

statewatch

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EU: "Anti-terrorism" legitimises sweeping new "internal security" complex

In June Javier Solana, the EU High Representative for defence and foreign policy, announced that internal security services (eg: MI5 in the UK) are to provide intelligence on terrorism to the Joint Situation Centre (SitCen) - part of the EU's emerging military structure. At the same time he revealed that the external intelligence agencies (eg: MI6 and GCHQ in the UK) had been cooperating with SitCen since "early 2002". These moves were clearly needed as attempts to bring together meaningful intelligence on terrorism through Europol was doomed to fail - internal security and external intelligence agencies are loath to share information with police agencies. However sensible this initiative may be it still begs the question of accountability and scrutiny. It would be almost inconceivable at the national level for a body whose role was military to have its remit extended "at a stroke" to include anti-terrorism without a formal procedure being undertaken - and to ensure that a chain of accountability and scrutiny both to government and parliament was set out.

SitCen's job is to produce assessment reports on "the terrorist threat (internal and external)" but it is also to provide reports that cover:

the broad range of internal security and survey the fields of activity of services in the areas of intelligence, security, investigation, border surveillance and crisis management (Dutch Presidency Note to the Informal Meeting of the JHA Council in October, unpublished doc no: 12685/04)

"Anti-terrorism" is itself problematic. It embraces at the national level raids on Muslim communities (see Statewatch, vol 13 no 6), "stop and search" operations, and an EU initiative on "radicalism and recruitment" which will target communities and places of worship and education.

The overall concept has, however, swiftly shifted from dealing solely with "anti-terrorism" to "internal security" which embraces all the agencies of the state from the military to the host of agencies who maintain "law and order", from biometric passports to border controls. It is the same in the draft "Hague Programme" on justice and home affairs (the successor to the "Tampere programme"), which refers to internal security as covering: "national security and public order".

SitCen will send "advisory reports" to the Justice and Home Affairs Council, reporting "any necessary action", and will cooperate with a host of JHA bodies, including the Strategic Committee on Immigration and Frontiers and Asylum (SCIFA) and the Article 36 Committee (CATS, senior national interior ministry officials), and representatives from the Commission, Europol, Eurojust, the European Border Agency (EBA), the Police Chiefs' Task Force, the Counter Terrorism Group (CTG) and a new "internal crisis management" working party.

Under the EU Constitution, SitCen will also report to an "Internal Security Committee" (Article III-261) which will deal with "operational cooperation on internal security". An *ad hoc* "Internal Security Committee", comprised of the chairpersons of the JHA bodies above, is to be set-up in the near future, before the Constitution comes into force. Under Article III-261, the European and national parliaments will only be kept "informed" of the new committee's activities - which on past experience will be bland, general reports. There is no guarantee that documents from this Committee will be accessible and little prospect of the interim, *ad hoc* Committee being accountable.

The EU Police Chief's operational Task Force, which was set-up in 1999, still has no legal basis for its activities and the EU Border Police is developing in the same *ad hoc* fashion. Before the Regulation establishing an EU Border Management Agency had even been agreed the EU had established a 'Common Unit' of senior border police, operational centres on sea, land and air borders, and a 'risk analysis centre'. Now, before the Regulation has even entered into force (1 May 2005), a broad expansion of the agency's remit and powers is planned. First, through the creation of a "rapid reaction force of experts" available to "temporarily" increase "external border control capacity" (including "intercepting and rescuing illegal immigrants at sea"). Second, through the creation of a "common European border police corps". Third, consideration of whether it should assume a wider roles for "security, customs" as well as:

the management of large information systems (such as Eurodac, VIS and SIS II) (Dutch Presidency Note to the Informal Meeting of the JHA Council in October, unpublished doc no: 12714/04)

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

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

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UK

ACTSA prisoner released after three years

The government's emergency anti-terrorism laws came under renewed attack in September when David Blunkett decided that a suspect, interned at Woodhill prison for three years without charge or access to legal advice, was no longer a threat to security. The man, who despite his release can only be named as "D", was one of 12 foreign nationals being held without due legal process at top security prisons in the UK under the Anti-Terrorism Crime and Security Act (ATCSA). The ATCSA has been described as "a perversion of justice" and a shadow criminal justice system by Amnesty International. Those detained under its powers have yet to be questioned by the police. Their detention has been compared to that of the hundreds of prisoners, including several British citizens, held at the US military base at Guantanamo Bay in Cuba. The detainees at Britain's "Guantanamo" are suffering serious mental health problems due to the conditions of their detention and the uncertainty about when - or if - they will be released (see *Statewatch* vol. 14 no 2).

D was among the first group of foreign nationals rounded up by police after 11 September as a threat to national security and he has been imprisoned since 17 December 2001. He lost an appeal against his internment last October when the Special Immigration Appeals Commission (SIAC) backed Home Secretary David Blunkett's decision to detain him because of alleged links to the Algerian *Groupe Islamique Armee* (GIA); the GIA is banned in the UK under the Terrorism Act 2000. D's detention was upheld by the SIAC again in July when it was minded to comment: "We accept D has a history of involvement in terrorist support activity and has the ability and commitment...to resume those activities were he to be at liberty in the UK."

D's sudden release was explained by Blunkett, who said "I have concluded...that the weight of evidence in relation to "D" at the current time does not justify the continuance of the certificate [that authorises his imprisonment]." Natalia Garcia, D's solicitor, remarked that her client feels that "he has been locked up for three years on a whim". Blunkett's offhand explanation was also criticised by Labour Party backbenchers and Liberal Democrat politicians as well as Shami Chakrabarti, of the civil liberties organisation Liberty, who said that "The Home Secretary is acting as judge and jury in relation to him [D] and all of those detainees still held."

D is the third of the detainees to be released. In March M, a 38-year old Libyan, became the first of the prisoners to be released (after 16 months in detention) when he won an appeal after the SIAC found that he had been interned on the basis of undisclosed intelligence that was "exaggerated" and "wholly unreliable". Upon his release he said that several of his fellow ACTSA detainees were being driven into physical and mental illness because of the conditions of their incarceration. Prisoner G (a 35-year old Algerian who was detained for two years) showed his words to be prophetic when he was released after the SIAC ruled that "he had become mentally deranged...and that his detention meant he was in danger of self-harm." He is now tagged and held under house arrest (see *Statewatch* vol. 14 no 2).

On 13 October a group of consultant psychiatrists and a psychologist reported "serious damage to the health of all the detainees [eight] that they have examined". Their findings, which were based on 48 reports and documents commissioned over the past two and a half years, found that the effects were

"inevitable under a regime which consists of indefinite detention". The doctors reported that: "Detention has had a severe adverse impact on the mental health of all of the detainees and spouses interviewed. All are clinically depressed and a number are suffering from PTSD [post-traumatic stress disorder]. The indefinite nature of detention is a major factor in their deterioration."

Their report highlights the following points:

- All are suffering from significant levels of depression and anxiety and have deteriorated over time.
- Several of the detainees are suffering from post-traumatic stress disorder.
- repeated instances of self harm and/or attempted suicide ranging from superficial cuttings to attempts at hanging.
- A sense of helplessness and hopelessness (an integral aspect of indefinite detention).
- Complex health needs are not being met.
- The interpretation of the detainees behaviour as manipulative rather than a symptom of the deterioration of their mental health
- A number of detainees have developed significant psychotic problems

The Stop Political Terror campaign is determined to ensure that "Britain's forgotten political prisoners" are not forgotten. They are urging people to write to political detainees in Belmarsh and Woodhill prisons. For more information visit their website: <http://www.stoppoliticalterror.com>

Independent 21.9.04

UK/CUBA

Detainee tells of murder, torture and death threats

One of the five British detainees still at Guantanamo Bay, Moazzam Begg, has claimed that he witnessed two prisoners killed by their US captors. In his first letter to be made public, Moazzam, who was abducted by Pakistani intelligence officers and US special forces in Pakistan in 2002, says that he has been tortured, subjected to death threats and forced to sign documents. His allegations echo those made by other released prisoners. Shafiq Rasul, Asif Iqbal and Ruhel Ahmed made a joint statement last June in which they implicated British officials and security personnel in abuses, which include repeated beatings and humiliation, they suffered at the hands of US soldiers, (see *Statewatch news online*). Another of the released British detainees, Jamal al-Harith, made similar claims of punishment beatings and psychological torture in the *Daily Mirror* newspaper (12.3.04).

The British prisoners' experiences have been corroborated by the eye-witness accounts of other detainees who have been released from the US interrogation centre. In mid-October the *New York Times* described the "harsh and coercive treatment" meted out to prisoners at Guantanamo as described to them by former Guantanamo employees. The newspaper interviewed military guards, intelligence agents and others who described "highly abusive" treatment occurring "over a long period of time." One of the techniques the former employees mention "was making uncooperative prisoners strip to their underwear, having them sit in a chair while shackled hand and foot to a bolt in the floor, and forcing them to endure strobe lights and screamingly loud rock and rap music played through two close loudspeakers, while the air conditioning was turned up to maximum levels". Such sessions could last up to 14 hours one official told the newspaper.

Here is the full text of Moazzam's letter:

TO WHOM IT MAY CONCERN

I, Moazzam Begg, citizen of The United Kingdom of Great Britain, attributed the number 00558 (Camp Echo), have felt it necessary to augment, and further clarify the above noted statement, and to accentuate my grievances and intentions.

After over two-and-a-half years in the custody of the US military without charge, and by extension, without jurisdiction, I have yet to be afforded basic rights normally granted under the constitution of the USA, and international law.

I therefore demand, unconditionally and irrevocably, that I be released immediately and returned to my family and domicile in the UK, together with all possessions: including all items and monies confiscated by US/Pakistani "agents" from my residence in Pakistan on 31 January 2002.

In the likely event that these demands are outrightly rejected or unnecessarily procrastinated, I demand the following rights under US law:-

1. A thorough and peremptory explanation of all statutory rights available within U.S. legislature, particularly with respect to foreign nationals.
2. Any and all charges/allegations be presented unambiguously, and written.
3. Full access to international phone calls in order to communicate with family and lawyers.
4. Full access to legal representatives of my own choice and appointment.
5. A fully inventoried list detailing all property seized (as mentioned above).
6. Regular and timely access to postal communication with family and a halt to the obscuring and withholding of mail from home.

Wife and children destitute

In addition to the aforementioned rights, I make it known that I expect logical and reasonable answers for the following violations and abuses, and intend to seek justice and accountability:-

- i) The exact purpose for my abduction, kidnapping and false imprisonment on 31st January 2002, under the auspices of US intelligence and law enforcement.
- ii) Subsequently, what legal jurisdiction they had for taking me forcibly to Afghanistan.
- iii) By what legal authority was property and money confiscated, leaving my wife and young children destitute and penniless, in their wake.

Solitary confinement

- iv) Why I was brought into a designated war zone, and my life put at risk.
- v) Why I was physically abused, and degradingly stripped by force, then paraded in front of several cameras toted by US personnel.
- vi) The reason for being held in Bagram detention facility for a year, and consequently, being denied natural light and fresh food for the duration.
- vii) The exact purpose for my incarceration in solitary confinement since 8th Feb, 2003!
- viii) Why all news pertaining to my own situation has been barred from me.
- ix) The justification for withholding most of my family mail, and incongruent obscurity of what little amounts have trickled through - even from 8 year olds!
- x) Why phone calls and legal representation have been continually denied, despite several reassurances to the contrary.

xi) Why, despite copious requests, I have yet to meet with a chaplain during all this time.

xii) What was the legality and purpose of extracting my signature on a statement, in early February 2003, by FBI and CITEF agents, under threats of long term imprisonment, summary trials and execution all without legal representation.

Vindictive torture

I state here, unequivocally and for the record, that any documents presented to me by US law enforcement agents were signed and initialled under duress, thus rendered legally contested in validity.

During several interviews, particularly - though unexclusively - in Afghanistan, I was subjected to pernicious threats of torture, actual vindictive torture and death threats - amongst other coercively employed interrogation techniques. Neither was the presence of legal counsel ever produced, or made available.

The said interviews were conducted in an environment of generated fear, resonant with terrifying screams of fellow detainees facing similar methods.

In this atmosphere of severe antipathy towards detainees was the compounded use of racially and religiously prejudiced taunts. This culminated, in my opinion, with the deaths of two fellow detainees, at the hands of US military personnel, to which I myself was partially witness.

In spite of all the aforementioned cruel and unusual treatment meted out, I have maintained a compliant and amicable manner with my captors, and a cooperative attitude. My behavioural record is impeccable, yet contrasts immensely to what I have experienced, as stated.

Seek justice

I am a law abiding citizen of the UK, and attest vehemently to my innocence, before God and the law, of any crime - though none has even been alleged. I have neither ever met Usama bin Laden, nor have been a member of Al Qaidah - or any synonymous paramilitary organisation, party or group. Neither have I engaged in hostile acts against the USA, nor assisted such groups in the same - though the opportunity has availed itself many a time, and motive.

Regardless of the outcome of all my appeals to sanity, and protestations over the years, I reiterate my intention to seek justice at every possible level available to me. It is with that intent that I have prepared duplicates of this statement: for the information and use of the authorities and courts of justice.

I have requested this document be perused by the camp NCO; the generality of its contents be recorded in the camp log; and forwarded to the appropriate intended recipient.

MOAZZAM BEGG (00558). Dated this twelfth day of July, 2004.

