

statewatch

monitoring the state and civil liberties in the UK and Europe

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EU: buffer states & "processing" centres

- 20 "neighbour" states to create new "buffer" zone

- readmission agreements unilateralist and inhumane

- all refugees and asylum-seekers to be immediately sent to EU "closed reception centres" for "processing"

The EU has come a long way since the creation of "Fortress Europe" in the mid-1980s, which sought to construct a "cordon sanitaire" at its external borders to keep migrants out. Tentative steps were taken in the late 1990s to try and introduce readmission agreements with third world countries so that nationals (and stateless people) could be returned. The High Level Group on Migration, set up in December 1998, attempted to target selected countries (like Somalia and Morocco) by bringing political and economic pressure (like threatening exports and withdrawing aid) to bear to get agreement.

The reaction post-11 September through the "war on terrorism" has been of an entirely new dimension because every refugee and asylum-seeker fleeing poverty and persecution is a potential "terrorist" or criminal (as well as being perceived as a "burden" of western economies).

A new *Statewatch* analysis of the EU's readmission agreements with non-EU states concludes:

The EU's approach to readmission agreements involves insisting that more and more non-EU countries sign up to road readmission obligations to the EU with little or nothing in return. EU policy has been backed by harsher and harsher rhetoric and threats against third countries as the EU becomes more and more unilateralist and focused solely on migration control. These policies are unbalanced, inhumane, and internally contradictory.

One of the latest initiatives is the creation of a "Circle of friends" or EU "neighbours" which are defined as Russia, Ukraine, Moldova and Belarus plus the "Western Newly Independent States (WNIS)" of Croatia, Bosnia-Herzegovina, Serbia and Montenegro, Macedonia and Kosovo plus the "Southern Mediterranean" states of Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia (only Ukraine and Moldova are seeking accession to the EU). The plan is to create a "friendly neighbourhood" of "prosperity" and "peace" with the underlying motivation being to protect the EU from trans-border threats of terrorism, crime and migration. These countries will be expected to institute "reform" (free

market capitalism) and to implement key parts of the EU's *acquis communautaire* - especially on "enhanced cooperation on justice and security issues" including illegal migration, judicial and police cooperation and "threats to stability". The European Commission is reluctant to define the final borders of the EU but the new formalised "buffer states" will create in turn problems for the new set of buffer states like Western Sahara, Mali, Niger, Chad and Sudan in Africa, Georgia, Armenia and Iran and in Asia Turkmenistan, Kazakhstan, Mongolia and even the USA (in the Bering Straits). It can be expected, like in the past, that buffer states be subjected to political and economic pressures to adopt EU "standards" on the control of migration (and crime).

The EU has thus moved through a number of stages: i) "Fortress Europe" to secure its own borders, the creation of "buffer states" (against immigration, terrorism and crime) in central and eastern Europe states, most of which are to join the EU in 2004, ii) now there is the creation of formal new "neighbour" states which in turn creates new "buffer" states.

This latest development coincides with two other strategic initiatives: First, moves to strengthen "Fortress Europe" through controls at the external borders of the EU, the move from voluntary repatriation to forced repatriation and new laws to punish those who harbour or give work to un-recorded migrants (see *Statewatch* vol 12 no 5). The second initiative is the swift adoption of the UK government proposal to create so-called "safe havens" (camps which do not have to meet EU standards) in "neighbour" states (eg: Ukraine) and "region of origin" (eg: West Africa), to return migrants suffering poverty and persecution to camps in the countries or regions from which they are fleeing.

Internal UNHCR documents dated April 2003 show that the organisation is bidding to undertake a similar role in cooperation with the EU (here it is trying to fend off the IOM, International Organisation on Migration, which is an unaccountable intergovernmental body). The first stage would see the "immediate transfer: upon arrival anywhere within the territory

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of EU Member States [of].. all asylum-seekers" to "closed reception centres" located in one or two member states where they would be "processed" under a fast-track procedure taking no more than "one month". Those found in need of protection (from persecution) who be distributed "fairly" around the EU (no choice for the refugee is set out), so-called "economic migrants" would be immediately sent back to the country of origin under EU imposed readmission agreements or sent to detention centres in the region of origin. The aim is that there would be no national asylum and appeal processes only those carried out in EU closed processing centres.

The effect will be to remove national procedures and hence national responsibility for refugees and asylum-seekers. They will be placed in enormous processing centres out of sight and no doubt heavily guarded to stop escapes and to deter protests.

The overall message was highlighted at a Greek EU Presidency conference in Athens on 15-16 May where the Foreign Minister, George A Papandreou, welcomed a selected audience of "many of the best thinkers in migration". He went through a catalogue of measures to combat "illegal immigration" and said that the EU "must welcome the economic migrants that our societies need" through "smart borders" (emphasis in original) and "well-managed immigration selection schemes" which could meet the expected 30% fall in the working population (and a drop from 22% to 12% of the EU's share of world trade). A report, he noted, suggested that the EU needed 30 million immigrants by 2020. These migrants were needed, he said, to do the jobs that: "too many of our fellow Europeans are not willing or able to do" - in other words for either the dirty low-paid jobs or highly-skilled workers.

While the EU is to reject those fleeing from poverty it wants to bring in migrants who will help in maintaining its "prosperity" and standards of living.

Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, (COM(2003) 104 final, 11.3.2002); www.statewatch.org/news/2003/may/12readmission.htm

journalists was the idea of the Pentagon and in the US many embedded journalists were briefed at "boot camps" before the war. While US Defence Secretary, Donald Rumsfeld, has praised their reporting as "historic", critics have pointed out that the journalists are so enmeshed "that it makes it difficult for them to think objectively. If your safety is in the hands of soldiers, you will be unwilling to criticise them." As CBS presenter Dan Rather put it: "There's a pretty fine line between embedded and being entombed". There were 150 reporters embedded with British forces and 660 with US forces. The IFJ believed that reporters "not travelling under the official protection of the military were being forcibly removed" which they described as "unacceptable discrimination against independent journalism".

For many non-embedded journalists Rather's comments are quite literally true. US military sources have finally admitted that they killed the non-embedded ITN reporter, Terry Lloyd, who was the first journalist to die in the conflict on 22 March. US Marines opened fire on his car, despite seeing clearly marked journalist signs, because they feared that the journalists might have been suicide bombers. Two other journalists travelling with Lloyd are "missing". On 8 April a US Abrams tank fired a round at the Reuters office in the Palestine Hotel in Baghdad, killing two and seriously wounding several others, in an act that US Secretary of State, Colin Powell, described as "justified" but *Independent* journalist Robert Fisk said was "murder".

On the same day an American aircraft bombed the *Al-Jazeera* office in Baghdad, despite having been supplied with coordinates and information by the station. The attack occurred shortly after the US condemned the station for reporting on the civilian casualties of bombing raids. "We were targeted because the Americans don't want the world to see the crimes they are committing against the Iraqi people", said *Al Jazeera's* Baghdad correspondent Majed Abdel Hadi. This was not the first American military attack on *al-Jazeera*: America bombed the station's office in Kabul in November 2001 and the US assistant secretary of Defence justified the attack, saying "the building we struck was a known al-Qaeda facility". Her opinion was contradicted by the Committee to Protect Journalists which said that the "bureau in Kabul was clearly a civilian object" based in a residential area.

The attacks on *Al-Jazeera* continued by other means when the station's newly-launched English-language website was hacked during the war on Iraq. Unidentified hackers took down the website and replaced it with "patriotic American images and text". The site was also hit by a "coordinated denial of service attack" rendering it unavailable for several days. *Computer Professionals for Responsibility*, which was formed by computer specialists in 1981, called on internet users worldwide to "protest the recent hacking episodes that have affected the Web site of Arab television network Al-Jazeera." They described the "malicious intrusion" into the news organisation's website as an "unjustifiable effort to censor foreign news organizations during this time of war and international crisis." The Qatar-based television satellite channel won the prestigious *Index on Censorship* prize for upholding freedom of expression in March. The judges praised the station for its "independence in a region where much of the media is state run".

In the UK the policy of embedding journalists has encouraged the government to make a series of unsubstantiated claims concerning alleged weapons of mass destruction, the "execution" of British prisoners of war and the assertion - based on the usual unnamed and anonymous "intelligence" sources - that civilian casualties in Baghdad's marketplaces were caused by Iraqi forces targeting their own civilians. This last tale was exposed as a lie by investigative journalists Robert Fisk who, in the *Independent* newspaper, provided the serial number and US armaments factory where the bomb was produced. For exposing Defence minister Geoff Hoon Fisk was singled out for personal

CIVIL LIBERTIES

IRAQ WAR

IFJ demands inquiry into beating of reporters

The International Federation of Journalists (IFJ) has demanded an "immediate and full inquiry" into reports that US and British forces in Iraq arrested, beat-up and detained four journalists alleging that they were spies. The reporters, Dan Scemama of Israel's Channel 1, Boaz Bismuth of *Yediot Aharonot* and Luis Castro and Victor Silva from Portugal's *Televisao Portuguesa*, were not officially "embedded" with the troops and they were detained by US military police, despite carrying international press cards, as they sheltered from a sandstorm. In an interview with *Democracy Now*, Dan Scemama described how five US soldiers beat and kicked one the Portuguese journalists, breaking his ribs, after he asked to phone home. The *Sindicato do Journalistas*, the IFJ affiliate in Portugal, said that "this appears to be an outrageous failure of military discipline, and those responsible must be investigated." Scemama has named an American unit under the command of First Lieutenant Scholl as being responsible for the assault.

The IFJ had earlier warned of the "unacceptable discrimination and restrictions being imposed on journalists covering the war in Iraq when they are not travelling with army units of the United States or Britain." The policy of "embedding"

attack by government representatives.

Al-Jazeera UK-language website <http://al-jazeera.org.uk>; IFJ press release 3.4.03; IFJ website, <http://ifj.org>; Index on Censorship website <http://indexoncensorship.org>; Independent 26.4.03

NORTHERN IRELAND

Pat Finucane Centre celebrates ten years in pursuit of justice

Over the Mayday 2003 weekend, the Pat Finucane Centre celebrated the tenth anniversary of its official formation. The following is a brief article on the history of the PFC from the *Derry News* entitled "Ten years in pursuit of justice" by PFC coordinator Paul O'Connor:

Ten years ago today Michael Finucane, son of Belfast solicitor Pat Finucane, unveiled a small plaque at the opening of the PFC on the second floor of an office at 1 West End Park.

The roots of the newly opened centre could be traced back to 1988/89 when a diverse group of family members and activists, the Bloody Sunday Initiative, had begun serious campaigning around the issue of Bloody Sunday.

Two groups, both based in West End Park and sharing resources and personnel, emerged from this period. One, the Bloody Sunday Justice Campaign, had a sharp focus and clear demands. The other, the Pat Finucane Centre, had a broader human rights agenda. The Finucane family had already given the go-ahead for the name change when there was an unforeseen intervention. In December 1992 the centre was raided by the RUC. As a direct result the name change was delayed so as not to give the impression that the group was "reinventing" itself under a new name.

The following May the Pat Finucane Centre opened. In the intervening 10 years there have been many highs, some lows and some wonderful political street theatre. Deserving of mention was the assault on Rosemount RUC Barracks with paint brushes and pink paint in broad daylight. The theory was that soldiers would feel foolish in a bright pink barracks. On another occasion PFC members patrolled the city centre dressed up in watchtowers which read, "Faulty Towers-Don't Mention the War". Following the exclusion under the PTA of a young Derry student from London the PFC served Exclusion Orders on British Army patrols in the city centre.

At the same time political engagement of a more serious nature was taking place. The centre hosted visits of human rights activists, clergymen from Warrington and even a group of German police officers!

Of the dozens of public meetings the political high point was during the 1995 Bloody Sunday anniversary. Gregory Campbell, Billy Hutchinson and Richard Dallas, to their credit, accepted a PFC invitation to enter the lion's den and defend the unionist position. The sound of ice breaking could be heard across the city.

The following year it was the sound of bones breaking when over 5,000 plastic bullets were fired during Drumcree related riots. The PFC began providing observer reports of the riots every two hours on the internet and thousands logged on worldwide to get an alternative to the official spin. (Over a thousand people in 14 counties now receive regular email updates.) In record time the centre published "In the Line of Fire", an account of the events which included the death of Dermot Mc Shane.

Other reports included one that nobody in the centre ever expected to compile, "Rosemary Nelson - The Life and Death of a Human Rights Defender". The last occasion on which Rosemary spoke publicly was at a fundraiser for the PFC in Rosemount, weeks before her murder.

The high profile work with families in Derry, the Peter Mc

Bride campaign or the controversial public interventions in relation to CCTV, Raytheon, policing and plastic bullets are all well known. Less visible has been the sensitive work with families outside of Derry, in particular the Recovery of Living Memory Archive in Armagh, Tyrone, and elsewhere involving some 70 families. In other ongoing work the centre has maintained a daily log of all sectarian incidents/attacks in the North. The PSNI has admitted it has no similar log. Has the centre made a difference? We believe it has but history will be the judge."

For more information see the PFC website: <http://www.serve.com/pfc/>

Civil liberties - in brief

■ **UK/Thailand: Solidarity with Thai drug users:** A group of UK and international drug user activists is calling for support of Thai drug users, 2,000 of whom have been murdered over the past two months by a combination of police and death squads as part of a new turn in the "war on drugs" in Thailand. A day of action has been requested by the Thai Drug Users Network (TDN) for June 12 and is supported by the UK Harm Reduction Alliance (HRA) and International HRA. For more information contact Elliot on informe@onetel.net.uk.

Civil liberties - new material

ID cards. *Liberty & Charter 88 2003.* This pamphlet developed out of a public meeting, jointly organised by Liberty, Privacy International and the Foundation for Information Policy Research, in central London in December 2002. While the Labour Party claims to have retreated from its post-11 September plans to introduce a national identity card, it has merely dabbled with the terminology, now advocating a "universal entitlement card". Everyone will have to register and produce the card to prove their entitlement to services that they have already paid for through taxes. The government argues that the card will - at a stroke - tackle all manner of problems, but in reality it will increase government departments' access to private information and contribute to burgeoning identity fraud. In April Home Secretary, David Blunkett, suggested that the public would be prepared to pay £25 each for the privilege of possessing one. This volume includes some diverse political contributions, ranging from Peter Lilly (Conservative) to Simon Hughes (Liberal Democrat), all of whom are united in their opposition to the introduction of identity cards. *Available on the Liberty website: www.liberty-human-rights.org.uk*

Did the US murder these journalists, Robert Fisk. *Independent 26.4.03.* Robert Fisk writes about the US attack on the Reuters office at the Palestine Hotel in Baghdad during the invasion of Iraq. US Secretary of State, Colin Powell, justified the killing of two independent journalists and wounding of others, but Fisk accuses the US of murder and of lying to cover up the truth.

Informed Dissent. *Undercurrents and Peace News.* This anti-war video and CD-ROM includes five presentations and discussions from Noam Chomsky, short pieces from anti-war actions in Britain and the US and the award-winning documentary "Globalisation and the Media" on the shaping of public opinion in the "war on terrorism". Running time 78 minutes (video)/28 minutes (audio). *To order see www.peacenews.info, e-mail admin@peacenews.info or send a cheque payable to Peace News for £6.50 to Peace News, 5 Caledonian Road, London N1 9DY. UK.*

Travellers' Times. Issue 15 (Spring) 2003, pp. 11. News, legal updates and cases relating to travellers' rights and discrimination. *Available from The Rural Media Company, Sullivan House, 72-80 Widemarsh Street, Hereford HR4 9HG, Tel: 0044-1432 344039, travellerstimes@ruralmedia.co.uk.*

Prisoners tell of life inside Camp Delta, Nick Fielding & Rahmullah Samander. *Sunday Times 6.4.03.* Article on the release of "co-operative" Afghani prisoners from Camp Delta, Cuba, that allows some insight into conditions. The tactics used by US interrogators include

psychological techniques (sleep deprivation, physical and verbal threats) while those considered more violent are likely to be drugged to knock them out for days on end. Women prisoners, it is alleged by those released, were stripped in front of US male soldiers. On their return to Afghanistan some of the released prisoners claim that they were handed over to Kabul police who beat them for a period of two or three days.

IMMIGRATION

GERMANY

Discrimination against Roma violates EU accession standards

In anticipation of a growing number of applications for membership by eastern European countries, the EU Council established at the Copenhagen Summit in 1993 what is now known as the "Copenhagen Criteria". Apart from administrative and economic standards, applicant countries must have a democratic government, which includes "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities." A study conducted by the EU Accession Monitoring Program of the Open Society Institute (EUMAP), has found that Germany violates the "Copenhagen Criteria" of minority protection. The report refers to institutional discrimination in the areas of housing, education, employment, healthcare and a lack of protection from racist violence. Another aspect of Germany's mistreatment of the Roma is the large-scale deportation programme targeting families from the former-Yugoslavia, who are being deported into economic and social insecurity.

