



GENOA

An Italian view of “public order policing” Italian style

○ 482 people injured ○ 280 arrests ○ 2,093 people turned back at the borders ○ Carlo Giuliani shot dead by police

It was thought that European public order policing had sunk to a new low after police opened fire on demonstrators in Gothenburg in June. However, it reached a new nadir in Genoa on 19-21 July when, during widespread demonstrations against the G8 summit, Italian police shot dead Carlo Giuliani. Claims by the Berlusconi government that it would guarantee the right of peaceful protest (as well as maintaining public order and security) were swept aside by practices on the ground. Clashes between the police and demonstrators resulted in 482 people receiving injuries (of whom 355 were protestors, 19 journalists and 108 policemen) and 280 arrests (105 from outside Italy); charges were brought against 230 persons. Forty-nine people were reported to be still in prison [in mid-August]. They have been charged with "subversive association aimed at destruction and looting" (a charge which allows the use of anti-terrorist legislation) and in some cases of resisting a public official.

On 1 August Interior Minister Claudio Scajola survived a confidence vote in parliament. A parliamentary inquiry has been set up, and eight police investigations into the policing of the event have been ordered. Three have so far been submitted to parliament. These relate to a raid on two schools hosting protestors and the independent media centre, allegations of torture at the Bolzaneto prison complex and to the overall management of public order. Three police officials have been removed from their posts: Arnaldo La Barbera, head of *Ucigos* (special operations, antiterrorist central office); Ansoino Andreassi (deputy head of police); and Francesco Colucci (head of Genoa police). A *carabiniere* conscript, Mario Placanica, is under investigation for manslaughter for the death of Carlo Giuliani - the first person to die on a demonstration in Italy since Giorgiana Masi was shot by police in Rome in 1977.

Security deployment

As the number of demonstrators expected in Genoa grew in the weeks leading up to the summit, and the *Genova Social Forum* (GSF) umbrella organisation gave over 700 organisations a common voice, security preparations took shape. Concerns over violent protest and the protection of the G8 meeting, (including secret service rumours that Osama bin Laden would attempt to kill George Bush), resulted in unprecedented measures. Clashes during the EU summit in Gothenburg on 14-16 June and the World Economic Forum in Salzburg on 1-3 July also caused concern at the European level.

Security arrangements included the hiring of a luxury cruiser as residential quarters for the G8 leaders, (George Bush stayed on a US aircraft carrier). Six naval vessels were deployed to patrol the *Porto Vecchio* (Old Harbour) area, with the port closed to non-G8 activities, as was the airport and nearest train stations. Defences for the summit included batteries of ground-to-air *Spada* missiles deployed in the port and airport, 12-ft high barriers of barbed wire mesh strengthened with metal bars and concrete bases around the "red zone", and 18,000 law enforcement officials.

These were drawn from:

- the national police (*Genoa police, flying squads, riot police and the interior ministry-run Ucigos and SCO, Central Operative Service*);
- the paramilitary *carabinieri* (6,300 officers, of whom 27% were conscripts, from the *Genoa provincial command, corps trained in public order, flying squads and ROS, Reparto Operazioni Speciali, special operations, anti-terrorist & organised crime section*);
- the prison service (*GOM, Gruppo Operativo Mobile, prisons flying squad reporting to the justice ministry set up in 1997*);
- and the *Corpo Forestale* (the *Corps of Foresters, on horseback and*

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on foot, replacing carabinieri on the streets after Giuliani was shot in the afternoon of 19 July).

Borders

Italy reinstated border controls by suspending provisions in the Schengen agreement from 14 to 21 July, as Austria had done for the World Economic Forum meeting in Salzburg on 1-3 July 2001. There were reports that German police on the Swiss border used a violent offenders database to prevent people from leaving the country. German lawyers argued that this was an infringement of the constitutional right to personal freedom. They are looking to file a test case against the police over the inclusion of two people on the database who were arrested or identified on peaceful demonstrations without charges being made against them.

On 23 July Interior Minister Scajola revealed that 2,093 people were refused entry into Italy. Some protestors, such as Britons Richard Byrne, John Harper and Julie Quinn, were refused entry and deported by Italian authorities on the basis of information supplied by police in the UK. The three had been arrested during anti-Trident demonstrations in Faslane naval base in Scotland, although only Harper was charged with a standard public order offence. They were denied access to lawyers, were held in a so-called "immigration zone" (or "sterile zone" in the words of the Italian embassy in London) where: "They told us that, as we were no longer on Italian soil, our right to a lawyer didn't exist", Byrne said. UK police officers on the spot told Mr Byrne that in the "immigration zone" the right to see a lawyer was a "utopian" idea.

In some cases where information was not available to the Italian police, this did not stop them from refusing entry. When a ferry carrying several coachloads of Greek demonstrators docked in the Adriatic port of Ancona on the east coast of Italy on 18 July, Italian police carried out identity checks and refused entry to 150 people. Ancona's chief of police said "We received detailed information and they have been sent back to Greece because they were considered dangerous for public order". Greek authorities denied this, and foreign minister Panos Beglitis expressed "strong regret for the brutal behaviour of the Italian police". Scajola later accepted that no information had been received and explained that they were sent back "for belonging to organisations". The head of the Greek section of Amnesty International was among those injured in clashes in the port of Ancona, and was not allowed into the country.

Others were refused entry at the Italian/French border in Ventimiglia, where a demonstration for open borders was held by Italian and French groups on 14 July, and the Italian/Swiss border at Como (Italy)/Chiasso (Switzerland), where clashes were reported on 16 July (see *Statewatch news online*, July 2001). Despite these attempts to deter protestors over 200,000 arrived in Genoa over the ensuing days.

Preventative raids and clashes

Dawn raids of campsites and buildings in which demonstrators were staying started on 18 July and continued through to the early morning of 21 July. These started with a search of the *Carlini* stadium hosting the "disobedient block". Its members included the *Tute Bianche* (White Overalls) whose objective was to use peaceful disobedience to advance and breach the red zone. Other camps, as well as the *Pinelli* social centre, which offered hospitality to anarchists, were searched in dawn raids, and the occupants' identities were recorded. Raids without warrants using anti-terrorist legislation in social centres around Italy in the weeks preceding the summit intensified as it approached, under the pretext of seeking weapons (see *Statewatch news online*, July 2001).

The first demonstration took place in the afternoon of 19 July when 50,000 people joined a march against racism and in

defence of migrants' rights.

On 20 July several marches, including a trade unions march, a Genoa Social Forum march and the civil disobedience block march (which had been banned) headed for the "red zone". Clashes had begun at the edges of the "yellow zone" (a buffer area outside the "red zone") around the civil disobedience march. Police used a water cannon after demonstrators attacked a petrol station and property in Piazza Manin, anarchists then laid seige to *Marassi* prison where police fired teargas, and further clashes developed near to *Brignole* station in Piazza Tommaseo and Piazza Alimondi where twenty-year-old Carlo Giuliani was shot in the head by Mario Placanica, a *carabiniere* conscript, as he approached the jeep with a fire extinguisher during clashes on the margins of the "yellow zone".

Luca Casarini, spokesperson for the *Tute Bianche*, who wanted to enter the "red zone" through peaceful civil disobedience, by padding their bodies, holding shields and passing through the sheer weight of numbers said they took part in the clashes in self-defence after being attacked by *carabinieri*.

Clashes also occurred where the bulk of the demonstration congregated on the southern edge of the "red zone" in Piazza De Novi, where members of the black block were accused of destroying property and offices. Stones were thrown at police who fired teargas before charging and blocking off exits, so that peaceful protestors found themselves trapped and beaten. Witnesses claimed that isolated protesters, "including thirteen-year-olds" were also beaten. Allegations were made by the GSF and political parties that police used neo-fascist infiltrators as *agents provocateurs*.

On 20 July the GSF called for a peaceful march to protest against third world debt and commemorate Carlo's death. Over 200,000 people took part, flowers were left on the spot where Giuliani died the day before and chants of "murderers" were directed at the police. A police attempt to divert the march along the route resulted in more teargas, police charges and running battles.

After the demonstrations were over, at around 3 am at night on 21 July police raided the *Armando Diaz* and *Sandro Pertini* schools. The GSF had moved its headquarters into the *Armando Diaz* school, and an independent media centre was upstairs. Police attacked people, left a room drenched in blood and destroyed computer hard discs, camera film and videotape evidence that lawyers for the GSF intended to use in lawsuits against police officers. Some material was confiscated. An English freelance web designer, Mark Covell, was hospitalised with fractured ribs and a pierced lung. He gave a graphic description of the beatings he suffered, claiming that he pretended to be dead in order to save his life. Vittorio Agnoletto, the GSF spokesman with whom the government negotiated before the summit, was manhandled and struck as he tried to find out what was going on in the school, as were lawyers. Ninety-three people were arrested, most of whom were quickly released; sixty-three people were injured (see *Statewatch News online*, August 2001).

Abuse in detention

A member of Bolzaneto police flying squad said in an interview with *Repubblica* newspaper that members of *GOM*, the prison service flying squad, were responsible for systematic beatings and torture in the Bolzaneto prison complex, which they transformed in preparation for the summit. The policeman says that both the raid on 20 July and subsequent detention in Bolzaneto reflected "a suspension of rights, a void in the Constitution. I tried to speak to some colleagues, do you know what they answered: that...we shouldn't be afraid, because we're covered." He alleges that people were made to stand against a wall without moving for hours on end, women were threatened with being raped with truncheons, while other detainees were beaten for refusing to sing a fascist hymn. They were denied

access to toilets, and some were even urinated on. *GOM* refuted the allegations, and another officer blamed the riot police. The reports of brutality, if not the identity of the perpetrators, were confirmed by accounts from the detainees. A man who only has one leg confirmed that he was made to stand until he collapsed. Simonetta Crisci, a lawyer who is defending protestors, says that charges will be brought over threats that women received in prison and *carabinieri* barracks which, she says, fall under "sexual violence" legislation. Crisci is part of a network of lawyers, the *Genova Legal Forum*, which is acting on behalf of demonstrators who have been charged with offences or are looking to file lawsuits against the police.

The aftermath - collective responsibility

Claudio Scajola addressed the Chamber of Deputies (lower house of parliament) on 23 July as demonstrators gathered to protest outside. He blamed the previous government for choosing Genoa as the venue for the summit and spoke of the overall success of the policing operation. "In Genoa, [there were no] difficulties in carrying out proceedings at the summit, as had been the case in Seattle, Nice and Gothenburg, where there were only 10 or 20,000 protestors, and violent factions of a few thousand persons. Here there were 200,000 demonstrators, and a few thousand violent extremists."

He tried to justify the raid on the GSF as being necessary to prevent clashes on the following day, although no demonstrations were planned and many protestors had already left Genoa. Scajola alleged that the GSF had connived with the black block and failed to isolate violent protesters. "It was clear that... even among the ranks of the GSF there substantial groups nesting which, behind the general idea of civil disobedience were nonetheless intending to infringe the law." He said that numerous weapons, including two molotov cocktails, had been retrieved during the raid, although a GSF spokesperson said that they were taken from a building site within the *Sandro Pertini* school opposite, which was also raided. As evidence of collusion with the black block, he added that a number of black tops had been found.

The government backed Scajola and the law enforcement agencies' role during the G8 summit, accusing the opposition of turning police from being the victims into the perpetrators. Gianfranco Fini went further, hinting at the possibility that there may have been connivance between people sitting on the opposition benches in parliament and the violent demonstrators on the streets. He was answering accusations by former prime minister and DS (Democratic Left) MP Massimo D'Alema who suggested that law enforcement agencies may have acted as they did because they felt they had political protection. He added, "In a democracy one can't mistake the rights of the winner of an election with the use of part of the [state] apparatus."

However, the repression against the anti-globalisation movement in Italy was not a new phenomenon. Police brutality and fascist sympathies among law enforcement officers had already been highlighted during demonstrations against the Global Forum in Naples on 17 March this year.

In the wake of events in Naples, sociologist Salvatore Palidda commented that "The facts which were explained in detail by the victims and numerous witnesses, as well as available footage, show that the brutal violence with which many officers from the police forces assaulted demonstrators in Naples was organised thuggery, sometimes overtly fascist." He claims that behind ideas such as "zero tolerance" the "social construction of a new violent [form] of social control is taking place" to impose social discipline. In an article for *Il manifesto* following the summit, Palidda implied that the violence was premeditated: "For weeks people in Genoa had often heard police officers promising to deliver beatings and brutal "lessons"". This view was confirmed in a letter by three activists from *Paci Paciana* social centre in Bergamo who were arrested

in Genoa on 18 June, and claimed that a police officer attacked one of them and issued threats about what would happen in Genoa (see *Statewatch news online*, July 2001).

International condemnation

As wounded demonstrators began to return home, having been denied access to lawyers and consular staff for 48 hours, international condemnation concerning policing at the summit increased. German Green MP Hans Christian Stroebele evoked South American dictatorships to describe events in Genoa. The Berlin police force commissioner stated that no one from his force would have shot a protestor in similar circumstances. The Austrian spokesman for the European Green MEPs Johannes Voggenhuber was told by female Austrian detainees that they were made to strip and suffered sexual harassment in detention. The Austrian foreign minister Benita Ferrero Waldner was particularly critical of the failure by Italian authorities to free sixteen members of the *noborder VolxTheatreKarawane*, a theatre company which has been touring border camp initiatives around Europe (see *Statewatch News online*, August 2001).

Stephen Jakobi, director of *Fair Trials Abroad*, an organisation concerned with the fair treatment of people in foreign jurisdictions said: "Consular access in defiance of international law was denied to hospitalised and imprisoned Britons for at least 48 hours" adding that "the proper investigation of complaints and fair judicial treatment of the large number of Europeans arrested ... will be a test that will determine the way that cooperation in judicial affairs proceeds within Europe from now on". *Amnesty International* said Italian authorities "should institute a thorough review of the current training and deployment of law enforcement officers involved in crowd control and take all necessary measures to ensure that officers are adequately equipped and trained to employ non-lethal methods of crowd control, and that no more force than usual is used to control disturbances". AI also asked for an independent inquiry to be established.

A backlash in public order policing was expected after clashes in Gothenburg during the EU summit on 15 June (see *Statewatch news online*, June 2001). In Gothenburg the escalation was marked by the shooting of three demonstrators, including Hannes Westberg, who was in a coma for several weeks. EU governments praised the police, and regret for the shooting was overshadowed by the clamour for measures to prevent the protesters from leaving their countries to join protests in another.

After Genoa, the Italian government accepted the police practice whereby peaceful and direct action non-violent protestors were considered legitimate targets simply because they were on the streets while violence was taking place. Evidence of abuse and international criticism resulted in the removal of high-ranking police officers as a face-saving measure but leaves the responsibility of the government, ministers and other police bodies unanswered. The behaviour of the law enforcement agencies in Genoa fits a pattern of the increasing criminalisation of protest and social milieus (particularly in Italy) - but have the Italian police gone too far this time or will this be the pattern for future protests across the EU?

Urgent information from the government on the serious incidents which occurred in Genoa on occasion of the G8 summit - Interior Minister's statement in the chamber of deputies (23.7.2001) (www.camera.it); Statewatch news online, June & July 2001; Fair Trials Abroad press release 25.7.01; Amnesty international press release EUR 30/004/2001 22.7.01; Corriere della sera 15.7.01-8.8.01; Repubblica 8.5.01 & 15.7.01-8.8.01; Il manifesto 23.7.01; Times 17.7.01, 20.7.01, 24.7.01, 28.7.01; Guardian 20.7.01, 24.7.01, 27.7.01; Independent 20.7.01; Salvatore Palidda "Vecchi e nuovi tipi di violenza dell'ordine liberista", 24.7.01; [www.minintero.it](http://www.mininterno.it)

See also: The "enemy within": plans to criminalise protests in Europe, page 29

Justice and Home Affairs Council

The Justice and Home Affairs Council in Brussels at the end of May had before it four proposals put forward by the French Presidency in July 2000 on "illegal" immigration and migrants rights (see *Statewatch*, vol 10 no 3/4).

Carriers liability

This draft Directive was discussed in the Mixed Committee (the JHA Council plus Norway and Iceland, re Schengen arrangements). The press release of the meeting simply concentrates on the financial sanctions not the implications for asylum-seekers and refugees. The "harmonised" financial penalties are to be either a maximum of at least 5,000 euros or 3,000 euros (minimum) or a maximum lump sum of 500,000 euros (over £300,000). The sanctions will apply to carriers who transport any person who does not have a visa or other travel documents. The effect will be an obligation to return migrants to the country from which they came or their country of origin from which they are fleeing.

Amnesty International said that any sanctions should not deny asylum-seekers their rights to proper asylum procedures and that "carriers' employees should not be asked to perform duties of the state in recognising who is entitled to protection under international and national law". *Statewatch* observed on the proposal: "The carrier sanctions Directive will force even more asylum-seekers to have recourse to illegal means if they want to enter the Community". The measure was formally adopted on 28 June at the Telecommunications Council with the title of "Council Directive supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985".

Facilitation of unauthorised entry and residence

The Council reached "political agreement" on the text of a draft Directive defining those who "facilitate" the "unauthorised entry and residence" or "illegal employment" of migrants whose presence in the EU is not authorised. Such actions are to be viewed as a serious criminal offence covered by a draft Framework decision with a maximum sentence of not less than eight years if financial gain is involved and "not less than six years" in other situations.

While there has been substantial opposition to this proposal from civil society groups the only problem for the Council was the proposal to insert a clause to protect those helping migrants for "humanitarian" reasons. This was opposed by Austria and the result is that EU states *may* decide not to impose criminal sanctions where the "facilitation" is for humanitarian motives.

Member states *have* to provide for serious criminal sanctions for "any person who intentionally assists or tries to assist" a person who is not a national of a Member state to enter or transit and "any person" for "financial gain" who does the same. These criminal sanctions will also apply to "any person who is the accomplice of the instigator of any conduct as referred to".

Groups and organisations helping migrants could be fined and staff jailed as could family members.

Amnesty International said: "Measures intended to stop those who smuggle human beings in breach of immigration laws should not have the consequence of preventing asylum-seekers from finding safety and criminalise those who assist them in doing so".

Mutual recognition of expulsion orders

The Council adopted, as an "A" point without debate, a

Directive on "the mutual recognition of decisions on the expulsion of third-country-nationals". An expulsion order from the EU issued by one member state has to be recognised by another member state in many cases if the person has been issued with a residence permit. The grounds are very general and the standards very low and are: a) if the third country national has been issued with an expulsion order based on being "a serious and present threat to public order or to national security and safety" but the standard is simply that they have been convicted of an offence carrying just one year in prison or "there are serious grounds for believing" they have committed a serious offence or "solid evidence of his intention to commit" such an offence; b) an expulsion order "based on a failure to comply with national rules on the entry or residence of aliens".

Temporary protection and family reunification

The Council reached "political agreement" on a draft Directive on temporary protection "where there is a mass influx of displaced persons in need of international protection". It would provide for minimum standards "to ensure a balance in the efforts of Member States" once "the Council has decided that a mass influx has occurred". A number of member states wanted such decisions to be based on unanimity but the Council decided it should be decided by a qualified majority.

The Council held a "general discussion" on the draft Directive on family reunification which has been on the table for 18 months. The EU governments on the Council have a number of disagreements. These include: whether a "family" only includes the "spouse and children including adopted children" or whether other family members should have the same rights; whether the family has to prove it has the ability to accommodate and support other family members; whether the right to reunification should only apply for the first four years (the period up to the granting of a residence permit); there is no agreement in the Council as to whether such family members should have an automatic right to employment; the granting of an "independent residence permit after at the latest four years of residence".

The Council has the additional problem in that Austria, which operates a system of quotas, has entered "a general reservation on the whole Directive".

Other matters discussed

Protocol to the 2000 Convention on Mutual Assistance in Criminal Matters: this was presented under the French Presidency in June last year as a draft Convention but was later changed to a draft Protocol to the 2000 Convention. The proposal concerns requests for financial and banking information between member states. The main issue concerning Ministers was the proposal to remove "as far as possible" on search and seizure the dual criminality requirement (that an offence has to be considered an offence in both the requesting and the requested Member State). This was deleted from the draft proposal.

Regulation on the taking of evidence in civil and commercial matters: The Council adopted a Regulation on cooperation between courts in the EU, in particular for a request to a court in another state to take evidence or a request to take evidence directly in another member state. The UK and Ireland are to take part in this measure, Denmark will not.

Financing SIS II: the Schengen Information System (SIS) in Strasbourg is currently funded on an inter-governmental basis (that is, each participating state pays a percentage). SIS II is a new computer database system intended to include the applicant countries in the future. There was no agreement in the Council to continue inter-governmental funding and consequently SIS II will be paid for out of the main Community budget.

Europol agreements: the Council noted the conclusion of the first three agreements on the exchange of intelligence and information between Europol and Norway, Iceland and Interpol.

G8 24/7 network: the Council adopted a Recommendation that all EU states join the G8 24 hours/7 days a week network on contact points to combat high-tec crime (this includes "hacking", viruses plus tracking offences). The network was set up in 1998 and the members of the network are: Australia, Brazil, Canada, Denmark, Finland, France, Germany, Italy, Japan, Luxembourg, Russia, Spain, Sweden, UK and the USA. Nine EU states are currently involved and the other six are now being urged to join. The "contact points" are not just for the exchange of information but "should be able to take operative measures".