See <http://lists.stir.ac.uk/pipermail/media-watch/2004-October/001506>; New York Times 17.10.04

Civil liberties - in brief

■ **Spain: Same-sex marriages get the go-ahead.** On 1 October 2004 the Spanish government approved the plan for a draft law to allow same-sex marriages, and to begin a process to eliminate discrimination "based on sexual orientation". The plan, drafted by the Justice Ministry, is set to modify the Spanish civil code by altering Article 44 to state that "The gender of either spouse-to-be does not prevent the celebration of the wedding,

nor its effects". A further 13 articles will also be amended to substitute the expression "man and wife" for a generic term, "spouse". The draft law's explanation indicates that "the Spanish social reality in our time has become much richer, plural and dynamic than the society in which the *Código Civil* arose. Co-habitation as a couple between people of the same sex...has been the object of an increasing social acceptance, overcoming deep-rooted prejudice and stigmatisation". It adds that it is time for this kind of union to obtain "formal acknowledgement by the law". Its likely effects include the exercise of new rights such as receiving an inheritance if their partner dies, opening joint bank accounts and benefiting from tax benefits for married couples, as well as the right to visit, or to be consulted about, partners who are ill in hospital without needing prior permission from their families, and the possibility of a same-sex couple adopting children. *Consejo de Ministros. Justicia "Anteproyecto de reforma del Código Civil que permitirá el matrimonio entre personas del mismo sexo", 1.10.04; available on: <http://www.cittadinolex.kataweb.it/Article/0,1519,30018|22,00.html>*

■ **Germany: Old cases, new trials: sentences for Klump and Weinrich.** On 23 August the Berlin regional court acquitted Johannes Weinrich (allegedly connected to the group of German militants active around the "Carlos" group in the 1970s and 1980s) of the charge of having committed several bomb attacks in France, Germany and Greece in the 1980s. Meanwhile, Andrea Klump has recently admitted in her trial in the Higher Regional Court in Stuttgart to having known about a bomb attack against Jewish emigrants in Hungary in 1991, which her then partner and ex-*Rote Armee Fraction* (Red Army Fraction) member Horst Meyer allegedly carried out. Meyer was shot dead by police during his and Klump's arrest in Vienna in 1999. What both trials have in common is that the accused have already been sentenced and imprisoned whilst facing additional charges of terrorist acts from the 1980s: Klump has been in prison since 1999 and received a nine-year sentence for an attempted bomb attack in 1988 against a Nato base in Spain. Weinrich has been imprisoned since 1995 and received a life sentence in 2000 for a bomb attack on the French cultural centre *Maison de France* in Berlin in 1983. He will therefore remain in prison after his acquittal. Weinrich was acquitted because of a lack of evidence. Apart from the fact that the court found no credible witnesses, the French public prosecutor has not verified that the relevant bomb attacks, for which several groups claimed responsibility, were carried out by the so-called Carlos group in the first place. There was also no hard evidence against Klump, leading the *Süddeutsche Zeitung* to speculate that Klump's defence changed its strategy with her admission of knowledge but not involvement in the failed bomb attack (she had denied the charges until now) to avert a possible charge of attempted murder. *Süddeutsche Zeitung* 24.8.04; *analyse & kritik* 1.3.04

Civil liberties - new material

When push comes to shove off, Mark Curtis. *Red Pepper* issue 124 (October) 2004, pp. 17. Article on the people of the Chagos Islands, "whom in the 1960s and 1970s the British had evicted from their Indian Ocean archipelago to make way for a US military base on the largest of the islands, Diego Garcia." The government has recently announced two "orders in council" banning the Chagossians from returning, overturning a November 2000 High Court ruling that the islanders should be allowed to resettle their homeland. There are an estimated 1,400 US military personnel, 1,800 civilian workers and 40 UK armed forces personnel currently on the island. Despite this, Foreign Office minister Bill Rammell, argues that the situation is too "precarious" for resettlement.

Text of Amnesty International submission to House of Lords

opposing indefinite detention. *Amnesty International* (EUR 45/027/2004) 4 October 2004, pp.20. AI's submission to the House of Lords, opposing the indefinite detention of detainees under the ATCSA. Available at: <http://web.amnesty.org>

Identity cards. *SCOLAG Legal Journal* No. 323 (September) 2004, pp.163-164. The Scottish Legal Action Group oppose the creation of a national database on general principal because, "such a scheme will not solve any of the general problems which are said to be the justification for its introduction" and is "likely to have a disproportionate impact on the most disadvantaged members of society...". This article examines the issues of scrutiny, accuracy, disclosure, financial penalties and identity theft.

Guantanamo's torture regime is a shameful disgrace, Vanessa Redgrave. *Independent* 23.8.04. The distinguished actress and political campaigner discusses the complicity of the British establishment, MI5, the SAS and Foreign Office, in aiding and abetting the torture of British prisoners held by the USA at Guantanamo Bay, Cuba. Her perspective is based on a document compiled by the lawyers, Birnberg, Peirce & Partners, from the statements made by three British citizens who were released without charge in March. Redgrave concludes by saying: "In the name of security, our Government is destroying the principles and the laws which are the foundations of the security of all citizens; these principals were proclaimed by the American Patriots in their Declaration of Independence and after the war, in their constitution which also prohibits cruel and degrading treatment. It is a spine-chilling disgrace that the Blair government has supported the Guantanamo torture regime, and agreed to the pre-tribunal hearings that have been repudiated by US civil rights lawyers and human rights NGOs."

EUROPE

FRANCE/SPAIN

Joint investigation units established

On 16 September 2004, the justice ministers of Spain and France announced the creation of the first joint investigation team (JIT) between EU member states, to be established under a community Directive agreed in the Tampere European summit in June 2002. The goal of the Franco-Spanish initiative will be to investigate attacks by ETA against tourist interests in 2003. The two countries are also examining the possibility of establishing another JIT to investigate the financing of an organisation linked to al-Qaeda. JITs are units composed of magistrates and officers from two or more countries with the power to act as judicial police, with powers to carry out searches, interrogations and telephone interceptions within the participating countries' territories. There will be shared access to the results of investigations carried out under this framework.

The JIT's purpose will be to identify, find and detain the members and accomplices of ETA, who were involved in attacks against tourist targets on 22 July 2003 in Benidorm and Alicante. Its remit lasts for a year, and is renewable. Two prosecuting magistrates from the national courts that have exclusive competence for investigating terrorism, the *Audiencia Nacional* in Madrid and the Anti-terrorist court in Paris, will direct the teams, made up of ten Spanish and ten French policemen. Officers from each country will be able to operate on their counterparts' territory, with no further restrictions than those applicable for officers from the country itself. Every operation will be supervised by the prosecuting magistrate from the country where the operation is carried out.

The *Audiencia Nacional* also seeks to structure a similar JIT to investigate a suspected terrorist financing network, named

Dawa Tabligh, that is believed to operate in Spain with ramifications in France and Morocco, and is deemed to be related to al-Qaeda. Tribunals may launch the creation of JITs on issues for which they have competence. Otherwise, it is up to the State Security department (in cases where only police officers are involved) or the justice ministry to establish new JITs.

El País, 17.9.04.

GERMANY

Schily lobbies for "external processing centres"

The proposal to create detention and holding centres for refugees and migrants outside the EU (eastern Europe, Africa, Turkey and the Middle East) is probably one of the most far-reaching of proposed strategies to control immigration and limit refugee protection in the EU through procedural measures. Although initially proposed by the Labour government in 2003 (in its euphemistically entitled paper *New vision for refugees*), the idea was in fact truly "European", with a Commission paper promoting the idea in June this year and subsequently promoted by Rocco Buttiglione, EU Commissioner for the Directorate-General for "Justice, Freedom and Security". The plans were revived by Germany and Italy at the informal JHA meeting in Scheveningen in September.

As *Statewatch* pointed out in July, the "processing centre" proposal has not followed the regular procedure of policy development, where the European Commission should produce a "Green paper", set out policy options and consult parliaments, interest groups and NGOs:

In this case...the Commission has taken-up the UK proposals, apparently only consulted third parties with an interest in implementing these proposals, and begun working on an ad hoc operational project using EU funds to undertake actions in third countries. It clearly did not consult the same expert opinion as the UK House of Lords, whose recent report: "Handling EU asylum claims: new approaches examined" (published on 30 April 2004) identified "a number of drawbacks" in the UK and UNHCR proposals, and recommended instead that "better quality decision-making in the Member States [is] the key to an effective determination process" (Statewatch Analysis June 2004)

Furthermore, there is a striking lack of legal clarity in the proposals, also reflected at the national level. When Schily promoted the "external processing" concept in the interior committee (*Innenausschuss*) of the lower house of parliament at the end of September, he was still not able to clarify what these processing centres would look like and on which legal basis they would operate: he was unable to answer questions as to whether they were detention centres or bureaus, if German or EU officers would be operating in them and what rights migrants and refugees would actually have. One thing, however, was clear: "those seeking protection do not always have to find it in Europe", (Schily after the meeting of 29 September). In July this year, Buttiglione, former European Affairs Minister in Berlusconi's government, revealed the underlying motivation behind the plans by claiming that the EU was being "swamped" by immigrants, a rhetoric traditionally used by far-right politicians (see *Statewatch News Online*, 23.8.04).

At the national level, the so-called "Schily refugee plans" are being criticised by members of the Social Democrats coalition partner (Green party) and the opposition for undermining asylum rights and lacking legal clarity respectively. Although Schily was unable to present united support for the plans at the European level, the parliamentary dispute is unlikely to block the plans. The EU Commission has already started negotiations with Morocco, Libya and Egypt to introduce refugee centres and the plans were

discussed at an informal Justice and Home Affairs Ministers meeting in Scheveningen (Netherlands) on 30 September and 1 October. The bi-annual informal meetings serve to reach political agreement on future EU policies. Backed by interior minister Giuseppe Pisanu, the Schily plans were received with similar reservations with regard to the vagueness of the proposals. One EU diplomat complained: "Everything is up in the air. It would be good for once to clarify what everyone is talking about. So far all we've seen are press reports". Diedrik Kramers, UNHCR spokesman in Brussels, commented: "What are we talking about? Information centres for immigrants? Centres to examine asylum seekers? To repatriate people intercepted at sea?"

However, most commentators do not oppose the idea of Regional Protection Programmes *per se*, which the Commission has pledged to introduce by July 2005 in consultation with the UNHCR. The principle remains the same: avert migration into Europe and keep refugee movements within their region of origin, a policy shift that migration scholar Alec Shacknove identified 10 years ago as a move "from asylum to containment". Although these centres already exist in countries bordering the EU, they will now be integrated into the EU's asylum system and, as Amnesty International warns, relieve EU states of their duty to assess asylum claims individually and endanger the lives and rights of thousands of refugees and migrants.

Although Amnesty particularly criticises the location of the camps in Libya and Tunisia, the EU agreed under pressure from Italy in September to lift an 18-year-old arms embargo, in order to cooperate with Libya to take measures against illegal immigration. The Baltic states and Austria recently called on Ukraine to create camps to handle Chechen asylum seekers heading west, but Kiev has so far refused.

The process of negotiating with third countries in this regard is taking place under the aegis of the EU's "regional and country strategy papers" which cover relations with developing countries in all policy areas and which typically use aid and trade measures as a leverage to enforce EU interests.

Süddeutsche Zeitung 30.9.04; www.eubusiness.com 29.9.04; Commission Communication on "Improving access to durable solutions", COM(2004) 410, 4.6.04; *Statewatch analysis* <http://www.statewatch.org/analyses/no-29-eu-ref-ext-process.pdf>

IMMIGRATION

ITALY/SPAIN/TUNISIA/MALTA

Migrant deaths in the Mediterranean

The flow of reports of migrants who die attempting to reach Europe's shores showed no signs of abating in the summer of 2004.

On Saturday 7 August, a merchant ship rescued an inflatable launch that was heading for Italy with 73 African migrants (reportedly from Liberia, Sierra Leone and the Ivory Coast) on board, exhausted and suffering from hypothermia. Two of the would-be migrants died during the rescue operation, and testimonies by survivors indicated that a total of 26 persons, whose bodies were thrown into the sea, had died during the nine-day journey from Libya.

On 13 August, six people survived, one person died and 32 disappeared when a dinghy carrying sub-Saharan migrants from the Western Saharan coast to the island of Fuerteventura in the Canary Islands capsized. The vessel had been approached by a *Guardia Civil* patrol boat, eight kilometres from its destination. The boat had been detected by the SIVE hi-tech coastline surveillance system that is operating in the Canary Islands and

part of the Andalusian coastline. Its headquarters is in Algeciras (Cadiz). This was the fourth incident of this type (when a vessel is intercepted by patrols and subsequently capsizes) in the Canary Islands since 2001. This latest incident caused the highest number of victims.

On 21 August, six sub-Saharan African migrants died in a shipwreck when their boat was only six metres from the Fuerteventura coast. On the same day, the dead body of a Maghreb-country national was found on a beach in Motril (Granada), a resort that has seen the arrival of many migrants since the SIVE surveillance system was established along the narrowest part of the Strait dividing southern Spain and Morocco. Kamal Rahmouni, the vice-president of the *Asociación de Trabajadores e Inmigrantes Marroquies en España* (ATIME, the Association of Moroccan Workers in Spain) has argued that the SIVE, which is due for a multi-million Euro extension, has caused an increase in migrant deaths because migrants now try to reach Spain using "longer routes", which means that "the possibility that they may not reach the coast alive increases". The body of a dead Moroccan was also found on the same day in Los Barrios, on the Cádiz coast.

Seven more migrants were reported to have disappeared in a shipwreck as they travelled from Morocco to Fuerteventura on 9 September. Twenty seven passengers from the same boat were rescued by the *Guardia Civil*, after they had been alerted by a fishing boat; officers from the paramilitary police force claimed that there was little hope of the seven being found alive, as the shipwreck took place in high seas.

On 4 October, a wooden fishing boat carrying 75 would-be migrants (70 Moroccans and 5 Tunisians) sank after breaking in two because it was overloaded, soon after setting off from the Tunisian port of Sousse to Italy. The Tunisian authorities managed to rescue 11 survivors, but they also found 22 dead bodies and a further 42 people had disappeared in the shipwreck. It was thought unlikely that any of them would be found alive.

There were also reports from Tunisian fishermen of another shipwreck two weeks earlier, when 11 children attempted to travel from Capo Bon to the Italian island of Pantelleria on a small boat with an outboard engine. Only five of the children, the eldest of whom was 16, survived.

On 14 October, two migrants died 70 miles to the south of Malta, as the wooden boat in which they were travelling overturned while a coast guard patrol from Messina (Sicily) was reportedly rescuing its occupants.

ADNKRONOS, 14.10.04; *El País*, 16.7.04, 9-10.8.04, 14-15.8.04, 21-22.8.04, 9-10.9.04, 15.10.04; *Il manifesto* 5.10.04.

GERMANY

Probation for killing refugee during deportation

On 18 October, the regional court of Frankfurt sentenced three border guards Reinhold S., Taner D. and Jörg S. to nine-months probation for "bodily harm resulting in death", a charge which usually requires a minimum sentence of one year. On 28 May 1999, they had violently pushed down Aamir Ageeb's head on his knees for around 8 minutes during take-off on a Lufthansa deportation flight, thereby suffocating the Sudanese asylum seeker (see *Statewatch* Vol 9 nos 3/4). Aamir's death has been publicised by anti-racist initiatives in their campaigns against deportations, highlighting the violent methods used by German police and border guards to deport refugees.

