. Some days later, a Kurd undressed himself in the public gallery of the parliament. Kurdish anger is high because of the declaration of Northern Iraq as a "safe" country of origin. Although direct flights to Northern Iraq are currently not possible due to the internationally binding no-fly zone, they can be deported via Turkey.

In late March 1999, a mission from the Ministry of Foreign Affairs visited Turkey and discussed with the authorities the possibility of deporting Kurdish refugees from Iraq via Turkey. Transit visas, logistical matters, and the cooperation of international bodies like the United Nations High Commission on Refugees and the International Organisation of Migration were discussed. In a parliamentary debate on 21 March, E Kalsbeek, the Secretary of State for Asylum and Immigration Affairs, said that Turkey does not allow for large numbers of refugees to be deported via Turkish territory.

Under the new Dutch Asylum and Immigration Act, Iraqi Kurds can now be denied access to asylum seekers' centres. In the past, refugees could claim shelter in the centres on the grounds that they could not return to their home countries. This option is not available in those cases where the government holds that asylum seekers can actually "deport themselves".

One of the hunger strikers, for example, received a letter from the COA, the government department responsible for the reception of asylum seekers, ordering him to leave the centre in *Waddinxveen*. Another was approached by a COA staff member

asking him about his preferences for his own funeral in case he died while on hunger strike. The COA claimed that this was a humanitarian gesture, because the hunger striker was still conscious and able to discuss the details. The government has announced that it will not change its policy because of the hunger strike.

Parool 30.3.01; de Volkskrant 21.4.01; Metro 19.4.01.

Immigration - in brief

■ **UK: Straw overruled again in application of Dublin Convention.** On 12 March, the Government's most recent plans to reduce the number of asylum applications by returning refugees straight back to other countries in the EU as set out in the Dublin Convention, was declared unlawful by the UK Court of Appeal. In a test-case judgement, the senior judges ruled that the UK would violate the principle of individual case examination if it was to introduce the practice of blanket return of asylum seekers arriving from other EU member states. The decision related to the appeal of Barjam Zeqiri, a Kosovan Albanian. It will make it more difficult for the government in the light of other recent rulings declaring Germany and France "unsafe" (see *Statewatch* Vol 9 no 5 and Vol 11 no 1), to automatically return asylum seekers at the borders. After French president Jacques Chirac had already rejected British proposals of "summary deportations" of asylum seekers arriving at Kent ports at the Anglo-French Summit on the 9 February, this recent decision has dealt another blow to the government's "pre-election jitters over asylum". *Evening Standard* 12.3.01; *Guardian* 6.2.01; *Times* 9.2.01

Immigration - new material

Immigration Controls, the Family and the Welfare State - a handbook of law, theory, politics and practice for local authority, voluntary sector and welfare state workers and legal advisors. Steve Cohen, 2001, ISBN 1-85302-723-5, £17.95, pp363. "There is an irony at the heart of the nexus between immigration law and welfare. This revolves around the family. Family unity is a central aim of welfare provisions. However, a consequence of immigration control is the division of families on a global scale". Cohen provides extensive material on the destructive effect of immigration controls on privacy and family life and shows how the division of families is central to immigration control. Drawing on extensive experience in campaigning and legal support work, the book is not limited to the strictly legal provisions of the Immigration and Asylum Act with regards to the family and welfare, but gives examples of hypothetical and real "case work problems" and "real case stories" to show the implications of current legislation. Chapters one and two deal with the basic issues (legal and political) behind immigration and "good practice" for support workers and give a detailed analysis and critique of concepts of the family and their relation to immigration rules, deportation and anti-deportation campaigning. Chapters three and four focus on the link between the eligibility of welfare provisions and people's immigration status and give invaluable and critical campaigning advice, again, drawing on extensive campaigning experience. Finally, the book concludes with a strong case against the notion of "fair" immigration controls, clearly outlining the necessarily racist nature of immigration controls as well the ideological presupposition behind the argument for controls. In the light of growing demands for a discussion on the abolition of border controls amongst anti-racist activists, this book, not least due to its strong focus on practical support and good practice, should inform every legal practitioner and support worker in the field of immigration and asylum. Available from: *Jessica Kingsley Publishers*, 116 Pentonville Rd, London N1 9JB, Tel: 0044(0)20-7837-2917, post@jkp.com, www.jkp.com.

Recent developments in immigration law, *Legal Action*, March 2001, pp10-17. This four monthly update keeps "practitioners up to date with

developments in legislation, practice and case-law" with regards to immigration and asylum. Available from *Legal Action*, 242 Pentonville Road, London N1 9UN, Tel: 0044(20)7833-2931, legalaction@lag.org.uk

Asylum Seekers - a guide to recent legislation, *Immigration Law Practitioners' Association and Resource Information Centre*, March 2001, pp100. Studies the effects and implications of the Asylum and Immigration Act 1999 and asylum related Human Rights Act provisions. The five chapters cover legal representation (including the appeals procedure and detention bail), the new support and dispersal arrangements, housing and other benefits, access to health, employment and education, and "vulnerable categories" (children, victims of torture, women and people with mental health problems). Available from: *Resource Information Service*, Basement, 38 Great Pulteney St., London W1F 9NU, Tel: 0044(20)7494-2408, ris@ris.org.uk

Far from Home - The housing of asylum seekers in private rented accommodation, Deborah Garvie (*Shelter*), January 2001, ISBN 1 870767 93 4, pp72, £12.50. This research was initiated after the homeless NGO *Shelter* started receiving alarming reports by local authority environmental health officers on the housing condition of asylum seekers. It is well researched and informative, tracing the systematic restriction of housing and support arrangements for asylum seekers through Asylum and Immigration Acts since 1993. The findings are based on a three-month investigation into the various forms of accommodation for asylum seekers with the main focus on the private sector through sub-contractors under the National Asylum Support System (NASS). Findings include overcrowding, placements in areas with hostile local populations and into housing unfit for human habitation, high fire risks, no child facilities, intimidation by landlords after complaints about housing standards, amongst others. Key recommendations call for a review of the NASS system and the provision of information packs for asylum seekers as well as improved coordination between the relevant asylum support agencies. Available from: *Shelter*, Tel: 0044(0)20-7505 2043/2180, or keytitles@shelter.org.uk

Asylum Seekers and the Right to Work in Ireland, Brian Fanning, Steven Loyal, Ciarán Staunton (*Irish Refugee Council*), July 2000, pp82. This report finds that lacking rights and support entitlements, social exclusion and racism have led to asylum seekers with the right to work being excluded from the labour market. It argues for statutory provisions for asylum seekers and black and ethnic minority groups in Ireland with regards to equal opportunities and accountability in service provisions, thereby integrating asylum seekers into the same support networks as other socially excluded groups. Apart from detailed examinations of asylum rights, (institutionalised) racism, accommodation, poverty and employment, this research includes an outline of Ireland's immigration history from 1919 onwards. Available from: *Irish Refugee Council*, 40 Lower Dominic St., Dublin 1, Tel: 00353(0)1-873-0042, refugee@iol.ie

Border Controls, *Home Affairs Committee*, First Report, Session 2000-01, January 2001 (pp66) and the Government Reply (pp15), 27 March 2001. This House of Commons Home Affairs Committee report includes some of the most reactionary policy recommendations on border control published to date. In line with the popular reasoning that deaths of migrants at borders are due to the ruthlessness of human traffickers rather than EU migration policies, the first sentence reads, "The fact that so many people take such risks and try to reach the UK, and that so many succeed, has caused us to examine the effectiveness of border controls." Consequently, the report investigates the effectiveness of, and seeks to improve, border controls to combat so-called illegal immigration and gives relevant recommendations as to how to logistically achieve this goal. It is based on an examination of the Immigration Services, Customs and Excise, their technological capacities, Britain's obligations under the 1951 Geneva Convention, so-called "pull-factors" for asylum seekers and migrants, the nature of trafficking organisations and the impact of EU enlargement on migration routes. It calls for an increase in the budget and technological equipment of the Immigration and Nationality Directorate and for existing agencies (immigration, customs and police) "to be combined to a single frontier". It calls for international cooperation, "aiming to disrupt the business" of human trafficking, an improved system of deportation as "Home Office

has been dilatory in enforcing the removal of people" and following Jack Straw, it urges for a reassessment of the 1951 Geneva Convention to "allow" refugees to apply for asylum in countries outside the EU. Finally, the Committee concludes from its findings that border controls "need to be supplemented by internal checks on access to work and public services", and explicitly re-opens the debate on identity cards (in the guise of "entitlement cards") in the UK. Available for free under www.publications.parliament.uk/pa/cm/cmhaff.htm or order for £10.60 from *The Stationary Office* PO Box, Norwich NR3 1GN, Tel: 0870 600 5522, book.orders@theso.co.uk

off limits, no 30 (January) 2001, 6DM, pp56. This issue tackles the issue of legalisation programmes, and their role within the anti-racist demand for open borders. With contributions on the regularisation of the *sans papiers* from Belgium, the Netherlands, Spain, Greece, France, Germany, Switzerland and the USA, as well more general discussions on the difficulties with limited political demands such as legalisation (as found in the so-called *Realpolitik*), the editors have successfully drawn together different European experiences with critical accounts of the problematic relationship between the demand for legalisation and the demand for free movement. Also includes campaign updates and contributions on the DNA testing of refugees in Germany, the situation of Palestinian refugees in the Lebanon and asylum and immigration in the Czech Republic. Available from: *off limits*, Susannenstr. 14d, 20357 Hamburg, Tel/Fax: 0049(0)40-439-3666, Redaktion@offlimits.de, www.offlimits.de

Migrations Societé vol 12 no 72 (November-December) 2000, CIEMI pp142 [60 Fr]. Special dossier on immigration and migrants' movements. Looks at the array of different groups involved in migrant struggles, from local support groups to the North-South partnership on immigration, the role of associations working to aid integration, foreign women's groups, youth organisations in working class areas, Islamic associations and international solidarity movements. Articles on Franco-Algerian couples and an analysis of Kurdish migration from a French perspective. Available from: Centre d'information et d'études sur les migrations internationales, 46, rue de Montreuil - 75011 Paris, France.

Migrations Societé vol 13 no 73 (January-February) 2001, CIEMI [60 Fr]. Dossier on the local government bodies responsible for consulting and deciding their activities with foreign residents. Includes articles on voting rights and citizenship, participation in local democracy and case studies based on experiences in Strasbourg, Mons-en-Baroeul, Grenoble, Belgium, Luxembourg and Switzerland. Features an article on the life projects of youths from Maghreb countries who complete their schooling and a press review regarding the repercussions of the Israeli-Palestinian conflict in France.

Le debat sur trois projets de textes gouvernementaux: mineurs étrangers maintenus en zone d'atteinte, incarcération des "clandestines" et centres de rétention pour les étrangers. [The debate on three government law projects: foreign minors kept in reception areas, the imprisonment of "illegals" and detention centres for foreigners]. *Migrations Societé* vol 12 no 72 (November-December) 2000, pp127-140. Press review and analysis of the debate concerning the increase in arrivals of unaccompanied minors and government plans to treat 16-18 year olds as adults, in legal terms. The article criticises the proposals - a result of police lobbying - for contravening the rights of children and highlights the absence of structures to provide assistance to minors who are often traumatised. Observes that the illegal detention of children is forbidden by Article 37 of the 1990 UN Convention on the Rights of Children. Secondly, it looks at the debate about the arresting of foreigners, drawing on press articles and reports from the Senate and Parliament on prisons, which include suggestions that the imprisonment of *sans-papiers* "does not correspond to the mandate which should be fulfilled by prisons", and figures on the rising percentage of foreign detainees arrested subject to the law on immigration (330% increase between 1984 and 1997). It says that foreign prisoners are becoming a "sub-class" within prisons, and are kept in the dirtiest and worst conditions. France's 15 detention centres held 14,500 foreigners for an average of 5.1 days in 1999, in addition to which there are several unofficial holding sites used by border police. It looks at a recent government draft decree which distinguishes between two types of detention area. Firstly, administrative detention centres

(CRA, *Centres de Rétention Administratives*) featuring better conditions and "social accompaniment", involving reception, information and moral and psychological support. Secondly, it allows for the use of prisons, disregarding recommendations from the human rights commission that these should only be used in exceptional circumstances. Finally, the debate is criticised for diminishing the role of the legal support network, CIMADE, by passing over the responsibility for "social accompaniment" to the International Office for Migration. Their scope for intervention is limited by statute, as confirmed by its director: "We are a public organisation, responsible for implementing government policy". This decision followed a recommendation by the Ministry for Employment and Solidarity in June, calling for a "re-examination of CIMADE's field of intervention" because it went beyond its mandate by performing a "legal advice role", rather than merely providing information. Laurent Giovannoni of CIMADE claimed it was not just a question of legal advice, but of moral and practical support.

Mugak no 12 (July/September) 2000, Centro de Estudios y Documentación sobre el racismo y la xenofobia, pp.59. This issue looks at the reform of the "Foreigners' Law" (*Ley de extranjería*) from a number of perspectives. An in-depth analysis, highlighting its restrictive characteristics, is accompanied by criticism of government agencies which stir up xenophobia against migrants; the article also includes discussions on the status and rights of migrants. Further articles cover the experiences of African women in Madrid, the relationship between migration and poverty, racism in Germany and the struggle by refugees, and commentary on a television programme in which a representative of the far-right expressed racist views while denying he was racist. Press reviews, legislative changes, book reviews and "Recommendations for the treatment of minorities by journalists" are included. Available from: *Mugak*, Pena y Goni, 13-1 20002 San Sebastian.

Inmigración: bajo el signo de la sospecha (Immigration: under the mark of suspicion). *Mugak* no 12 (July/September 2000), pp7-12. The article claims that the arguments the PP (*Partido Popular*) uses to justify its reform of the *Ley de extranjería* are as dangerous as its contents. The indirect comparison of immigration and ETA as threats to Spanish society, and the manipulation of statistics to exaggerate the pressure from immigration suffered by Spain run parallel to the denial of foreigners' fundamental rights guaranteed by the Constitution. Also, the frequent use of press reports on the arrival of "illegal" immigrants, or of deaths in the Strait of Gibraltar, to highlight the weakness of the law which was passed last year as being "too permissive", granting excessive rights to "illegal" immigrants and obstructing the authorities' power to control and sanction, is criticised. The solution which has been adopted is "a law against illegals", clearly dividing legal from "illegal" migrants, and granting the state more means to confront the problem. Recognised rights, such as those of reunion, association, unionisation, demonstration and to strike, are denied and all "illegals" must be expelled. The fact that many are unable to become "legal" due to their not being offered employment contracts is disregarded by a law which effectively "turns a vast number of people into 'illegals'", denying them rights, making regularisation difficult, and introducing the permanent threat of expulsion.

Parliamentary debates

Asylum Seekers *Lords* 14.2.01 cols 248-288

Illegal Immigrants *Lords* 20.2.01 cols 590-594

Detention Centre Rules 2001 *Lords* 27.3.01 cols 240-258

CIVIL LIBERTIES

ITALY

New internet censorship

A new law (62/2001) passed in Italy by the Constitutional Affairs Commission on 21 February was published in the official journal

(*Gazzetta Ufficiale*) on 7 March 2001. It makes internet sites subject to Italy's stringent press laws, effectively preventing people who are not "professional journalists" from posting information on websites. This contradicts constitutional guarantees applying to freedom of expression: "Everyone has the right to freely express their thought orally, in writing and any other means of distribution", and press freedom: "The press cannot be subject to authorisation or censorship". By redefining an "information publishing site" as an "editorial product" like newspapers and magazines, regulations and sanctions are introduced.

Websites carrying information regularly are to be registered with competent government offices (the local tribunal), as envisaged in Article 5 of the 1948 press law. The documents required to register include "a declaration carrying the authenticated signatures of the owner and the director, or a responsible deputy director which includes their name and residence, and the person running the news business, if it is a different person from the owner, as well as the title and nature of the publication". Also required are "documents proving the possession of the requirements indicated in articles 3 and 4" (having a director who is responsible for the publication, and an owner who is Italian and on the electoral register), "a document to certify membership of the order of journalists", and a copy of the publication's constitution or statute. Failure to register can be sanctioned with up to two years in prison or a fine of up to 500,000 Lire (£160) under Article 16 of the 1948 Press Law (*Legge sulla Stampa*) dealing with "illegal press" (*Stampa clandestina*). Service providers are likely to take on a controlling function in view of their liability to an administrative sanction of between Lire 200,000 and Lire 1,200,000 if they play any part in the distribution of illegal press.