European Judicial Network: the Council adopted a Decision establishing the European Judicial Network in civil and commercial matters to facilitate judicial requests and information exchange. It will extend the EJN for criminal cases which was set up in 1998.

known, but the long-term prospect of a network of interlinked number-plate recognition cameras on Britain's roads clearly has enormous scope for the surveillance and tracking of vehicles.

CCTV cameras are also being planned to enforce congestion charges planned for London in 2003. Motorists who wish to enter central London are to be charged a daily tariff, which must be paid in advance. One-hundred-and-eighty CCTV cameras will take pictures of the number plate of every vehicle entering the central zone, these will be automatically crosschecked and the details of those who have not paid will be recorded. A spokesman for Transport for London, an arm of the new Greater London Authority responsible for operating the cameras, said that they "were keen to help the police with security issues".

The Association of London Government has drawn-up plans to introduce CCTV cameras dealing specifically with parking offences. The new system would be based on operator monitored CCTV cameras who would look for offences where people park illegally for several minutes, perhaps to go to cash machines or even just to work out their location.

CCTV is also used to prosecute people for driving in bus lanes and according to media reports the government is considering using zoom-lens cameras to check tax-discs (which show when a vehicle's annual road tax expires).

Motoring organisations are incensed by the plans. According to the Association of British Drivers:

It is fundamentally wrong for those bodies responsible for setting and enforcing laws to benefit financially from doing so - it is inevitable that the criminal law will cease to serve the public interest, instead becoming a political tool for raising money.

Statistics exemplifying the huge revenues have been bandied around the media. Apparently, "Britain's most notorious speed camera bags a vehicle every minute...raking in £840,000 per week" and 4.1 million parking tickets were issued in London last year. Most of the income generated is collected by local authorities.

Under recent legislation, however, police authorities can now directly retain a portion of the revenue generated by speed cameras. In April 1999 the Home Office authorised eight police forces' participation in "pyramid schemes" allowing them to borrow money for new cameras. All they had to do was provide the Home Office with a business plan for new installations, setting potential revenue (fined drivers) against capital outlay (cost of system). In July, this practice was authorised across the UK when the Vehicle (Crime) Act 2001 was adopted (Article 38).

When the Bill was debated, junior transport minister Keith Hill refuted accusations that the clause was a means of raising revenue for the police. "It goes without saying that this is a measure concerned with road safety and the prevention of road accidents. It could not be for any other purpose, and it would be grossly irresponsible and unfair to suggest otherwise", he replied. After the Act was adopted, Richard Brunston, Chief Constable of Wales and head of the ACPO traffic technology committee said that motorists should expect the number of cameras on Britain's roads to treble and Superintendent Steve Lovegrove, of Staffordshire police warned of "the discriminatory use of mobile camera units, for the purpose of keeping ticket numbers at the right level." Estimates suggest that there are at least 2.5 million CCTV cameras in the UK.

Hansard, 30.1.01 (col. 229); Evening Standard, 25.6.01; The Independent, 26.6.01; Guardian, 18.7.01; Police Review, 29.6.01; Association of British Drivers: www.abd.org.uk; Speedcheck Ltd: www.speedcheck.co.uk.

Civil liberties - new material

We should be outraged by these DNA databases, Helena Kennedy. *Guardian* 14.5.01, p20. The Labour peer and president of the Civil

CIVIL LIBERTIES

UK

Traffic CCTV cameras: more surveillance and license to print money?

Motoring organisations are up in arms about next generation speed cameras and plans to introduce "parking cameras" that have followed new legislation enabling the police to keep some of the revenue raised. Civil liberties concerns about the surveillance technology itself have been overshadowed.

The first speed camera was installed on Britain's roads in 1991 and now there are some 4,300, each costing between £30-40,000. These cameras use Gatsometer speed-detectors (after the Dutch rally-driver Maurice Gatsonides who helped develop the technology in the 1950s) linked to a stand-alone camera that photographs any vehicle exceeding a set-limit.

New technology called "SVDD" (Speed Violation Detection Deterrent) instead uses a linked network of cameras that read vehicle number plates along a measured baseline of up to 500 metres. Each camera records the number plates and precise times that vehicles pass. Number plate records are then matched and an average speed for the vehicle is calculated. If this is above the "trigger" speed, the digital image, which clearly records the number plate and who is driving, together with the date, precise time, location and speed, is transmitted to computers at the driving licensing authority. Speeding fines are sent out automatically to the registered owner of the offending vehicle. The system has the potential to process some 60,000 tickets per-hour.

A private company called Speed Check developed the technology, testing it on British roads between 1993 and 1995. The company received Home Office Type Approval in April 1999 and SVDD cameras are known to be operating on roads in Nottinghamshire and Gloucestershire.

Number plate-recognition based surveillance systems have been used extensively by City of London police since 1997, with all vehicles entering the so-called "ring of steel" around the City checked against police computers. The extent to which the new SVDD technology is compatible with existing systems is not

Liberties Trust condemns the government's DNA legislation, which has "been rushed through parliament without adequate parliamentary discussion or public debate." The Bill will, observes Kennedy, "allow the authorities to take DNA from virtually everyone who is arrested...The DNA will remain in the database forever, even if the person is acquitted of any crime." Kennedy argues that it is "essential" that "an independent body is established to hold the DNA samples and access should be allowed only on application, with any abuse of genetic information being treated as a criminal offence."

Staatsgewalt gegen rechts? [State authority against the right?] CILIP Nr.1/2001, ISSN 0932-5409, pp 4-65. Eight contributors with a civil liberties, legal and parliamentary backgrounds discuss the issue of Germany's response over the past year to far-right extremism. They point out the profound consequences for civil liberties in particular when banning political parties. This is also an excellent and in-depth contribution to the controversial involvement of the German police and Office for the Protection of the Constitution (*Verfassungsschutz*) in upholding the "free democratic institutional order" of the Federal Republic. It is a good exposition of the often confused discussion about the merits of banning far-right parties. Available from: *Bürgerrechte & Polizei/CILIP*, c/o FU Berlin, Malteserstr. 74-100, 12249 Berlin, info@cilip.de

Grundrechte-Report 2001. Zu der Lage der Bürger- und Menschenrechte in Deutschland (Basic Rights Report 2001. On the situation of civil and human rights in Germany). T. Mueller-Heidelberg, U. Finkh, E. Steven, B. Rogalla (eds.), Rohlwolt Taschenbuch Verlag, 2001, ISBN 3-499-23044-5, pp.267, DM 16.90. This is the fourth report by civil liberties groups and human rights activists scrutinising Germany's attempts to "defend the constitution" in order to safeguard the "free democratic institutional order" of the FRG. It proposes an alternative interpretation of constitutional rights. Rather than securing democratic rights through "data collection mania", surveillance and the criminalisation of most non-parliamentary opposition, contributors argue that it is Germany's civil society, including refugees and migrants, which has to be active in defending human rights. So this alternative annual report includes an assessment of the state's adherence to specific articles in the Basic Law (*Grundgesetz*), to the legality of banning parties and the legal prohibition for Germany's army to invade other countries. All these and other rights and obligations are tested against specific cases: police detention, travel restrictions for "hooligans", DNA collection and storage, legal advice, deaths during deportation, economic inequalities between east and west Germany, restrictions in wearing Muslim headscarfs in public positions, conscientious objection, self-declared anti-demonstration zones, police violence, university fees, surveillance, the situation of German and refugee children, and the invasion of Kosovo. Also includes a chronology of events and changes in the law relating to civil liberties and a useful list of civil liberties groups and human rights associations in Germany. This report clearly shows that human rights concerns should more than ever be focused within the EU, not only outside it. Available from: *Humanistische Union*, Haus der Demokratie und Menschenrechte, Greifswalder Str. 4, 10405 Berlin, Tel: 0049-30-2045-0256, Fax: 0049-30-2045-0257, info@humanistische-union.de

UN committee examines UK's human rights record, John Wadham. *Legal Action* May 2001, pp6-7. Wadham, the director of Liberty, considers the work of the United Nations Human Rights Committee and the International Covenant on Civil and Political Rights and its functions.

Deaths in custody and neglect verdicts at inquests, Stephen Simblet. *Legal Action* May 2001, pp25-27. This piece summarises recent cases involving deaths in custody and discusses the circumstances in which the coroners should leave the issue of "neglect" to the jury.

Welcome to the free world: gas me, stun me, zap me, douse me, drug me, shut me up, Frank Morales. *Covert Action Quarterly* no 70 (April-June) 2001, pp6-13. Discusses "non lethal weapons" and their centrality to the US military's domestic "civil disturbance planning" programme in the form of "riot control agents". Morales argues that "From Seattle to Philadelphia, from [Washington] DC to Prague, and...Davos, Switzerland, "non-lethal confrontation" has become

second nature to US fighting forces and those inspired and trained by US affiliates". Includes a useful "Taxonomy of terror" (or "what they'll be firing this season"). Available from: Covert Action Publications Inc, 1500 Massachusetts Avenue NW, Washington, DC 20005, USA.

Parliamentary debates

UN Human Rights Commission Commons 7.3.01 cols 88WH-110WH

Illegal Drugs Commons 21.3.01 cols 65WH-87WH

Social Security Fraud Bill [Lords] Commons 27.3.01 cols 857-934

Travellers' Camps (Skegness) Commons 28.3.01 cols 1078-1082

Children's Rights Commissioner Bill Commons 6.4.01 cols 605-670

Pupil Exclusions Commons 27.4.01 cols 617-624

Social Security Fraud Bill Commons 1.5.01 cols 760-815

IMMIGRATION

SWITZERLAND

Deportation deaths

On 1 May Samson Chukwu, a Nigerian detained awaiting his deportation, died whilst being taken from his cell at 2 o'clock in the morning by officers from the Anti-Terror Unit (*unité spécial d'intervention*) from the canton of Valais. According to the officers, they twisted the man's arms behind his back and held him face down on the ground. The post-mortem identified death by suffocation, or positional asphyxia. The Zurich based human rights group *augenauf* as well as *Amnesty International* have criticised Swiss deportation practices as well as the official response to the second death of a deportee at the hands of Swiss police officers within two years. The authorities, with no tangible evidence, stereotyped Samson Chukwu as yet another Nigerian drugs dealer with suspected congenital or cardiac problems. *Amnesty International* and *augenauf* demand an immediate review of deportation operations and call for all forced deportations to be stopped until further investigation into this lethal police practice.

Not the first

The death of Samson Chukwu is not the first death during a forcible deportation from Switzerland, and certainly not the first in the EU. In March 1999, Palestinian Khaled Abuzarifa died (*Statewatch* vol 9 nos 3 & 4), sedated, his mouth sealed with plastic tape, bound hand and foot and strapped into a wheelchair, during his deportation from the "deportation airport" in Kloten/Zurich. The post-mortem identified asphyxia, as did the post-mortem report on Samson Chukwu.

In the case of Khaled Abuzarifa, legal proceedings were initiated against a doctor employed by the Canton of Bern and the three officers accompanying Khaled, on grounds of manslaughter. The doctor who had witnessed the taping of Khaled's mouth and had approved it as safe, was sentenced by the regional court to a five months' suspended prison sentence and was ordered to pay CHF 50,000 (\$28,000) in damages to the family of the deceased. Two officers were acquitted and in the case of the third the judge referred the files back to the prosecutor's office for re-examination and for additional charges: because there was no single document brought forward during the trial to indicate that there was an order to tape the victim's mouth, the incident is being handled as an abuse of position on the part of the officer in charge. This decision indicates the officer has failed in his responsibilities towards the prisoner. The judge further called into question the legality of

the use of taping in light of Article 3 of the European Convention of Human Rights ("No one shall be subjected to torture or to inhumane or degrading treatment or punishment").

In the case of Samson, the officers forced the man on his stomach onto the ground with his hands handcuffed behind his back, a practice often used by arresting officers during forced deportations, and which is also known amongst the police to be potentially lethal. *augenauf* also points out that during forced deportations with charter jets, (known as Level-4 deportations in Switzerland), the arresting officers are reported to have used excessive force, in an attempt to immediately quell any resistance by the deportee. According to *Amnesty International*,

There have...been a number of reports that police escorts have subjected some deportees to physical assault and racist abuse, that recalcitrant deportees have on occasion been given sedatives in order to subdue them, rather than for purely medical reasons, and that a number of deportees have been deprived of food, liquid and access to a lavatory for many hours, until they reach their destination. Some have even been offered the degrading option of wearing incontinence pads - an officially sanctioned practice at Zurich airport, abandoned in the course of 2000 and replaced with special urine-absorbent airline seats.

Samson did not get that far. At 3 am, one hour after he had been arrested, a doctor declared him dead.

"Positional asphyxia"

The post-mortem examination revealed that there were no traces of toxins in Samson's blood and concluded that he had died of positional asphyxia. Positional asphyxia, dubbed "sudden death in custody" in German-speaking law enforcement circles, usually occurs when officers apply force when facing resistance to an arrest, forcing the victim into a position which hinders unrestricted respiration. Restraint techniques are known to be potentially lethal among law-enforcement agencies across Europe: in Germany, police officers are trained to avoid injuries or fatalities during forceful arrests. But even after the death of Khaled, the Swiss authorities refused to review their forced deportation practices or establish an independent control commission to investigate responsibilities in incidents of death at the hands of officers.

Ruth-Gaby Vermot, a Socialist member of the National Council, has now demanded an additional enquiry into the second death of a deportee in two years. "The cause of death is mysterious", she said. She does not consider the inquiry, involving officers from the force in Valais, reliable as they are practically investigating themselves. Jean-Daniel Gerber, head of the Federal Office for Refugees (*Bundesamt für Flüchtlinge - BFF*) and the police on the other hand, have not found any official wrongdoing: "I do not know where a mistake could have occurred", said Françoise Gianadda, head of the foreigners police from Valais. According to the press, he also defended the use of anti-terror groups: "In such cases we cannot send in traffic wardens", she quipped.

The official response to deportations that cannot be easily enforced because deportees, out of fear or desperation, are not willing or able to return to their countries of origin (and increasingly, transit countries), is clear: deportation at any price. This was not the first attempt to deport Samson. Some weeks ago, the authorities tried to deport him but he resisted and the pilot of the Swissair aircraft refused to take off. The police had to return him to the detention centre, but restrictions meant that they could not detain him for more than nine months, until 7 May. So the foreigner police were determined to remove the Nigerian before that date, and they did.

Not the last?

Walter Angst, a member of *augenauf*, pointed out that "Samson Chukwu would still be alive if, after the death of the Palestinian deportee Khaled Abuzarifa, officers had admitted their

responsibility and taken the consequences." The group has already initiated legal proceedings against Rita Fuhrer, Zurich Cantonal Minister for police matters after the death of Khaled. They are now demanding that the recommendations by *Amnesty International* be implemented. *Amnesty* is demanding:

- clear police guidelines on the use of force, in line with international standards,
- a ban on methods of restraint which impede respiration and involve a significant risk for life,
- sedative drugs only to be administered in accordance with purely medical criteria, and in line with Principle 5 of the *UN Principles of Medical Ethics*,
- deportees be regularly provided with food and drink, given access to the toilet and treated with respect to their human dignity at all times.

Anti-deportation and human rights campaigners have consistently warned against the practice of forced deportation and pointed to the steady number of human lives violent deportation practices have taken (see www.deportation-class.com). After campaigning against aviation companies who agree to fly out people who are forcibly deported (see *Statewatch* vol 10 nos 3 & 4), activists are now starting to target charter airlines and non-EU aviation companies such as Tarom, which are slowly taking over the job of deporting for Western European governments. With the introduction of charter jets (see *Statewatch* vol 11 no 1), where several deportees are accompanied only by police officers and therefore without public scrutiny, the potential for human rights abuses is high. It is only when a deportee dies, that the public hears about the reality of enforced deportations.

Amnesty International news release 29.6.01; augenauf press releases 9.5.01; SonntagsZeitung 13.5.01; For more information on Samson's death see <http://www.augenauf.ch/bs/doku/chukwu/sc00.htm>

GERMANY

Foreign Office declares Iraq unsafe

The German asylum rights organisation *Pro Asyl* and *Verband für Krienshilfe und solidarische Entwicklungszusammenarbeit (WADI)*, a development organisation, have welcomed the latest country report on Iraq by the German Foreign Office. The situation reports, which are regularly published by the Foreign Office, serve as a guideline for the government in its policy towards asylum seekers from the relevant regions. The report, which was published in February, abandoned the idea of a "safe zone" in northern Iraq and for the first time declared that the whole of Iraq cannot be assumed safe, because everybody who lodges an asylum application abroad can expect persecution. It contains detailed descriptions of the structures of political persecution and systematic violation of human rights in Iraq, so that torture, arbitrary arrest, "disappearances" and organised rape are not portrayed as exceptions but as regular practice by Iraqi security forces. *Pro Asyl* and *WADI* say the report falls short of portraying state brutalities against ethnic minorities, in particular the so-called Anfal campaign, during which around 200,000 Kurds have died in chemical gas attacks, as well as the chemical gas attack on Halabja in 1988, which killed 15,000 Kurds.

Whilst the human rights situation in Iraq is evidently not improving, ever more EU countries are starting to prepare the deportation of Iraqi Kurds back to northern Iraq. The UK, Germany and the Netherlands are holding talks with Turkey about allowing the EU to deport Iraqi Kurds via Turkish territory. In the Netherlands, around 9,000 Iraqi Kurds were in effect made illegal through changes in the law which instructed them to leave the country (deportation not being possible because there are no flights to northern Iraq) and the withdrawal of all social benefits

whilst banning them from working (see *Statewatch* vol 11 no 2). In Germany, authorities have started DNA testing on Lebanese asylum seekers in order to declare them Turkish (see *Statewatch* vol 11 no 1). Soon it became clear that the exercise served the purpose of allowing non-Turkish asylum seekers from the "Near Middle East" (Northern Iraq and Lebanon in particular), who cannot be deported due to the situation in their countries of origin, to be deported to Turkey; they are told to make their way home from there. In the year 2000, refugees from Iraq were the largest single group to lodge asylum applications in Germany.

Pro Asyl press release, 13.3.01

DENMARK

New detention rules for asylum seekers

With one of the last laws passed through the Danish parliament before the summer break the government won a majority for its proposal to amend the Aliens Act regarding the detention of asylum seekers. According to the new rules an asylum seeker who has been convicted of a crime while staying in Denmark during the processing of an asylum application can be imprisoned for as long as it takes for the authorities to process the case. The kind of crimes that can now lead to imprisonment include all violations of the Penal Code, including shoplifting and theft. If an asylum seeker is caught shoplifting valuables in excess of 500 Dkr. the prosecution can now ask for a prison sentence. This kind of penalty will only be applied to asylum seekers and not citizens or residents of Denmark who, in similar situations, will be given a fine at the most.

The new rules are justified by perceived problems with asylum seekers from Moldavia, Armenia, Azerbaijan and Russia over the past two years. According to police sources and asylum administrators organised networks of people from these countries are involved in organised criminal activities in Denmark. When arrested they apply for asylum and are sent to a centre where the authorities are obliged to consider their application. It is claimed that some continue their criminal activities, controlling extortion rackets in the centres among the other asylum seekers.

The government's proposals exploit these allegations in an attempt to boost their poor ratings in the opinion polls. Some critics of the amendment, both in parliament and among non-governmental organisations, suggest that the problems could be brought under control by using a faster-track procedure for this particular group of asylum seekers. They say that the government is only using the "popular" tough on crime approach to polish its own image in the light of pressure from the populist Danish Peoples Party and other right-wing parties.

A more likely explanation for the government's enthusiasm is buried in other parts of the amendment. Namely, the section that makes it possible to detain asylum seekers if they don't provide the police with satisfactory information about their travel routes and the smugglers who helped them enter Denmark. Given that legal entry to Denmark with a visa is practically impossible nowadays - a policy coordinated with Schengen - asylum seekers have little option but to use human smugglers to enter Fortress Europe. Thereafter, they may be forced into criminal activities in order to repay the money that they have been charged.

During the debate on the amendment critics pointed out that this situation is a self-imposed problem that could be minimised by loosening the visa rules now in force and lifting the carrier sanctions imposed on transport companies. In using the current provisions of the amendment to the Aliens Act the government treats asylum seekers as hostages in a practice for which it is responsible.

Immigration - in brief

■ **EU: Information for people in immediate threat of deportation.** The German anti-deportation network *no one is illegal* has published guidelines for people who have exhausted legal avenues against being deported and who cannot or do not want to be returned to their countries of origin. It outlines the legal position of the airline pilot and accompanying police officers during forced deportations, and informs the deportee of possible avenues for resistance. The information is available in English and German on www.aktivgegenabschiebung.de/material.html

■ **Germany: Trafficking legal according to High Court?** In an interview with a self-declared *Fluchthelfer* (flight helper, or "organised trafficker" in EU jargon), published in the newsletter of MP Ilka Schröder (*Partei des Demokratischen Sozialismus*), the criminalisation of traffickers is questioned on the grounds of Germany's past High Court rulings. In various rulings from the 1970s, trafficking was declared legal, even if traffickers received sums of up to DM 40,000 from their "clients". Not surprisingly, the test cases were dealing with refugees and migrants from the former German Democratic Republic to the Federal Republic of Germany. The interview discusses the precarious issue of taking money from refugees and destitute migrants and points to the fact that traffickers, however organised, provide a service whose limits are dictated by EU policy. But although trafficking has become extremely expensive due to increasingly government "managed migration", the trafficker asserts that "for those DM 40,000 which were commonly asked for at the German border, I can get a whole extended family from Sri Lanka to Germany". *Denkpause*, the newsletter from Ilka Schroeder, is available from: abadatel@ilka.org

See High Court ruling III ZR 164/75, taken from BGHZ 69, 295-302.