Germany's deep-seated institutional racism against the Roma and Sinti dates back to the sixteenth century and continued throughout the Nazi era up to today, from deportation policies specifically targeting Roma communities to institutional racism reinforced through anti-Roma court decisions and unchallenged popular racism. In 1661 and 1725 respectively laws were passed ordering the death penalty on any "Gypsy" to be found in Saxony and demanding that any Gypsy in Prussia over the age of 18 should simply be hanged. Similar regulations continued until the Weimar Republic and the Nazi era, where forced labour camps and extermination policies killed around 500,000 European Sinti and Roma. In the post-World War 2 era, the discrimination of Roma and Sinti continued, often at the hands of the same people who retained positions of authority, and through Nazi regulations and institutions which have stayed in force up to today. Court decisions have denied Roma and Sinti compensation as victims of the Nazi regime.

Details on historical and contemporary anti-Roma and Sinti racism can be found in the second volume of EUMAP's 2002 *Monitoring Minority Protection* report which for the first time also concentrates on the five largest EU member States, examining the situation of Muslims in France, Italy and the UK, and of Roma in Germany and Spain. The volume was prepared "with the intent of underlining that EU standards must be applied and monitored equally throughout the European Union, not only in candidate countries."

A recent incident of anti-Roma racism involves one of the more prestigious hotels in Berlin, the Estrel Hotel which has publicised itself as a metropolitan meeting point: on 28 January this year, Johann Herzberg, a German businessman of Roma origin attempted to book a room in the hotel only to be told that he had been banned because "the hotel computer identified him as a Gypsy". Asking to speak to a superior, he was transferred to "Ms. Müller" who told him the hotel "does not rent out rooms to

the race of Gypsies". Even if this could be put down to individual racist behaviour, the reaction by the hotel's management to official complaints lodged by Petra Rosenberg, the chairman of the regional association of German Sinti and Roma as well as the International League for Human Rights portrays the full extent of Germany's deep-seated anti-Roma racism. Without any investigation into the complaint, Thomas Brückner, the hotel's director, dismissed the incident as a "misunderstanding" and claimed Mr Herzberg had violated hotel regulations, without providing any more detail on grounds of the hotel's "discretion" policy towards its customers. Furthermore, unaware of the racist connotations of this statement, Brückner's colleague Ute Jacobs claimed that racism simply could not exist within the hotel's structures because foreigners were employed there and reassured the newspaper *Jungle World* that the receptionist would have reacted in the same way "if it had been a German." Herzberg, of course, is German.

The recently introduced mass deportation of Roma from Germany follows the German-Yugoslav readmission agreement of 1 November 2002 affecting about 100,000 people around 80,000 of whom are Roma (40,000 from Serbia, 35,000 from Kosovo). Protests against the planned mass deportation of Roma families started in April 2002, when around 500 Roma travelled all over the country to raise awareness and try and avert their deportation, finally setting up a camp in Düsseldorf (see *Statewatch Bulletin* vol 12 no 6). The camp had to close down due to the cold at the end of December, and - apart from an Interior Minister's decree temporarily halting the deportation of families with children under the age of 16 on grounds of the cold weather - the deportations are now being enforced all over Germany. Deportees have reported brutal and inhumane conduct by the German police and campaigners have received desperate telephone calls from those deported, not knowing how to survive in the country they have been sent to. Dzoni Sichelschmidt, spokesman of the Roma campaign for the right to stay, received a phone call from a 17-year old woman who had lived in Germany for 13 years before she was deported back to Belgrade. She says she has no house or family, is destitute and now has to resort to prostitution as she has no other means of survival. In another case, the father of a family deported from Germany was sedated and the family split up because the mother came from Macedonia. The children were divided between father and mother. After the mother attempted suicide, she was put on the plane to an insecure future.

Although the bi-annual conference of regional interior ministers has issued a temporary halt to the deportation of families with children under 16 and a meeting between Interior Minister, Otto Schily, and Michael Steiner, special representative of the UN Interim Administration Mission in Kosovo (UNMIK), has resulted in a temporary stop on the deportation of Kosovo Roma, deportations to Serbia are still continuing. Both decisions are merely temporary, one depending on the weather, the other on interior ministers deciding that the former Yugoslavia is "safe" for Roma and Sinti. The reason why a prolonged protest and public awareness campaign has not succeeded in averting the large-scale deportations is, says Dzoni Sichelschmidt, related to the fact that the uninterrupted historical discrimination of Roma in Germany has led to a lack in representational or economic power at all levels of society. He has recently visited the former Yugoslavia and compiled written and photographic evidence on the discrimination against Sinti and Roma there. His report will soon be available on <http://www.fluechtlingsrat-berlin.de>.

Jungle World 5.3.03. see <http://www.eumap.org/reports/2002/content/09> (EUMAP *Minority Protection Reports*), www.krit.de/roma (hosting the campaign against the deportation of Roma to former Yugoslavia), www.proasyl.de (Germany's Refugee Council and its campaign for the right to remain). You can contact Dzoni Sichelschmidt, campaign spokesman, Dsichelschmidt@t-online.de.

SPAIN

Aliens' Bill provisions annulled

The Supreme Court has invalidated 11 articles of the Regulation implementing the Aliens' Bill, because they affect fundamental rights which cannot be regulated by decree. These include the right to effective judicial protection for undocumented migrants detained within Spanish territory and the right to free movement for undocumented migrants who have authorisation to remain in Spain.

After the decision the government will have to free migrants who arrive in dinghies if it is unable to return them to their countries within a 72-hour deadline. It will also no longer be allowed to detain foreigners who are the object of return proceedings, rather than expulsion orders, in detention centres.

Furthermore, the government will have to review the thousands of work permit applications submitted through the *Regimen General* (General regime), that were rejected in 2002 due to the "inadequate proceedings" requirement that was part of the Regulation.

The government has already stated that it will not consider changing its immigration policy. In order to avoid the consequences of the decision it will amend the Aliens Bill, which will be its third amendment since the *Partido Popular* has been in power. The Aliens' Bill that is currently in force is also subject to an appeal before the Constitutional Court, which has not yet expressed a view on whether it is unconstitutional or not.

ITALY

Regularisation applications result in expulsion

A regularisation process (see *Statewatch vol 13 no 1*) aimed at legalising the position of migrant workers who are illegally employed in Italy, is turning into an expulsion trap for some of the over 700,000 applicants who submitted their applications within the 11 November 2002 deadline. It emerged in Milan that where the regularisation application is not accepted, expulsion procedures are automatically commenced.

La Repubblica newspaper reported on 9 March 2003 that 4,000 applications had been accepted, whereas in the 25 cases of rejections, expulsion procedures began. The migrants were reportedly tracked down at home or at work (information available on their applications) and brought to Milan's *Corelli* immigrant detention centre, without any explanation other than that their applications were turned down. Parliamentary questions by Giuliano Pisapia (*Rifondazione Comunista*) and Luana Zanelli (Greens) asked "how is it possible that in a country with our judicial system foreign people who have made an application for regularisation and have an honest job can be taken from their homes and expelled without anyone telling them why they are no longer allowed to stay?"

A *Caritas* spokesperson claimed that the process is turning into a trap to identify and expel migrants, whereas an employer was concerned that he went through the trouble and costs of starting the legalisation procedure in good faith, and is now a worker short. On 11 March a judge in *Corelli* detention centre annulled ten of the expulsion orders. Turco from the PDS (Left Democratic Party) claimed that "The most elementary rights to defence are being contravened". Expulsion from Italy carries a ten-year ban on re-entry, which may extend to the entire Schengen area in view of cooperation to combat illegal migration, and the use of the centralised SIS database.

La Repubblica 9-12.3.03.

Immigration - in brief

■ **Spain: Government will subsidise the return of migrants:** The government has decided to examine the provision of economic subsidies for migrants who are willing to return voluntarily to their countries of origin, testing a method that is already at work in other EU countries. The subsidies will consist of financing the return journey and providing money, in the form of a credit, as a means of helping the migrants to establish themselves in their country of origin.

■ **Spain: Agreement for the return of migrants with Morocco:** Morocco has accepted the return of sub-Saharan migrants who reach the Spanish coast by dinghy when it can be demonstrated that the owner of the dinghy is Moroccan and as long as the dinghy was stopped in the high seas and not before it has reached the coast. The agreement is not retrospective, and reaffirms an agreement that was signed ten years ago.

■ **Spain: Contracting illegal migrants no crime without exploitation:** Lérida Criminal Court has absolved a businessman who contracted unregularised migrants and who failed to register them in the Social Security system. The court considered that this cannot be considered a criminal offence, unless there is proof that the workers were exploited. The prosecutor had asked for an 18-year prison sentence for the defendant.

■ **Spain: Fines for airlines that carry undocumented migrants:** The Interior Ministry has fined 49 airlines a total of 1,015,000 Euros for carrying undocumented migrants in 2002. The police turned away 11,698 migrants at the border in the last year.

Immigration - new material

Vermessene Ausländer, Philip Jansen. *Infodienst des Bayerischen Flüchtlingsrats*, No.1/2003, pp19-20. Article on the history of Germany's central databank on foreigners (*Ausländerzentralregister*), which was recently extended to include personal details on religious background. It includes useful details on which authorities are authorised to access the databank (eg. the FBI), its legal basis as well as outlining how the central registration of foreigners inevitably leads to racist criminalisation by police and security services and enables swift deportations or rejection at the border. Available from: *Bayerischer Flüchtlingsrat, Augsburg Str. 13, 80337 München, Tel.: 0049-89-762234, bfr@ibu.de*

Infodienst des Bayerischen Flüchtlingsrats. No.1/2003, pp. 34, E. 2.60. This issue of the bi-monthly Bavarian Refugee Council's information bulletin includes contributions from a conference held in January this year entitled "The War Against Refugees". They deal with the developments of the EU's migration management towards using military means to control refugee movements, the creation of 'concentric circles' around Europe through different levels of anti-migration measures and the internal repression of refugees and migrants within Germany. The SIS, Eurodac, and the IOM are also scrutinised. Available from *Bayerischer Flüchtlingsrat, Augsburg Str. 13, 80337 München, Tel.: 0049-89-762234, bfr@ibu.de*

From refugee protection to managed migration: the EU's border control programme, Liz Fekete. *European Race Bulletin* no.43, pp 2-10. In depth analysis and outline of the EU's migration management strategy, from the history of border control mechanisms to details on EU migration control programmes in different countries and regions. Includes detailed outlines of budgets, visa policies and control mechanisms in eastern Europe, Serbia and Morocco and analyses the objectives and likely future developments in EU migration policy towards the coercion of non-EU countries and increased military involvement in migration management. Available for £5 from: *Institute of Race Relations, Tel: 0044-20-7837 0041, info@irr.org.uk*

Educación e Interculturalidad, *Mugak* no. 21, 4th quarter 2002, Centro

de Estudios y Documentación sobre racismo y xenofobia, pp.60 (5 Euros). This issue looks at education and cultural interaction, with the deaths of migrants travelling in dinghies and in a Malaga police cell at the end of 2002 and start of 2003 (see *Statewatch* vol 13 no 2), which "confirm the existence of first and second-class deaths", setting a sombre tone. One article looks at the impact of the socio-political conditions under which migration occurs, and the situation under which schooling takes place, on the integration of children in schools, as well as proposing some theoretical and attitude-centred proposals for intercultural education. Another looks at difficulties faced by social-educational workers introducing newcomers to the world-view of Spanish society, and at their successes and failures in managing their participation. Other articles look at the elaboration of a "minimum" standards curriculum to be applied to school projects concerning cultural diversity, and critique current school materials as "ethno-centric" and "incompatible" with inclusive citizenship. Includes cases, EU measures on immigration and new materials. Available from: Peña y Goñi 13-1, 20002, San Sebastian, e-mail: hiruga01sarenet.es

Somali and Kurdish refugees in London - new identities in the diaspora, David J. Griffiths. *Ashgate Research in Migration and Ethnic Relations Series*, pp. 230, £42.50 (hardback), ISBN 0 7546 1701 7. Based on interviews and detailed political and social background information on Somalia and Kurdish regions in the Middle East, this research gives an insight into the formation of refugee identity in London. Rather than portraying a romanticised notion of identity however, the author recognises the interaction between the politics and social structure of the countries of origin and the country of resettlement. It includes theoretical discussions on refugee studies and identity and although the academic form becomes slightly overbearing at times, the detailed nature of the empirical evidence and explanatory use of interview quotations gives a real insight into the complexities and difficulties of life in exile and reflects a balanced approach to a politicised subject matter. The author points out that increased public awareness of refugees and asylum seekers has not been matched by improved understanding, but rather by growing hostility. The lack of "voice" and social and economic power of marginalised communities often lies at the heart of dominant ignorance and as such this book attempts to redress the balance. From: www.ashgate.com

IOM Counter-Bulletin. Campaign to combat global migration management (European noborder network), ISSN 06-2002, pp4, free. The International Organization for Migration (IOM) has received increasing and widespread criticism, amongst others by Amnesty International, for their involvement in the emerging migration management regime in Europe and elsewhere. This *IOM Counter-Bulletin* traces the history of the IOM, created during the Cold War to capitalise on and promote emigration from Communist states, to the present, where it has involved itself in such diverse issues as female "trafficking", "voluntary return" programmes, compensation payments by companies involved in the exploitation of Nazi slave labour to more recent plans of running refugee camps outside Europe. A common factor in its activities is the IOM's self-portrayal as humanitarian, migrant-loving and justice seeking, whereas the reality has shown it to be involved in the direct implementation of EU governments' policies on migration management. Available from: www.noborder.org

Green Pepper. Autumn 2002, pp34, E5. This issue deals exclusively with border issues: from racism and nationalism, detention, labour unions and migration, globalisation, EU legislation, border camps, the Schengen Information System and the control of female migrants through anti-trafficking legislation, the articles provide a refreshing and critical analysis of the issue of migration and its treatment by industrialised centres. A recurring theme is the inherent racism of migration controls and the necessity to resist them. Available from: Green Pepper, CIA Office, Overtoom 301, 1054 HW, Amsterdam, Netherlands, Tel: 0031-20-6831021.

A Common Policy on Illegal Immigration (with evidence). House of Lords Select Committee on the European Union. Session 2001-01, 37th Report, pp166, £20.50. This detailed and balanced report takes into account evidence given by over twenty organisations and individuals. Although it remains within the dominant conception that migration management is absolutely necessary, underpinned by the empirically

questionable claim that "illegal immigration poses a serious problem to almost all the Member States and to the EU as a whole", it recognises the relationship between the increase in undocumented migration and the near impossibility of legal immigration and is therefore probably the first official UK report to recommend the regularisation of undocumented migrants in the UK as well as urging for more positive immigration measures. Regularisation, however, should only be initiated on an individual basis, in fear of creating a "pull factor" for migration. Available from: The Stationary Office, PO Box 29, Norwich NR3 1GN, Tel: 08457 0234747, Fax: 0870 600 5533, order online: www.tso.co.uk, the text is also available free on the web: www.parliament.the-stationery-office.co.uk/pa/ld200102/ldselect/ldeducom/187/187.pdf

LAW

NORTHERN IRELAND

Lawyers intimidated by police

A report by the Police Ombudsman's Office into police harassment of lawyers and barristers in Northern Ireland has found fifty-five solicitors and barristers who said that they had experienced "intimidation, harassment or threats from the police." The majority of the incidents took place before the Ombudsman's office went into operation in November 2000. Over half of these respondents said that they were not the victims of a single incident but "frequent targets" who "had experienced incidents of mistreatment...three or more times". The "inappropriate" behaviour included "defamation, physical threat, threat of arrest and sectarian abuse", while more serious forms included accusations of involvement in terrorist activity and threats that their names and addresses would be given to a terrorist organisation. Most did not make a complaint, even about the most serious incidents, because "they felt that the police would not do anything about them." The report notes that "there are a number of lawyers who appear to have been frequent targets of this type of behaviour from the police."

The report was published on the eve of the fourth anniversary of the murder of human rights solicitor Rosemary Nelson at the hands of loyalist paramilitaries working in collusion with the Royal Ulster Constabulary. As the Committee on the Administration of Justice (CAJ) has pointed out, the timing allowed an opportunity to reflect:

upon the risk that some barristers and solicitors run in pursuing their chosen profession and the importance of taking all necessary steps to protect them against intimidation and harassment.