Punto Informativo, a magazine dealing with IT issues, has launched a petition to oppose the new law, collecting signatures which will be presented to parliament after the May election. "The Net and the Web", it reads, "represent two instruments for the distribution of ideas and information which are totally innovative, and instead of facilitating its development, this law imposes obligations and registrations which are totally incompatible with the technical and libertarian nature of electronic communication." The petition has so far been signed by 45,000 people and received support from some members of the *Socialisti Democratici Italiani* (SDI) and Greens.

The Italian National Press Federation secretary Paolo Serventi Longhi supported the law. He was quoted as saying: "This puts an end, at least in Italy, to the absurd anarchy which allows anyone to publish information online without rules and controls, and guarantees to the citizen/user that minimum quality standards will apply to all information". Nonetheless, professional journalists from the *www.vita.it* site have reportedly offered to take responsibility for other websites until the law is repealed. Professional journalists are members of the *Ordine Nazionale dei Giornalisti* (ONG, National Order of Journalists) who must undergo an examination and pay fees to the guild association to be officially recognised. *Rifondazione Comunista* leader Fausto Bertinotti pronounced himself in favour of the ONG's abolition and called the measure a "threat to liberties".

Legge 7 marzo 2001, no 62 "Nuove norme sull'editoria e sui prodotti editoriali e modifiche alla legge 5 agosto 1981, no 416, Punto Informativo, www.punto-informativo.it "Speciale/Italia, ufficiale la censura su Internet; Legge sulla Stampa, no 47, 8.2.1948.

Civil liberties - new material

Dead Woman Walking - Executed women in England and Wales 1900-1955, Anette Ballinger, ISBN 1-84014-789-X, £50 hardback, pp374. This book analyses the capital punishment of women in England and Wales, based on extensive archive material and case studies and with the

use of feminist theory. Central to the book is the analysis of sexist discourses surrounding the portrayal and explanation of female violence. Seven chapters include the social history of capital punishment and gender, feminist theory and the power to punish. Chapters four to six provide in-depth case material and analysis of women killing their own children, other women and their male partners. Available from: *Ashgate*, Gower House, Croft Road, Hampshire GU11 3HR, 0044(20)1252 331551, ashgate@cityscape.co.uk

Women's Rights at Work - a Handbook of Employment Law. Alison Clark, ISBN 0-7453-1559-3, £12.99, pp233. This book "begins by exploring the potential problems facing women trying to find a job and ends with an examination of how to pursue a claim for unfair dismissal." In an attempt to provide a comprehensive guide to women's rights at work, the book gives an overview of existing employment laws in relation to gender and covers key issues such as inequality with regards to pay, unfair dismissal, sexual harassment, age discrimination and lack of promotion, drawing on a wide range of relevant legislation such as Contract Law, the National Minimum Wage Act, the 1998 Data Protection Act and the 1998 Human Rights Act. Available from: *Pluto Press*, 245 Archway Rd, London N6 5AA, Tel: 0044(2)0 8348-2724, pluto@plutobks.demon.co.uk, www.plutobooks.com.

Hanratty may still be innocent, OK?, Paul Foot. *Guardian* 4.4.01. Foot considers the leaked details of new DNA tests on the exhumed body of James Hanratty, who was hanged in 1962 for the A6 murder, which "conclusively" link him to the crime. Foot, along with a number of other commentators, have shown that eye-witness evidence placed Hanratty elsewhere at the time of the murder and that the police mishandling of the case and "every single new discovery by the [Criminal Cases Review] commission's investigator's pointed to Hanratty's innocence." He argues that "the case for Hanratty's innocence is stronger than it ever was, and that if the DNA suggests otherwise there must be something wrong with the DNA."

Parliamentary debates

Private Security Industry Bill [HL] *Lords* 30.1.01 cols 562-571; 587-626; 643-682

Social Security Fraud Bill [HL] *Lords* 1.2.01 cols 810-865; 883-928

Social Security Fraud Bill [HL] *Lords* 6.2.01 cols 1049-1120

Drugs and the Law *Lords* 21.2.01 cols 871-904

Communications White Paper *Lords* 28.2.01 cols 1223-1262

LAW

UK-SPAIN

Fast-track extradition agreement

On 21 March Jack Straw, the Home Secretary, and Angel Acebes Paniagua, the Spanish Justice Minister, signed a bilateral extradition agreement in London. It commits them "to negotiate a treaty for expedited judicial surrender, based on the principle of mutual recognition" to speed up the "return of fugitives accused or convicted of serious crimes". The treaty, to "be negotiated and signed over the next months", will require primary legislation to come into force, and will "largely do away with" current extradition procedures.

The guiding principles for the treaty outlined in the agreement are 1) the surrender of people accused or convicted of all serious crimes (including terrorism and organised and international crime), 2) the mutual recognition and execution of judicial decisions (including arrest warrants, with the requesting States' specification of offences applying) and 3) the replacement of extradition procedure with a single court hearing "to establish liability to surrender".

The hearing is to be based "on examination of documentation from the requesting State", including: a) the arrest warrant or certificate of conviction/detention, b) relevant requesting State legislation, and c) documentation establishing the fugitive's identity. It will only be possible to refuse requests or file appeals on these grounds. Nationality will not be a ground for refusal, emergency arrest procedures will be introduced, and "temporary surrender" will be provided for if the fugitive is serving a sentence in the requested State or is undergoing proceedings in both countries.

Jack Straw commented that "close police and judicial cooperation across national boundaries" is "at the heart of the successful fight against international crime". A week earlier the Home Office published a consultation document, "The Law on Extradition: A Review" which envisaged a new extradition scheme based on a tiers system: tier one represents "a fast-track extradition regime" comprising "EU and Schengen Convention partners" (see next story). The future UK-Spain treaty is expected to "mirror closely" its proposal for a "backing of warrants scheme". The study recommends that in the hearing, "for the process to be as quick and as straight-forward and simple as possible... any duplication of decision-making should be eliminated and there should be no consideration of matters... which are properly for the court of trial in the requesting state". The distinction between pre- and post-conviction cases is deemed "unhelpful operationally" and "unnecessarily complex".

Warrants transmitted to the court by the Home Office would authorise provisional arrests, although the report suggests that new legislation should allow the arrest of individuals listed on the Schengen Information System (SIS) "without the need for a provisional arrest warrant". Many restrictions to extradition, such as conditions in the requesting state, the dual criminality rule (that the offence be recognised as such in both states), the risk of the fugitive facing the death penalty and the political offence exception, should be eliminated because EU/Schengen membership "is in itself, a powerful protection for an individual". The retention of "a minimum sentencing threshold of 12 months in the requesting state" and the double jeopardy rule as exceptions was recommended. The report also questioned whether the exceptions for military offences (outside the scope of the criminal law), offences "where the requesting state has taken on extra-territorial jurisdiction" when these are not considered offences in the requested state and *in absentia* judgements should apply. It argues that *in absentia* judgements may be interpreted as a defendant waiving his/her right to a fair trial, except for cases where they knew nothing of the court case.

Straw and Acebes anticipate that the treaty may act as a forerunner for an EU-wide "surrender scheme". Spain has taken the lead in efforts to push fast-track extradition to the top of the EU's justice and home affairs agenda. It signed a ground-breaking treaty with Italy in November 2000 for "the pursuit of serious crime by superseding extradition within a common area of justice" which replaces extradition procedures with administrative transfers. Based around the "trust in the structure and workings of the respective judicial systems and their ability to guarantee a fair trial", it covers the mutual recognition of criminal judgements and judicial measures taken to restrict an individual's freedom.

The definition of the scope of the UK-Spain agreement, which includes "all serious crimes, including terrorism and organised and international crimes", is vaguer than that in the Spanish-Italian treaty, which includes "facts related to terrorism, organised crime, drug trafficking, arms trafficking, human trafficking and the sexual abuse of minors", carrying a maximum sentence of no less than four years. The treaty between Spain and Italy goes so far as to convert extradition into an administrative transfer whereby surrender of the fugitive can only be denied if the documentation provided by the requesting state is incomplete

or unsatisfactory, or where the fugitive has been accorded immunity in the requested state.

In negotiations with Spain, France and Portugal refused to subscribe to the treaty between Spain and Italy, and Portuguese Prime Minister Antonio Guterres claimed that it breaches his country's constitutional guarantees for the rights of defendants (see *Statewatch* vol 11 no 1). Stephen Jakobi of *Fair Trials Abroad*, an organisation concerned with fair treatment of defendants in foreign jurisdictions, expressed concern at the unquestioning execution of judgements:

Bilateral agreements with countries that do not observe in practice the rules of fair trials are delivering UK citizens to human rights abuse. In particular, we have had a number of recent cases in Spain, and research projects have demonstrated that a citizen without means is unlikely to have a competent lawyer due to the poverty of the legal aid system and interpretation and translation facilities are likely to be unacceptable due to the lack of professional standards in Spain.

A web of bilateral extradition agreements is developing as a pilot scheme for an EU-wide fast-track extradition system. However, critics suggest it should be preceded by a general raising of standards if judicial scrutiny is to be limited further.

Home Office press statements 13 & 23.03.01; United Kingdom-Spain agreement for a treaty on fast-track surrender of persons accused or convicted of serious crimes, 21.3.01; Trattato tra la Repubblica Italiana ed il Regno di Spagna per il perseguimento di gravi reati attraverso il superamento dell'estradizione in uno spazio comune di giustizia, 28.11.00; The Law on Extradition: A Review, March 2001; Statewatch vol 10 no 5, vol 11 no 1; Statewatch news online, January 2001.

UK

Reform of extradition procedures

The Home Secretary Jack Straw has published a consultation document on extradition which proposes to:

create a simplified, unified scheme of extradition, which aims to remove where possible the complexity and potential delay of the present arrangements, and to produce a framework that will form a much more efficient support to international judicial cooperation whilst ensuring justice for defendants and victims.

The report contains an overview of the new scheme which includes a fast-track procedure (tier 1) "for EU and Schengen partners" that aims to "develop proposals that reflect the Tampere conclusions." Tier 2 would include "any EU member state not yet in tier one by virtue of not having ratified the required EU instrument" (assuming the reciprocity of that scheme) while tier 3 "would include all the remaining countries participating in the Commonwealth Scheme for the Rendition of Fugitive Offenders, as well as our bilateral treaty partners until a treaty is renegotiated." Tier 4 deals with extradition requests from a foreign state with which the UK does not have a general extradition arrangement.

The present extradition arrangements, according to "an analysis of cases over the last ten years confirms that it is in general taking longer to reach decisions in all extradition cases, and that some of them are failing on technical grounds." However, while extradition procedures are in desperate need of reform, simplifying and speeding them up in the manner proposed may result in less "technical failures" but may lead to more miscarriages of justice. It is imperative that any reform of the extradition law takes on board the lessons learnt from the case of Roisin McAliskey who was shunted between Holloway prison and Belmarsh high-security prison for 15 months after the British government pressured the German authorities to seek her extradition for her alleged involvement in an IRA mortar attack on a British army base in Osnabrook in June 1996.

During this time the then pregnant McAliskey was interrogated, held in isolation in a filthy cell that had been used

for a no-wash protest and strip-searched on more than 90 occasions. The case against her, which was described as "puny" by her solicitor Gareth Peirce, was eventually dropped after the Crown Prosecution Service acknowledged that there was no evidence against her. However, the object of the exercise was achieved when a physically and mentally shattered McAliskey left prison suffering from brittle bone disease. She was admitted to London's Maudsley hospital undergoing psychiatric treatment for post-natal depression and severe post-traumatic stress ensuring that her political activities were curtailed (see *Statewatch* vol 10 no 5).

If you wish to respond to the Home Office document you can write to: Extradition Policy Section, Judicial Cooperation Unit, Room 451, Home Office, 50 Queen Anne's Gate, London SW1H 9AT, Telephone 0207 273 3468. It is also available on the Home Office website at: www.homeoffice.gov.uk/oicd/jcu.htm "The law of extradition: a review" Home Office, March 2001 pp87.

MILITARY

UK

Police and army to deploy "unstable weapon of death"

The Labour MP Kevin McNamara has condemned the Ministry of Defence for defying the recommendations of the Patten report into policing in Northern Ireland by planning "to re-equip Army and police in Northern Ireland with a new generation of plastic bullets." The new L21A1 baton round has already been "issued to police forces in England, Wales and Northern Ireland and to the Army" (Jack Straw, *Hansard* 2.4.01, col 68W) and will be "fully in force from June 1". It will replace the L5A7 (model 5, revision 7) version.

In July 2000 a steering committee was formed, comprising the Association of Chief Police Officers, HM Inspector of Constabulary, the Home Office, the Ministry of Defence, the Police Scientific Development Branch of the Home Office, the Police Authority of Northern Ireland, the Royal Ulster Constabulary and the Northern Ireland Office. Their report, dated April 2001, announced that:

A programme to improve the characteristics of the baton round has been recently completed and a new round, designated L21A1, has been produced. The sighting system for the baton gun has also been vastly improved and the new round along with the new sighting system offers much improved accuracy. Medical reviews of the round indicate the new system will reduce the incidence of life threatening injuries by virtue of the increased accuracy.(Paragraph 104)

However, in September 1999, when Chris Patten was finishing his recommendation for research to be undertaken into alternatives to the baton round, the Ministry of Defence was already testing the new generation of plastic bullets leading McNamara to condemn the Ministry for "defying the recommendations of Patten and pushing ahead with a secret plan to re-equip Army and police in Northern Ireland with a new generation of plastic bullets." In August 2000 the Defence Scientific Advisory Council (DSAC) issued a Statement on the new baton round and sighting system which McNamara describes as "chilling reading".

Under the section on "Characteristics" the report notes that:

To achieve...improvements in ballistic performance, the L21A1 differs in mass, velocity, shape and material from the L5A7: It is lighter, faster, aerodynamically shaped and manufactured from a stiffer material. (Paragraph 4)

Moreover, these "improvements" are in themselves likely to lead

to more, not less, injuries;

The improved accuracy from the L21A1 will lead inevitably to an increase in the incidence of impacts to intended targets and thereby an increase in the incidence of non-serious (not life-threatening) injuries. (Paragraph 17)

An example of this potential increase is found in Paragraph 18a which states that: "The use of the L21A1 is likely to increase the incidence of some intra-abdominal injuries" .

Despite the claimed "improved accuracy" under test conditions the DSAC concludes that the round may actually prove unstable in practice:

The probability of ricochet within the normal operational range of batons will be higher with the L21A1.(Paragraph 16e)

Of particular concern here is the likelihood of dangerous head injuries, which the report says are likely to be less frequent, but more serious:

The severity of injuries to the brain is likely to be greater with the L21A1, due to higher pressures in the brain, and greater penetration of the projectile...If the L21A1 does contact the head, and it strikes perpendicular to the skull ("head on"), there is a risk that the projectile will be retained in the head.. (Paragraphs 18 c and d)

In summary, and largely ignoring voluminous reports on the misuse of plastic bullets in Northern Ireland the report concludes that:

The use of L21A1 according to the joint ACPO and MOD policy is likely to increase the incidence of injuries that are not normally life-threatening such as soft tissue contusions and simple bone fractures in limbs.

More tendentious, particularly given the history of the extensive misuse of plastic bullets by the British Army against young people in Northern Ireland, is the conclusion that it "will reduce the overall frequency of serious, life-threatening head injuries..."

The DSAC report also recognises;

that it might be difficult to maintain the acceptable incidence of injury at the low level currently envisaged, in all operational as distinct from test and training circumstances.. (Paragraph 15)

McNamara, who has dubbed the new baton round a "child killer", has claimed that "Everything the government has done on this issue has been shrouded in secrecy". He argues that the use of the weapon should be banned, a proposition supported by the European Parliament, the United Nations Human Rights Committee, Amnesty International and (on paper at least) the British Labour Party. He has demanded clear answers to concerns about the lethality and injury potential of the new weapon, and has tabled 20 parliamentary questions to that end.

Kevin McNamara MP press release 6.4.01; "Patten Report recommendations 69 and 70 relating to public order equipment: a paper prepared by the Steering Group led by the Northern Ireland Office" April 2001; "Statement on the comparative injury potential of L5A7 baton round fired from the L104 Anti-riot gun using the battle sights, and the L21A1 baton round fired using the XL18E3 optical sight." Defence Scientific Advisory Council 21.8.00

EU

European defence: hidden agendas?

According to *International Herald Tribune* writer John Vinocur there is hardly a strict consensus between Germany, France and Britain about how the "decision making capacity" of the common European defence force will evolve. Without this capacity "our undertaking makes no sense" (French Defence Minister Richard). The essential ambiguity in the project is that each of the European countries have different strategic motives.

