

statewatch

monitoring the state and civil liberties in the UK and Europe

vol 12 no 6 November-December 2002



Mandatory data retention by the backdoor

EU: The majority of member states are adopting mandatory data retention and favour an EU-wide measure

UK: Telecommunications surveillance has more than doubled under the Labour government

A special analysis on the surveillance of telecommunications by *Statewatch* shows that: i) the authorised surveillance in England, Wales and Scotland has more than doubled since the Labour government came to power in 1997; ii) mandatory data retention is so far being introduced at national level in 9 out of 15 EU members states and 10 out of 15 favour a binding EU Framework Decision; iii) the introduction in the EU of the mandatory retention of telecommunications data (ie: keeping details of all phone-calls, mobile phone calls and location, faxes, e-mails and internet usage of the whole population of Europe for at least 12 months) is intended to combat crime in general.

UK: Surveillance more than doubles under Labour

Figures published by the Interception of Communications Commissioner for England, Wales and Scotland (no figures have ever been made available on Northern Ireland) for 2001 appear to show that the number of interception warrants issued dropped from 1,900 in 2000 to 1,314 in 2001. But the true picture is quite the reverse. Changes to warrants, "modifications", which previously required a new warrant have been excluded from the figures - when these are added it shows that the total number of warrants issued in 1996 (the last full year of the Conservative government) was 1,370 and for 2001 the total was 3,427. Moreover, even these figures are a major under-estimate due to changes introduced under the Regulation of Investigatory Powers Act 2000 (RIPA) (see analysis page 17).

EU member states bring in mandatory data retention

On 12 July 2002 the EU agreed fundamental changes of the 1997 EC Directive on privacy and telecommunications preventing the erasure of data and allowing member states to introduce new laws requiring communications providers to keep traffic data and make it accessible to the law enforcement agencies).

A draft, binding, EU Framework Decision prepared by the Belgian government (and backed by the UK) has temporarily been put on the shelf due to widespread criticism. But a secret document shows that at the national level nine out of 15 member

states have, or are planning to, introduce mandatory data retention (only two member states appear to be resisting this move). In due course it can be expected that a "harmonising" EU measure will follow.

Terrorism pretext for mandatory data retention

Mandatory data retention had been demanded by EU law enforcement agencies and discussed in the EU working parties and international fora for several years prior to 11 September 2000. On 20 September 2001 the EU Justice and Home Affairs Council put it to the top of the agenda as one of the measures to combat terrorism. But now, over 16 months later, it is nowhere near being in operation in most EU states.

So the question has to be asked: does this mean that all telecommunications have not been under surveillance since 11 September? Of course they have, not by the law enforcement agencies but by the security and intelligence agencies. The National Security Agency (USA) and the Government Communications Headquarters (GCHQ, UK) have been surveilling global communications since 1947 (UKUSA agreement). During the Cold War this was for military and political purposes, later through the new Echelon system political and economic intelligence was targeted. Echelon, NSA and GCHQ were already moving to cover terrorism (and associated serious crime) before 11 September - after it became a new priority. But even then, for example, with the new, huge, NSA online storage system (Petraplex) designed to hold all the world's communications for 90 days, this is almost useless unless the agencies know (through gathering human intelligence on the ground, HUMINT) what to look for.

The EU's law enforcement agencies' demand for data retention, now backed by their governments, has little or nothing to do with terrorism but rather is primarily to deal with crime and internal threats posed by public order, refugees and asylum-seekers, and migrant communities.

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AUSTRIA

Demands for regulation of CCTV and biometrics

On 4 November the Austrian data protection council put forward a recommendation to the federal government to regulate the use of video cameras (CCTV) run by private and public operators as well as the use of biometrics. The artists collective "United Aliens" counted 200 video cameras installed in Vienna's city centre. The Austrian data protection association *Arge Daten* estimates that altogether, including public spaces (parks, sports facilities, traffic monitoring, banks etc.) as well as video cameras installed at buildings for security, Austria possesses around 160,000 video cameras that film people without their knowledge with an image quality able to identify faces.

Hans Zeger, of the data protection council (which is an advisory body to the government) as well as chairman of the non-governmental organisation *Arge Daten* has put forward a proposal for future regulation. It argues for a clear definition and regulation of video surveillance and biometrics, controls on the reasons for surveillance and the use of the collected data and adherence to data protection principles. It also calls for the registration of video installations.

Recent Home Office research into CCTV in the UK, which has the highest levels of cameras in the world, has shown that their effects are "overrated" and a report commissioned by the crime reduction charity Nacro found that improved street lighting was as much as four times more effective in preventing crime. The Irish Council for Civil Liberties commented: "CCTV does not seem to achieve anything that can't be achieved by common sense measures such as better street lighting"

For more information see www.argedaten.at; Brandon C. Welsh & David P. Farrington "The effects of Improved Street Lighting on Crime: A systematic Review" (Home Office) 2002; ICCL press release 28.6.02;

UK

AI renews call for release of ATCSA prisoners

On the eve of the first anniversary of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) Amnesty International called for the "immediate release of all persons detained under the ATCSA unless they are charged with a recognizably criminal offence and tried by an independent and impartial court in proceedings which meet international standards of fairness." Thirteen people have been arrested under the ATCSA since its enactment on 14 December 2001. Two have since been "voluntarily" repatriated, while ten non-UK nationals are interned without trial at the Belmarsh and Woodhill high security prisons. The eleventh man, Mahmoud Abu Rideh, was in no fit state to be detained and was transferred to the high security mental hospital, Broadmoor.

The detentions have been condemned by civil liberties lawyer Gareth Peirce, who told Amnesty:

As horrified as we were a year ago when people were first arrested, if we thought for a moment that a year later we would be no further forward we would have told the detainees bluntly 'they have locked you up and thrown away the keys.' As it is we feel that we have all been subjected to a false pretence that there would ever be an early hearing that could lead to their release.

Ms Peirce's concerns were not addressed at the Committee of

Privy Councillors review of ATCSA on 12 December.

Amnesty has also written to the US government reiterating its "deep concern" at the continuing detention without charge or trial of more than 600 non-US nationals in the US detention centre on Cuban territory at Guantánamo Bay. Amnesty said: "Their conditions of detention - held in small cells for up to 24 hours a day with no access to lawyers and family - together with no indication as to if, or when they will be tried or released, continues to raise urgent legal and welfare issues." The organisation calls for the voluntary repatriation of all those detained as combatants, as required under the Geneva Conventions. Eight UK citizens are known to be held by the US military at Guantánamo Bay and another four are reported to be held at US bases in Afghanistan.

Amnesty International press releases 12 & 13.12.02; Committee of Privy Councillors "Anti-Terrorism, crime and Security Act 2001 review" press release 12.12.02

NETHERLANDS

Suspected "terrorists" acquitted

Four "terrorist" suspects charged with preparing an attack on the American embassy in Paris last year have been acquitted after a Rotterdam court found that evidence against them had been obtained unlawfully. Prison sentences varying from one to six years had been demanded by the prosecution, but defence lawyers called for the charges to be dismissed arguing that the prosecution had failed to act in accordance with the law. The Court felt that there was not such a serious infringement of the principle of due process that it should bar the prosecution. The immediate release has been ordered of three of the suspects who were being held in detention.

The Court considered that evidence against all four suspects had been unlawfully obtained by the Public Prosecution Service (OM). The evidence against them was based on information that had been gathered and handed over to the OM by the - then - National Security Service (BVD). The competence of the BVD is limited to the gathering of information for national security purposes and it has no competence in investigating criminal offences. In addition, the information handed to the prosecution by the BVD was insufficient to establish that the accused were "suspects" in the sense of Article 27, paragraph 1 of the Dutch Criminal Code.

Even before an investigation could establish reasonable suspicion of guilt, the Prosecution Service had designated the men as "suspects". The ensuing searches and arrests were therefore authorised on insufficient grounds and must be considered unlawful. Material obtained from the searches could not serve as evidence in relation to any of the charges. In the absence of other evidence this resulted in the acquittal of all four men.

The Court stated in its judgment that, even if it had decided otherwise about the start of the criminal investigation, it would not have found proven the charge of involvement in the preparation of an attack on the American embassy in Paris or on an American Army unit in Belgium. The criminal file provides insufficient information to conclude that the charge has been proven. Neither can the charge of participation in a criminal organisation be proven.

Civil liberties - in brief

■ **Austria: Privacy violated in election campaign?** In September a German news programme reported on dubious election campaign practices by the German conservative party after they contracted a market firm to collect personal data on possible voters to improve their election chances. The move was

to possibly gear their campaign towards the dominant life-style preferences of the electoral districts (see *Statewatch Bulletin* vol 12 no 5). A similar practice is now thought to have taken place in Austria, where the Austrian data protection association *Arge Daten* has received numerous complaints about unwanted phone calls by a firm called IFES. Although the practice of so-called 'cold calls' (the random telephoning of unknown persons) is not illegal for all but commercial purposes, IFES also uses numbers not registered in the telephone directory, which violates the expressed wish to personal privacy. Furthermore, the identity of IFES's contractor, which apparently is researching into the "living situation in Austria and how it is to be improved", is not given out by the market research firm on "data protection" grounds. See www.argedaten.at for more details

Civil liberties - new material

Cultural Resistance Reader. Stephen Duncombe (ed.) *Verso* 2002, pp.447, £14, (ISBN I-85984-659-9). In eight chapters, this reader covers a wide range of social aspects involved in cultural resistance, looking at the political in cultural expressions from the turn of the 19th century until the present. From a group of landless commoners seizing their land in 1649 to black political movements, urban subcultural scenes, music and feminism, this book draws from classic and modern texts, portraying the historical links between old and new forms of culture as an important tool of resistance. Available from: Verso, 6 Meard Street, London W1F OEG, www.versobooks.com.

Our judges: the usual suspects. *Labour Research* vol 91, no 12 (December) 2002, pp.14-16. Results of a *Labour Research* survey of the 774 judges sitting in English and Welsh courts which finds "that the UK's judiciary remains overwhelmingly elitist, white, male and aged." The results support the Commission for Judicial Appointments' view that the judiciary is "overwhelmingly white, male and from a narrow social and educational background."

IMMIGRATION

GERMANY

German-Yugoslav agreement puts Roma at risk

On 1 November, a new readmission agreement between Germany and the Federal Republic of Yugoslavia came into force, paving the way for the deportation of around 100,000 people, over half of whom are Roma facing institutional and popular racism in Yugoslavia. The majority of them have been living in Germany for around ten years with their children born and brought up there. The readmission agreement is modelled on "modern EU readmission standards", Interior Minister, Otto Schily, declared. Last April the European Council set out criteria for the identification of third countries with which the EU should draft readmission agreements. Economic (trade and aid), diplomatic and political pressure on third countries to sign readmission agreements are thought to be "an extremely useful and efficient instrument in the fight against illegal immigration" (JHA Council press release, 15.10.02). The new and modern German-Yugoslav readmission agreements puts thousands of refugees under risk of economic destitution and the minorities amongst them in danger of attacks. Since April this year several hundred Roma refugees have set up a camp in Düsseldorf in protest at their planned deportation, but despite their widely supported action the deportations are continuing.

From refugee to illegal migrant

The first German-Yugoslav readmission agreement came into force in 1996, and despite provisions under the Dayton agreement of 1995 allowing only for the deportation and 'organised return' of refugees to Bosnia-Herzegovina if they could securely return to their homes. Germany enforced deportations, in particular of Roma refugees, not only into a life without housing or economic stability but also to danger of discrimination and racist attacks (European Roma Rights Centre press release 1997). After the persecutions in Bosnia in 1992, several hundred thousand refugees found support from friends and relatives in Germany, but despite refusing them a secure residency status, the German authorities have not managed to fulfil their deportation targets.

The German deportation plans were supported by the EU Justice and Home Affairs Council this year, which in October considered the state of progress of EU readmission agreements with 11 countries, because the Council believes it is more "cost-effective" to deport people than to "support" undocumented migrants (see *Statewatch news online*). It is a position that contradicts recent government assertions that immigration is economically beneficial to the EU as well as reports on the exploitation of cheap undocumented migrant labour in EU industry sectors. More importantly however, just like the German position on refugees from former Yugoslavia, it declares victims of armed conflict "illegal immigrants" in an attempt to justify their mass deportation.

On 16 September this year, Interior Minister Otto Schily, and his Yugoslav counterpart Zoran Zivkovic, signed a new readmission agreement, removing in particular bureaucratic obstacles to the deportation of Yugoslav citizens. Whereas under the 1996 agreement, German authorities had to ascertain the citizenship of a deportee with the Yugoslav authorities, now a document proving Yugoslav nationality to the German authorities allows Germany to initiate the deportation without the expressed permission of the Yugoslav authorities. Another new aspect of the agreement follows the "modern" EU standards, introducing an obligation on the third country not only to automatically readmit its own, but also third country nationals and stateless people coming from or having lived in that country. Schily praised the agreement as a "sign of the Yugoslav government coming closer to Europe" the standard EU diplomatic carrot for Eastern European countries - that is promises for possible accession to the EU in the far-distant future.

The reality of "readmission"

The conflict in Bosnia in 1992 produced more than 3 million refugees, the biggest refugee crisis since the second world war. Instead of granting refugee status however, the EU only "tolerated" the refugees, marking the erosion of a fully protected refugee status to a temporary, that is insecure residency to be revoked at any time the authorities declare the country of origin safe again (see *Statewatch news online*, November 2002). Moreover, refugees from former Yugoslavia were systematically excluded from a secure right to residency because the *Duldung* ("tolerated") status does not allow employment. In order to receive a residency permit foreigners have to prove they have been in legal employment for several years. Even if a work permit could have technically been demanded, many regions practice a blanket refusal to grant work permits.

There are around 233,224 foreigners in Germany who only have the insecure *Duldung* residency status. 103,000 of them come from Serbia, Montenegro and Kosovo. It is estimated that 70 - 80,000 of them are Roma (Berlin Refugee Council). Most of the 103,000 refugees have been in Germany for eight years, many for ten or more. Not only have their children been born and brought up in Germany but their social life is by now firmly rooted in the country.

Apart from infringing on people's personal lives the return to the former Yugoslavia means a return to economic insecurity and danger. The Amnesty International *Annual Report* (2002) estimates that around 230,000 Serbs and Roma, internally displaced from Kosovo, remain in the Federal Republic of Yugoslavia (FRY), along with 390,000 refugees from Bosnia-Herzegovina and Croatia. It further reports that

In Kosovo ethnically motivated attacks on minorities continued and politically motivated attacks on moderate politicians occurred, particularly before the November elections, while tensions between Serb and Albanian communities resulted in abuses of human rights. The UN Mission in Kosovo (UNMIK) and the NATO-led peace-keeping Kosovo Force (KFOR) failed to fully protect and promote human rights, particularly those of detainees...

Racist attacks on Roma, Jewish, Albanian and other communities reportedly continued. Perpetrators were rarely brought to justice...

Violent crimes against Serbs, Roma, Muslims and other minorities remained disproportionately high, and few perpetrators were brought to justice...

A lack of security and freedom of movement, the absence of an impartial judiciary and outstanding cases of missing persons continued to affect minorities and prevented return

According to the UNHCR, Swiss Refugee Aid, the *Diakonisches Werk* and other refugee organisations the Roma in particular will be facing a life under inhuman conditions and will be under threat by popular and institutional and, in particular police racism.

UK

Domestic violence victims relieved of immigration pressure

On 26 November 2002 the Home Office announced changes to a concession which permits victims of domestic violence who have an insecure immigration status, often linked to their spouse, to remain in the country on showing certain evidence of their plight. Women who suffer abuse by their husbands are often locked in violent relationships because leaving would entail the withdrawal of their residency permit and place them under threat of deportation. The west London campaigning group Southall Black Sisters commented that in the case of a deportation of a victim of domestic violence, the women often risk abuse on their return due to prevailing attitudes towards female divorcees.