The risk is all the greater considering that "relatively few of the 2,834 solicitors and barristers in Northern Ireland routinely do work which brings them into conflict with the police."

Surprisingly, given the recently published summarised findings of the Stevens inquiry into loyalist/police collusion, the Ombudsman asserts that there is no evidence to suggest any police involvement in the murder of Pat Finucane.

The Police Federation of Northern Ireland has described the Ombudsman's report as "nothing more than a publicity stunt". In a more considered response the CAJ, recalling that "in the past Northern Ireland has been almost entirely dependant on international bodies" (such as the UN Special Rapporteur) to monitor police abuses, says that "anything that helps make the work, and ultimately, the lives of solicitors safer, is an important advance". It sees the real test in "what action will result from the Ombudsman's findings."

Police Ombudsman for Northern Ireland "A Study of the treatment of solicitors and barristers by the police in Northern Ireland" March 2003, <http://www.policeombudsman.org>; Just News, March 2003, CAJ website:

ITALY

Court annuls release of activists charged with "subversive association"

On 7 May 2003 the Court of Cassation in Rome annulled the decision taken by Catanzaro court to release activists (*Rete del sud ribelle*) who had been arrested on 15 November 2002, charged with "subversive association" and political conspiracy against the state by Cosenza prosecutors (see *Statewatch news online, November, December 2002*). The appeal by Cosenza prosecuting magistrate Domenico Fiordalisi was based on irregularities in the hearing in Catanzaro, and undue influence exercised by a demonstration outside. Defence lawyers stressed that the appeal was based on an interpretation of laws on "subversive association" and "political conspiracy" that dated back to fascism. The Court of Cassation accepted the appeal on the grounds that there were "procedural" irregularities in the composition of the court (ie. different judges should have heard the case). This means that a new hearing will have to take place in Catanzaro before a court selected through an "appropriate" process to decide if the activists should be released or not, although they will not be freed in the meantime. If the Court of Cassation fails to give instructions to the future court regarding the nature and consistency of the charges against the accused in the document explaining its ruling, the "subversive association" charges may be upheld.

According to the *Confederazione Cobas*, a trade union movement to which some of the defendants in the *Rete del sud ribelle* case belong, past Court of Cassation jurisprudence argues that such irregularities are a merely internal issue, which does not affect court decisions that have already been taken. The *Confederazione Cobas* has been regularly targeted following events at the G8 summit in Genoa in 2001, with raids on its Taranto offices, confiscation of IT material, and charges brought against some of its members for "psychological participation" in disturbances in Genoa.

Confederazione Cobas statement 10.5.2003.

SPAIN

Controversial award to "victim of terrorism"

On 12 March 2003 the Spanish Supreme Court rejected an appeal by the Basque Nationalist Party (*Partido Nacionalista Vasco*, PNV) against an award "of civil recognition for the victims of terrorism" granted to Melitón Manzanos on 19 January 2001 as a result of his shooting by ETA on 2 August 1968 (see *Statewatch* vol 11 no 1). The law on victims of terrorism decrees that the families of those granted the award should receive 138,000 Euros compensation. Manzanos was head of the political police (*Brigada Politico-Social*) in San Sebastian, renowned as a symbol of repression in the Basque Country under general Franco.

The award, made in 2001, outraged left and nationalist parties, with the PNV calling for the award to apply from the start of the democratic regime in 1975, rather than 1 January 1968, during the dictatorship. Different groups, including the PNV and the United Left (*Izquierda Unida*), appealed against the decision. The Supreme Court heard testimony from persons who were tortured by Manzanos who described the award as "an insult to citizens", and explained that "kicks, slaps and truncheon blows" were part of his interrogation tactics, as well as the "bag" placed over prisoners' heads to make them struggle for breath.

Manzanos' award was confirmed by the Supreme Court based on his killing by a terrorist group, which was not in question, and is the "only objective criteria" for granting the award. Furthermore, it appealed to a spirit of national reconciliation as a foundation of Spanish democracy:

One of the basic pillars of our democracy is that it has allowed the integration of all those who have accepted democratic principles, without any memory of their previous life trajectory from a political perspective.

Thus, according to the Supreme Court, it would be unfair to deprive Manzanos of the award, because his "death at the hands of terrorists" deprived him of the option of "accepting democratic values", in the same way as "the immense majority of Spanish people had". The Supreme Court also noted the important contribution made by "personalities of considerable political importance in the previous regime" to Spanish democracy.

El País, 16.1.03, 13.3.03, 1.4.03.

Law - new material

How the Inquest system fails bereaved people. INQUEST's response to a consultation paper on death certification and the coroner services in England, Wales and Northern Ireland. INQUEST, December 2002, pp. 72, £10. Available from INQUEST, 89-93 Fonthill Road, London N4 3JH.

Lawyers fear review body is failing the innocent, Bob Woffinden. *Times Law*, 29.4.03, p.5. Article on the Criminal Cases Review Commission (CCRC), a body established six years ago to identify miscarriages of justice. After its launch it was criticised by campaigners for effectively stanching a flood of overturned convictions during the 1990s (ie. Birmingham 6, Guildford 4, Bridgewater 4, Cardiff 3). Woffinden records a new wave of discontent, noting "that it is failing to refer meritorious cases to appeal, taking too long to consider those that are referred and rejecting some just to improve clear-up figures."

Recent developments in UK human rights law, Nicholas De Marco. *Legal Action* May 2003, pp.25-29. This article reviews recent cases involving human rights law in UK courts.

Age and the Northern Ireland Criminal Justice System. *Northern Ireland Office* 2003, pp. 75 (ISBN 1 903686 08 3). Statistical data and research findings on comparisons between different age groups in relation to prosecutions, convictions, sentencing and imprisonment involving the Northern Ireland criminal justice system. Also includes chapters on "victims" and "fear of crime".

MILITARY

Military - new material

Brigadier 'led rogue spying on Russia', Liam Clarke. *Sunday Times* 27.4.03. This piece reports allegations of unauthorised espionage against Russia after the fall of the Berlin wall made by a former RAF intelligence officer in Germany. The allegations are made against Brigadier Gordon Kerr, the commander of the Force Research Unit (FRU) in Northern Ireland during the 1980s. Kerr's activities were exposed when he tried "to use staff and equipment from Brixmis", (the British liaison mission to Soviet forces in Germany). He is reported to have been reprimanded and a promotion was delayed. Clarke also alludes to the burning down of the offices of the Stevens inquiry into the FRU's activities in Northern Ireland in 1989, claiming that it was carried out "by the Controlled Methods of Entry Squad, a sister unit of the FRU based with the Special Intelligence Wing at Ashford."

We see too much. We know too much. That's our best defence. John Pilger. *Independent* 6.4.03. Wide-ranging article that uses history to dissect the "propaganda and corrupt journalism" that has accompanied

the invasion of Iraq. Among others he cites Labour MP Tam Dalyell who accuses Tony Blair of war crimes and Palestinian writer Ghada Karmi who argues that "a deep and unconscious racism" has elevated Saddam Hussain from a petty local chieftom, albeit a brutal and ruthless one, to a figure "demonised beyond reason".

My part in the dirty war, Martin Ingram. *Guardian* 16.4.03. Martin Ingram is a pseudonym for a former soldier who for many years was "a member of a covert army squad, the Force Research Unit" (FRU) which "recruited and ran agents within paramilitary organisations" in Northern Ireland. The FRU is at the centre of an investigation by Metropolitan police commissioner John Stevens into collusion with loyalist paramilitaries, a fact that Ingram confirms.

Our last occupation, Jonathan Glancy. *Guardian* 19.4.03. During a recent demonstration organised by students against the invasion of Iraq a handwritten notice was stuck to a statue of Winston Churchill outside the Houses of Parliament. It read: "He used WMDs in Iraq first". Police officers ordered that it be taken down and the kids refused, saying "it's true". The policemen tore into the offenders before ripping the poster down and shredding it in front of them. In his article Glancy reprises the period of British rule, when "Iraq proved a useful testing ground for newly forged weapons of both limited and mass destruction, as well as new techniques for controlling imperial outposts and vassal states." Churchill defended the use of chemical weapons against "recalcitrant Arabs" saying: "I am strongly in favour of using poisoned gas against uncivilised tribes...[to] spread a lively terror..."

POLICING

WALES

Victim criticises delay in justice

Francisco Borg, one of two Cardiff youths who were the victims of a racist attack and were then attacked again by police officers when they attempted to report the first incident, has won £40,000 compensation from South Wales police. The first assault, by a gang of white men with links to the National Front, saw the men's car surrounded, its windows smashed and a pitbull terrier set on them. When they attempted to escape they were stopped by police officers, who had observed the incident take place, and sprayed them with CS gas. Both of the men were charged with violent disorder. The charges were only dropped when it was revealed that the incident had been captured on CCTV. In August 1988 two of the gang were convicted of violent affray at Cardiff crown court and received light jail sentences; a third man was sentenced to carry out community service (see *Stawatch* vol. 8 nos. 3 & 4, 5 and vol. 9 no. 6).

Following complaints by the men about the South Wales police force's handling of the incident an investigation was carried out by South Wales police, under the supervision of the Police Complaints Authority (PCA). This found "no grounds for criminal charges against any of the police officers" involved in the arrest and "determined that racism did not play any part in the police actions." Five police officers were disciplined over their handling of the attack in May 2000. Francisco Borg then brought a civil action against the police force for wrongful arrest, false imprisonment, assault, negligence and malicious prosecution which came to court in April 2003. The actions saw South Wales police agree a settlement in which they paid Mr Borg £40,000, admitting liability for false imprisonment and "the consequential technical issue of assault". The police force press release noted that "There is no admission of negligence, malicious prosecution or that excessive force was used."

Commenting on the case Mr Borg complained at the length of time it had taken for his case to be resolved: "I've achieved some justice, but this should have been sorted a long time ago".

He pointed out that "we were the victims in this, and they ended up arresting us". Compensation "can't change what happened on the day", he said.

South Wales police statement 24.4.03; BBC news online 23.4.03.

UK

"Utterly misguided" name and shame campaign halted

Essex constabulary's campaign to "name and shame" convicted criminals, came to an abrupt halt in February after the high court found that their plans infringed upon their intended victim's human rights, (see *Stawatch* vol 12, no. 6). The police force had planned to put up 40 posters in the Brentwood area with the name and photograph of a local man who had been sentenced to three and a half years for burglary and car crime. They argued that the poster campaign would discourage others from crime "and show law-abiding citizens that criminals were being caught". However, Sgt Piers Quinnel, one of those responsible for dreaming-up the scheme, insisted that the intention "is not to humiliate". The high court disagreed with Quinnel and the man's legal representatives won a temporary injunction banning the posters.

Essex police argue that a "risk assessment" had taken into account the impact that the campaign would have had on the man's mental health. The assessment also concluded that it would not make the target's relatives vulnerable to revenge attack. However prisoner's advice groups have castigated the campaign as "utterly misguided". Lucy Gampell, of Action for Prisoners' Families, described it as "a serious infringement on the right to privacy for the family of the prisoner". She added, "The real victims of this initiative will be the family members of this offender and other families to be named in future campaigns". An Essex police spokesman said that the force, "is considering its position". Plans to extend the name and shame campaign to forces in London, Greater Manchester and Sussex have been put on hold.

Police Review 7.2.03; Guardian 3.2.03.

UK

New "lethal weapon" for police

Despite safety widespread concerns, five police forces - Northamptonshire, Lincolnshire, Thames Valley, North Wales and the Metropolitan police - have been equipped with Tasers, a "less-lethal" hand-held weapon that incapacitates individuals with an electric charge. The stun-gun is shaped like a pistol and fires a barb-tipped dart for up to 7 m. to deliver a high-voltage shock (50,000 volts in the US version of the gun). The charge induces a loss of some voluntary muscle control and its effect was described as "extremely painful" by one firearms trainer who had tested it. At the launch of the weapon in Northampton Paul Acres, the Hertfordshire chief constable, said that it was safe to use:

There is no evidence of any direct link between the use of Tasers and deaths but there have been occasions when people who have been "Tasered" have died. But there have been extenuating circumstances

However, Robert Parker of Amnesty International UK said:

The medical effects of Tasers have not been independently tested. Until they are proven safe, they must be treated as lethal weapons.

In the United States, where over 1,700 law enforcement agencies are armed with Tasers, Amnesty International USA has recorded 16 deaths of people after they were hit by darts from the stun guns in Los Angeles; three Florida men died in 2002 after being

subdued with the devices. The organisation warns that "certain medical conditions, including drug use and heart disease, may increase the risk that they will be lethal." William Schultz, executive director of Amnesty USA said:

Electro-shock weapons are promoted as legitimate tools for law enforcement, when in fact they are weapons of terror used to torture men, women and children... Corporations cannot disguise these weapons as reasonable police equipment for crime control when the design is intended to inflict severe pain.

Police Review 7.2.03; *Times* 18.4.03; *Independent* 18.4.03; <http://amnestyusa.org>; *Amnesty International UK website*, <http://amnesty.org>

Policing - in brief

■ **Italy: Legitimate defence in Giuliani case:** Mario Placanica, the *carabiniere* on trial for the shooting of Carlo Giuliani during the G8 summit held in Genoa in July 2001, has been found to have acted in "legitimate self-defence". Elena Dalouisio, the *giudice per la udienza preliminare* (gup, judge for preliminary hearing), also ruled that his use of a weapon was legitimate, necessary and aimed at being as inoffensive as possible. She also accepted a ballistic examination indicating that a piece of concrete may have diverted the shot, which was heatedly contested by prosecutors. Giulio Giuliani, the father of Carlo, said he will seek to have the case re-opened. *Repubblica*, 6.5.03.

■ **Spain: Malaga police cell blaze case re-opened:** A Malaga tribunal has ordered the case concerning the fire in a police cell that resulted in the death of seven Moroccan migrants on 27 December 2002 (see *Statewatch* vol 13 no 1) be re-opened to determine whether any police officers or officials should face criminal charges, due to negligence, or due to inadequate fire safety measures. The ruling accepts an appeal by regional NGO *Andalucía Acoge* after the investigating magistrate dismissed the case on 17 February 2003 because the authors of the fire (two of the detainees) had died, and no criminal responsibility for police authorities was envisaged. José Luis Rodríguez, a lawyer for the relatives of two of the victims and *Andalucía Acoge* president, welcomed the decision as "an opportunity to ascertain the political responsibilities that exist and the alleged criminal irregularities that may be brought out by the investigation". On 6 February Interior Minister Angel Acebes told the Congress Justice and Home Affairs Commission that according to the Malaga fire service emergency fire facilities and procedures in the police station were "adequate", although he conceded that it may have been better to use available empty cells in the holding quarters rather than detaining 17 persons in a single 7 x 4.5 metre cell. *Izquierda Unida* MP José Luis Centella considered detaining the 17 prisoners, who were awaiting expulsion, in such a small cell "inhuman". Lawyers for the deceased argued that there is a difference between fire prevention facilities being "adequate", and adequate security measures being taken, because "no fire prevention system was used in the police station before the arrival of the firemen". *El País* 7.2.03, 5.4.03.

■ **Spain: Reparation withdrawn:** A protestor who was seriously injured by a gas canister fired by police during a demonstration in Pamplona (Navarra) saw the Supreme Court revoke an order by the *Audiencia Nacional* for the interior ministry to pay 10 million Ptas. damages to Mikel Iribarren Pinillos. The Supreme Court disagreed with the previous ruling that the police "acted in a disproportionate manner", arguing that the plaintiff participated in an illegal demonstration during which violence occurred, seriously disturbing public order. Thus, the riot squad's intervention was not deemed "disproportionate", and the injury was not shown to have been caused deliberately, but by chance. One of the judges disagreed,

stating that he did not feel that the plaintiff had "the legal duty" to accept having to "put up with the impact of a gas container in the head, fired by the security forces at a very short distance". *El País* 1.3.03.

■ **Spain: Surveillance criminalises South Americans:** After the scandal caused eighteen months ago by *Operación Ludefco*, when the General Director of Police ordered the surveillance of Colombians and Ecuadorians in order to establish databases on them and to prevent their entry into Spain (see *Statewatch* vol 12 no 1), the same agency is up to its old tricks. In Madrid police put a note into post-boxes asking residents to call them if they see South Americans walking in the street at night.

■ **Spain: Policeman punished for unjustified detention:** A local municipal policeman from Madrid was found guilty of detaining a woman "for no reason whatsoever", got a six-year sentence and 8 years disqualification from public service. The policeman knew the woman (a foreigner who had been nationalised Spanish) because she was a witness against him in a trial in 1994. He is alleged to have threatened her repeatedly in the street, saying "I won't stop until I have you expelled from Spain". The arrest occurred on 24 March 1999, when the policeman asked the woman for her identity card, before handcuffing and arresting her, throwing her to the ground and striking her. *El País* 14.3.03.