Immigration - new material

Mugak no 14 (January/March) 2001, Centro de Estudios y Documentacion sobre el racismo y la xenofobia, pp59 [700 Ptas]. This issue looks at the recent struggle by *sans-papiers*, conducted through demonstrations, lock-ins and opposition to the new Aliens' Law (*Ley de Extranjeria*). This marks a shift from previous initiatives, largely conducted by local people or groups of "legal" immigrants, and led to the establishment of a "Papers for All" platform (*Papers per a tothom*), and to increased cooperation between different migrant groups. Details of the protests, demands and negotiations with government, including the agreements which were made, are reported. The magazine also includes criticism of the Spanish government's immigration agreement with Ecuador, continuing deaths in the Strait of Gibraltar, and racist discourse voiced by politicians, particularly Heriberto Barrera, a PSOE representative in the Andalusian regional parliament. Available from: *Mugak*, Pena y Goni, 13-1 20002 San Sebastian.

Migrations Societe vol 13 no 74 (March-April) 2001, CIEMI [60 Fr]. Issue dealing with the position and social mobility of young French women of Algerian origin as well as developments in European immigration following the Nice summit. Looks at the new French visa policy, regularisation in southern European countries, the consequences on central Europe of a new EC migration policy, the composition of the Chinese community in Paris and the German policy towards *Aussiedlers*. Available from: Centre d'information et d'études sur les migrations internationales, 46, rue de Montreuil - 75011 Paris, France.

Migrations Societe vol 13 no 75-76 (May-August) 2001, CIEMI [60 Fr]. Includes a dossier on a meeting on "Integration in relation to discrimination and exclusion" in Cergy-Pontoise university which includes discussion on the issues of citizenship, family rights, discrimination, family strategies in schooling, racial discrimination, immigrants' participation in trade unions and housing. Includes articles on Italian immigration in Alsace-Lorraine until the first world war, and

on mosques as part of public space in France.

Infodienst des Bayerischen Flüchtlingsrates, No 79 (May-June) 2001, DM5, pp38. This "information service" by the Bavarian Refugee Council includes legal updates on asylum issues in Germany, as well as regular campaign updates and press cuttings. *Pro Asyl* has started a nationwide campaign for the implementation of the UN Convention on the Rights of the Child, refugees threatened with deportation are informed about how to stop their deportation "at the last minute", while country reports in this issue concentrate on Angola, Syria and Turkey. Available from: *Bayerischer Flüchtlingsrat e.V.*, Valleystr. 42, 81371 Munich, Tel: 0049-89-762234, Fax: 0049-89-762236, e-mail:bfr@IBU.DE.

Kurdistan Report no 30 (winter) 2000, pp93 [£2.80]. This Report looks at how the arrest of Ocalan may turn into a "Trojan Horse" for Turkey, due to increased international visibility of the Kurdish struggle. An open letter from the Kurdistan National Congress to President Ahmed Necdet Sezer gives an historical overview of the Kurdish problem, and documents abuse and highlights issues which need to be resolved. Also includes discussions, both at a national and EU level, on possible developments, an update on the situation of Ocalan and his appeal to the ECHR, an interview with Baroness Sarah Ludford, a report released by the Human Rights Association of Turkey for the first half of 2000 concerning human rights violations and an analysis of German asylum policy towards the Kurds. There is a round-up of developments in Britain (Angel Heights 7, a stabbing in Hull, Kurdish Women Action Against Honour Killings meeting), extended coverage of the controversy surrounding the highly contentious Ilisu dam, and of developments in Iraqi Kurdistan, particularly with regards to Turkish policy. Available from: Kurdistan Solidarity Committee & Peace in Kurdistan Campaign, 44 Ainger Road, London NW3 3AT.

Parliamentary debates

Illegal Immigrants (Eurotunnel) Commons 22.3.01 cols 568-578

Entry Applications Commons 4.4.01 cols 114WH-120WH

Asylum Seekers (North-East Lincolnshire) Commons 2.5.01 cols 279WH-286WH

Border Controls Commons 3.5.01 cols 295WH-338WH

Asylum Policy Lords 9.5.01 cols 2167-2170

terrorism saw the creation of a special police corps to deal with urban violence and ETA, based in Bayonne, in the French Basque region. It began operations on 18 June 2001. The corps, which is manned by civilian staff with access to advanced technology, is composed of 25 officials and headed by police commissioner George Bonfont from the National Anti-terrorist Division. It will be divided into three operational groups. Interior ministers Mariano Rajoy and Daniel Vaillant will study new forms of cooperation, including the opening of a joint police station in Canfranc.

El País, 3.4.01, 22.5.01, 11-13.7.01.

UK

New Labour's second term plans

On securing a second term in government, the Labour government announced plans to give more new powers to the police and further erode the rights of suspects and people caught up in the criminal justice system. The Queen's speech, which sketches out the new government's legislative programme, contained proposals on the use of previous convictions in criminal trials, removal of the "double jeopardy" rule, tougher sentencing, expanding the sex offender's register and the confiscation of assets.

At present, juries are not told about defendants' previous convictions and must reach their verdict on the strength of the evidence before them. If prior convictions are revealed to juries, it is bound to lead to cases where they convict on the basis of a defendant's criminal record even if there is insufficient evidence. "Double jeopardy" is the rule that says a person can not be tried twice for the same offence, or on the basis of the same facts. The government may seek a retrospective law, allowing people acquitted before any new law comes into force to be retried - although this may well not be compatible with the European Convention on Human Rights.

Proposals relating to the confiscation of assets have already been made. People will have to prove - initially to the police and then in public at trial - that their assets were obtained lawfully, instead of the prosecution having to prove they were obtained illegally: a complete reversal of presumption of innocence. Judges are to decide whether to freeze a suspect's assets on the "balance of probabilities"; a new Criminal Assets Recovery Agency will investigate.

Liberty press release 20.6.01; Legal Action Group, July 2001.

Law - new material

International comparisons of criminal justice statistics 1999, Gordon Barclay, Cynthia Tavares & Arsalaan Siddique. *Statistical Bulletin* Issue 6/01 (Home Office) May 2001, pp20. This bulletin compares crime trends (as opposed to recorded crime levels) for 1995-1999 in 32 countries, including all European Union Member States.

Regulation of Investigatory Powers Act 2000 (1): Big brother.gov.uk: state surveillance in the age of information and rights, Y Akdeniz et al. *Criminal Law Review* February 2001, pp73-90. The RIP Act 2000 signals both the importance of forms of surveillance as techniques of policing and also the human rights apprehensions which those strategies engender. The Act is explained and analysed according to rights-based standards as well as its fit with the development of an "information society".

Regulation of Investigatory Powers Act 2000 (2): evidential aspects, P Mirfield. *Criminal Law Review* February 2001, pp250-255. This article is concerned with evidential problems which may arise under the RIP Act 2000 and, in particular, in the light of the coming into force of the Human Rights Act 1998. First, the 2000 Act has its own regime of inadmissibility in relation to the interception of certain kinds of communication. Second the 1998 Act may be thought to have the effect of breathing new life into the discretionary inclusion of

LAW

FRANCE/SPAIN

No extradition, but "temporary surrender" likely

At a Franco-Spanish summit in Toulouse, 12-13 July, on cooperation in the fields of justice, industry, and foreign and home affairs French interior minister Daniel Vaillant ruled out the possibility of a bilateral agreement with Spain on extradition. Spain concluded a treaty on this issue with Italy in November 2000 (see *Statewatch* vol 10 no 6) and obtained an agreement to draw up a treaty with the UK in March 2001 (see *Statewatch* vol 11 no 2). Portugal refused any such agreements claiming they infringed the constitutional rights of defendants.

In response to the French refusal, Spanish justice minister Angel Acebes proposed the "temporary surrender" of detainees suspected of terrorism to allow Spanish investigating authorities to question them. His French counterpart Marylise Lebranchu claimed that there is no legal obstacle to introducing such a practice, which is to be discussed by the Franco-Spanish working group on justice (see *Statewatch* vol 11 no 1) in September, despite admitting that it is unprecedented. Lebranchu reiterated France's commitment to support proposals for a European directive to remove the safeguards in extradition procedures.

Continuing French cooperation with Spain against

evidence, whether produced by other conduct in relation to communications or surveillance, under section 78 of the Police and Criminal Evidence Act 1984.

Advance Disclosure: Reflections on the Criminal Procedure and Investigations Act 1996, C Taylor. *Howard Journal of Criminal Justice* vol 40 no 1 (February) 2001, pp114-125. The Criminal Procedure and Investigations Act 1996 introduced a regime for advance disclosure which is at odds with the operational practices of police officers, the Crown Prosecution Service (CPS) and defence solicitors. Discretion in matters of disclosure has largely been returned to police officers with evidence of flawed supervision of the process by both police and CPS. As a consequence errors, whether inadvertent or otherwise, may not be recognised and the result is a system which presents real risks of future miscarriages of justice.

Parliamentary debates

Tribunals of Inquiry (Evidence) Act 1921 Commons 23.1.01 cols 850-866

Criminal Justice Commons 26.2.01 cols 583-597

Criminal Defence Service (Advice and Assistance) Bill [Lords] Commons 26.2.01 cols 635-667

Civil Legal Service Commons 8.3.01 cols 135WH-170WH

Marchioness Inquiries Commons 23.3.01 599-611

Internet (Criminal Offences) Commons 30.3.01 1269-1276

Criminal Defence Services (Advice and Assistance) Bill [Lords] Commons 2.4.01 cols 50-62

International Criminal Court Bill [Lords] Commons 3.4.01 cols 214-279

International Criminal Court Bill [Lords] (Programme) Commons 3.4.01 cols 280-294

Solicitors Commons 4.4.01 cols 84WH-104WH

GM Crop Trial (Low Burnham) Commons 1.5.01 cols 200WH-207WH

International Criminal Court Bill [Lords] (Programme) (No.2) Commons cols 305-319

International Criminal Court Bill [Lords] Commons 10.5.01 cols 320-352

Council centre. The staff will not as yet assist the EPSMC and the Military Committee during the upcoming exercises because the three bodies are not collectively operational. However the staff is ready to analyse, for example, the situation in Macedonia, outlining possible options for EU-led operations. Most probable is a leading role for NATO as they have the most forces on the ground. *Jane's Defence Weekly* 20.6.01 (Luke Hill)

NORTHERN IRELAND

Northern Ireland - new material

Policing in a rough neighbourhood: the reform of the RUC, K Maguire. *Police Journal* vol 73 no 4, 2000, pp341-353. Looks at the "problem" of policing ethnically divided societies. Provides an overview of the record of the RUC since partition and reviews the main critiques of the RUC from the perspectives of Republicans, Loyalists and civil libertarians. Finally, it examines the peace settlement based on the Good Friday agreement and its implications for the future of policing in Northern Ireland and looks at the proposals of the Patten Report for reform of RUC.

Report to the government of the United Kingdom on the visit to Northern Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 November to 8 December 1999. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, (Council of Europe) May 2001, pp60. The Committee visited Castlereagh Holding Centre and Musgrave Street police station in Belfast and Gough Street Holding Centre, Armagh. Two prisons were inspected (Maghaberry and Magilligan) and two juvenile centres (Lisnevin and Rathgael). Following the lack of improvement in the "unsatisfactory" conditions at Castlereagh the CPT recommended its closure; consequently the holding centre closed at the end of December 1999.

Response of the United Kingdom government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Northern Ireland from 29 November to 8 December 1999. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, (Council of Europe) May 2001, pp24.

RUC Special Branch destroyed evidence and lied to Stevens, Laura Friel. *An Phoblacht/Republican News* 3.5.01, p2. This article alleges that the RUC Special Branch destroyed a taped confession to the murder of Belfast solicitor, Pat Finucane, who was shot dead at his North Belfast home in February 1989. According to RUC officer Johnston Brown a secretly taped conversation in which a UDA gunman admitted his involvement in the killing of Finucane was destroyed and substituted.

Statistics on the operation of the Prevention of Terrorism Acts Northern Ireland 2000, Michael Willis. *Northern Ireland Office Research & Statistical Bulletin* 6 (June) 2001, pp12.

The Northern Ireland prison population in 2000, Laura Hague and Michael White. *Northern Ireland Office Research & Statistical Bulletin* 7 (July) 2001, pp24.

MoD blocks Stevens probe, Laura Friel. *An Phoblacht/Republican News* 14.6.01, p4. This article describes a Ministry of Defence intervention to prevent the Stevens inquiry team from questioning a key FRU (Force Research Unit) operative, Captain Margaret Walshaw, at the centre of the murder of Belfast solicitor Pat Finucane.

Parliamentary debates

Victims of Crime (Northern Ireland) Commons 23.1.01 cols 201WH-214WH

Political Parties Commons 6.2.01 cols 875-898

Electoral Malpractice (Northern Ireland) Commons 29.3.01 325WH-350WH

POLICING

UK

Sylvester family judicial review put on hold

The family of Roger Sylvester suffered another blow in May when the outcome of their judicial review, challenging the Crown Prosecution Service's (CPS) decision not to bring criminal charges against the police officers involved in Roger's death, was postponed until after an inquest. Roger Sylvester died in hospital after being restrained by eight police officers outside his home in January 1999. Last November the CPS, in a decision described at the time as "shocking", ruled that there was "insufficient evidence for any criminal charges against any police officer." On 6 April a judge at the High Court in London granted the family a judicial review of the proceedings, but this will now have to await the outcome of an inquest later this year. (see *Statewatch* vol 9 no 1, vol 10 no 5 & 6).

On May 21 the Sylvesters went to the High Court to challenge the decision not to bring criminal charges against the police officers involved in Roger's death. When they left court they had learnt that their judicial review would be postponed until after an inquest. The family's legal representatives argued that holding an inquest first "would not be in accordance with public policy". Ian MacDonald QC explained that: "If there's an inquest beforehand, it allows the person who may be prosecuted to see all the evidence tested and actually have a kind of rehearsal." The High court decided that the limited scope of an inquest would be adequate to allow a public investigation. It would also, in the light of any fresh evidence, allow the Director of Public Prosecutions to reconsider his decision not to prosecute the police officers. Lord Woolf added that it would be unfair for the officers to "have the matter hanging over them without having the opportunity of publicly giving their version [of events]".

The judges also ruled that an inquest would provide an opportunity to make available information requested by the family. They had sought disclosure of an Essex police report into the operation that the Metropolitan police, owners of the document, had refused to hand over as well as post mortem reports and other material essential to their case. Deborah Coles co-director of INQUEST has pointed out that a key recommendation of the Macpherson inquiry was for information to be disclosed to a family in these circumstances. In refusing disclosure for so long the Metropolitan police has not only shrouded the case in "obsessive secrecy" say INQUEST but also "exacerbated the family's suffering in the search for the truth about how Roger Sylvester died."

The limitations of the inquest are likely to be exposed, the family fear, when police officers come to give evidence. The officers remained silent throughout the Essex police investigation and it is thought likely that, rather than taking the "opportunity of publicly giving their version", they will continue to remain silent. Roger's brother, Bernard Renwick, said: "We fear that the officers may use the rules to continue to give no-comment answers." In July one of the police officers pleaded guilty, at a disciplinary hearing, to destroying his contemporaneous notes of the events. The officer, who has not

been named, indicated that he would plead guilty beforehand, thereby allowing the Metropolitan police to refuse the Sylvester family permission to attend the hearing. The family condemned the decision to keep the officer's punishment secret and, in an unprecedented move, they were joined by the Police Complaints Authority. The mayor of London, Ken Livingstone, also criticised the Metropolitan police's unwarranted secrecy.

In April the CPS informed the family of another black man, Christopher Alder, who was unlawfully killed in police custody in Hull in 1998, that the officers involved will not face manslaughter charges. Christopher died after being left handcuffed and clearly disturbed, face down on the floor of the police station custody suite for over 10 minutes while police officers made no attempt to help him. Earlier this year the policemen unsuccessfully attempted to get the unlawful killing verdict, reached by an inquest jury, overturned. Five of the officers involved have been charged with the lesser offence of misconduct in public office (see *Statewatch* vol 8 no 3 & 4, vol 9 no 5, vol 10 no 5, vol 11 no 2)

Commenting on the decision, Helen Shaw, Co-director of INQUEST commented:

We have always believed that following the "unlawful killing" verdict the police officers should have faced manslaughter charges and these matters put before a jury. This is yet another example of perverse decision making by the CPS in a death in custody case where they are usurping the function of the jury.

INQUEST press releases 25.4.01, 18.5.01; *Guardian* 22.5.01.

ITALY

Ten-years for policeman who shot youth

In April Judge Alfonso Barbarano found Tommaso Leone guilty of the "voluntary homicide" of 17-year-old Mario Castellano, sentencing him to a ten-year prison term (see *Statewatch* vol 10 nos 3/4). The policeman shot Castellano in the back on 20 July 2000 close to Agnano racecourse near Naples, as he fled on his moped after failing to stop when he was flagged down for not wearing a helmet. The shooting led to rioting, during which three police cars were destroyed, as police battled with a crowd for two hours before they were able to remove Castellano's body.

Family members claimed that the police officer had persecuted Mario: his twin brother Lorenzo said that Leone had sworn that he would kill him, probably to intimidate him. The main eyewitness, Giovanni De Bernardo, who works in the nearby racecourse, claimed that he saw the policeman kneel, aim and shoot the youth. He confronted Leone, who threatened him and accused him of being the dead youth's accomplice. Leone claims that he mistakenly shot the youth after slipping, although he failed to testify in court.

Leone will serve his sentence in Santa Maria Capua Vetere military prison. In addition to his prison sentence, Leone has been banned from holding public office and has been ordered to pay Lit. 200 million (£65,000) damages to the Castellano family. Prosecutors had demanded a 16-year sentence considering the disproportionate nature of the policeman's action. Gaetano Montefusco, from the Castellano family's legal team, argued that the incident was totally unnecessary as the youth could have been arrested later, "after all agent Tommaso Leone himself knew Mario Castellano's address". Montefusco also criticised the Interior Ministry, claiming that the policeman's work record was littered with worrying precedents. In his native region of Apulia he was investigated and cleared of shooting a smuggler during a gunfight in 1996.

Castellano's mother, Patrizia Battimelli, welcomed the sentence but expressed doubts as to whether the police officer

would serve the full sentence: "We want him to serve his full sentence and not receive special treatment in jail just because of the uniform he wore. He shot an innocent boy and this makes him a murderer...".

Repubblica, 25.4.01; Il Mattino, 21-23 & 28.7.01, 15.10.01, 5.11.00, 31.1.01, 2.2.01, 25.4.01; La Verita - Napoli, 25.4.01. Further information: http://web.tiscalinet.it/castellanomario/

UK

NCS Corruption investigation

The National Crime Squad (NCS), which began operations in April 1998, has expelled 61 of its officers following allegations of indiscipline and corruption. The NCS employs 1,350 detectives seconded from former regional crime squads in England and Wales and 420 civilian staff that work from 32 locations across the country, targeting "national and transnational serious and organised crime". The 61 officers under investigation have been "prematurely returned to their forces"; their number includes seven officers who have been accused of "allegations of financial or evidential corruption". The investigation, revealed in a report entitled *Professional standards in the National Crime Squad returns to forces and investigations*, published exactly three years after the NCS was launched, followed on from a series of raids in Derbyshire and Nottinghamshire in April during which five current and two former members of the squad were arrested. Most of the other officers returned to their forces were alleged to have failed to meet with the squads "standards of behaviour" relating to drink driving, the loss of police property or other disciplinary matters. All disciplinary enquiries will be carried out by "the parent [police] force or another force" in liaison with the NCS Professional Standards Unit.

Policing - new material

Policing after Macpherson, I McKenzie. *Police Journal*, vol 73 no 4, 2000, pp323-340. Provides an overview and analysis of the Macpherson report and draws out implications for the British police service as a whole and police management in particular.

The search for the Holy Grail, Steve Goodwin. *Police* Vol XXXIII no 5 (May) 2001, pp9-11. Goodwin interviews Roland Oullette, president of REB Training International Incorporated, which trains police officers in the use of "non-lethal" weapons in the United States and elsewhere. Oullette says: "We are the biggest pepper spray training company in the United States where we've certified 5,000 instructors", before describing his latest invention, the A3P3. He describes the product as "a socially responsible defence device that incapacitates an attacker without excessive force." It does this by discharging a "highly controlled and debilitating" aerosol plume such as oleoresin capsicum or OC, CS, Mace or Pava for a distance of 20 plus feet. The discharge is calculated by an "onboard computer with an automatic target-range finding system" that uses "a sonic object detection sensor" and a "laser sighting beam" that has a strobe effect designed to "distract" an aggressor. He cites the effects of discharging OC as an example: "The eyes would immediately stream with tears, the lungs close down and blood from the legs is sent by reflex action up to the lungs. This causes the target to literally collapse on the floor..." Oullette concludes by expressing his pride in the weapon which apparently, but hardly surprisingly, has impressed the American National Institute of Justice and is soon to be tested on streets and "in prisons" across the USA.

Sure-fire investment, John Dean. *Police Review* 13.7.01., pp22-23. On Durham and Cleveland constabulary's new £6.8m Tactical Firearms Training Centre which "houses some of the sophisticated technology available and is already attracting attention from other police forces and the military..."