Margaret Moran, Labour MP and chairwoman of the All Party Parliamentary Group on Domestic Violence said that "women were being forced to leave a terrible situation in this country, only to be subjected to disgrace, humiliation and ostracism by their own families for something that was not their fault." Moran played a central part in initiating an Internet project in September 1999, to enable survivors of domestic violence to contribute evidence and information about their experiences and thereby gather evidence about their needs and identify key issues in providing effective responses. Amongst other things, the women involved in the project were asked to consider the impact of immigration status on women's ability to gain help in escaping domestic violence. Over 80% of the contributors agreed that women with an uncertain immigration status who are experiencing domestic violence face many more barriers preventing them from accessing help. The project found that:

Lack of information on the rights of women with uncertain immigration status can make women fearful of approaching agencies for help. They also have difficulty in accessing public funds (such as income support and housing benefit). Local refuge providers find it difficult to offer space to women with uncertain immigration status because refugees rely on rent income from housing benefit to run the safe houses.

Although the Government originally introduced the domestic violence concession in immigration cases on 16 June 1999 it did not have the desired impact as the types of evidence to be produced were too restrictive. The recent changes allow a man or woman in a marriage or partnership to remain in the UK if they produce two of the following pieces of evidence:

- a medical report by a hospital doctor confirming injuries consistent with domestic violence,
- a letter from a GP with the same information as above,
- a court order disallowing the spouse contact with the victim,
- a police report confirming a visit at the home of the victim,
- a letter from social services or a letter of support from a women's refuge.

The Times 27.11.02; See also <http://www.womensaid.org.uk/policy/briefings/womenspeak.htm> for information on the Internet project for victims of domestic violence.

GERMANY

Roma campaign against deportation and for residency

The situation of Roma in Germany has always been precarious, with continuing threat of deportation and institutional racism and racist attacks against them. Since 27 April 2002, around 500 Roma have been travelling across Germany in a protest and awareness raising Caravan. They first put up their tents in Essen in June to protest against their deportation to the former Yugoslavia. The camp and caravan are part of a campaign supported by the German asylum organisation *Pro Asyl* under the slogan "Here to Stay! Right to Residency". The campaign is demanding a federal residency regulation for all refugees who have lived as families with children on "tolerated" (*Duldung*) status for more than three years or as individuals for more than five years. The right to residency campaign is supported by all regional refugee councils, charities and churches.

The camp has been going for six months and conditions at the site are reported to be difficult. The humanitarian organisations which were providing food have ceased as they view it as the city council's responsibility. There has been racist verbal abuse from local residents and media coverage is mixed, sometimes inciting fear and hatred. People have very little money and some have fallen ill. Roma on the site are living in fear of imminent deportation, and two people have already been arrested whilst attending the Foreign Affairs Office to renew their permits to stay in Germany. On 17 July, they were deported back to Belgrade despite protests.

Protests outside the camp are continuing as well. On 18 November, around fifty Roma refugees occupied the regional offices of the *Partei des Demokratischen Sozialismus* (PDS) in Berlin and protests are being held in front of political party offices all over the country. But the deportations are continuing. At the beginning of November the Berlin Refugee Council reported an unlawful deportation that led to the separation of a family. The eight-year-old son remained in Berlin whilst his parents and siblings were deported, despite their pending asylum claims.

On 16 September, the Berlin Refugee Council said that:

In the face of the reality that the [readmission] agreement in particular entails the deportation of Roma, who have been living in Germany as refugees from war for many years, that the racist oppression and exclusion in Yugoslavia is continuing and that it is still impossible for the Roma to secure a social and economic existence because they are denied access to housing, work, education and legal protection, it borders on hate crime, when Interior Minister

Otto Schily defines those affected by the agreement merely as "illegal migrants from the Balkan region". Not least the historical responsibility of Germany in the face of more than 500,000 Roma and Sinti having been murdered by the Nazis in Germany and Eastern Europe, demands not to accelerate their deportation but instead to at last create a generous and effective residency regulation, which does

not grant a "tolerated" status for a few weeks but which entails a permanent and secure residency status with the right to housing, the right to education and work as well as funds for social integration, that is education, language and employment courses, and child and parental support.

Anti-Roma racism reached its height in 1989-1990 when most of the hostility was aimed at Romany immigrants who had fled similar mistreatment in Eastern Europe. On 2 October 1989, for example, Hamburg police tried to displace a number of recently arrived Roma who were camped out at the site of the former Neuengamme concentration camp. Some of the Roma who were attacked by police in full riot gear were survivors of the Holocaust.

For more information on the camp: C.I.A.E. Roma-Union e.V. (Centre of Integration, Affirmation and Emancipation of the Roma in Germany) Spokesman: Dzoni Sichelschmidt Tel: 00 49 (0)178-2836880 or Dsichelschmidt@t-online.de. and <http://zone.noborder.org/> On the need for a secure residency status for Roma in Germany and background to the protests see <http://www.fluechtlingsinfo-berlin.de/fr/presseerklarungen.php#47>; Background to the treatment of Roma in Germany: Ian Hancock "Gypsy History in Germany and Neighbouring Lands: A Chronology Leading to the Holocaust and Beyond," in David M. Crowe and John Kolsti, eds., *The Gypsies of Eastern Europe*. Armonk, NY: M.E. Sharpe, 1991; Background to the treatment of refugees during the Kosovo war: Hemmut Dietrich & Harald Glöde "Kosovo - Der Krieg gegen die Flüchtlinge" (Kosovo - the war against refugees) Forschungsgesellschaft Flucht und Migration, Heft 7

Immigration - new material

Starting again - young asylum seekers views on life in Glasgow. *Save the Children and Glasgow City Council Education Services* (2002) pp.32. This publication is timely in light of the recent changes introduced by the UK Asylum Bill, which will force asylum seekers' children outside the mainstream schooling system and into separate schooling in detention/dispersal centres. Based on interviews with 738 young asylum-seekers (aged 5-18) from 1,231 enrolled in Glasgow's primary and secondary schools, this report identifies key issues experienced by children and proposes recommendations to central and local government with regards to the dispersal programme. The report finds that school is "the highlight of many young asylum-seekers' lives" as well as pointing to the "importance of making friends and finding opportunities to socialise and play". Based on a mainstream schooling system, the "importance of learning English to achieve at school and socialise successfully" is also highlighted. Both these will not be possible any more in a system where children of 54 different nationalities and 40 different languages will be educated in an "apartheid" schooling system. Available from: Save the Children, Ingram House, 227 Ingram Street, Glasgow G1 1DA, Tel: 0044 141 248 4345.

Immigración, racismo y xenofobia, análisis de prensa. *Mugak*, Centro de Estudios y Documentación sobre racismo y xenofobia and SOS Arrazakeria. This new publication compiles a review of press articles concerning immigration in Spain, Navarra, the Basque Country and the EU appearing in a selection of national, regional and local newspapers. It includes quarterly resúmenes serving as introductions to lists of the titles of articles divided by subject. There is a listing of editorials, and two features deconstruct a number of government and media claims about the link between immigration and delinquency. Available from Peña y Goñi 13-1° 20002 Donostia, e-mail: hiruga01@sarenet.es

Anonimato y ciudadanía. *Mugak*, no. 20, 3rd quarter 2002, Centro de Estudios y Documentación sobre racismo y xenofobia, pp.60, (5 Euros). This issue includes essays on the complexity and cultural diversity that

can be found within societies that contradicts simplistic one-dimensional views, looks at the issue of anonymity as an important facet of citizenship, on the relationship between globalisation and integration and on the relationship between being foreign nationality and citizenship. An analysis of events in Seville in the summer, including a demonstration on 22 June and an immigrant lock-in in Seville's Pablo de Olavide University (see *Statewatch* vol 12 no 5) that started in June and ended with a police raid during which 270 immigrants were arrested, many of whom have been expelled. A round-up of developments in immigration policy around Europe is also included. Available from Peña y Goñi 13-1° 20002 Donostia, e-mail: hiruga01@sarenet.es

Report on migrations in Lombardy 2001. *Osservatorio Regionale per l'integrazione e la multiethnicità*, July 2002, pp.222. This report results from the establishment in 2000 of a regional observatory on migration in Lombardy to gather information, to understand crucial aspects of immigration, to monitor the effects of policies and to establish a databank. It provides a wealth of statistical information and analysis, including a regional survey that estimates that between 405,000 and 435,000 foreigners are present in Lombardy, over 330,000 of whom are regularised, with a similarly large proportion (near to 100,000) of Asians (particularly in Milan and Como), North Africans (Bergamo and Mantova) and East Europeans (Varese, Brescia, Pavia, Cremona, Lecco and Lodi). Moroccans are the largest national group, followed by Albanians. Other chapters deal with work, housing, health, school attendance, reception and integration, and "non profit organisations for migrants". Available from Fondazione ISMU, Foro Buonaparte, 22 - 20121 Milano, Italy.

MILITARY

SPAIN

Lieutenant accused of raping soldier

Lieutenant Iván Moriano Moreno of the Spanish navy infantry division had a five-month prison sentence confirmed by the Supreme Court in November after he was found guilty of abusing his authority by subjecting trainee soldier Dolores Quiñoa to degrading treatment, by making her undress in a training camp in El Piornal, near Cáceres, on 11 May 2000. The court accepted that "drunkenness" and "spontaneous repentance" were mitigating circumstances in the case. However, Quiñoa subsequently claimed that she had in fact been raped by Moriano, explaining that she had limited her allegations due to threats received from the lieutenant, aimed at herself and her family. Quiñoa also told *El País* newspaper that on 17 September 2002, she had made a formal complaint to the Defence Delegation in Lugo, in which she gave a formal, detailed description of events explaining that Moriano "RAPED ME" [capitals in original], but the defence authorities failed to reply. Defence minister Federico Trillo-Figueroa indicated that the failure by Defence authorities to react to the complaint will be investigated by military prosecutors. Quiñoa's allegations came after she received a letter from the Evaluation Board in early September stating that it was making a decision on her status, due to her loss of psychological and physical aptitude without any "cause-effect relationship with the difficulties experienced during service".

In her complaint Quiñoa explained that she started service in "perfect physical and psychological conditions", and her company went to a training camp that preceded the swearing of an oath of allegiance that ended the soldiers' training period. At dawn, several officers returned to the camp in drunken conditions, and she was woken up, along with the soldier with whom she was to share sentry duty, on orders from the lieutenant.

After dismissing her colleague, the officer led her to an isolated part of the camp and ordered her to undress, which she did, complaining. She was scared and humiliated, and he raped her; Quiñoa alleges that the rape was followed by threats, her life in the barracks was made difficult and she became depressed, twice attempting suicide.

Another soldier confirmed Quiñoa's allegations, claiming that the other 45 recruits who were about to end their training period offered to resign after realising what had happened. The officer in charge, head of the *Infantería de Marina de la Guardia Real* (navy infantry royal guard) Rafael Dávila Álvarez, apologised and explained that what happened "is not normal in the army", as well as giving Quiñoa a branch of flowers when the company graduated. However, he failed to open an investigation. Military prosecutors ceded responsibility for investigating the assault to the prosecutions office in Cáceres, which will allow the soldier to be represented by her lawyer. This would not have been possible in a military trial. Moriano filed for his sentence to be pardoned, but the Defence minister told Congress on 27 November that he would ask the Council of Ministers to refuse the request. Nonetheless, the lieutenant was arrested on 28 November 2002 after he was accused by another female soldier of sexual abuse in the sports facilities in the Agrupación de Infantería (infantry division) in Madrid, where he was transferred following the incident involving Quiñoa.

El País, 16.11, 17.11, 24.11, 28.11, 29.11.02.

NATO

The Pentagon's foreign legion

NATO's November summit in Prague decided on the creation of multi-national rapid deployment force of about 20,000 troops that would allow NATO to operate quickly and effectively against new "enemies" outside Europe. The intention is to construct a part of NATO that can be useful for the United States in its global war against the new terrorism and the "axis of evil". The decision followed one earlier this spring that was much more circumspect. Without attracting any publicity the North Atlantic Council (the foreign ministers of NATO) in Reykjavik negotiated a new agreement ending years of debate over whether NATO should operate "out of area", meaning outside of Europe. The ministers agreed that "Nato must be able to field forces that can move quickly to wherever they are needed" so the alliance can "more effectively respond collectively to any threat of aggression against a member state." The new NATO Response Force (NRF) will do exactly that.

An anonymous West European ambassador to NATO remarked about the spring decision: "It was done by stealth, but everyone was conscious of its significance. No one wanted it to become a controversial matter at home." An initial operational capability for the NRF is to be ready no later than October 2004. Full operational capability will be reached no later than October 2006. The troops would be dedicated to a new NATO command, and would remain on call for rotations of six months, when they might be called into action on very short notice, and be able to sustain themselves in the field for a month. The force must be capable of making 200 combat air sorties a day and make use of advanced precision guided weapons.

At the Prague summit agreements were also signed on three major military equipment initiatives. A German-led initiative to lease 10 to 15 oversized transport aircraft - either Boeing C-17s or Antonov An-124 strategic airlifters was supported by ten other countries. This is to bridge the gap until 2008 when the European-built Airbus Military A400M is expected to enter service. Shortly after the summit the German government decided finally to order 60 of those aircraft. This is believed to be just enough to hold the unit price on the earlier agreed amount of

Euro 85 million a piece. Spain is leading a plan for purchasing 48 tanker aircraft for inflight refuelling by 2005. Eight other countries have joined this initiative. An initiative led by Norway and Denmark and supported by seven other countries will provide NATO in the short term with sealift capacity.

The creation of this small, but heavily armed rapid intervention force, is of a highly symbolic value. *International Herald Tribune* commentator William Pfaff remarked that it would probably be employed "operationally detached from NATO as neither the White House nor the Pentagon imagines submitting US strategy to the consensus views of the permanent North Atlantic Council." He concluded that the new strike force "would look very much like a self-financing foreign legion for the Pentagon." The NRF might very well undercut the EU plans to build up a rapid-reaction force. There also could develop a kind of division of labour with NATO meeting the need of the USA for allies in new high intensity wars and the EU force - for the immediate future - mainly policing its borders like in the Balkans.

Defense News 7-13.10.02 (Martin A Aguera); *Washington Post* 5.11.02 (Robert G. Kaiser and Keith B. Richburg); *International Herald Tribune* 7.11.02 (William Pfaff); *Jane's Defence Weekly* 13 and 27.11.02 (Luke Hill), December 11.12.02 (Ian Kemp); *Guardian* November 22.11.02 (Ian Black); *Financial Times* December 2.12.02

UK

CND loses challenge to legality of Iraq war

In December the Campaign for Nuclear Disarmament (CND) lost a case against the UK government over their decision to go to war against Iraq. The judicial review in the high court brought proceedings against Tony Blair, the Prime minister, Jack Straw, the Home Secretary and Geoff Hoon, Defence Minister. Following former US Attorney General Ramsey Clark, who said that "An attack by the United States on Iraq to overthrow its government would be a flagrant violation of the UN charter, the Nuremberg charter and international law", the Campaign argued that the UK "government will be acting illegally if it uses armed force against Iraq without a fresh UN Security Council Resolution." CND argued that present resolutions, including Resolution 1441, did not authorise the use of force.

Phil Shiner of Public Interest Lawyers said: "There is no doubt...that international law does not permit the government to go to war unless there is a fresh Security Council Resolution. Even then there are strict limits on the use of that force in accordance with principles of necessity and proportionality." Carol Naughton, the chair of CND, added: "This war is illegal, immoral and illogical...It is vitally important that this government should be made to comply with international law rather than undermine the Security Council...If the UK is forced to await a fresh Security Council Resolution it gives all concerned the continuing opportunity to obey the law which requires that all peaceful means be used to resolve this dispute over Iraq's weapons." The High court ruled that it had no power to interpret the UN's wishes.

CND press release 6.12.02.

Military - new material

Don't attack Iraq. *Stop the War Coalition* no. 1 (May) 2002, pp4. This is the first issue of the Coalition's national bulletin, which brings together the arguments against pursuing a war on Iraq in order to guarantee US oil supplies. The Coalition organised a successful, broad-based 400,000 strong march against the war, and in support of freedom for Palestine, in September. Stop the War Coalition, PO Box 3739, London E5 8EJ.