■ **Spain: mossos d'escuadra on trial for torture:** Sixteen officers from the *mossos d'escuadra* the Catalan regional police will be tried in relation to the beating of a Moroccan citizen, Driss Zraidi, in a police cell in Roses (Girona) on 4 August 1998. Ten officers are accused of torture and bodily harm, while the remaining six have to answer for their failure to intervene, stop or pursue the offences by their colleagues. The events reportedly happened at night when Zraidi refused to show officers documentation after committing a traffic offence, leading to a violent struggle during which an officer hurt his hand. Zraidi accused officers of repeatedly striking him in the cell, and a visit to a hospital showed that he had three broken ribs and injuries compatible with a beating. Zraidi claims that he was denied medical assistance in the police station, and that he was unable to talk to his lawyer properly because of the pain from his injuries. The judge at the preliminary hearing found that the officers used force in a proportionate manner to detain Zraidi, but argued that the trial must find whether such force was necessary, and whether the broken ribs were produced during the arrest or the subsequent attack. *El País* 9.1.03

■ **Spain: Policeman who sexually abused detainees jailed:** The Supreme Court confirmed a ruling by Palma de Mallorca court sentencing police officer Jaime Ramis Hidalgo to 12 years in prison for sexually abusing female detainees in the cells of a police station, and while patrolling the streets. The ruling found that five instances of sexual abuse had been proven, during which Ramis Hidalgo took advantage of his position monitoring police cells in the national police headquarters in Palma. One inmate was twice led away from her cell (in March and May 1999) to a hidden toilet area to be abused and was again abused, when Ramis Hidalgo spotted her while on patrol. Another detainee was sexually abused "no less than four times" in the toilet area and "once...in the cell itself". Others were embraced and kissed by the officer during their detention in the police station. *El País* 11.3.03.

■ **UK: New Metropolitan police riot training centre.** A £55 million Metropolitan Police Specialist Training Centre opened in Gravesend, Kent on 15 April. The 9,250 square metre facility, which includes a fake town centre complete with shops, banks, nightclubs and a pub, a housing estate and part of a stadium, will be used to train police officers for public order incidents. A life-sized section of an aircraft will be used to train "air marshals" to

respond to hijack or public order situations. Additional features include a laser video firing range, an assault house, several search houses and an eight storey abseil tower for practising roof entries into buildings. The centre was built by Equiton and will replace facilities at Lippitts Hill and Hounslow. It has accommodation for 302 people. Lord Harris, chairman of the Metropolitan Police Authority, in a pessimistic prediction on the future of UK policing, described the complex as "vital" to train police officers in riot and gun control and counter-terrorism. *Times* 16.4.03.

■ **UK: DNA tests on arrest.** The government announced in March that police officers will be given powers to take and keep fingerprints and DNA samples from anyone whom they arrest. The announcement triggers a huge extension of the national DNA database - at the moment police officers keep samples if a person is subsequently released or is acquitted. The system broke down because police forces routinely failed to delete from the national database thousands of records which should have been deleted. The decision comes after pressure from the chief constables of several large urban forces, but ignores evidence of irregularities and misuse of DNA samples from the United States. Earlier this year in Texas thousands of convictions based on DNA evidence were called into question after investigators disclosed poor standards, incompetence and contamination of evidence at American laboratories. One University of California criminologist examined eight cases and found that correct scientific procedures had not been followed in any of them. In February ACPO announced that it is considering opening a voluntary database "to help police identify victims after a terrorist attack on Britain." The proposed database would have to hold international DNA information said Chief Inspector Alan Clark from the British Transport Police. *Police Review* 7.2.03; *Guardian* 12.3.03

■ **UK: Fresh inquest into police killing of Harry Stanley.** In April the High Court ruled that there should be a fresh inquest into the death of Harry Stanley, who was shot dead by Metropolitan police officers in September 1999 (see *Statewatch* vol 10 no 2). Harry was shot in the head as he returned home from the pub carrying a table leg in a plastic bag, which the policemen mistook for a gun. The police officers, from the SO19 firearms unit, had received information reporting a man leaving a pub with a sawn-off shotgun. They claimed that Harry had aimed the table-leg at them, as if to open fire, forcing them to shoot him. The first inquest returned an open verdict after the coroner instructed the jury to reject the unlawful killing option, leading to the family's application to the High Court to have the open verdict from the first inquest quashed. Mr Justice Silber's judgement will be handed down at the end of April, but is expected to reflect the family's concern about the conduct of the original coroner, Dr. Stephen Chan. Outside the court Mrs Stanley said: "I want a fair inquest. I want justice." *Inquest press release* 27.4.03; *Miscarriages of Justice UK*

■ **France/Italy/Portugal/Spain/UK: The failure of police surveillance in the Mediterranean:** The filter system turned out to be a colander. Operation Ulysses, presented as sowing the seeds for a future European border police force, and undertaken between 28 January and 8 February 2003, (see *Statewatch news online*), turned out to be a resounding failure. During this period Ulysses failed to detain a single dinghy while, on the other hand, over 600 migrants reached the coasts of Andalucia and the Canary Islands. The programme directed by the Spanish *Guardia Civil* paramilitary police force, envisaged the participation of five frigates and patrol boats from the UK, Portugal, France, Italy and Spain, but all sorts of things went wrong. The UK withdrew on the day after the operation began. On the next day the Portuguese did likewise. The Italian ship failed to leave port due to the rough sea, and the French withdrew from the

programme after six days. The obstacles they experienced included a lack of a common working language (resulting in crews not understanding each other) and incompatible communication systems. The operation cost over 1,200,000 Euros.

Policing - new material

Sticky fingers, Lisa Bratby. *Police Review* 14.2.03, pp.27-28. Article on new fingerprint technology. Looks at Mason Vactron's development of the Super Fume (superglue) fingerprint retrieval system and quaser light technology, a light source that will show up fingerprints not caught by the Super Fume. The piece also discusses digital imaging, the process by which fingerprints are captured and photographed, that has been criticised because of its ability to remove or change the mark.

Annual Report 2001/2002. Independent Police Complaints Authority (The Stationary Office) pp122 or via web on: www.pca.gov.uk/news/2002report.htm

Police Complaints and Discipline: England and Wales, 12 months to March 2002, David Povey and Judith Cotton. *Statistical Bulletin* (Home Office) 04/03, 11.2.03, pp22.

A Commentary on Northern Ireland Crime Statistics 2001, Deborah Lyness (ed.). *Northern Ireland Office* (Statistics and Research Branch) 2003, pp132 (ISBN 1 90 3686 10 5). This report covers notifiable offences, offences cleared by the police, court proceedings, sentencing, prison population and crime victimisation. There are appendices on the criminal courts in Northern Ireland and sentences available to the court.

Police station law and practice update, Ed Cape. *Legal Action* April 2003, pp. 10-16. First in a new series covering developments in law and police station practice. This piece reviews new PACE codes of practice: Code A on stop and search; Code B on searching of premises and property found; Code C on detention, treatment and questioning of persons; Code D on identification and Code E on the tape recording of interviews.

Baton Rounds: report by the Omega Foundation for the Northern Ireland Human Rights Commission. Available from: NI Human Rights Commission, Temple Court, 39 North Street, Belfast BT1 1NA and on their website (under publications): www.nihrc.org

PRISONS

UK

Inspection of UK detention estate

A report published by Anne Owers, Chief Inspector of Prisons, into the UK detention estate - where refugees and asylum-seekers are held - has made serious criticisms of the safe functioning of the establishments reviewed. The inspection team visited Haslar, Lindholme, Campsfield House, Tynsley House and Oakington. They observed that perceptions of detainee safety were not high anywhere. The inspectors noted with concern that detainees felt particularly unsafe in the two Prison Serviceman centres, Haslar (where 10% felt safe) and Lindholme (15%)

At Haslar, the physical environment was unsafe - many detainees were in dormitories that were in effect cubicles without doors and with nowhere to isolate disturbed individuals. For detainees in all centres (except for Oakington) insecurity was heightened by the fact they were unable to obtain reliable information from the immigration authorities about the reasons for their detention or the progress of their case.

The inspection team noted that it is clear that staff in most centres were not sufficiently alert to, or trained in, the specific needs of immigration detainees. This was particularly apparent at

the two Prison Service-run centres, where both the attitudes of staff and the procedures were geared towards offenders. The provision of interpreters and translated information was poor in all the centres except Oakington. A major cause for concern at all centres was the absence of any specific provision to deal with the welfare needs and anxieties of those who had suddenly, and sometimes after extended periods of UK residence, found themselves detained indefinitely. Both Prison Service run centres still randomly strip searched detainees after visits. Healthcare, particularly mental health care, was an issue in most centres. Communication between centres, and with community health services that had provided, or would go on to provide treatment, was often poor.

Chief Inspectorate of Prisons "Inspection of five Immigration Service Custodial Establishments"; National Coalition of Anti-Deportation Campaigns press release 8.4.03; see: www.statewatch.org/news/2003/apr/Detentionstatereport.pdf

GERMANY

Privatising the prisons, with a little help from the UK

Between 24 and 25 March this year, around 40 representatives from the criminal justice, economic and political sectors met at a conference organised by the German association *Management Circle AG* on "Prisons - (Partly) Privatised Prisons as new area of Investment!". Speakers from law firms, businesses, the justice ministry, universities as well as from building and leasing sectors met to discuss the advantages and incentives for introducing a partial privatisation of Germany's prisons because "The penal system is expensive!", and can therefore also be very profitable. Speaker Ian Andrews, English lawyer and Solicitor of the Supreme Court of England and Wales did not need to convince the conference goers of the financial advantages of "Public Private Partnerships" (PPP), "Private Finance Initiatives" (PFI) or "output oriented financing of prison systems", because all of them had come there not to listen to critiques of the plan but to learn how and where to invest as well as about the legal remits and possibilities of the scheme. The conference even included a visit to a Berlin prison to "have a look inside", this after the informal get-together at which participants should "relax in a comfortable atmosphere and get into deeper conversation with speakers and participants!"

Although in Germany progress in privatisation has been slow due to constitutional concerns and legal restrictions, first attempts have already been made with the prisons in Waldeck and Neustrelitz in Mecklenburg Vorpommern. Another PPP prison is being planned, the *JVA Hünfeld* in eastern Hesse which is to hold 500 inmates (presented as a model project at the conference by Torsten Kunze from the Hessian ministry of justice).

The privatisation of the prison industry has shown to lead to a deterioration in prison standards in the US as well as the UK and private prison firms are not interested in rehabilitation or social causes of crime, because the more prisoners there are, the more profit they make.

These issues are addressed by prisoner support groups and anti-racist initiatives, the latter fighting against detention centres and their further deterioration with privatisation, including increasingly racist behaviour by security staff. In Germany. The only real resistance they are likely to meet is not the public concerned about civil liberties and a soaring prison population, but local residents fearing a drop in their house prices with prisons being built in their area. The planned PPP prison in Schlüchtern was shelved for that reason.

*Telepolis 26.3.03; www.heise.de/tp/deutsch/inhalt/konf/14469/1.html, *Jungle World* 19.3.2003; see: http://www.mcf.de/pdf_upload/03-*

6349web.pdf, www.hessen.de/justiz/

Prisons - in brief

■ **UK: HMP Holloway inspection.** In February 2003 the Prison Service was told by the Chief Inspector of Prisons, Anne Owers, to remove the 65 inmates under 21 still held at the jail. Anne Owers stated that "In our view, girls should not be held at Holloway." Parts of the jail were plagued by cockroaches; some units were infested with lice and fleas. The inspection team, which visited in July 2001, found that "No assessments of vulnerability and risk were being carried out, the regime was wholly inadequate, staff lacked essential documentation and no training plan meetings were taking place." There were 17 inmates with babies at the time of the visit and inspectors said new mothers were confined to their rooms for "long periods of time." Only cleaners were allowed to bathe more than two hours per week, so pregnant women and new mothers were denied regular showers. The prison was praised by the Chief Inspector for its suicide prevention procedures and treatment of inmates with drug problems. A spokesperson for Women in Prisons noted in response "Prison is not hospital, it's not drug rehab, it's not drug therapy, it's punitive...do we want to solve crime or incubate it?" *Office of Chief Inspector of Prisons: Report of a visit to HMP Holloway; BBC News 18.2.03*

■ **UK: Rioting at HMP Shotts.** HMP Shotts in Lanarkshire saw rioting again, on 4-5 April 2003. About 35 inmates were said to be involved, in protests and disruption at the National Induction Centre, where all inmates sentenced to 10 years or more serve their first 12 months. The top floor of the unit was severely damaged and one prison officer received hospital treatment for minor injuries. In January 2003, an investigation was launched after two serious incidents, including a siege involving 80 inmates. The protests at Shotts reflect poor conditions for prisoners across the Scottish prison estate. Shotts has a high level of prisoner-on-prisoner violence. Across the Scottish prison estate, 24 % of prisoners continue to "slop-out" in the absence of decent in-cell sanitation. There were 84 suicides across the Scottish prison estate between 1996-2002. *Miscarriages of Justice UK 5.4.03; Scottish Parliament Information Centre; BBC News 5.4.03*

■ **UK: Brutality complaints at HMP Full Sutton.** Prison support organisations report continued concerns following further complaints about staff brutality in the segregation unit at Full Sutton. In a report on the recent assaults on prisoner Charles Bronson in the Full Sutton segregation unit, Dr Bob Johnson, a one-time employee of the prison service, commented that "Perhaps most troubling, there is the suggestion of an under-culture of physical brutality which may run somewhat as follows: if a prisoner smashes property, then staff are expected to smash the prisoner." In 1994, *Fight Racism, Fight Imperialism* highlighted complaints of prisoners at Full Sutton segregation unit that a gang of eight to ten prison officers maintained a reign of terror, dragging prisoners from their cells and systematically assaulting them. The police are currently investigating fresh complaints about staff brutality in the Full Sutton segregation unit. *Fight Racism, Fight Imperialism April 2003; Miscarriages of Justice UK 5.4.03*

■ **UK: Campaign Against Prison Slavery.** The Campaign Against Prison Slavery was launched at a conference in Leeds on 1 February 2003. The Campaign aims to publicise and organise against the modern-day slavery which is embodied in the exploitation of prison labour. The Campaign points out that "In British prisons there have been savage cuts in education budgets over the past half-decade; any pretence at rehabilitating prisoners and empowering them with trade skills has now been abandoned. They are now seen as a readily exploitable work force, a Third

World colony in Britain's own backyard, cheap, non-unionised, available and literally compelled to work.. Private companies are making enormous profits from prison labour: £52.9 million in 1999." The Campaign, which aims to have a militant working-class orientation to the issue, began on 5 April by picketing branches of Wilkinsons, a company using prison labour to make stationery and household goods. Successful pickets were held in Brighton, Birmingham, Luton, Leeds and Nottingham. *Campaign Against Prison Slavery, The Cardigan Centre, Cardigan Road, LEEDS LS6 1LJ. E-mail: againstprisonslavery@mail.com*

■ **UK: Call for inquiry into HMP Brixton deaths.** Patrick Gavin is one of seven Irish men who lost their lives while being held on remand at HMP Brixton. On 9.4.03 at Southwark Coroners Court a jury returned a verdict of "Accidental death - contributed to by neglect by individuals within the prison service as well as Systems neglect." The families of the seven men are calling for an independent public enquiry into their deaths. *Contact Irish Deaths in Custody, Terry Stewart 07931 844969; email: ceartuk@hotmail.com; INQUEST press release; Irish deaths in Custody press release; Miscarriages of Justice UK*

Prisons - new material

Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 21 February 2002 and Response of the Government of the United Kingdom to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 21 February 2002. CPT 12.2.03. Examines the treatment of eight prisoners held under the Anti-Terrorism, Crime and Security Act 2001, since the UK's derogation from Article 5(1) of the European Convention on Human Rights. Recommendations include "reminders" to Belmarsh prison officers that "force should only be used as a last resort" and that "forms of ill-treatment, including verbal abuse, are not acceptable." Noting that the UK authorities have failed to provide prisoners' with access to a lawyer from the outset of detention, the CPT "recommends that steps be taken to ensure that...the right of access to a lawyer is guaranteed as from the very outset of custody". The Committee is also critical of the conditions of detention, recommending "that all prisoners are guaranteed the basic requirement of at least one hour of outdoor exercise every day." On health care the report notes "particular concern" on the "provision of psychological support and/or psychiatric treatment."