Cause for complaint, Gary Mason. *Police Review* 23.3.01, pp26-28. Mason interviews Alistair Graham, the chairman of the Police Complaints Authority (PCA). Somewhat belatedly, Graham notes that:

"If we [the PCA] are constantly seen just to be accepting the recommendations of senior police officers in discipline matters rather than asserting from time to time the wider public interest then I think confidence in the police complaints system would drop dramatically." Asked, post-Macpherson, if "some complainants are using the focus on racism to make unfounded allegations against police officers", Graham replies that he doesn't have any evidence one way or the other.

Mayday Monopoly game guide: anti-capitalist actions across London on Tuesday 1 May 2001. London Mayday Collective, 2001, pp40. Handbook to accompany "celebrating Mayday 2001...with numerous autonomous actions centred on locations around the Monopoly board." The booklet was "designed to provide some initial information on the locations and perhaps some ideas..."

Parliamentary debates

- Criminal Justice and Police Bill Commons** 29.1.01 cols 34-143
Police Commons 31.1.01 cols 325-353
Police (South Buckinghamshire) Commons 31.1.01 cols 112WH-119WH
Policing (East Anglia) Commons 6.2.01 209WH-215WH
Metropolitan Police Commons 1.3.01 cols 1140-1146
Criminal Justice and Police Bill Commons 12.3.01 cols 728-776; 776-792
Criminal Justice and Police Bill Commons 14.3.01 cols 1045-1125
Criminal Justice and Police Bill Lords 30.4.01 cols 1611-1641; 1649-1686
Criminal Justice and Police Bill Lords 1.5.01 1696-1765; 1782-1824
Criminal Justice and Police Bill Lords 8.5.01 cols 2037-2070; 2074-2109; 2131-2156
Criminal Justice and Police Bill Lords 9.5.01 cols 2170-2188
May Day Protests Lords 26.4.01 cols 1452-1456
Police Manpower (London) Commons 9.5.01 cols 93WH-116WH
Criminal Justice and Police Bill Commons 10.5.01 cols 287-304

PRISONS

ENGLAND AND WALES

Prison numbers rising

There are currently 8.6 million people in prison worldwide. The USA accounts for a quarter of this number. Its rate of imprisonment is now five times as large compared with 1972 and is over 450 per 100,000 of the population or 680 per 100,000 when the population of local jails is included. This phenomenon of "mass imprisonment" has disproportionately impacted on African Americans to the point where one in three African American men aged 20 to 29 are now in custody or under supervision. In addition the country now locks up more black women than the total population of any one major western European country.

This extraordinary explosion in the American prison population has impacted on the debates and policies concerning the prison population in England and Wales. Tony Blair and Jack Straw's close relationship with the American government and their admiration for the Clinton administration's hard-line law and order policies (which the new Bush administration has reinforced) has been well documented. It is therefore not surprising that the prison population in England and Wales has risen again to the point where the country is second only to Portugal in western Europe in its rate of imprisonment. It is estimated that by 2002 it will be first in western Europe and that by 2007 it will be second in the western world in its rate of imprisonment. The prison population has risen by 50% since

1991. Since 1979, 24 new prisons have been built and an additional 12,000 places have been added to the system.

Black people now account for more than 20 per cent of the 66,000 currently incarcerated which is the highest since records began. The proportion of black and Asian people in prison has nearly doubled since the 1970s. In addition between 1993 and 1999 the female prison population doubled compared with a 45% increase for men. More people are now sent to prison than in Saudi Arabia, China and Burma, countries that are consistently condemned for their human rights abuses. The government is planning to build another 5,370 places by 2004. Home Office projections indicate that by 2008, at a minimum, the prison population will rise to 70,200. Another projection indicates that if the custody rate increased at 4% for males and 9% for females but sentence lengths stay at 2000 levels (which is highly unlikely) then the population will rise to 83,500 by 2008.

It was against this background that the Halliday report - *Making Sentences Work* - was published on 5 July. Halliday, formerly Director of Criminal Justice Policy at the Home Office, began his review in May 2000 and reported to the Home Secretary in May 2001. In commenting on the report the new Home Secretary David Blunkett broke with the hard-line rhetoric of his immediate predecessors by raising the issue of the rehabilitation of offenders and for the need to develop programmes that attempt to achieve this goal. Those serving sentences of 12 months or less could now be released after serving half of their sentence and be supervised in the community for the other half of their sentence. In addition some offenders may not be imprisoned unless they breach supervision rules. Although this might lead to fewer minor offenders being sent to prison in the first instance, the prison population could still rise, as has happened in America, if these offenders breach their community sentences.

The long-term population is likely to increase under these proposals because those sentenced for violent offences will no longer be released after serving two thirds of their sentence. These offenders will be released only after a risk assessment exercise carried out by the Parole Board. If considered a risk to the public then the offender could face another 10 years under supervision. In addition the so-called 100,000 "persistent offenders" who it is alleged account for 50% of recorded crime will receive tougher sentences. Furthermore, the identification of this group is based on an unpublished Home Office model which itself is based on data from the Offender's Index. Halliday has indicated that the sentencing reforms could push up the prison population by between three and six thousand. This would come from what he described as a "steady state" option involving persistent offenders being sent to prison for longer periods, the recall of prisoners for breaching their conditions of release and longer sentences for more serious offenders. Halliday's report is not out for public consultation until 31 October 2001.

Safer Society Magazine December 2000; Punishment and Society vol 3 no 1 (January) 2001 (special edition on mass imprisonment in the USA); Guardian 7.5.01; Observer 27.5.01; Guardian 20.6.01; Observer 24.6.01; Observer 1.7.01; Guardian 2 & 6.7.01; Home Office news release "Put Sense back Into Sentencing" 5.7.01 (homeoffice.gov.uk); Independent 6.7.01; Home Office Statistical Bulletin (2001) "Projections of Long Term Trends in the Prison Population to 2008" issue 8 2001

UK

Prison officers investigated over racist material

Three prison officers, two men and a women, have been arrested after a police raid on their north London homes, which uncovered racist literature. The raids, which were part of an investigation into a network of prison officers, were prompted by

allegations of racially aggravated harassment by staff at Holloway women's prison and Pentonville in north London. All three officers have been suspended from duty and charged with possession of racially offensive material; they have been released on bail to appear in court later this year. In May a prison officer was dismissed from Frankland prison in Durham after he refused to stop wearing nazi paraphanalia including a swastika tie pin and an SS badge.

The arrests are the most recent in a sequence of allegations of racism directed against the Prison Service. In June 1999, 22 prison officers from Wormwood Scrubs prison were charged with assaulting inmates (see *Statewatch* vol 8 no 2 and 5; vol 9 nos 1 and 3 & 4). Last November the Commission for Racial Equality (CRE) launched a general inquiry into racism in the prison service. It will focus on three institutions, HMP Brixton, Feltham Young Offenders Institution (YOI) in London and Parc prison, south Wales.

For the CRE the racist behaviour of inmates at Parc was considered significant, while a June 2000 report into race relations at HMP Brixton, by the Prison Service's race advisor Judy Clements, found "alarming evidence" of discrimination by staff at the south London prison. The CRE's initiative was taken in direct response to the leaked internal report on the racist murder of nineteen year old Zahid Mabarek at Feltham YOI in March 2000 (see *Statewatch* vol 10 no 2). However, Zahid's family are "shocked and dismayed" at the limited scope of the investigation and have sought a judicial review of it. In its place they have demanded a public and accountable inquiry similar to the investigation into the racist murder of Stephen Lawrence which "showed the benefits of attempting to eradicate racism in an open and transparent manner". Suresh Grover, chairman of the National Civil Rights Movement, has predicted that: "The CRE's current plan will fail to deliver and simply add to a mountain of other damning reports and well-intentioned paper policies and action programmes."

On 26 July the Chief Inspector of Prisons, Sir David Ramsbotham, issued his latest public report which condemned Feltham B (the wing for young offenders aged between 18-21) as unsafe and dirty with many inmates spending most of the day in their cells and staff who were predominantly and profoundly negative. Ramsbotham has previously described conditions at the institution as "unacceptable in a civilised society", and in his latest inspection he noticed no improvement.

Judy Clements "Assessment of race relations at HMP Brixton" (Respond June 2000; ER Butt "Investigation into the death in custody of Zahid Mubarek on 21 March 2000 at HMYOI/RC Feltham. Parts 1 (31.10.00) & 2 (13.11.00); Independent 16.7.01.

UK

Call for public inquiry after neglect verdict

On 18 May the jury at the inquest into the death of David "Rocky" Bennett, a 38-year old black patient at the Norvic clinic in Norwich, returned a verdict of accidental death aggravated by neglect. David had been a detained patient at the National Health Service (NHS) secure unit for three years when he died in October 1998 while being restrained by up to five staff for 25 minutes. Following the verdict Norwich coroner William Armstrong made a number of recommendations emphasising the need for national standards on the use of restraint in psychiatric hospitals and for the need for staff to be pro-active in dealing with incidents of racist behaviour by and against patients. The Norfolk Health Authority have stated their intention of holding an inquiry, but the campaigning group INQUEST are calling on the government to consider holding a public inquiry to consider the wider issues.

The inquest decided that David had died of "positional

asphyxia" after being restrained by three - and possibly five - members of staff, reaching a verdict of accidental death aggravated by neglect. The events had been sparked by a fight after David was racially abused by a white patient. David was angered when that it was he who was moved off the ward, and a brief struggle led to him being restrained in a manner that prompted the coroner to remark, "The horror of listening to what happened that night is going to live with me forever". He added:

I came away quite disturbed by the fact that there are no proper safeguards for the prevention and management of aggression and violence that apply nationally [in the NHS], and gravely disturbed by the chaotic way the whole situation was managed, with tragic and fatal consequences.

Armstrong also criticised NHS trusts, accusing them of failing to take the issue of racism seriously. Pointing towards institutional racism within the NHS he noted the lack of a system for dealing with complaints of racism and a casual racism among staff who stereotyped David as "big, black and dangerous". Armstrong believes that the Trusts should have a written policy on racist abuse, a recommendation that Norwich has since taken up. He also called for national standards on restraint techniques and for more medical staff to be available as well as for better trained staff and resources. Scrutiny of procedures and internal reviews following the death of a patient are also called for.

However INQUEST, while welcoming both the coroners "searching recommendations" and the promised Norfolk Health Authority investigation, would like to see "a more wide-ranging and authoritative inquiry that can address the many systematic issues that arise...". These include institutional racism within the NHS, specifically, the over-diagnosis of severe mental illness in Black people with mental health problems; the over use of seclusion and detention of Black patients; the failure of the psychiatric services to implement appropriate strategies to manage frustration and anger; the failure of mental health services to provide appropriate support and care at an early stage; the poor treatment of a bereaved family following a death and the apparent failure of the NHS to learn from previous deaths following the use of control and restraint.

INQUEST press release 2.5.01; Catherine Jackson "Dangerous neglect"
Guardian Society 18.7.01, pp2-3

Prisons - in brief

■ **UK: New chief inspector of prisons appointed.** Ann Owers, director of the human rights group Justice, was appointed the new Chief Inspector of Prisons in May. Owers will succeed David Ramsbotham who retires in July after five years in the position. During this time he proved an outspoken critic of the government on issues such as overcrowding and prison conditions, calling for massive reductions in the numbers of prisoners. In June in a talk to the Prison Reform Trust, he slated the "disgraceful" treatment of young offenders and the deplorable healthcare standards in jails and criticised the cult of management that preoccupies the Prison Service. Ramsbotham's predecessor, Sir Stephen Tumim, also highlighted the appalling conditions in some of the 137 prisons in England and Wales in his reports. Owers, who was general secretary of the Joint Council for the Welfare of Immigrants for a decade before she went to Justice in 1991, will take up her post in August.

Prisons - new material

Penological Information Bulletin No 22 (December) 2000, pp130. This issue contains articles on prison populations, conjugal prison visits in 30 European countries and the conclusions from the conference "The

implementation of European standards for imprisonment and community sanctions and measures." Available from: Directorate General 1 - Legal Affairs, Department of Crime Problems, Penology and Criminology Division, Council of Europe, F-67075 Cedex, France.

Recent developments in prison law, Hamish Arnott & Simon Creighton. *Legal Action* June 2001, pp9-15. Latest update on the law relating to prisoners and their rights covers legislative changes, parole and lifers, discipline, conditions, sentence calculation, determinate parole and personal injury.

Electronic monitoring of released prisoners: an evaluation of the Home Detention Curfew scheme, Ed Mortimer. *Findings* 139 (Home Office) 2001, pp4.

A year on the tag: interviews with criminal justice practitioners and electronic monitoring staff about curfew orders, Isabel Walter, Darren Sugg & Louise Moore. *Findings* 140 (Home Office) 2001, pp4.

Electronic monitoring and offending behaviour - reconviction results for the second year of trials of curfew orders, Darren Sugg, Louise Moore & Philip Howard. *Findings* 141 (Home Office) 2001, pp4.

Incarcerating racism, Suresh Grover. *Agenda* no 14 (Spring) 2001, pp8-10. Grover argues that the Commission for Racial Equality's investigation into racism in the prison service will be worthless unless "it learns the hard fought lessons of the Lawrence inquiry and is fully prepared to involve the Mubarek family and allow the open public scrutiny of the events leading to Zahid's tragic, appalling and completely avoidable death."

Parliamentary debates

Strangeways Riot (Woolf Report) *Commons* 7.2.01 cols 294WH-302WH

Prison Conditions *Commons* 12.2.01 cols 37-79

Young Offenders Institutions *Commons* 13.2.01 cols 290-296

RACISM & FASCISM

UK

"Suicide" verdict as third black man found hanged

On 6 July the inquest into the death of Harold "Errol" McGowan, who was found hanged in suspicious circumstances in Telford, Shropshire, in July 1999, concluded that he had been driven to take his own life after a sustained campaign of racist harassment. Errol's nephew Jason, who worked on a local newspaper and was investigating the death, also received racist death threats before he was found hanged six months later. And, in June, days before the inquest was to open, a third black man linked to the McGowan family was found hanged. The body of Jonny Elliot, 44, was found by police in his flat and a post mortum confirmed that the cause of death was a "low-level" hanging.

Like his cousin Jason, Errol was found hanged after being harassed by a racist gang in a campaign that coroner, Michael Gwynne, described as shocking and horrific. Errol had been subjected to abuse, threats and attacks (and was even told his name was on a Combat 18 death list) after stopping Robert Boyle from entering the bar where he worked (see *Statewatch* vol 10 no 1). Six of the alleged members of the gang, Robert Boyle, Mark Morris, Stephen Boyle, Eddie Solon, Scott Cannon and Thomas Mann, gave evidence to the inquest. The jury was shown CCTV footage of a racist attack, carried out by Boyle and his associates, on Errol and a friend, Malik Hussain, taken two months before his death. Hussain was arrested with Boyle, and later had all charges dropped, but considers that the police did not take the incident seriously. Boyle is currently serving a

prison sentence for racially aggravated public disorder.

The inquest revealed that Errol had suffered racial harassment compounded by police inaction on the 18 complaints he made before his death. Officers failed to log his complaints as racist incidents, had never heard of Combat 18, and logged a telephone call in which he told police that he was in fear of his life as "low priority". The senior officer responsible for examining the extent of the racial abuse against Errol, Superintendent Colin Terry, was forced to apologise after issuing a single page report on the events.

After Errol's death police officers failed to treat the circumstances as suspicious assuming that his death was a suicide, and thereby contaminating the scene of the hanging. With police experts failing to even take fingerprints from the scene forensic evidence to the inquest was limited and contradictory with Home Office hanging expert, Roger Ide, arguing that Errol's death was not murder and that there was no "third party" involvement. His evidence was contradicted by Home Office pathologist, Nathaniel Cary, who said that it was plausible that others could have been involved in his death. He said "With its background of racial harassment...I would have expected this to have been a full-blown suspicious death investigation." The senior forensic scientist with West Mercia police, Tristram Elmhirst, also could not rule out the presence of another person at the scene, (two unidentified men were seen at the house shortly before Errol's death).

The all-white jury at the inquest reached a majority verdict - by eight to two - that Errol had taken his own life, prompting his family to consider bringing a private prosecution against the police and members of the gang. Lawyers said that they would consider bringing a civil case under the Human Rights Act alleging that the police were incompetent in dealing with Errol's complaints. Meanwhile the inquest of Jason McGowan, who was found hanged six months after his uncle, is also expected to reveal a catalogue of indifference and racism. It is to be hoped, but with little optimism, that some lessons will have been learnt from the deaths of Errol and Jason McGowan and applied to the investigation into the death of Jonny Elliot.

Independent 12.6.01; 7.7.01; *Voice* 4.6.01.

ITALY

Right-wingers sentenced for another "anarchist" bomb

Milan's second assizes found three right-wingers guilty of planting a bomb that exploded on 12 December 1969 in the *Banca dell'agricoltura* in central Milan. Delfo Zorzi, Carlo Maria Maggi and Giancarlo Rognoni received life sentences on 30 June 2001 for the bombing, which killed sixteen people and injured eighty-four in Piazza Fontana. It was the eighth trial held in relation to the massacre and confirms the suspicion of secret service involvement. Investigating magistrate Guido Salvini, responsible for re-opening the case in 1990, said that the Piazza Fontana bombing "was among the fundamental causes of the explosion of left-wing terrorism". Carlo Taormina, the justice ministry under-secretary from Berlusconi's *Forza Italia* party, who acted as defence lawyer for Delfo Zorzi, claimed the verdict was political, and that judges "have re-written history with a red pen". An appeal is likely.

Zorzi, who planted the bomb, was judged *in absentia* as he lives in Japan, where he runs a successful fashion business. His new name is Hagen Roy and he has acquired Japanese citizenship. Japan does not extradite its nationals and efforts by the last Italian government to extradite him have been in vain, although the guilty verdict may change his situation, if the Italian government presses for his extradition. Maggi, a doctor and leader of *Ordine Nuovo* (ON) in Veneto was ruled to be the

organiser of the bombing. He has already served a four-year sentence for "reconstituting the fascist party", and received a life sentence on 11 March 2000 for instigating a bombing in front of the Milan police headquarters on 17 May 1973 which killed four people. The author of the police station bombing was Gianfranco Bertoli, a self-styled "anarchist" who was found to be employed by Italian secret services, and to have links with right-wing groups (see *Statewatch* vol 9 no 2, vol 10 no 2). Maggi is unlikely to serve either of his two life sentences due to ill-health.

Veneto-born Giancarlo Rognoni, leader of the Milan neo-fascist group *La Fenice* also received a life sentence for giving logistical support to the perpetrators of the *Banca dell'agricoltura* bomb. Stefano Tringali received a three-year sentence for aiding and abetting, whereas Carlo Digilio was the key witness in the trial, and the supplier of arms and explosives to the ON cell in Veneto at the time. He claims to have been a CIA informer and was acquitted for his part in the conspiracy as it was covered by the statute of limitations. Franco Freda and Giovanni Ventura were judged to have been party to the plot although they were not tried after being acquitted on appeal of the same crime in 1981. They had previously received life sentences in a trial in Catanzaro.

The bombings were part of a broader strategy overseen by the United States agencies and carried out by the Italian secret services, with the assistance of neo-nazis, to discredit Italy's Communist Party (PCI) and to undermine its electoral prospects. The so-called *strategia della tensione* (strategy of tension), was aimed at installing an authoritarian regime which would keep Italy within NATO's orbit. *Ordine Nuovo* was deeply infiltrated by the Italian and US secret services. Blaming the left for the bombs and covering up evidence were instrumental aspects of this strategy.

Guido Salvini described the role of the Americans as "ambiguous, halfway between knowing and not preventing and actually inducing people to commit atrocities." Vincenzo Vinciguerra is another witness, a former member of ON who is serving a life sentence for planting a bomb in Peteano on 31 May 1972, killing three *carabinieri*, and for other terrorist crimes. He is an unrepentant fascist who has not asked for any reduction in his sentence, but has spoken to investigators about former colleagues who he felt were linked to the secret services. He saw the Peteano bombing as a protest against secret service manipulation of fascist groups, and told magistrates that ON was a useful tool for the secret services to plant bombs. He blames all of the fascist bomb attacks from 1969 onwards (with the exception of Peteano) on a single organisational structure "...within the institutions, more precisely in a parallel and secret structure of the Interior Ministry."

Two anarchists, Pietro Valpreda and Giuseppe Pinelli, were originally arrested in connection with the bombing. Valpreda was identified in a farcical identity parade in which he appeared, dishevelled, among freshly shaven policemen. He spent three years in prison for carrying out the massacre. Pinelli died after "falling" out of a window while he was being questioned in police superintendent Luigi Calabresi's custody, in a death that was commemorated in Dario Fo's play "Accidental death of an anarchist". Calabresi was shot in suspicious circumstances in Milan in 1972.

Maurizio Dianese & Gianfranco Bettin "La Strage: Piazza Fontana. Verità e Memoria", Universale Economica Feltrinelli, 1999; Philip Willan "Puppet masters. The Political Use of Terrorism in Italy" Constable, 1991; Guardian 2.7.01; Repubblica 1.7.01, 2.7.01; Il Manifesto 1.7.01, 3.7.01.

Racism and fascism - in brief

■ **UK: Irving loses appeal.** The pro-nazi "historian", David Irving, has failed in his appeal against the High Court decision to dismiss his libel case against the author, Deborah Lipstadt, last year. Lipstadt, in her book *Denying the Holocaust: the*

growing assault on truth and memory (Penguin 1994), accused Irving of falsifying statistics and distorting historical evidence in order to support his neo-nazi political ideology. On losing the case Irving said that he would appeal against the "perverse" ruling, but in July three Appeal Court judges upheld the original decision and rejected his application. One of the Appeal court judges, Lord Justice Pill, said: "The respondents were justified in describing him as one of the most dangerous spokespersons for Holocaust denial' having regard to the views he has expressed and in some respects persists in, and the manner and force with which he has expressed them."