America's bid for global domination. John Pilger. *New Statesman* 12.12.02. Pilger discusses the "threat posed by US terrorism to the security of nations and individuals" as expressed by institutions such as the Project for the New American Century, the American Enterprise Institute and the Hudson Institute and others that have "merged the ambitions of the Reagan administration with this of the current Bush regime." He cites Richard Perle who, both as an advisor to Reagan and George W. Bush, advocates "total war" on terror: "This is total war. We are fighting a variety of enemies. There are lots of them out there. All this talk about first we are going to do Afghanistan, then we will do Iraq...this is entirely the wrong way to go about it. If we just let our vision of the world go forth, and we embrace it entirely and we don't try to piece together clever diplomacy, but just wage a total war...our children will sing great songs about us years from now."

Mercenaries Inc. Solomon Hughes. *Red Pepper* January 2003, p.11. Hughes looks at DynCorp, a US-based multinational that manages its military operations from Wiltshire in the UK. The "private military company" supplies bodyguards to Karzai in Afghanistan, "is involved in fire-fights with FARC members" in the war on drugs in Columbia and runs police forces in Kosovo and Bosnia. It also earns nearly £7 million for supplying police officers and training in East Timor and Haiti. One officer turned whistleblower, who won at an industrial tribunal recently, revealed that staff visited brothels and traded in prostitutes while policing in the Balkans.

Doctrine for Joint Urban Operations, Joint Chiefs of Staff. *Joint Publication 3-06*, 16.9.02. This timely publication, prepared under the direction of the director of the US Joint Chiefs of Staff, addresses the planning and conduct of joint military urban operations. Using the slogan "Cities are the most likely battlefield in the 21st century" it covers "planning and conducting joint urban operations", "operational tasks and considerations", "noncombatants" and "infrastructure" and has six appendices and a glossary.

RACISM & FASCISM

ITALY

Neo-fascists acquitted in Milan bomb appeal

On 27 September 2002 a Milan assizes court quashed the sentences of a number of neo-fascists including retired Colonel Amos Spiazzi and General Gianadelio Maletti, head of "D" Office (Special Affairs) of the former Italian secret service (SID), on appeal. Neo-fascists Carlo Maria Maggi, Francesco Neami and Giorgio Boffelli, as well as Spiazzi, were given life sentences on 11 March 2001 after they were found guilty of instigating, planning and assisting in an explosive attack outside Milan police headquarters on 17 May 1973 (see *Statewatch* vol 10 no 2, vol 11 no 3&4). The attack, in which four people were killed and scores injured, was carried out by Gianfranco Bertoli. General Maletti had received a 15-year sentence that he never served after fleeing to South Africa, where an Italian parliamentary commission travelled to hear his testimony on the so-called "years of lead". Another neo-fascist, Gilberto Cavallini, received a ten-year sentence which was not quashed because he did not file an appeal.

Gianfranco Bertoli, now deceased, admitted carrying out the attack and claimed that he was an anarchist acting on his own. He served over 25 years of a life sentence before dying last year on parole. The prosecution argued that Bertoli was a member of the secret services infiltrated in anarchist circles, who was manipulated by the neo-fascists of the Triveneto section of *Ordine Nuovo* (ON), and that the bombing was part of the "strategy of tension", but failed to convince the court. Prosecuting magistrates said that they will probably file an appeal

before the Court of Cassation, the last possibility for appealing a sentence.

Another case in which neo-fascists from ON are under investigation, the 28 May 1974 bombing in Piazza della Loggia (Brescia) in which eight people died, saw the head of the Italian parliament's justice committee, Gaetano Pecorella, being notified on 21 August 2002 that he is under investigation for aiding and abetting Delfo Zorzi. Zorzi, a member ON, received a life sentence alongside Carlo Maria Maggi and Giancarlo Rognoni for a 1969 bombing in Piazza Fontana in Milan (see *Statewatch* vol 10 no 2; vol 11 no 3&4). He lives in Japan, having acquired Japanese citizenship, which makes his extradition unlikely as Japan does not extradite its nationals. Pecorella, Zorzi's lawyer, is accused of contacting former ON member Martino Siciliano to convince him to retract allegations against Zorzi in exchange for payment. Siciliano is a witness in relation to the Piazza Fontana, Milan police headquarters, and Piazza della Loggia bombings, and has retracted accusations in the past, as well as refusing to testify in the Piazza Fontana trial in September 2000, complaining that the money paid to *collaboratori di giustizia* (informers) was a "misery". Siciliano sent a letter retracting his accusations to Italian magistrates by fax from Colombia in April 2002, and was subsequently arrested in Brescia on 14 June 2002 for aiding and abetting Zorzi.

Repubblica 15.6.02, 22.8.02; *il manifesto* 15.6.02, 22-3.8.02.

ITALY

Moroccan beaten by football gang

A 31-year-old Moroccan, Kay Abdorhamane, was beaten with baseball bats and chains and kicked and punched by a five-strong gang in the Ostiense area of Rome on 13 October 2002. He spent several days in a coma in San Giacomo hospital due to a blow to the head. Five members of the *Irriducibili*, a Lazio football supporters gang (see *Statewatch* vol 12 no 5) were detained on charges of attempted murder with the aggravating circumstance of racism, and are currently under investigation. Four of the five have criminal records related to football violence. The police, who came to the scene following an emergency call that talked of a "manhunt", found iron bars, chains and the mobile phone of one of the accused, Stefano Celi, at the scene of the crime. More weapons, including baseball bats were found when a nearby *Irriducibili* clubhouse where Celi admitted having picked up the weapons before the attack, was searched.

The accused did not deny the attack, but claimed that they were defending women who were harassed by a group of Moroccans. One of the women, linked to the *Irriducibili*, claimed that a verbal dispute took place after they nearly ran over a Moroccan man who was crossing the road carelessly, and that they drove off after some friends of the man approached aggressively. It also appears that Kay was not one of the persons involved in the dispute, but a random Moroccan who was singled out for attack.

In spite of the lack of evidence of harassment, at the next football match large banners appeared in the Lazio end of the Olympic stadium in Rome reading: "Sexual harassment = Racist attack" and "If defending our women is a crime, we're all guilty". An official from the police *Digos* (Special operations general command) said:

We believe that the component of racial intolerance is present due to the way in which events took place, and for the futile motives alleged by the detained..., and finally because there is an element of premeditation, due to the iron bars that were picked up and then returned

Vittorio, the Roman partner of Kay's sister who shares a flat with him, said he was shocked about the attack. He said that Kay has been working in Italy for four years, and is "particularly

calm", "never caused any problems", and "would not even respond under provocation".

Il manifesto, 4.11, 7.11.02; *Repubblica* 15.10.02; *press agencies from www.repubblica.it*, 14-15.10.02; *indymedia italy*.

AUSTRIA

Haider's erratic behaviour prompts FPO collapse

The behaviour of Jorg Haider is being blamed for the demise of the far-right *Freiheitliche Partei Osterreichs* (FPO) in November's general election. The FPO saw its vote reduced from 27% to 10 per cent in the biggest collapse of any political party in Austria's postwar history. The FPO trailed in third place behind their former collaborators in the *Osterreichsche Volkspartei* (OVP) who received 42% of the vote and the social democrats (37%). Following the crushing defeat Haider announced his withdrawal from Austrian politics observing that he saw the vote as "an expression of distrust towards me". He also offered to resign from his role as governor of Carinthia saying that he was disillusioned with politics.

Predictably, within a couple of days Haider had withdrawn his offer arguing that his party should stay in government, and indicating that he was ready to renew a coalition with Chancellor Wolfgang Schussel of the OVP. Schussel, who in 1997 pledged never to enter into partnership with the extremist FPO, has moved further to the right, adopting many of the FPO's policies, particularly in relation to immigration and security. A divided FPO with little real power would prove to be a convenient cover for Schussel and the OVP to implement the FPO's policies while allowing Haider to shoulder the blame for them.

Guardian 25.11.02.

UK

NF activist "martyred" in drug gang killing

National Front (NF) activist and Combat 18 (C18) supporter Jason Spence, 31 from Kingstanding, West Midlands, was shot dead in November. Hailed as a "martyr" by the far-right, Spence was killed by two men in a silver estate car, one of whom shot him twice. The murder is being blamed on "fundraising" conflicts between far-right organisations and criminals dealing in Class A drugs. Spence's death was commemorated by a small but intimidating Combat 18 demonstration in his home town of Kingstanding. The death has led a local newspaper, the *Birmingham Post*, to investigate the role of far-right groups in the hard drugs trade which is often accompanied by extreme violence

Far-right organisations, such as Combat 18 and the National Front have been engaged in serious drugs trafficking for at least a decade. It played an important role in the formation of C18 in 1992 when, under the influence their leader, Orangeman and police informer Charlie Sargent, they began to emulate loyalist paramilitaries whom they regarded as role models for a "radical" nationalist politics. Heavily involved in football hooliganism, C18 collapsed after an acrimonious feud led to the death of one member and the imprisonment of Sargent for murder. The organisation had been inactive since the arrest of members connected a letter bomb campaign in 1997, but has lately re-emerged to protect National Front rallies and papersales.

While they are considerably smaller than the British National Party the NF have picked up support because of the BNP's attempts to gain respectability. During the 1980s key NF and C18 members were arrested for arms running in conjunction

with loyalist paramilitaries. They include current NF leader Terry Blackham who was jailed for his involvement and key NF/C18 activist Eddie Whicker, who was eventually released without charge in unexplained circumstances. In public far-right leaders promise that they will "clean up society" and "execute drug dealers" while their members are banking profits from dealing.

In the course of their investigation the *Birmingham Post* interviewed ex-members of the NF. One former member, who left the party because of increasing violence, told the paper that he feared that "clashes between the extreme right and existing drug dealers could lead to innocent members of the public getting killed." He added: "There are criminals within these [far right] groups who think nothing of selling drugs in large amounts to get money to fund activities." The National Front has announced that it will confer its activist of the year award to Spence at their annual general meeting.

Birmingham Post 6.12.02;

UK

NF gang jailed for torture plot

A National Front (NF) gang, led by their youth organiser Simon Northfield (23), received jail sentences totalling 25 years at Kingston Crown Court after pleading guilty in November to a plot to kidnap and torture black people. The eight-strong gang had driven to Tooting, south London on 29 September 2001, in a white van loaded with weapons, searching for black youths to attack. The plot was apparently in response to the attacks on New York and Washington on 11 September, although the media has downplayed this motive. The gang's actions aroused the suspicions of park employees who contacted the police. Officers arrested the driver and his companion and found five more people, dressed in black combat jackets and boots, inside the vehicle. The men were equipped with "a kidnap and assault kit" that included balaclavas, handcuffs, batons, knives, CS gas, a knuckleduster and an imitation gun. A map of London with a mosque marked out was also found.

Raids on the homes of the men uncovered more weapons, including 33 knives, a sword, a knuckleduster and photographs of the men dressed in nazi and Ku Klux Klan uniforms. The searches also revealed NF and Combat 18 propaganda. Northfield who was a National Front "officer" and is a close associate of leading NF activist and convicted Loyalist gun-runner, Terry Blackham. In February 2000, he had admitted attacking members of the Anti-Nazi League while taking part in an anti-asylum seeker demonstration in Margate, Kent. NF literature describes Northfield as a builder and a leading figure in the Young NF.

Northfield was jailed for 4 years and 4 months for conspiracy to cause racially aggravated assault and possessing weapons. Police also found racist NF literature at the home of James Kennett, who was jailed for three and a half years; he had a previous conviction for putting NF stickers on an Asian-owned shop. The other members of the gang who admitted conspiracy to cause racially aggravated assault were: Paul Lewis (3 years), Paul Connell and Thomas Slade (3 years and 9 months), Paul White (3 years and 10 months). Two juveniles were also jailed for 18 months each. Three of the men had previous convictions for racist attacks.

In October another white supremacist, David Tovey, from Oxfordshire was found guilty of racially aggravated damage to property and firearms and explosives offences. Tovey, who was arrested after being observed writing anti-white graffiti in a public lavatory in an attempt to incite racial hatred, was convicted at Oxford crown court in October after police raided his home and found British National Party (BNP) literature and an enormous arsenal. Among the weapons found were a Sten sub-

machinegun, Spaz pump-action and Kestrel shotguns, a pistol and silencer, body armour and CS gas. Even more disturbingly, police found a quantity of British Army P4 explosive. The odourless plastic explosive is known to be widely available on the black market, and police have belatedly begun an investigation into its route from the army onto the underground market.

Tovey was sentenced, after undergoing psychiatric tests, to eight years for the firearms and explosives charges in November. He received a further three year sentence for two counts of racially aggravated graffiti, to run consecutively. Police have said that Tovey was planning to emulate the nazi nailbomber, David Copeland, a BNP supporter who exploded a series of bombs in London in 1999, killing three people and injuring over 100.

UK

BNP lies, intimidation and videotape

The fascist British National Party (BNP) picked up its fourth council seat in November when it narrowly defeated the Labour party candidate by 16 votes to win a by-election in the Mill Hill ward in Blackburn, Lancashire. Robin Evans' victory in the constituency of Labour's foreign secretary, Jack Straw, was unexpected and greeted with dismay by local councillors, religious leaders and trade union members. In May the BNP won three council seats in neighbouring Burnley (see *Statewatch* vol 12 no 3/4) but failed to make expected advances in Oldham or Bradford. Evans' victory recalled the 1970s when fascists last won three seats in Blackburn. In other recent by-elections the organisation gained 18% of the vote in Stoke in October and 20% of the vote in Lewisham, south London in November.

The BNP continues to emulate its European counterparts' political successes by revising its history, limiting overt expressions of support for national socialism, usually by omitting to mention the subject or by using a codified language, and presenting racist attacks in terms of self-defence. These cosmetic changes have been accompanied with a less intimidating street presence, with only sporadic outbreaks of violence rather than the concerted focus they previously gave to certain areas. Their political progress has been unremarkable, except at council level where they have made some headway in areas of the Midlands. The party has promoted a number of "clean-cut", anodyne members to represent them at media level, but many of their long-term activists continue with the tried and trusted methods.

These values were exposed in a recent *Panorama* television programme on Mark Collett, the organiser for the Young BNP and a member of the party's advisory council. Collett, a protege of party leader Nick Griffin, took part in the Channel 4 documentary to present the "future" of the organisation in a homely, family friendly light. Unfortunately for Collett, the hour-long documentary included excerpts from conversations recorded without his knowledge which lauded precisely those aspects of the BNP's programme that the party is attempting to deny. These included expressions of admiration for national socialism and Adolf Hitler, anti-Semitic comments and the promotion of "white power".

The BNP's routine practice of intimidation and lies were exposed when David Wilson, a party activist and member of their FAIR (Families Against Immigrant Racism) campaign, was jailed for four months in November for distributing "threatening, insulting and abusive" leaflets to Scotland's largest Muslim community in the Pollockshields area of Glasgow. Wilson was convicted under the Public Order Act after his gang of heavies posted newsletters urging residents to stop "militant Muslims running amok" in the area in July 2001. The reality of the situation is that Glasgow witnessed the racist killing of Kurdish

refugee, Firsat Yildaz, only days after Wilson's arrest.

The BNP's claims of attacks on white people in the area were rejected by Sheriff Linda Ruxton who said that: "Despite its disingenuous drafting, the intent of the leaflet was clear...the selective distribution in Pollockshields of inaccurate and threatening material containing anti-Muslim sentiment was clearly aimed at provoking ill-feeling and hostility towards the Pakistani community." She described the BNP's material as "sinister, insulting, abusive and threatening." In his defence Wilson claimed that the leaflets were aimed at promoting "harmony" within the community.