RACISM & FASCISM

UK

BNP trebles seats in local elections

The British National Party (BNP) put up a record number of candidates at the local elections on 1 May, contesting 221 seats, compared to 68 last year. The following day, results showed that the fascist organisation held sixteen council seats trebling its previous total of five. In the North-east, an area that the BNP had targeted, they failed to win a single seat in Oldham, despite standing ten candidates including party leader, Nick Griffin. In Sunderland, where the BNP ran a particularly vindictive campaign against asylum-seekers they also failed to win a seat.

However, in Burnley, Lancashire, where they already had

three councillors, the BNP gained five new seats bringing their total to eight and making them the second largest party, behind the Labour Party, on the council. As has been pointed out by the Institute of Race Relations (IRR), they mainly won seats in the white, middle class areas where there appears to be a significant number of former Conservative voters who have been influenced by the BNP's "ideal" policy of "an all white Britain". The BNP predict that they will gain overall control of the council by 2004, and the IRR warns that this claim "should not be lightly dismissed".

A second target area for the BNP was the West Midlands, a region where racist and fascist organisations have historically strong links. The BNP gained two seats on Sandwell borough council and also took seats in Dudley and Stoke-on-Trent, Staffordshire. A BNP splinter group, The Freedom Party (formed by disillusioned members at the end of 2000 after a falling out over financial matters) also contested seats in the Midlands. The Freedom Party won a seat on South Staffordshire district council, where ex-BNP deputy leader, Sharon Edwards, defeated the Conservatives. In Calderdale, west Yorkshire, the BNP picked up a seat and now have two council members. In the south the party gained a seat in Hertfordshire.

The BNP's success should not be overestimated, they hold just sixteen seats out of more than 22,000, and successful local campaigning cancelled out their challenge in Oldham. However, the government's policy of appeasing the far-right by adopting increasingly restrictive policies on immigration has proved counter-productive, opening the floodgates for the media to demonise refugees and asylum seekers using same language as the far-right. The results have prompted Labour MEP, Claude Moraes, to warn of the danger that the BNP could win a seat in the European Parliament in elections next year. BNP leader Nick Griffin has already met with French *Front National* leader, Jean-Marie Le Pen, to discuss a joint strategy to fight the European elections.

For a detailed analysis of the BNP's election results see Arun Kundnani "Local election results prompt new urgency in fight against BNP", <http://www.irr.org.uk>; The Coalition Against Racism - Unite to Stop the BNP campaign can be contacted at PO Box 263, Oldham OL8 1PZ. Tel. 0161 624 1060; Times 15.4.03.

GERMANY

Informant scandal halts NPD ban

The German government's attempted legal action to enforce a ban on the far-right *National-Sozialistische Partei Deutschlands* (NPD) has been thrown out of court because of dubious prosecution evidence provided by secret service informers who were active in the NPD (see *Stawatch Bulletin* vol 12 no 1). The government initially refused to disclose to the court the role of secret service informers, who were supposed to provide incriminating evidence against the far-right demonstrating that they had violated Germany's constitution with their racism and anti-Semitism as well as their involvement in attacks. The court criticised the government for refusing to inform the jury about the extent of the involvement of paid informers in the NPD; the government eventually admitted that at least one in seven of the party's regional and national leadership had at some point worked for the secret services. It was also revealed that informers within the party had acted as agent provocateurs. The presiding judge, Winfried Hassmer, said that "The fact that state informers were active within the party leadership makes their influence unavoidable. The proceedings have been dismissed."

A two-thirds majority would have been necessary for a continuation of the proceedings, which were initiated by the Upper and Lower Houses of Parliament and the government, but three of the seven judges voted against. Some MP's had criticised

the reliance on informants as unnecessary as there was sufficient evidence within the party's manifesto and actions to prove their unconstitutionality. Green MP Hans-Christian Ströbele supported the court's decision as a sign of the Federal Constitutional Court's independence from party political disputes and is now demanding an independent review of the use of secret service informants, their "effectiveness", supervision and cooperation. However, civil liberties organisations and other MPs have called for the re-launch of the campaign to abolish the secret services (there are 17 regional *Verfassungsschutz* offices and one federal one in Germany). They argue that not only do they not provide security from "internal threats", but they fundamentally violate democratic principles. Socialist (PDS) MP Ulla Jelpke commented that the:

scandal surrounding the informants again shows that the secret service departments will not be controlled by anybody nor reveal their hand. They are a state within a state, an alien element in a democratic society.

Arguments against the effectiveness of the secret services are supported by the fact that hardly any of their surveillance activities lead to prosecutions. More than 90% of proceedings initiated against mostly left-wing groups on grounds of a "terrorism", are thrown out of court for lack of evidence, but leave the victims to pick up the pieces and pay the legal costs.

Moreover, only in June 2000 did the government introduce new secret service interception powers, extending the relevant crime catalogue to include "incitement of racial hatred" and legalising the use of secret service evidence in legal procedures dealing with bans on political parties on grounds of unconstitutionality or bans of unconstitutional groups and associations (see *Statewatch* vol 11 no 3 & 4).

Another result of the NPD scandal is increased sympathy for the far-right in Germany. The NPD's youth organisation, the Young National Democrats (*Jungen Nationaldemokraten*), have portrayed themselves as victims of freedom of speech restrictions. They have attempted to exploit this by encouraging their supporters to play an increasing role in Germany's anti-war movement.

Jungle World 26.3.03, *The Independent* 19.3.03

Racism & fascism - in brief

■ **UK: Life sentence for racist murderer.** Steven Roberts, a member of the "Edinburgh Young Westburn Team" gang, was found guilty at Newcastle Crown Court in March of stabbing to death 28-year old Iranian asylum-seeker Peiman Bahmani as he defended the home (where he had been sent to under the Home Office's dispersal scheme), (see *Statewatch* vol 12 no 5). The killing came after warnings to the police about an escalation of racist attacks on Iranian asylum-seekers and refugees had been ignored, leading to allegations of police "indifference". Roberts had been involved in a number of earlier attacks, involving death threats and racist abuse, on Peiman and his friends before stabbing him to death at the end of August 2002. During the trial Roberts had said that he was acting in self-defence, but his claim was "completely rejected" by Mr Justice Henriques who told him: "This was a wicked and shocking killing." At the time of the stabbing Roberts was on bail for attempted murder after fracturing a man's skull during a machete attack. Roberts' friend, Joseph Rutherford, was found guilty of affray; Gavin Gash was cleared on all charges. *International Federation of Iranian Refugees*, BM Box 1919, London WC1N 3XX. Tel. 07931 866 985, www.hambestegi.org; *North East Campaign for Asylum Rights*, PO Box 787, Newcastle NE99 1DJ

■ **UK: Asylum centre custody officer was fascist election candidate.** A local newspaper, the *Bedford Times & Citizen*, has exposed a custody officer working at Yarl's Wood asylum

detention centre as a former British National Party (BNP) election candidate. Richard Green, from Goldington, joined the BNP in 2000 and told the newspaper that he allowed his membership to lapse before he was employed by security firm Group 4 in November 2002. However, his membership of the BNP was not considered an impediment as he was vetted for the job, and employed as a detention custody officer and physical training instructor. The North East Bedfordshire MP Alistair Burt has demanded that the government explain how a man with his "political view of immigrants and the immigration process" was employed. He said: "I am surprised someone with a BNP background would be considered appropriate to work at Yarl's Wood and will ask ministers about vetting processes to see if they consider sufficient safeguards are in place." *Bedford Times & Citizen* 4.4.03.

Racism & fascism - new material

CARF. Campaign Against Racism & Fascism, no. 70 (Spring) 2003, pp.16. Articles on the "hate industry" (Britain's tabloid media and its obsessive campaign against asylum seekers), Blunkett's latest court defeat on asylum provisions and an important review of anti-terror legislation in the UK, including a table of "Arrests under anti-terrorist legislation since 11 September 2001"

State of the BNP, Nick Lowles. *Searchlight* February 2003, pp17-21. Article on the BNP's regional organisers and current leadership in the run-up to the May council elections.

Labour's hypocrisy on race, Imran Khan. *Guardian* 22.4.03. This piece, by the solicitor for the family of Stephen Lawrence, considers the impact of the Macpherson inquiry for race relations. A decade after Stephen's murder and despite Macpherson's findings, Khan finds that it is still necessary to offer a definition of institutional racism: "when discrimination becomes institutionalised, we are dealing not with individual prejudice but with power. That power is derived from racist laws, constitutional conventions, judicial precedents, institutional practices - all of which have the sanction of the state and the blessing of our establishment." Khan acknowledges that progress has been made but this has only brought us to "the point of accepting that there is a problem." He points towards the government's treatment of asylum-seekers which has opened the floodgates to attacks and exploitation by the BNP.

Antifaschistisches Infoblatt. No.58/2003, 58 pp, E 3.10. The compensation payments for victims of the Nazi regime is the main theme of this issue. Articles outline the history of the continued resistance of the German state to pay reparations to the victims of fascism, from the dispossession of Jews through the 1935 Nuremberg Race Laws and the related "Aryanization" of property to the victims of forced labour in mainly Eastern European based concentration camps. This contribution comes at a time when the German government is trying to put the issue to sleep after some compensation was legally enforced through American and Eastern European initiatives. Available from: *AIB*, Gneisenauerstr. 2a, 10961, aib@mail.nadir.org, www.nadir.org/nadir/periodika/aib.

European Race Bulletin. No 43 April 2003, pp. 39, ISSN 1463 9696. Updates, news and features on developments in European countries on issues of racism and immigration. Available from: *Institute of Race Relations*, Tel: 0044-20-7837 0041, info@irr.org.uk, subscription: £15 for annual online subscription.

Roma Rights - Quarterly Journal of the European Roma Rights Centre. no. 3 & 4, 2002. This issue critically assesses the segregation (and the related ghettoisation) and the call for desegregation of Roma communities in particular in the area of education and housing and especially in eastern Europe. It includes well-researched articles with statistics and details on the issue in the Czech Republic, Hungary, Slovakia and Lithuania, amongst others. Other articles discuss the possibilities of resistance and change through law, campaigns and initiatives. Also includes news updates on racism and discrimination in

Europe as well as information on legal defence, advocacy, funding possibilities and education. Available from: European Roma Rights Centre, 1386 Budapest 62, PO Box 906/93, Hungary, Tel: 0036-1-413 2200, office@errc.org.

"Strafrechtlich nicht relevant" ("Not within the remit of criminal law"). *Rote Hilfe*, nos 2 & 3, 2002, C 2778 F., pp 32-33, E. 2. When Achidi J, a Nigerian migrant, died in Hamburg in December 2001 after he was force-fed emetics on suspicion of drug dealing (*Statewatch* vol 11 no 6), a Hamburg law firm initiated legal proceedings against the responsible doctor and police officer on behalf of the young man's parents. It took the public prosecution three months to even formulate a reply to the charge, six months later the authorities still had no investigation file on the case. After the law firm threatened action against the public prosecution, the latter finally claimed that a medical examination by a Berlin university clinic found the victim had died due to a collapse of his blood circulation system and a severe heart condition. Achidi was 19-years old and a medical examination prior to the use of emetics had not found such a heart condition. The article further provides detailed background information on the use of emetics and the arguments by doctors and lawyers against it. Available from: *Rote Hilfe*, Postfach 6444, 24125 Kiel, Germany, Tel & Fax: 0049-431-75141.

SECURITY & INTELLIGENCE

SPAIN

"Al Qaida" detainees released

Fourteen of the sixteen Moroccan and Algerian nationals arrested in Catalunya on 24 January 2003 suspected of links with Al Qaida and of planning terrorist attacks were released on 21 March. The operation followed a request to search a dozen homes from a French judge investigating a planned terrorist attack in Strasbourg in 2000. On 12 February *Audiencia Nacional* judge Guillermo Ruiz Polanco had demanded that the police provide some evidence to justify keeping the suspects in custody. On 19 February the French judge informed his Spanish counterparts that France will not ask for their extradition, as the detainees were not accused of committing any crime in France. The release on 21 March followed tests that were carried out on substances that were confiscated in a bottle and two containers. They revealed that what were suspected of being chemical or explosive substances to be used for terrorist attacks were in fact harmless cleaning products. Some forged documents were also found in the raids, although most of them turned out to be authentic. Two of the suspects are still in custody pending further investigations: one for possessing false documents and another for having electronic materials, including cables and mobile phones, that investigators claim could be used to activate explosive devices.

The findings are an embarrassment for the government, which played up the Islamic terrorist threat in the run-up to the war. An interior ministry press statement issued after the arrests in Barcelona and Girona on 24 January assured that "they had access to explosive and chemical products". José Maria Aznar, prime minister, used the arrests to justify his government's support for the war in Iraq by stressing that "they were preparing to commit attacks with explosive and chemical materials", and that "I hope and wish that what happened today in Catalunya will be useful to make many people take note that we are not talking about hypothetical or remote threats: we are talking about something that we have before us". References to the arrests were also made in a parliamentary debate on the war on 5 February to illustrate the links between Saddam Hussein, Al Qaida and the so-called "Spanish cell". On their release after

nearly two months' detention, one of the suspects argued that they had been used as an excuse for Spanish support for the war, "The fact that we were released after the war ended says it all", while another one said that "I won't buy any more bleach", ironically referring to one of the confiscated "substances".

One of the prisoners who remains in pre-emptive detention alleged being mistreated, and that his statement was taken at 4 a.m., with police officers threatening to send him to his "fucking country", where he would be killed. Three people detained in another anti-terrorist operation, in Valencia on 7 February 2003, and released without charge on 12 March, criticised their detention. One alleged that he was denied his medication, that he was left in a tiny, moist cell, with the light constantly switched on (stronger at night) and that he was twice blind-folded when the *Guardia Civil* were taking his statements. Their lawyers may file a suit for ill-treatment, and argued that "what happened is very serious and contravenes fundamental rights included in the Constitution.

El País, 6.2, 14.2, 20.2, 21.2, 26.2, 27.2, 14.3, 22.3.03.

SPAIN

Ex-CESID directors jailed for illegal phone-taps

On 4 April 2003, two former directors of Spanish military intelligence service *Centro Superior de Información de la Defensa* (CESID) were found guilty of the "illegal interception of telephone communications" of the left-nationalist *Herri Batasuna* (HB) offices in Vitoria, in the Basque Country. Emilio Alonso Manglano and Javier Calderón received three-year sentences, a fine and are barred from public office for eight years. Two CESID officers who were deemed to be the material authors of the interceptions received sentences of two-and-a-half years, a fine and were barred from public office for six years. In finding Manglano and Calderón guilty, the court argued that having ascertained that "important issues" were discussed by the heads of operative groups with the director, and deeming that the surveillance of a political party for over three years was such an issue, it follows that the directors of CESID when the interception started (Manglano) and when they were discovered (Calderón) would have known about it.

The Vitoria tribunal was critical of central government's failure to disclose relevant documentation "that directly concerned the facts that were the object of the investigation and responsible persons" although proof of the interception activities existed. Interference with the office's phone lines was discovered by a *Telefónica* (Spanish national telephone company) technician on 31 March 1998, and confirmed by the then Defence Minister, Eduardo Serra (PP), in the Defence Commission of the Spanish Congress on 21 April 1998. Serra recognised the existence of CESID operations in Vitoria, and justified them on the basis of obtaining "valuable information on the activities of the structure to support ETA" (preceding the illegalisation of HB's successor, *Batasuna*, several years later in March 2003 under the *Ley de Partidos Políticos*) for being deemed to be part of ETA's support infrastructure.

CESID was a largely unaccountable body as a result of the absence of legislation to regulate its operation. A scandal broke in June 1995 after the newspaper *El Mundo* published extracts of conversations recorded by CESID, alongside evidence that several public figures, including King Juan Carlos, had been under telephone surveillance. The ensuing investigation and trial in Madrid found that CESID had listened to "an infinity of citizens for years" even when their topics of conversation were irrelevant to national security, in violation of the Constitution. Manglano and his head of operations Juan Alberto Perote were sentenced to six months imprisonment for the repeated crime of

illegal phone-tapping, and five other CESID officers received four-month sentences.⁽¹⁾

CESID was replaced on 7 May 2002 by a civilian intelligence agency, the *Centro Nacional de Inteligencia* (CNI). The CNI bill seeks to introduce greater accountability and control over intelligence activities by the executive (through a government commission responsible for setting the Centre's annual goals), judiciary (through the requirement that a Supreme Court judge authorise interception or entry into private premises) and Congress (through supervision by a commission that oversees the use of secret funds for police and secret services). Areas of secrecy will remain, particularly with regards to exchanges of information with foreign intelligence services and international bodies, if cooperation agreements have confidentiality as a condition, (see *Statewatch* vol 12 no 1). Spanish journalist Nacho García Mostazo notes in his book *Libertad Vigilada* that CIFAS, a body to rationalise the intelligence capabilities of the armed forces (army navy and air force), was created in late 2000, shortly before the CNI bill was approved. CIFAS is not regulated by any law, other than a ministerial order specifying its internal organisation. Mostazo notes that this lack of accountability, together with defence intelligence services' involvement in a secret long-term military intelligence project known as the Santiago Programme (to be fully operational by 2008), limits the significance of replacing CESID with a civilian body to provide greater democratic guarantees.