■ **UK: Anger at soldier's manslaughter verdict.** The family of Glyne Agard, who died after being attacked by a group of soldiers in June 2000, reacted with anger and astonishment after a trial at Bristol Crown Court. Four soldiers were charged with murder when the trial began in May but private Wayne King admitted the lesser charge of manslaughter while another member of the Green Howards regiment, private Thomas Myers, admitted assault on Glyne's brother, Stephen. Two other soldiers were cleared of murder when the prosecution offered no evidence against them. The two brothers and their friend, Gary Belgrave, were attacked as they left a nightclub leaving Glyne Agard dead from massive head injuries and his brother suffering chest and neck injuries. Gary Belgrave also received hospital treatment. His mother, Marilyn, said: "We are very disappointed with the verdicts that have been reached. They do not reflect the gravity of the brutal attack in which Glyne was killed and has left both Stephen and Gary in a shocked, traumatic and distressed state. The attack was unprovoked, senseless and racially motivated." Sentencing of the two soldiers was adjourned. *CARF 62 (June/July) 2001; Guardian 12.6.01.*

Racism & fascism - new material

The 'Fourth Way' of the ultra-right: Austria, Europe, and the end of neo-corporatism, Oliver Marchart. *Capital & Class* no 73 (Spring) 2001, pp7-15. This piece discusses the entry of the neo-nazi *Freiheitliche Partei Österreichs* (FPÖ) into coalition government with

the conservative *Österreichs Volkspartei* (ÖVP) in February 2000, which prompted short-lived EU sanctions against Austria. Marchant notes that: "For a few months it seemed that the EU-member states were not prepared to accept racist parties in government. Of course, this turned out to be a rather short-lived form of heroism when Austrian ministers threatened to use their power of veto at EU-conferences in order to fight the sanctions by any means."

The making of Injustice and Fighting talk, Tariq Mehmod. *Red Pepper* no 85 (July) 2001, pp18-22. Mehmod's articles discuss the background to the making of the film "Injustice", which investigates all too frequent deaths in police, prison and psychiatric custody. Significantly the film provides a voice, beyond the round of public meetings and official hearings, for the relatives of those killed. Some of the police officers and forces involved have gone to extraordinary lengths to try and prevent the film from being shown publicly. See also, CARF, August-September 2001.

The new Italy: the rise of fascism within and without, Alfio Bernabei. *Searchlight* July 2001 pp28-29. Article commenting on Italy's new government, "the most right-wing coalition since 1946", in which "the list of ministers reads like a who's who of the neo-fascist or xenophobic tendencies". Traces the development of Italian fascism from the Salo Republic to the *Movimento Sociale Italiano* and now *Alleanza Nazionale*. Argues that the shift has encouraged an increase in far-right activities including the Association of Duce's Guards guarding Mussolini's tomb and *Forza Nuova* holding ceremonies in honour of fallen Salo Republic soldiers. Links are being developed between a *Forza Nuova* delegation and other European neo-fascist organisations in study groups held in Britain, and through the anti-abortion movement.

Antifaschistisches Infoblatt (AIB). Nr 52, 1/2001, pp55, DM6. This issue argues that far-right activities and racist violence lies at the heart of Germany's institutional and political structures. Articles focus on neo-nazi violence against the homeless and Germany's policies of social exclusion towards migrants and refugees, documenting institutionalised racism in Germany with specific examples. Available from: AIB, Gneisenauer Str. 2a, 10961 Berlin, Tel: 0049-30-694-6795, aib@mail.nadir.org

GERMANY

New interception of telecommunications law

XSecret service surveillance legitimised by new powers

On 1 June 2000, the *Bundesrat* (Upper House) agreed a Bill (14/5655, which was passed by the Lower House on 11 May 2001), amending the existing telecommunications interception law, which gives German secret services powers to infringe the right to privacy in postal correspondence. MPs rejected 13 amendments to the Bill by the Socialist faction (*Partei des Demokratischen Sozialismus* - PDS) and the Liberals (*Freiheitlich Demokratische Partei Deutschlands* - FDP), which voiced concerns about its constitutionality. Parliament ruled that the government should report on the new law in practice within two years.

The regulations came into force within two weeks of the Upper House decision and have received widespread criticism from media commentators and civil liberties groups. They expressed concern over issues such as civil liberties and data protection, but also the speed with which the government passed the Bill through parliament, stifling parliamentary expert hearings and public debate. Others have pointed to the fact that the amendments increase control over the secret services conduct and data handling through the creation of an independent control commission. The improvement of

independent control procedures was a response to an order by the Federal Constitutional Court in 1999, which deemed the existing interception law unconstitutional and obliged the government to change the legal basis for the "strategic surveillance" of telecommunications by the secret services before 30 June 2001.

Background

The interception law (called *G-10-Gesetz* because it infringes the basic right to privacy in telecommunications under Article 10 of the German constitution (*Grundgesetz* - GG)) was introduced in 1968 under a broad coalition government. The strategic interception of international telecommunications however, was conducted illegally by the Federal Intelligence Service (*Bundesnachrichtendienst* - BND, responsible for foreign intelligence) for over 30 years, without parliament, its oversight committees or data protection officers being informed. Only in 1980 did the oversight committees learn of the interception operations of the BND; the Federal Data Protection Officer only learnt of its activities after *Der Spiegel* published an interview with a BND officer responsible for technical

information in 1993.

In 1994, the conservative government introduced amendments to the *G-10-Gesetz* that considerably increased the remit of the *BND* by allowing indiscriminate interception of telecommunications via satellite from Germany and within foreign countries in the "fight against crime". The increased powers were challenged in the same year by individuals and the newspaper *taz*, on grounds of constitutionality (violation of Article 10 *GG*). In 1999, the Federal Constitutional Court declared the interception law partially unconstitutional in relation to the authorities' handling of personal data and ordered the government to amend the law and give it a legal basis in line with the German constitution by 30 June 2001.

The *G-10-Gesetz* does not regulate interception powers of police and other law enforcement agencies but only of German secret services. The former is mainly regulated under paragraph 100 of the Criminal Procedures Act (*Strafprozessordnung*) which gives powers to intercept individuals, where police can justify surveillance if "certain facts" lead them to suspect that a crime (the nature of which is listed in a crime index) might be committed in the future. In particular since the introduction of "preventative" policing in the 1980s, non-suspect related surveillance and personal data collection and storage were given legal bases in various police and procedural laws. The list of crimes that constitute reason for surveillance by police became long and vague, and has been criticised for its political nature. The "formation of a criminal organisation", for example, has historically been used to initiate large-scale and long-lasting surveillance and interception operations on left-wing, environmental and anti-fascist groups in Germany, without any hard evidence pointing to criminal activities (see *Statewatch* vol 1 no 5, vol 4 no 4, vol 9 no 5, vol 10 no 1).

The G-10-Gesetz

The *G-10-Gesetz* amends the earlier provisions that were declared unconstitutional and introduces some new regulations. According to the government, the *G-10-Gesetz* adapts to "new technological developments" in international telecommunications, which saw a reduction in the use of satellites in favour of the use of glass fibre cables. Paragraph 5 of the new law allows strategic control of international telecommunications via glass fibre cables by the *BND*, whereas the surveillance of satellite communications is reduced to 10% per satellite. Data protection officers, the *G-10* control commission (whose remits have been extended) and parliament are obliged to ensure that this 10% limit is not exceeded. Paragraph 5 para 1(1) explicitly lays down that the new law shall not allow for more interception but for a change in focus to adapt to new technological developments. That the law will not lead to an increase in surveillance in practice, is contested by civil liberties groups.

Further, under the new law:

- the crime index that justifies intercepting the telecommunications of individuals by the German Office Responsible for the Protection of the Constitution (*Verfassungsschutz* - internal security service) is extended to include "incitement of racial hatred" and serious crime such as murder, arson or hostage taking. This surveillance can only be ordered if there is concrete threat to the "free democratic institutional order" of the FRG;
- data provided by secret services can now be used in legal procedures dealing with bans on political parties on grounds of unconstitutionality or bans of unconstitutional groups/associations;
- German authorities are now authorised to inform the foreign secret service about relevant risks or areas of danger (*einschlägige Gefahrenbereiche*) without seeking judicial permission.

On the data protection side, the *G-10-Gesetz*

- obliges the secret services to record all personal data gathered and passed on through surveillance and to justify data collection with

specific reasons as well as checking the necessity of data storage every six months. All data, where this is found not to have been carried out, should be deleted (para's 4 & 6);

- limits the possible situations in which the data gathered can be passed on to other authorities and differentiates according to the level of suspicion (para's 4 & 7);

- lays down that within five years, the *BND* must inform persons on whom personal data has been gathered, unless the data was deleted within three months of its collection. However, informing the affected persons can be delayed if and as long as it will affect the surveillance operation. If this is the case for the foreseeable future, the *BND* is relieved from the obligation to inform. However, this must be agreed unanimously by the control commission. If this is not the case the data has to be deleted;

- extends the powers of the *G-10-Committee* and the *G-10-Commission*. Every member of the commission can oversee the ministerial decree authorising surveillance and can also follow the whole process of extraction, analysis and use of all personal data. Members of the commission are further authorised to demand access to all relevant files as well as having access to the offices of the relevant authorities. The regulations also lay down that the commission is entitled to all personal and material resources necessary for its operation. Members of the *G-10-Kommission* are appointed by the parliamentary oversight committee of the Lower House and are obliged to secrecy even after the fulfilment of their term of appointment;

- obliges the government to inform the parliamentary oversight committee every six months about the reason, extent, length, results and costs of strategic as well as individual surveillance operations. The government also has to justify not informing of persons affected.

Civil liberties concerns

Criticism from journalists and civil liberties groups was triggered by the fact that the White Paper was presented in the Lower House of parliament only three months before the official deadline for the amendments to be introduced. The first reading of the White Paper occurred on 29 March 2001, without public scrutiny and without national media attention. MP Max Stadler (*FDP*) criticised the fact that the final version of the regulation was only presented on 4 May, seven days before the Upper House passed the law, making an independent expert hearing impossible. Ulla Jelpke (*PDS*) declared the passing of the law another "dark day for civil liberties" and criticised the Green party for having voted for it after they won amendments.

The civil liberties group *Humanistische Union (HU)* has questioned the very basis of the *G-10-Gesetz*, arguing that it has nothing to do with fighting - and thereby reducing - crime. According to the latest data provided by the parliamentary oversight committee, during the past five years of strategic interception of international telecommunications, in only 29 cases did the *BND* pass on information to other law enforcement agencies. It is not known if a single case has led to a conviction as the committee is under no obligation to publish these details. The 29 cases relate to the international arms trade. Relevant data on international terrorism (53 entries) and the international drugs trade (119 entries) were not passed to other authorities, due to insufficient or irrelevant evidence.

The *HU* has particularly criticised the fact that the new law does not provide for an assessment of the success of such expensive and large-scale interception and surveillance operations. It has called for an immediate halt to non-suspect related interception of telecommunications by the *BND* on the grounds that the remits of security services are continuously increased to include the task of law enforcement agencies. According to the remit of the secret services should return to its initial formulation, that of protecting the "free democratic institutional order" of the FRG, and the "fight against crime" should be limited to the police and public prosecutor.

A final point, which has received very little attention during the discussion about data protection, is the right to privacy in telecommunications for third country nationals. Although the interception of international telecommunications into or from Germany is now legally regulated, the interception within foreign countries is taking place without data protection mechanisms nor parliamentary or judicial scrutiny.

*The legal details in this article were primarily taken from a commentary of the Green faction in parliament written by Christian Strobel, "Das neue G-10-Gesetz - eine Bewertung aus grüner Sicht" (14.6.01), available from hans-christian.stroebel@bundestag.de and a report by the Humanistische Union, which contains detailed criticisms of the existing regulations. Available from Humanistische Union e.V., Greifswalder Str. 4, 10405 Berlin, Tel/Fax: 0049-30-204502, hu@ipn-b.de heute im bundestag, 29.3.01, Nr. 093; *Blickpunkt Bundestag*, 5.5.01, both available under www.bundestag.de*

EU: ACCESS TO DOCUMENTS

European Ombudsman backs new Statewatch complaint against the Council

After a four year fight the agendas of a EU-US global planning unit are handed over

After a four year fight Statewatch has finally obtained the agendas of ten EU-US high-level planning meetings between September 1996 and February 1998. The agendas concern meetings of the "Senior Level Group" and the "EU-US Task Force" set up under the New Transatlantic Agenda agreed in 1995.

When Statewatch applied for the agendas in 1997 the Council refused to give access to the documents because, they argued, there were three separate "authors" - the "Presidency" of the Council of the European Union, the European Commission and the "US authorities". After an appeal against the initial decision Statewatch took a complaints to the European Ombudsman who ruled on 30 June 1998 that the Council's decision was erroneous and there were no grounds in the code of access to support their argument - the Ombudsman ruled that the Council should give access unless one of the exceptions in Article 4.1 could be applied.

On 9 July 1998 Statewatch again requested the agendas (9 July 1998). Despite the Ombudsman's ruling the Council now claimed quite different grounds for refusing access, namely that the documents were not "held" by the Council but by the General Secretariat of the Council and that they were not registered or systematically filed - they therefore, in the Council's view, fell outside the code of access.

Statewatch then took the issue back to the European Ombudsman again. On 1 March 2001 the Ombudsman made a Recommendation (the highest power the Ombudsman's office has) that the Council: 1. respect the Ombudsman's decision of 30 June 1998; 2. systematically register and file the documents concerned, and 3. give access to the documents in question unless the exceptions in Article 4.1. apply.

On 25 May 2001, after nearly four years, the Council backed down and supplied the agendas of the meetings.

The Ombudsman's actions are important for another reason. In the initial ruling the Ombudsman established that the "Presidency" of the Council of the European Union is not a separate "institution" (author) from the Council. In this new decision the Ombudsman has established that the "General Secretariat" of the Council is similarly not a separate "institution". In his ruling the Ombudsman, Mr Jacob Soderman, said:

The Ombudsman rejected the Council's argument that its General Secretariat is a separate institution. No provision in the Treaty or in Community law would suggest such a thing. Therefore, documents held by the General Secretariat of the Council are documents "held by the Council" and its public access rules apply.

The Ombudsman also insisted that the aim of the Code of Conduct on Public Access to documents is to allow for the largest possible access for citizens to information. This objective

could not be met if the Council refused access to documents saying that they were held by its General Secretariat."

This is the seventh successful complaint taken by Statewatch against the Council of the European Union to the European Ombudsman, the decision of the Ombudsman on an eighth complaint is expected soon.

What the EU-US agendas reveal

The two groups - the Senior Level Group and the EU-US Task Force - were set up as result of the signing of the New Transatlantic Agenda in Madrid on 3 December 1995. At the same time a "Joint EU-US Action Plan" was agreed on justice and home affairs issues.

What the agendas show is the level of EU-US economic, political and military cooperation on major global issues.

Access to the agenda - which contain no references to any of the documents discussed - does not mean access will be granted to any of the documents. The agenda of the meetings reveal that the following issues were discussed:

EU-US Senior Level Group (SLG), date, place if given and issues discussed included:

20 September 1996: Operations Center Conference Room, Washington DC, USA

- Chemical precursors/customs agreement (EU lead)
- ILEA (US lead) (international law enforcement agencies)
- Bosnian elections (US lead)
- Cuba (EU lead)
- Iran/Libya (US lead)

22 November 1997: Dublin

- TABD (Transatlantic Business Dialogue)
- WTO meeting
- "Third Pillar and political issues": Third Pillar Initiatives (policing, customs, immigration and legal cooperation), KEDO (Korean Peninsula Energy Development Organisation), MEPP (Middle East Peace Process), Terrorism, Joint Action on Zaire, Cooperation with Turkey
- China: UN Committee on Human Rights: draft resolution
- Central and Eastern Europe and Baltics: Enlargement

28 January 1997: Operations Center Conference Room, Washington DC, USA

- WTO work plan
- dialogue on biotechnology issues
- TABD
- TALD (Transatlantic Labour Dialogue)
- Joint Action on Central Europe

- Third Pillar Initiative

1 October 1997: Operations Center Conference Room, Washington DC, USA

- Bananas
- WTO
- Law Enforcement Cooperation (counter-narcotics cooperation in the Caribbean and Andes, Europol/US exchanges and organised crime dialogue)
- Climate change negotiations
- Turkey/Cyprus
- Enhancing coordination of US and EU Policies towards Countries of Concern

20 November 1997: Brussels

- trade issues (implementation WTO Basic Telecoms, GMO, SRM's)
- Preparation Climate change conference
- EMU (European Monetary Union)
- Iran
- Ukraine

26 February 1998

- Global issues: Counter narcotics cooperation (including Caribbean project) and Kyoto/Climate Change
- Diplomatic cooperation including Ukraine, Turkey, China Human Rights, Southeast Europe and Caspian energy corridor

14 July 1998: Vienna

- implementation of Understandings on Iran/Libya/ILSA
- TABD
- GMO's (process for approval of GMO type of products)
- Global issues: Kyoto/Buenos Aires, Law enforcement, drugs, trafficking in women

NTA Task Force

17 April 1997

- common foreign policy agenda: Bosnia/Serbia, Albania, Turkey/Cyprus, MEPP, China, Central Africa, Terrorism, Iran
- Global issues: Development cooperation, food security, third pillar cooperation, environmental issues, health task force

19 November 1997

- cooperation between law enforcement agencies, trafficking in women initiative, mutual legal assistance, Central Asia drugs, Third Pillar deliverables to the Summit

25 February 1998

- international crime/drugs (Caribbean/Central Asia)
- Readout of Environmental Bilaterals in Kyoto
- WTO: Ministerial and China Accession
- MAI (EU)
- China Human Rights
- Caspian Region Energy

The new Regulation - where now?

The new Regulation on access to EU documents will come into effect for the three institutions - the Council, European Commission and European Parliament - on 3 December. They have until June 2002 to implement the provision on providing a public register of documents. The Regulation is known as "Regulation no 1049/2001 of 30 May 2001".

Before December each institution has to amend its rules of procedure to meet the provisions in the Regulation. These changes are important because they will define in detail how access to documents will operate.

The Council's Working Party on Information (WPI) has discussed a list of measures that it has to undertake. These

include:

- 1) deciding how "consultations" with "third parties" will work;
- 2) "who will act on behalf of the Council as regards the two-step procedure foreseen in Articles 7 and 8.. as regards sensitive documents". The "Solana Decision" of August last year said that the vetted officials on the respective working parties should decide on access - not the Working Party on Information;
- 3) the creation of the inter-institutional committee (Article 15) which will discuss "best practice, address possible conflicts and discuss future developments". The meeting of the WPI discussed whether it should be composed of officials or political representatives (eg MEPs in the case of the parliament).

The Council also has to repeal a number of provisions including the original 1993 Decision (93/173/EC) and those on the creation of its public register. It was also noted that if these are repealed then "Decision 2000/527 of 14 August 2000 will be repealed automatically" - this is the "Solana Decision".

The New Regulation on Access to documents: A forward or backward step?

In the wake of the final adoption of the new Regulation on access to EU documents some in the institutions involved are admitting that the secret "trilogue" meetings which negotiated the "compromise" text was not an appropriate procedure for such an important measure concerning citizens' rights. Tony Bunyan, *Statewatch* editor, has said that the process was a "public relations disaster" and a "constitutional farce".

There is also widespread agreement that the three drafts on the table by December last year were miles apart and did not reflect the intent of the Amsterdam Treaty commitment - and further that the parliament's November report by Cashman/Maij-Weggen was a complete "mess".

Civil society groups argued that in these circumstances the only way to proceed was through the full co-decision procedure which would at least have been an open process in which their views could have been properly considered.

What follows is a short summary of the effects of the new Regulation. Compared to the situation prior to the adoption of the "Solana decision" in August 2000, the new Regulation on access to documents is on balance a backward step as regards access to documents. The following provisions of the new Regulation reduce the standards that previously applied:

- the exception for "financial, monetary or economic policy" of the EC or its Member States is far wider than the provisions it replaces;
- the exception for "commercial interests" is also far wider than the provisions it replaces;
- Member States will be able to request the institutions not to release documents;
- EU rules will prevail over Member States' rules on whether to release documents, requiring Member States to consult with the EU first before releasing any EU document, and banning Member States from releasing documents which the EU institutions consider "sensitive";
- there is no longer any discretion for the institutions to release "internal" documents;

- there is a new concept of "sensitive documents", which the originators can veto release of, and which need not be listed on the registers of documents;

In contrast, there are some limited steps forward compared to the pre-Solana situation:

- the new Regulation will cover documents sent to the EU institutions from third parties;
- there will be a possibility to argue for the release of some more

categories of documents in the public interest;

- the time limit on replying to requests is a week shorter;

- the test for refusing access is arguably more stringent;

Also, there are several crucial problems with the current rules that are not solved by the Regulation:

- the exception for documents for "internal use" (previously for the "confidentiality" of the institutions) is not sufficiently limited, even when the institutions are adopting legislation or developing strategies;

- very important exceptions (public security, the military, international relations and financial and economic policy) are still not subject to any public interest test;

- there is no express obligation to place every document on the registers of documents, so the institutions can still keep the existence

of many documents secret;

- there is no clear and precise obligation to publish documents on the register, even documents relating to legislation or strategy.