Ageeb's death is by no means an isolated case resulting from the EU's deportation politics. Mariame Getu Hagos (2003) and the Argentinean Ricardo Barrientos (2002) died in France; in Switzerland, the Nigerian citizen Samson Chukwu was killed in 2001 and Khaled Abuzarifa from Gaza in 1999; in Austria,

Marcus Omofuma was killed during his deportation in 1999; in Belgium the Nigerian Semira Adamu in 1998; the Nigerian citizen Kola Bankole died after being injected with sedatives by German police during his deportation in 1993 and in the UK, Joy Gardner was violently killed by police in 1993. This list is not comprehensive. In 1994, the Nigerian government protested to Germany over the deaths of 25 Nigerian deportees over the past three years. The Nigerian embassy said most of the 25 deaths had occurred in police custody with the majority of deportees dying of brain haemorrhages (see *Statewatch* Vol 12 no 2, Vol 11 no 3/4, Vol 8 no 5, Vol 4 no 5, Vol 3 no 5).

Given the more than 10 year old track record of deportation deaths and the role of the police in them, it is surprising that the defence in Aamir Ageeb's case succeeded in arguing that their clients had not been sufficiently trained to deport. They claimed that they had not been aware of the potentially fatal consequences of gagging a person by putting a cushion in front of his/her mouth and pushing the head down onto the knees. Hence the mild sentence by presiding judge Heinrich Gehrke, who, although condemning the death and the practice of shackling, found the Federal Border Guard leadership co-responsible for the death for not providing officers with enough practical training or clear guidelines. He therefore applied an exceptional provision under the Criminal Code which allows the defendant to remain under the minimum sentence for a particular charge if an unusual number of mitigating circumstances are found. If he had sentenced the guards to 12 months, they would have had to leave the service, now they will remain in office.

The evidence in this 9 month long trial revealed the brutality of the deportation regime and of the so-called accelerated airport procedure. Before bringing Ageeb to the airplane, officers had shackled him in the torturous "swing" position, in which his hands and feet were tied together behind his back, leaving the victim bent backwards, in this case for two and a half hours. On board, officers tied Aamir to the seat, using eleven plastic shackles, a five metre long rope and four rolls of tape, and put a motorbike helmet on him. Witnesses reported they used a cushion to subdue his screams.

Expert witness Claus Metz from the organisation "Doctors in Social Responsibility" (*Ärzte in sozialer Verantwortung*, IPPNW) concluded that some of these restrictive measures, even if used on their own, would have been sufficient to lead to death by suffocation. To push down a person's upper body with their hands tied in front of their stomach could prevent breathing, he said. Further, witnesses reported that the border guards refused to untie Ageeb's body when he showed no life signs.

After Aamir's death, the public prosecutor in Frankfurt charged the three border guards with involuntary manslaughter on grounds of the medical report which found six broken ribs, bruising and positional asphyxiation. However, despite the fact that these charges are usually dealt with by the regional courts, Ageeb's case ended up with the administrative court, where the judge Ralph Henrici let the case rest for several years. Dieter Kornblum, joint plaintiff and representative of Ageeb's family in the Sudan, says that the family had made almost weekly enquiries at the German embassy about their relative's death at the hands of the German authorities.

Following the defence's argument that the officers had been ignorant of "safe" deportation methods, the trial then became concerned with assessing the level of training required rather than posing a critique of Germany's deportation regime. There was an information leaflet for border guards that told them to break off the deportation if in doubt, but, the defence argued, their clients had never seen it. They had also never been informed of the dangers of restricting someone's upper body, leaving the judge to conclude that officers had not been sufficiently trained in the 1990's. He concluded that management was therefore mainly responsible for Ageeb's death. The perpetrators have been ordered to pay 2000 euro each to the

victim's family.

Amnesty International followed the trial closely and criticised the light sentence and the government's reaction to the judge's remark that likened the shackling methods in the Frankfurt prison with the torture in Abu Ghraib, Iraq. Instead of commenting on the brutal methods leading to a death at the hands of the authorities, a spokesman from the interior ministry only criticised the comparison to Abu Ghraib. Amnesty pointed out that the comparison resulted from a careful presentation of evidence that showed systematic abuse that remained accepted and unpunished by leading officers. In its press release from 19 October the human rights organisation says:

The conditions in the Abu Ghraib prison were characterised by the personnel employed there torturing in a quasi law-free zone - at least not prevented by their supervisors. The presiding judge in the Frankfurt trial has found similarities in his reasons for judgement. The "unimaginable" also took place in the prison cell of the Federal Border Guards on the Frankfurt Rhein-Main airport - and it was accepted by the lower ranks because, according to some witnesses, it was not prevented by the higher ranks.

Jungle World 11.2 04, 13.10.04; Süddeutsche Zeitung 19.10.04. see <http://lola.d-a-s-h.org/~rp/ageeb> for an in-depth documentation of the circumstances of Aamir Ageeb's death and the trial.

UK

Asylum seekers roll call of death

The Institute of Race Relations (IRR) has published a harrowing "roll call of death of the 180 asylum seekers and undocumented migrants who have died either in the UK or attempting to reach the UK in the past fifteen years." The report, written by Harmit Athwal, finds several significant causes for the deaths. Athwal found that the high risk strategies forced on asylum seekers to enter the UK because of draconian legal barriers accounted for 50% of the cases examined. Another significant factor, accounting for over 25% of the cases examined resulted as an "indirect consequence" of the iniquities of the immigration/asylum system. A further 28 people died in the course of their work, by virtue of being forced into the "black economy". Fifteen people died at the "at the hands of racists or as a consequence of altercations which had a racial dimension" and five died in prison, police or psychiatric custody.

The most numerous cause of death, covering half of the cases investigated, was of people forced to "take dangerous and high risk" methods to enter the country due "to legal barriers in place to prevent them securing visas or work permits to enter legally." The report considers 90 cases in which people had died after being forced to stow away on planes and lorries or attempt to cross the channel in makeshift boats or cling to trains. The report acknowledges that the recorded number of those who died in this manner is only a fraction of the total.

A further 42 people died as "an indirect consequence of the iniquities of the immigration/asylum system." Of these 34 died by their own hand "preferring this to being returned to the country they fled, when asylum claims are turned down." Another four people died accidentally after taking evasive action "at what they presumed to be the arrival of deportation officials".

The number of people who died working in the "black economy" (28) is also an underestimate, as work-related deaths of people who are "illegal" are frequently not reported. Fifteen of the deaths were a consequence of racism, many of the instances arising as a result of the government's dispersal policy, which left the victims isolated and vulnerable. Five of the deaths were in institutions, such as prisons, police stations or psychiatric units, where institutional racism and reckless restraint methods have long been recognised as a major problem.

In the introduction to the work Athwal says:

No section of our society is more vulnerable than asylum seekers and

undocumented migrants. Forced by circumstances beyond their control to seek a life outside their home countries, prevented by our laws from working, denied a fair hearing by the asylum system, excluded from health and safety protection at work, kept from social care and welfare, vilified by the media and therefore dehumanised in the popular imagination, their hopes of another life are finally extinguished

Harmit Athwal "Death Trap: The human cost of the war on asylum" (Institute of Race relations) 2004, http://www.irr.org.uk/pdf/death_trap.pdf

Immigration - in brief

■ **UK: Defend Rachid Rama's right to an education:** Rachid Ramda is an Algerian asylum seeker who has been detained in Belmarsh prison for over 9 years, despite never being convicted of an offence. Rachid's detention resulted from an unsuccessful attempt by the French government to extradite him on terrorism charges in 1995, in connection with bomb attacks in Paris. The UK's High Court rejected his extradition in June 2002, arguing that evidence had been gained through the ill-treatment of another man connected to the case. The court judged that there was a "real risk" Rachid would be tortured if returned to France. Rachid spent the first six years of his detention in a Special Secure Unit (SSU) without access to education. During this period his mental and physical health suffered. After six years in the SSU he got access to education and has completed an Open University course in English literature. With his new skills he acts as a lifeline for other prisoners detained, also without trial, under the Anti-Terrorism Crime and Security Act 2001. Rachid would like to study two more Open University courses this year, but the prison authorities have created the obstacle of funding. If Rachid is to enrol in the courses in time he needs to raise funds. A substantial part of the £500 needed has been acquired, but his solicitor is asking for donations to meet the total. If you are able to help Rachid by making a contribution please send a cheque made out to Birnberg, Peirce & Partners (with a note saying that it is for Rachid's education fund). Any surplus money will be spent on educational materials. Cheques should be sent to: Daniel Guedalla, Birnberg, Peirce & Partners, 14 Inverness Street, Camden Town, London NW1 7HJ. *Scotland Against Criminalising Communities* <http://www.sacc.org.uk/> CARF website, <http://carf.demon.co.uk/index.html>; Miscarriages of Justice UK

Immigration - new material

Asylum statistics: United Kingdom 2003, Tina Heath, Richard Jeffries & James Purcell. *Home Office Statistics Bulletin* 11/04, 24.8.04, pp.80 (ISSN 1358-510X).

New Labour's new racism, Jonny Burnett & Dave Whyte. *Red Pepper* Issue 124 (October) 2004, pp. 28-29. This article argues that the government's asylum and citizenship policies have resulted in an upsurge in racially motivated violence and police harassment.

Control of Immigration: Statistics United Kingdom, 2003, Jill Dudley. *Home Office Statistics Bulletin* 12/04, 24.8.04, pp.47 (ISSN 1358-510X).

Asylum, Immigration & Nationality Law Update, Robert Sutherland. *SCOLAG Legal Journal* Issue 322 (August) 2004, pp149-153. This piece reviews significant cases from Scotland and England until June 2004. It covers the areas of asylum, social welfare support, criminal proceedings and human rights.

The control of rights: the rights of workers and asylum seekers under managed migration. A discussion paper, Lydia Morris. *JCWI* May 2004, pp.26.

Handling EU asylum claims: new approaches examined. Report with evidence. *House of Lords European Union Committee* HL Paper

74 (April) 2004, pp.71 + Minutes of evidence (ISBN 0 10 400443 6), £20. This paper considers, among other things, "transit processing areas", concluding that "the British Government's and UNHCR's proposals for extra-territorial processing of asylum claims are not the answer." Chair of the inquiry, Baroness Harris of Richmond, said: "Shuffling people around the EU for their applications to be considered would be undesirable for the people concerned and raise serious legal difficulties. It would also be a logistical nightmare."

LAW

NETHERLANDS

DNA samples become obligatory on conviction

The Dutch Parliament has passed a Bill that makes it obligatory for anyone convicted of a crime that carries a sentence of four years or more, to provide a DNA sample. Previously, suspects would give a DNA sample when a serious crime, such as murder or rape, was involved. During preliminary analysis the sample can be compared with DNA that is found at the scene of the crime. It is also possible to compare samples with profiles stored on the DNA databank, which contains 14,500 profiles. People can also give a voluntary DNA sample to prove their innocence.

The DNA debate began in the Netherlands at the beginning of the 1990s, when there was fierce resistance to, and extensive discussion on, the subject, in contrast to the present-day situation. In 1990 the High Court ruled against the obligatory delivery of DNA because there was no legal basis for such an infringement of the "physical integrity" of a suspect. This changed in 1994 when the courts ruled that samples could be taken when urgently needed for a criminal investigation carrying a sentence of more than six years. This legal remit proved to be very flexible when the newspaper *Trouw* disclosed, in October 1998, the large scale collection of DNA specimens, from burglaries in the provinces of Utrecht and West Brabant. The High Court consolidated this practice in 1999, after a case involving DNA specimens taken by police during an Amsterdam house-search. In September 2003, the Dutch parliament passed a law permitting the identification of racial and gender information from samples found at the scene of a crime.

By October 2002 the Dutch Forensic Institute at Rijswijk held 5,147 DNA specimens and 2,074 identified samples. A year later, in November 2003, the Institute held 10,864 specimens and 3,489 identified samples. Currently there are 14,500 samples with 5,737 identified profiles in the database.

The new Bill permits genetic material to be taken from anyone who is convicted of a crime with a penalty of four years or more. In reality this is likely to impact on all criminal acts that fall under the penal code. There are some exceptions, such as perjury or forgery - the reason being that these crimes do not have any relation to physical characteristics.

In future it will be necessary to provide a DNA sample where a person is charged with an offence where the sentence is four years or more but has been given a lesser sentence - for example, a suspended sentence or community service. The only exception will be sentences punishable by a fine. For those sentenced while in custody, DNA samples will be taken by prison personnel. A convicted person awaiting imprisonment or community service will be invited to the police station to provide a DNA sample; for those who fail to appear the public prosecutor will issue an arrest warrant. The period of detention for an arrested person will be extended by six hours (above the existing 6 or 12 hour current limit) to collect a DNA sample. In cases where an individual protests strongly it is permitted to take a

blood or hair sample.

The new Bill will not work retrospectively for people who have already served their sentence. It does apply to people in prison when the Bill becomes law or if they are convicted but not yet jailed.

It is unclear when the Bill will become law, but it will be introduced in two stages. The first stage is for those convicted of acts of violence or a sexual offences, in the second phase those convicted of lesser crimes will be obliged to provide DNA samples.

Police chiefs would like to see the new measures go further with some of them pushing for a national database. Others argue for the retention of DNA samples from anyone who is held in police custody for a period of more than six hours. The Amsterdam police chief, Bernard Welten, who is also the Council of Police Chiefs representative responsible for forensic research, drew a comparison between CCTV and the DNA database: "Ten years ago everyone was against CCTV and now everyone wants the cameras", he said. Both the government and opposition parties are in favour of obtaining samples from suspects, with the proviso that it is destroyed if the suspect is cleared of the charges.

The expansion of the DNA database was criticised by the lawyer, J. Boone, who told *Volkskrant* in November 2003:

I am worried about the constant enhancement of the law. It is part of a semi-fascist way of looking to security. They want to ban crime for once and all, but with the cost of privacy for civilians. Security is not only prevention of crime, but also a system which reduces civilians to zero. A system which, above all, is not fool-proof.