Glasgow Herald 25.10.02, 15.11.02; *Coalition Against Racism press release* 22.11.02; *National Assembly Against Racism press release* 22.11.02

Racism & fascism - new material

Antifaschistisches Info Blatt (Antifascist Information Bulletin), No. 55 (Spring) 2002 pp.54 (Euro 3.10) This issue focuses on the far-right retail industry: the marketing of Lonsdale products in Germany was just the beginning of a booming nazi culture and music industry, supporting the attraction of youngster to the nazi life-style, many of the shops having found a footing in the mainstream marketing industry. Other articles report on the death of a young Cameroonian after being force-fed emetics in Hamburg in December 2001 and on the nazi presence in rural areas in eastern as well as western Germany. Available from: *Antifaschistisches Info Blatt*, Gneisenaustrasse 2a, 10961 Berlin, aib@mail.nadir.org.

Flirting with Hitler, John Hooper. *Guardian Weekend*, 16.11.02. This article identifies the link between Germany's devil worshipping-gothic-esoteric youth culture and the far-right. With an example of a ritual murder carried out in Germany earlier this year, Hooper points out that the connection between goth and pagan culture and fascism has a long tradition in Germany and that the far-right is making a concerted effort to use life-style trends and the entertainment industry to promote fascist ideology and recruit new members. Leading far-right thinkers have put this forward in fascist magazines and far-right newspapers under the title "Culture as a question of power" (Roland Bubik), urging "to open up contemporary cultural and political phenomena to use them for our own purposes" (Simone Satzger).

PRISONS

UK

Overcrowding and early release extended

The Home Secretary, David Blunkett, has ordered the extension of the Prison Service's early release programme. The changes mean that the Home Detention Curfew (HDC) scheme will be extended to inmates who fall within the limits of the HDC scheme 90 days before the end of their sentence, rather than 60 days, as was previously the case. Over 56,000 inmates have been released under the HDC scheme from its implementation in 1999 to date, with a re-offending rate of less than 5%. The changes are anticipated to affect between 20,000 and 25,000 inmates every year.

It is difficult, though, to square this apparent concern to address the issue of overcrowding with the measures in the proposed Criminal Justice Bill for a "victim-based" criminal justice system which will ratchet up conviction rates and inevitably lead to miscarriages of justice. Among the measures proposed are the abandonment of "double jeopardy", the disclosure of previous convictions to juries as part of the

prosecution case, advance notice of defence witnesses as part of defence disclosure, and the introduction of Diplock-style non-jury courts where the issues involved are felt to be "too complex" for a jury, or where there is a "risk" of jury intimidation. Also included in the Bill are the creation of further low-level nuisance offences, to be dealt with by on-the-spot fines, and the likely increase in short sentences for non-payment handed out to fine defaulters.

Meanwhile in her Report of a Visit to HMP Ford, the Chief Inspector of Prisons, Anne Owers, observed that overcrowding was having a corrosive effect on even the most relaxed open prisons. Prisoners were found to be sleeping in cleaning cupboards at one jail, in a move which led the Chief Inspector to question "how some of this accommodation has been certified fit for use." The overcrowded conditions at Ford were "appalling, providing neither privacy nor dignity."

Of 19 new prisons built in the last 10 years, 16 are already overcrowded. Commenting on the government's latest criminal justice proposals and their likely effect on prison overcrowding, Prison Reform Trust director, Juliet Lyons, called for the "rhetoric of crackdown and control to be superceded by the cool voices of reason and common sense."

Guardian 30.0.02; Report of a visit to HMP Ford Open Prison; Prison Reform Trust press release.

UK

Childrens Act applies to child prisoners

The Howard League for Penal Reform was successful in its challenge by way of judicial review to the exemption of child prisoners (under 18s) from the protection afforded by the 1989 Childrens Act. According to the Howard League, child inmates are routinely treated in jail in ways which, were they to occur outside, would trigger child protection investigations. Between April 2000 and May 2002, 976 juveniles were held in segregation conditions for more than one week, and "pain-based" control and restraint measures were used 3615 times. Between April 2000 and November 2001 there were 554 reported cases of juvenile self-harm, and five suicides.

In the High Court, Mr Justice Munby declared that Home Office claims the Childrens Act did not apply to child prisoners were wrong in law. The case will mean that social services and NHS teams will be able to provide young prisoners with the same level of care they would provide to children at risk in the community or in childrens homes. Mr Justice Munby commented that the government "appeared to be failing very badly in its duties towards vulnerable and damaged children"; comments supported by Cherie Blair QC, writing in *The Times*.

Ms Blair referred to the Second Report of the United Nations Commission on the Rights of the Child, which found that treatment of children in Britain's juveniles prison system had consistently worsened. She observed that "Unless and until the UK government recognises the concept of the human rights of the child it will remain rightly criticised as being only half-hearted about the rights of the child."

Howard League for Penal Reform; Times 12.11.02

Prisons - in brief

■ **UK: Lincoln prison riots:** Rioting took place at Lincoln prison on the night of 23 October 2002, with over 550 prison and police officers deployed to regain control over the jail, following the overpowering of a prison guard and the torching of parts of the jail. The jail was in the hands of inmates for over eight hours. More than 200 inmate places were destroyed. Of particular

significance is the revelation that the Prison Service had in place preparations for the rapid deployment of MUFTI (Minimum Use of Force, Tactical Intervention) squads from other jails, on the basis that such revolts by prisoners were anticipated, and the fact that a no-fly zone was declared around the jail until control was regained. HMP Lincoln was 200 over capacity when the riot took place. Martin Narey, who began his career at HMP Lincoln, declared that the jail, (which had been described routinely in the media as a "hell-hole" following disgraced Conservative MP Jeffrey Archer's transfer there) was a "good jail" and promised to "crack down" on those involved in the riot. *Guardian 24.10.02; Miscarriages of Justice UK*

■ **UK: Miscarriage of justice victim released:** One of Britain's longest serving miscarriage of justice victims was released in November 2002. Robert Brown had already served 25 years for murder by the time his conviction was declared unsafe by the Court of Appeal. Robert Brown was beaten into confessing to a crime he did not commit. Fibres from another suspect, picked out on ID parade, were known to have matched those found on the victim. Four years after Brown's conviction, the officer central to the case was jailed for four years for corruption. *Guardian 19.10.02; Miscarriages of Justice UK: Miscarriages of Justice Organisation*

■ **UK: Home Secretary's tariff setting violates fair trial.** A declaration of incompatibility was made unanimously by the House of Lords on the application of Anthony Anderson in relation to the tariff setting powers (power of the Home Secretary to decide how long a prisoner sentenced to life for murder should serve before being eligible for parole) of the Home Secretary. The Law Lords held that the power violated the guarantee of a fair trial by an impartial court independent of the executive. The European Court of Human Rights had already stripped the Home Secretary of equivalent powers in cases of life for crimes other than murder. *Guardian 25.11.02.*

Prisons - new material

The future of prison health care: a critical analysis, Joe Sim. *Critical Social Policy*, volume 22 no. 2 (May) 2002. A response to the Home Office/NHS report on "The Future Organization of Prison Health Care". It concludes that "until the formal and informal networks of penal power are addressed...the document's hopes for change are unlikely to be realized."

Analysis of Juveniles admitted onto Remand in Northern Ireland, Laura Hague & Patricia Campbell. *Research & Statistical Bulletin* no. 6 (Northern Ireland Office) November 2002, pp.20.

Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to October 2001 and Response of the Greek Government to the Report to the Government of Greece by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 5 October 2001. *Committee for the Prevention of Torture (CPT/Inf) 31 & 33, 2002.* Both available from: Secretariat of the CPT, Human Rights Building, Council of Europe, F-67075 Strasbourg CEDEX, France.

The Northern Ireland Prison Population in 2001, Kristine Amelin & Michael Willis. *Research & Statistical Bulletin* no. 8 (Northern Ireland Office) November 2002, pp.20.

Towards prisons without inmates? Re: the introduction of electronic monitoring in France, Pierre Victor Tournier. *Penological Information Bulletin* nos. 23 & 24 (December) 2002, pp3-6.

ITALY**Andreotti guilty of ordering journalist's murder**

On 17 November 2002 an assizes court in Perugia (Umbria) found seven-times prime minister Giulio Andreotti and Mafia boss Gaetano Badalamenti guilty on appeal of ordering the murder of journalist Carmine "Mino" Pecorelli in Rome on 20 March 1979, sentencing them to 24 years and overturning an acquittal in the same city in April 1999. The other defendants, former politician and magistrate Claudio Vitalone, mafioso Giuseppe Caló, Michelangelo La Barbera, member of the Roman *banda della Magliana*, and Massimo Carminati, were acquitted. Andreotti was first linked to the investigation by allegations from now deceased mafia *pentito* (turncoat) Tommaso Buscetta in 1993. Buscetta revealed that fellow boss Badalamenti told him that he had Pecorelli killed as a favour to the senator-for-life and former Christian Democrat (DC). Badalamenti is currently in a New Jersey prison serving a 45-year sentence for his involvement in the "Pizza Connection" case in the USA, and has also received a life sentence in Italy for killing anti-mafia activist Peppino Imposimato.

Sergio Matteini Chiari, prosecuting, claimed that the murder was linked to the journalist's intention to publish part of the *memoriale Moro*, a document that disappeared after it was found by the *carabinieri* paramilitary police headed by general Dalla Chiesa. It was believed to include details of the trial in a "people's court" to which Aldo Moro was subjected by the Red Brigades after he was kidnapped on 16 March 1978. The 55-day kidnapping of Moro, who was president of the DC at the time, ended with his death. Part of the *memoriale Moro* has never been recovered, and prosecutors argued that Pecorelli had obtained it (from Dalla Chiesa himself) and was going to publish it in his magazine *Osservatore Politico* (OP). Moro grew increasingly bitter towards Andreotti and his DC colleagues as his fate unfolded, amid threats that "my blood will fall on all of you". Prosecutors believe that the document contained damaging information about Andreotti, the then prime minister who refused to negotiate, or exchange prisoners, with the Red Brigades to secure Moro's release. Andreotti also knew that Pecorelli was in possession of some damaging information concerning an illegal payments scandal. His assistant Franco Evangelisti admitted paying Pecorelli 50 billion Lire to prevent him from publishing the story only days before the journalist was murdered.

Pecorelli was also a member of the P2 masonic lodge, an illegal organisation that was considered a "state within the state" with membership including politicians, members of the military and secret services as well as businessmen. It has been alleged that the shadowy organisation was involved in coup attempts, terrorism and countless scandals, including the murder in London of banker Roberto Calvi. Licio Gelli, "Venerable Master" of P2, was acquitted of involvement in the murder of Pecorelli at a previous trial in 1991.

The guilty verdict was vociferously criticised by politicians from several parties as well as Vatican officials. Most notably, prime minister Silvio Berlusconi took it as further evidence of the excessive politicisation of certain sectors of the judiciary who were persecuting conservative politicians, and of the need for reform of the judicial system. Nonetheless, Andreotti is considered the custodian of many of Italy's post-war secrets due to his almost uninterrupted proximity to power from the late 1940s to 1992, and his excellent relationship with officials in the USA and in the Vatican. On 26 February 1991, in response to a parliamentary question, Andreotti sent a document to the

parliamentary investigation commission on massacres and terrorism presided over by Giovanni Pellegrino, admitting and detailing the nature of "Gladio", a CIA-financed clandestine organisation for unconventional warfare to resist the possibility of a Communist takeover of Italy.

Andreotti is currently accused of involvement in the mafia in another appeal trial that is being held in Palermo. This is another case in which he was acquitted in the first trial, although it produced damaging revelations. In particular, his relations with Salvo Lima, a local DC politician and mafioso, the brothers Nino and Ignazio Salvo, who were found by a parliamentary commission to have links to the mafia, and former Palermo mayor, mafioso and DC politician Vito Ciancimino came under scrutiny. He was found by the court in the first trial to have lied about these relations, although they were not deemed sufficient to find him guilty on charges of "continued and aggravated Mafia association" and of being the lynchpin between the mafia and the state.

Forensic tests suggest murder in Calvi mystery

Italian forensic scientists who conducted a post-mortem investigation on the body of Italian banker Roberto Calvi, who died in mysterious circumstances in London on 18 June 1982, believe that he was murdered and then subsequently hung under Blackfriars Bridge. Judges in Rome said that the examination showed that Calvi did not touch the bricks that were found in his pockets, and used to weigh his body down to simulate suicide, and that marks consistent with strangling were found on his neck. Calvi's son Carlo also claimed that no sign of zinc from the scaffolding he was supposed to have climbed in order to commit suicide had been found on his shoes.

The banker is known to have entertained close relations with a number of powerful - and dangerous - partners, ranging from the P2 masonic lodge, to which he belonged, to elements within the Vatican such as IOR (*Istituto per le Opere Religiose*), for which he claimed to have undertaken secret missions of an anti-Communist nature in South America and Eastern Europe, and Opus Dei, to the mafia, for which *pentiti* (turncoats) claim that he was holding considerable sums. Archbishop Paul Marcinkus, head of the IOR at the time, was charged as an "accessory to fraudulent bankruptcy" due to its business dealings with Calvi. The collapse of Calvi's business empire, with the record-breaking bankruptcy of his Banco Ambrosiano, which crashed with debts of 892 million lire in the summer of 1982, preceded by his arrest in May 1981 on charges of illegal export of currency, saw him abandoned by his erstwhile allies. Calvi began issuing veiled threats to secure support, which may have led to his death due to his knowledge of many secret dealings.

Calvi's wife Clara claims that her husband believed that *Democrazia Cristiana* (DC) politician and seven-times prime minister Giulio Andreotti was sabotaging his attempts to save Banco Ambrosiano from behind the scenes. The DC politician has recently been sentenced to serve 24 years in prison for the murder of journalist Carmine Pecorelli in 1978 (see this issue) and is currently on trial for association with the mafia. According to inquiries, including private investigations commissioned by Carlo Calvi, and statements by mafia *pentiti*, have resulted in members of the Sicilian mafia and neapolitan camorra becoming the chief suspects of involvement in the murder, with the complicity of businessman Flavio Carboni, who accompanied Calvi on his last trip to London. The forensic findings will result in prosecutors re-opening the case, the latest in a number of turns that the case has produced (see *Statewatch* vol 9 no 1). Investigators consider documents found in a security box in the *Nuovo Banco Ambrosiano* (Calvi's bank's successor) in early

October to be "useful and interesting". They included a brick, two sheets from the *Corriere della Sera* newspaper, which reportedly contained articles on the Banco Ambrosiano and on the freemasonry.

Repubblica 12.10.02; *Times* 26.10.02, 30.9.02; *Stawatch* vol 9 no 1; *Their Kingdom Come: Inside the Secret World of Opus Dei*, Robert Hutchinson (Doubleday) 1997.

UK

New inquest for victim of Porton Down's "squalid secret"

The High Court announced in November that there will be a new inquest into the death of British soldier, Ronald Maddison, who died nearly 50 years ago after taking part in a sarin nerve gas experiment at the Ministry of Defence's Porton Down research centre, in Salisbury. Maddison was 20 years-old when he took part in the tests in May 1953 after being told, according to members of his family, that he was participating in a project to find a cure for the common cold. The claims are supported by other soldiers who volunteered to be subjects for common cold research in the early 1950s. At least one other serviceman (Subject 702) came close to dying in the same set of experiments when he stopped breathing, and five other guinea pigs "suffered particularly badly". Other soldiers have claimed that they were pressed by superiors to participate in the tests that have been described as the establishment's "darkest hour". Some have stated that they were forced to sign a gagging document or were instructed to sign the Official Secrets act.

Maddison died two days after arriving at Porton Down when a dose of liquid sarin caused an "adverse reaction". The soldier was one of 400 servicemen who volunteered to take part in the experiments:

to determine the dosage of GB (sarin), GD (soman) and GF (another nerve gas), which when applied to the clothed or bare skin of men would cause incapacitation or death.

Many of the participants have since campaigned for an inquiry into the deception, claiming that fellow soldiers were used as "guinea pigs" and died after being exposed to the nerve agents.