1) Libertad Vigilada, Nacho García Mostazo, Ediciones B, Barcelona, January 2003, p. 260-3; 2) ibid., p. 265-7; El País 17.2.03, 19.2.03, 5.3, 22.3, 5.4.03.

Security - new material

Libertad Vigilada - El Espionaje de las comunicaciones, Nacho García Mostazo. Ediciones B, Barcelona, January 2003, pp.401. This book looks at the history of signals intelligence and investigations carried out into Echelon and related interception networks run by the American NSA and members of the UKUSA treaty for intelligence cooperation and sharing. It analyses recent developments such as efforts to develop a reliable voice-recognition and transcribing system, and asserts that US interception airdrops and facilities were set up in bases in numerous countries, including Chicksands (UK), San Vito dei Normanni (Italy), Karamursel (Turkey), Rota (Spain), Bremerhaven (Germany), Ezdell (Scotland) and the Azores archipelago (Portugal). The second section focuses on communications intelligence activities in Spain by Spanish, US and UK secret services and military agencies (see *Statewatch news online*, March 2003). Available from: *Ediciones B, Bailén, 84 08009 Barcelona, Spain.*

Spain: Phone taps violated privacy: On 18 February 2003, the European Court of Human Rights in Strasbourg announced its decision to unanimously find Spain guilty of contravening article 8 of the ECHR, which guarantees the right to private life. *El País* 19.2.03

Democracy, law and security - internal security services in contemporary Europe, edited by Jean-Paul Brodeur, Peter Gill and Denis Tollborg. Ashgate, 2003, pp362, hardback £45.00. A timely publication covering the role of internal security agencies plus studies on France, Belgium, UK, Spain, Hungary, Poland, Netherlands, Sweden, Canada and Germany. Although prepared largely prior to 11 September it provides essential analyses of the history, structures and practices of these secretive agencies.

UK: Data retention and access consultation farce

Government to allow access for crime purposes to records which can only be held for "national security"

In March the Home Office issued two consultation papers, one on the retention of communications data, the other on access to communications data. The deadline for responses is 3 June. The latter came about after the government tried to rush through a Statutory Order giving over 1,039 public authorities the right to request communications data - after widespread objections by civil society this was withdrawn on 18 June 2002.

The former, on data retention, dates from the passing of the Anti-Terrorism, Crime and Security Act in December 2001. Section 103 says that the Home Secretary has to issue a consultation paper before the government brings in a voluntary Code of Practice by statutory instrument. It has taken the Home Secretary 16 months to issue the consultation paper. The ATCS Act says that the Home Secretary can order mandatory data retention if the voluntary scheme does not work (Section 104). However, Section 105 limits this power to two years from the passing of the Act which will be 13 December 2003 - the Code is unlikely to be operative by this date so the Home Secretary will have to put through another statutory instrument extending his powers for another two years (Section 105.4).

This begs the obvious questions: In December 2001 the ATCS Act was rushed through parliament on the grounds that the new powers were urgently needed to combat "terrorism" - does this mean that the security, intelligence and police agencies do not have access to communication data to combat "terrorism" or does it mean they already have all the powers they need? Does excessive delay not tell us that data retention is more to do with combating crime in general than terrorism?

The retention of data - what the Act says

Under the Act the Home Secretary can issue a code of practice

(voluntary or mandatory) as is necessary:

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

(b) for the purpose of prevention or detection of crime or the prosecution of offenders which may relate directly or indirectly to national security" (Section 102.3, emphasis added)

The Act is thus unequivocal, the Home Secretary can lay down a Code for the retention of communications data which is directly or indirectly related to "national security".

What the government is trying to do is to extend this legal definition to cover crime in general and in the case of some agencies to those who deal with health and safety, trading standards and local authority agencies.

Home Office officials try to argue that the Home Secretary made it clear during the debate on the ATCS Act that it would apply to crime in general. What the Home Secretary may have said during the debate has no bearing on the legal situation, it is what the Act says that counts. Moreover, if every statement by every government Minister during the passage of legislation had legal standing the courts would be in chaos.

Whatever the spin and glossy consultation document says the government is assuming that the telecommunications industry will cooperate and that the unlawful practice of accessing communications data for law enforcement in general will become the norm.

Consultation - data retention

The consultation paper on data retention under the ATCS Act admits that powers are only available to retain data for the purpose of "national security" and related crimes but then refers to crime in general throughout. It states that the "Home Office

does not consider" that data retained for the purposes of national security "and not for any other reason, should prevent the police or other public authorities having access to that data when they can demonstrate a proportionate need for it" - ignoring the fact that "proportionate" is only relevant where an underlying power exists in the first place.

The Information Commissioner (the re-named Data Protection Commissioner) who was consulted sits on the fence by saying that in relation to data protection (as distinct from the underlying law) access would not automatically be "unlawful.. but that it may be in certain circumstances". The Commissioner's advice to communications service providers is that they should notify their office that they are processing data for the purpose of national security and crimes directly or indirectly associated (citing the text of s.102.3 of the ATCS Act) which can hardly be re-assuring if faced with a legal challenge. The Home Secretary, David Blunkett, has apparently assured the industry that he will stand side-by-side with them if they face any data protection or human rights legal challenges - which is pretty meaningless unless the Home Secretary is also sued.

Under the draft Code of practice subscriber information and telephony data (date, time, location etc) would be kept for 12 months and e-mail data for 6 months.

Consultation - access to communications data

Powers to access communications data is defined as traffic data (including location of the users of mobile phones), service data and subscriber data (names, addresses etc) under Chapter II of Part 1 of the Regulation of Investigatory Powers Act 2000 (see Statewatch vol 10 no 1).

Access under RIPA 2000 referred to current, "real-time" (as a conversation is happening for example) or to further surveillance - and not to data retention which only became an issue under the ATCS Act 2002.

The reason the Statutory Order was withdrawn last year was because it was revealed that some 1,039 public authorities would have the right to request access to communications data. The consultation paper seeks to justify access for a number of authorities such as the Office of Fair Trading, the Immigration Service and Serious Fraud Office but is utterly silent on exactly how many authorities will have these powers under a so-called revised list. This list still includes all local authorities in the country, only parish councils (who have few powers anyway are to be excluded). A list of potential authorities is provided on an obscure Home Office page (see below) which is interesting not just for some dubious justifications but because it shows that hundreds of thousands of requests for access to communication data are already being made by agencies even though there is no legal power to do so (except for those agencies directly specified

in RIPA 2000 like the police).

What is evident from the detailed information is that you cannot have hundreds of agencies authorising themselves to demand access to communications data. The paper is much exercised to find a mechanism to authorise them. One obvious option is judicial authorisation but this would be a "burdensome duty on the courts", another is the toothless Interception of Communications Commissioner (see below) which the Home Office favours.

Another option not considered is that all intrusions into privacy are serious and that access to communications data should be subject to the same level of authorisation as telephone-tapping and mail opening, that is by a warrant from the Home Secretary. However, correspondence released by *Privacy International* (PI) suggests this too would be meaningless. In a letter to Simon Davies, Director of PI, Jonathan Sedgwick, Private Secretary to the Home Secretary, explained the way the current Home Secretary authorises telephone-tapping and mail-opening warrants. No less than "four levels of officials" look at a new application before it is put to the Home Secretary which "does not substitute for the Secretary of State's own consideration". And how does the Home Secretary "consider" each of the 1,400-plus new warrants a year?

For David Blunkett, applications are presented orally and an official is on hand to answer any questions he might have on an application

If it were not so serious it is a procedure that would lend itself to a comedy sketch. Official: "Minister, today we have 50 terrorism, 30 drugs, 25 cyber-crime and 12 from the USA" Blunkett: "Are there any problematic ones?" Official: "Not this time Minister" Blunkett: "OK. What's next on the agenda?"

"Independent oversight" is to be provided by the Interception of Communications Commissioner which is hardly likely to engender public confidence. The holders of this post, and the Tribunal to which members of the public can complain about surveillance, were created under the 1985 Interceptions of Communications Act (now replaced by RIPA 2000) have never in the eighteen years of their existence upheld a complaint.

The paper ends with the following extraordinary observation that where "intrusion into privacy is possible" and when people are aware of this and oversight is in place:

Those who then engage in conduct, knowing from information placed in the public domain, that as a consequence their privacy is liable to compromise, accept the risk to their privacy

The two consultation papers are available on the Statewatch website on: www.statewatch.org/news/2003/mar/11comm.htm. To people who want to write to their communications providers (ISPs, phone and mobile providers) PI have prepared three "template" letters demanding full details of information held, see: www.statewatch.org/news/2003/may/10data.htm

Losing the "war on drugs"

Crisis and contradiction in international policy

In April 2003 the UN Commission for Narcotic Drugs (CND) concluded its annual meeting and Ministerial Conference of member states to mark the half way point in the ten year UN strategy: "a drug free world, we can do it!". Devised at the 1998 UN General Assembly Special Session (UNGASS) in New York, world leaders put their faith in the elimination or significant reduction in poppy, coca and cannabis cultivation.

Despite the positive spin to emerge from the CND gathering, it is impossible to disguise the failings of this strategy. Neither did the ministerial endorsement of the ten-year plan, and vague recommendations to enhance drug control strategies, mask the crisis in international drugs policy. The UK Home

Affairs Select Committee had called for a discussion of alternatives at the conference, "including the possibility of legalisation and regulation to tackle the global drugs dilemma"; the CND ministers subsequently expressed:

grave concern about policies and activities in favour of the legalization of illicit narcotic drugs and psychotropic substances that were not in accordance with the international drug control treaties and that might jeopardize the international drug control regime (1)

Losing the war on drugs

The UK is a signatory (along with almost all UN member states) to three UN drug control treaties (1961, 1971, 1988) that

enshrine the basic tenets of prohibition: the criminalisation of production, supply, and possession of specific drugs into domestic law. After four decades of the 'war on drugs' and untold billions spent on co-ordinated international drug control and enforcement, the market for illegal drugs continues to expand (estimates for the size of the international drug trade now range from £100-£300 billion a year, putting it on a par with the oil and arms trade). The negative consequences of these illegal markets expand accordingly, exacting a terrible toll across the world from producer countries such as Colombia and Afghanistan, to the deprived crime ridden inner cities of Western Europe. This crisis has essentially been precipitated by the collision of rising illegal drug use with prohibitionist policies formulated in an era when patterns of use were unrecognisable from those of today.

Unintended consequences

For the first time ever the UK updated drugs strategy 2002 refers to "*maintaining prohibition*" (as a deterrent for young people) (3). What the strategy excludes is the potential to address the unintended negative consequences of a prohibitionist approach. Just as with alcohol in 1920's and 30's USA, violent and deregulated illegal markets are inevitable when a policy of prohibition collides with a continued or growing demand for prohibited substances. Significantly, the negative impacts of prohibition in the UK, and globally, have expanded in proportion to the ballooning demand for illegal drugs over the past three decades.

The price of illegal drugs is artificially high. The price of a kilo of cocaine in Colombia is £1,000. In the UK it is £30 000 (4). This 3,000% profit margin not only attracts organised crime, it also makes street prices far higher than they would be in a legal market, leading to high levels of property crime and street prostitution amongst problematic users. That heroin use in the UK has increased by over 1000% since 1971 illustrates the extent to which the policy-making environment has shifted (5). This change has presented problems that could hardly have been imagined when the original UN drug control treaties were drafted, with some of the text dating back to the late 1940's.

Market forces

At the global scale the inflated prices of illegal drugs provide an extraordinary profit opportunity for trans-national criminal organisations, whether traditional organised crime networks, or newer terrorist groups. As an adjunct to illegal drug supply activities, such groups are invariably also involved in murder, assault, fraud, tax evasion, money laundering, intimidation and corruption.

At the national scale, for key drug producer countries in particular, the profits made from illegal drugs fuel corruption at all levels of government and the criminal justice system, undermining social development and endangering fundamental social structures. The recent UK Home Office research into the social and economic impact of illegal drugs in the UK estimated the costs in 2000 at between £10.1 and £17.4 billion. It calculated that 70% of this figure are "*victim costs of crime*" rather than the impacts of drug use itself (6). This research strongly suggests that the cost to society from drug use is eclipsed by the far greater burden generated by the crime that results when prohibition policies collide with rising use.

At the local level prohibition has created violent territorial battles ('turf wars') between rival drug gangs fighting to secure the large profits offered by illegal drug markets. This is particularly the case in socially deprived communities where rates of problematic drug use are highest (7). Police have also closely associated the alarming recent rise in gun crime with the development of territorial battles to control illegal drug markets. The Home Office estimates that 50% of all property crime is committed by the UK's approximately 300,000 problematic

heroin and crack users. These drugs are essentially worthless commodities that only assume huge value because of their scarcity and the risks carried by the chain of criminal suppliers. These inflated street prices fuel offending amongst problematic illegal users, a phenomenon not observed amongst problematic users of legal drugs.

Human Rights

There is widespread use of the death penalty for drug offences in violation of the UN charter of human rights. China routinely celebrates UN world anti- drugs day with mass executions of drug offenders, 64 being executed on June 27th 2002, and 54 the previous year (8). The CND have yet to publicly condemn this practice despite the UN Commission on Human Rights calling for a moratorium on *all* executions. Neither have they condemned the estimated 2,000 killings of drug-users in Thailand following a recent escalation of the war on drugs in that country.

An estimated 2 million people are imprisoned globally for drug offences, one quarter of the total prison population. This places a huge financial and human cost on society with little evidence of benefits. Furthermore, it is invariably the 'weakest links' in the illegal drug chain (peasant growers, drug 'mules', and problematic users) who feel the greatest impact of drug enforcement. The top players have the resources to evade legal consequences and bargaining power (as informants) if they are caught.

Indigenous cultures in some producer countries that have long traditions of medical and ceremonial uses of local drug crops (coca, opium and cannabis) have also come under attack through the criminalisation of traditional practices and aggressive eradication programmes.

Public health

The significant impact of the UN drug control policy focus on enforcement and interdiction is that health based interventions and harm reduction suffer from funding constraints and political obstacles. The result is higher rates of HIV/AIDS and other blood-borne diseases, more drug deaths from overdose and infection, and generally higher rates of drug related harm. Thus, many of the harms associated with illegal drug use are a direct result of their illegality, relating to unknown strength, impurities, inadequate information and a tendency to move to more concentrated versions of drugs (heroin and crack). Running prohibition and harm reduction policies concurrently creates a perverse situation where one set of policies is creating collateral damage that another set of policies is then seeking to reduce.

Environmental damage

Crop eradication using aerial fumigation, has been a corner stone of UN policy for over 20 years. It causes serious and wide scale environmental damage but has not been effective at reducing global drug production, which is so profitable that it relocates to new regions, often further exacerbating negative environmental impacts. Cocaine production in Colombia has more than trebled since eradication began.

Serious concerns have been raised over the UNDCP program (part funded by the UK) to develop mycoherbicides, fungus designed to attack specific species of drug crops. The concerns relate to dangers of epidemic spread, cross-infection of non-drug crops and threats to human health (9). If used without state consent these mycoherbicides would be classed as biological weapons in violation of the 1972 Biological and Toxin Weapons Convention.

Reviewing UN drug policy

In the wake of rising global drug use and production during the 1990's, calls grew for a review of the efficacy and viability of the

UN drug control system's enforcement oriented strategy. These calls were led by Mexico, which in 1993 called for the 1998 UNGASS to be convened. The idea was for a global review of anti-drug strategies, with a view to improving and adapting them for the next century. Unfortunately this review failed to take place due to pressure from states which advocated more forceful application of existing control policies as the only way to achieve the so far elusive reductions in drug supply and demand. Leading the objections was the USA, the spiritual home of prohibition and enforcement-led 'war on drugs' thinking. This pressure led to the rejection of a proposal to install an expert review committee to undertake an independent evaluation of drug control efforts and 'new strategies' at the very first pre UNGASS 'Prep-Com' meeting in Vienna in March 1997. Ultimately the 1998 UNGASS saw no meaningful evaluation or review of policy effectiveness or the wider impact of the UN drug control system's increasingly repressive approach. As a *New York Times* editorial put it, it was devoted to "recycling unrealistic pledges".