NETHERLANDS

Extradition of Nuriye Kesbir

Two weeks after 11 September 2001 Nuriye Kesbir arrived at Schiphol airport in Holland. She entered the Netherlands with a false passport and sought asylum. Kesbir was born in Turkey but lived in Germany throughout the 1980s; her family also live in Germany, as political refugees. A Kurd, in 1991 she joined the armed struggle of the PKK (Kurdish Workers Party) in eastern Turkey. Her decision was based on the treatment of the Kurdish people and the position of Kurdish women. She became a member of the PKK's Central Committee from 1995 and in January 2000 she joined the Presidential Council, the highest governing body of the organisation.

Kesbir's membership of the PKK is not disputed, although it became a complicating factor during the legal process. What is disputed is whether or not she knew of, or took part in, a campaign which the PKK undertook from 1993 till 1995. In this period the organisation targeted village guards who were appointed by the Turkish government. The Turkish authorities accuse her of 25 attacks in which more than 150 people died during this period. She denies using arms, arguing that she was mainly active in improving the position of Kurdish women both within Turkish society and the Kurdish community. Furthermore she denied being in eastern Turkey between 1993 and 1995. She claims that she was in Haftani, Northern Iraq, fighting for equal rights for women.

Kesbir's asylum request of 25 September 2001 was rejected at the beginning of 2002 on the grounds that she was suspected of having collaborated in war crimes or crimes against humanity. This is the 1-F procedure, that is directed at those who seek asylum but are suspected of the above mentioned crimes. After the rejection Turkey immediately asked for her extradition. Kesbir appealed against the asylum decision and began a court case against the Turkish extradition request, fearing that she will not get a fair trial. There is also a chance that she will be tortured and jailed for the rest of her life. She points to the conditions of

the imprisonment of Abdullah Ocalan, the leader of the PKK who is incarcerated on an island in Turkey.

Kesbir's legal battle was not for nothing. Turkey stated that it would prosecute her for membership of a terrorist organisation, for which the maximum penalty is 10 to 15 years imprisonment. Although they accuse her of leadership of a terrorist organisation Turkey does not intend to prosecute her for that, probably because previously the death penalty was given and Holland would not extradite her if that was the case. The Amsterdam court asked the Turkish authorities to clarify why they had chosen that course. The court also asked the Turkish government for a guarantee that she would not appear before military court, that she would not be tortured and that she would not face the death penalty. The Turkish public prosecutor complicated the case by stating that even if the Justice department decides to prosecute her for membership of the PKK, the court could still sentence her for her leadership role. Theoretically, she could receive a life sentence.

In December 2002, when Kesbir had already been in prison for 14 months, a court ruled that the Netherlands was not allowed to extradite her because the Turkish authorities had not handed over sufficient evidence of the specific charges against her specifically, her role within the PKK. Another ground of the extradition request, Kesbir's membership of a terrorist organisation, is not a criminal act in Holland.

At the beginning of 2003 Kesbir was released, because the court did not see any pressing need for her imprisonment. After all, Holland had allowed the Kurdish Parliament on its territory and doesn't have a law concerning the prohibition of "terrorist" organisations. The Minister of Immigration Affairs at the time appealed against the decision of the court at the Council of State, which ruled that Kesbir should be imprisoned until her appeal. Kesbir went into hiding and was absent from the court case concerning her asylum request.

Kesbir was not the first PKK member who sought refuge in Holland. In the beginning of 1999 Abdullah Ocalan, leader of the PKK, tried to enter, but was refused because he was an "undesirable" foreign national. In November 1999 Murat Karayilan sought asylum in Holland. Turkey immediately requested his extradition. The Dutch authorities, to avoid conflict with the Turkish, rejected the asylum claim while the extradition request was not acted upon, the Justice department arguing that they did not know where Murat Karayilan resided. This was a peculiar argument because in cases where an address is unknown the Immigration and Naturalisation Service (ID) should not start processing an asylum request. In this instance the INS argued that it was sufficient that a lawyer knew where Karayilan was living. In their 2000 annual report the Secret Service mentioned that Karayilan left the country in June 2000.

Kesbir's case was similar in its early stages. Her asylum request and the extradition order were rejected. The difference was that she was imprisoned and the Dutch authorities could not argue that they did not know where she was. Kesbir appealed the asylum case and the public prosecutor in the extradition case.

In the asylum case appeal the Council of State returned the case to the Amsterdam court because it had not given Kesbir sufficient opportunities to correct and/or add information to her statements. The court decided on 5 March 2004, as it had done earlier, that the Minister of Immigration Affairs had justifiably rejected her asylum request. Kesbir lost her appeal at the Council of State, which followed the court decision of 23 July 2004 and said that she: "had knowledge and personally took part in war crimes which were committed by the PKK in the South-East of Turkey".

The grounds for the rejection are based on two Ministry of Foreign Affairs documents in which the Ministry states that Kesbir stayed in a camp in eastern Turkey from where terrorist activities were undertaken. The source of these documents was not revealed by the Ministry, because "we never give

information about individual documents". Amnesty International has questioned the Ministry's reports; the organisation warned that if the information is coming from the Turkish authorities, it possibly came from statements of PKK fighters that were obtained under torture.

The Turkish authorities have stated that the information came from a Kurd who changed sides and who also played a role in the arrest of Ocalan. He claims that Kesbir was responsible for an area where a lot of people were killed.

The extradition case took a long time to proceed, because the Dutch authorities did not want the High Court to deal with the case when Kesbir was not present. The public prosecutor did not accept her lawyer's argument that he knew where she was. When Kesbir attended court she was immediately arrested after the case was dealt with on 5 March 2004.

In May 2004 the High Court advised Minister of Justice Donner to grant the Turkish extradition request if their authorities would give guarantees for her safety. After the Court's verdict Kesbir went on hunger strike from 7 May 2004 till 10 June 2004. A Kurdish group supported her both by a hunger strike as well as several demonstrations against her proposed extradition.

During the court case the Dutch State argued that the PKK is a terrorist organisation according to the European Union and although the Netherlands had voiced its doubts about this statement it did not protest when the organisation was placed on the EU-list of terrorist organisations. He agreed that the PKK's struggle had a political context, but that did not mean that Kesbir's crimes were political. Kesbir's lawyer V. Koppe was surprised by this opinion. He argued that even the Minister of Immigration had argued, in the asylum case, that Kesbir should not be expelled from Holland, because of the political facts in the case.

Koppe also tried to persuade the court to try Kesbir in Holland, which is possible under the new Law on International Crimes (which came into force in October 2003). This law allows prosecutions against people who "have killed or wounded innocent civilians during an internal armed conflict".

The High Court ruled that the Netherlands could extradite Kesbir, but that her fears of torture and of receiving a life sentence in Turkey are correct, but not in so far that they stand in the way of the extradition. In a reaction to the decision the spokesman for the prosecution declared that the case was partly political but the criminal element took precedence.

The fact that the attacks of which Kesbir is accused in the extradition case were not used in the asylum case because of lack of evidence persuaded Human Rights Watch and Amnesty International to voice their concern at the verdict. Human Rights Watch is generally concerned about the Dutch conduct in cases of extradition. According to the organisation people are expelled to countries, which are known for torture or mistreatment. The Netherlands accepts the guarantees of the countries in question but according to recent research by the organisations these promises are unreliable.

Even the United Nations (UN) and the United Nations special reporter on torture, Theo van Boven, have advised the Dutch government not to extradite Nuriye Kesbir, because the guarantees of the Turkish authorities had no value in earlier cases. The UN also declared that if Holland extradited her it would ask the Turkish government to guarantee her safety and that UN representatives be allowed to visit Kesbir regularly. In the similar case of Mehmet Kaplan, involving Germany, Turkey refused to comply with these guarantees.

After the High Court's decision to proceed with the extradition the last chance for Kesbir was her asylum request, but the Council of State ruled that it was justifiable that she was refused refugee status in Holland. It was up to the Minister of Justice Donner to decide if he would extradite her.

Donner agreed to Nuriye Kesbir's extradition on 7

September 2004 after Turkey gave a guarantee that Kesbir would not be tortured. Kesbir appealed against this decision. After this appeal she only can contest the verdict at the European Court of Human Rights.

UK/USA

Enron 3 case confirms extradition fears

On 15 October 2004, Bow Street magistrates' court in London recommended to the Home Secretary the extradition of three British investment bankers to Houston, Texas, in the United States. They face prosecution for their alleged defrauding of Nat West Bank, the British company they worked for, in a scam in 2000 with executives from Enron, the collapsed oil company. The three are to appeal the Decision.

Gary Mulgrew, Giles Darby and David Bermingham are being extradited under the 2003 UK Extradition Act. This implemented the European Arrest Warrant and streamlined procedures to more than 100 'category 2' countries, including the US - in line with a draft 2003 Treaty with that country. [1] This Treaty removed the requirement on the US side to provide *prima facie* evidence of a crime when requesting the extradition of people from the UK (a statement of the facts will now suffice), but maintaining that requirement on the UK when it seeks someone's extradition from the US (to satisfy the 'probable cause' requirement in the US constitution). [2]

Although the 2003 UK-US agreement is now being applied by the UK, it has not yet even been ratified by the US. It was sent by the US President's office to the Senate Committee on Foreign Relations for scrutiny in April of this year. So if the UK wants to extradite someone from the US, procedures in the 1972 UK-US Extradition Treaty (and 1985 Supplementary Treaty) still apply. It remains to be seen if the US will ever in fact ratify the 2003 agreement because of the civil liberties concerns it has raised. [3] In the meantime the US can apparently ignore the provisions of its existing Treaty with the UK and request the extradition of UK citizens under the new Act, potentially taking advantage of its favourable provisions.

The defendants in the Nat West-Enron case argue that if they are to be prosecuted, they should face prosecution in the UK courts: the alleged offences were committed in Britain against a British corporation by British citizens. The UK Serious Fraud Office, on behalf of the US, intervened to say it would be more expedient to prosecute the three in the US and that a successful prosecution was more likely there than in the UK. In his approval of the extradition request, Judge Nicholas Evans agreed, offering the following conclusion:

I accept the defendants could have been prosecuted in the UK. There was, however, no obligation to prosecute them in the UK. They are not going to be prosecuted in the UK. The US wants to prosecute them in the US. The process is 'necessary in a democratic society' and proportionate.

Lawyers for the three say the UK Financial Services Authority has effectively cleared them of any wrongdoing and that they have repeatedly asked Nat West, and its parent Company, Royal Bank of Scotland to bring charges if they felt they had been the victim of a crime. RBS/NatWest has taken no action and continues to provide bank accounts for the men's personal and business activities.

The defendants also argue that extradition would breach their fundamental rights under the European Convention and UK Human Rights Act (HRA), and that the US request should be refused in accordance with the few barriers to extradition that remain in the new UK procedure. They will almost certainly be refused bail if extradited to face federal charges and potentially

bankrupted by the cost of their defence. They also argue that they will not receive a fair trial in the US because of the media interest in the prosecutions connected with the collapse of what was once the country's seventh largest corporation. Their alleged co-conspirators at Enron have already entered guilty pleas and will testify against the three, further undermining the credibility of the prosecution, argue defence lawyers.

Liberty, the Human Rights organisation, has already indicated that it will intervene for the three in their appeal, arguing that the trial venue is a crucial consideration and that the case is 'an important benchmark as to the extent to which the HRA can safeguard the rights of those facing extradition proceedings'.

The case poses more searching questions about UK judicial cooperation with the US. First is the one-sided nature of the UK-US extradition procedures. Were the 'probable requirement' in the US constitution to exist in a hypothetical UK constitution, the Extradition Act 2003 would surely have been incompatible. Has the Act, and the European Arrest Warrant, gone too far? Would the US extradite three of its citizens on the basis of the same facts put forward by the UK in the same circumstances?

Second, there are questions about the broader nature and effect of UK-US judicial cooperation, including the central issue of whether to bring prosecution in the UK. It is logical that the UK authorities want to cooperate with US attorneys in the Enron Task Force. However, international cooperation should also protect the rights of individuals and mutual legal assistance is supposed to make the principle of transferring proceedings possible (if not preferable in certain circumstances). There is no reason that the UK authorities can not request and receive evidence from the Enron Task Force and put it to a jury in a British court (though in the absence of a complaint from RBS/NatWest there is no obligation upon them to do this).

Two weeks ago a UK subsidiary of a US corporation turned over *Indymedia's* web-servers in London over to the FBI, posing yet more questions about human rights, accountability and jurisdiction. [4] The 'free movement of investigations and prosecutions' in the 'globalised', post-September 11 world effectively means that states can extend their jurisdiction and powers across borders and in third states (depending, of course, on the barriers raised by the third state's constitution). Suspects and defendants are no longer protected by international conventions, but increasingly at their mercy.

Finally, reform of the UK extradition procedures under the 2003 Act was supposed to, among other things, take the politics out of extradition requests. It is perhaps ironic then that the UK-US extradition treaty was subject to a single ministerial report to parliament - after it had been signed - and slipped onto the statute using arcane legislative procedures. The more searching questions posed by the Enron 3 and *Indymedia* cases are not being discussed in parliament at all. But not all the politics has been taken out of extradition procedures. The final Decision to extradite still rests with the Home Secretary, David Blunkett.