Within a week of Maddison's death Porton's human experiment programmes were subject to a three day secret inquiry presided over by officials from the government department that ran the research centre. The inquiry concluded that the tests had been "reasonable" and that the death was an "unfortunate accident". A few days later his inquest was held in secret. Only Maddison's father was allowed to attend and he was sworn to secrecy by the authorities. The inquest reported directly to the government and, as a contemporary newspaper account put it: "Nobody outside official circles knows why he died. Nobody outside official circles knows what the inquest verdict was. Even his name, age and home town have been hushed up." The "official circles" confirmed one fact: "We can confirm that there was a fatal accident. Beyond that we have no information."

Porton's final report on the human experiments remains secret, but in August 1999 Wiltshire police launched Operation Antler, investigating allegations that the servicemen had been duped into taking part in the experiments. It can bring charges against staff who were working at the centre at the time and has the potential to throw some light on the establishment's "darkest hour".

For more information on the Maddison case, and Porton Down's human experiments see Rob Evans "Gassed: British Chemical Warfare Experiments on Humans at Porton Down" (House of Stratus, London) 2000, www.houseofstratus.com

UK

Government's opportunistic "propaganda" ridiculed

At the beginning of December, six days before the deadline for Iraq to release details of its weapons of mass destruction to UN weapons inspectors, the British government published its graphic dossier on crimes and human rights abuses in Iraq. Described by Foreign Secretary Jack Straw as a reminder to "the world that the abuses of the Iraqi regime extend far beyond its pursuit of weapons of mass destruction" the document has been widely condemned as "opportunistic" and "propaganda" by civil liberties groups. Within the Labour party, MP Tam Dalyell described it as a "highly unusual, indeed unprecedented publication [that] is cranking up for war."

In order to bolster the "human rights" angle the dossier cites Amnesty International at great length, prompting the organisation to respond by warning the government that "The human rights situation in Iraq or elsewhere should not be used selectively." The organisation points towards another human rights catastrophe that is unfolding (and about which the British and American governments are unlikely to be so forthcoming): "As the debate on whether to use military force against Iraq escalates, the human rights of the Iraqi people, as a direct consequence of any potential military action, is sorely missing from the equation."

The idea that the planned invasion of Iraq is based on human rights considerations is a proposal about as convincing as the argument that the US attacked Afghanistan to liberate the nation's oppressed women. As in Afghanistan, the numbers killed or information about the dead (civilian or otherwise) is unlikely to be considered worthy of attention.

Saddam Hussein: Crimes and Human Rights Abuses. A Report on the human costs of Saddam's policies by the Foreign & Commonwealth Office. Available on the FCO website

Palestinians denied justice

Leave to appeal the convictions of Samar Alamai and Jawad Botmeh, provisionally accepted in July, has been rejected by the Law Lords. Samar and Jawad were convicted of conspiracy to cause explosions at the Israeli embassy and Balfour House in London in 1994 in a trial that dismissed pertinent evidence and accepted that "human errors" led to failures to disclose police and MI5 evidence that might have had a bearing on the case. Amnesty International said:

that failure to disclose crucial evidence violates the appellant's right to a fair trial.

The defence will now be applying to the European Court of Human Rights and will "consider" an application to the Criminal Cases Review Commission. However, supporters of Samar and Jawad point out that this route will take many years

The Free Samar & Jawad campaign has published a comprehensive overview of the circumstances surrounding the wrongful convictions of Samar and Jawad. "Infinite Justice" provides a useful insight into the powerful mechanisms of the secret state prior to the plethora of emergency anti-terrorist legislation that is sweeping across Europe. The defence says that unsourced "intelligence", disinformation, the withholding of essential evidence and legal prevarication were used to convict Samar and Jawad, leading to widespread criticism of the handling of their case. These mechanisms have become more and more common in the UK today.

Infinite Justice: Human Rights Breaches and the Wrongful Convictions of Samar Alami and Jawad Botmeh, July 2002, www.freesaj.org.uk

Security - new material

Infinite Injustice: Human Rights Breaches and the Wrongful Convictions of Samar Alami & Jawad Botmeh. *Freedom & Justice for Samar & Jawad*, July 2002, pp.28.

The rotten heart of Italian democracy, Peter Popham, *Independent Review* 19.11.02, p.4-5. Traces the rise of Giulio Andreotti from altar boy to the most influential figure in post-war Italy, through the tutelage of Alcide De Gasperi and his wide array of allies that included former fascists, clergymen and mafiosi. Popham says that he is unchallenged "for endurance, for wiliness, for the Macchiavellian craft of politics".

POLICING

GERMANY

Transsexuals suffer police abuse

The issue of discrimination and abuse against transsexuals has never received much media or campaigning attention, but abusive police conduct against transsexuals is high, as a recent charge lodged against the Hamburg police has revealed. Particularly vulnerable to abuse are undocumented transsexuals who are threatened with deportation. In Hamburg, transsexuals from South America earning their living as sex workers are regularly picked up by police, often by undercover officers, forced to undress at the police station, and then deported for working without papers on a tourist visa (prostitution itself is not illegal in Germany).

At the end of 2001, a transsexual from Ecuador was physically attacked by police in the red light district in Hamburg. When seeking help from two police officers she was taken to the police station, where the officers told her she was illegal and tearing at her clothing and demanded she take her clothes off. They stared at her and ordered her to spread her legs. There are many more cases of police forcing transsexuals to take their clothes off, often without providing translation for those who do not speak German. Others report police officers telling them if they can take nude pictures of them, promising they would save them from deportation, only to be photographed and find themselves in a deportation prison soon afterwards. Many do not bring charges for fear of being imprisoned, where the abuse and danger of being raped is even higher. The Ecuadorian victim has now brought charges against the police officers and her lawyer explains that there are only two circumstances allowing the police to demand that arrested persons to take their clothes off: first, in cases of danger and criminal prosecution, in order to detect drugs or weapons hidden in people's orifices. Secondly, in order to secure evidence, a reason often given when police order the force-feeding of emetics to make people vomit. In December 2001, a Cameroonian died in Hamburg after being force fed emetic on suspicion of drug dealing (see *Statewatch* vol 11 no 6). In the case of the Ecuadorian, the police only suspected illegal residency, which leaves their conduct unlawful.

However, there still exist a police regulation according to which officers should determine if the genitals of an arrested transsexual were predominantly male or female, in order to establish if a male or female officer should carry out a body check. This recent case raises firstly, the vulnerability of undocumented migrants in relation to abuse from police, employers and/or clients, and secondly, the discrimination against transsexuals and transgendered persons in law and popular practice. In Germany, around 24,000 people born as so-called Intersexuals have had their genitals removed/changed at birth by operation, in order to make them identifiable as male or

female, often without their knowledge. The chances of the recent legal proceedings initiated against the police being successful are very low.

Jungle World 4.9.02. *German Association for Transidentity and Intersexuality (Deutsche Gesellschaft für Transidentität und Intersexualität e.V.):* <http://www.dgti.org/>

UK

IPCC chair named

Home secretary David Blunkett has named Nick Hardwick, presently chief executive of the British Refugee Council, as the first chair of the Independent Police Complaints Commission (IPCC). The IPCC will replace the widely derided Police Complaints Authority in April 2004 and Hardwick will have responsibility for overseeing the setting up of the body.

The government has consistently ignored recommendations and criticism from groups such as the United Friends and Family Campaign and Inquest for a new body with its own permanent staff and an active commitment to recruiting from ethnic communities and outside the policing profession.

In remarkable piece of "spin" the Home Office press release insists that the IPCC "will be independent of the Government and police". The press release continues:

The IPCC will deliver an open and transparent system to increase public confidence and give reassurance that complaints will be investigated fairly and effectively. Providing an independent complaints system to deal with the small number of complaints against the police will demonstrate the integrity of the police service as a whole.

The claims echo those made at the launch of the PCA. Then many commentators observed that the only new aspect of the PCA was the word "independent" inserted in a different type-face on its headed notepaper - now the word has been officially incorporated into the new title.

The United Friends and Family Campaign, have made a detailed critique the new IPCC, (see *Statewatch* vol. 11, no 2). They conclude that the new body:

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

"Complaints against the police: framework for a new system. A response to the government's proposals" United Family and Friends Campaign (February) 2001; Home Office press release 12.12.02

Policing - in brief

■ **UK: Essex police to "name and shame" convicted criminals:** Essex police force has begun a campaign to "name and shame" convicted criminals on the grounds that it will act as a deterrent to juveniles. Under the campaign anyone convicted of a crime that carries a minimum sentence of one year could have their name and photograph put on posters displayed in the Brentwood area of the county. The offender and their legal representatives will be served with an official notice giving them seven days to register a formal legal objection before they are named. The project has been a year in the planning to ensure that the posters are legal. A spokesman for Essex police said that the poster will not be used against those with a mental health problem, paedophiles, young people or the vulnerable. *Police Review* 15.11.02.

■ **Italy: Neighbourhood police patrols:** On 17 December 2002, Interior Minister Giuseppe Pisanu launched a proximity policing scheme based on the "*poliziotti di quartiere*" (neighbourhood policemen) aimed at "striking a blow against crime". A pilot scheme has been operating in cities including

Rome and Vicenza (in the Veneto region) for some months. They are drawn from the ranks of police and paramilitary *carabinieri* officers involved in administrative functions, so as not to cause a decrease in the number of officers deployed on the territory doing usual duties. The *poliziotti di quartiere* will patrol the streets in two's, and will be carrying guns and lap-top computers connecting them to the central police station or a *carabinieri* station. They will wear special uniforms to distinguish them from other law enforcement services. The deployment of 500 *poliziotti di quartiere* started on 18 December 2002 in 28 cities distributed in the north (Aosta, Bolzano, Cuneo, Milan, Padua, Reggio Emilia, Turin, Udine and Vicenza), centre (Ancona, Arezzo, Ascoli Piceno, Chieti, Forlì, L'Aquila, Lucca, Perugia and Rome), south (Avellino, Bari, Crotona, Imperia, Lecce and Salerno), and islands (Cagliari, Palermo, Sassari and Siracusa). From 20 January 2003 another 500 officers will be added to the service, and 24 further cities will be involved in the scheme. *Interior Ministry press statement, "Armati di computer il poliziotto e il carabiniere di quartiere debuttano in 28 capoluoghi di provincia" (Armed with a computer, the neighbourhood policeman and carabinieri make their debut in 28 provincial capitals), 17.12.02.*

Policing - new material

Are Miscarriages of Justice being identified and remedied? Is the Court of Appeal dispensing fair justice? Can Miscarriages of Justice be prevented? A MOJO critical analysis and review of the efficiency of the Criminal Cases Review Commission and the Criminal Court of Appeal. Miscarriages of Justice Organisation, April 2002, pp.34. This report considers the CCRC ("miscarriages of justice are on a steep incline and...the CCRC is failing to deal with them adequately.") and the Court of Appeal (has "returned to trends and cultures which the legal profession find unacceptable."). A third section deals with the 1995 Appeal Act and Sex Offence legislation, while the annexes cover sample CCRC cases and extracts from some MOJO case files. Available from MOJO, 52 Outmore Road, Sheldon, Birmingham B33 0XL, Tel. 0121 789 8443, email Mojo.National@aol.com

A First Digest of Cases. A Selection of cases handled by the Police Complaints Authority. *Police Complaints Authority* 2002, pp.38. This publication was, according to the introduction, "written to illustrate the diversity of cases handled and to give an insight into the way in which complaints against the police in England and Wales are investigated and

decided upon." It does neither and fails to even consider the concept of a genuinely independent body that might restore public confidence in a woefully inadequate bureaucratic institution.

Taking up arms, Mike McBride. *Police Review* 6.12.02, pp20-21. Discusses the range of "less-lethal" weapons available to the UK's police forces.

Achilles Heel, Tony Cross. *Police Review* 6.12.02, pp24-25. The latest Home Office figures show that black people are eight times more likely to be stopped and searched than other ethnic groups, four times more likely to be arrested and are over-represented in the criminal justice system. With new anti-terrorist measures this will inevitably increase. But, according to Met Federation chairman Glen Smyth, the public should "get real" about the stops, while in his article Cross argues that "management tools" can be used "to create a balance".

De Tampere à Seville: Bilan de la Sécurité Européenne, vols 1 & 2, *Cultures & Conflits*, September 2002, pp.169 & pp.173. These volumes look at developments in European security between the October 1999 Tampere summit and the Seville summit in June 2002, a period of conflict between governments and protest movements strongly marked by the 11 September attacks on the USA. It includes essays and documents on subjects ranging from police cooperation and the creation of a "space of freedom, security and justice", to common European policies on immigration and asylum, including analysis of the effects of the Amsterdam Treaty on police institutions and the treatment of third country nationals. Didier Bigo and Elspeth Guild's introduction talks of an unprecedented speeding up of "the transnationalisation of governance on a world scale" seeking to prevent a similar transnationalisation of protest through legal measures, "soft" law and regimes of exception that suspend the rights of individuals. They stress the progress made in the EU in relation to the repressive agenda set in Tampere which was not matched by guarantees in terms of individuals' rights. Europol and Eurojust are seen as allowing the coordination of prosecutions and allowing "jurisdiction shopping", whereby "the most cynical prosecutors analyse information received from Europol" to ensure that "criminal charges are brought in those countries" where defendants will have the least possibilities of defending themselves. Available from *Cultures & Conflits*, Centre d'Etudes sur les Conflits, 157 rue des Pyrénées 75020 Paris, France.

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France: New internal security law

New laws governing the exercise of police powers and the criminalisation of a host of new offences place the blame, and appear to be aimed directly at the poor and the "foreign"

Nicolas Sarkozy, interior minister in the Jean-Pierre Raffarin government, presented a draft bill on internal security (*projet de loi de sécurité intérieure*, PLSI) in the *Assemblée Nationale* (French parliament) on 23 October 2002. The text was an expression of the goals sought by its predecessor, the *loi d'orientation et de programmation pour la sécurité intérieure* (LOPSI), approved on 29 August 2002, that establishes a five-year plan and follows the priorities to be addressed in that period, particularly making the national police force and paramilitary *gendarmerie* more effective in criminal investigations and improving security. Provisions include an increase in police numbers, better cooperation between forces, simplified procedures and lower thresholds for the recording of personal information in law enforcement databases and stop-and-search. These measures will be supplemented by the introduction of tough sanctions against petty crimes such as begging (which may

even be construed as organised crime!), prostitution, squatting or obstructing public highways. A number of organisations - including trade unions, opposition parties, civil liberty groups, lawyers and magistrates have described the law as "instituting a Republic in which poverty is considered a crime and in which the expression of a conflict becomes a crime".

LOPSI: more police, more powers

The reorganisation of French internal security under LOPSI has a planned budget of 5.6 billion euros between 2003 and 2007, and includes the creation of 13,500 new jobs to be divided between the *gendarmerie* (7,000) and the national police force (6,500) over this period. Provisions are also made for *gendarmes* who reach their age limit to extend their service by a year, though the plans do not only concern police numbers. They also attempt to create a system whereby policing will permeate civil society,

through:

- the establishment of civilian reserve officers to be used in the case of "serious crises";
- an increased number of six-man patrolling squads for "problem areas";
- the strict management of municipal, national and paramilitary police forces by central and local political authorities who would have regular meetings with police chiefs;
- increased cooperation between forces through regular high level meetings;
- the shared use of databases - the scope of which are extended to "petty and medium-scale delinquency" in the PLSI;
- and a reduction in legal restraints on the use of investigatory powers.

LOPSI's overall aim is to "fix the new institutional architecture of internal security", and to "give internal security services a renewed judicial framework to allow them to combat certain kinds of criminal conduct and delinquency more effectively". A network of international liaison officers will be developed, with officers and funds made available for activities outside France that involve internal security, such as combating terrorism, organised crime and money laundering, international crime syndicates and 'illegal immigration' networks. This appears to tie in with the EU Framework Decision on joint investigation teams (OJ 2002 L 162/1) and proposed Decision on the joint use of liaison officers in third countries (OJ 2002 C 176/8).