As to the British position on the distance such a project

would create between America and NATO, British defence expert Charles Grant has declared that "Britain may be disingenuous". In the view of Grant, and his fellow strategic experts Gilles Andreani (France) and Christoph Bertram (Germany) in their book *Europe's Military Revolution*, Europe must be autonomous in defence matters because "[she] has to learn to develop the mentality of the major power which she could become". Since European defence resources are only now developing a European force the EU requires NATO assets for the period of the next ten years. But in the long run "autonomy should become a reality" and the US should use the long transition period to adapt NATO so that Europe can become a more equal partner.

The *International Herald Tribune* observes that no one in the governments of Britain, Germany and France talks about the issue publicly in this way. But "a strong case can be made that this is the direction pointed to by the EU's explicit goal of military and diplomatic integration." According to the newspaper all three leading European players have different motivations in moving ahead with the European force. Britain wanted, being outside the eurozone, to create an ambitious undertaking at the centre of Europe. Germany needed, in light of its history, full inclusion in an integrated foreign and security policy but with a continuing American guarantee as a "safeguard against the resurgence of rivalries in Europe" (Karsten Voigt of the German Foreign Ministry). France sees defence as the most hopeful area to assert its international influence.

Before long these differences could grow into contradictions. Francois Heisbourg, a professor at the *Institut des Etudes Politiques* has already spoken of "Nice: A Diplomatic Suez".

International Herald Tribune 9.4.01.

Military - In brief

■ **European Air group extended.** The members of the European Airgroup (EAG) - since February this year consisting of Britain, France, Belgium, Italy, Spain, Germany and the Netherlands - have signed an agreement in the Hague to share airlift and refuelling assets. The agreement creates a virtual EAG pool of airlifters and tankers. A multinational Airlift Co-ordination Cell will be created by September 2001, most probably at Eindhoven Air Base, the Netherlands. Some members, like Germany want to see this set-up evolve into a true European Air Transport Command, while others, like the UK, are more cautious. According to Dutch Defence Minister De Grave, the EAG will also initiate collaboration on unmanned air vehicles and combat search and rescue. It can be foreseen that the cooperation will have consequences for procurement issues too. *Jane's Defence Weekly* 14.2.01.

■ **France-Italy: agreement on satellite sharing.** During a summit in Turin end of January, France and Italy concluded discussions to cooperate on the military and civil use of multisensor earth observation satellites. The arrangement provides for six spy-satellites, four radar and two high resolution optical. The Italian project will orbit the radar satellites between 2003 and 2006 and will in exchange get access to images from France's planned Helios 2 and its eventual successors. The crux of the matter is exchange of data instead of investment in each others projects. There is a possibility that Germany will take part the arrangements if it launches its proposed SAR Lupe military observation satellite. *Jane's Defence Weekly* 21.2.01.

Military - new material

Fit for intervention? - Die neuen sicherheitspolitische und **militaerische Strukturen der EU** [The EU's new security and military structures].

AMI February 2001, pp49-53.

Die Rote Hilfe. no 1/2001, C 2778 F, pp30, 3,5DM. This newsletter is published by the German defence and solidarity organisation *Rote Hilfe*, which campaigns against politically motivated prosecutions and follows legal developments in civil liberties issues. It covers recent developments in the use of the German Terrorist Act (para 129a *StGB*) against anti-racist and anti-fascist activists and this issues further focuses on militarism and the prosecution of conscientious objectors. It also includes a regular section on prisons and the criminalisation of the Kurdish community in Germany. Available from: *Rote Hilfe Redaktion*, Postfach 3255, 37022 Göttingen, Tel: 0049(0)174-477-9610, Fax: 0049(0)551-770-8009, redaktion@rote-hilfe.de, www.rote-hilfe.de.

"**I didn't join the UN to kill kids**", Denis J Halliday. *Red Pepper* No 82 (April) 2001, pp18-19. Halliday resigned from his position as United Nations assistant secretary-general and head of the UN's "oil-for-food" programme in Iraq in 1998 because he was "overseeing a policy of genocide." He writes: "The reality is that the UN and the USA/UK pact are responsible for punishing the people, the children, of Iraq because they cannot find a means to punish the leadership in Baghdad." Halliday has been campaigning against the policy ever since and in this article he spells out alternatives. *Red Pepper*, 1b Waterlow Road, London N19 5NJ; redpepper@redpepper.org.uk

The people zapper: this secret weapon doesn't kill, but it sure does burn. C Mark Brinkley. *Marine Corps News* 5.3.01. Article on the US Marine corps' Vehicle-Mounted Active Denial System, a "non-lethal" weapon that fires "directed energy" at human targets to "stop them in their tracks". Marine Colonel George Fenton says that "the energy, which falls near microwaves on the electromagnetic spectrum, causes the moisture in a person's skin to heat up rapidly, creating a burning sensation similar to a hot light bulb pressed against one's flesh." If it is used "as directed", he added, "the weapon causes no long-term problems". The amount of time the weapon must be trained on an individual to cause permanent damage remains classified.

Alternative anti-personnel mines: the next generations. Landmine Action & German Initiative to Ban Landmines (March) 2001, pp80 (£8.50). The report notes that, since the 1997 Ottawa Treaty banned the use, production, stockpiling and transfer of anti-personnel mines, NATO governments "are investing in alternative mines that could be just as dangerous and are continuing to manufacture and use others that act like anti-personnel mines." It contains chapters on "Anti-vehicle mines with anti-personnel capabilities" and "Future alternative anti-personnel mines" and makes a number of recommendations. Landmine Action, 89 Albert Embankment, London SE1 7TP, UK; German Initiative to Ban Landmines, Rykestrasse 13, 10405 Berlin, Germany.

Privates on parade. Jim Carey. *Red Pepper* No 82 (April) 2001, pp22-23 & 34. This article considers the "over £1 billion worth of private involvement in the British military" and the role of Halliburton, "a huge US-based transnational corporation whose tentacular involvement in UK services, both civilian and military, have reached sizeable proportions." Halliburton's chief executive officer and chairman was Dick Cheney, until he stepped down last August to become US vice-president.

A new agenda for NATO. George Farebrother. *The Blackaby Papers* no 2 (Abolition 2000) 2001, pp16. Considers the implications for the UK and NATO following the Nuclear Non-Proliferation Treaty Review conference in New York last year. It raises 11 issues that "UK and NATO ministers and officials should address..." Available from Abolition 2000, 601 Holloway Road, London N19 4DY.

Parliamentary debate

Chinook ZD 576 *Lords* 5.3.01 cols 87-109

PRISONS

Prisons - new material

Prison Report. Issue 54 (Spring) 2001, pp28. Latest issue of the redesigned journal contains an edited version of Lord Woolf's lecture to

the Prison Reform Trust ("We still fail our prisoners"), Privatisation Factfile and a section on prisoner education. Available from Prison Reform Trust, 15 Northburgh Trust, London EC1V 0JR, Tel. 0207 251 5070.

Special issue on mass imprisonment in the USA. *Punishment & Society* vol 3 no 1 (January) 2001, ISSN 1462-4745. With the number of inmates incarcerated approaching 2,000,000 this issue focuses on the emergence, over the past 20 years, of mass imprisonment in the United States. Described as "an unprecedented event in the history of the USA", the imprisonment rate is five times as large as it was in 1972, and is six to 10 times higher than European and Scandinavian countries. In his introduction David Garland defines mass imprisonment by two characteristics; i. "a rate of imprisonment and a size of prison population that is markedly above the historical and comparative norm..." and ii. when imprisonment "ceases to be the incarceration of individual offenders and becomes the systematic imprisonment of whole groups of the population." The issue contains 13 papers and an introduction and epilogue by Garland.

Modernising the management of the Prison Service: an independent report by the Targeted Performance Initiative Working Group, Lord Laming (Chair). Home Office 2001, pp34. The working group on "targeted performance improvement" was announced by Jack Straw in January 2000 with the remit "to assist the Prison Service in its commitment to tackle under-performing prisons." This report has sections on i. The blocks to effective performance, ii. Systems of delivery, iii. Setting standards, iv. Levels of accountability and v. The role of the community. It includes 16 recommendations.

Parliamentary debates

Prison Service Lords 20.2.01 cols 667-683

Haslar Prison Lords 14.3.01 cols 961-980

Birmingham Prison Lords 4.4.01 cols 812-815

POLICING

UK

Families reject "cosmetic" changes to PCA

The Police Complaints Authority (PCA) is to be replaced by a "new" body, the Independent Police Complaints Commission (IPCC), in 2003 the Home Office announced in December. The decision follows the publication of a consultation paper last May, which was the result of meetings with the civil rights group Liberty and management consultants KPMG. However, the Home Office report, "Complaints against the police: framework for a new system", has been greeted with disappointment by the United Friends and Family Campaign (UFFC), a coalition of relatives and friends of those who have died in police custody, prisons or psychiatric hospitals. The UFFC have criticised the report on the central issue of "whether the police will continue to investigate themselves" as well as questioning whether other proposals represent a change of policy, rather than a repackaging of the old product.

The UFFC's response to the Home Office report rejects two of the framework's basic premises; firstly it refutes the notion that the PCA is reformable, rather than "discredited", and the Home Office argument that the PCA has "been restricted only by the limits of the legislation under which it operates." Secondly, it repudiates the notion that "public confidence and trust have been undermined by the **operation** of the current system, rather than the concept that police officers should be investigated by other police officers." (emphasis in original). As a result of these flaws,

the report continues:

the proposed Independent Police Complaints Commission (IPCC) can hardly be considered any more "independent" than the Police Complaints Authority and the proposed changes appear to be largely cosmetic.

The UFFC's document then articulates their reasons for "rejecting the main thrust of the Framework document", focusing on a number of issues.

The Home Office's section on "Investigations by the IPCC", identifies "specified categories" that will be investigated by the new body, including deaths in police care or custody; police road traffic accident fatalities; shooting incidents in which a police officer discharges a firearm during a police operation; allegations of serious corruption or misconduct; racist conduct; allegations of a police officer committing a serious arrestable offence or causing serious injury (Section 27). However, the UFFC notes that, such incidents will be investigated by an IPCC team of civilians and police officers, led by a civilian: "Many of the investigations into serious complaints within the 'specified categories'...will continue to be investigated by the police under 'supervision' by the IPCC, just as they are under current legislation by the PCA." They reject this outright, reiterating the need for an independent body to oversee complaints:

UFFC rejects the idea that the IPCC should have the discretion to either supervise or investigate a complaint...Instead, we call for the end of supervised investigations and for all examinations of serious complaints to be subject to a mandatory investigation by a new independent body.(UFFC recommendation 1)

Concerning the structure of the new complaints body the UFFC observes that the proposed structure for IPCC investigation teams include "seconded senior police investigators" and a "mix of police and non-police members" (Section 23), thereby missing "the opportunity to address longstanding concern about the involvement of police officers in the investigation of complaints against fellow officers." They believe that it is "essential" that "the new body must be seen to represent a clear break with the past and be clearly different from a body as discredited as the Police Complaints Authority." To this end they propose:

a new body with its own, permanent investigative staff, with an active commitment to ensuring recruitment from ethnic minority communities. At all levels, the new body must be recruited, given the sensitive nature of police complaints, from outside the policing profession. (UFFC recommendation 2)

The UFFC report then examines the section on the "powers of the new complaints body", which "On paper...are the stronger features of the government's proposals". "However", the report continues, "they are undermined by the limits placed on the powers of independent investigation teams." There is no reason why investigative staff should not have "extensive legal powers to carry out their investigation and to compel individual officers and police forces to co-operate fully with an investigation, backed by recourse to the courts to enforce these powers."

Additionally, the UFFC believes that an independent complaints body should be able to secure the scene of a crime more rapidly. They also reject the notion that police officers facing a potential criminal prosecution should be treated differently from other members of the public. They see "no reason why a warrant for arrest cannot be served by the police on the instructions of an independent complaints body if an investigation uncovers criminal activity." Regarding the legal powers of the new complaints body the UFFC proposes that they:

should be granted to any new independent complaints body and that undermining or failure to assist the work of complaints investigators should be included within the disciplinary code.(UFFC recommendation 3)

The UFFC report identifies a number of other areas of concern including the prosecution of serious cases involving police and

prison officers; disciplinary procedures; appeals and openness. On the latter they recommend "that a complainant should have a mandatory right to access to an investigation report" and with regard to disclosure following a death in custody: "Full disclosure is essential."

In conclusion the UFFC is "very disappointed" with the Home Office framework which falls far short of the "sweeping reforms needed for restoring confidence." The UFFC is critical on "the central issue of whether the police will continue to investigate themselves", because the government's proposals "...amount to little more than the current system with an increased input from non-police personnel." They also note that on transparency, "The government's response has...endorsed only the most basic changes..." Rather than the begrudging changes proposed by the government the UFFC advocates a system that should:

seek to give those with genuine grievances an opportunity for their concerns to be fairly addressed... Arguably, building trust in reforms begins not with convincing policing bodies or even the public at large but with convincing those who feel that they have been let down by the existing system of police complaints.

"Complaints against the police: framework for a new system. A response to the government's proposals" United Families and Friends Campaign February 2001; "Complaints against the police: a consultation paper", Home Office May 2000; "Complaints against the police: framework for a new system", Home Office December 2000.

UK

Damages for injury - but not for death

In May 1995 Brian Douglas became the first victim of the US-style long-handled baton following its issue to the Metropolitan police force (see *Statewatch* vol 5 no 3, vol 6 no 4). Brian and his friend Stafford Soloman were stopped by two police officers in south London - the stop resulted in Brian being hit across the back of the head by one of the policemen; he died from his injuries five days later. Stafford Soloman was struck on the arm with the new baton in the same incident. In 1996 an all-white inquest jury returned a verdict of "misadventure" on Brian, a decision that was condemned by his family as "a gross miscarriage of justice".

Stafford Soloman took a civil action against the Metropolitan police for the injuries that he received. Now the force has agreed to pay £45,000 in an out of court settlement. Brian's sister, Brenda Weinberg, said: "The [Metropolitan police] have refused to accept any form of liability but by making this payment they are admitting liability for their actions. We will not stop until the officers responsible for the death of my brother are prosecuted." Her views were endorsed by Brian's girlfriend, Rochelle Field, who said: "As far as I am concerned this is an admission of liability for what they did to Stafford and Brian because they would not pay out otherwise."

GERMANY

Racist stop and search: does not exist if not recorded

On 1 September 1998 arbitrary stop and search powers (known as *Schleierfahndung* in police regulations) were written into Federal Border Guard Law (§22(1a) *Bundesgrenzschutzgesetz* - *BGSG*). Under the official rationale of fighting "illegal" entry and "organised crime", the new provisions gave border police powers to stop and search any individual without specific evidence

("reasonable suspicion") indicating criminal behaviour (see *Statewatch* vol 10 no 5 for a more detailed account). Now a parliamentary question by the socialist faction (*Partei des Demokratischen Sozialismus* - *PDS*) in parliament has revealed that no data on the national or ethnic background of stop and search subjects or on complaints lodged against a police officer's conduct is being recorded.

The introduction of "non-suspect related" stop and search powers has been marked by controversy, with the *Mecklenburg-Vorpommern* constitutional court having declared parts of the *Schleierfahndung* unconstitutional on 21 October 1999. The Upper House of the parliament only ratified §22(1a) *BGSG* for a specific period (until 31.12.03), after which it would have to be reviewed. When the government was questioned about its plans to prevent racist conduct by Federal Border Guard officers (a Nigerian student filed a complaint after being intimidated in an operation in Trier), the *PDS* MP Ulla Jelpke was told that the official's conduct had not been racist and discriminatory. Further elaboration was not possible as the *BGS* did not record complaints about racist conduct. Jelpke described this response as a "scandal", accusing the government of following the reasoning that "where there is not statistical information, racism and other misconduct cannot be proven".

Despite only 3.5% of arbitrary stop and search operations detecting actual "crimes", the government still contends that §22(1a) *BGSG* represents "an important contribution in the prevention or restriction of illegal entries". During the first six months of last year, 280,728 people were arbitrarily stopped and searched by *BGS* officers at Germany's borders, railway stations and other control points; 797 of these were found to have entered Germany "irregularly". It remains unclear how the government is to assess the law's contribution towards racist conduct without recording complaints or the ethnic minority background of those subjected to arbitrary stop and search. Although the government is obliged to conduct a "continuous evaluation" of the new regulations before the reassessment in December 2003, its evaluation procedures fall far short of those demanded by civil rights and anti-racist groups.