More recently a management crisis at the UNDCP resulted in the UN Office of Internal Oversight Services (OIOS) being called in to investigate. One of the OIOS reports concluded:

lacking was a consistent system for programme oversight in the form of monitoring implementation and assessing results. (...) Thematic evaluations were few and had not led to much-needed substantive discussions or changes in practice. There was no mechanism to formulate lessons learned and to feed them back into programme formulation and delivery. (10)

Available evidence suggests that CND led supply control efforts have, at best, had an impact that is marginal, localised and temporary. The CND has produced no evidence that any supply control programmes (including eradication, crop substitution or international enforcement and interdiction) have ever been effective in global terms. On the contrary, trends in production and use of the drugs crops singled out in 1998 have continued to rise. Heroin and cocaine are cheaper and more available than ever before in UK street markets (11).

A review of the UNDCP 2000 World Drug Report (by Carla Rossi, a board member of the European Monitoring Centre for Drugs and Drug Addiction) concluded that:

the volume cannot be considered of any value in terms of information, and even less so in terms of scientific rigor", and that it served "the aim of twisting the data in order to support pre-established theses that are not corroborated at all by real epidemiological observations" (12). The OISIS also concluded that claimed successes on the drugs front were "beyond the limits of credibility (13).

Contradictory agendas? UN drug-policy, the WHO, UNAIDS and UK drug strategy

In UN agencies outside of the UN drug control machinery (CND, INCB (International Narcotics Control Board), UNDCP (UN Drug Control Programme)) the concept of 'harm reduction' has rapidly gained ground and the World Health Organisation, UN Development Programme and UNAIDS use the term as a matter of course. The UNGASS 2001 on HIV/AIDS adopted a declaration that called for "harm reduction efforts related to drug use" and "expanded access to essential commodities, including [...] sterile injecting equipment". Similarly, harm reduction is now a central plank of UK drug policy thinking. In the 2002 update of the UK drugs strategy (p.3) David Blunkett called harm minimisation one of "our most powerful tools in dealing with drugs". (3)

By contrast the UN drug control bodies are extremely wary of the 'harm reduction' concept considering it "controversial in many environments" and stating that the term "has been used as a flag for a variety of causes and, as such, has been given disproportionate attention" (15). This equivocal stance towards harm reduction combined with the overwhelming focus on enforcement and eradication makes the CND increasingly isolated from the UN system, and increasingly at odds with

trends in UK and European policy development.

There is also growing divergence of views over how to address the current crisis between the UN drug control bodies and a number of key member states. This has in essence been caused by policy evolution and innovation amongst certain states (most in Western Europe but also including Australia, New Zealand and Canada) relative to the dogmatism and stagnation in UN drug control policy thinking.

On one side is the progressive European view which puts emphasis on tolerant policing, harm reduction and health based interventions such as needle exchanges, substitute prescribing, safe injecting rooms, and decriminalisation of possession. On the other side is the dominant US/CND view, that the 'war on drugs' must be pursued with renewed vigour, characterised by concepts such as 'zero tolerance', increasing militarisation of drug enforcement, harsher sentencing and crop eradication.

There is no question that sooner or later the European tolerance trend will run into the limitations of the UN conventions. It already touches the very edges of the letter and spirit of some articles. Most steps taken along this path so far are defensible in that they technically adhere to the conventions, but this defence already requires some creativity of interpretation and space for further experimentation and innovation is minimal. It is likely that the tensions between European drug policy developments and strict treaty adherence will be a major theme in Vienna.

Conclusion: barriers to reform

It should be unacceptable to UNDCP donor states, including the UK, that the UNDCP is not accountable to any meaningful evaluation of its programmes whatsoever. The UK should demand regular, comprehensive and independent evaluation of the effectiveness of CND policy and UNDCP initiatives and spending. Evaluation of spending should incorporate the wider impacts of current UN drug control policy on public health, crime, human rights and the environment. Appropriate indicators need to be developed so that impacts on these areas of concern can be satisfactorily evaluated. The level of drug seizures, for example, is not an adequate indicator of overall policy effectiveness. Targets should cover all indicators used in policy evaluation, not just those likely to show success.

In the short term it is important for the UK and other states exploring progressive policy alternatives to ensure 'room for manoeuvre' within the strictures of the UN treaties so that the development and implementation of UK harm reduction initiatives and other evidence based policy innovations are not undermined. In the longer term the UK must question its commitment to treaties that are entrenching counterproductive policy initiatives and creating obstacles to innovative policy development when they should be facilitating it. The 2002 Home Affairs Select Committee report on UK drug policy stated that

in the longer term we believe the time has come for the treaties to be reconsidered" (17)- paragraph 266. It then went further: "We recommend that the Government initiates a discussion within the Commission on Narcotic Drugs of alternative ways - including the possibility of legalisation and regulation - to tackle the global drugs dilemma. (17) -paragraph 277.

The political obstacles to effective alternatives to the drug war are enormous. Sadly drug enforcement is now a multibillion-dollar industry in which many powerful agencies have vested interests, often stifling serious high level debate. At the top of the pile sits the US and its domination of the UN drug agenda. The drug war has proved to be a useful tool for justifying foreign policy interventions that would otherwise struggle for acceptance. It is not something they will let go of easily.

Ultimately drug policy, as with any social policy, needs to be developed in a rational way based on evidence of effectiveness. If prohibition is ineffective alternatives need to be thoroughly

evaluated, and those alternatives inevitably include the possibility of state regulated drug production and supply.

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EU: Mass deportations by charter flight - enforcement and resistance

"Collective expulsion of aliens is prohibited" (4th Protocol (Article 4) to the European Convention on Human Rights)

For all the EU governments' hard line speeches on their clamp down on asylum, the one thing they have always failed to achieve is their deportation targets. Although the living conditions for asylum seekers in the EU have dramatically decreased over the past decade (detention, dispersal, no social services, racist attacks), their removal after failed applications has been slowed down by several factors. Contrary to common belief, these are not related to the EU government's international obligations under the ECHR.

Firstly, there is the refusal by countries of origin to take back their own and other nationals (this includes in particular the lack of identity documents and the unwillingness by refugees and migrants to disclose their nationality in fear of deportation, as well as stateless refugees); secondly, there is the resistance by refugees and migrants against their deportation as to them it is either death or economic destitution awaiting them (although in most cases deportations are not physically resisted); finally, there are the logistical and financial problems of forcefully deporting thousands of people: it is very expensive, not least due to the fact that for every forced deportation, the government has to pay wages and (return) flight costs for around four security personnel or police officers. Up to now, governments have used scheduled flights because they include landing rights (which are cheaper) and there have allegedly been deals between governments and airlines on taking deportees in return for the waving of carrier

sanctions. To enforce the deportation of the target number (2,500 a month according to the 2002 UK White Paper on immigration, nationality and asylum) individually, the governments would have to pay millions. Another important aspect here is the refusal by most airline companies to carry out deportation flights, since anti-deportation campaigners have started focusing on aviation companies for carrying out deportations. Or as one private security firm responsible for escorting deportations told the UK Houses of Commons home affairs committee during an enquiry on deportations: if it was not for British Airways, the number of those deported on scheduled flights would be "virtually nil".

For these reasons, EU governments and think tanks have come up with the plan of chartered deportation flights. It is difficult to pinpoint precise origins, but chartered deportation flights have occurred at least since the 1980's, albeit not regularly. In 1992, when in Hungary 1,200 refugees were round-up, 740 of them were immediately deported on charter flights to Damascus and Hanoi amongst others. The French have used charter trains to Marseille where refugees are then deported by boat to North Africa, a plan which encountered much resistance in 1993, when then interior minister Charles Pasqua ordered the French state railway company SNCF to conduct a feasibility study. Since then however, trains have again been used for deportations to France's coast. More recently, charter deportations have been stepped up in the EU in a drive to enforce

Member States' deportation targets, and they have started to occur in cooperation between EU member states, notably France, Germany, the Netherlands and Britain. The test case for chartered deportation flights was undoubtedly Kosovo. The UK government alone has deported over 4,000 people to Kosovo on charter flights over the past few years, and on 4 March this year, immigration minister Beverley Hughes confirmed at an inquiry into asylum and immigration removals that "Yes, we actually do a lot of charter flights...there have been weekly flights out to Kosovo..." And in fact, she "was very impressed" with the way the security firm dealt with the escort, so impressed she stayed "and watched the flight go".

But although most politicians view 'removals' purely in terms of a logistical problem, in reality, deportations are a serious human rights concern and resistance to them is strong. Deaths during deportation occur almost every year and eye witnesses report time and again that police and security officers violently abuse deportees. The use of sedatives and straightjackets, gagging, shackles and physical force are a regular occurrence on deportation flights. Only at the beginning of this year, another two people died on Air France flights after border guards used force to 'calm them down': the 52-year-old Argentinean Ricardo Barrientos and the 24-year-old Somali Mariame Getu Hagos, died during deportations on Air France flights on 30 December 2002 and 16 January 2003 respectively. At least 11 more such deaths have occurred in the past two years in Belgium, France, the UK, Austria, Switzerland and Germany. The common cause of death during deportation is 'positional asphyxia', in other words, people suffocate to death whilst they are being held down (see *Statewatch Bulletin* vol 11 no's 3&4). Since the introduction of charter flights, human rights organisations have become particularly concerned because abuse can now go unchecked, which is why in France, the Red Cross is now allowed to send a representative along to witness charter deportations, together with around 90 security personnel and police.

Charter deportation in EU policy

Joint charter deportations were already discussed during the Schengen process, driven by Germany. When EU governments were forced to make public the Schengen *acquis* in late 1996 after sustained pressure from their parliaments, not only the extent of Germany's driving force behind the restrictive development of asylum and immigration law became clear, but the German report on the Schengen 'progress' also emphasised that "repatriation through joint charter flight by Germany, France and the Netherlands has been successful and should be expanded."

Switzerland endorsed the practice of joint charter flights in 1993 through a Swiss-German readmission agreement which included a clause on joint quotas for deportation by charter flights, particularly to Kosovo. Switzerland again reinforced its deportation cooperation with Germany in December 1997, when it signed a Memorandum of Understanding with Germany which clearly foresees "common repatriation contingents" of third country nationals and the "use of common charter flights". In 1999, the Belgian interior minister Luc van den Bossche announced that as a result of the death of Samira Adamu during a deportation flight, the government would now use charter flights (small business planes) to deport asylum seekers who "repeatedly use violence in order to prevent deportation". He said that Germany and France had shown interest (chartered flights have, of course, been discussed between interior minister much earlier in the Schengen process) and that the first flight was scheduled for February the same year. However, this plan was soon abandoned after protests against the company. Indeed, the string of deaths during deportations has led to the issue being discussed at EU level since 1998. It was again the German

government which highlighted the 'problem' of lack of restraint powers and conflicting jurisdictions, leading to a draft Joint Action obliging EU member states to give mutual assistance in transit situations during deportation by air (see *Statewatch Bulletin* vol 9 no 3/4). The proposed measures include the introduction of group deportations by charter flight. The latest drive for a common expulsion policy involving charter flights is discussed in the EU Commission Green Paper on an EU policy on "return" (expulsion, deportation or repatriation) from the EU. In line with the Council of the European Union (the 15 EU governments) it says that the EU has to develop a detailed policy on expulsion "irregular migrants". Due to the various problems encountered by the state in its deportation attempts, the Commission recommends that instead of flying out from individual countries "joint operations" with "voluntary and forced returns" are to be encouraged. The French government has taken the lead on a project to rationalise expulsion measures, in particular by means of these "group returns" (doc no: 11388/02). France has therefore opened talks with Germany and the UK on the possibility of joint "European charters". The French Ministry of the Interior with responsibility for expulsion (DLPAJ/DCPAF Directorate of Civil Liberties and Legal Affairs/Central Border Police Directorate) is to organise monthly meetings to work out the procedure - which has to include: a legal framework; operational constraints (security rules during flights, composition of escort, requests to overfly third states etc); diplomatic constraints (issue of consular [EU] laissez-passer, reception by the authorities of the country of destination etc) (see *Statewatch Bulletin* vol 12 no 5). In Britain, the idea of mass deportation in the form of charter flights was also pursued in the government's White Paper on immigration, nationality and asylum, launched on 7 February 2002 (*Statewatch* vol 12 no 1).

What follows is by no means comprehensive list of chartered deportation flights that have taken place in Germany France and Britain over the past few years, followed by a chronicle of resistance to deportations through the targeting of airlines (see sources below).

Germany

Over the past three years more than 10,000 people are estimated to have been deported by charter flights from Germany. One major departing airline is *Tarom*, destinations are mostly Eastern Europe, Turkey and the Middle East but also Nigeria and Sri Lanka. In Germany also, charter flights became government policy after scheduled airline flights started refusing to take deportees on board, especially after the death of Aamir Ageeb during his deportation on a Lufthansa flight in 1999. In Germany, the official focus is on 'potentially troublesome' refugees, who are seen as the main problem with deportations. The use of force against is common and *Tarom*, together with German Federal Border Guards have come under criticism from the UNHCR for beating and using electric shock devices on a Kurdish refugee. *Tarom* employs its own security personnel.

UK

Since March 2001, over 4,000 Kosovans have been deported with charter flights under 'Operation Aardvark'. It is the first time that migrants and refugees are forcibly removed from the UK *en masse*, this time mainly to Tirana (Albania) and Pristina (Kosovo).

20 September 2002: 48 Roma are deported to the Czech Republic under the name 'Operation Elgar', media film crews are invited (and the footage is later screened in the Czech Republic) to witness the deportation in an attempt by the UK government to show Roma refugees, who suffer popular and institutional racism as well as economic destitution in Eastern Europe, that they are not welcome in Britain either.

28 April 2003: the UK government publicises its allegedly first mass deportation to Afghanistan, a country still deemed unsafe by the UNHCR and Amnesty International. Reports differ but the deportation involves around 20-30 people and is claimed to be the first in a series of mass deportations to Afghanistan. Britain is the first Western country to begin enforced deportation to the war torn country.

France

27 February 1997: 77 people are forcefully deported to Mali, bound to their seats. On arrival border guards start abusing the deportees, upon which they start attacking the guards, hospitalising 20 of the 47 *Gendarme*. The *sans papiers*, which were finding refuge from deportation in the Paris church of Saint Bernard at the time, call for a boycott of all "Racist Euro Charters".

3 March 2003: 54 people are forcefully deported to Senegal and Ivory Coast, accompanied by 89 French *Gendarme* and 4 German officials. Interior minister Nicolas Sarkozy announces that there will be one charter flight a week from now on.

25 March 2003: 55 citizens from Côte d'Ivoire and 10 Senegalese are deported against their will. This was the third charter flight from Roissy in March. Eyewitnesses reported abuse in the extraterritorial zone of the airport, numerous deportees were gagged, hands tied behind their backs and feet shackled, numbers put on their backs to identify them and they are thrown like parcels into busses.

27 March 2003: Spain and France conduct a combined deportation of 70 Roma to Romania.

Beginning of April: a co-organised deportation flight between Britain and France to Afghanistan.

Anti-deportation protests target aviation campaigns, and now charters

One reason for airlines of scheduled flights resisting taking over the government's deportation plans is widespread campaigning against aviation companies. Lufthansa, KLM, Tarom and more recently Air France have been the target of public criticism due to their involvement in forced deportation, in breach of their regulations and various ethical commitments enshrined in travel and tourist charters. What follows is a list of protests organised in Germany and France against Air France, as well as a list of successful anti-deportation actions which have involved the specific targeting of airlines. The move from scheduled to charter deportations has led to a shift in anti-deportation campaigning to include charter flight companies as well as travel agencies who do business with those companies. The campaigns are carried out by a variety of national groups and are often coordinated by the European noborder network (www.noborder.org), which was set up in 1999 to "work on the questions of migrants and asylum seekers in order to struggle alongside them for freedom of movement, for the freedom for all to stay in the place which they have chosen."

Berlin/Amsterdam, 29 June 2001: German and Dutch groups work together in halting the deportation of a Nigerian refugee by pressurising Lufthansa and KLM. Saka Depo O., after having been deported from Berlin to Amsterdam to go on to Lagos, is brought back to Berlin after KLM informs the campaigning group that it does not carry out deportations against people's wishes. A few days earlier Saka's deportation was stopped in Berlin when passengers on his deportation flight protested because he was handcuffed.

April 2002: KLM issues a press release stating that they do not deport people against their wishes.

Munich, 22 December 2002: Two deportations are stopped by actions in the plane and pressure on the departing airlines KLM and Turkish Airlines. In the first case, KLM offices in Amsterdam and Munich are faxed two days before the

deportation, informing them that the planned deportation is taking place against the refugee's will and that he is likely to resist his deportation. Activists had also bought a ticket for the flight with the intent of refusing to sit down during take-off. The deportation is halted and the activists are arrested but released after a few hours. The same day, activists receive a call from the relatives of an Iranian deportee whose deportation is scheduled for the same day. After a series of phone calls the airline refuses to take the deportee on board. A week later, Air France takes over deportations from Munich to Togo.