PLSI: security as "the first of all liberties"

The PLSI's explanatory memorandum claims that new framework is needed to address the four million crimes recorded in France in 2001. With no mention of social factors such as exclusion, it assumes that crime can be reduced by improving the effectiveness of internal security forces; "modernising" the French legal system; and "strengthening the authority and ability of public agents" to restore security. While paying lip service to the need to "strike a balance between the respect for individual liberties" and the need for effective action to "restore security", it rests on the assumption that the latter is a "fundamental right and the first of all liberties".

The draft law comprises six parts. Part 1, which includes measures concerning internal security forces, databases, terrorism and the protection of persons and property, is examined in detail below. Part 2 establishes a stricter control on the purchase and possession of weapons and ammunition. Part 3 grants increased powers to local councils and municipal police forces to combat delinquency, such as wider access to vehicle registration and driving license databases and the power to confiscate vehicles. Part 4 provides private security activities with a legal framework that defines the investigative activities that may be carried out and deals with the procedures for the authorisation and registration of firms and individuals. It also lays down the powers of private security agents, and demands that such agents be professional and do not carry out any other activities outside their private security roles. Part 5 is entitled "miscellaneous measures" and strengthens the legal protection of internal security agents and their families, and of a wide new range of "public and private officers", such as private security guards, caretakers, as well as teachers, social workers, medical professionals and firemen etc. Part 6 covers measures applicable in overseas French territories.

Organisational issues

Part 1 of the PLSI is comprised of six chapters, the first of which establishes the responsibility of the regional *préfet* (heads of police) to direct and coordinate internal security measures and the action of regional internal security forces (both from the national

police and paramilitary *gendarmerie*) involved in administrative activity or public order. *Préfets* can also call on assistance from other local services such as customs, taxation and anti-fraud bodies, for internal security purposes. *Zone préfets* coordinate the actions of regional *préfets* in cases involving public order situations that may affect two or more regions in a zone.

Judicial procedure

The second chapter simplifies legal procedures and extends the competencies of judicial police officers beyond the constituency to which the court under whose authority they are operating belongs, ostensibly to improve the effectiveness of judicial investigations. Reserve police or *gendarmerie* officers who have previously undertaken judicial police functions may be called upon to fulfil such functions again. Article 4 lowers the burden of proof for ID checks to be carried out on vehicles, including mobile-homes and camper-vans, or individuals from "evidence allowing to presume" to "one or more plausible reasons to suspect": this replacement of concrete evidence with plausible suspicion will appear again in relation to databases. In particular places and for specific periods decreed by an investigating magistrate (of no more than 24 hours, though these are renewable), judicial police officers may stop and search individuals or vehicles for a range of crimes. This marks an expansion from terrorism, illegal explosive or weapon possession, and drug trafficking to the inclusion of theft, "serious threats against persons or property" and abetting crimes, apart from carrying out customary identity checks. Such stop-and-searches only need to be recorded if an offence is uncovered, or on request from the vehicle's driver, and if a different offence is discovered from the one motivating the search, the search is nonetheless valid.

Law enforcement databases

The third chapter deals with automated information systems holding information on named individuals for participation in crimes or offences involving "troubling public safety or peace, threats against persons or goods, actions linked to forms of organised delinquency, or actions against the dignity of persons". One of the main themes of the law is to coordinate the efforts of the police and *gendarmerie* and sharing the use of their respective databases is seen as one of the means of achieving this. Members of the national police, *gendarmerie* and judicial police officers who have been selected and granted special authorisation, are granted access to the databases, and Article 12 allows the transmission of the information to international police cooperation bodies such as Interpol or Europol, or to foreign police forces in accordance with international agreements such as the EU Mutual Legal Assistance Convention 2000. Newly proposed amendments also grant them power not only to access communication data, but to request its preservation by Internet Service Providers (ISPs) and to make 'remote' computer-searches, including of data and systems accessible linked to the initial system.

The databases may contain information on people who are the subject of preliminary investigations; have been caught in the act of committing a crime; are the subject of information requested by a magistrate; or on the basis of evidence or serious suggestions "proving or allowing to presume participation in committing the acts that are under investigation". According to a recent amendment before the parliamentary assembly first reading, the information held would be erased in the case of investigations that did result in prosecution or where individuals are acquitted only *at the explicit request* of the General Attorney. The Cabinet will decide upon the length of time during which the data may be retained when investigations do not result in trials, or are not followed up for lack of evidence. It will also decide the procedures for updating or erasing information, allowing access

to information based on public order concerns and the secrecy of investigations, the conditions under which information may be transmitted in the context of administrative or security police missions, and those under which victims of crimes may have information concerning them erased after the person responsible for the crime has received a final sentence.

Article 13 makes permanent some emergency provisions taken in the Law for Sécurité Quotidienne (LSQ) on 15 November 2001 and extends the reasons for which administrative authorities are allowed access to automated databases for reasons including the taking of decisions on the recruitment, appointment or authorisation of individuals to undertake a specified list of public sector jobs, or private sector activities of a sensitive nature (particularly in the fields of security or defence); and to evaluate applications for French nationality or for the renewal of entry or residence permits by migrants.

Article 14 will establish fixed and permanent mechanisms for the automatic control of data on stolen vehicles in all "appropriate" locations, such as land borders, ports or airports, and major national and international transit routes, to combat car theft and trafficking stolen cars.

The fourth chapter deals with the national DNA database (*fichier national automatisée des empreintes génétiques*, FNAEG). Originally reserved for offences of a sexual nature, it will be extended to a long list of crimes, ranging from crimes against humanity, crimes and offences that threaten peoples' lives, torture, threatening fundamental national interests, acts of terrorism and organised crime including organised begging and prostitution, to violence against persons or property, threats against people or property, drug trafficking, theft, extortion, money laundering, and aiding and abetting criminal acts. Furthermore, the lower threshold of "one or more plausible reasons" to suspect that an individual may have committed one of the specified offences justifies inclusion, rather than the gathering of concrete evidence. A penalty of six months' imprisonment and a 7,500 Euro fine (approx £5,000) introduced for the refusal to allow a sample to be taken has been recently doubled and is raised to 2 years' imprisonment and a 30,000 Euro fine (approx £20,000) for persons who have already been found guilty. These penalties are cumulative with any other sentences that the individual in question may receive.

Chapter 5 extends the period in which temporary anti-terrorist legislation will be in force concerning searches conducted by internal security officers without permission from the searched person and the retention of data on communications by telecommunications operators from the end of 2003 to the end of 2005.

Criminalisation of 'petty crimes'

Chapter 6 introduces a raft of measures to prevent the spreading of "certain forms of criminality" or "the development of situations that trouble the peace of citizens" and their right to security. It introduces heavy penalties for offences such as prostitution, begging, squatting, and newly qualified petty-crime called "noise assault" sanctioned by a two month jail penalty. Loitering in groups in communal areas within buildings if this entails obstruction, drug dealing, or aggressive or threatening behaviour is also introduced.

Combined with the provisions on plausible suspicion, prostitution or approaching someone in public with a view to recruiting them to carry out sexual relations in exchange for money, may be gauged by a "[person's] clothing attire or attitude". The distinction between active (prostitute) and passive (client) recruitment is abolished, and what was previously a non-custodial offence will carry a six month prison sentence and 7,500 Euro fine (approx £5,000). Soliciting, accepting or obtaining sexual relations with a minor or particularly vulnerable person, is an aggravating factor.

A new criminal offence, aimed at travelling communities, of installing oneself in association with others on land belonging to the local council or private individuals with a view to residing there without authorisation is introduced, to be punished with six months' imprisonment and a 3,750 Euro fine (approx £2,500). If the occupation is carried out using a vehicle, the draft law envisages further sanctions: the seizure of the vehicle, restitution (upon proof of the means and legality of its acquisition), and a three-year suspension of the person's driving license.

Threatening public officers (including judges, jurors, lawyers, public or ministry officials, *gendarmes*, police, customs or prison service officers, or others representing public authority or responsible for public service duties such as teachers, social assistance agents, emergency doctors, firemen etc) during the exercise of their duties will carry a two year prison sentence and a 30,000 Euro (approx £20,000) fine, rising to five years and 75,000 Euro (approx £50,000) if a death threat is involved. This assigns to these public and private agents the same privileges and as police officers, and by placing upon them some law enforcement responsibilities, some have argued that their status will be raised to that of auxiliaries of the police. Article 20 eliminates the requirement that the menace be "repeated or expressed through writing, an image or any object", and extends the measure's scope to the public officers' children, family, spouse's family and anyone living with them, as well as to security guards working in buildings. This means that the burden of proof is lowered and that a heated argument with any of a wide range of public officers could result in crippling sanctions for an individual. Causing a nuisance in communal spaces (entrance, stairways or other collective areas) within "collective residence buildings" (ie blocks of flats), in the form of "violence, the threat of violence, the deliberate obstruction of access and the free movement of persons, or of security measures", if committed by several accomplices, is to carry a two year prison sentence and a 3,750 Euro fine (approx £2,500).

"Organised" begging, food stands and mobile phone theft

The exploitation of begging is introduced as an offence punished with three years in prison and a 45,000 Euro fine (approx £30,000), and involves profiting from begging by other persons, organising the begging activities of others for profit or recruiting, training or convincing persons to beg. This measure also applies to someone who is in habitual contact with one or more beggars and cannot justify their life-style. The punishment increases to five years' imprisonment and a 75,000 Euro (approx £50,000) fine if the crime involves: using a minor or a particularly vulnerable person, several persons, if a person has been encouraged to beg abroad, before entering France, if a person exercising parental or other authority over the person is responsible, if constraint or violence are involved, or if numerous persons are acting in association. Mobile phone theft, international organised crime and unauthorised take-away food stands are also addressed. Begging undertaken "aggressively" or using the threat of a dangerous animal carries a six month prison sentence and 3,750 Euro fine (approx £2,500).

Article 24 allows the administrative closure of take-away food stands for no more than three months if its activity represents a threat to public order, security or the peace. With regards to mobile phone theft, anyone responsible for carrying out alterations or technical adjustments on stolen mobile phones is to be subjected to the same punishment as the main culprit of the theft, and operators are required to implement technical mechanisms to prevent the use of their networks by mobile phones that have been declared stolen. Finally, to combat international organised crime syndicates, new categories of crimes are included for which foreigners' temporary residence permits may be withdrawn, including prostitution, exploitation of

begging or aggressive begging, and recruitment for such syndicates.

Fear of crime, racism and xenophobia

In a speech to present the LOPSI in the Assemblée Nationale on 16 July 2002 Sarkozy painted a picture of France in which the increase in crime meant that the French people were no longer free, "Living with fear for oneself or ones loved ones on a daily basis is not to live in freedom". He laid the blame squarely on foreigners for ordinary French citizens' real or imagined fears, arguing that in France the issue has been a taboo for too long. Prostitution (and problems linked to it such as drugs aids and organised rackets), drug dealing and aggressive begging or begging by minors, are explicitly described as "foreign" crimes, and must no longer be tolerated. He accepts that such crimes are the result of human misery, "which must be fought and not suffered".

It is in this context that the introduction of heavy sanctions against what are in many cases victimless crimes must be understood. The measures are aimed explicitly at migrants,

beggars, travellers, prostitutes or even groups of youths who gather within block of flats, or around take-away food stands, because their very presence and visibility threatens the "peace" of citizens (for real or imagined reasons). Thus, offences are created to discourage this presence by subjecting it to increasingly stringent conditions, including crimes by association when members of a group carry out an offence, that will sometimes entail crippling fines as well as prison sentences.

Another aspect, which was in LSQ Bill and is strengthened in PLSI, is the systematic and exploratory access to all communication data. In this matter, the French PLSI is implementing a new procedure of "automatic computer-searches" that might well be un-constitutional.

Loi n. 2002-1094 du 29 août 2002 d'orientation et de programmation pour la sécurité intérieure (LOPSI); Nicolas Sarkozy speech in the Assemblée Nationale to present LOPSI, 16.7.2002; Nicolas Sarkozy response to criticism from the magistrates' trade union regarding LOPSI, 26.9.02; Projet de loi pour la sécurité intérieure 23.10.2002, and explanatory memorandum; "Sur le projet de loi sur la sécurité intérieure" ? appeal opposing the law, 21.10.02; "Letter to Mr. Nicolas Sarkozy", by the Ligue des Droits de l'Homme, and the lawyers' and magistrates, trade unions,

UK: Surveillance of telecommunications goes through the roof

Since the Labour government came to power in 1997 communications surveillance has doubled - and this is a gross underestimate. While in the EU reluctance to proceed directly to a binding Framework Decision because of widespread criticisms means that member states are introducing data retention at national level first.

The annual report of the Interception of Communications Commissioner for 2001 was published in October 2002. The report, by the Rt Hon Sir Swinton Thomas, as usual shows that no complaint by a member of the public to the Investigatory Powers Tribunal has been upheld.

The report appears to show that the number of warrants issued dropped significantly to the lowest for five years. However, the true picture is quite different.

On the face of it the number of warrants issued to conduct communications surveillance (telephones, mobiles and letters) fell in England and Wales from 1,608 to 1,314 and in Scotland from 292 to 131. But the Commissioner's report says that the continued increase in serious and organised crime and the "increased facility to counter it" (ie: new means of surveillance) are:

the main cause of the larger number of warrants. The significantly higher level of warrants sought each year

Interception warrants issued:

	England & Wales	Scotland	total
1990	515	66	581
1991	732	82	815
1992	874	92	966
1993	998	122	1,120
1994	947	100	1,047
1995	997	138	1,135
1996	1,142	228	1,370
1997	1,456	256	1,712
1998	1,763	268	2,031
1999	1,734	288	2,022
2000	1,608	292	1,900
2001	1,314	131	1,445

No figures have ever been provided on Northern Ireland.

From these figures it would seem that warrants for the surveillance of communications (telephones etc) and mail-

opening have dropped significantly after 2000.

However, quite the reverse is true.

From July 1998 a major change in the interpretation of the 1985 Interception of Communications Act (IOCA) meant that where previously any change to the initial warrant (eg: a person moved or changed phone numbers), known as a "modification", led to a new warrant being issued for all instances concerning serious crime. As noted by the them Commissioner, Lord Nolan, in the report for 1999:

The great majority of warrants issued in England, Wales and Scotland remain related to the prevention and detection of serious crime(p3)

Warrants issued under the two other categories on grounds of national security or "safeguarding the economic well-being of the UK" can be modified by a "senior official".

This means that in order to get historically comparative total figures the number of "modifications" carried out each year need to be added to the number of initial warrants. The additional figures, post July 1998, for "modifications" are:

	England & Wales	Scotland	Total
1998	172	not applicable	172
1999	565	not applicable	565
2000	722	not applicable	722
2001	1,788	194	1,982

Thus the correct figures for the extent of admitted communication surveillance (warrants plus modifications) is as follows:

	England & Wales	Scotland	total
1990	515	66	581
1991	732	82	815
1992	874	92	966
1993	998	122	1,120
1994	947	100	1,047
1995	997	138	1,135

1996	1,142	228	1,370
1997	1,456	256	1,712
1998	1,935	268	2,203
1999	2,299	288	2,587
2000	2,330	292	2,622
2001	3,102	325	3,427

Until 1996 the highest annual number of warrants issued was 1,682 in 1940 at the onset of World War II.

Since the Labour government came to power in 1997 communications surveillance has therefore doubled.

However, this is only the part of the picture for which precise figures are provided. Three changes following the introduction of the Regulation of Investigatory Powers Act (RIPA) on 2 October 2000 mean that the increase in surveillance is much, much greater.

The first change, as noted by the Commissioner, is that warrants are now issued against named individuals rather than as an order placed on a communications provider. This means that a warrant against an individual can state that all their mail, phone-calls, mobile calls, e-mails and internet usage are to be placed under surveillance. Or put another way round, now one warrant against an individual is used in place of up to five separate warrants (served potentially on five different service providers) previously.