Parliamentary question by MP Ulla Jelpke and the PDS faction (14/3937, 24.7.00); Answer by the government (14/3990, 14.8.00); Heute im Bundestag (no 215, 29.8.00), PDS press release no 2071 (3.1.00) and 2535 (16.3.01)

Policing - in brief

■ **UK: "Voluntary" DNA sampling of officers still causing problems:** The Essex Police Federation (the police equivalent of a trade union) has accused force managers of using "bully-boy tactics" to persuade officers to provide DNA samples under a voluntary scheme. Forensic scientists have advocated a database of police profiles to eliminate their samples from crime scenes but some officers have refused (see *Statewatch* vol 10 no 5, vol 11 no 1). Terry Spelman, Police Federation Secretary, did not disclose the nature of these "tactics", but told the force newspaper that his comments were a response to "a lot of a concerns". He claims "officers are now saying they will not give the sample because of this attitude, when if it had been handled differently, they would have considered it". Meanwhile, the Gloucestershire Federation awaits "final clarification" on whether the threat to remove from operational duties six officers who refused to give samples breaches the Human Rights Act. *Police Review*, 2 & 16 March 2001.

■ **Italy: Carabinieri investigated for Tunisian's murder:** Eddine Imed Bouabid, a Tunisian, was found dead, with a broken skull on the A12 motorway outside Ladispoli (a seaside resort near to Rome) on the night of 15 March. Three carabinieri detained and drove him away in their car after receiving a call

from a pharmacist who claimed that Bouabid was drunk and acting aggressively 25 minutes before he was found dead. They are under investigation for murder after the forensic examination of their car and an autopsy which reportedly revealed that he may have been beaten to death. *Il Messaggero (Cronaca di Civitavecchia)* 3.4.01.

■ **Italy: Policeman "accidentally" shoots dealer.** On 16 February an anti-drugs operation conducted by the *carabinieri* (paramilitary police) in Milano Marittima, a seaside resort on Italy's eastern Adriatic coast, ended with the shooting of a youth and the arrest of his girlfriend. After leaving a restaurant, the two noticed a *carabinieri* vehicle and headed down an alley where the woman disposed of five grams of cocaine by dropping it. Antonello Soligo, a 27-year-old who had already been charged in December for dealing cocaine (five grams), was shot in the back of the head by *carabinieri* officer Franco Lauriola although the unarmed couple made no attempt to escape arrest. Lauriola, who is being investigated for murder, claims that he shouted, telling the couple to stop, and got out of the car in pursuit. When they did not try to run away he slowed down, and claims that this is when he slipped and mistakenly shot Soligo with his Beretta gun from around ten metres. After the shooting, he handed the gun to his colleagues, allegedly saying "My God what have I done!". Soligo's girlfriend denies hearing any warning. She said she heard a car door slam, turned around, saw two men following them "one of whom had a gun, raised it" and shot her partner. She is now facing charges for dealing cocaine. *Il Manifesto*, 18.2.01; *Repubblica*, 18.2.01.

■ **UK: Police fail to overturn unlawful killing verdict:** Hull police officers involved in the death of Christopher Alder have failed to have the unanimous unlawful killing verdict, reached by a jury at an inquest in August last year, overturned. Christopher died of positional asphyxia in April 1998 after being arrested and taken to Queen's Garden police station where he was left unconscious and lying face down in the custody suite for over 10 minutes. His trousers were down, he had been doubly incontinent and blood pooled around his mouth, but the officers took no action to assist him. Hull police had sought a judicial review of the coroner's summing up of the evidence to the jury in an attempt to have the verdict overturned. The Director of Public Prosecutions has announced that five police officers have been suspended from duty and are awaiting trial accused of misconduct in public office (see *Statewatch* vol 8 no 3 & 4, 6; vol 9 no 5). Family solicitor, Ruth Bundy, commenting on the High Court's rejection of the police case, said: "This has been a time-consuming diversion - we hope that the full investigation into how Christopher Alder was unlawfully killed can now resume." The Justice for Christopher Alder Campaign can be contacted c/o Red Triangle cafe, St James' Street, Burnley, Lancashire. Tel. 01282 832319. INQUEST press release 9.4.01.

Policing - new material

Call to order, John Dean. *Police Review* 23.2.01, pp22-23. Article on "a newly developed computer programme which can recognise voices" and "is being used as part of an experimental police-backed scheme to reduce problems posed by young offenders." The trials, launched by the national Youth Justice Board last year, "could work by the young person ringing the computer at a prearranged time, but the preferred method...is for the computer to make the call itself...[The computer] could also be programmed to contact him [sic] at school or similar establishments to check that he was attending."

Operation of certain police powers under PACE: England and Wales, 1999/00, Graham Wilkins & Paul Hayward. *Home Office Statistical Bulletin* 3/01 (February) 2001, pp23. Statistics showing 857,200 persons and/or vehicles were stopped and searched in 1999-

2000 with resulting arrests of 121,300 - a decrease of 11%.

Time for change, Tony Cross. *Police Review* 23.2.01, pp25-26. On the community and race relations "initiatives" in the London borough of Greenwich, where Stephen Lawrence was killed in a racist attack, on the second anniversary of the Macpherson report. It examines local "Community and Race Relations" policies, described by Dr Robin Oakley as "a leading example of "best practice" within Britain and Europe." However, the article concludes by acknowledging that "it would be wrong to give the impression that racial attacks and public service failure are a thing of the past."

Keeping order, Richard Evans. *Police Review* 6.4.01, pp25-26. This article examines ACPO's proposals "for greater cross-border cooperation between [police] forces" when dealing with public order issues, particularly animal rights protests. ACPO secretary, Tim Hollis, identifies four "cornerstones" to their proposals: i. intelligence (the National Public Order Intelligence Unit was formed in April 1999 to "coordinate public order intelligence nationally and...disseminate this intelligence through its close links with force special branches."); ii. the establishment of "a unified command and control structure"; iii. "greater liaison with potential target individuals and institutions in each force area", and iv. legislation.

Changing man, Sean Howe & Roy Penrose. *Police Review* 1.12.00, pp20-22. Howe interviews Roy Penrose, the former director general of the National Crime Squad, who retired last December.

Ground control, John Dean. *Police Review* 2.2.01, pp26-27. Interview with Ron Hogg, the Association of Chief Police Officer's spokesman on football disorder, who "is involved in moves to improve the way nations on the continent work together in identifying known hooligans when they travel abroad to follow their national or team clubs." In particular he advocates the importance of "improved police intelligence, helped by CCTV surveillance systems at many grounds."

Keep off the grass, James Morton. *Police Review* 16.2.01, pp18-19. Morton questions "whether the evidence of jailhouse informers is too dangerous to use." He concludes: "Perhaps the time has come when decisions should be taken that, when the case is so weak that one or more jailhouse snitches are needed, it should not be put to the jury until there is more evidence than the words of those with very serious axes to grind."

Parliamentary debates

Regulation of Investigatory Powers (British Broadcasting Corporation) Order 2001 *Lords* 9.3.01 cols 477-482

Private Security Industry Bill [HL] *Lords* 15.3.01 cols 1005-1024

NORTHERN IRELAND

Ex-RIR soldier jailed for possession of loyalist arms

A former Royal Irish Regiment (RIR) soldier who stored weapons for loyalist paramilitaries was jailed for nine years at the beginning of April. William Thompson, a former Lance Corporal with the RIR before he received an "exemplary" discharge in 1999, was arrested by Norfolk detectives investigating the murder of civil liberties lawyer Rosemary Nelson (see *Statewatch* vol 9 no 3/4). The police found an Uzi sub-machinegun, a sawn-off shotgun, cartridges and components for a pipe bomb in the garage of his Hamiltonbawn home, along with propaganda from the Ulster Freedom Fighters and the Loyalist Volunteer Force.

Also found was material from Combat 18 (C18), a far right organisation whom Thompson had contacted, initially in London and afterwards in Northern Ireland, through a mutual interest in football and football violence. Mr Justice McLaughlin described C18 as "a fascist organisation which glories in its association with

the thinking and philosophy of Hitler."

Collusion between the British military, loyalist paramilitaries and nazi groupings has a long and disreputable history. Johnny Adair, the leader of Belfast's Shankill Ulster Freedom Fighters (UFF), took part in demonstrations organised by the National Front and Blood and Honour. Only last year Steve Irwin, Adair's UFF colleague, who served a sentence for an indiscriminate gun attack that killed eight people, was observed playing a prominent role at a C18 demonstration in London. In March 1999 police raids netted a number of British soldiers who were questioned about their membership of Combat 18 and other far-right groups; two were dismissed (see *Statewatch* vol 10 no 6).

Irish News 5.4.01; *Belfast Telegraph* 4.4.01.

Northern Ireland - new material

Review: Unfinished business: state killings and the quest for the truth, Bill Rolston with Mairead Gilmartin. *Beyond the Pale* 2000, pp336, £12.99 [ISBN 1-900960-09-5]. This substantial volume was inspired by an event at the West Belfast Festival devoted to the "forgotten victims" of the conflict in the North of Ireland - "the people who had lost friends and relatives at the hands of the British state during the previous three decades..." It is built around accounts of 23 instances of state involvement in killings ranging from Bloody Sunday in January 1972 to the fatal beating of Robert Hamill in May 1997. In his introduction Rolston estimates that just over 10 per cent of the deaths in the conflict (357 people) can be attributed to the state, with over 50 per cent of these victims being civilians. He describes six categories of state killing, i. shoot-to-kill operations, ii. excessive use of force in public order situations, iii. individual actions by an armed member of the state forces, iv. collusion with loyalist paramilitaries in advance of the death, v. actions by loyalists but with security force cover-up after the event, and vi. other reasons (such as dereliction of duty, as in the case of Robert Hamill). However, the strength of this powerful book can be found in the accounts given by the friends and relatives of those who died. Their stories tell not only of the killings, but of how they were "ignored, marginalised, vilified and harassed by the same state forces which had killed their loved ones". In the words of the South African poet Antje Krog, speaking of the testimony of victims and survivors to the South African Truth and Reconciliation Commission; "Each word is exhaled from the heart, each syllable vibrates with a lifetime of sorrow." Available from BTP Publications, Unit 2.1.2 Conway Mill, 5-7 Conway Street, Belfast BT13 2DE.

They killed my father, Michael Finucane. *Guardian* 13.2.01. Pat Finucane was a civil rights lawyer who was murdered by loyalist paramilitaries, allegedly with the involvement of a covert wing of the British army - the Force Reconnaissance Unit - in February 1989. Their agent in the unit was UDA intelligence officer and police informer Brian Nelson who was eventually arrested and sentenced to 10 years imprisonment (he served four and a half years) on 23 charges ranging from conspiracy to murder to collecting information for terrorist purposes. Pat Finucane's murder was not among the charges brought against him. Finucane's son concludes his article by asking the salient question: "The state machinery that murdered Patrick Finucane was not established to kill one man. Others died too, and the question that has to be answered is, how many?" The Pat Finucane Centre, which has called for an independent inquiry into the lawyer's murder, can be contacted at The Pat Finucane Centre, 1 West End Park, Bogside, Derry.

A new beginning on policing? Gerry Kelly. *Left Republican Review* Number 2 (September/October) 2001, pp4-7. Article by the Sinn Fein spokesman which describes the "new beginning" of policing in the North of Ireland, as envisaged in Chris Patten's report, as "an indispensable and absolutely minimum requirement if there is to be any possibility of a successful conflict resolution process." Sinn Fein's criticisms of the Bill that is being considered by the British parliament is also succinctly summarised: "Of the original 175 recommendations contained in Patten's report, the legislation subverts 89 of those, lacks clarity on a further 75, and only ensures the implementation of 11." Available from Subscriptions Department, LRR, 13c Grainne House,

New Lodge Road, Belfast BT15 2EH.

Bloody Sunday Inquiry. *Just News* vol 16 no 1 (January) 2001, pp8. This is a special edition dedicated to the "Bloody Sunday" inquiry into the killing of 14 people, participating in a civil rights march in Derry in January 1972, by the British army. The tribunal, which is in its third year, is praised for its thoroughness in the amount of information it has gathered although Angela Hegarty in her editorial notes that the Ministry of Defence "has now issued Public Interest Immunity Certificates to prevent information being released to the Tribunal." She warns of the danger of "the Tribunal collaps[ing] under the weight of trying to find out the truth with one hand tied behind its back." Available from CAJ, 45/47 Donegall Street, Belfast BT1 2BR.

Northern Ireland: An inclusive Bill of Rights for all. Amnesty International, February 2001, pp23 + Appendix "A Bill of Rights for Northern Ireland: Lessons from South Africa" by Gilbert Marcus, pp24. The Multi-Party Agreement, signed in April 1998, mandated the Northern Ireland Human Rights Commission to draft a Bill of Rights for Northern Ireland which would "define rights additional to those in the European Convention on Human Rights..." Amnesty calls for a Bill "which will ensure equal dignity and respect for all persons" and which must "guarantee not only the fullest protection of civil and political rights, but also of social, economic and cultural rights."

Northern Ireland sentencing patterns by court division 1993 and 1997, Deborah Lyness & Hugh Kerr. *Northern Ireland Office Research and Statistical Series* Report no 3 (December) 2000, pp86. The report provides statistical information on sentencing disposals by court division; by offence classification; by gender and court division; by age of offender and court division and sentencing disposals by criminal history and court division.

The Northern Ireland prison population in 1999, Michael Willis & Laura Hague. *Research & Statistical Bulletin* (Northern Ireland Office) 2/2001 (March) 2001, pp24.

Exceptional reasons to kill, Tracey Davanna. *Fortnight* no 392 (February) 2001, pp12-13. Article on the slaying of Peter McBride, a civilian who was stopped and searched by a patrol of the British army Scots Guards in North Belfast; after the search the intimidated McBride ran from the checkpoint and died after being shot twice in the back by soldiers. Two years later Guardsmen Jim Fisher and Mark Wright were convicted of murder and sentenced to life imprisonment, but within six years "exceptional circumstances" led to both men being released from prison and resuming their military careers. The army described McBride's murder as an "error of judgement" and a recently leaked army memo suggests that they are in line for promotion. In the meantime McBride's family are seeking another judicial review of the Army Board's ruling.

Parliamentary debates

Northern Ireland Act 1998 (Designation of Public Authorities) Order 2001 *Lords* 30.3.01 cols 535-538

Northern Ireland Arms Decommissioning Act 1997 (Amnesty Period) Order 2001 *Lords* 3.4.01 cols 726-741

RACISM & FASCISM

UK

Foot in mouth politics

Europe is currently obsessed with the foot and mouth crisis in the agricultural industry, which started with the discovery of the disease on 20 February 2001 in a slaughter-house in the county of Essex in south-east England. On 26 March, government officials accused Chinese restaurants and take-aways of illegally importing meat, claiming it was the cause of the foot and mouth crisis. The national media covered the allegations widely, causing a rapid fall in the amount of customers at Chinese catering

facilities (up to 40%) creating a growing feeling of insecurity in the Chinese community, especially in the countryside.

The BSE crisis, recent outbreaks of swine fever and now foot and mouth have thrown the agricultural industry into chaos. The Ministry of Agriculture Fisheries and Food (MAFF) needed a scapegoat. However, there is no proof of the allegations against Chinese restaurants in relation to the initial discovery of the disease on 20 February. Other reports pointed to the likelihood of the disease being present in the UK for at least three weeks before it was first identified. In response to questions by the Chinese community regarding the allegations the government denies any responsibility. A spokesman of the MAFF said that "there was no inquiry underway into how the allegation surfaced because they were certain it had not originated from MAFF".

Following the criminalisation of the Chinese community after the death of 58 Chinese migrants in June 2000 (see *Statewatch* vol 10 nos 3 & 4), the recent allegations add to the feeling of uncertainty within the Chinese community, particularly outside of London. Jon McKenzi, regional coordinator of the National Civil Rights Movement in south-west England, noted an increase in anti-Chinese sentiment in the area directly after the press coverage. Further, the allegations have directly affected the whole Chinese community economically, with 80% of the Chinese workforce being employed by the catering industry. Wing Wai Chan of the Yangzhou Association, which represents Chinese caterers, called on the government to clarify the situation, saying that Chinese caterers believed the original allegation came from the Agriculture ministry.

On 8 April 2001, a demonstration of about one thousand people took place in London's Chinese district of Soho to protest against the allegations. Jack Tan, an editor of *Dimsum*, a British Chinese community website, said that the community felt stereotyped as a foreign community living like the enemy within. "The fact is that the Chinese community has been in this country for close on to 200 years and since then we have been feeding the British public, doing their laundry, we've been creating jobs", he added. "This irresponsible scare-mongering has shaken the community to its foundations and threatened our livelihoods," Jabez Lam, a Chinese Community leader added.