The "Call for an open and democratic Europe"

The civil society campaign is to continue with extended objectives. These now include not just access to documents but also demands for full freedom of information in the EU and for democratic standards and accountability.

The *Statewatch* website now includes a new page: "Freedom of information in the EU" which brings together all the existing reports and documentation in one place. It also includes a new "Observatory" on decisions in the Court of First Instance and by the European Ombudsman (with links to the texts of judgements). It is on: www.statewatch.org/foi.htm

UK

Police shoot two unarmed men in five days

More shootings, more flawed inquiries, more questions than answers

Police armed response units shot dead two men in separate incidents in the space of five days in July. One had a samurai sword and was shot twice in the chest; the other had a replica gun cigarette lighter and was hit once in shoulder and three times in the back. The killings follow recent controversies in two other fatal police shootings which have seen the Chief Constable of Sussex Police resign over the death of a naked and unarmed man in a botched raid and a "shocking" Crown Prosecution Service (CPS) decision that there is "insufficient evidence" to prosecute police marksmen who shot dead a man carrying a table-leg through a park.

Derek Bennett, Brixton, 16 July 2001

People demonstrated on the streets after Derek Bennett, a 29-year-old black man, was shot and killed by police on a housing estate in Brixton, South London. Three police officers, two armed, responded to a call from a member of the public who had seen a man with a gun arguing with another man. After a brief search they found the "gunman" on the first floor balcony of a block of flats. Police initially said that he was told to drop his weapon, which he then pointed at the head of a "hostage". One officer fired six shots from a Glock automatic pistol. Mr Bennett's "weapon" was later found to be a cigarette lighter in the shape of a pistol. The Police Complaints Authority (PCA) has called in the Northumbria force to conduct an enquiry.

Several days after the shooting, media reports claimed that Mr Bennett had been hit once in the shoulder and three times in the back. Hundreds of riot police were called to Brixton as people took to the streets again.

This was the eighth fatal shooting involving the Metropolitan force since 1995. Deborah Coles, co-director of *Inquest* (a voluntary group monitoring deaths in custody and police shootings), said: "the shooting dead of a black man raises questions about the disproportionate number of young black men who die following the use of force by police".

Andrew Kernan, Liverpool, 12 July 2001

Andrew Kernan, a 37 year-old schizophrenic, was shot dead by police officers, who were called to his home by his mother after he had become ill during the evening and calls for help to the hospital had gone unanswered. Mr Kernan was brandishing a samurai sword and following failed attempts to restrain him using CS gas he was shot twice in the chest from close range. His mother described him as "gentle giant" and said: "they shot

to kill - twice in the chest when they should not have shot at all. Why did they not shoot him in another part of the body?".

Harry Stanley, Hackney, 22 September 1999 - CPS decides not to prosecute

Harry Stanley was shot dead by police as he made a short walk home from a pub in east London in the early evening (see *Statewatch* vol 10 no 2). Armed police were responding to a call from a member of the public reporting an Irishman carrying a sawn-off shotgun. Mr Stanley, a 46 year-old painter and decorator, was in fact Scottish and was carrying a table leg his brother had repaired in a plastic bag. Although Mr Stanley had his passport and his brother's phone number in his pocket, the police did not contact the family until 18 hours after he had been shot.

After almost two years of campaigning, Harry Stanley's family are still waiting on the CPS who are reconsidering their initial decision not to prosecute on the grounds of "insufficient evidence". The Stanleys had begun judicial review proceedings, but these are on hold as the CPS is looking at the case again. Irene Stanley, Harry's widow expressed shock and disbelief at the initial decision and said she wants to see the police prosecuted.

James Ashley, Hastings, 15 January 1988 - Sussex Chief Constable resigns

Paul Whitehouse, chief constable of Sussex police resigned in June after criticism from the new Home Secretary, David Blunkett, over the killing of James Ashley (see *Statewatch* vol 8 no 3/4 and 5). Twenty-five officers, each armed with a pistol, a sub-machine gun and 60 rounds of ammunition raided Mr Ashley's flat at 4am, initially going in to the wrong flat on the floor below. By the time they reached Ashley's flat he was up and out of bed, naked and unarmed. In the half-darkness he was shot in the chest in front of his 19-year-old girlfriend. At a press conference chief Whitehouse said he was wholly satisfied with the conduct of the raid, intended to recover drugs and a gun, and that Ashley was wanted for an attempted murder. It soon transpired that Mr Ashley had actually prevented the attempted murder in question and that no drugs or weapons were found at the flat. Whitehouse received "strong written advice" from the Sussex Police Authority in April 1999 (see *Statewatch* vol 9 no 2).

Conduct of the operation was heavily criticized by Kent and

Hampshire police in PCA investigations that came to light during a trial in May in which the officer who fired the shot was acquitted of murder and manslaughter. It emerged that the preparations were as flawed as the press conference: according to Kent police intelligence was "not merely exaggerated, it was determinably false" and "there was a plan to deceive"; the search warrant was technically defective as it did not specify which flat in the block was to be searched and should not have been granted under the Misuse of Drugs Act because there was no evidence of drugs in the flat; members of the special operations unit were inexperienced and incorrectly briefed.

The operation was the biggest use of armed police in Sussex police history and was based on a rapid intervention tactic known as "Bermuda" which the force claimed to have learnt from the Royal Ulster Constabulary in Northern Ireland; the RUC denies this. Experts said there was no need to use armed officers at any stage of the raid and the Association of Chief Police Officers (ACPO) said the strategic objectives failed to meet their guidelines.

After the trial, which recognized a "corporate failure" but insufficient evidence to prosecute individual officers, it was announced that two of the senior officers (then detective inspectors) who planned the raid were to return to duty as chief inspectors. They had been suspended on full pay since the raid in January 1998 and their promotion included a backdated pay-rise. Before the trial the CPS had attempted to bring charges of misfeasance in public office against the two.

The Home Secretary invited the Sussex Police Authority to sack Paul Whitehouse "in the interests of efficiency and effectiveness". Mr Whitehouse, who had been chief constable for eight years and was widely regarded as liberal and progressive, resigned immediately and called for a public enquiry - a call he resisted when in the job.

Deployment of armed police rises sharply

Recent figures show that the deployment of armed police has at least trebled over the past decade. According to an HM Inspectorate of Constabulary Report guns were being used by police forces in England and Wales in more than 200 operations each week. The total for 2000 was 10,915, almost treble the 3,722 instances in 1991. In the same nine-year period the number of crimes committed using guns in the UK has increased very little, from 6,665 cases in 1991 to 6,843 in the year to April 2000 (*Times* 17.6.01).

Police in England, still generally described as "unarmed", began conducting routine patrols of armed officers on housing estates in Nottingham last November. This pilot project was the first use of armed patrols in mainland Britain (see *Statewatch* vol 11 no 1). The police and politicians cite an increase of guns in criminal hands and a need to protect themselves, as well as providing reassurance to the public and a deterrent to criminals.

At least 25 people have been shot dead by police officers England and Wales since 1990; eight of these by the Met and the rest by nine other forces (statistics from *Inquest*; there are 43 regional police forces in England and Wales; the forces responsible are not known in five cases).

Some 43 unarmed people have been shot by police officers in England and Wales in the past decade (*Guardian*, 23.5.01). Sixteen were carrying "replica" guns, 14 had other weapons, and seven had nothing at all (the remaining six cases were "accidental discharges" and five of these hit police officers).

Stun guns for the Met and Northamptonshire

Following the fatal police shootings in Liverpool and Brixton, the Home Secretary announced that the Home Office's Less Lethal Technology group, is to look into the possibility of using tranquilliser darts or "stun-guns" as an intermediate weapon, between the firearm and the extendable baton. In June *Police*

Review reported that Northamptonshire constabulary was considering arming its officers with stun guns and in July it was announced that London's Metropolitan police intended to deploy the weapon.

Northamptonshire's chief constable, Christopher Fox, is expected to decide upon deploying the weapon soon, following research into the M26 Advanced Air Taser which is manufactured in the USA by Taser International. The taser, which disables its target with an electric shock, is described as a:

battery powered weapon [which] has a range of 21 feet and costs around £400. It resembles a large pistol and fires two darts which attach to the target. The darts are connected to the weapon by cables which transmit a temporarily disabling high-voltage electric shock through up to two inches of clothing.

The taser, which the Metropolitan police force is hoping to purchase from the USA before the end of the year, was banned for export from Britain in 1997 as "equipment used for torture". In its strategic report for 2000, the Department of Trade and Industry expressed its commitment "to extending the unilateral ban on the export of equipment used for torture". Experts in the field of less lethal weaponry have criticised that lack of meaningful independent studies of taser technology and the health risks associated with it. Amnesty International have called for police forces to suspend their plans until proper medical tests have been carried out.

The ACPO guidelines

An ACPO firearms manual sets out the procedures to be followed by police. Previously confidential, the manual was last updated in January 2001 and published soon after on the ACPO website (www.acpo.police.uk).

Firearms can be issued when police believe suspects are armed, or have access to arms, or where "a person is otherwise so dangerous that the officer's use of a firearm may be necessary" (chapter 3, para. 2.2). The minimum level of authority to issue firearms in "spontaneous" deployments is Inspector. In the case of preplanned operations an ACPO officer must take the decision (assistant chief constable or higher). "Self-authorisation" is available in eventualities "where officers with immediate access to firearms encounter a situation" requiring their use. A "standing authority" is granted to Armed Response Vehicles and other routinely armed police units (special protection services etc.).

There is no reference to checks on the integrity of police intelligence, only a responsibility to "maximize the level of intelligence gathered" but the manual does state that in order to comply with the European Convention on Human Rights, a plan "must be proportionate, justified and the least intrusive or damaging to the rights of individuals" (ch 4, 7.1.1).

In spontaneous incidents, "it is important to establish and maintain an effective information gathering process from an early stage". The guidelines state that a decision to deploy armed police is not in itself a justification for the use of firearms.

Shoot only when absolutely necessary, shoot-to-kill?

"Firearms are to be fired...only when absolutely necessary after conventional methods have been tried and failed or must, from the nature of the circumstances, be unlikely to succeed if tried." (ch 5, 1.1).

Armed police must issue a clear oral warning of their intention to use their weapons before firing. "When it is considered necessary to open fire..., police need to shoot to stop an immediate threat to life" (ch 5, 5.2).

In a number of recent fatal shootings, people have asked why the unarmed victims could not have been shot in another part of the body. However, the manual gives a clear instruction to aim for the torso. Some commentators see this as a de facto shoot-to-kill policy; a Met police spokesman said their officers

"shoot to stop". ACPO says:

Research has indicated that only shots hitting the central nervous system (which is largely located in the central body mass) are likely to be effective in achieving rapid intervention... Research has also shown that the accuracy of shots fired under training conditions is generally greater than in operational circumstances. Police officers are therefore normally trained to fire at the largest part of the target they can see. (ch 5, 5.1-2)

There is certainly evidence to support concerns over accuracy: according to research by Superintendent Burrows 56% in a sequence of shots fired in operational circumstances missed their targets (*Guardian* 23.5.01).

Legal liability

The ultimate responsibility for firing a weapon rests with the individual officer, who is answerable ultimately to the law in the courts. Individual officers are accountable and responsible for all rounds they fire and must be in a position to justify them in the light of their legal responsibilities and powers. (ch 5, 1.2).

In the ACPO guidelines this "ultimate responsibility" of the officer firing the shots precludes a wider, "institutional" or "corporate responsibility", where senior officers (or the force as a whole) are liable for operations under their command. This limited liability is at odds with the case-law of the European Court of Human Rights, which has held that:

the court must...[take] into account not just the agents of the State who actually administer the force but also the surrounding circumstances including such matters as the planning and control of the actions under examination. (McCann v UK (1995) 21 EGRR 97, para. 150)

Police officers themselves are also against being solely liable and Scotland Yard marksmen have reportedly been refusing to carry their weapons for four months after threats to prosecute colleagues involved in shooting incidents.

The judicial process

The PCA will now produce reports on the Bennett and Kernan shootings, based on investigations carried out by other police forces. To counter the now routine allegations of partiality, a

PCA spokesman suggested that the appointment of Northumbria to investigate the Metropolitan police in the Bennett case had an air of independence because of the geographical distance between the two forces. The Bennett family solicitor, Imran Kahn, said he had "no confidence whatsoever".

Neither family has received an apology. Although ACPO suggest "there will be occasions when the reason for police action may not be apparent to members of the public...[and] on occasions some form of apology may be required" (ch 5, 13.8.1-2), the police have preferred expressions of regret and say that it would be inappropriate to pre-empt disciplinary and judicial proceedings.

On the basis of past experience, the PCA reports will take at least 18 months to complete. At least a further six-months will pass while the CPS decides whether there is sufficient evidence to prosecute individual officers.

The 25 fatal shootings have so far resulted in only two prosecutions and the officers were acquitted in each case. If the CPS decides not to prosecute, a Coroner's Inquest will take place. In 18 such inquests since 1990, there have been 17 "lawful killings" and one "open verdict".

At the trial of PC Chris Sherwood for the killing of James Ashley, it was argued, and widely accepted, that it was impossible and unfair to pin the blame on a single officer. After all, the decision was taken to send an unprecedented 25 armed officers to arrest a suspected drug-dealer in tactics developed by the RUC, apparently on the basis of a 'tip-off'. However, no mechanism was in place to address the "corporate failure" (save a public sacking of a chief constable by a government minister). Nick Davies, writing in the *Guardian*, concludes:

the justice system is incapable of pinning the blame where it belongs...The rate at which officers are armed, the law which controls them, the systems which are supposed to supervise them are all left untouched. Ashley is dead. Forty others are needlessly dead or wounded. Yet for all official purposes there is nothing wrong.

Sources: *Inquest* (see <http://www.inquest.org.uk>); *Manual of guidance on police use of firearms*, Association of Chief Police Officers, January 2001; *Voice* 23.7.01; *Guardian* 23.5.01, 26.6.01, 18.7.01, 21.7.01, 24.7.01; *Times* 17.6.01; *Police Review* 22.6.01.

EU TELECOMMUNICATIONS SURVEILLANCE

Data protection or data retention in the EU?

EU governments are backing the law enforcement lobby's demands

The debate over the demands of the EU law enforcement agencies that telecommunications traffic and location data be retained, and that they should have access to it, is reaching a crucial stage. At present under existing EU Directives this data has to be erased or made anonymous and such data can *only* be kept for billing purposes (ie: to aid the customer).

The fight is centred on a new draft Directive on "the processing of personal data and the protection of privacy in the electronic telecommunications sector" which would update the existing 1997 Directive on this issue. The Commission's draft proposal simply updates the provisions to cover new means of communication (eg: the internet and e-mail).

The European Parliament is due to discuss and adopt a report from the Committee on Citizens' Freedoms and Rights at its session in Strasbourg on 2-6 September. This report comes out strongly in favour of the existing Directives and against data retention. The Council of the European Union (the 15 EU governments) have agreed a position which would allow for data retention and its surveillance by law enforcement agencies.

If the parliament's report is adopted unamended and the

Council then adopts its opposing common position the two institutions will be on a collision course.

"ENFOPOL 98" agreed, Conclusions on hold

The meeting of the EU Justice and Home Affairs Council on 28-29 May agreed a "Council Resolution on law enforcement operational needs with respect to public telecommunications" which effectively adopts the extension of surveillance in "ENFOPOL 98" (see *Statewatch*, vol 7 no 1 & 4 & 5; vol 8 no 5 & 6; vol 10 no 6; vol 11 no 1 & 2; the final legislative text is in ENFOPOL 55, 20.6.01). Its formal adoption has been delayed due to a scrutiny reservation by Germany - when this is withdrawn it will be nodded through.

The Resolution defines how the "Requirements" to be placed on network and service providers are to be interpreted in the EU (see *Statewatch* vol 11 no 2 for details of its effect). The "Requirements" were adopted by the EU on 17 January 1995 and mirrored those drafted by the FBI in the USA.

The draft Council "Conclusions" in ENFOPOL 23 (30.3.01)

which seeks to make an overall statement on the demands of the EU law enforcement agencies for the retention and access to all traffic data. They also call on the Commission to review all existing EU laws which effect this surveillance. The proposal is currently on hold because some member states do not think it appropriate for a "third pillar" (justice and home affairs) initiative to law down the law to the Commission and the Telecommunications Council ("first pillar", economic and social policy).

Statewatch's application to the Council for a copy of ENFOPOL 23 + COR 1 (which makes clear this is a proposal from both the Swedish *and* French delegations), was discussed at two meetings of the Working Party on Information. The first meeting concluded that: "the applicant may have access to the documents requested (provided that the French and Swedish delegations agree)." However, on 23 May it was decided that:

The document was agreed to be withheld because the French delegation so wished.

The text of ENFOPOL 23 is on the *Statewatch* website: www.statewatch.org/soseurope.htm

Divisions in the Council and adoption of "guidelines"

Since last autumn when the discussions on the new Directive in the Council on the needs of the law enforcement agencies (LEAs) to have access to telecommunications data came back onto the agenda there were divisions amongst the member states (see *Statewatch* vol 11 no 2). Belgium, Germany, France, Netherlands, Spain and the UK wanted to delete the requirement that traffic data must be erased or made anonymous in the 1997 Directive and the LEAs given access to the data.

On 29 May the Telecommunications Working Party discussed the Council's draft position. Three delegations, Sweden (the then Presidency of the EU) and Belgium (the next Presidency) and the United Kingdom wanted to delete from Article 6.1. the requirement to erase data or make it anonymous because it:

does not take into account the needs of the repressive agencies.

Greece, Italy and the Netherlands, together with the Commission, refused:

to see the text of the present directive changed on this point and insisted on the importance and sensitivity of this issue which affects human rights and fundamental rights

The UK also argued in favour of changing Article 15 to allow general retention of data and the Swedish Presidency proposed that the following was added to Article 15.1.:

Member states may provide for the retention of data for a limited period..

The final version sent by the working party to COREPER (the permanent committee of top-level representatives from the 15 EU governments based in Brussels) included a wording put forward by Belgium (the incoming EU Presidency). This proposed removing the requirement in Article 6.1. to delete traffic data and inserting that the data could be:

processed for legitimate purposes as determined by national law or applicable instruments (29 May)

At the meeting of COREPER on 13 June the UK tried to insert an enabling clause for law enforcement purposes in Article 15.1.

The wording of Article 15.1. allows member states to derogate from the Directive for the purposes, among others, of national security and the prevention, investigation, detection and prosecution of crime. Indeed there is nothing in the present or proposed Directive preventing EU member states, on an individual basis, from adopting national laws allowing for the general retention of data for law enforcement purposes. However, such measures would have to be compatible with community law especially Article 8.2 of the European Convention on Human Rights and the consequent case law in

the European Court of Justice.

However, the demands of the law enforcement agencies, backed by a number of powerful governments, require that *all* EU states (and thus all applicant states) be bound to adopting the same powers of surveillance. The argument is that there cannot be a situation where country A allows data retention but country B does not.

The "informal" text of the Council's position was agreed at the Telecommunications Council on 27 June - this text is termed "guidelines" rather than the Council common position as the European Parliament has not yet adopted its first reading position.

The amended text sent from COREPER to the Telecommunications Council inserted at the end of Article 15.1. a new sentence saying that in derogating from the Directives provisions EU governments "may provide for the retention of data for a limited period". In order to get unanimity this was deleted at the Council and instead a revised "Recital 10" was agreed saying:

this Directive does not affect the ability of Member States to carry out lawful interception of electronic communications or take other measures, such as providing for the retention of traffic or location data for a limited period, where necessary and justified for these purposes

The purposes are as set out in the existing Directive "to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences". However, most existing national interception laws only covers those authorised on an individual basis for a specific suspected offence - not the general retention of data for law enforcement purposes. Although the Council is now not proposing a change to the main text of the new Directive the change to this Recital will, in their view, give a green light for EU governments to adopt new laws at national level ending the erasure of data, requiring data to be retained, and for law enforcement agencies to have access to this data. The effect would be to fatally undermine data protection and privacy in the EU.

EU data protection letter

In the midst of these discussions Stefano Rodotà, chair, of the EU's Data Protection Working Party sent a letter to the European Parliament, the European Commission and the Council.

The letter is blunt calling on them to back the Commission's initial proposal:

It seems that some Member States would like to change the balance in favour of increasing the possibilities of law enforcement authorities beyond the scope of what the European Court on Human Rights has accepted in the course of its case law on Article 8 of the European Convention of Human Rights.

The Article 29 Data Protection Working Party considers that the Council and the European Parliament should resist any changes of the existing provisions guaranteeing confidentiality of communications (Article 5) and limited processing of traffic data (Article 6). It is not acceptable that the scope of initial data processing is widened in order to increase the amount of data available for law enforcement objectives. Any such changes in these essential provisions that are directly related to fundamental human rights, would turn the exception into a new rule. Systematic and preventive storage of EU's citizens' communications and related traffic data would undermine the fundamental right to privacy, data protection, freedom of expression, liberty and presumption of innocence. Could the Information Society still claim to be a democratic society under such circumstances?

Some EU governments jump the gun

Evidence has emerged that some EU governments have already

taken steps to require the retention of data, thus putting pressure on others to do the same.