Warrants used to be issued simply to the Post Office (mail) and British Telecom (phone), under Section 2 of the IOCA 1985. But the growth of privatisation and diverse means of communication has changed the demands of the agencies.

Thus a warrant is now issued to the requesting agency (eg: MI5, MI6, GCHQ, NCIS etc) which includes "schedules" that list addresses, numbers, "apparatus or other factors, or combination of factors" (eg: the location of a mobile phone users at a particular point in time). The agencies then place an interception order on any service provider.

There is little doubt that this change should, in theory, result in fewer application for warrants or put another way, if the overall number of warrants issued stays the same then more people are being placed under surveillance. It is not possible to determine the numerical increase in warrants due to this factor.

The Commissioner is, at times, economical with the truth. Throughout the report he writes of "individuals" or "persons" but there is only one reference to "premises". Like the previous IOCA 1985, the new RIPA 2000 in Section 8.1. allows for warrants to be issued for the surveillance of "premises" (as distinct from a person). This means that a house or office occupied by a group of people or an organisation (which may be small or very large) are covered by one warrant. No breakdown is given of the number of "premises" placed under surveillance.

The second major change under RIPA 2000, as distinct from the IOCA 1985, is the periods for which warrants are issued.

Under RIPA 2000 warrants can be issued on four grounds (Section 5.3) the fourth of which is new:

- (a) *in the interest of national security*
- (b) *for the purpose of preventing or detecting serious crime*
- (c) *for the purpose of safeguarding the economic well-being of the UK*
- (d) *to give implement "any international mutual assistance agreement" concerning para.b above (ie: serious crime).*

Under the IOCA 1985 warrants covering the then three different purposes were all for two months. Renewals, were for six months for categories (a) and (c) and one month for (b) serious crime, the most numerous category. RIPA 2000 greatly extended these periods. Initial warrants for categories (a) and (c) is now six months with renewals for another six months and for category (b),

serious crime, an initial three months with renewals for three months. Put simply, the periods covered by warrants has in effect been doubled. For example, for serious crime an initial warrant plus one extension used to cover three months, now it is six months. For national security (a) and "economic well-being" (b) a warrant used to cover eight months and now it is twelve months.

Again it takes little imagination to see that if, for the administrative convenience of the Home Office and the agencies (ie: a lot less work), the periods have been extended in this way there should either be significantly fewer warrants issued, or if the same or a greater number are issued then the rise in warrants requires explanation and quantification.

The knock-on effect is compounded because, as the Commissioner notes, now a single warrant for the surveillance of an individual or premises has to be renewed. Whereas before: "Under IOCA, warrants for intercepts with different CSPs" (communications service providers) had to be renewed separately thus adding to the total number of warrants issued.

Overall, the figure for the number of initial warrants issued in 2001, 1,314, disguises the fact that i) 1,788 previously included "modifications" are excluded; ii) that the periods for warrants in the most numerous category, serious crime, have increased by 50% (initial warrant) and 100% (renewals); iii) where previously between one and five warrants were issued to communications service providers now only one is issued to cover a person or premises (which also has a knock-on effect on the number of renewals).

The effect of these changes are alluded to in the Commissioner's report. On the Metropolitan Police Special Branch (MPSB) he writes that:

Statistically, MPSB warrants are now held for longer than in the past - typically over a period of several months rather than days

The example given by the National Criminal Intelligence Service (NCIS) to the Commissioner shows that in the last year of the IOCA 1985 they had "just over 600 warranted target addresses" (individuals and premises). Whereas as in the first year of RIPA 2000 they had 800 target addresses "deriving from only just over 400 warrants". While the number of warrants dropped by a third (from 600 to 400) the number of target addresses rose by a third (from 600 to 800).

Taken alone the overall rise in warrants issued (including "modifications") showed a doubling of surveillance since 1997. The additional, unquantified, issuing of single warrants to agencies where previously between one and five may have been issued to CSPs and the extended periods of the warrants means that this is a gross under-estimate of the growth in surveillance since the Labour government came to power.

Furthermore it must be noted that Chapter II of Part I of RIPA is not yet in force because when it was revealed that the Home Offices list of designated bodies extends to 1,039 public authorities there was public uproar and the proposal was put on hold. Chapter II covers the access of designated bodies to communications data (traffic data and personal details but not content data). The Commissioner will be responsible for this mode of surveillance too and notes that his role is to be extended to "64 police authorities and an as yet uncertain number of public authorities [who] will be authorised to acquire and disclose communications data".

Theoretically the agencies have no legal powers to obtain such data but through the "voluntary" cooperation of service providers this new form of surveillance, which is unquantified, is widespread (see below).

"Conspiracy" or norm?

The Commissioner tries to confront widespread suspicion that communications surveillance is much wider than admitted. "Many members of the public", he says, "are suspicious about the

interception of communications.. people tend to be suspicious of what takes place in secret, and are worried about the "big brother" concept". He then answers his own question and shows a touching faith in the strict implementation of the law by stating that:

the concerns are, in fact, unfounded. Interception of an individual's communications takes place only after a Secretary of State has granted a warrant.. Of course, it would theoretically be possible to circumvent this procedure, but there are extensive safeguards to ensure this does not happen.. Furthermore, any attempt to get round the procedures for legal interception would, by reason of the safeguards, involve a major conspiracy within the agency concerned which I believe would, for practical purposes, be impossible (para 10, p3)

The security and intelligence agencies (and the Special Branch) have always exceeded their legal powers since they were respectively created in 1883, 1909 and 1911). For example, from 1977 British Telecom routinely supplied agencies on request lists of peoples' calls and the numbers involved. This was not legalised until RIPA came into effect in October 2000. For years some communications providers of mobile phone, e-mail and internet services have routinely flouted the Data Protection Act by retaining traffic data (and in some cases content data) and supplied data to the agencies. The Government Communications Headquarters (GCHQ), which operates under the Foreign Office on behalf of MI6 (the UK's overseas intelligence agency) and Defence Intelligence, are issued warrants for specific investigations. But GCHQ contributes to, and has access to, data gathered under the ECHELON system which gathers all communications traffic across the world and then applies "dictionaries" of key words to search for intelligence (see, "Interception Capabilities 2000", Duncan Campbell, April 1999).

Equally important is the routine "hacking" of service providers by MI5, MI6 and the Special Branch (this developed out of creating systems to counter "hackers"). It can be done very quickly by illegally entering a server and downloading all data (traffic and content) on an individual or group within minutes - and can be undertaken in the office, at home or in the field. To this extent modern forms of communication, e-mails and internet sites and usage, "facilitate" unaccountable surveillance.

These practices do not constitute a "major conspiracy", rather they follow a well-trodden path whereby the practices of these agencies have always exceeded their legal powers - which are usually, but not always, made lawful years later.

Sources: See Statewatch, vol 7 nos 1 & 4 & 5; vol 8 nos 5 & 6; vol 10 no 6; vol 11 nos 1 & 2; vol 12 nos 1 & 3/4; the most complete available figures for interception warrants in England, Wales and Scotland from 1937 onwards is available on the Statewatch website: www.statewatch.org/news/2003/jan/telap01.htm

Data retention in the UK

There is much public confusion between new powers under RIPA 2000, which covers *access* to communications data (traffic data and personal details but not content data) and those under the Anti-Terrorism, Crime and Security Act 2001 (ATCS), which covers *data retention*.

In regard to the surveillance of communications' RIPA 2000 sets out the issuing of warrants for the surveillance of *specific* individuals and premises and powers to specified bodies to serve a "notice" on a CSP to provide communications data held on *specific* individuals and premises.

Part 11 of the ATCS covers the retention of communications data for the first time. Section 102 provides for the Secretary of State (the Home Secretary) to issue a "code of practice". Under Section 103 the Home Secretary must prepare and publish a draft code and "consider representations made" - the ATCS became law on 14 December 2001 and more than twelve months on this draft still has not been produced. Section 104 sets an initial time limit of two years during which the Home Secretary may make

mandatory the retention of data (though this can be extended "on one or more occasions").

The critical aspect of this power for voluntary (under a code of practice), or mandatory, data retention is the scope laid down in Section 102.3. This says that these powers may be used where it is necessary:

(a) for the purpose of safeguarding national security; or

(b) for the purposes of prevention or detection of crime or the prosecution of offenders which may relate directly or indirectly to national security."

The Act is therefore quite explicitly limited to offences concerning national security (eg: terrorism) or ones which are "directly or indirectly" related (eg: money-laundering).

However, a contradiction immediately emerged. If communications providers, whether by a "voluntary" code of practice or a mandatory order, *retain* communications data for a period of say 12 months, it can only be legally *accessed* for purposes connected to national security.

The Home Office is now trying to argue that once the data is retained it can be accessed for any purpose connected with crime in general as well as national security.

A Note from the Home Office, to a parliamentary "All Party Internet Group public inquiry into the retention of and access to communications data for law enforcement purposes" (December 2002), argues that government Ministers "clearly explained" during the rushed passage of the Bill that "access" to retained data would not be restricted. It does not matter what Ministers said in parliament, what matters in law is the text of the Act (moreover, if Ministers were held to everything said in parliament, the law would clearly be in chaos).

This issue has been picked up by the Information Commissioner, the Internet Service Providers Association (ISPA, UK), seventeen major communications providers (including BT) and civil liberties groups.

The Information Commissioner says that the ATCS 2001 restricts the purpose for which data can be obtained. The ISPA that: "Service providers believe that this disparity of purpose must be resolved before the consultation advances further". The ISPA wrote to the Home Secretary in September saying that the industry could not sign up to current plans on grounds of privacy (they could be held liable in court for breaching Article 8.2. of the ECHR) and costs. Indeed when asked for "case studies" demonstrating the need for data retention for law enforcement the "cases" supplied to the ISPA failed to address these concerns or make a "compelling case for retention" (*Guardian*, 22.10.02).

UK police want mandatory retention to be EU-wide

In evidence to the same inquiry James Gamble, Assistant Chief Constable of the National Crime Squad (and head of the Association of Chief Police Officers, ACPO, data communications group) says that the present position:

is untenable, leaving the industry exposed to civil action and law enforcement uncertain of their powers".

His argument is that if relevant data "exists" it is essential it can be "accessed", by the UK law enforcement agencies but this is hardly a legal argument. On the ATCS Act he comments:

Unfortunately this emergency legislation was based and presented as a response to terrorist events of 11 September. Insufficient emphasis was placed on the requirement of data for Crime purposes. Accordingly Parliament restricted the provisions of the Act to terrorist related matters.

Mr Gamble also calls for the reserve powers of the Home Secretary to make data retention mandatory because: "it would appear that many large CSPs have been unable to volunteer for the scheme and it is therefore in danger of failing".

One way around this, supported by UK LEA's, is for

mandatory EU-wide data retention. Mr Gamble says at a recent meeting of EU internet service providers one member commented that this would not be possible "until there was a common EU legal structure". Mr Gamble comments that: "we could not wait that long".

Intriguingly Mr Gamble confirms a *Statewatch News online* exposure of a secret proposal by the Belgium government for a Framework Decision on data retention binding on all member states - whose existence was denied by the Danish Presidency of the EU. The UK law enforcement community, he writes, "supports" the "work being undertaken by the Home Office to support the Belgian EU proposal" (see below).

Equally interesting in Mr Gamble's submission is the summary of the present practice. As Part I Chapter 2 of RIPA 2000, as described above, is not yet in force law enforcement agencies have to rely on Section 29 of the Data Protection Act to request CSPs to release communications data "if a sufficient case is made for its release" (this procedure does not comply with the ECHR and is open to challenge in court). Within this uncertain procedure Mr Gamble states that over 10,000 requests have been made to CSPs for data "related to terrorist activities" (including 4,000 from a single agency) since 11 September 2001. It will be interesting to see if the Commissioner reports on these figures.

EU slow to move on data retention

Following the fundamental changes to the 1997 EC Directive on privacy in the telecommunications sector formally adopted on 12 July 2002 the door was open for new measures to require data to be retained at national and EU levels (see *Statewatch*, vol 12 no 3/4).

Two key privacy protections were removed. The first of which said that data could only be held for the purposes of billing (ie: for the customer to check the details), usually only for a few weeks. The second allows member states to adopt national laws to require communications providers to retain data for a specified period so that law enforcement agencies can get access to it.

"Under the table", out of public view, was a binding Framework Decision drafted by the Belgian government which would have made data retention mandatory in all EU states (and all applicant states) and rules for the exchanges of data between states/agencies (see *Statewatch*, vol 12 no 3/4 for details). *Statewatch* was leaked a copy of the draft Framework Decision and when it was published, with much critical commentary, the Danish Presidency of the Council of the European Union claimed to know nothing about it. However, a set of non-binding draft Conclusions, prepared by the Danish EU Presidency, said:

within the very near future, binding rules should be established on the approximation of Member States' rules on the obligation of telecommunications service providers to keep information concerning telecommunications in order to ensure that such information is available when it is of significance for criminal investigations (Conclusion 9, doc no 10358/02, 24.6.02, emphasis added).

Five further drafts were produced prior to the adoption of the Conclusions at the Justice and Home Affairs Council on 19 December 2002. The first, on 3 October, said that "two delegations" were not in favour of the draft document and five had scrutiny reservations - this was to rise to nine by the time of the next draft on 23 October. The disagreement centred on the issue of data retention in Conclusion 7 (the renumbered no 9 in the adopted text).

The 3 October version said "binding rules should be established on.. retain[ing] traffic data". By 23 October the word "binding" had disappeared, and now a "dialogue" leading to "rules.. should be established and implemented". The draft of 22

November 2002 was firmer, saying that there should be: "as a matter of priority, the necessity of establishing and implementing binding rules.. to retain specific traffic data". But the version of 28 November (which became the final version) said that:

before adopting rules.. to retain specific traffic data.. a dialogue between interested parties should take place.. [and that] If it is found necessary to establish such rules, they should at any rate ensure that such traffic data is available

So, on the face of it mandatory data retention across the EU would appear to be on hold for the moment. Indeed, no other EU government wants to pick up and formally put forward the Belgian government's draft binding Framework Decision - it thus remains "under the table".

This lack of decisive action is all the more surprising as Conclusion 4 of the specially-called meeting of the Justice and Home Affairs Council on 20 September 2001 (and the Bush letter of 16 October 2001) called for measures to be brought forward urgently.

The true picture is more complex. First, the law enforcement agencies already have the power in every EU state to place under surveillance named, *specific* individuals or organisations (the procedure varies from state to state but has been in place for years). Investigations into suspected terrorists are thus ongoing and unhindered. Second, a majority of EU member states have, or are in the process of, adopting national laws on mandatory data retention (see below). Third, the costs imposed on communications providers is unresolved. Fourth, in some countries there is, in addition to privacy considerations, a perceived conflict between new surveillance powers to combat terrorism being extended to crime in general. Fifth, the widely reported adverse critiques on sweeping changes, by civil liberties groups and civil society, has embarrassed some governments - can democracy be defended by undermining it? Finally, the agencies mainly involved in tackling terrorism (as distinct from crime) - the security and intelligence agencies - have virtually unfettered powers of surveillance in many EU states.

EU survey on current laws and on the introduction of mandatory data retention at national level

Mandatory data retention has primarily demanded by the law enforcement community (police, criminal investigation, immigration, customs etc) from well *prior to 11 September 2001*.

On 14 August 2002 the Danish Presidency sent out a questionnaire on data retention to member states. The initial results of the survey were presented to the EU's Multidisciplinary Group on Organised Crime in a Room document (no 7) at its meeting on 16 September 2002 and the final document covering all member states (14107/02) was circulated to the same working group on 20 November 2002.

Statewatch applied to the Council of the European Union for a copy of "Room document no 7" discussed on 16 September, But on 3 December 2002 the Council wrote to *Statewatch* refusing access. The reasons given were as follow:

Room document 7 relates to the state of play on retention of traffic data. It refers to problems law enforcement authorities have encountered in this field and highlights the weaknesses and vulnerabilities of the Member States' law enforcement systems on this topic.