Guardian 26, 27 & 28.3.2001, *Volkskrant dossier on foot and mouth disease online*, *Independent* 5.3.2001, 3.4.2001, *BBC News Online*.

Racism & fascism - in brief

■ **UK: Leeds footballers retrial:** The trial of the Leeds United football players, accused of assaulting Safraz Najeib in January 2000, was abandoned in March after an article about the case was published in the Sunday Mirror newspaper. The newspaper, which later issued an apology for causing the collapse of the trial, saw their editor, Colin Myler, resign a few days later. Footballers, Lee Bowyer and Jonathan Woodgate, and Woodgate's friends Paul Caveney and Neil Clifford will face a retrial, scheduled for 8 October at Hull Crown Court. The four defendants remain on police bail facing charges of grievous bodily harm with intent and affray for the attack on Safraz. The trial is estimated to have cost £8 million and was abandoned shortly before the jury was expected to reach a decision on the charges. Suresh Grover, of the National Civil Rights Movement and spokesman for the Najeib family, described the decision to abandon the trial as a blow for the family and added that the newspaper article was printed without their consent. He was optimistic about the outcome of the new trial, but was unable to comment further because of reporting restrictions (see *Statewatch* vol 10 nos 1 and 2).

■ **Italy/Europe: Lawyers against racism and fascism:** A meeting to establish a network of European lawyers working in the field of foreigners' rights was held in Rome by the International Association of Democratic Lawyers and the Centre

for the Research and Development of Democracy on 17-18 February 2001. "Lawyers, social scientists and activists engaged in the struggle against racism and fascism" participated, adopting a final resolution which highlighted the continuing threat of racism and its resurgence, with fascist connotations. They expressed concern at the relationship between these phenomena and economic globalisation, and called upon democratic lawyers to combat racism and fascism, proposing that "a regional network of lawyers committed to the defence of migrants facing racist attacks" be established. Practices in detention centres were condemned as "contrary to the principles of international law on human rights", and the need for effective anti-racist legislation to be adopted and enacted was stressed. The "Manifesto of European Lawyers for Equality" announced the setting up of the network and highlighted faults in the European Charter of Fundamental Rights resulting in "third country nationals" only enjoying a second-class status, involving the denial of some basic human rights. They challenge the equation between "illegal" immigration and criminality put forward by some politicians, noting that this causes migration policies to focus on repression and the denial of rights. The document also calls for a universal "right to free movement" as the only means of eliminating clandestinity and the involvement of organised crime syndicates in "illegal immigration". For further information: marcelli@ici.rm.cnr.it

Racism & fascism - new material

Afrikaner in Wien. Wir sind nicht gefährlich, wir sind in Gefahr [Africans in Vienna. We are not dangerous, we are in danger], Heinz Fronek, *asylkoordination*, no 1/2001 pp4-10. This article highlights the extent of police and other institutionalised racism black people have to face in Austria. African asylum seekers have been accused by police and politicians of running a drugs racket in Vienna (see below), accompanied by brutal police raids on asylum seekers homes, with little evidence to support the accusations. Fronek lays out a "chronology of humiliation", stressing discrimination in the labour market, the danger of homelessness and institutionalised racism. Available from: *asylkoordination*, Schottengasse 3a, A-1010 Vienna

AfrikanerInnen wehren sich [Africans defend themselves], Herbert Langthaler, *asylkoordination*, no 1/2001 pp18-22. Over the last three years, as part of "Operation Spring", the African community in Vienna has been subject to violent police raids followed by prosecutions, based on the flimsiest evidence due to an official crackdown on drugs. This article outlines one of the more controversial responses by African community organisations (*Association for Democracy in Africa - ADA*), which is an attempt to "build a bridge" between the police and the black community through common seminars and anti-racist programmes. Although some people have found positive experiences through these programmes, ADA has also been criticised from within the community for its approach to combating institutionalised racism. Available from: *asylkoordination*, Schottengasse 3a, A-1010 Vienna

Context XXI. Arbeitsgemeinschaft für Wehrdienstverweigerung, Gewaltfreiheit und Flüchtlingsbetreuung (Working Group on conscientious objection, freedom from violence and refugee support) No 1/2001, ISSN 1028-2319, pp30, 35 ATS (5DM). Focuses on racism and anti-Semitism in Austria, and includes an interview with Austrian resident African journalist Charles Ofoedu about the criminalisation of the African Community in Vienna and the work of the migrant organisation *die bunten* which has worked for migrants' rights in Austria for the last five years. Other articles focus on anti-Semitism in the Austrian Freedom Party *FPÖ* and in the media, and the history of Jews in Vienna after the holocaust. Available from: *Context XXI*, Schottengasse 3 A/1/59, A-1010 Wien, Austria, Tel: 0043(0)1-535-1106, Fax: 0043(0)1-532-7416, contextXXI@mediaweb.at, <http://contextXXI.mediaweb.at>.

The starting line and the incorporation of the racial equality directive into the national laws of the EU member states and

accession states, Isabelle Chopin & Jan Niessen. *Commission for Racial Equality & Migration Policy Group* (Belmont Press, Brussels & London) March 2001, pp59. Includes two essays, "The further development of European anti-discrimination policies" (Jan Niessen) and "Meeting the challenge? A comparison between the EU Racial Equality Directive and the Starting Line" (Mark Bell).

Race Relations (Amendment) Act 2000, Sadiq Khan. *Legal Action* April 2001, pp23-24. Khan discusses the Race Relations (Amendment) Act and its implications for public bodies. He considers "Public authority", "Exemptions from extended duty to public authorities", "Positive duty on public authorities", "Criminal investigation and proceedings" and "Immigration and asylum appeals".

Stephen Lawrence inquiry. Home Secretary's Action Plan: Second Annual Report on progress. Home Office, February 2001, pp44. This report presents the second audit of the Macpherson report's recommendations following the racist murder of Stephen Lawrence - a "programme [that] lies at the heart of effective policing." It notes that HM Inspectorate of Constabulary (HMIC) "found universal understanding of the new simplified definition of a racist incident proposed by the Inquiry" but also that "there was some resistance to embracing the rationale for recording racist incidents". "Further work" was necessary on stop and search and recent research "showed that the higher use of searches could be associated with reduced effectiveness." The report welcomes "the establishment of the Metropolitan Police Authority in July 2000", supports "an independent system of complaints investigation" and is "particularly pleased by the enactment of the Race Relations (Amendment) Bill 2000."

SECURITY & INTELLIGENCE

GERMANY

Secret service informer exposed

A Munich based "documentary film maker" who had been posing as an activist in the left-wing radical scene in Germany and neighbouring countries for over 20 years, has been exposed as gathering evidence for several secret service agencies. Material found in the flat of Manfred Schlickerieder, who under the code name "Camus" has gathered vast amounts of intelligence on networks in Germany, Italy, Austria and Switzerland, points to connections with not only the German Federal Intelligence Service (*Bundesnachrichtendienst - BND*) and the Bavarian Regional Office for the Protection of the Constitution (*Bayerisches Landesamt für Verfassungsschutz - LfV*), but also to the Italian secret service *SISDE* and the UK industrial intelligence agency, *Hakluyt*. *Hakluyt* was formed by former MI6 members and conducts investigations into the environmental movement for multinational companies such as Shell and British Petroleum.

During the course of last year, members of the Swiss radical group *Revolutionärer Aufbau Schweiz* had become suspicious of their long-standing member who gained access to left-wing activist networks with film projects through the video and documentation centre *Gruppe 2* in Munich; *Gruppe 2* turned out to be a one-man operation. The Swiss activists formed an investigation committee to examine his activities. They uncovered written notes and official correspondence on a scale unseen before in secret service exposures, all of which can now be downloaded in pdf format from the group's website (<http://www.geocities.com/aufbaulist>).

Schlickerieder had meticulously recorded every meeting and personal details of hundreds of activists and their contacts, often with photographs and films, enriched with personal assessments of potentially militant tendencies of individuals and groups. The discovery of official correspondence, the authenticity of which has not been disputed by the relevant secret services, further supports the suspicions that Schlickerieder has

worked for several agencies: a summary report by the Italian *SISDE* on the Red Brigades, details on interception of telecommunications of Red Army Fraction prisoners, interception and observation reports by the Federal Office for the Protection of the Constitution (*Bundesverfassungsschutz*) on alleged members of the French *Action Directe* and letters to Schlickerieder by a former MI6 agent which specifically asks for details on Greenpeace's stance towards possible compensation claims by oil companies after protest actions.

Schlickerieder made a "documentary" on Shell in Nigeria ("Business as Usual - the Arrogance of Power") during which he filmed and interviewed friends of Ken Saro-Wiwa amongst others, and passed these details on to the London-based "business-intelligence bureau" *Hakluyt*, which in turn passed the information on to their multinational clients. Schlickerieder even kept the pay slips issued by *Hakluyt*. Other films, all based on personal interviews with prisoners and activists, investigated the Italian Red Brigades, the German *Rote Armee Fraktion* and industrial action taken by British dock workers. An archive with photos (front and profile view) of members of the *Revolutionärer Aufbau Schweiz*, their personal histories and international contacts, was found at Schlickerieder's office, and activists suspect this archive to be the tip of the iceberg.

Schlickerieder is now thought to have left Switzerland, where he could face several years imprisonment for engaging in foreign spying activities on Swiss soil. Meanwhile, the *Revolutionärer Aufbau Schweiz* has intensified its publicity campaign with planned information tours in Germany and the Netherlands. They are calling for those who believe that they may have been subjected to Schlickerieder's investigations to come forward, so that they can gain insight into the data collected on them.

More detailed background information in German and also in English can be found under www.salonrouge.de/gruppe_2.htm and www.geocities.com/aufbaulist/Gruppe2/Gruppe2.htm e-mail address: rev_aufbau@gmx.ch; taz 3.2.01; Rote Hilfe 1/2001; junge Welt 24.3.01

UK

Repeal the Official Secret Act (ROSA)

A campaign has been launched to repeal the UK's Official Secrets Act following a series of trials and court actions against individuals, journalists, publishers. ROSA's aims are:

A review of the law with broad public consultation and with the aim of replacing the Official Secrets Act with a law which has a clear public interest defence. This should include: A CLEAR definition of national security that requires proof of a threat to the country's existence or democratic structures or the existence of a serious threat to human life. A TEST of substantial damage to be satisfied for all prosecutions, taking into account whether or not the information is already in the public domain. THE BURDEN of proof of damage to rest with the government; PROTECTION of journalists' confidential sources and information; EXTENSION of statutory protection for whistleblowers to the security and intelligence services; Reform of the Official Secrets Act needs to be combined with: AN END to the use of ex parte injunctions preventing publication on grounds of national security; SUBJECTING the Security and Intelligence Services to full democratic accountability; REFORM of government classification procedures; A THOROUGH REVIEW of all current prosecutions."

ROSA is supported by Liberty, the Campaign for Freedom of Information, the National Union of Journalists, the Campaign for Press and Broadcasting Freedom, Statewatch and Index on Censorship.

Contact: Nigel Wylde: nigel.wylde@btinternet.com; Martin Bright: martin.bright@btinternet.com; Tim Gopsill TimG@nuj.org.uk; John Wadham: JohnW@liberty-human-rights.org.uk

EU governments to back demands of the law enforcement agencies for access to all communications data

The new initiative by the EU governments to back the demands of their law enforcement agencies (LEAs) only came to light when *Statewatch* "acquired" a series of EU documents which it had been refused access to. The documents in question were refused on the grounds that:

the matter was still under discussion...[and] disclosure of this document could impede the efficiency of the ongoing deliberations.

The demand of the law enforcement agencies centre on the issue of "data retention", that is the recording and storage of all telecommunications data:

- every phone call, every mobile phone call, every fax, every e-mail, every website's contents, all internet usage, from anywhere, by everyone, to be recorded, archived and be accessible for at least seven years

The move by the EU governments (the Council of the European Union) has been sparked by a draft proposal put forward by the European Commission on "the processing of personal data and the protection of privacy in the electronic communications sector" (COM(2000)385 final, 12.7.00). The proposal would update Directive 97/55/EC but is not "intended to create major changes to the substance of the existing Directive", merely to "update the existing provisions". The proposal thus builds on the principles of the 1997 law and data protection rules established in EU community law.

Also under discussion is a related Communication from the Commission on "Creating a Safer Information Society by improving the security of information infrastructures and combating computer-related crime (COM(2000)890 final) (see *Statewatch*, vol 11 no 1). Here the Commission, in line with community law, emphasises that: "interceptions are illegal unless they are authorised by law when necessary in specific cases for limited purposes".

The EU-FBI surveillance plan comes home

The EU adopted the "Requirements" developed by the FBI on 17 January 1995 - the "Requirements" set out demands on network and service providers to provide the law enforcement agencies with both data from intercepted communications and real-time access to transmissions (see *Statewatch*, vol 7 no 1 & 4 and 5; vol 8 no 5 & 6; vol 9 no 6; vol 11 no 1).

In September 1998 the EU's Police Cooperation Working Party proposed that the "Requirements" be extended to cope with internet and satellite phone telecommunications. The initial report (ENFOPOL 98) went through several drafts and ended up as ENFOPOL 19 (15 March 1999) which gathered dust. It transpired that because of the "negative press" surrounding ENFOPOL 98, which coincided with exposures on the ECHELON spying system, there was a lack of "political support" to move forward on the issue (report on the Police Cooperation Working Party meeting on 13-14 October 1999 by the European Commission).

In the spring of 2000 the EU's Police Cooperation Working Party decided that issues previously discussed under the title of "interception of telecommunications" would now be called "advanced technologies". A report by the same working party (ENFOPOL 52, 12 July 2000) spelled out that "an informal inter-pillar link" should be created between their work and that being carried out under the "first pillar" on the "global Information

Society". The purpose was to bring to the attention of the Telecommunications Council and the Internal Market Council, working on technical and commercial decisions, the need to: "safeguard the possibility of lawful interception".

On 29 May 2000 the Convention on Mutual Assistance in criminal matters was agreed by EU Justice and Home Affairs Council and is now out for ratification by each of the 15 EU national parliaments. This includes provisions for the interception and exchange of telecommunications data based on specific requests but makes **no** provision for the retention of data (except in individual, authorised, instances).

This Convention and the work of intergovernmental groups, like ILETS (International Law Enforcement Telecommunications Seminar) and the G8 Sub group on High-Tec Crime, and the adopted 1995 "Requirements" provide the basis for provisions in new national laws on the interception of telecommunications across the EU - for example the UK's Regulation of Investigatory Powers Act (R.I.P. Act) which came into force on 28 July 2000.

All of these new legal powers and demands on the network and services providers under the "Requirements" do **not**, however, give the law enforcement agencies everything they need as they only cover the exchange and interception of data on the production of an "interception order" (eg: warrants under national laws). None of them provide for the wholesale retention of data and access to it by law enforcement agencies except in specific authorised cases.

EU Data Protection officials come out against data retention

Data Protection Commissioners in the EU and their officials, who attend a multitude of working parties, have long been aware that the "law enforcement agencies" in quasi-secret international fora have been arguing not for data to be retained for 30 days or 90 days (as it is currently for billing purposes) but for much longer - for up to seven years at least. In her annual report for 2000 the UK Data Protection Commissioner, Elizabeth France, said: "The routine long-term preservation of data by ISPs [internet service providers] for law enforcement purposes would be disproportionate general surveillance of communications".

The spring Conference of European Data Protection Commissioners in Stockholm, 6-7 April 2000, issued a declaration on the "Retention of Traffic Data by Internet Service Providers" saying:

such retention would be an improper invasion of the fundamental rights guaranteed to individuals by Article 8 of the European Convention on Human Rights. Where traffic data are to be retained in specific cases, there must be a demonstrable need, the period of retention must be as short as possible and the practice must be clearly regulated by law.

The meeting of the International Working Group on Data Protection in Telecommunications in Berlin on 13-14 September 2000 adopted a common position on the Council of Europe draft Convention on cyber crime (see *Statewatch* vol 10 no 6). This said that the storing of "data on all telecommunications and Internet traffic for extended periods" is:

disproportionate and therefore unacceptable. The Working Party underlines that traffic data are protected by the principle of confidentiality to the same extent as content data (Article 8 of the

European Convention on Human Rights).