Paris, 30 January 2003: more than 20 *sans papiers* and members of the French pilot unions *SUD Aerian* and *ALTER* as well as activists from *droits devant!!* and members of a homeless collective occupy an Air France Agency at Invalides/Paris. They demand the immediate halt of any deportations by Air France, the suspension of border guard officers responsible for the two undocumented migrants who were killed on Air France aircrafts in December and January, as well as an independent inquiry into the deaths.

Munich, 8 February 2003: Air France is unimpressed by protests against the deportation of a Togolese woman to Lomé whose partner and three year old child are left behind in Munich. Federal Border Guards break the woman's arm during deportation. Activists suspect Air France of taking over the deportation business from KLM in Germany.

Paris, 9 February 2003: 50 activists from the *Collectif Anti Expulsion* lobby personnel and passengers to resist on flights suspected of 'hosting' deportees, followed by a demonstration at the check-in counters, distributing leaflets on how to stop a deportation flight and with information of the recent deportation deaths on Air France aircraft.

Frankfurt, 17 February 2003: Anti-racist activists prevented the deportation of a political refugee and member of the Southern Cameroon National Council (SCNC) and Southern Cameroon Youth League (SCYL) scheduled from Munich airport with Air France. They informed the pilot and flight crew about the forceful deportation and the likelihood of resistance, as well as reminding them of the two deaths that occurred a few months earlier. Activists bought a ticket for the flight with the intention of refusing to sit down during take-off. The pilot was persuaded to personally ask Ms. Kugo Oginia if she is willing to travel, a few minutes later she is taken off the plane and brought back to her place of residency in Germany.

Paris, 22 February 2003: Mass leafleting of Air France agencies, informing customers and employees of the recent deaths and offering instructions for passengers what to do in case they caught a deportation flight.

Paris, mid-March: Regular protests at Roissy airport with banners and leaflets at Air France check-in counters processing flights to Bamako, Cotonou, Ouagadougou, Dakar, Shanghai and Beijing.

Berlin/Frankfurt/Düsseldorf, 9 March 2003: At the international tourism fair 'International Tourism Exchange ITB Berlin' and airports in Frankfurt and Düsseldorf, activists dress in flight attendants outfits and distribute leaflets in German and French, demanding an immediate stop to deportations, information on the two recent deaths and Air France's responsibilities in the matter. Potential tourists and passengers are informed on how to stop a deportation.

Paris, 20 March 2003: Around 100 *sans papiers* and support groups, including Bishop Jacques Gaillot, occupy the offices of the travel agency FRAM, which is the main commercial user (over 80%) of the EURALAIR-HORIZONS, the airline company that carries out France's deportation flights.

Sources: www.noborder.org, www.ncadc.org.uk, *The Guardian* 21.9.02, *The Independent* 29.4.2003, *Stawatch Bulletin* vol 3 nos 4 & 6, vol 6 no 5, vol 8 no 1, vol 9 no 1, vol 9 no 3/4, vol 11 no 2, vol 12 nos 1 & 5.

GERMANY

Legally regulated torture - the Daschner case and the political trap

A suspect was told that unless he disclosed the whereabouts of the kidnapped Jakob von Metzler, the police holding him would inflict more pain on him than he had never experienced before. This is what Frankfurt police officers, on order from their Deputy Chief Constable (*Polizeivizepräsident*) threatened the kidnapper with in October 2002. Although threats of violence from the police may be unsurprising, since this case became public in February this year, the German public has been discussing the limits of the ban on torture and thereby have fallen into a trap.

If Frankfurt Deputy Chief Constable, Wolfgang Daschner, had been caught trying to smuggle one kilogram of cocaine through customs the minimum sentence would be two years imprisonment (30 *Betäubungsmittelgesetz* - Germany's Controlled Substances Law) with no chance of probation. The media might have commented:

In effect the only issue is the length of sentence. Although the presumed perpetrator has publicly confessed, he has not shown any signs of remorse and in such situations it is normal for the courts to give the maximum possible sentence even if only to make an example

This would also have been the view of politicians, lawyers and not least the German public.

However, in the case of the hypothetical drugs courier Daschner if a confession had been extracted by torture the case should not have reached court and if it did then it should have been thrown out. The law laid down in legal and internationally binding norms is unambiguous: coercing statements (343 *Strafgesetzbuch* (StGB) - German Criminal Code), that is the threat or use of physical violence or mental pain by a public officer with the aim of coercing a person to give a statement in legal proceedings, is a crime. It is punished with at least one year imprisonment, which, different from smuggling illegal drugs, allows for the perpetrator to receive a sentence on probation. Torture and other forms of interrogation that break a person's will, are prohibited under 136a of the *Strafprozessordnung* (German Criminal Procedure's Act). The prohibition also applies to the interrogation of persons obliged to give evidence under police regulations (12.4 Hessian Law on Public Security and Order - *Sicherheits- und Ordnungsgesetz*). It is anchored in the UN Anti-Torture Convention as well as in the European Human Rights Convention and it is clearly laid down in Article 1 of the *Grundgesetz* (Germany's Constitution or Basic Law), which declares the dignity of human beings to be inviolable. There is no exception here. The Daschner case is resolved and does not require any further explanation or court proceedings.

"Human sympathy"

In taking up the debate, the public immediately stepped into a trap laid down by Daschner & Co.. The principles of this trap are:

1. Harmlessness of torture: there would not have been any physical consequences for the person concerned,
2. Ethical conflict and legitimate reason for torture: it was argued that the life of an innocent (the 11 years old Jakob von Metzler) would have to be saved: 'we had no choice',
3. The incident was exceptional and excusable, and if necessary a legal basis for these situations should be created.

In various interviews, Daschner successfully attempted to reject the image of a brutal torturer. He would not have accepted

beatings or injuries, but merely "simple physical influence, for instance through overstretching the wrist joints...there are certain places around the ear...where you press...and it hurts a lot without causing any injuries."

The torture would not have been carried out by a "specialist" but by a police officer "with a training license from the German Sports Association...with the cooperation of a police doctor...in order to prevent injuries." (1)

However, the lack of consequences for the victim is nothing less than the description of modern torture techniques which can be sold to the public in a "democratic" society based on the rule of law precisely because they cannot be seen with the bare eye. In large part, the media believed Daschner's apparent moral conflict, although he was not present during the interrogations and made his decision after contemplations at his desk. "The reality", even the *taz* (liberal German newspaper) proclaimed, "has caught up with morality...the threat of inflicting pain...might by all means be the lesser evil in this case." (2)

Volker Bouffier, Interior Minister of Hesse, and his Premier, Roland Koch, demonstrated "human sympathy" towards the perpetrators, disciplinary proceedings were not initiated. Politicians of the established parties, from the legal expert of the *Christlich Soziale Union* (CSU - Christian Social Union) Norbert Geis to the federal minister of justice, Brigitte Zypries (*Sozialdemokratische Partei Deutschlands* - SPD), official representatives such as Geert Mackenrodt from the Federal Association of Judges, or Holger Bernsee from the Association of German Crime Police Officers, all thought Daschner's behaviour excusable. It seemed that the only question here was if - according to Zypries - the circumstance of "legitimizing emergency" (24 StGB) would suffice in this case or if - so thought Geis - the police should be granted "more powers in case of life threatening situations" in order "to be able to force the perpetrator to provide information which directly helps [the investigation]." (3)

Torture as a regular police competence?

Daschner himself rejected the term torture for his planned and precise infliction of pain, because this had not been a criminal procedural interrogation. "My explicit order was:... No questions as to delinquency, participation and so forth. The only question that had to be and was allowed to be asked was: where is the child?" (4) He argued that this remained within the remits of police law (preventing threats to public security and order) - but here also the Hessian police law prohibits the coercion of statements. That the laws are unambiguous and that there is no "definition gap" is also known to Winfried Brugger, legal philosopher from the university of Heidelberg, from whom Daschner copied his argument. Since 1996, Brugger has been demanding the relativisation of the torture ban by means of the constructed example of a terrorist threat. (5) It is not coincidental, that Brugger refers to the shoot to kill regulations in the police laws of the *Länder* defined as "final saving shot". Until the first draft for a uniform police law in 1974, it was not conceivable that the ordered shooting a person could be legally regulated. Today, the majority of police laws of the *Länder* contain such powers. Applying the same logic, Brugger already defines the criteria according to which the torture ban should be legally relativised.

There is (i) a definite, (ii) direct, (iii) considerable threat for (iv) the life and physical integrity of an innocent person. (v) The threat is caused by an identifiable perpetrator. (vi) The perpetrator is the only person that can avert the threat, by returning to the remits of law, that is by disclosing the hiding place of the bomb. (vii) He is also obliged to do this. (viii) The use of physical force is the only successful means of securing information. (6)

Paragraph 1 of the new police regulation is thus almost formulated. The following paragraphs would then only have to lay down instruction powers - by the superintendents, the public prosecutor or the judge -, the application of torture by qualified personnel, the observation by a doctor and the obligation to keep a record only accessible by the police and the public prosecution - just like Daschner had practically demonstrated it. This would be the exact form in which "considerable" police powers and interventions into fundamental rights were standardised in the past decades: torture regulated according to the rule of law, installing a perverse conception of the proportionality principle and precise procedural instructions. (7)

Police violence

The discussion, which has been controversially conducted in public, has masked that again and again there have been cases of violence and also of statement coercion, in German police stations. In 1993/94, Vietnamese citizens arrested in Bernau (Brandenburg) on suspicion of illegal tobacco smuggling were victims of torture and excessive humiliation, through precisely aimed beatings of the naked body, attempted rapes and threats of castration. In a 1994 Hamburg police scandal, there was, amongst other incidents, a case of mock execution. In Frankfurt on the Main, three officers were sentenced on grounds of evidence given by a police trainee for abusing a young Algerian man; one of them had shoved his pistol into the victim's mouth. During the past few years there have been regular reports of attacks in police stations. (8) But only a few have led to prosecutions and even less to sentences. These however, have not been cases of moral dilemmas, but rather incidents of unscrupulous and violent conduct, in particular against people from minority groups or non-German people. Up to today, the consistent demand for independent police commissioners or similar complaint's authorities has never been answered. The only attempt was by the Hamburg Police Control Commission, which was abolished after the reactionary conservative right-wing-liberal city council came into office.

The abuse of arrestees and prisoners has up to now been clearly defined as illegal. Such attacks, if they become public, have regularly been described by the official side as the work of "a few rotten apples". The cynical achievement by Daschner, Brugger, Geis and their supporters consists of explicitly portraying the use of violence during interrogations as necessary - providing it takes place for a "good" and legitimate reason, for the protection of other, higher legal values. Today, these are the right to life and physical integrity of innocent third parties, which are classed higher in the legal practice of 'balancing interests' than the physical and emotional integrity of a person to be interrogated. As soon as the first step towards the legalisation of torture is taken, we can be sure that an inflation of the number of those subjects of protection will soon follow.

For the third time now, and again to no avail, the Council of Europe's Commission for the Prevention of Torture (CPT) has demanded that the Federal Republic of Germany (FRG) introduce a code of conduct for interrogations. (9) Such a code of conduct would probably result in a situation where those who behave correctly during interrogations would be reaffirmed in their behaviour. Against the background of the Daschner debate, such a code would be useless.

Useful torture abroad

The FRG does not belong to those many states in the world states where torture occurs more or less systematically. However, it likes overlooking the fact that this is in fact happening in other states. In 1986, Edmund Stoiber, then a director in the Bavarian state secretary's office and today Prime Minister in the same *lande*, rejected the ratification of the UN Anti-Torture Convention because it would create new grounds for asylum and the FRG would thereby "almost inevitably become the El Dorado of all foreigners awaiting deportation". (10) The feared situation failed to materialise because jurisdiction in asylum cases only accepts as grounds for asylum torture practised in the framework of political prosecution. Good relations with NATO ally Turkey should not be aggravated. The same consideration is given in extradition law. In 1996, the Federal Constitutional Court agreed to the extradition of a man whom the Spanish authorities accused of supporting ETA. The proceedings against him were triggered by statements obtained under torture from a member of ETA, during the practice, legal in Spain, of detaining a terrorist suspect for five days without access to a legal representative or confidant (*incommunicado detention*). The torture of a third person within the same proceedings, it was argued, did not justify the prohibition of the use of evidence obtained under duress or torture, it was not a fruit of the forbidden tree and therefore did not constitute a barrier to extradition. The court would not accept the argument that the use of such secondary evidence in effect supports the use of torture, which is common in political criminal proceedings in Spain. (11)

For now, the FRG is not in danger of becoming a "torture state". But if human rights and dignity are to be preserved, it is not enough to appeal to liberal democracy and its rule of law, and it is absolutely unacceptable to apply the legally enshrined "interest balancing test" to torture in a case of emergency. Politics and the justice system are already completely overtaxed with controlling violent police excesses in this country and are apparently also not willing to provide a serious contribution to the prevention of torture abroad. If they retrospectively legitimate Daschner's behaviour, they will declare their bankruptcy. Torture destroys human dignity - the dignity of the person being tortured, as well as the dignity of those who apply torture and those who justify it.

This article by Heiner Busch first appeared in Bürgerrechte & Polizei/CILIP 74 (1/2003

1. *Frankfurter Rundschau* 22.2.2003; similar in *Der Spiegel* 9/2003, 24.2.2003

2. *taz* 19.2.2003

3. *Der Tagesspiegel* and *WDR* 5 21.2.2003; *Frankfurter Rundschau* 24. and 25.2.2003

4. *Der Spiegel* 9/2003, 24.2.2003

5. Brugger, W.: *Darf der Staat ausnahmsweise foltern? (Is the state exceptionally allowed to torture ?), in: Der Staat, 1996, issue 1, pp. 67-97; same author: Vom unbedingten Verbot der Folter zum bedingten Recht auf Folter? (From the categorical ban of torture towards the conditional right to torture?), in: Juristenzeitung 2000, issue 4, pp. 165-173*

6. Brugger (2000) *l.c.* footnote 5, p. 167

7. Die Grünen, Kreisverband Münster, *AG Demokratie und Recht: Bei Folter Rechtsstaatlichkeit beachten, (The Green Party, Regional Office Münster, Working Group Democracy and Law: Adhering to the Rule of Law During Torture)*, press release 21.2.2003, www.gruene-muenster.de; also contains a satirical "draft law" with all details

8. *Bürgerrechte & Polizei/CILIP* 67 (3/2000) with references to various documentation

9. *CPT: Report on the visit to Germany from 3 to 15 December 2000, Strasbourg* 12.3.2003, p. 24; *Response of the German Government* 12.3.2003, p. 23, both under www.cpt.coe.int/documents/deu/2003-03-12-eng.htm

10. *Frankfurter Allgemeine Zeitung* 4.4.1986

11. *Bundesverfassungsgericht: Entscheidung* 29.5.1996, Az.: 2 BvR 66/96 (*Federal Constitutional Court: Decisions*)



THE STRUGGLE FOR CIVIL LIBERTIES AND FREEDOM

Our tribute to Larry Grant

Tuesday 24 June 2003, 6:30- 9.00pm.
Conway Hall, 25 Red Lion Square,
London WC1

Hilary Ives, family, friends and colleagues of Larry, invite you to celebrate his life and to address the continuing injustices which he so passionately opposed. **Michael Seifert**, lawyer, will introduce the proceedings and the contributors:

Stephen Madut Baak The struggle for liberation in the Sudan (UK and Ireland Representative of the Sudanese People's Liberation Movement)

Helen Bamber, OBE Compassion and humility in justice (founder, Medical Foundation for the Care of Victims of Torture)

Tony Bunyan Civil liberties: the effects of the war on terrorism in Europe (editor, Statewatch)

Jane Coker Respect for the claimant (solicitor and Refugee Women's Legal Group)

Courtenay Griffiths, QC The criminal justice system

Gareth Peirce Rights and the war against terrorism (solicitor)

Rick Scannell Honouring international obligations (barrister and chair of ILPA)

Rita Sethi Knowledge and understanding through training (barrister (former solicitor))

Carolyn Taylor Mental health and civil liberties (solicitor)

Peter Thornton QC Echoes of the past: from civil liberties to human rights

John Wadham Bloody Sunday and civil liberties in the UK (solicitor and director of Liberty)

This event has been arranged and is generously sponsored by the Immigration Law Practitioners Association. Refreshments kindly provided by YumYum Thai Restaurant, 30 Stoke Newington Church Street, London N16

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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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