[1] 'UK applies new simplified extradition procedures to USA and over a hundred other countries', *Statewatch News online*, January 2004: <http://www.statewatch.org/news/2004/jan/06extradition.htm>

[2] 'New UK-US Extradition Treaty', *Statewatch News online*, July 2003: <http://www.statewatch.org/news/2003/jul/25ukus.htm>

[3] "Support Proper Judicial Review for Extradition Requests", *ACLU*: <http://www.aclu.org/NationalSecurity/NationalSecurity.cfm?ID=14624&c=24>

[4] 'Was the seizure of *Indymedia's* servers in London unlawful or did the UK government collude?', *Statewatch News online*, October 2004: <http://www.statewatch.org/news/2004/oct/04uk-usa-indymedia.htm>

Law - in brief

■ Germany: Court might decriminalise PKK. On 19

August, the German Federal High Court (*Bundesgerichtshof*) indicated during an appeal, that the "democratisation" process started by the PKK might lead to it being taken off of the German list of "criminal organisations". The PKK was banned in Germany in 1993. After the arrest of Abdullah Öcalan in January 2000, it announced an end to the armed struggle. The organisation had already been downgraded from "terrorist" to "criminal" by the federal prosecutor's office in 1998. Last year, the PKK renamed itself the People's Congress of Kurdistan (*Kongra-Gel*). The appeal was initiated by two PKK leaders who had received prison sentences from the higher regional court of Lower Saxony on grounds of membership of a criminal organisation. The presiding judge Walter Winkler argued that since it had renounced violence, the PKK had not committed any "deliberate and overt" (*demonstrative*) criminal acts such as the occupation of embassies and consulates. The prosecution representative Wolfgang Kalf countered this by stating that the PKK was still a Marxist-Leninist organisation with an authoritarian leadership that had remained open to the use of violence if political circumstances changed. A final decision by the court on the appeal is expected. *Süddeutsche Zeitung* 20.8.04

■ **Italy: Acquittal for eight communist terrorist suspects**
On 21 September 2004, eight members of *Iniziativa Comunista* (a Marxist-Leninist group based in Rome), who were arrested on 3 May 2001 in relation to investigations by the *carabinieri* regarding the "new" Red Brigades (BR) and the assassination of Massimo D'Antona, were acquitted by a court in Rome. The judge in the preliminary hearing ruled that the accusations did not stand up to judicial scrutiny, and that the evidence presented by anti-terrorist prosecutors was "inconsistent". The eight were accused of subversive association as a result of "political dialogue" with the new BR. One of the accused was also accused of material involvement in the assassination, before a witness failed to identify her in an identity parade in *Rebibbia* prison. Prosecutors had demanded two-year prison terms for six of the accused, two years and eight months for the leader of the group, and the acquittal of the eighth suspect, and have announced that they may appeal the ruling. The defendants spent nine months in prison, and may demand damages. *Il manifesto*, 22.9.04.

■ **European Court: McLibel 2 take case to Strasbourg.**
Helen Steele and David Morris, who are known as the McLibel 2 after they were sued by the US-based McDonald's fast food chain in 1990, have asked the European Court of Human Rights to consider whether the trial breached their right to a fair trial and freedom of expression. The McLibel 2 were accused by the corporation of handing out leaflets criticising McDonald's and were forced to defend themselves in the longest trial in English legal history, (lasting 313 days).

Law - new material

Gypsy and Traveller law update, Chris Johnson, Marc Willers & Angus Murdoch. *Legal Action* August 2004, pp13-18. This piece considers official caravan sites, unauthorised encampments and homelessness. It expresses concern over the "recurrent theme" of the need to reintroduce the duty to provide or facilitate the provision of Gypsy and Traveller sites. The government is expected to report on this issue later in the year.

Recent developments in European Convention Law, Philip Leach. *Legal Action* July 2004, pp.28. This article summarises cases at the European Court of Human Rights which have relevance to the UK.

Anti-social Behaviour Act 2003 and Gypsies, Travellers and public gatherings, Timothy Baldwin. *Legal Action*, August 2004. An important article focusing on Part 7 of the ASBA which contains important amendments to public order legislation (namely the Public Order Act 1986, and the Criminal Justice and Public Order Act 1994).

These amendments serve to enhance police powers and impose greater restrictions on public assemblies to the extent that the Joint Committee on Human Rights has warned that Part 7 may be incompatible with the European Convention on Human Rights. Provides a detailed account of the legislative changes, and draws attention to the questions of whether gypsies and travellers are being criminalised under the act. See: On Statewatch site: <http://www.statewatch.org/asbo/ASBOWatcho.html>

MILITARY

USA/UK/IRAQ

37,000 civilians reported dead in invasion

Aljazeera.net has reported that an Iraqi political group, The People's Kifah (Struggle Against Hegemony), has estimated that nearly 37,000 Iraqi civilians died in the period between March and October 2003. The statistics were compiled by a UK-based physiology professor, Al-Ubaidi, and have been "vouched for" by the deputy general secretary and spokesman for *Aljazeera.net*, Muhammed al-Ubaidi, who said:

We are 100% sure that 37,000 civilian deaths is a correct estimate. Our study...involved hundreds of Iraqi activists and academics...For the collation of our statistics we visited the most remote villages, spoke and coordinated with grave diggers across Iraq, obtained information from hospitals and spoke to thousands of witnesses who saw incidents in which Iraqi civilians were killed by US fire.

The survey ceased in October 2003 after one of the group's workers was arrested by Kurdish militias and handed over to the US occupation authorities. His fate is unknown, but al-Ubaidi fears that he may have been tortured or "disappeared", as have other prisoners held by the US military in Abu Ghraib prison.

To date there are no reliable official estimates of Iraqi civilian casualties as the interim Iraqi government has not published any statistics. The US and UK occupation authorities have also refused to provide figures, the US General, Tommy Franks, explaining "We don't do body counts" - not Iraqi civilian body counts, anyway. As of 21 September 2004 there were 1,178 coalition military forces killed, (1,043 Americans, 66 Britons, six Bulgarians, one Dane, two Dutch, one Estonian, one Hungarian, 19 Italians, one Latvian, 13 Poles, one Salvadorean, three Slovaks, 11 Spaniards, two Thais and eight Ukrainians).

A recent report by the Washington-based *Knight Ridder*, based on statistical data compiled by the Iraqi Health ministry and leaked to them, recorded 3,487 Iraqi civilian deaths in 15 of the country's 18 provinces between April and September 2004. Of these 328 were women and children. A further 13,720 Iraqis were injured. In August alone, 1,100 Iraqis - "overwhelmingly civilians" - were killed. Iraqi officials said about two-thirds of the Iraqi deaths were caused by multinational forces and police. The remaining third died from insurgent attacks. The officials told *Knight Ridder*: "the statistics proved that US air strikes intended for insurgents were also killing large numbers of innocent civilians" and that the "aggressive US military operations...could backfire." It has been reported by the Associated Press that the Health Ministry has been ordered to stop releasing figures to the press as US and Iraqi government forces build their campaign against the Iraqi resistance to coincide with US presidential elections.

A number of unofficial estimates exist for Iraqi victims of the US-led invasion. The UK-based Iraqi Body Count (IBC), which is run by a small group of academics and peace activists, estimates that 13-15,000 civilian deaths resulted from the US-led intervention. The IBC has called for an independent commission

to be set up in Iraq to give the best estimate of how each person died. The US-based Brookings Institute combines the IBC's figures with projections for deaths caused by violent crime resulting from the collapse of Iraq's infrastructure following the invasion to reach an estimate of up to 25,000 victims between May 2003 and August 2004.

The UK Ministry of Defence, like the Pentagon, does not record the number of Iraqis killed, but Foreign Minister Jack Straw opined to the BBC in May that the death toll was around 10,000. Straw found it "odd" that the coalition did not compile figures. The Foreign Office later pointed out that Straw's estimate "was not an official figure" and doubted if one will ever be obtained - despite a legal obligation, under the Geneva Convention, to do so.

The Brookings Institution "Iraq Index: Tracking Variables of Reconstruction & Security in Post-Saddam Iraq" [http://www.brook.edu/Iraq Body Count](http://www.brook.edu/Iraq%20Body%20Count) <http://www.iraqbodycount.net/>; BBC News 24.9.04; Al Jazeera <http://english.aljazeera.net/HomePage>

ITALY

Commission to investigate effects of depleted uranium on soldiers

On 15 September 2004, the establishment of a parliamentary commission to investigate the effects of depleted uranium on Italian soldiers deployed in missions abroad was agreed. The Commission will be formed by ten senators and ten MPs appointed by the presidents of the two chambers. It will have a year to reach its conclusions, and powers of investigation that are similar to those of judges, including access to documents and the possibility of calling witnesses, authorities and experts to testify on this issue. The main scope of the Commission will be to investigate whether there is a risk of contamination in the region where Italian military personnel is deployed under UN control in Kosovo (KFOR), on the precautions adopted by the Defence ministry before, during and after their deployment, and whether there are cases that could be assessed as being similar to the so-called "Gulf War syndrome" among members of the Italian armed forces who have returned from Kosovo. The notion of "official State secrets" cannot be used to withhold information from the Commission, although the Commission will be responsible for deciding what elements of its investigations will be divulged, and what elements will be subject to a regime of secrecy. Once its work has been completed, it will present a report to parliament and pass on its findings to the ordinary prosecuting authorities. Domenico Leggieri, a spokesman for the *Osservatorio Militare* welcomed the decision, because "For the first time we will be able to submit all the documentation we have collected, from figures to medical assessments", although he expressed "perplexity" over the possibility of the commission being purely formed by doctors and scientists.

Members of the families of military personnel claim that 30 Italian soldiers have died as a result of exposure to depleted uranium (DU) in peace-keeping missions in Somalia and the Balkans. They report that up to 300 persons may be suffering the consequences of exposure to depleted uranium. They compared their lack of protection with the hi-tech equipment worn by US soldiers who were operating in Somalia in 1993 and subsequently in the Balkans, reportedly dismissed as "exaggerated" by Italian officers on the ground, and complained about the fact that the Italian government and army refused to admit any responsibility for the deaths. In Somalia, gas masks were reportedly kept in a storehouse rather than being available for use by military personnel. In 2000, a ministerial commission (the Mandelli Commission) found that there was no relationship between leukaemia and tumours and depleted uranium, although it also noted that there was an anomalously high incidence of

Hodgkin's disease among military personnel deployed in the Balkans. The payment of damages has been blocked because it has not yet been ascertained whether depleted uranium on its own is sufficient to cause these health problems, or whether it acts in association with other factors.

On 14 September 2004, a delegation of relatives and members of the armed forces who are suffering from these diseases was heard in the Senate. They asked for the rights of their relatives to be upheld, and for the real responsibilities behind this phenomenon to be discovered. "They explained [to us] that our dead were already ill when they left, that every possible precaution had been adopted in the Balkans", claimed the widow of a *carabiniere* (member of Italy's paramilitary police force) from a parachute division who died in 2000. They claimed that military hospitals took part in the erection of a "wall of silence" around their cases, by discharging and failing to carry out the necessary exhaustive tests on them. In one case, an officer who died in 2001 was released from a military hospital and chose to go to a civilian hospital for further tests, where he was found to have a tumour. The doctor who carried out the tests asked him: "Where have you been? It looks like you come from Chernobyl." Angelo Fiore Tartaglia, a lawyer who is representing 36 soldiers suffering from their exposure to depleted uranium in the Balkans and their relatives, noted that the "defence [ministry] is obliged to guarantee the psychophysical integrity of its employees". He noted that "lots of heavy metal particles have been found in the soldiers' bone marrow", explaining that "the dust particles that are generated following the explosion of missiles stay in the atmosphere, and they then enter the bodies of military personnel and the civilian populations, causing these diseases". Although the establishment of this Commission has to do with the exposure of Italian military personnel to depleted uranium in the Balkans, one can only imagine that the effects suffered by civilian populations and the environment in the regions will be exponentially higher.

Progetto di Legge n.2333/04; Il manifesto, 15.9.04

EU

Green light for EDA

EU foreign ministers formally authorised the creation of the Europe Defence Agency (EDA) during a meeting in Brussels on 12 July. The EDA becomes a functioning agency with around 80 staff in 2005. The ministers approved an initial budget of about EUR 1.9 million in 2004 with which to conduct feasibility studies. In the following years the budget will hover around EUR 15 million annually. The agency aims at developing EU defence capabilities for foreign military intervention, promoting and enhancing the European arms industry, strengthening the European military industrial and technological base and creating a competitive arms market for exports. It consists of five departments:

Capability Development Directorate

Research & Technology Directorate

Armament Directorate

Defence Industry and Market Directorate

Corporate Service Directorate

In the process the defence ministers of the bigger countries will be personally committed through their membership of the Steering Board that oversees the agency under the presidency of High Representative Solana. The Steering Board will decide by qualified majority. The Steering Board held its inaugural meeting in the fringe of the informal meeting of EU defence ministers in Noordwijk, Netherlands, in September.

Not only "open projects", where everybody can take part, will be developed by EDA, but also "closed projects" where a small number of states co-operate. The agency will propose criteria for spending efforts and military output and induce the member countries to commit to these levels.

In future years it is possible that a significant amount of money from the EU common budget will flow towards EDA in the so-called framework program, the sizeable security-related research budget of EUR 1 billion per year that the European Commission is planning to begin in 2007.

Jane's Defence Weekly 21.7.04 (Peter Felstead); Defense News 19.7.04 (Brooks Tigner) Europäische Sicherheit 9/04 (Peter Albers)

EU

Defence chiefs decide on battle groups, gendarmerie

At their informal meeting in September in Noordwijk, Netherlands, EU defence ministers approved plans for a highly trained, rapid deployable 15,000 strong military force by 2007. The force would be broken down into eight to ten battle groups of 1,500 specialising in everything from civil emergencies to jungle warfare and full-blown conflict; it should be able to deploy within 15 days. The idea is that larger EU members (Britain, France, Germany, Italy, Poland) would put up their own battle groups while the smaller countries should pool. The plan is, as the *Guardian* puts it, that the units "would react quickly, guns blazing as need be, to a crisis" and then make way for more traditional UN or regional "peacekeeping" forces in trouble spots. The battle groups could also form the spearhead for the 60,000 strong EU main rapid reaction force. Britain and France - the important sponsors of the plan - talk of Africa as being the main theatre of action for the battle groups. In the course of 2005 the first two or three battle groups should become available.

The ministers also decided positively on the French proposal for an 800-strong European *gendarmerie* (militarised police) force with headquarters in Italy, to be deployed rapidly (30 days) in the management of situations just after a crisis has occurred (riot control). Just as with the battle groups, there will be no geographical limitations. Five countries who have already this kind of *gendarme*-type police (France, Italy, Spain, Portugal and the Netherlands) would take the lead here. It will be open for others in the future. Britain's defence minister Geoff Hoon took the opportunity to stress that other European countries should spend more on defence. "You can certainly get more capability out of existing money by coordinating your money", he said. "But I do think that right across Europe we need to see governments to spend more on defence to reflect the enhanced threat that we face."