The European Commission lent weight to the Data Protection officials' arguments in its draft proposal, put out at the end of last year (and agreed on 26.1.01), on "Creating a Safer Information Society by improving the security of information infrastructures and combating computer-related crime". This says that laws in EU member states have to be in line with community law on data protection and privacy:

safeguards for the protection of the individual's fundamental rights of privacy, such as limiting the use of interception to investigations of serious crime, requiring that interception in individual investigations should be necessary and proportionate, or ensuring that the individual is informed about the interception as soon as it will no longer hamper the investigation (p16)

On 22 March 2001 EU Data Protection Working Party also published a strong opinion on the Council of Europe's Draft Convention on cyber-crime. It said that the provision in the draft proposal which does "not oblige signatories to compel providers to retain traffic data of all communications should in no way be revised". The EU has already indicated that it will adopt this Convention.

The Data Protection Commissioners and others in the field have, together, made formidable arguments for maintaining rights and protections put into place in the EU during the 1990s on data protection and privacy.

Law enforcement agencies fight back

In the face this substantial opposition to the automatic retention and storage of content and traffic data for long periods (for longer than allowed under EU law, around 30 days) the law enforcement agencies needed heavy-weight "political support", denied earlier, from the governments of the EU (the Council).

A far-reaching report sent by the UK National Criminal Intelligence Service (NCIS) to the Home Office on 21 August 2000 set out the demands of the agencies which reflect the conclusions of discussions in international fora in which the UK plays a prominent role, such as in G8 (see *Statewatch*, vol 10 no 6). The report called for the retention of all content and traffic data from all forms of telecommunications (phone-calls, mobile phone-calls, faxes, websites and internet usage) to be recorded and kept for at least seven years. What was of particular note is that this report was presented on behalf of all the UK law enforcement agencies and all the UK's security and intelligence agencies (MI5, MI6 and GCHQ). This suggests that while the primary demand is coming from the former the latter have a major stake too. This report was not in the public domain until December 2000.

Confirmation of a counter-attack by the law enforcement agencies emerging in the EU came in July 2000. As noted earlier, ENFOPOL 52 (12.7.00) from the Working Party on Police Cooperation had called for "an informal inter-pillar link" to be created between their work and that being carried out under the "first pillar" on the "global Information Society". This was the very same day, 12 July 2000, that the Commission put out its proposal on personal data and the protection of privacy (COM(2000)385).

The minutes of the Council's Working Party on Police Cooperation for the meeting on 19/20 July note a lengthy "exchange of views" with the French Presidency on the "relations between the first and third pillars in the field of advanced technologies". It also noted the Commission's proposal and "decided to come back to this item regularly during the next six months".

It was a report from the working party to the Article 36 Committee (senior interior ministry officials from the 15 EU member states) dated 31 October 2000 which began to express the need for urgent action. This report (ENFOPOL 71) said six

countries - **Belgium, Germany, France, Netherlands, Spain and the UK** - had "grave misgivings" about the effect of Article 6 which effectively states traffic data "must be erased or made anonymous upon completion of the transmission" (emphasis in original). The provision would "render it impossible to trace "historical" data and seriously reduce the investigation services' chances of identifying perpetrators.." The report then tries to justify its demands by reference to: i) the 17 January 1995 "Requirements" which it do *not* cover the retention of data indefinitely; ii) the Council of Europe draft Convention on cyber crime which in the latest version excludes general data retention and iii) the Convention on Mutual Assistance in criminal matters where data retention is "implied".

The report concludes by noting that the Commission's proposed measure "is already well advanced" and the Working Party urges the Article 36 Committee to:

examine these observations so that it may use every available channel to bring this problem to the attention of the authors of the draft Directive concerned.

The Working Party on Police Cooperation updated this report in ENFOPOL 71 REV 1 (27.11.00) (see *Statewatch*, vol 11 no 1). This report states the demands of the law enforcement agencies starkly. While noting that their demands:

would probably not be considered proportionate, as it would call into question the very aim of the draft Directive

namely the protection of personal data and privacy, it still goes on to argue that:

It is impossible for investigation services to know in advance which traffic data will prove useful in a criminal investigation. The only effective national legislative measure would therefore be to prohibit the erasure or anonymity of traffic data.

This report urged the Article 36 Committee to "take into account the serious consequences the Directive would have for criminal investigations, public security and justice."

At a meeting on 14 December the Article 36 Committee some delegations (representing their governments) "advocated harmonising the period for storing data." The Committee decided to wait and see "how much account" the Commission took of delegations' (government) comments before deciding "whether to alert COREPER and the Council to the issue."

At the Justice and Home Affairs Council on 15 March this year, Commissioner Vittorino reported that at a hearing which took place on 7 March "the central question of the retention of traffic data dominated discussions".

However, it is clear that the Commission was not taking "much account" of the Council's view so that by 30 March the Swedish Presidency felt obliged to draw up draft Council Conclusions on the issue of data retention. The report recommending draft Conclusions on access by the law enforcement agencies to traffic data was discussed at the meeting of the Working Party on Police Cooperation on 6 April. The minutes of this meeting say that it:

took note of the reservation by the representative of the Commission concerning the procedure followed within the Council

Clearly the Commission was concerned that the Council was, unusually, considering adopting "Conclusions" which would fundamentally undermine its proposed Directive. The two new reports, dated 30 March (see below) were discussed at the Article 36 Committee meetings on 10 April and 3 May.

The key reports

The first new crucial report is ENFOPOL 29 (30.3.01) which reintroduces the highly criticised new definition of the "Requirements" to be laid on network and service providers in "ENFOPOL 98". It is intended that this report and an accompanying Council Resolution will go through the Justice and

Home Affairs Council on 28-29 May.

The report looks at the "operational needs" of the LEAs as applied to the "Requirements" (IURs) adopted on 17 January 1995 (by the EU under "written procedure" and not made public until November 1996). It gives much more detail on their expectations than the bland "Requirements". As such it is an attempt to re-introduce the highly-controversial ENFOPOL 98 (and later drafts) which led to much adverse comment in the media (as a result of which it has been held up since March 1999).

The report looks at: "Applicable services" and makes clear that interception will cover *all* forms of telecommunications eg: ISDN (e-mail and internet usage), mobile phones and satellite phones. On IUR ("International User Requirement") no 1 it says, like ENFOPOL 98, that the law enforcement agencies expect to have access not just to the call content but also to:

user addresses, equipment identities, user name/passwords, port identities, mail addresses etc

plus IP addresses, account numbers, logon ID/passwords, PIN numbers and e-mail addresses. They also want access to the "transmitted" and "received" data and "any telecommunications associated with.. the subject of interception". A redefined "IUR 1.4" states that "associated data" includes "conference calls, call forwarding, mobile calls, network calls, call back services etc" must also be provided on the intercepted subject. An ominous "NB" says it also includes data "where it has been retained by providers in accordance with the requirements of their national legislation". "IUR 1.5" extends the meaning of "geographical location" to "geographical, physical or logical" location and "IUR 1.3" again refers to "national jurisdictions" in the context of excluding data which is not "within the scope of the interception authorisation", ie: some national laws might allow the inclusion of "excluded" data. "IUR 6" is another direct inclusion of a controversial proposal taken from ENFOPOL 98. It says that the LEAs are to be provided with:

a. full name of the person (company) b. the residential address and c. credit card details

This report extends the remit for interception to: all forms of telecommunications (including e-mails and internet usage) and requires personal details on the interception subject. It also contains a number of references to "national jurisdictions" where, by implication, powers may be greater than the norm.

Some EU governments see ENFOPOL 29 ("ENFOPOL 98") as simply "technical" changes to the "Requirements". However, they fail to understand that it is precisely the details of how the "Requirements" will be used that signals the enormity of the threat to data protection, individual privacy and fundamental freedoms.

A greater, and complementary, danger is the battle between the Data Protection officials and the law enforcement agencies over the retention of data (content and traffic details) for long periods (seven years or more) and the right of the law enforcement agencies to access this archived data at will for purposes of investigating any crime however minor or for the purpose of intelligence-gathering - so-called "fishing expeditions".

This is the enormous significance of the "Council Conclusions" in ENFOPOL 23 (30.3.01). The EU governments are, in effect, to tell the European Commission (and European Parliament) that the demands of the law enforcement agencies take precedence over the privacy and freedoms of people. Council officials will "spin" the usual line that "Conclusions" are not binding, but the timing of the decision and the enormity of its effect will brush this aside.

The draft proposal says that: 1. The obligation for operators to erase and make traffic data anonymous "seriously obstructs" criminal investigations; 2. It is the "utmost importance" that "access" be "guaranteed" for criminal investigations; 3. It calls on

the European Commission to: a) to take "immediate action" to ensure that law enforcement agencies can have access now and "in the future" in order to "investigate crimes where electronic communications systems **are or have been used**" (emphasis added); b) the "action" should be "a review of the provisions that oblige operators **to erase traffic data or to make them anonymous**". The "Conclusions" say that the Council:

1. considers it important that the law enforcement authorities be not obstructed or hampered in their efforts to investigate crime, such as dissemination of child pornography or agitation against an ethnic group via the Internet

This blatantly cynical use of "child pornography" and racism has become a standard justification for the extension of EU surveillance powers but not just for these offences - but for all and any offence. These phrases have replaced "organised crime" and "illegal immigration", used for many years in a similar way.

2. understands that this issue.. it is important to find a solution that is well founded, proportionate and well-balanced

It is not possible to "balance" the different interests. There is no need under EU law for commerce to keep data except for very limited periods (eg: 30 days to check billing). The existing "Requirements" and most national laws allow for the gathering of data for criminal investigation in specific instances subject to proper authorisation and legal safeguards.

3. emphasises the opinion of the Council that the obligation for operators to erase and make traffic data anonymous, besides obstructing seriously crime investigations, also can lead to a decreasing confidence in, particularly, the electronic commerce...

The EU governments fail to understand that is precisely the erasure of data and anonymity which creates "confidence in electronic commerce" by citizens. A wholesale reversal of this policy as envisaged would indeed create a "crisis of confidence".

4. invites.. the European Commission to take immediate action with the purpose of ensuring that the law enforcement authorities also in the future will have the opportunity to investigate crimes where electronic communications systems are or have been used.. the action to be taken should comprise a review of the provisions that oblige operators to erase traffic data or to make them anonymous; the object of the action should be to ensure that the purpose of limitations regarding the personal data do not come into conflict with the law enforcement authorities' needs of data for crime investigation purposes.

In effect the Council is telling the European Commission (and the European Parliament) that the proposed Directive on the table has to be changed and that all existing EU data protection and privacy laws have to be reviewed. It is calling for an end to the obligation, under current EU law, of commerce to erase data and to end anonymity and to ensure that law enforcement agencies have the "opportunity" to access all data held.

The next legislative steps

The urgency on the part of the law enforcement agencies is due to the fact that the first proposal they want changed is the Commission's proposed Directive on personal data and privacy in electronic communications is already before European Parliament committees under the co-decision procedure - Citizens' Freedoms and Rights (lead committee), Environment, Industry and Legal Affairs. These committees are due to put a report to the parliament's plenary session on 3 September. However, the Council is likely to adopt a common position at the Telecommunications Council on 27 June. Co-decision means all three institutions (Commission, Council and European Parliament) have to agree on the new measure. The Council is trying to pre-empt the parliament's opinion by putting forward radical changes on the retention of content and traffic data.

Documents on Statewatch Observatory on Surveillance in Europe (SOS Europe): www.statewatch.org/soseurope.htm

European Parliament votes for "deal" with Council

European Parliament agrees "deal" on the new code of access to documents with EU governments; "the parliament could have achieved much, much, more" (Heidi Hautala MEP) ; the campaign for openness is to continue

On 3 May (World Press Freedom Day) the European Parliament voted in favour of accepting the "deal" reached with the Council (the 15 EU governments) on a new Regulation on the citizens' right of access to EU documents.

The vote was 400 in favour, 85 against and 12 abstentions. The two largest political groups in the parliament, PSE (Socialist, social democrat) and the PPE (conservative), together with the ELDR (Liberal) group voted in favour. Three groups voted against: the Green/EFA group, GUE (European United Left) and EDD (Europe of Democracies). On a separate vote which concerned EU member states "respecting the security rules of the institutions" the vote was 370 in favour, 115 against with 11 abstentions. In the previous vote on the parliament on 16 November last year 409 MEPs voted in favour of the PSE/PPE report with only 3 voting against and the Green group abstaining.

The "deal" will be adopted at the meeting of the General Affairs Council on 14-15 May. The new Regulation will enter into force three days after its publication in the *Official Journal* and will "be applicable" six months after its adoption (that is, in November). The public registers of documents, of the Commission and the European Parliament, will be operational one year after entry into force (the Council already has a public register).

The "unholy alliance" between the PSE and PPE on this issue, which was evident from the start of the parliamentary process last summer, had hoped to get the unanimous support of the parliament. However, as the process went on between 16 November, when the parliament first voted on the issue, and the 3 May vote, opposition to a "deal" became more evident both inside and outside the parliament. This was due to the way the "deal" was reached through secret "trilogue" negotiations and to its content.

Civil society and the "unholy alliance"

As the civil society groups who had been active on the issue for many years were excluded from playing any part in the decision-making process they organised a "working seminar" in the parliament in Brussels on 27 February (organised by the European Federation of Journalists and *Statewatch*). The Council, Commission and parliament rapporteurs all attended. As one observer reflected afterwards: "They spent most of their time talking to each other. They came, heard, went away and ignored our views".

All the civil society groups - which also included the European Citizens Action Service (ECAS), the European Environmental Bureau (EEB), Bankwatch, Professor Deirdre Curtin from Utrecht University and Steve Peers from Essex University - said the draft on the table was unacceptable: 1) it removed rights available under the existing 1993 code; 2) it patently failed to meet the commitment in the Amsterdam Treaty to "enshrine" the right of access; 3) it gave more new "rights" protecting the Brussels institutions than to citizens; 4) it should be torn up and they should start again - the 1 May deadline was unimportant, a proper code of access was the priority (it is not unusual for treaty deadlines to be extended).

The Committee on Citizens' Freedoms and Rights was due to discuss the "deal" at its meeting on 25 April and the deadline for amendments to be put in was Wednesday 18 April. On Thursday 12 April (the day before the Easter Bank Holiday), when the

"deal" was all but agreed, the main rapporteur Michael Cashman (PSE), contacted *Statewatch* asking for our views by the Tuesday after Easter. The e-mail said:

If you have any amendments to make to these [the report], I would be happy to receive them. I cannot promise as to my agreement, but I'm happy to see your ideas and see what we can do.

Over the four-day holiday period a coalition of civil society groups prepared detailed amendments with justifications and sent them in on Tuesday 17 April. On Wednesday 18 April Cashman replied rejecting all the suggestions and saying: "I will be sticking as closely as possible to the common text [the agreed "deal" with the Council]."

"Open letter" from civil society

The civil society coalition, not to be ignored, immediately sent its critique to all MEPs. It then prepared an "Open letter" to all MEPs to be sent out on 2 May (the day of the debate) - the full text is overleaf. The letter was put out in the name of all the groups, representing between them hundreds of EU organisations, who had been active on the issue. Over three thousands copies of the "Open letter" were downloaded from the *Statewatch* website that single day. Every MEPs got a copy by e-mail and another in their mail pigeon-holes.

Prior to the vote on the new code, on 3 May, Michael Cashman (PSE), Hanji-Maij-Weggen (PPE) and Graham Watson (ELDR) responded to the "Open letter" by sending their version on events out to all MEPs. It contained four points, with a lot of "spin" and few facts.

First, it proclaimed the new code was "A vast improvement on the status quo" and that, whatever the shortcomings or criticisms, it is: "a self-evolving text which can be, **and will be**, improved over time" (emphasis in original). EU Regulations, which the new code is, are not, and cannot be, "self-evolving": they are binding community law down to the last dot and comma. Second, it claimed that the "deal" reached through the secret "trilogue" meetings with the Council was a "transparent process" and that all the "versions" of the report were discussed in "public committee meetings" - they were not. Indeed at the final, decisive, meeting on 25 April of the Committee on Citizens' Freedoms and Rights (where a verbal amendment undermining national freedom of information laws was introduced) **no discussion was allowed**. Third, it argued there is "A sensible solution for sensitive documents". This refers to the re-introduction of the infamous "Solana Decision" of last summer which is now extended well beyond military and foreign policy to cover public security (policing, immigration and legal cooperation) and international relations (trade and aid). The formula is different, no longer are whole categories of documents to be excluded instead all applications for classified documents (and any document mentioning a classified document) will be considered by the police and military officers who write them who will also decide what is to be put on the public register (if a citizen does not know a document exists how can they ask for it?).