In the Netherlands legislation requires internet service providers to store connection data for three months. Belgian law requires them to keep call data for a minimum of 12 months and France is also preparing a law requiring the retention of connection data for 12 months. While official responses to a survey carried out by the EU's Police Cooperation Working said:

the United Kingdom have concluded informal arrangements for national service providers whereby UK investigative departments hope that connection data will be stored for 12 months"

This admission contradicts statements given by two Ministers - Patricia Hewitt and Charles Clarke - that the government was not planning any measure on data retention. Or rather they said: "We have no plans to introduce legislation mandating the retention of such data" (letter to Sunday Independent, 28.1.01). Instead it appears they have followed the advice of the report from the National Criminal Intelligence Service (see *Statewatch*, vol 10 no 6) for an "informal" agreement - as legislation going through parliament might be contentious.

The EU report said that all member states wanted telecommunications providers to be obliged "to store connection data for a minimum period... a minimum period of 12 months".

European Parliament report

On 11 July the European Parliament's Committee on Citizens Freedoms and Rights adopted a report on the new Directive by 22 votes to 12 with 5 abstentions. A mixed alliance: the PPE (conservative group), ELDR (Liberal group), some PSE (Socialist group) and Turco and Cappato (Italian Radicals) voted in favour, the majority of the PSE (Socialist group) voted against with the GUE (United Left) and the Green/EFA groups abstaining.

The critical amendments in the report are to Recital 10 and to Article 15. Article 15 allows member states on an individual

basis to restrict the limits of the Directive for national security and the prevention, investigation, detection and prosecution of crime. The parliament's amendment would add the following:

These measures must be entirely exceptional, based on a specific law which is comprehensible to the general public and be authorised by the judicial or competent authorities for individual cases. Under the European Convention on Human Rights and pursuant to rulings issued by the Court of Human Rights, any form of wide-scale general or exploratory electronic surveillance is prohibited".

There was much discussion not around data retention but around unsolicited e-mails and faxes (which the Commission wants to prohibit and criminalise, so do the PSE group). The adopted text in the Cappato report leaves these issues to national decision-making. The draft Council "guidelines" want to extend the ban on unsolicited e-mails to "political campaigns" which would negate NGO/voluntary group work.

On 19 July the Council's Working Party on Telecommunications discussed the parliament's report and concluded that "the possibility of agreement at first reading with the European Parliament was not the likeliest hypothesis". However, the Belgian Presidency could hold "informal discussions" before the vote in the September plenary (there have so far been two informal "trilogue" meetings). At the Working Party meeting Germany requested that discussion be re-opened on Article 6 (data retention) but this was not accepted by other member states.

Conclusion

The report adopted by the Committee on Freedoms and Rights in effect keeps the position of the 1997 Directive that data can only be kept for billing purposes. Whether this position can be maintained during the plenary session of the parliament in September and subsequent discussions remains to be seen. The outcome, as the EU's Data Protection officials observe, will fundamentally affect the future of democracy in the EU.

EU

Europol: Operational powers & new mandate

Convention to be re-written on the basis of a Europol "shopping list" but is it operational already?

The 1995 Europol Convention is to be rewritten next year in a legislative overhaul that will extend Europol's mandate to another 18 forms of crime and give the agency operational powers it has long coveted. Europol officials have drawn-up a "shopping list" of 25 amendments that they would like to see made to the Convention which, after discussions in EU working parties, will be adopted by EU justice and home affairs ministers as a political mandate for officials to draw up concrete proposals.

Meanwhile, a forthcoming *Statewatch* report on the development of Europol suggests that activities to date may have been of a far more operational nature than the Convention envisaged.

From a proposed amendment to a complete overhaul

The "shopping list" has followed lengthy negotiations on how to allow Europol officials to participate in joint investigation teams operating in two or more member states, and separate discussions on extending Europol's mandate from specific forms of "organized crime" to serious crime in general. The joint teams proposals began as a recommendation from the Tampere summit in October 1999. Policy-makers had hoped to allow Europol participation in joint teams without amending the Convention but a formal amendment was eventually proposed in

2001. Discussions on expanding Europol's mandate, which does not expressly require amendment of the Convention, date back to late last year.

Since any amendment of the Convention requires national parliaments to ratify an agreement, the new Belgian presidency of the EU is taking the opportunity to:

initiate a procedure to amend the Europol Convention, which will cover a number of topics, allowing afterwards the Convention to remain unchanged for a number of years (9273/01, 11.6.01).

A shopping list of possible amendments followed, drawn-up by Europol and its Management Board (senior officials appointed by the member states). The document is described as "guidance" by the Belgian presidency, who says "it is not [their] intention to start a general overhaul of the Convention". Nonetheless, 25 amendments are on the table, covering all the key areas of the 1995 agreement which entered into force in October 1998 (Europol "officially" became operational in July 1999).

Operational powers

Top of the shopping list (Item 1, 10979/01, 18.7.01) is the proposal to delete article 4(2) of the Convention which prevents Europol officers from liaising directly with national law enforcement agencies. There is already political agreement on this point. Article 4(2) reads:

The [Europol] national unit shall be the only liaison body between Europol and the competent national authorities.

Europol national units, and liaison officers, are appointed by the member states and seconded from national forces. The amendment is to empower Europol's staff, whose number will grow to 260 by the end of 2002. It will allow their participation in joint investigations teams which can be set-up under the 2000 EU Mutual Legal Assistance Convention (MLA).

The MLA Convention contains basic rules on the powers and liability of member state officers operating in another member state. Joint teams are "set up" in one member state and can operate in all the countries participating in the investigation. Police officers from outside the member state where the team is working are regarded as seconded to the competent domestic authorities and can be present when investigative measures and operational activities occur. The leader of the investigation comes from the state that set up the team, but the team must always work in accordance with the laws of the state in which they are operating. In any case, Europol officers have complete immunity from the legal process and cannot be prosecuted or made to testify in court (unless the Europol Director waives the immunity). Next year Europol will draw-up the operational EU manual for joint investigation teams.

Eurojust, the future EU public prosecutions office (see *Statewatch* vol 10 no 3 & 4), will also participate in joint teams. Item 2 on Europol's shopping list, on which there is also political agreement, empowers Europol to ask the member states to start investigations (Eurojust is to be similarly empowered where prosecutions are concerned). If national police forces refuse, they must provide a written justification. Justice has suggested this will make the requests very hard to refuse in practice, giving the agencies in The Hague a quasi-judicial role.

Operations based at "non-operational" Europol since 1998

According to a new report from *Statewatch*, de facto joint teams are already a reality at Europol. The June 1998 version of the confidential EU controlled delivery operational manual, leaked to *Statewatch*, shows that the then Europol Drugs Unit (EDU) - the "provisional" Europol created in 1993 - was being used as:

a European platform for the support of ongoing operations in respect of organised crime, including controlled deliveries.

The manual cites a number of benefits for national investigators using this "platform":

the unique benefit of having their representatives permanently based at the EDU, each operating under the direction of his or her national unit"; office space, equipment and technical facilities; translation facilities; the presence of "representatives of different law enforcement agencies" (ELOs) (police, customs, gendarmerie, coastguard etc)"; the "possibility of exchanging "soft" information; and respect for "sovereignty and subsidiarity.

This controlled deliveries manual was produced before the Convention had even entered into force and on the legal basis of article 2(3) of the 1995 EU Joint Action on the EDU: "the objective of the [EDU] is to help the Police and other Member States to combat the criminal activities [within the EDU mandate] more effectively". Neither is there a specific locus in the Europol Convention or "acquis", or in fact any reference, to such an extensive operational platform. Item 20 of the shopping list tacitly acknowledges the status quo and suggests: "clarifying Europol's competence in providing technical support to Member States' operations".

It is not known how many operations have been based at the EDU/Europol, but the agency received more than 600 requests for specific operational support between 1994 and 2000. In the four years from 1996-99, Europol was involved in 253 controlled delivery operations (seven of which concerned "people trafficking").

Operational targets

Europol is known to be leading a number of operational-oriented projects, several of which will come to fruition in next year. According to the work programme for 2002, one on motorcycle gangs "will enable Europol to identify specific targets" and "be in a position to undertake joint actions" (with national police forces) "to dismantle these groups". Europol also expects to "undertake up to 5 major projects on trafficking in human beings, focusing on sexual exploitation, child molesters networks and child pornography" and may promote "investigative initiatives to counter threats created by Eastern European criminal organisations". Operational projects concerning the illegal immigration of Moldavians and Ukrainians are already underway and Europol has been "handed over" a Schengen Task Force "project concerning illegal immigration from Iraq and neighbouring countries".

Statewatch has identified eight of the "analysis work files" of the 11 Europol said it had opened to the end of 2000. These files can contain comprehensive personal data on groups and individuals and are expected to lead to operational outcomes. They include "eco-terrorism"; illegal immigration from Iraq; illegal immigration from a "specific province in China"; "extremist Islamic terrorism" in the EU; Latin American drug smuggling groups (two different files) and counterfeiting of currencies. Member states have an obligation under the Convention to contribute their relevant intelligence to Europol analysis files, but can withhold intelligence on a broad range of grounds (national security, protecting investigations or personal security, or specific intelligence activities). Europol has suggested that "it is necessary to clarify the legal obligation to supply information to Europol, unless the exceptions of article 4(5) [of the Europol Convention] apply" (Item 21).

Extending the Europol mandate

Item 3 on the shopping [list] will extend Europol's mandate to all the forms of crime in the Annex to the Europol Convention; there is a "general agreement" among the delegations on this. This mandate has already been extended a number of times, on each occasion without any prior objective assessment of Europol's efforts and achievements. The EDU's remit was widened in 1995 (from drugs) to trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime. Terrorist activities were added when Europol became operational in July 1999, followed by the counterfeiting of currency (1999), falsification of payments (1999), all forms of money laundering (2000), and "trafficking in human beings" was redefined to include child pornography (1999). A proposal to add "cybercrime" is on the table; extending the mandate to the rest of the crimes in the annex will add:

Against life, limb or personal freedom:

- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia

Against property or public goods including fraud:

- organized robbery
- illicit trafficking in cultural goods, including antiquities and works of art
- swindling
- racketeering and extortion
- counterfeiting and product piracy
- forgery of administrative documents and trafficking therein
- corruption

Illegal trading and harm to the environment:

- illicit trafficking in arms, ammunition and explosives
- illicit trafficking in endangered animal species

- illicit trafficking in endangered plant species and varieties
- illicit trafficking in hormonal substances and other growth promoters (Annex 2, *Europol Convention 1995*).

From reactive to proactive policing

Europol officials have argued for the fullest extension of their mandate, claiming the "crime-related approach" (where Europol's is tasked with specific crimes), "has led to major hindrances" since law enforcement agencies intending to work with Europol "are each time confronted with the uncertainty whether Europol is competent or not" (5571/01, 26.6.01). The solution: rather than address certain forms of criminality, Europol should be competent to deal with any criminal activities it encounters in the course of its activities.

The current proposals are seen as the "first step" toward "making Europol competent for international organised crime in general". This represents a fundamental change in the operational nature and scope of the agency from reactive policing (responding to actual or suspected offences such as international drug trafficking) to proactive (where Europol is able to choose where and to whom it turns its attentions).

Wider access to Europol and SIS databases

The central information system of the Europol Computer System (TECS) will go online at the end of 2001. It will initially cover counterfeiting of the euro and will be fully operational during 2002. TECS will eventually house the analysis files and an index system alerting users to their content. Item 16 on the shopping list calls for "widened access to the information system", "with simple hit notifications for users that do not belong to the [Europol] national units".

Europol access to the Schengen Information System, Europe's largest law enforcement database, is also on the agenda (item 17). This will require amendment of the relevant provisions on the SIS (now part of the TEU) as well as the Europol Convention.

Data protection and intelligence exchange

Before the shopping list had been produced, the Swedish presidency (January-June 2001) had already taken forward plans to reform the data protection regime. In May, an amendment to the rules and regulations on the transmission of personal data to third states and bodies was proposed (8785/01, 22.5.01; OJ C 163, 6.6.01). It will make it easier for Europol to pass on intelligence and reduce the supervisory role of the Joint Supervisory Body (JSB) on data protection. The existing rules, adopted in 1998, stipulate that third parties are not allowed to pass on data supplied by Europol. Under the Swedish proposal, the Europol Director will be able to authorise the "onward transmission", although the member state that initially supplied the data must give their consent. The requirement on Europol to supply information to the JSB on their assessment of the need to transmit data to third parties is also to be removed.

This may be the first in a number of proposals that will weaken a data protection regime that has already been widely criticized for procedural weaknesses and problems that arise in enforcing it. Item 22 of the shopping list reads:

It might be considered to enable Europol to disseminate certain categories of data using a simplified procedure. For certain categories of data the assessment of the level of data protection required could perhaps be lowered in order to facilitate the exchange of information with third parties.

The first Europol-third state cooperation agreements, which allow the exchange of data to begin, were approved at the justice and home affairs council on 29-30 May. Europol can now conclude agreements with Interpol, Iceland and Norway. Estonia, Slovenia, the Czech Republic, Hungary and Poland are next on the agenda. Negotiations with Bulgaria, Latvia,

Lithuania, Malta, Slovakia, Cyprus, Poland, Turkey, Malta, USA, Canada, the Russian Federation, the World Customs Organisation and relevant UN agencies will follow. Under the agreements, "cooperation" is not limited to intelligence exchanges, but "may involve all other tasks mentioned in the Europol Convention".

External relations and organisational structure

Item 23 proposes amendment of the Convention to allow third-state representatives with whom Europol has concluded a cooperation agreement to work in The Hague in a "forum aimed at opinion exchange... in particular cases that affect common interests".

Europol also wants to be able to draw-up its own cooperation agreement with the future EU prosecutions unit Eurojust. Article 16 of the present draft of the Eurojust agreement (7408/3/01, 12.7.01) stipulates that a cooperation agreement between the two agencies will be adopted by the EU Council; the rules on Europol's external relations allow the Europol Management Board to conclude agreements itself. Item 14 suggests clarification through amendment of the external relations rules.

The powers of the Europol Heads of National Units (a senior officer from NCIS in the case of the UK) may also be increased. Allowing the HENU's chairman to be present at management board meetings; the development of common standards in the national units; and the possibility of giving HENU's a formal status under the Convention are to be discussed (items 4 and 5).

Accountability and decision-making

In May, the Swedish presidency acknowledged "murmurs of discontent" over the "democratic control" of Europol and suggested that wider "consultation" of the European Parliament (EP) on matters relating to Europol, observer status on the Europol Management Board and making Europol Directors give evidence before EP committees could be a step in the right direction (8677/01, 14.5.01). However, the Swedes took "no stand" on the "advisability" of any of the measures, from "neither a practical nor political point of view" and the only relevant measure on Europol's shopping list is item 18 under which the annual work programme would be "presented" to the EP "for information purposes only" (item 9). The EP is already entitled to the annual report, but this is a "sanitised" version of the report presented to member state governments (see *Statewatch* vol 10 no 6).

Europol wants decision-making powers regarding staff issues, suggesting certain issues such as salaries could be dealt with by the Management Board rather than the Council of the EU (item 7).

Ironically, ratifying the protocol that will amend the Convention may be national parliaments' last formal legislative involvement with Europol. Item 15 on the shopping list is an amendment of the provision stipulating that amendments to the Europol Convention can only be made by way of a protocol; Europol is seeking "a more flexible" procedure.

Joint Action 95/73/JHA on the EDU, OJ L 62, 20.3.95; EU Manual on controlled deliveries, 18.6.98, Europol/EDU file no. 2571-14r4 (confidential); Extension of Europol's mandate - Europol's position, 5571/01, Europol 6, 26.1.01; Europol work programme for 2002, 8141/01, Europol 36, 24.4.01; Democratic control over Europol, 8677/01, Europol 39, 14.5.01; Europol cooperation agreements with Interpol, Norway and Iceland: see 9011/01, 9012/01 and 9013/01 (plus addenda) respectively; List of possible amendments to the Europol Convention, 9273/01, Europol 52, 11.6.01; Draft Council decision setting up Eurojust, 7408/3/01, Eurojust 7 rev 3, 12.7.01; List of possible amendments to the Europol Convention, 10979/01, Europol 65, 18.7.01.

Is there justice or just us?

Deaths in custody: families and campaigners ignored by government

In July 2001, the latest annual report of the Police Complaints Authority (PCA) made much of changes, such as CCTV in custody suites and new training, that had "reduced deaths in police care and custody dramatically, from a high of 65 in 1998-99 to 32 this year."^[1] Anyone reading these figures would, at first glance, view them as evidence of welcome progress. With the issue of deaths in custody having been forced onto the political agenda by campaigners, particularly over the last five years, the PCA has been heavily criticised for its inaction and is clearly keen to take the credit for a reduction in the number of deaths. However, playing the numbers game on this important issue is highly misleading. The Home Office's own research shows that, year to year, the number of deaths has varied wildly since 1981 (and, to add to the confusion, it records not 65 but 67 deaths in 1998-99 and 70 in 1999-00)^[2]. Furthermore, statistics alone do nothing to show that each "number" represents a person with family and friends who have lost an important part of their lives and that over the years this means hundreds of people have faced the trauma of a death in custody. Nor do they reveal the grave concerns that bereaved families have about the way they are subsequently treated, the manner in which deaths are investigated or the repeated failure to prosecute those responsible. The impression that police officers are never held accountable for their actions - that in a number of incidences they literally get away with murder - undermines any confidence relatives have that the figures will not climb again.

It is astonishing that, given the number of people who have died in custody, the last time that there was any formal investigation of the issues that such deaths raise was twenty years ago, by the then Home Affairs Select Committee of the House of Commons. Campaigners believe that this is because each death is treated as an isolated incident, a "terrible tragedy," although the common threads that run through the circumstances of many deaths seem to point to a persistent refusal by the state to learn lessons that could save lives. This is why individual family campaigns and INQUEST, the campaigning group that supports families, have repeatedly called for an independent public inquiry that can draw these threads together. In April 1999, families and campaigners met the then Home Secretary, Jack Straw, to argue a simple case: that deaths in custody, involving public institutions that have a duty of care and protection placed upon them following the removal of an individuals' liberty by arrest, imprisonment or detention under the Mental Health Act 1983, is a broad and complex issue that requires a properly funded, comprehensive and independent investigation. Confronted by relatives' frustration and anger, this was an uncomfortable meeting for a minister whose government has made much of the rights of families and Straw initially raised hopes by promising to consider the merits of an inquiry. Unfortunately, it subsequently appeared that he simply lacked the courage to refuse grieving families in person and they were told six months later in a letter from a senior Home Office official that the Home Secretary was "not persuaded of the need to initiate a public inquiry."^[3]

In response, the United Families and Friends Campaign (UFFC) decided to hold its own People's Tribunal into Deaths in Custody. UFFC was established by families of black people who have died in custody as a coalition that seeks to unite all families together, campaigning with INQUEST and Newham Monitoring Project to ensure that the voices of families and friends are heard. From the start, the Tribunal was not intended to be a

substitute for a full public inquiry, but instead aimed to draw together families' experiences and testimony about the impact of custody deaths on people's lives. Families alone can speak out with authority on this neglected issue and drawing these threads together, UFFC aimed to put pressure on the government not only for a public inquiry but for its other urgent demands. These include the abolition of the PCA and an end to police officers investigating themselves, the suspension of police and prison officers until a death has been properly investigated, prosecutions of those responsible for deaths (especially after an inquest verdict of "unlawful killing") and Legal Aid and full disclosure of information to families facing an inquest.

After many months where families drafted submissions to the Tribunal, on 11 and 12 July, public hearings were held at Conway Hall in central London. The Tribunal Panel, which included Ian Macdonald QC, Harry Fletcher from the National Association of Probation Officers, Rev Arlington Trotman from the Churches Commission for Racial Justice and Liz Macmin, a Mental Health Act Commissioner, heard powerful, distressing and often emotional testimony from families from a wide range of backgrounds. Amongst those recounting their experiences were Irene Stanley, whose husband Harry was shot dead by the police in east London; Joanna Bennett, whose brother Rocky died after being restrained by staff at Norvic secure psychiatric unit in Norfolk; Sonia Coley, whose brother Alphonso died in Pentonville Prison; and UFFC Chair Brenda Weinberg, whose brother Brian Douglas was killed after being struck by police officers with a then newly issued long-handled baton.

The circumstances of each death and events leading up to them were very different but many families shared, from the moment they were informed of the death of their loved one, experiences of insensitive and begrudging treatment and obstruction to enquiries by public bodies. At a time when relatives are most in need of information, many described the lack of basic advice about their rights concerning post-mortems, support available to them or an explanation of the process of official investigations. Equally, the inadequacy of the Coroner's Court system to properly reveal the facts surrounding a death, with the quality and scope of inquests varying considerably, was another common theme. Families recounted the difficulties their lawyers faced in gaining disclosure of information in order to prepare for inquest hearings. What was also clear from both the written and oral submissions to the Tribunal was the way that bereaved relatives are treated does little to stop the impression that public bodies actively seek to cover up actions that may be either negligent or unlawful. A number of relatives complained that the Police Complaints Authority seemed more interested in examining the character of a person who had died than police officers who were under investigation, whilst others despaired at the reluctance of the Crown Prosecution Service to bring charges against police and prison officers.