Military - in brief

■ **UK: "Privatised" Gulf War Syndrome inquiry announced.** In July Lord Morris of Manchester, who is honorary parliamentary advisor to the Royal British Legion, announced that he had established an inquiry into Gulf War Syndrome, the unexplained range of illnesses that afflicted soldiers serving during the first Gulf war in 1991. The inquiry is to be led by Lord Lloyd of Berwick and is funded by an anonymous donor and individual contributions. It is expected to cost in the region of £60,000. An independent inquiry into the syndrome was first called for by the British Legion in 1997 but, according to Lord Lloyd, "although the Government had claimed it had not ruled out holding an inquiry, it had "repeatedly" resisted one". A spokesman for the Ministry of Defence (MoD) said that: "We do not believe that a public inquiry is appropriate at this time." The

MoD has always denied the existence of Gulf War Syndrome. *Independent 13.7.04.*

■ **UK/USA: RAF using drones in Iraq.** The *Sunday Times* newspaper has reported that Royal Air Force officers have joined a team of US pilots "in the desert in Las Vegas that is flying and firing missiles from unmanned Predator spy planes more than 7,000 miles away in Iraq." The report says that the British airmen are deployed at the Nellis base in Las Vegas and at Balad, near Baghdad, which oversees the takeoff and landing of the drones. The Predators are used to provide information on coalition targets for conventional aircraft and are capable of firing missiles themselves. The US commander of the Predator operations at Balad, Kurt Schieble, told the paper that it "was cheaper and more efficient to base pilots far from the combat zone. "When I'm back in Nellis I can fly a mission over Iraq with the Predator, and then take my children home"". The 18-hour flights are controlled using a satellite link between the bases in the USA and Iraq and when the drone identifies a target it can either destroy it with its own Hellfire missiles or alert other aircraft. However, the growing use of US air power - currently standing at about 1,300 strike missions a month - to quell the uprising against coalition forces has led to widespread concern about the number of civilian casualties. *Sunday Times 3.10.04.*

Germany: Army officer charged with abuse. On 7 October, the Neustadt am Rübenberge regional administrative court sentenced a 42-year old army officer from the German Air Force (*Luftwaffe*) to six months on probation for physical abuse and degrading treatment. The indictment had listed 51 cases in which Andreas B. twisted soldiers arms, beat them, tied them to tables and verbally threatened them. These incidents took place between 2001 and 2003 on the Wunstorf airbase in Lower Saxony. Last year, the army transferred the case to the public prosecutor in Hanover and the accused was suspended from duty. The sergeant admitted the charges, which meant that only two witnesses had to be heard. The sentence reflects a common attitude in court towards law enforcement and army officers accused of abuse: the average sentence is less than 12 months, which allows the perpetrators to remain in office, (anyone in public office is automatically sacked when receiving a sentence of 12 months or above). Although Michael Giers, head of the respective regional court, claims that this incident is unprecedented, the German Campaign against Conscriptation, Forced Service and the Military (*Kampagne gegen Wehrpflicht, Zwangsdienste & Militär*) provides a comprehensive list of cases of "abuse and torture" committed by German soldiers and officers in Germany but also by those stationed in the Kosovo against civilians.

(see http://www.kampagne.de/Themen/BW_Monitoring/Doku_Folter.php Süddeutsche Zeitung 20.8.04, Die Welt 24.8.04)

POLICING

SPAIN

Gaztexte eviction leads to clashes and mass arrests

On 17 August 2004, police forcefully evicted a *gaztexte* (squatted cultural youth centre) in Pamplona (Navarre), in a building that had been occupied by squatters since 1994, after it had remained closed since 1978. The squatters turned it into an establishment with a bar, which hosted educational courses, political meetings and conferences, film viewings and concerts. The eviction marked the start of a week of protests, which saw widespread disturbances, the burning of rubbish containers, the launching of molotov cocktails, police charges and the firing of

rubber bullets.

A demonstration attended by over 10,000 people was held on 21 August to support the occupants, amid accusations that the town council was trying to establish a "police state". Two other buildings were occupied by protestors in the days that followed the eviction, one of them a de-consecrated church and the other an abandoned industrial warehouse, although they too were eventually evicted by police. The assembly of the *gaztete* thanked the neighbours for their support, as well as claiming that the prolonged disturbances had resulted in a total of 115 arrests, 15 injuries and 89 complaints about the excessive use of force by police. The police replied by arguing that 82 rubbish containers were set on fire, 30 molotov cocktails were thrown, and the local council argued that the disturbances bore the hallmarks of the "kale borroka" (urban vandalism with political motives in the Basque Country, which has been typified as terrorism). The arrested protestors may be charged with offences including usurping property, obstructing police officers in the course of their duty, and the carrying out of activities against public authorities. Reports also indicated that police fired rubber bullets at cars whose drivers had honked their horns in support of the occupants.

In early August mayor Yolanda Barcina, of *Unión Popular de Navarra* (UPN, the Popular Party's Navarre branch), demanded that they vacate the building. In the early morning of 17 August, members of the national, regional and municipal police forces began the forceful eviction of the premises, which resulted in 37 arrests and in minor injuries to two occupants and a police officer. Demolition of the building began immediately, and the mayor justified the operation by stressing that it was "illegally occupied" and in poor condition, as well as claiming that uncontrolled "lucrative" activities were carried out on the premises (such as the sale of food without necessary health and safety controls).

The town council bought the building from the company that owned it on 21 June 2004, with plans to build a sports complex in its place. Nonetheless, it appears that the plans for the sports complex have now been abandoned. The council intends to use the space temporarily as a parking lot, and heated discussions in the local council have thrown up evidence that the demolition of the building was an action which had not been duly authorised nor examined by the council's town planning department. Four nationalist and left-wing parties in the town council (*Izquierda Unida*, *Eusko Alkartasuna*, *Aralar*, and *Batzarre*) opposed the eviction, as well as criticising the "disproportionate" police action.

The mayor's arguments in response to the accusations revealed the political motives behind the eviction, as she linked the youth centre to activities organised by the proscribed Basque *Batasuna* party, and to disturbances that took place during the feast of the city's patron saint, *San Fermín*, and to the existence of a "hard core" of "professional" squatters in the region.

El Pais, 3, 4, 17, 18, 20, 21, 22, 23, 24, 26, 28.8.04.

Policing - in brief

■ **UK: Protesting - an anti social crime?** On 25 June, whilst demonstrating outside Caterpillar's financial offices in Solihull at the bulldozer manufacturer's continued sale of machinery to Israel, nine members of the Palestine Solidarity Campaign were arrested under the Anti Social Behaviour Act for refusing to provide their names and addresses. The protest was entirely peaceful and had involved the use of megaphones, drums and street theatre. Those arrested were forced to spend 18 hours in a police cell and were not permitted to have a private telephone conversation with a lawyer. Equally alarming are the conditions for bail which stipulate that the accused cannot go within 500 metres of the offices in order to prevent further offences being

committed and to protect the children who use the road. The prosecution argued that had these conditions not been in place the campaigners would be capable of resuming their protests, implying that the act of protesting itself is illegal when of course their "crime" was to not provide their personal details to the police when asked. The defendants claim the charges to be in violation of their ECHR right to freedom of expression. The trial takes place on the 17, 18 and 19 January 2005 when the government hopes to successfully establish a precedent for the use of anti-social behaviour legislation in this field. *The Palestine Solidarity Campaign can be emailed at: info@palestinecampaign.org (Tel. 0207 700 6192); For more information on the use of ASB legislation against protestors see ASBWatch: <http://www.statewatch.org/asbo/ASBWatch.html>*

■ **Ireland: Inquiry finds Gardai planted "IRA" weapons.** An inquiry into corruption among senior police officers has found that 17 officers planted fake IRA explosives and ammunition in order to impress their RUC colleagues in the north of Ireland. The report, by Dublin judge Mr Justice Frederick Morris, found that members of the Gardai Siochana in Donegal had been involved in gross dereliction of duty and dishonest practices. Two members of the force, Superintendent Kevin Lennon and Detective Garda Noel McMahon, orchestrated the planting of ammunition and hoax explosives; the two officers were also found to have lied to the tribunal. The report also exposed the recruitment of an IRA "informer", who was never a member of the organisation. She was used by the police officers to plant "IRA" material in Northern Ireland so that they could tip off the RUC. Michael McDowell, the minister for justice, described the men's activities as "frightening and unprecedented." *Mr Justice Morris "Report of the Tribunal of Inquiry set up pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-1922 into Certain Gardai in the Donegal Division" <http://www.ireland.com/newspaper/special/2004/morris/index.pdf>*

■ **Spain: Prosecutor demands 18-year prison sentence for policeman:** Prosecutors from the Navarre *Tribunal Superior de Justicia* asked for 18-year prison sentences to be passed against a policeman and his son, who murdered a baker, Ángel Berrueta, in Pamplona (Navarre). On 13 March an argument broke out between Berrueta and the policeman's wife over the authorship of the 11 May bombings in Madrid, (see *Statewatch* vol 14 no 2). The baker refused to allow the man's wife to stick an "ETA NO" poster in his shop window shortly before he was fatally shot three times (by the policeman) and stabbed (by the policeman's son). *El Pais*, 2.10.04.

Policing - new material

Report of the MPA Scrutiny on MPS Stop and Search Practice. Metropolitan Police Authority (May) 2004, pp149. This report finds that the practice of stop and search is "influenced by racial bias" and that black people are four times more likely to be stopped than white people. Policing Minister, Hazel Blears, has acknowledged the "disproportionality" of the figures on stops and searches, but denies that the causes have anything to do with racism. Available on the MPA website, <http://www.mpa.gov.uk/default.htm>

Hi-tech moves, Lisa Bratby. *Police Review* 30.4.04, pp23-23. Article on hi-tech crime, specifically computer crime, and the field of computer forensics. It considers the UK's National Hi-Tech Crime Unit (NHTCU), launched last April, and the Council of Europe's Cybercrime Convention. The head of the NHTCU, Detective Inspector Marc Kirby, stresses that it "is important to develop links with computer forensic experts in foreign law-enforcement agencies" and the Central Police Training and Development Authority (Centrex) recently secured European Commission funding "to develop cybercrime training for all 28 EU and candidate countries as well as Norway, Switzerland, Interpol and Europol."

A formal investigation of the police services in England and Wales: An Interim report, David Calvert-Smith. *Commission for Racial Equality* (June) 2004, pp.77, ISBN 1 85442 551 X. This CRE investigation was launched after the BBC's *Secret Policeman* television programme revealed widespread racism among recruits at a police training school. It examines screening job applicants, training and disciplinary and grievance procedures and Employment Tribunal Cases. It concludes that little has changed in the five years since the publication of the Stephen Lawrence inquiry.

Policing: Modernising police powers to meet community needs. Home Office (August) 2004, pp. 28. Among the "modernising" powers discussed in this paper are the modification of the concept of arrest, search warrants, workforce modernisation, prevention and detection powers, identification (incorporating moving images, photographs, fingerprinting and "covert DNA and fingerprints") and the forfeiture of electronic devices relating to indecent photographs of children. See Home Office website <http://www.homeoffice.gov.uk/>

PRISONS

UK

No resignations over record number of prison deaths

Fourteen prisoners took their own lives in August 2004, the highest number of deaths in prison for a single month since records began 20 years ago. Among those who took their own lives were Adam Rickwood, at 14 the youngest fatality ever in a prison in the UK, who died in the secure training centre in Durham. Jason Lee Alldiss was found dead in his cell at HMP Elmsley on 8 August, while serving a two year sentence for aggravated bodily harm. Richard Balmer, who escaped from HMP Castle Huntley, Dundee, was recaptured and sent to HMP Perth. He was found dead in his cell on 14 August. The Scottish Prison Service declined to comment on how Robert died, but launched a fatal accident inquiry. Robert Finch, remanded to HMP Exeter for killing his wife, took his own life on 15 August, the second suicide at Exeter this year. There were two deaths in August at HMP Armley, Leeds - Michael Briggs, on remand for murder, on 12 August, and Richard Carter, serving four years for armed robbery, on 26 August. There were two suicides at HMP Shrewsbury, Mark Keeling, a remand prisoner, and Lee Nottingham, serving a three month sentence for theft.

On 4 September Shaun Hazelhurst and Patrick Kilty, both serving sentences for robbery, were found dead in their cell, at HMP Manchester, with suspicion of a possible suicide pact.

Six of those who took their own lives in August were remand prisoners. The majority were held in local jails - with a high turnover and high levels of overcrowding. To date no prison official has resigned over the record number of deaths in custody this year.

A recent Prison Reform Trust report *A Measure of Success* records the extent to which jails in England and Wales meet their Key Performance Indicator (KPI) targets. It notes as follows:

- *The Prison Service is failing to meet its KPI on overcrowding. The average rate of doubling up in single cells is 21.7%, rising to 75% in some jails.*

- *The recorded rate of drug use in prison has risen to 12.3%*

- *The Prison Service has failed to meet its target of providing an average of 24 hours a week purposeful activity, and has only met its purposeful activity KPI once in 9 years.*

- *Total rate of serious assaults is 1.54% against a target of 1.2%. This is the seventh consecutive year the KPI on assaults has not been met.*

- *For the sixth year running, the KPI on working with sex offenders has not been met.*

KPIs have not been established for time out of cell, distance from home and sentence planning. For the Prison Reform Trust (PRT), Enver Solomon commented: "This report demonstrates that overcrowded jails don't work. They are unsafe, inhumane and ineffective."

A further PRT report on Young Offender Institutes concluded that levels of drug abuse, bullying and violent assaults in YOIs are worse than in adult jails. In some YOIs one in ten inmates test positive for drugs and one in 12 is involved in a serious assault. One of the Prison Service's central targets states that jails and YOIs should keep serious prisoner-on-prisoner assaults to a maximum of 1.2%. In Onley YOI the rate was 8.79%. Last year a Prisons Inspector visiting Onley found young inmates shivering in sub zero temperatures in cells deemed unfit for human habitation. Brookhill and Feltham YOIs also had rates of serious assault five times higher than the target. Thirteen of the 16 YOIs analysed had assault rates above the target.

Government figures for 2003-4 show that 3,337 teenagers sent to custody were deemed at risk of self-harm or had been bullied or abused. There have been 11 self-inflicted deaths at YOIs in the last 5 years. Richard Garside, director of the Crime and Security Foundation, has said that children were the collateral damage of a government policy bent on fast tracking young offenders through courts into prison. He said: "It takes a warped vision of justice to make the speed and efficiency with which disturbed and vulnerable children are prosecuted a measure of success."