This information would be useful for criminals who want to exploit those weak spots in order to pursue their activities in these Member States and other countries of the European Union. This would undermine the protection of the public interest as regards public security. Furthermore, parts of this information were provided on a

confidential basis by the law enforcement authorities themselves on the condition that the results would be used only for communication between Member States. Disclosure of this information would be a breach to their trust and could make them reluctant to provide more of such information in future. Access to these documents is therefore denied pursuant to article 4(1)(a) of the Regulation (public security).

Statewatch has appealed against the refusal of access.

However, both documents (16 September and 20 November 2002) are now in the public domain. What they show is that the information provided is a description of the present state of the law on telecommunications surveillance in each EU state and the plans, if any, to amend the legal framework.

An analysis of the answers to the questionnaire give the following picture:

Austria

The existing law is under Section 93 of the Law on Telecommunications (TKG) plus the Surveillance Regulation (UVO) which establishes an obligation to cooperate on service providers. A new Law on Communications is being drafted and: "Consideration is being given to the inclusion in the draft of a rule obliging providers to retain exchange data for a given period for prosecution purposes".

On the proposal that there should be an EU instrument on data retention: "The Austrian Ministry of Justice and the Austrian Ministry of the Interior would welcome a binding rule (possibly in the form of a framework decision)." (The Federal Chancellery, responsible for data protection, is "sceptical").

Belgium

Belgium has adopted a new law, the Computer Crime Act (28.11.00) [Loi sur la criminalité informatique] which "has settled the principle of compulsory data retention" for a minimum of 12 months.

On the proposal that there should be an EU instrument on data retention: "it is essential to have common policies.. the EU instrument could be a framework decision". It is important to show that "the orientation of EU criminal law is not only repressive [by introducing safeguards] which is unfortunately more and more argued among the civil society".

Denmark

The Danish Administration of Justice Act was amended by Act No 378 of 6 June 2002 (the Anti-Terrorism Act of the Ministry of Justice). Section 786 has been amended so that communications providers have to retain data for 12 months.

On the proposal that there should be an EU instrument on data retention: The Ministry of Justice "supports" the "solution of creating an instrument on traffic data retention for law enforcement purposes.. at a European level".

Finland

The main legislation is the Finnish Data Protection Law. Under the Decree on the Protection of Privacy and Data Security in Telecommunications operators are obliged to keep traffic data for at least three months for billing purposes.

The police and Ministry of the Interior considers that the appropriate and effective time for operators to keep traffic data (including connection information, "logs") should be 2 years. This should be taken into account when updating the Privacy Protection Act.

On the proposal that there should be an EU instrument on data retention: "it is hard to judge how it should be handled at the European level".

France

Article 29 of the Law on Everyday Security of 15 November 2001 makes mandatory the retention of data "for the purpose of investigating, establishing and prosecuting offences" for up to one year.

On the proposal that there should be an EU instrument on data retention: "Data retention for the purposes of public security is explicitly authorised by Article 15 of Directive 58/2002/EC, derogating from the general principle of erasure.. This new Directive.. marks a further step in dealing with this matter".

Germany

Two laws cover this issue, the law on teleservices (TDG) and the law on telecommunications (TKG). Under section 89, para 2., of the TKG and section 7 of the Regulation (TDSV) and section 6 of the teleservices data protection law data may only be retained (for up to six months) for billing purposes.

The Federal Constitutional Court has laid down "restrictive conditions for the retention of personal data for purposes other than for the original purpose of processing for official requirements or for the purpose of concluding a contract". Moreover, "on economic grounds and for reasons of data protection, the associations and service providers tend to be critical of any obligation to retain traffic data". Exceptionally, there is an obligation in Germany for "those who are the subject of the [surveillance] order to be notified that data is being disclosed".

On the proposal that there should be an EU instrument on data retention: The need has to be shown for this. The government thus first has to consider whether it is "actually necessary" and second whether it is "permissible pursuant to the German constitutional law".

Greece

The current law on the protection of personal data in the telecommunications sector is covered by Law No 2774/1999 compliant with the 1997 EC Directive. That is, data may be kept for billing purposes and access to data by law enforcement agencies can only be made for "specific cases and not on an abstract, general or preventive basis".

However, "for the present, the tendency in Greece is to retain data for one year".

On the proposal that there should be an EU instrument on data retention: "Greece considers the creation of such a legal tool to be important, useful and essential".

Ireland

Directions were issued by the Minister for Public Enterprise in April 2002, under the Postal and Telecommunications Services Act 1983, to require operators "to retain existing traffic data and future traffic data for not less than 3 years". Primary legislation is being prepared to require operators to retain data.

On the proposal that there should be an EU instrument on data retention: an amendment should be made at EU level "to ensure that law enforcement agencies access to call related data is in accordance with national legislation".

Italy

Under law no 171 of 13/5/1998 the retention of data is not

allowed except for billing purposes. However, the law is being reviewed as "this lack of precious information in support of criminal investigations could pose serious obstacles".

The Italian submission notes that: "as a general principle, the longer that traffic data is retained the better it is".

On the proposal that there should be an EU instrument on data retention: "international cooperation in this matter is always welcome", an instrument should also cover the exchange of data between countries.

Luxembourg

A new law is being drafted to incorporate the changes made to the EC Directive on privacy in telecommunications as regards data retention.

On the proposal that there should be an EU instrument on data retention: "Harmonisation of procedures at European level is always appropriate".

Netherlands

Article 13.4 (2) of the Telecommunications Law requires the retention of "certain sets of data" (traffic data) for three months.

On the proposal that there should be an EU instrument on data retention: the Netherlands is conducting a review and says there should be a legal instrument under Title VI of the TEU (ie: a Framework Decision).

Portugal

The current Law 69/98 of 28 October 1998 says data must be erased when it was served the purposes for billing. However, there is an intention to "transpose" the new, amended EC Directive (12 July 2002) into national legislation.

On the proposal that there should be an EU instrument on data retention: "We feel that such a measure would be of great importance".

Spain

Article 12.1 of the Information Society and Electronic Services Law (Law 34/2002 of 11 July) is an amendment in line with the major changes to the 1997 EC Directive on 12 July 2002 which says "connection and traffic data" must be retained for 12

months.

On the proposal that there should be an EU instrument on data retention: Spain "very highly" backs such a proposal.

Sweden

A government committee has considered the implications of the amended 1997 EC Directive and has made no suggestion that data retention should be mandatory. The issue is however "the subject of discussions".

On the proposal that there should be an EU instrument on data retention: "it is difficult to see how cooperation could be successful if the rules on traffic data retention seriously diverge among its signatories" - in other words they would support such a proposal.

UK

The position in the UK (as outlined above) is that data retention is included in the Anti-Terrorism, Crime and Security Act 2001 but only in relation to purposes directly or indirectly connected with national security.

On the proposal that there should be an EU instrument on data retention: not surprisingly the UK says, "To resolve these issues on a European basis would be very useful".

Conclusion

On the basis of this survey it can be broadly concluded that at this stage:

1. Nine of the 15 EU states have or intend to introduce an obligation for the retention of data, two member states have no plans and four are unclear.
2. The norm for the period of data retention would appear to be 12 months, although Ireland is way out ahead with 3 years.
3. Ten of the 15 EU states would support a EU measure, only two are against this and three are unclear.

Answer to questionnaire on data retention, General Secretariat to Multidisciplinary Group on Organised Crime (MDG), doc on 14107/02, 20.11.02.

Statewatch case leads to landmark decision

The Council agrees to keep copies of all documents and to list them in "Outcomes of Proceedings"

As a result of the European Ombudsman's Special Report to the European Parliament on a case from *Statewatch*, the Council of the European Union has agreed that all SN documents, Room documents etc considered at its meetings will be listed in the "Outcomes of proceedings" (see *Statewatch*, vol 11 no 6). This landmark decision will by implication apply to meetings of the Commission and the European Parliament too.

The Ombudsman said in his Special Report that the new Regulation that came into effect on 3 December 2001 obliged the three institutions to place all documents on their public registers. In this case the Council:

should maintain a list or register of all documents put before the Council and make this list or register available to citizens

Although the Council accepted a Recommendation from the

Ombudsman to this effect he said in the Special Report that its response:

raise doubts as to whether the draft recommendations will indeed be implemented

For this reason the Ombudsman referred the issue to the Petitions Committee of the European Parliament.

The Ombudsman also referred to the Committee a second issue raised by *Statewatch*. This concerned a meeting of the Police Cooperation Working Party (Experts meeting - Interception of telecommunications) in September 1998. This was the meeting that discussed the infamous ENFOPOL 98 proposal on the interception of communications. The Outcome of Proceedings list five Room documents which the Council refused to supply - they claimed all the documents had been sent when

they had not.

The rapporteur in the Petitions Committee was Astrid Thors (ELDR, Liberal group) and the Ombudsman's Special Report was discussed at its meeting on 23 May 2002. Mr Hans Brunmayr, Deputy Director-General, attended for the Council and discussed the background to the complaints.

A second meeting of the Petitions Committee on 20 June was attended by Mr Brunmayr and Tony Bunyan, *Statewatch* editor. In the meeting Mr Brunmayr agreed that the Council would reconsider the earlier request for documents from the Police Cooperation Working Party - indeed the Council had mistakenly been responding to a completely different request which led to some confusion - and would put forward a proposal that a list of all the documents considered at Council meetings or its preparatory meetings would be attached to the "Outcome of Proceedings".

On 17 July Mr Brunmayr wrote to *Statewatch* on the first issue. The Council agreed that "Notes" (Meetings documents) had been considered from the German and UK delegations. As the General Secretariat of the Council did not have copies the delegations were "consulted".

The German Ministry of the Interior no longer has the note", the Council said, and the "United Kingdom Home Office no longer had copies of its notes"

This refers to six "Meetings documents" which:

UK and Germany submitted meetings documents 1-6, introducing the telecommunications interception requirements with reference to new technologies established by these groups and other technical working parties (Outcome of Proceedings)

The reference to "these groups" is to "various technical working parties, ILETS and the recent meeting in Rome in July 1998"

Thus none of the missing documents were available. However, in its reply the Council said:

In 1998, the relevant department of the Council Secretariat did not systematically keep in its archives all the room documents submitted by delegations. Measures have in the meantime been taken to remedy this (emphasis added).

The importance of this new Council practice - that all Room documents should be archived in future - is closely related to *Statewatch's* second complaint concerning the failure to maintain (and supply) lists of documents discussed at Council meetings.

On 24 July Mr Brunmayr wrote to the rapporteur, Astrid Thors, on the issue of maintaining list of all documents considered at Council meetings as follows:

I have the pleasure of informing you that, in the light of the Ombudsman's Special Report, all Directors-General of the Council Secretariat have received the following instructions:

- all texts submitted to the Council or its preparatory bodies and which affect the decision-making process or reflect the state of work regarding a certain dossiers, shall be produced as ST (Standard) documents. In conformity with the existing internal rules for the establishment of Council documents (called "Workflow"), the references of all these documents will be automatically entered in the Council's Public Register;

- all "room documents", "non-papers" and the like submitted during meetings of the Council or of its preparatory bodies shall be mentioned in the "Outcome of Proceedings" of those meetings or in a list to be annexed thereto."

These two decisions should mean that all documents circulated/discussed at all Council meetings are archived and that a list of them will be included at the back of all "Outcomes of Proceedings" (but see below).

The report adopted by the European Parliament at its plenary session on 18 December 2002 is unfortunately quite inaccurate as it describes the state of play *before* the meeting of the Petitions Committee on 20 June. Anyone reading the report would

therefore not know the true impact of the Council's commitment as there is no reference to the two letters from Mr Brunmayr.

However, the Resolution does include a request to the Council to report back to the parliament in six months time (ie: by June 2003) on the "concrete measures" taken to implement the Secretary General's decision.

Missing documents

Although the instruction went out to all Directors-General in the Council on 24 July that all documents considered should be listed in the "Outcome of Proceedings", it appears that few of them are following it. For example, at the meeting of the Multidisciplinary Group on Organised Crime held on 16 September 2002, seven Room Documents were circulated but not listed in the "Outcome of Proceedings". *Statewatch* has complained to the Council about this and is awaiting their response.

Tony Bunyan, *Statewatch* editor, comments:

The two decisions of the Council taken together - to keep copies of all documents and to make a list of all documents discussed available - is a major breakthrough for openness. The problem now is going to be to get the Council to actually put into practice its stated policy.

European Ombudsman takes on the Commission and the European Parliament

In September the European Ombudsman sent a strongly worded letter to Mr Prodi, President of the European Commission, saying that "data protection rules are being misinterpreted as implying the existence of a general right to participate anonymously in public activities". The Ombudsman called for the scheduled review of 1995 EC Data Protection Directive to be amended to expressly state that the Directive: "is not intended to limit the principle of openness and the right of access to official documents".

To back his case the Ombudsman published a paper on "The misuse of data protection rules in the EU". Here he argues that the implementing Regulation 45/2001 on the protection of personal data held by EU institutions is being used to "undermine the principle of openness in public activities".

The paper gives four examples of misuse, two by the European Parliament and two by the Commission. The parliament argues that the name of MEPs assistants, who are paid from Community funds, have the "right to remain anonymous even whilst being paid from European taxpayers' money". The parliament has also rejected a recommendation that in future "recruitment competitions.. the names of the successful candidates" should be made public.

The Commission has refused, in a complaint concerning UK law, to make public the names of companies who attended a Commission meeting who may have influenced an Article 266 investigation. When a newspaper applied to the Commission for access to a register of "approvals given for external activities of Commission officials" the Commission supplied the register but deleted all the names of the officials involved. The Ombudsman concludes that the "misuse of data protection seems to be based on the idea that there exists a fundamental right to participate anonymously in public activities".

In October 2002 the President of the European Parliament, Pat Cox, weighed in on the side of secrecy. A letter from Pat Cox to the Ombudsman, dated 28 October, states that the changes proposed by the Ombudsman would in: "the view of this institution" represent a substantive change as: "Article 4(1)b of Regulation 1049/2001 is to subordinate the public right of access contained in that Regulation to Community data protection legislation". This is strange as the parliament had, at that point, taken no such view. Moreover, it is legally incorrect to suggest that the Directive on data protection is superior or overrides the Regulation on the public right of access to EU documents.

Larry Grant

Hackney 19 January 1943
- Southwold, 4 January 2003

Larry was a lawyer, teacher and later a judge who fought all his life for civil liberties and migrants' rights.

He was also a founding signatory to Statewatch's trust in 1981 and remained a trustee for the next 22 years - helping us, quietly, in so many important ways - until his untimely death.

Larry was a "gentle giant", full of compassion and humour, who was a personal friend for many of us - he is irreplaceable and we shall miss him enormously.

"In 1970 he became legal officer for NCCL... After the Allende regime was overthrown in Chile, Larry obtained an injunction against the Home Secretary to prevent the deportation of refugees... Unfortunately, nobody, including the judge had remembered that injunctions were not available against the Crown, and the decision was reversed a week later. But the point had been made. The deportations were stopped... He viewed Edward Heath's Immigration Act of 1971 as a discriminatory attack upon the unity of immigrant families. He wrote: "The Act treats women so automatically as appendages of men as to deny them even the status of second-class citizens; they scarcely exist except as shadows"

From Larry's obituary in *The Independent*

IRR news network

The Institute of Race Relations has launched the "IRR news network" which is regularly updated, has a searchable database and e-mail list. It is on:

Statewatch News online

News and features in this bulletin are supplemented and updated on *Statewatch News online*. To join the e-mail list send an e-mail with the subject: "Subscribe to list" to: office@statewatch.org

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Statewatch website

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

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Statewatch bulletin

Subscription rates: 6 issues a year: UK and Europe: Individuals and voluntary groups £15.00 pa; Institutions and libraries: £30.00 pa (outside Europe add £4 to the rate)

Statewatch does not have a corporate view, the opinions expressed are those of the contributors.

Published by Statewatch and printed by Russell Press, Russell House, Bulwell Lane, Basford, Nottingham NG6 0BT

ISSN 0961-7280

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