Now that families' testimony has been gathered, the Tribunal aims to produce a report, with recommendations, to be launched in time for UFFC's annual Remembrance Procession from Trafalgar Square to Downing Street at the end of October. It will be a difficult document for the government to ignore, although both families and campaigners are fully aware of ministers' reluctance to address the issues that it may raise. It seems that no matter how controversial a death in custody is or how much publicity it generates, relatives face an arduous battle for justice. Since the Tribunal's public hearings, the family of

James Ashley have been told that the government has ruled out a public inquiry into his fatal shooting in Hastings, which forced the resignation of the chief constable of Sussex, Sir Paul Whitehouse. Home Office Minister John Denham has informed them that an inquest is sufficient to provide public scrutiny of James Ashley's death, but the coroner has refused to reopen the inquest because of the unsuccessful prosecution of the officers involved in his death. Like Joy Gardner's mother, Myrna Simpson, who was denied an inquest for similar reasons, the Ashleys face the prospect of no proper investigation of the circumstances that led James to be killed.

Those involved in UFFC hope that by providing a collective voice to families about appalling treatment such as this, they can encourage widespread support for urgent change. For too long, the relatives and friends of those who have died in custody have

felt that they are battling for a fundamental right, the right to life, with little wider support. But if the state cannot be held to account for the loss of a life, when can it ever be accountable?

Footnotes

1 The 2000/2001 Annual Report of the Independent Police Complaints Authority, Stationery Office

2 Deaths in Police Custody, Statistics for England and Wales, April 1999 to March 2000, Home Office

3 Letter to the United Families and Friends campaign dated 15 October 1999

INQUEST can be contacted at Ground Floor, Alexandra National House, 330 Seven Sisters Rd, London N4 2PJ. Tel: 020 8802 7430. UFFC can be contacted c/o INQUEST. Tel (Tribunal office): 020 8221 2930.

EU - GENOA

Report on Genoa by two members of the German Bundestag

An extract from a report by Annelie Buntenbach and Hans-Christian Ströbele, Members of the German Bundestag, on their trip to Genoa on 25 and 26 July 2001

Following initial reports and newspaper articles on the arrests in Genoa in the wake of the G8 summit on Monday, 23 July 2001, Members of Parliament Cem Özdemir and Hans-Christian Ströbele issued a statement to the press on the morning of 24 July calling for an investigation of the events in Genoa, in particular of the circumstances surrounding the arrests, and for the setting up of an independent international commission of inquiry.

On Tuesday afternoon (24 July), MP Ströbele made a decision to set off the next morning for Genoa. The German Foreign Office promised over the phone that it would provide support via the German consulate in Milan. Mr Höpfner, and later Mr Hartmann of the Foreign Office assisted in preparing the trip. That evening, MP Ströbele talked to MP Buntenbach who, independent of him, had also decided to set off, and they agreed to meet the next day in Genoa and try to visit the prisoners together.

The Prison in Vercelli

The delegation drove to the town of Vercelli, one and a half hours away. Two German women, F and G, were being held in detention at the prison in this town. While they were en route for the town, the Consul General and MP Ströbele received word that the women and other prisoners had just been released. MP Buntenbach, who had arrived via Milan from Germany and was waiting at the prison entrance, confirmed this. The group drove on, nonetheless, hoping that they would be able to meet and talk to the women released. When they arrived, they found that the women were no longer there.

When MP Buntenbach arrived at Vercelli Prison shortly after 17:00, a review of custody had just taken place. There was a group of 10-15 people in front of the prison, among them lawyers, journalists, friends and relatives who were waiting for the prisoners arrested at the Diaz School to be released at any moment. Police vehicles were on hand to drive the released prisoners away immediately. The police did all they could to impede contact between the prisoners and the people waiting for them. It was only when MP Buntenbach had given proof of her status as a member of the German Bundestag and when the prison director had arrived to intervene that she was able to talk to the two German women for two minutes, who were already sitting in a police van.

They said that they were alright. One visible sign of injury

was a nose-ring which had been ripped out, now causing an infection. The two women reported that they were being deported by plane to Hamburg against their will. One of the women wanted to visit friends in Milan; the other one wanted to go back to Germany, but to southern Germany, not to Hamburg. MP Buntenbach was not able to stop the police transport to Milan airport. During the attempt to find what legal basis there was for deporting the prisoners, a lawyer from Vercelli stated that all prisoners released by the court authorities, who were not Italian citizens, were to be taken to the border and deported. The lawyer reported the case of one prisoner with dual citizenship, one of which was Italian, who was deported, too, although his parents were waiting at the prison to pick him up.

The same procedure was applied for all the people released on that and the following day. The prisoners were deported from the country by plane, train or bus. This was extremely vexing for the prisoners themselves, and for their friends and relatives. Many of the relatives had driven to Italy for the sole purpose of picking up their incarcerated family members. Many of those released from Pavia and Voghera, who were taken to the Brenner Pass by the police on Wednesday evening, were openly apprehensive that they would be left at the mercy of the police once again after release, i.e. of the men who had maltreated them at the Diaz School or at the police station.

The legal basis for these "deportations" was only clarified on Thursday with the help of the Consulate General. It was a decree from 1965, brought up to date by the Convention applying the Schengen Agreement, according to which, if there is a particular threat to public security, "allontanamento" (removal) is legal. MPs Buntenbach and Ströbele were informed at police headquarters on Thursday that the measure had been decreed directly by the Ministry of the Interior and was carried out by the Prefect of Genoa. It can be assumed that the measure was taken to prevent those arrested from giving interviews locally.

Late that evening, MP Buntenbach received a call from Ms F and Ms G who had arrived in Hamburg. They told her that their identity papers had been kept by the Italian police and they were not able to present any identification to the German border guards (Bundesgrenzschutz) at the airport. The officer in question had threatened to detain them to ascertain their identity because there was seemingly no proof thereof, although the women had been handed over to him by the Italian authorities. The matter was solved when the parents of one of the women were called to come and pick up their daughter, and were thus

able to identify her. The other woman was able to use her driver's licence to prove her identity.

On the evening of 25 July and the following night, members of the coordination centre in Milan and the German Consulate General reported that all the women in Voghera prison and the male prisoners in Pavia prison, who had been in the school on the evening of Saturday, 21 July, had been released. The prisoners visited in hospital were also free. The judges could see no reason for their imprisonment. The police withdrew. Injured persons stayed on at the hospital for health reasons.

Ponte Decimo prison in Genoa

There are two prisons in Genoa in which Germans were being detained: the Ponte Decimo, with eight women and three men, and the Marassi, where a further six men were being held. MPs Buntenbach and Ströbele were not able to visit the latter prison because of time constraints. When MP Buntenbach arrived at the Ponte Decimo prison at about 16:30 with an official from the Consulate General, the review of custody had just taken place for the eight women. Seven of them (L, M, N, O, P, Q, and R) were arrested on Monday, together with the three men now imprisoned in Marassi, as they were travelling in two campers on their way out of Italy. The eighth woman, Ms S, was imprisoned for similar reasons but had been arrested elsewhere.

After more than an hour's delay, MP Buntenbach was able to talk to all the eight women in a group. They said they were being treated properly in prison, were being kept four to a cell, had contact with lawyers and were being cared for by the Consulate General in Milan. The review of custody had unfortunately not led to the release of the prisoners, but to an order for pretrial detention. Asked what they had been accused of, their initial and spontaneous reply was: "black clothing." Also incriminating were the contents of the campers, i.e. numerous hammers and knives etc. found in the tool box. They

were not accused, either individually or as a group, of any concrete offences in connection with the demonstrations or any other crimes.

The accusation with regard to the objects confiscated from the campers relates to paragraph 419 of the Italian Penal Code, which is most comparable in German law to a mixture of paragraph 129a of the German Penal Code (StGB) and an aggravated breach of public peace. The minimal sentence for this is eight years. The women had arranged with their lawyers to appeal against the decision taken during the review of custody. MP Buntenbach was able to talk briefly to the lawyers. If the appeal which will result in a new review of custody within ten days at the latest is turned down, the judicial authorities will then decide on whether the prisoners will be sent to trial. In Italy, this can last up to a year. According to the laws in force there, the women are not allowed to leave the country during this time. At best, they could be placed under house arrest in Italy so as not to have to stay in prison. They would thus be being punished before trial and sentence, which would result in what is probably an irreparable gap in their CVs. They would no longer be able to get a job or study, and would rarely be able to see their children.

Ms S was in a state of distress because of this. She was also depressed because of the difficulties she was having in making contacts with the outside world, with friends and relatives. For this reason it was difficult in such a situation to get her to respond to questions. She stressed several times, however, that during their arrest, the police had placed objects which did not belong to her in the vehicle and which she had never seen before. The list of these objects was now the basis for the order of pretrial detention.

**The full text of their report is on Statewatch News online
www.statewatch.org/news**

EU

The "enemy within": plans to criminalise protests in Europe

This special report looks at the plans EU governments have put in place to counter protests and draws conclusions on their effect on the right of free movement and the right to protest

In the aftermath of confrontations, arrests and the shooting of protestors at the Gothenburg EU Summit (14-16 June) a special meeting was held in Stockholm of 25 EU prosecutors on 18-20 June. The meeting heard from Swedish prosecutors that 50 people were being held in custody (at 3 July) and the names and details of 400 others had been recorded for future use. This was confirmed by a local police chief in Gothenburg who said the names had been put on the Schengen Information System (SIS) [1].

The prosecutors put forward a number of ideas. It was suggested that the names of "potential hooligans" exchanged for Euro 2000 should be compared with the list gathered in Gothenburg - though the link between travelling football fans and protestors is not spelt out, nor is it apparent. More concretely they point to the problem of making arrests on the streets because there were not enough police available to "investigate and begin to gather evidence" - this long-standing feature of public order policing was evident in Gothenburg and Genoa. There were very few arrests but many protestors were physically assaulted (what some call a form of "arbitrary punishment" for being part of a protest) - public order/paramilitary police units are, in the main, not trained to arrest and remove people but to clear the streets.

The meeting raised the idea that Europol should be given competence in the future to gather intelligence from national units and prepare analysis files on "suspected" groups (see below). The conclusions of the prosecutors meeting contains the following classic statement:

It was thought that criminal organisations are behind these events in most cases as they are so well organised

This meeting of EU prosecutors in Stockholm was followed by a special meeting of public order "experts" at the Police Cooperation Working Party in Brussels on 4 July. This was quickly followed by a series of meetings where the draft Conclusions were discussed by the "Justice and Home Affairs Counsellors" (specialist permanent officials based at the national delegations in Brussels) and twice by COREPER (the high-level committee of permanent representations of the 15 EU governments based in Brussels). The Conclusions were adopted at a specially convened meeting of the Justice and Home Affairs Council on 13 July.

EU Justice and Home Affairs Council adopt new measures to counter protests

The measures adopted by the Ministers at the Justice and Home

Affairs Council were "Conclusions" which are considered to be "soft law" and not binding but all EU member states are expected to abide by them. National parliaments and the European Parliament were not consulted.

The first EU measures put in place were the Joint Action of 27 May 1997 on cooperation on law and order and security (covering public order in general including football matches and protests)[2]. This set up the exchange of information and intelligence and EU member states were to inform each other if:

sizeable groups which may pose a threat to law and order and security are travelling to another member state

The other legal power explicitly referred to is Article 46 of the Schengen Convention which covers the prevention of "offences against or threats to public order and security."

The following analysis looks at each of the measures agreed and their possible effect on the right to protest and the right to free movement.

The new plans are explicitly meant to put in place "operational measures". This is a major departure from existing powers which only cover the exchange between EU member states of information, intelligence and liaison officers.

The group charged with overseeing "the practical implementation" of the plans (ie: everything from the gathering of intelligence to the policing of protests) is the "Task Force of Chief Police Officers". The day-to-day coordination will be carried out by a "senior officials working party" which will run the "permanent monitoring of these operational procedures", called a "Police Chiefs Task Force".

There are two problems with this arrangement. First, **the "Task Force of Chief Police Officers" has no legal basis for its activities** in the EU (there has been a reluctance to give it a status by amending the Europol Convention entailing a lengthy ratification process). Second, the "Police Chiefs Task Force" is intended to legitimised under Article 3 of the 1997 Joint Action. But this Article gives **no** legal authority for the creation of an "operational" working party. Article 3 allows for an **annual** meeting (in the spring) of the "heads of central bodies for law and order and security to discuss matters of common interest" (Article 3.a) and the "holding of exercises and exchanges and training secondment" (Article 3.c).

The 1997 Joint Action confers no powers: i) to create a permanent working party or ii) to engage in operational issues.

At the national level there is the "activation" of permanent contact points in national criminal intelligence centres/services for the "collection, analysis and exchange information". This "information" is to come from "police or intelligence officers" who will:

identify persons or groups likely to pose a threat to public order and security

These terms of reference are vague, all-encompassing and have no test whatsoever of unlawful activity.

But, even more important, is the fact that **this remit legitimises the ongoing surveillance of any group whose concerns might lead them to take part in an EU-wide protest.** [3] It authorises the gathering of "open source" information from publications and the internet, the surveillance of e-mails, faxes and post, the taking of photos or video footage of members of a "suspect" group (what they call a "risk group"), the recruitment of informers, the infiltration of undercover police officers or internal security service agents and the recording of "fact" alongside supposition and "suspicion" (so-called "intelligence"). Moreover, such targeted surveillance is likely to be used in domestic situations as well as EU-wide events. The rationale which will feed this intrusion into normal political activity is that the agencies need to prepare their files and

dossiers well in advance of any protest in another country (it should be supplied to the host state at least four months in advance).

The EU governments could not agree on a proposal which was discussed at the highest level (in a COREPER meeting) to create a "European database of troublemakers who have committed violent acts". Sweden, Germany, Portugal, Italy, Belgium, Luxembourg and the UK supported the idea (7 states), Austria, Spain, Greece, Finland, Denmark, Ireland, Netherlands and France (8) opposed it. However, they did agree on:

the use of all the legal and technical possibilities for stepping up and promoting, more structured exchanges of data on violent troublemakers on the basis of national files

It should be noted that the standard of those who have "committed violent acts" (in the draft) has been lowered to simply "violent troublemakers". Whether or not there is a "European database" is, in a sense, immaterial. If state "A" is hosting a G8 Summit meetings then the files from the national databases in all of the other 14 states will be passed to state "A".

The Conclusions lay down no standards for data protection whatsoever nor for how long such files can be retained. However, in another draft EU proposal on the table, dated 4.7.01, to extend measures on "football hooliganism" says that "records exchanged may be kept on record and may subsequently be consulted by other interested national information centres" (ie: other agencies in that state) [4]. It goes on to say that "general information" (ie: the size and suspected likelihood of the group to undertake violent action) can be kept for 10 years and "personal information" for at least "three years".

This proposal is going to lead to the creation of files on political activists to be held on national databases which can be passed to other EU states, the use of which is unregulated.

In addition the national centres will provide a "pool of liaison officers" with the state hosting the main event who would go to that country and work with the local police agencies. They would also provide a pool of "spotters" who would: i) know the identities of key members of the "suspect" group; ii) would attempt to travel in the same party as the "suspect group" and iii) would attempt to "identify" members and "ringleaders" of the "suspect" group during a protest.

How effective "spotters" can be is a moot point. In a small to medium, and relatively orderly, protest they might be quite effective but in a large rambling protest their role may well be very limited. Equally, whether "spotters" identify for arrest "suspects" because they are committing an offence or simply because they are present is open to question.

The Conclusions then says that in the extensive amendments planned to the Europol Convention that:

the Council will examine the possibility of increasing the powers of Europol in this area

At present Europol has no powers covering public order, it was set up to deal with serious organised crime. To extend Europol's power to cover public order and the surveillance of protest groups would dramatically change its role. Only the Netherlands and Austria entered scrutiny reservations on this issue.

Free movement

Austria (meeting of the World Economic Forum, 1-3 July, in Salzburg), Sweden and Italy all invoked Article 2.2 of the Schengen Convention to reimpose border controls prior to major protests. These were just part of a number of measures intended to stop the free movement of people, others included trying to cancel trains (ie: French attempt to stop train carrying 430 people from the UK) and refusing to let passengers disembark (ie: Italian refusal to let 150 Greek people land in Ancona).

The issue of whether there should be EU-wide powers to prevent people leaving their own country to go to another for a protest also divides the governments (eg: in the UK, for

example, such powers only cover football supporters). The penultimate draft said measures should be taken:

preventing individuals who have a record of law and order offences from leaving the Member State

The same eight member states opposed the idea - Finland, Greece, France, Austria, Spain, Ireland, Denmark and the Netherlands - and the same seven supported it - Germany, Luxembourg, Italy, Portugal, Belgium, Sweden and the UK.

The adopted version leaves this issue in an ambiguous position stating that "all legal possibilities" should be used to prevent such individuals "from going to the country hosting the event". The standard for preventing people is that there are "serious reasons" to believe (undefined) that:

such persons are travelling with the intention of organising, provoking or participating in serious disturbances of public law and order

Moreover, people with a record of "law and order offences" is a very vague standard. For example, people can be arrested in the UK for obstructing the highway (sitting down in the road) or obstructing a police officer in the course of their duty (ie: refusing to move on when told to do so).

The measure as formulated encourages EU government to pass law to prevent people from going to protests in other countries thus denying their right to freedom of movement if their names have been "recorded" on a database or if they have been convicted on minor public order offences.

An EU riot police force?

The EU's concept of "conflict" was spelt out in a report [drawn up by the UK] to a meeting of its public order experts in 1998. "Conflict" is:

any act that is contrary to the general public's perception of normality or which adversely affects the quality of life... conflict has the potential adversely to affect the status quo

This reasoning encompasses *any* mass protest which is thus the subject of law enforcement contingency planning.

But none of the new measures will stop major demonstrations attended by tens of thousands of protestors. This is partly because most protestors will come from within the "host" state and partly because trying to identify "suspects" in advance rarely works (look at the list of 700 people supplied by the UK to the Euro 2000 authorities, hardly any of those arrested were on the list of "suspects").

It is likely that EU governments will be faced with the hard reality that while the issues underlying the protests remain - poverty, debt repayments, inequality between rich and poor (North and South) countries perpetuated by the exploitation of these countries under international agreements and the arms race - there are likely to be mass protests and their only option is going to be how they respond on the streets.

Otto Schilly, the German Interior Minister and Claudio Scajola, the Italian Interior Minister have called for the creation of an EU force of riot police (6.8.01). Mr Schilly suggested it could be modelled on a "border police" unit the two countries are planning. However, it is more likely, in the longer-term, that the 5,000 strong para-military police force being created by the EU military wing for use in the third world might be employed within the EU as well as outside.

Chronology

14-16 June	Gothenburg EU Summit
18-20 June	Special meeting of EU prosecutors (European Judicial Network) in Stockholm
1 July	Incoming Belgian Presidency calls a special meeting of public order "experts" in Brussels (Police Cooperation Working Party)
4 July	Meeting of Police Cooperation Working Party

5 July	COREPER meeting discusses draft conclusions on combating protests
9 July	Special meeting of Justice and Home Affairs Counsellors (national officials base in Brussels) amends draft
11 July	COREPER discusses revised text
13 July	Justice and Home Affairs Council adopt "Conclusion on security at meetings of the European Council and other comparable events"
19-22 July	G8 meeting in Genoa

Some forthcoming events

26-27 Sept	NATO meeting in Naples
3-5 October	International conference in the Hague: "Global civil society: Maintaining public order, a democratic approach" (see <i>Statewatch News online</i>)
5-9 Nov	UN Food and Agriculture Organisation (FAO) in Rome

Footnotes

1. Article 99 of the Schengen Convention covers the holding of data on the Schengen Information System (SIS). It allows information to be held where a person, for the purpose of the "prevention of threats to public safety" is intending to commit "extremely serious offences" or: "Where an overall evaluation of the person concerned, in particular on the basis of offences committed hitherto, gives reason to suppose that he will commit extremely serious offences in the future" (Art 99.2). It also allows for people and vehicles to be "checked" and/or placed under "discreet surveillance". Data on the SIS can be accessed by all EU police forces and customs and immigration officials.

2. The "Recommendations on guidelines for preventing and restraining disorder connected to football matches" was agreed in 1996. In 1997 this was followed by the Joint Action on law and order and security which extended the provisions of the Recommendations to public order in general including sporting events. It passed through the Justice and Home Affairs Council as an "A" point, this is without discussion - nor did national parliaments or the European Parliament have to be consulted.

3. In an interview Mr Schilly, the German Interior Minister said that according to the Office for the Protection of the Constitution there were "33,000 to 34,000 people who could be classified as left-wing extremists" and 6,000 people as belonging to the "militant independent scene" and that "some 400 German violent opponents of globalisation went to Genoa".

4. An EU meeting on football "hooliganism" held in Brussels on 22-23 May included the conclusion that: "the experts would like to propose" that the information gathered should be "related to the Schengen Information System".

Sources: *Conclusions adopted by the Council (Justice and Home Affairs) and the representatives of the member states on 13 July 2001 on security at meetings of the European Council and other comparable events, doc no 10916/01, 16.7.01; Draft Conclusions on security at meetings of the European Council and other comparable events, doc no 10731/01 and Rev 1, 10 & 11.7.01; Note from the General Secretariat on an "Ad hoc meeting on follow-up to the Gothenburg events on 4 July", doc no 10525/01, 3.7.01; Outcome of proceedings of the Police Cooperation Working Party (chiefs of service for maintaining public order and justice experts), doc no 10795/01, 12.7.01; Draft discussion document for a policy debate on a ban on hooligans entering and/or leaving a country and similar measures, doc SN 3159/01, 8.6.01; Football matches with an international dimension - new Council Resolution, doc on 10536/01, 4.7.01; Public order: conflict management - experts meeting in Brussels on 15 April 1998, doc no 7386/98, 3.3.98; Joint Action on cooperation on law and order and security, 26.5.97 and see *Statewatch*, vol 7 no 3, 1997.*

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