The rise in suicides has been an entirely predictable. Six out of ten women remanded to jail are ultimately either acquitted or given a non-custodial sentence. The number of women remanded into custody has trebled in the last ten years, even though 75% of their offences are minor/non-violent. Of the 1,200 women received into custody in 2002, 71% had no previous custodial history. The majority had drug/mental health problems. There have been 11 female suicides in jails in England and Wales this year.

Prison Reform Trust, Crime and Security Foundation, Independent on Sunday 15.8.04; BBC News 12, 14, 15, 26.8.04, 4.9.04

SPAIN

Quatre Camins officials sanctioned

A number of officials from *Quatre Camins* prison in La Roca del Vallés (Barcelona), have been suspended from working in the prison by the *Generalitat's* (Catalan government) justice department. The suspensions arise from the prison revolt on 30 April 2004 (see *Statewatch* vol. 14 no. 3/4) and allegations of ill-treatment by prison officers against 26 prisoners before, during and after their transfers to different prison establishments. Those suspended include the prison's medical sub-director Xavier Martínez (in July), and the treatment and re-habilitation director Diego Enríquez and sub-director Vincenç Gasó (in September). The press statement that announced the dismissals in September made no reference to events in *Quatre Camins*.

Four officials have been charged, and called upon to appear before the court that is investigating the allegations on 22 November. They include Martínez, two heads of centres in the prison and one head of services, three of whom still occupy their posts in the prison. Apart from charging the officials the judge also demanded that the prison management proceed to identify the officers who took part in the prison transfers, and the five who were partially identified by the prisoners who made the allegations.

A spokesman from the Barcelona University *Observatori del Sistema Penal I els Drets Humans* (OSPDH), whose interviews with inmates who had suffered ill-treatment were part of the documentation used to build the case, claimed that "the changes are a logical consequence of the events that occurred, and demonstrate the Justice Department's ability to react positively". However, they were deemed "insufficient" in so far as they don't affect "three officials who have been charged by a court for torture and ill-treatment of prisoners".

El Pais, 3-4, 7.9.04.

ITALY

Concerns over underground isolation cells

In a series of letters dated May and June 2004, lawyer Vittorio Trupiano tried to raise awareness of the alarming conditions in which some prisoners are held in Cuneo prison in the north-western region of Piedmont. He released extracts from a letter dated 22 May 2004 by Gioacchino Fontanella, a prisoner who is serving life imprisonment under the *41 bis* hard prison regime since 23 October 1998 for crimes involving the *Camorra* (a Mafia-like criminal organisation based in Campania). The *41 bis* prison regime was originally meant for people convicted of serious offences involving Mafia-type organisations, although it was extended in December 2002 to include offences involving terrorism and human trafficking as well (see *Statewatch* vol 12 no 5).

The letter by Fontanella claims that underground isolation cells are used for punishment in Cuneo prison. He describes their use as "torture", due to its lack of basic medical facilities and unhygienic conditions, including an absence of natural light and a lack of ventilation. The prisoner also claims that he was detained in one of these cells in retribution for having reported their existence to a Cuneo prosecuting magistrate, and that he was injected soon after being moved to this section. He began a hunger strike on 10 May, and wrote that he felt weak, and that the responsibility for anything that may happen to him would lie with "the management of Cuneo prison and the penitentiary police staff". His hunger strike ended when he was interviewed by judicial police officers on orders from the prosecuting magistrate. The judge responsible for monitoring conditions in Cuneo prison subsequently wrote to Fontanella to explain that: "with regards to the situation you raised... I inform you that I have recently seen the single-cell sector that you mentioned, and that I have been assured by the Cuneo prison management that the necessary refurbishment work is set to begin shortly", once the funding for the work (which has been requested as "urgent") is made available.

Filiarmonici website: www.ecn.org/filiarmonici, *Letters by the lawyer Vittorio Trupiano*, 22, 26.5.04.

Prisons - in brief

■ **UK: Parc Prison rated worst-performing private prison.** Parc Prison in Bridgend, has been rated the worst-performing private prison in England and Wales. A report published by the Independent Monitoring Board also found that the prison, run by the Securicor company, and providing over 1,000 places for adults, young offenders and non-convicted juveniles, had no separate health care facilities for juveniles. There are seven outstanding inquests into deaths in custody at the prison. *The Sixth Annual Report of the Independent Monitoring Board to The Secretary of State* (HMSO) 2004, http://www.homeoffice.gov.uk/docs3/imbparc04_english.pdf

■ **UK: CRE asked to investigate racism at HMP Armley.** The Commission for Racial Equality is being asked to set up an inquiry into claims of racially motivated assaults by prison staff at HMP Armley, Leeds. It has been alleged that Asian and black inmates were verbally abused, unfairly denied access to facilities, and punched and kicked by prison staff. The allegations surfaced in April, after an Asian prisoner, Shahid Aziz, was found dead in his cell at Armley. One prisoner alleged an officer held him by the throat and banged his head on the floor. Another inmate claimed that he was punched in the face 20 times. Some prisoners have commenced civil proceedings in relation to their treatment at the jail.

■ **UK: HMP Wandsworth "deteriorating".** Conditions at HMP Wandsworth have deteriorated, according to the Chief Inspector of Prisons, Anne Owers. Wandsworth has been rated poorly on all four of the Prison Inspectorates' "healthy prisons" tests. Assessing safety, respect, purposeful activity, and resettlement, the inspectorate raised serious concerns. Black and ethnic minority prisoners consistently complained of racism, staff were disrespectful and failed to engage with prisoners and overcrowding made conditions worse. During the previous inspection 16 months ago, the prison was found to be "failing to meet basic standards of decency and activity for most of its 1,460 prisoners." Since then, things had "become significantly worse." *Chief Inspector of Prisons*

Prisons new material:

Perception of race and conflict: perspectives of minority ethnic prisoners and of prison officers, Kimmett Edgar & Carol Martin. *Home Office Online Report 11/04*, 2004, pp.24. This is a Home Office commissioned report that investigates "situations arising between officers and minority ethnic prisoners that involved potential for conflict". Among other findings the report says that 52% of the "ethnic minority prisoners surveyed believed they had experienced some form of racial discrimination in prison within the previous six months." It also reports that only two Prison Officers interviewed "believed the Prison Service could do more to combat racism." <http://www.homeoffice.gov.uk/>

A Few Kind Words and a Loaded Gun, Razor Smith. *Penguin Books* 2004 (ISBN:0-670-91544-0). Razor Smith will be familiar to many prisoners and prison rights activists from his writings in *Inside Times*, the *New Law Journal* and the *Guardian*. His book, subtitled "The Autobiography of a Career Criminal" is a fast-paced and entertaining read from a man who "has been a criminal all my life and I am neither proud nor particularly ashamed of the things I have done". Importantly, Razor details systematic abuse and brutalisation of prisoners by prison staff throughout the prison system, from his first taste of youth custody at Latchmere House, through the punishment block at Dover borstal, to sit-down protests and punishment beatings at Wandsworth. Razor Smith will not be the first to illustrate the extent to which prisons are sites for the "assault, torture and ill-treatment" of prisoners - Jimmy Boyle, Frankie Fraser, Bruce Reynolds and Vic Dark are among many who have written of similar experiences before him. Because the authors are career criminals and working class, their books are dismissed as "lad-lit", instead of being received as documents of struggles against regimes of systematic violence (interspersed with stories of fast lives and violent times in the criminal world) and so the struggles - from Parkhurst, through Hull, to Strangeways and on - are buried and the violence covered up. It would be a waste of an important book if Razor Smith's autobiography suffered the same fate.

Prisoner-on-prisoner homicide in England and Wales between 1990 and 2001, Ghazala Sattar. *Home Office Online Report 46/04*, 2004, pp.24. See <http://www.homeoffice.gov.uk/>

Improving race relations in prisons: what works? Tom Ellis, Catherine Tedstone & Diane Curry. *Home Office Online Report 12/o2* 2004, pp.8, <http://www.homeoffice.gov.uk/>

GERMANY

Verfassungsschutz role endangers NPD prosecution

After the constitutional test trial initiated by the German government against the far-right NPD (*Nationalsozialistische Partei Deutschlands*) failed because the constitutional court found a prominent role of secret service informants in the party's leadership (see *Statewatch* Vol 12 nos 1 & 3), a second court case against violent far-right activists is in danger of collapsing because of a secret service informant's involvement in the planning of racist and anti-Semitic attacks.

Last year, chief public prosecutor Kay Nehm initiated proceedings against the neo-Nazi Martin Wiese and 13 members of the Munich based *Kameradschaft Süd* ("Comradeship South", which is known for its violent attacks on foreigners) for membership of a terrorist organisation. The police found 14 kg of explosives in a raid, which the group planned to use in a bomb attack on a Jewish community centre and synagogue in Munich (see *Statewatch* Vol 13 no 5).

It soon became known that police and secret service agencies had been unaware of the extent of the weapons trading and plans for large-scale attacks, despite their surveillance of Wiese and the organisation. However, it has now surfaced that a member of the group who was close to Wiese was an informant for Germany's secret service (*Verfassungsschutz*) and this is endangering Wiese's prosecution. According to Wiese's defence lawyer Anja Seul, the informant Didier Magnien, who was the leader of the far-right *Parti Nationaliste Française et Européenne* in 1997, played a central part in planning the attacks, buying weapons and explosives and "inspiring" Wiese and therefore the whole group.

Whilst undoubtedly being used in the defence's strategy, the active involvement of Magnien in the *Kameradschaft Süd* is not denied, with regional interior minister Günther Beckstein (*Christlich Soziale Union Deutschlands*) admitting that the secret service had to order Magnien to stop helping the group to obtain weapons. On 3 March this year, Marcel K. and Steven Z. were sentenced to one year and nine months and nine months on probation respectively for providing pistols, explosives and hand grenades to the far-right group.

The Bavarian interior ministry, however, insists that Magnien's involvement in the far-right scene was necessary. In relation to his so-called anti-fascist activities (collecting personal details of left-wing activists and publicising them for targeting by far-right groups), Beckstein commented that Magnien's activities had given him access to the *Kameradschaft Süd*, arguing that an informant was after all someone who had to "swim in the scene". The authorities have never informed the left-wing groups and individuals whose data has been collected and spread by the group around Wiener nor about the possible danger.

According to Paula Schreibe, a member of the alternative legal support organisation *Rote Hilfe*, these "left-wing targets" have not been contacted, despite the fact that the *Kameradschaft Süd* is now operating under another name (*Aktionsbüro Süd*). She believes that the publication of the extent of secret service involvement in the far-right scene would "endanger the criminal activities of the secret services"

Jungle World 4.8.04

UK

Tyndall to challenge for leadership of BNP

John Tyndall, writing in his magazine *Spearhead*, has announced that he will challenge BNP leader, Nick Griffin, for the leadership of the British National Party. Tyndall, who led the fascist organisation unchallenged until he was defeated by Griffin in a leadership contest at the end of 1999, expects the new contest to take place in the summer of 2005. The challenge to Griffin had been expected following Griffin's unsuccessful attempt to expel his former leader in August 2003. Then Tyndall was accused of "subversion" and slandering the party leadership.

The divisions have effectively split the party and Tyndall said in July that he would oppose Griffin. He gave a number of reasons. These included "undesirable developments", which include "gimmicks" such as featuring a Sikh writer in the party magazine and election broadcast and Griffin's recent dismissal of an all-white Britain as an unrealistic utopia. A similar criticism was aimed at Griffin for amending the constitution to open the party "to let in non-white members."

Tyndall's second criticism stems from Griffin's failure to secure the election of any Euro candidates in last May's elections. He believes that the party should have concentrated on local elections and spent less time supporting Griffin's political ambitions to become an MEP.

The BNP failed to make a major breakthrough at local level also, increasing its tally of local councillors from 17 to 21, partly because the anti-immigrant vote was split with the UK Independence Party and partly because of strong anti-BNP campaigning. Across Britain around 800,000 people voted for the BNP in the European elections (just less than 5% of the vote) and its best results were in the West Midlands, Yorkshire and Humberside. In the local elections the BNP failed to win control of Burnley and was left with six seats on the council, as before.

If the BNP's electoral ambitions have stalled, they are having greater success on the legal front. In October, Jason Lee, a BNP election candidate and train driver won an unemployment tribunal decision against the train drivers trade union, Aslef. Aslef unanimously voted to exclude BNP members at its 2002 annual conference when its general secretary, Mick Rix, said that they would not tolerate racist and fascists in their ranks. Lee, who did not disclose his BNP membership when he joined the union, will receive a minimum award of £5,000.

Racism & Fascism - in brief

■ **Spain: Members of the military arrested for attacking vagrants:** On the night of 18 August, two members of the Spanish armed forces were arrested for attacking two homeless people as they got ready to sleep in the street in the Moncloa neighbourhood in Madrid. They were insulted by a woman, while they were lying down in front of a block of houses, before the three men she was with began assaulting them with a shower of blows. When one of the victims managed to get up, he was stabbed in the stomach with a 10-centimetre pointed knife by one of the assailants, two of whom belonged to the Spanish armed forces, one in the Royal Guard and the other in the *Brigada de Intervención Rápida* (Rapid Intervention Unit). The member of the Royal Guard was suspected of being responsible for the stabbing. A young woman who was with the assailants told police that the group had set out to "hunt" homeless people, many of whom live in Moncloa. She said that she got involved to prevent the group she was with, which included her boyfriend, from getting angry with her. The assailants were in possession of fascist paraphernalia, and admitted to having attended concerts

organised by a Spanish neo-Nazi group, the *Movimiento Social Republicano*. *El País* 21.8.04

Racism & fascism - new material

Fairness for all: a new Commission for Equality and Human Rights. White Paper. *Department for Trade and Industry* (May) 2004, pp.134, Cm 6185, £17.50. This White Paper sets out the government's proposals to merge the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission into a single

body, the Commission for Equality and Human Rights.

My week as a BNP activist, David Johnson. *Evening Standard* 6.10.04, pp.26-27. Johnson infiltrated the BNP's electoral campaign in Barking and Dagenham where, in September Daniel Kelley won a council seat for them. As part of the fascist party's rebranding, they stood a candidate of Turkish descent. The author of this article accompanied the BNP as they canvassed - preferably white - households and observed the quotidian racism and hypocrisy that is the standard fare of the BNP's political opportunism. Their candidate, Lawrence Rustem came second with 934 votes in the Village ward by-election.