Finally, a series of "bullet points" highlighted what the rapporteurs the achievements of the new code. These included: agencies created by the EU would be covered - but this is now simply a "Joint statement" of intent attached to the code not a legal requirement set out in the text; documents from "third parties" would be accessible, but EU member states (who

comprise the Council of the European Union) are to be given the right to "veto" access as are other "third parties" like NATO; it says there is a "public interest" consideration, but there is not on the central exceptions (Article 4.1) only under the "space to think" provision; "partial access" to be given with passages blanked out, but this is an existing right already decided by the Court of First Instance. Among the many issues the note fails to mention is that this Regulation will override national freedom of information laws where the two are in conflict. If MEPs voted for the new code of access on the basis of this note from the main EP rapporteurs, on whom they have to rely, then they would not have been in possession of the full facts - because it was, without doubt, "economical with the truth".

Secret "trilogue" negotiations

It is not just the content of the new code which are at issue but the

way in which a "deal" over its contents was reached which offends basic democratic standards.

The decision on the new code of access was taken under the "co-decision procedure". This means that the Council, Commission and the European Parliament all have to agree on the measure. Therefore it would have been usual for the parliament, when it adopted its report on 16 November 2000, to have also agreed to it being its 1st reading position. The Council would then have produced its response (unless it agreed with the parliament, which at that stage was most unlikely). The Commission, who put forward the initial proposal, would then have published its reaction. After a 2nd reading in parliament and the Council's reaction to this a further, final process is the creation of a conciliation committee. At each stage the position is public. Instead the parliament rapporteurs decided, under Rule 69, to conduct negotiations with the Council - but Rule 69 only

OPEN LETTER from civil society on the new code of access to documents of the EU institutions"

to: All Members of the European Parliament

from:

European Citizens Action Service (ECAS)

European Environmental Bureau (EEB)

European Federation of Journalists (EFJ)

Standing Committee of Experts on International Immigration, Refugee and Criminal Law, Utrecht (the "Meijers Committee")

Statewatch

"We call on the European Parliament to reject the proposed "deal" offered by the Council of the European Union on the new code of access to EU documents.

We believe this proposal weakens current rights of citizens, it does not fulfil the Amsterdam Treaty commitment to further the cause of open government and ignores important requirements of the Aarhus Convention on access to environmental information (which the Community and all its Member States have signed). It has been drawn up without proper consultation with civil society groups (see Footnote).

Moreover it has been adopted as a result of "trilogue" negotiations with the Council (and the European Commission) which have taken place behind closed doors for over five months. At no stage has a full, open, debate in the parliament taken place on the various substantive issues proposed. We believe that the procedure followed is not only inappropriate given the nature of the topic in question, citizens access to information, but also substantially weakens the nature and purpose of the co-decision procedure as such and parliament's function in that respect.

We ask you not to adopt this approach, but to maintain current rights and insist on a new round of discussions based upon a reaffirmation of the principles of transparency set out in the Amsterdam treaty.

Our criticisms of the "deal" now presented to the Parliament are as follows:

1. It reduces citizens' rights under the 1993 Decision (prior to the "Solana Decision" of last summer) as interpreted by the ECJ and CFI. We have detailed chapter and verse of the specific ways in which the current situation has been worsened, for example, with regard to the institutions "space to think", with regard to the pre-emption of institutions classifications systems over the citizens' right of access to information on decision-making processes with regard to "third parties" (including EU member states) being able to deny citizens access to documents submitted to EU decision-making and with regard to the supremacy of this new draft Regulation over existing national freedom of information legislation in the various member states.

2. It does not meet the commitment taken in the Amsterdam Treaty (Article 255, TEC) to "enshrine" the citizens' right of access to EU documents. This commitment was to ensure that at the very least the 1993 Decision, and subsequent decisions by the courts and the Ombudsman are entrenched in binding legislation, and moreover to include new rights such as the establishment of public registers of all documents with direct access on the internet (subject only to Article 4.1 of the draft Regulation).

authorises negotiations with the Commission.

Informal "trilogue" meetings with the Council were condemned in a report by the EP's Vice-Presidents who said they were only suitable, prior to 1st reading, to "fast-track" uncontroversial measures. Not until 2 April, after the fifth "trilogue" meeting, did the EP actually appoint a formal delegation, give it a mandate and agree it should formally report back to the main committee. Over the five months of secret negotiations the composition of the EP delegation varied. After 2 April the delegation appears to have been limited to Cashman, Maij-Weggen and Watson - thus excluding Heidi Hautala, Astrid Thors, Cecilia Malstrom and other more critical rapporteurs.

As Heidi Hautala, co-president of the Green/EFA group, commented after the final vote the parliament could have achieved "much much more".

Tony Bunyan, *Statewatch* editor commented:

It shows that on this issue the majority in the European Parliament are closer to the governments in the Council than they are to the people who they represent.

Citizens and civil society were promised that the commitment in the Amsterdam Treaty would "enshrine" their rights of access to EU documents. Instead all three Brussels institutions have colluded, through secret negotiations rather than open procedures, to reach a deal that suits them.

The campaign for an "Open Europe", which has gathered in strength over the past two years, will have to continue its work. The call from civil society for an open, accountable and democratic Europe may have been ignored on this occasion but its case stands, unanswered.

A full analysis of the new code will be in the next issue. For news on openness see our website on: www.statewatch.org/news

The new code was intended to be drawn up in the spirit of the foundational article of the European Union, Article 1, namely that: "This Treaty makes a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible". This clearly indicates that the very minimum which is "possible" is the status quo. Anything less than the status quo can be considered in breach of Article 255, read in the light of Article 1.

3. The proposal further undermines democratic standards by seeking to exclude from public access, for example, documents defined as "sensitive documents" covering not just foreign and military policy but also ones concerning public security, immigration, legal measures trade and aid - and any non-classified documents which refers to them. The proposal would give EU member states, and other "third parties" like NATO, a right to "veto" access to documents submitted to EU institutions.

4. The proposal disregards the Aarhus Convention's requirements by limiting the right of access to EU citizens and residents; by phrasing exceptions in mandatory instead of discretionary terms; by failing to require reasons for refusal in all cases; and by other shortcomings.

5. Finally, we are appalled about the way in which this "deal" has been drawn up. It was prepared in secret negotiations instead of going through the proper co-decision process (where the position of each institution at each stage would be on the record and thus open to public debate). This undercover dealing goes against the fundamental values of openness and is, we believe, a disgrace to democratic standards.

In these circumstances, we conclude that the proposal before the Parliament has failed to meet the needs of citizens, it has not taken proper account of the reasoned critiques from civil society, and it will be interpreted - outside of Brussels - as a "deal" which does more to protect the interests of the institutions than the interests of the citizens. Therefore, we ask you not to endorse this proposal and invite the Commission to present a new draft proposal to meet the Amsterdam commitment.

Many months and years have already gone by in the attempt to create meaningful, and inclusive, open government within the European Union and this flawed policy proposal must not be the last word. There is still time to continue the normal process of co-decision or to return to the drafting table. We urge the European Parliament to vote this "deal" down and make a courageous stand for the benefit of the European citizen it represents."

2 May 2001

FOOTNOTE

The views of civil society have consistently been placed on the record: 1) At a conference in the European Parliament on 26 April 1999 (where the Commission's unpublished discussion paper on the new code was the subject of much criticism); 2) At a "hearing" organised by the Committee on Citizens' Freedoms and Rights in the European Parliament on 18 September 2000; 3) At a seminar in the European Parliament organised by civil society groups on 27 February 2001.

Representatives of the Council, Commission and European Parliament were present at these meetings.

Draft Regulation of the European Parliament and Council Regulation laying down the general principles and the limits of the citizen's right of access to documents of the European Parliament, the Council and the Commission, and its explanatory memorandum, drafted by Professor Deirdre Curtin and Professor Herman Meijers for the Standing Committee of Experts in international migration, refugee and criminal law, July 1999, Utrecht, Netherlands.

European Environmental Bureau (EEB) Comments on the European Commission's Proposal for a Regulation regarding public access to documents of the European Parliament, the Council and the Commission 17 March 2000, prepared by Ralph Hallo.

In November 2000 *Essays for an Open Europe*, by Tony Bunyan, Deirdre Curtin and Aidan White was published, sent to all MEPs, and extensively circulated throughout the EU.

Statewatch's Observatory on the new code has carried all the draft proposals and our detailed critique of the draft "common position" was sent to all MEPs

International alarm at “anti-terrorist” prosecutions

“Political provision” in the Criminal Code used to try and control extra-parliamentary activity

In the wake of the prosecution of six men and women on grounds of "membership of a terrorist organisation", anti-terrorist legislation in Germany as well as the conduct of the trial, has been strongly criticised by a wide range of national and international civil liberties groups. On the basis of evidence given by a single witness, obtained under the much criticised crown witness regulation, the Federal Public Prosecutor's Office (*Bundesanwaltschaft*, BAW) is re-opening Germany's history of anti-imperialist/anti-racist struggles and using police methods and security precautions reminiscent of the "terrorist" heyday of the 1970s (see *Statewatch* vol 10 no 1).

Most of the charges relating to specific incidents (physical attacks as opposed to vague allegations of "membership of a terrorist organisation") have passed their limitation period and are now statute-barred crimes. Moreover, the "terrorist" organisation in question, the *Revolutionäre Zellen/Rote Zora*, which was active in Germany for almost 20 years, declared its dissolution almost ten years ago.

Inconsistencies in the evidence to the trial and the lengthy remand periods the accused have served, together with what is seen as the politically motivated nature of the prosecution, has led to renewed demands by extra-parliamentary groups and MPs to abolish §129/129a of the German Criminal Code. This is an anti-terrorist provision which, after the dissolution of Germany's armed resistance movements in the 1980s, has been almost exclusively applied to extra-parliamentary pressure groups such as the anti-nuclear movement, peace campaigns, animal rights groups and squatters, and in particular to the anti-racist and anti-fascist movements.

Background

The Berlin court case sees Harald Glöde, Axel Haug, Sabine Eckle, Matthias Borgmann, Lothar Ebke and Rudolf Schindler on trial for membership of the "terrorist organisation *Revolutionäre Zellen*" and for allegedly participating in various bomb attacks. The charges need to be understood in the context of long-standing attempts by the BAW and the German Federal Criminal Police Office (*Bundeskriminalamt* - BKA) to prosecute active members of the *Revolutionäre Zellen* (RZ), which conducted attacks against several institutions and individuals between 1973 and the late 1980s. The RZ defined their actions as anti-imperialist and anti-Zionist and also had a militant feminist section. Their targets ranged from the Federal Constitutional Court in Karlsruhe (for its role in the anti-abortion law) and the OPEC conference in Vienna in 1975 (in support of the Palestinian struggle), to bomb attacks on German Aliens Offices and individuals held responsible for the curtailment of asylum rights. Germany's racist *Ausländerpolitik* (foreigner politics) were the main target of the RZ's anti-imperialist struggle from the mid 1980s onwards. Unlike the trials of *Rote Armee Fraktion* (RAF) members, every attempted prosecution of alleged RZ members has been unsuccessful.

In 1998 public prosecutors in Germany started to actively pursue Germany's unsolved history of militant resistance with the arrest of Hans-Joachim Klein in France in September 1998. Klein was extradited to Germany in May 1999, and gave evidence under the *Kronzeugenregelung* (crown witness regulation). This allows lighter sentences under its witness protection programme, for those charged with serious offences, if they gave evidence against former colleagues. Klein named Schindler, amongst

others, and both were tried in a regional court in Frankfurt last year. Klein was convicted for his part in the bombing of the OPEC conference in Vienna in 1975, but Schindler was cleared of all charges. The court decided that it "could not verify" Schindler's involvement in the attack based on Klein's evidence.

After Schindler was cleared the BAW challenged the judgement and attempted to retry him for "membership" of the RZ. The Berlin Supreme Court rejected this move referring to the provision of *Strafklageverbrauch*, which regulates that criminal offences related to the same crime cannot be tried when the accused has been cleared of all charges relating to this crime. However, in an appeal to this decision, lodged with the Supreme Court in Karlsruhe, the BAW got the ruling overturned on a technicality: due to a "temporary restructuring and change in the proclaimed aims of the *Revolutionären Zellen* between 1976 and 1981" the Berlin RZ "was not the same terrorist organisation according to 129a", the Court declared. By differentiating between a national RZ and a Berlin-based RZ "cell", the court declared the charge of "membership" in the BAW appeal different from that tried in Frankfurt. The BAW had argued that Schindler had temporarily stopped his involvement with RZ after the OPEC bombing, and then taken up his activities again around 1981. They were therefore prosecuting different "memberships". After just three days in court, and without any charges having been laid due to protracted legal arguments, the judge decided to link the prosecution of Schindler to the other five people in Berlin and ordered a retrial which is set for 17 May.

The Berlin RZ trial

If Klein's statements under the *Kronzeugenregelung* were central to the first trial in Frankfurt those of Tarek Mousli, under the same regulation, are apparently the sole basis for the Berlin prosecutions.

Mousli, who had been active in the Berlin autonomous scene for many years, was arrested in November 1999 on Klein's evidence. During the following months, and particularly on 30 December 1999, one day before the controversial *Kronzeugenregelung* was due to expire, Mousli incriminated several people, some of whom were actively engaged in anti-racist work in Berlin, namely Harald Glöde and Axel Haug (see *Statewatch* vol 10 no 1).

On the basis of Mousli's evidence, Glöde as well as Borgmann, Haug and Eckle are now being prosecuted for "membership of a terrorist organisation" under §129/129a StGB, a regulation which allows for the prosecution and far-reaching investigation of people without establishing if the people in question actually committed a specific crime. The charges they face are often vague for example, the prosecution includes allegations of the kneecapping of Harald Hollenberg (the former chair of the Berlin Foreigners Office, October 1986) and Günter Korbmacher (the then presiding judge of the Federal Constitutional Court, September 1987), despite the fact that both are statute-barred. The BAW justifies this move on the grounds that they portray "the danger of the terrorist organisation RZ".

Although a raid of the *Mehringhof* social centre last December, on the basis of allegations by Mousli that it had a hidden weapons and explosives depot found no evidence (see *Statewatch* vol 10 no 1), Haug is still being charged with having been in charge of the arms depot. Together with Glöde, he is alleged to have run a "coordinating committee" distributing

money to illegal groups. Borgmann, Glöde, Haug and Eckle are further accused of having taken part in actions against Germany's refugee policies. Namely, a bomb attack on the Social Security Centre for Asylum Seekers (ZSA) in Berlin on 6 February 1987. Borgmann, Glöde and Haug are further charged with a bomb attack on Berlin's *Siegessäule* in January 1991. These latter charges ("membership" of the RZ and the possession and handling of explosives) are not statute-barred.

The prosecution has made an extradition request for Lothar Ebke, who is currently resident in Canada.

"Paid perjurers"

With the likelihood of long prison sentences for prosecutions under §129a StGB, many have argued that the *Kronzeugenregelung* encourages false statements because the giving of evidence considerably lessens the sentences.

In Mousli's case, it was not only the sentence which was reduced, but the charges against him were changed during his year and a half of interrogation by the BKA. After a relatively short court case in December 2000, he was sentenced to two years on probation.

The Berlin trial defence lawyers have also pointed out that after removing Mousli's income with his arrest (he ran a Karate studio in the "alternative" district of Berlin), the financial support he now receives under the BKA witness protection programme makes him dependent on the authorities.

Apart from arguing that the *Kronzeugenregelung* solicits potentially fabricated evidence in return for reduced prison sentences and financial rewards, the Berlin defence team has questioned the reliability of Mousli as a witness. In an application to halt the prosecutions for violating the principle of a fair trial, Kaleck, the defence lawyer of Matthias Borgmann listed serious inconsistencies in Mousli's accounts. These had been played down, ignored, or, perversely taken as proof of Mousli's credibility by the prosecution.

On the kneecapping of Hollenberg, Mousli described the wrong escape route and wrongly contended that the escape car was stolen when it had been bought. He described the gunman as male where the RZ and the victim described the person shooting as female. Similar inconsistencies are found in Mousli's statements on the attack on Korbmacher and the bombing of the ZSA Berlin. On the latter he claimed Glöde had been involved in preparing the attack when in fact he was in police custody on the night in question. He claimed the attack was aimed at destroying the central computer system but it was aimed at the main utilities area. These (and other) inconsistencies are explained away by the prosecution: the flight plans had obviously been altered retrospectively without informing Mousli and Hollenberg could not actually take in all the details of the attack. Concerning the false incrimination of Glöde, the BAW contends that Mousli was in fact a credible witness, as he at least had distinguished between definite and less definite recollections.

Kaleck, a defence lawyer, further argues that after one and a half years of intensive discussions with BKA officers - during which Mousli was repeatedly given summaries of his own statement as well as extensive background material on the RZ: "his statement will be a mixture of concrete memories, additions and extracts from his imagination, [and] learnt facts, corrected by the investigating authorities...". All of the defence lawyers question Mousli's credibility claiming that he had been under pressure from the police and prosecution. One public prosecutor said that during one of his interrogative prison visits to Mousli he had made it clear that: "the help in solving the case [*Aufklärungshilfe*] [under the *Kronzeugenregelung*] would have to lead to the investigative authorities catching other perpetrators. In relation to this I talked about "scoops"".

The judge in the trial against Mousli even commented that: "It is noticeable that at the end of December 1999 [close to the

expiry date of the witness regulation] there appears a certain change in [Mousli's] statement".

Political prosecution?

Apart from the vague accusations based on conflicting evidence (see www.freilassung.de/prozess/ra/290301.htm for a detailed outline by Borgmann's defence lawyer), many have argued that the Berlin RZ trial is politically motivated. Probably the most striking aspect of the prosecution's conduct is the prolonged imprisonment of the five men and women on trial. Defence lawyers have made repeated applications for their release, all of which were refused (the most recent on 12 April after the postponement of the trial until mid-May).

The defence says the justification for refusal (danger of flight) is unjustified because all of them live and work in "stable conditions", have no previous criminal records (except one verdict from 1987) and because the organisation in question had declared its dissolution years ago. Remand periods are usually restricted to six months, obliging the courts and public prosecutor to ensure a swift processing of the case. However, the "emergency" nature of §129/129a allows for exceptions.

Their prolonged imprisonment is compounded because they are being treated as "security risks" by the authorities. On their arrests in December 1999, Glöde, Eckle and Haug (who have been on remand for 15 months) were put into isolation cells and transferred to different prisons around the country. This is called "ghosting" (a practice which was used against the RAF to avoid contact between prisoners) which seriously undermines the prisoner's contact with relatives, friends and lawyers.

The "security risk" tactics continued during the trial and was condemned by the Group of International Trial Observers (GITO). During prison visits and on the opening day of the trial, the international observers and members of the public were subjected to what they claim were disproportionate security measures. In court Mousli was accompanied by armed officers and the passports of those attending the trial were copied.

The GITO members (Sean McGuffin, Irish jurist and author, Saskia Daru, member of UNITED, Frances Webber, UK based immigration lawyer and member of the Institute of Race Relations, Pierre Jourdain, from the *Fédération des Associations de Soutien aux Travailleurs Immigrés* and Marcel Bosonnet, Swiss based defence lawyer and member of the Democratic Lawyers Zurich) claimed they were obstructed from conducting their work as they were not allowed to take pen and paper into the courtroom. Their press release says:

"The search of [all] trial observers with the use of plastic gloves [including] the removal of shoes as well as comments by the BAW, which tried to justify the security measures with reference to organised events associated with the trial, left the impression that the public was regarded as a threat...[In this practice] we see a deliberate attempt of deterrence by the court and the BAW".

The prosecution has also been accused of protracting the trial. Relevant files were not passed to the defence and although preliminary investigations finished in early 2000, the Chief Federal Prosecutor only brought charges towards the end of the year, thereby violating the rule of swift processing of court procedures (GITO press release, 21.3.01).

§129/129a

The Berlin RZ trial has raised serious civil liberties concerns about German anti-terrorist legislation created during 1970's. Last year, several parliamentarians called for an abolition of §129/129a StGB, including Green party member Renate Künast, the Minister for Agriculture and Consumer Protection. In 1997 the former liberal Interior Minister Gerhard Baum said that the terrorist legislation was an "overreaction by the state" and that: "a revision of these "emergency regulations", which have not and

are not leading to anything, is urgently necessary".

The use of §129/129a shows that far from prosecuting dangerous "terrorist" for "membership", 85% of prosecutions deal with the lesser allegations of "promoting" organisations. A Munich GP medical assistant was sentenced to 12 months imprisonment for spraying a citation by the German author Büchner ("Krieg den Palästen - analogous to "fight the palaces") and a five pointed star (symbol of the RAF) on an underground carriage. Her friend, who allegedly helped her was sentenced to six months imprisonment.

However, §129/129a is not restricted to charges and sentences which do not require the proof of a specific crime ("promotion" suffices). It allows the investigating authorities to: impose restrictions on the defence (including limiting access to relevant files) and to use increased powers of covert police methods (interception of telecommunications, surveillance, the

use of undercover agents, raids and arbitrary stop and search operations). Civil liberties groups have argued that far from constituting a legal basis for the prosecution of specific crimes, §129/129a is a political provision (*Gesinnungsparagraph*), intended to surveil and control extra-parliamentary movements. The socialist faction of the Lower House of the German parliament has said it will initiate a motion to abolish §129/129a. But Künast is being pressurised to withdraw her signature from the initial appeal. According to Guido Westerwelle, secretary general of the same liberal party (*Freiheitlich Demokratische Partei Deutschlands*), whose members demanded the abolition of §129/129a four years ago), Künast had attacked the "independence of the judiciary".

For all press releases and updates on the current situation of the RZ trial see www.freilassung.de ; jungle world No 13 (21.3.01.) & No 16 (11.4.01).

UK Immigration: Asylum "non-compliance" regulation abused by Home Office

"Sloppy and illegal" decisions will be appealed say immigration lawyers

The biggest scandal of the past year has been the Home Office abuse of "non-compliance" refusal of asylum. The immigration rules give the Home Secretary and his officials power to refuse an asylum claim if the asylum claimant fails to "make prompt disclosure of material facts or to assist" the Home Office "in establishing the facts of the case". A small proportion of asylum claimants have always disappeared, for one reason or another, after putting in their claim, and the rule was designed to enable the Home Office to deal with this perceived abuse of the asylum procedure. The rule was not meant as a means for the Home Office to massage its statistics so as artificially to enhance its decision rate, which is what has happened.

Promises, promises

The July 1998 White Paper contained the promise by the government to reduce the time taken to decide asylum claims to two months, and the total time (including the appeal) to six months. The promise was designed to show that the government was committed to reducing the huge backlog of asylum claims, and to meet criticisms of the other White Paper proposal - the replacement of welfare benefits entitlement (partially abolished by the Conservative government in 1996) by a workhouse-type asylum support scheme. Destitute asylum seekers were to be compulsorily dispersed out of London, put in hard-to-let accommodation and given benefits in kind, by way of board or vouchers. An unacceptable regime was presented as acceptable because temporary claimants would be out of the country, or recognised as refugees, and either way out of the asylum support scheme, in six months.

It was always obvious that the promise to decide asylum claims in an average of two months could not be carried out properly. It is inconsistent with the thorough and careful procedures needed to decide asylum claims. Claimants need time to obtain evidence, whether from political colleagues in exile elsewhere in the world, or medical evidence from doctors or from the Medical Foundation for the care of victims of Torture, which has a waiting list of months for a first appointment. It is even more impossible to meet the two-month timescale for decision when claimants are dispersed all over the country, to areas where immigration lawyers are unknown. Nevertheless, the government pressed ahead. Asylum claimants were greeted at the port with 19-page Statement of Evidence (SEF) forms to complete - in full,

and in English - and return within 14 days before being sent off to Sunderland or Devon or Norwich. The result was massive "non-compliance". If claimants managed to find a solicitor or law centre to help them, the first appointment was usually over a month away. Interpreters were impossibly hard to find, and the filling in of the form would often take two months. When solicitors tried to contact the Home Office to warn them of the situation, and of the fact that the form could not be returned in time, they simply could not get in touch - phones went unanswered, fax machines didn't work and letters were ignored.

The Home Office would then summarily refuse the asylum claim after a month on the grounds that the form had not been returned in time, demonstrating the claimant's unwillingness to "help establish the facts of the case". Between September and November 2000, 38 percent of asylum refusals were for non-compliance - which meant the Home Office had not considered the substance of the claim at all. The first time such claims were considered was on appeal.

As more solicitors have been recruited to help asylum-seekers in the dispersal regions, and have become adept at getting the forms in in time, the non-compliance refusal rate should have dropped dramatically. But over a quarter of claims were still, in February 2001, refused on non-compliance grounds. But, as the Home Office acknowledges, many non-compliance refusals are now "defective" - that is, claims are refused for non-compliance *even though the Home Office received the form in time*. The Asylum Policy instructions of the Home Office say that when this happens, the refusal should be withdrawn with an apology and an interview date set. But officials are now refusing to withdraw the wrongful refusals, saying that it saves time merely to "review" them in the light of the information in the SEF form. The clear implication is that they will refuse most of the claims anyway, so there is no point withdrawing the refusals. A number of challenges are under way in the Administrative Court (the new name for the High Court, when it deals with administrative cases). Meanwhile, the Home Office says that in February 2001 it decided 14,430 claims, the highest number ever. It does not seem to have occurred to the department that the other main statistic in the February statistics - that appeals are up by one-fifth to 10,400 - may be related. Sloppy and illegal decisions will be appealed.

“Pile of pants”

The unorthodox wording of the refusal of one asylum claim, of an Afghani asylum seeker, “the Secretary of State considers your claim to be a pile of pants” - made the news, but the quality of full asylum refusals generally remains abysmally low, despite strong criticisms from (among others) the Refugee Council, Asylum Aid and the Medical Foundation. It is perhaps not surprising, when the material the Home Office produces for its staff is inaccurate and misleading. For example, in Iran, sodomy remains a capital offence and secret executions are rife. Yet the Home Office country assessment claims, falsely, that the death penalty no longer exists for such offences. In fact, the height of the Iranian reformers’ achievements has been to abolish stoning; in a recent speech prime minister Khatami pronounced that it has been replaced by hanging and shooting. The misleading country assessment leads to gays from Iran being told that if they are discreet they will have no difficulties. The Home Office country assessment on Iran also indicates that it is virtually impossible for someone wanted by the authorities to leave the country via Tehran airport, by bribery or use of false documents. This conclusion is based on a quite inaccurate summary of a Canadian report, and is false and misleading. It leads to claims being regularly refused. The refusal of Iranian claimants can be a matter of life and death: one Iranian asylum seeker, Ramin Khaleghi, committed suicide in January 2001 after hearing that his claim had been refused.

Unlawful discrimination?

The Race Relations Amendment Act, which amends the 1999 Immigration and Asylum Act, now makes it possible to appeal a Home Office decision on the basis that it constitutes unlawful racial discrimination. That’s the good news. The bad news is that discrimination on the grounds of nationality, or national or ethnic origin, is not deemed unlawful, so long as the discrimination is in the exercise of immigration functions. Unless immigration officers are foolish enough to make decisions explicitly on grounds of colour, it is hard to see how they will be caught by the Act. One area where they might be is detention, where discrimination on the grounds of nationality is overt.

The decision to detain asylum claimants at Oakington, where claimants whose claims are deemed unfounded are sent, is taken largely on nationality grounds. Detainees spend a week at Oakington, where their claims are lodged and screened. They are then processed or, if they appear not to be unfounded, they are dispersed. The Home Office Operational Enforcement Manual sets out the nationalities who may be detained at Oakington, which include Iraq, Kosovo and China. The contradiction represented by the simultaneous portrayal of Saddam Hussein as one of the cruellest human rights abusers and the pre-judging of Iraqi Kurds’ asylum claims as manifestly unfounded is blatant. The Oakington detention policy is being challenged in the Administrative Court.

Meanwhile, the fate of the Afghani hijack passengers who claimed asylum remains unknown, as the passengers, whose asylum claims were refused and whose appeals were dismissed last year, remain in limbo, as their appeal to the Immigration Appeal Tribunal is adjourned indefinitely.

Vouchers review?

The widespread principled opposition in the labour movement to the dispersal and vouchers regime, with which the government was confronted at the autumn Labour party conference, forced Home Secretary Jack Straw to agree to a review of the voucher scheme. At the time, opponents of vouchers believed the battle was won. But so far the only visible effect of the campaign has been the issue of vouchers in smaller denominations. Meanwhile the misery of the workhouse regime continues undiminished. In

December 2000, a extensive survey of fifty organisations working with asylum seekers across the UK was published by Oxfam GB, the Refugee Council and the TGWU. Eighty-two percent of the organisations surveyed reported that the level of support did not allow asylum seekers to buy enough food, 96 percent reported that it was not enough to buy other essentials, and 62 percent reported that asylum seekers using the vouchers had experienced hostility from other shoppers.

Human rights - where?

The coming into force of the Human Rights Act 1998 and the introduction of the “human rights appeal” against all immigration decisions in October 2000 led to an immediate backlash by the higher judiciary. In a series of cases from October to December, the Court of Appeal and the Administrative court dealt a blow to all who believed that the Act would produce a more robust attitude to the executive. The Court of Appeal led the way, holding in the case of *Amjad Mahmood* that the role of the court remained very much the same as before. Although the Home Secretary was to make sure that deportation or removal from the UK did not violate family life rights, the court would accept his assessment if it was “reasonable”. And it was reasonable, in that case, for the Home Secretary to remove a failed Pakistani asylum claimant to Pakistan, and to expect his British wife and two British-born children to return with him, although they were entitled to live in Britain - if the family was split, it was, the court ruled, effectively their own fault. Earlier in the year, the Court had ruled, in the context of a “national security” deportation, that “national security” meant exactly what the Home Secretary wanted it to mean. In its first case, the Special Immigration Appeals Commission, which was set up after the European Court of Human Rights condemned the lack of an independent review of national security detention and deportation in the case of *Chahal v UK*, established its independence of the Home Office by holding that a Sikh supporter of liberation struggles in Azad Kashmir, Shafiq ur-Rehman, was not a threat to the UK’s national security. The Court of Appeal, to which the Home Secretary appealed, disagreed. Since terrorism was international, and since combatting it depended on international cooperation, a terrorist threat to a friendly state was capable of affecting the UK’s national security.

BIOT

Finally, a historical wrong was righted when the Court of Appeal ruled in November, in the case of *Bancoult*, that the British Indian Ocean Territory Order No 1 1971, which banished UK and Colonies citizens from their home on the island of Diego Garcia, was unlawful. The Order was passed to enable a major American military base to be established on the island, and the islanders have been campaigning to return to their homeland ever since. It is a pity that it took 30 years for the injustice to be recognised.

Home Office Operational Enforcement Manual, 21 December 2000; “Token gestures: the effects of the voucher scheme on asylum seekers and organisations in the UK”, Oxfam GB, Refugee Council and TGWU, December 2000; R on the application of Amjad Mahmood v Secretary of State for the Home Department, December 2000; Chahal v UK, 1996, 23 European Human Rights Reports, 413; Shafiq ur Rehman v Secretary of State for the Home department, reported in [2000] Immigration and Nationality Law Reports, 531; R v Foreign Secretary ex parte Bancoult, Times 10 November 2000.

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1997: European Commission, London
1998: "European Voice" newspaper
1999: The Finnish Presidency

Statewatch has previously been given an award for its work on EU openness by the Campaign for Freedom of Information.

CONTENTS

EU governments to give law enforcement agencies access to all communications data	1
Europe	2
Netherlands/UK: Questions asked whether death of 58 Chinese immigrants was a "controlled delivery"?	
EU: Justice and Home Affairs Council, 15-16 March	
Immigration	4
UK: Compensation claims for illegal imprisonment of refugees	
UK: Charter jets for mass deportations	
UK: Anti-deportation protests at airports illegal?	
Netherlands: Iraqi refugees on hunger strike	
Civil liberties	7
Italy: New internet censorship	
Law	8
UK/Spain: Fast-track extradition agreement	
UK: Reform of extradition procedures	
Military	10
UK: Police and army to deploy "unstable weapon of death"	
EU: European defence: hidden agenda?	
Prisons	11
Policing	12
UK: Families reject "cosmetic" changes to PCA	
UK: Damages for injury - but not for death	
Germany: Racist stop and search: does not exist if not recorded	
Northern Ireland	14
Ex-RIR soldier jailed for possession of loyalist arms	
Racism and fascism	15
UK: Foot in mouth politics	
Security & intelligence	17
Germany: Secret service informer exposed	
UK: Repeal the Official Secrets Act (ROSA)	
FEATURES	
EU governments to back demands of the law enforcement agencies for access to all communications data	18
European Parliament votes for "deal" with the Council on access to documents	21
Germany: International alarm at "anti-terrorist" prosecutions	24
UK: Asylum "non-compliance" regulation abused by Home Office	26

Statewatch website

Statewatch's website carries News online and has a searchable database. The url is: <http://www.statewatch.org>

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