The EU Constitution and Justice and Home Affairs - the accountability gap

The proposed EU constitution, originally agreed in the EU's constitutional Convention in July 2003, has been subject to an Inter-governmental Conference from October 2003 to June 2004, when EU leaders agreed on the text of the Constitution. The Constitution was officially signed in Rome on 29 October 2004, following which it will have to be ratified by all twenty-five Member States to enter into force. According to its Article IV-447, the Constitution will enter into force on 1 November 2006 at the earliest, or at a later date if there is a delay in ratification by all Member States. The issue of Justice and Home Affairs (JHA), where the Constitution is particularly ambitious, will likely be a major issue in the national ratification process. What strengths and defects does the Constitution have in this area?

First of all, there would be a number of striking changes regarding the decision-making process and judicial control over JHA matters. All measures concerning border controls, immigration and asylum would shift to a qualified majority vote (QMV) in the Council (made up of delegates from Member States' governments). Furthermore, in all cases except one (emergency asylum decisions) there would also be co-decision with the European Parliament, giving the EP joint decision-making powers with the Council. As for criminal law and policing, the majority of legislation would be subject to qualified majority voting with co-decision, excluding only the creation of the European Public Prosecutor, cross-border actions by police and operational police measures (concerning such matters as the use of joint investigation teams), subject to an 'emergency veto' for Member States as regards certain aspects of criminal law (discussed below). The Commission would be given the exclusive power to propose immigration and asylum legislation (this has already been the case since 1 May 2004) and the dominant role in proposing criminal and policing legislation, sharing its power to propose only where by a quarter of Member States make a proposal, rather than any one Member State, as at present. Also, criminal and policing legislation would take the form of "normal" EU laws (Regulations and Directives, to be renamed European laws and framework laws) with their normal legal effect, rather than framework decisions, decisions and Conventions as at present.

In all areas of EU law, including Justice and Home Affairs, the Constitution would distinguish between legislative acts (European laws and framework laws), over which the European Parliament and national parliaments would have extended powers or influence and greater transparency would be guaranteed, and executive acts (regulations and decisions), with far more limited transparency or parliamentary control. The executive acts, to be adopted by the Council, Commission or European Council (EU leaders) will range from administrative decisions of the Commission (applying competition law, for

example), to implementing decisions (in principle delegated to the Commission, under control of the Member States), to a new power for the Commission to adopt delegated regulations (under control of the Council and European Parliament), to the powers of the European Council to adopt decisions amending or implementing certain institutional provisions of the Constitution (for example, nominating the Commission President).

Judicial control in the area of JHA would be expanded by applying the normal rules on the Court of Justice's jurisdiction (including the possibility for all national courts or tribunals to send questions to the Court of Justice) to all JHA matters in all Member States, with the exception of the validity and proportionality of policing actions and Member States' prerogatives concerning law, order, and internal security (Article III-377).

Secondly, the extent of the powers of the Union would also change in all of these areas. In the areas of immigration and asylum (Articles III-265 to 268), visa and border powers would be revised to grant broader powers over visa policy and powers over freedom to travel, and to provide for power to set up an "integrated border management" system (but with no express reference to the idea of establishing a European border guard). Member States would retain the right to determine their geographical boundaries. Immigration and asylum policies would be "common", rather than concerned (at present) with establishing minimum standards in most areas. The EU's asylum powers would be revised to include some of the principles established by the Tampere European Council (summit meeting) of 1999, to give the EU power to adopt rules on a "uniform" status of asylum and to set out "common" rules in various areas, to state more expressly that all of the EU's powers extend to subsidiary protection (a status granted to those who need protection but who do not meet the definition of "refugee" in the 1951 Refugee Convention), and to add a power concerning external cooperation on asylum (at the urging of the UK government in particular). As for the EU's immigration powers, again some Tampere principles would be included in the constitution (for example, "fair treatment" of third-country nationals), but not all (the Tampere reference to equal treatment of long-term residents does not appear). The EU would have express powers to define the rights of third-country nationals in a single Member State, and the powers over irregular migration would be revised so that the EU could act against anyone resident without authorisation (rather than illegally resident) and would have express powers over removal of such persons. It would also have express power over readmission agreements and the power to adopt incentive measures concerning integration of third-country nationals. However, the EU's immigration competence would be limited, in that it would not affect Member States' power to control the volumes of third-country nationals

coming from third countries in order to work or obtain self-employment. Finally, there would be a general clause on the principle of solidarity (sharing of persons and funds), which would apply to this entire area, replacing the specific current power to adopt measures on burden-sharing related to asylum.

In the areas of police and criminal law, the EU's powers would be more precisely defined. The criminal law powers would cover three areas: cross-border cooperation (Article III-270(1)), criminal procedure (Article III-270(2)), and substantive criminal law (Article III-271). In addition, there would be powers to adopt incentive measures concerning crime prevention (Article III-272), to regulate Eurojust (Article III-273) and to establish a European Public Prosecutor (Article III-274). As for policing, there would be powers over police cooperation, Europol and cross-border activities of police forces (Articles III-275-277).

The cross-border criminal cooperation powers would focus explicitly on ensuring mutual recognition of judgments and other judicial decisions (such as decisions on freezing of assets or orders to search homes and seize evidence). Powers over criminal procedure would concern admissibility of evidence, the rights of individuals in criminal proceedings and victims' rights; in order to extend these powers to other areas, the Council would have to agree unanimously with the consent of the European Parliament. A similar solution is proposed for substantive criminal law, where the EU would have powers over ten specific crimes: terrorism, trafficking in human beings; sexual exploitation of women and children; drug trafficking; arms trafficking; money laundering; corruption; counterfeiting of means of payment; computer crime; and organised crime. Again, the Council can extend these powers if it agrees unanimously with the consent of the European Parliament. It will also have powers to adopt criminal law to assist implementation of another Union policy (for example, environmental law or the single currency) which is subject to harmonisation measures. As for Eurojust, the Constitution will allow it to initiate prosecutions (although formally all acts will be taken by national authorities). Finally, the wholly new power to agree to creation of the European Public Prosecutor will allow the Council, acting unanimously, to establish the Prosecutor with broad jurisdiction to investigate and prosecute crimes against EC financial interests. The European Council (EU leaders) could agree unanimously that the Prosecutor would also have jurisdiction over other serious crimes affecting more than one Member State. Prosecutions would have to be brought in the courts of a Member State.

The EU's powers over national police cooperation would be broadly unchanged, but the powers and remit of Europol would be expanded to cover all serious crimes with a cross-border element and to permit Europol to coordinate, organise and implement investigations and operations in conjunction with national forces. However, any "coercive action" would have to be carried out by national forces.

The new Chapter would also contain general Articles applicable to all areas of JHA. First, the general objectives of JHA policy (Article III-257) would include respect for fundamental rights and fairness to third-country nationals, along with the goal of "a high level of security". The same Article apparently offers definitions of "freedom", "security" and "justice" in turn; in this context, the Constitution only refers expressly to civil justice, not to criminal justice or administrative law justice, principles which are crucial respectively to policing and criminal law and to immigration and asylum law. The European Council would define strategic guidelines for legislative and operational planning (Article III-258). There would be general powers to adopt evaluation mechanisms and to establish a standing committee to ensure operational cooperation in internal security (Articles III-260 and 261), which will coordinate activities of EU and national bodies such as police,

customs, border police and possibly even intelligence agencies (see, for instance, the powers concerning police cooperation to be conferred by Article III-275). The power to adopt rules on administrative cooperation between Member States (current Article 66 EC) would be extended to third pillar rules and such rules will be adopted by QMV with consultation of the EP (Article III-263). At the moment, this power is used to adopt measures concerning the Schengen Information System (SIS) and the Visa Information System (VIS); the provision in the Constitution would mean that such important measures would be adopted as executive acts which would escape any significant public or national or European parliamentary scrutiny or control. National parliaments would have the right to receive information about evaluation mechanisms and the standing committee (Article III-259), and in areas of police and criminal law it would be slightly easier for a group of them to invoke the (non-binding) system to be set up to ask the Commission to rethink its proposals on grounds of subsidiarity (the principle that EU activity should "add value" as compared to Member State activity).

What is the likely impact of the new rules, if the Constitution is ratified? The moves toward qualified majority voting in the Council would likely mean quicker adoption of legislation, and furthermore adoption of legislation that would not have had any chance of success otherwise. This would particularly be the case where the Council currently uses Conventions (most importantly the Europol Convention), where any amendment to the Convention now requires not only unanimous voting in the Council but also require ratification by all national parliaments. National scrutiny reserves which have been used to delay adoption of JHA legislation would not mean much when the Council can override them by QMV. Clearly the powers for national parliaments foreseen in the new rules are very weak compared to those parliaments' current position. As mentioned above, for the SIS and possibly similar information systems, there is a risk that the "administrative cooperation" power will be used, so that neither national parliaments nor the EP will have any control over measures.

Co-decision with the European Parliament will mean, going by the EP's historical voting record, a considerably more liberal approach to immigration and asylum law but a largely uncritical approach to the risks posed by mutual recognition in criminal law (although the EP has been a staunch supporter of EU measures to ensure effective protection of suspects' rights). It is too early to be certain whether or not the EP elected in June 2004 will take the same positions, however. There are widespread doubts about the necessity for the European Public Prosecutor in a number of Member States, particularly if its remit would extend well beyond crimes against EU financial interests and counterfeiting the euro. A possible scenario is provision for the Prosecutor to have powers only in those Member States which consent to it, but this raises complex and awkward questions about its jurisdiction regarding those Member States which object to the Prosecutor, as they will be in a situation similar to the United States as regards the International Criminal Court.

There is no effective system of accountability proposed for the standing committee on operational cooperation in internal security which would be created by the new Constitution. National parliaments and the European Parliament would only be informed of its activities, but that would not give them power to control it. Who would the committee be accountable to, and who would be liable if something goes wrong? The planned rules on access to documents (Article I-50) would apply more fully in the case of legislative activity (Article III-399) so there would be a big risk, based on present practice, that the Council would not disclose to the public what is going on in this standing committee. Similarly the provisions on effective control and accountability of Europol, Eurojust and the Public Prosecutor are very vague.

Some potential protection for human rights and civil liberties could result from the process of inserting the EU Charter of Rights as part of the Constitution, and obliging the EU to accede to the European Convention of Human Rights. Furthermore, a clause on data protection (Article I-51) will extend EU data protection rules to all three of the current 'pillars' and to all actions by Member States within the (wide) scope of EU law. However, the new mechanisms for ensuring effective human rights protection will have to show themselves in practice, and there is a risk that a sweeping 'law enforcement' exception could be inserted in the future data protection rules, instead of a serious attempt to set out detailed rules to balance civil liberties against law enforcement interests in this area.

Taken as a whole, the Constitution would create a system where much JHA legislation would be subject to joint control by the European Parliament and full judicial control would be

exercised by the EU courts. However, the powers of national parliaments would be dramatically weakened, some important legislation would escape effective controls, and the extended powers for EU bodies and/or Member States collectively to engage in joint operations would not be subject to sufficient accountability. There are improvements as regards human rights and data protection, but much would remain to be done to ensure that the improvements work in practice as well as on paper.

IGC 87/04, final text of Constitution prepared for signature

Statewatch's Observatory on the EU Constitution
<http://www.statewatch.org/euconstitution.htm>

“Silently Silenced - creation of acquiescence in modern society”

Preface to a collection of essays by Thomas Mathiesen (Waterside Press, 2004)

This book contains a number of essays on the general theme of silent and unnoticed political silencing which I largely wrote during 1977-1978. Most of the essays were collected in book form in Norwegian and published by Pax Forlag in 1978. At the beginning of the 1980s, the book was translated and published in Swedish and German. I translated the book myself into English in 1981, adding one essay that had not appeared in the Norwegian version, but left the manuscript unpublished in a drawer. I was too preoccupied with other matters.

However, the theme of how - silently and unnoticed - people are brought to silence, especially political silence, continued to haunt me over the years and decades. It seemed and seems to me to be a process which penetrates social life, notably also political life, in all its forms, certainly also in other Western societies like ours which have freedom of expression and democracy on the agenda. So, in 2003 I took the manuscript out of the drawer and had it typed into a computer. Thanks are due to Helga Smári Hanssen and Magnus Gommerud Nielsen for their painstaking accuracy.

The manuscript remained in my computer for a while. Then something happened in my own life which placed the process of silent silencing in bold relief for me. It was intensely political and intensely personal. I had never thought that silent silencing could have such a force in a person's life. In fact, I am silenced to the extent that I cannot write about it even now: maybe later if I live to be old enough. But I can say that what happened concerns the heart of what in Norwegian is called the 'care system', or 'aid system' (*hjelpesystemet*). Ideally, the 'care system' is a part of the welfare system, and should in theory in different ways and through various institutions care for, help, support and provide treatment for people in various forms of distress, from psychiatric disorders to child welfare. However, in so far as it actually exists and is not a just a myth with symbolic functions for the welfare state, the 'care system' is *structured* in such a way that it silently and suavely makes clients and patients fall into silence, keep quiet, hold back their criticism, beware of protest, go along, be acquiescent and strategic.

But what happened at least jolted me to get the old manuscript up before me on the computer screen. It was a kind of vindication of the utmost importance of my concern with the topic.

This English translation includes all of the original essays which I had translated back in 1981. I have been tempted to augment, adapt and change the essays in line with events and developments since then. To a fair extent I have done so. The

basic theoretical conceptualisation, with the emphasis on 'silent silencing', is new – in the original Norwegian version I discussed the issues in other terms that I now find less apt. Furthermore, in some of the essays I have deleted obviously obsolete material and added obviously clarifying passages, and also made a number of other changes. Other essays, however, largely remain as they were, the reason being that I think they are still relevant as they stand, only perhaps more so.....

Let me be very clear on this: what follows is not at all a denial of the existence and, indeed, the expansion of types of repression which are very 'loud', visible and physical rather than silent and quiet. If I had denied that, I would have gone against much of what I have been working on, academically and politically, through many decades. Prison figures are soaring in many Western countries, police forces are expanding in terms of number of personnel as well as in terms of technological equipment and areas of control in society. The 'war against terrorism', which started back in the 1990s but acquired new impetus after 11 September 2001, has been loud indeed, with bombs and killings. It has involved vastly increased police and military activity, which in turn has had the erosion and downright downfall of civil rights in its wake.

This, however, does not detract from the importance of the silent methods of silencing people. Hidden in the deep structure of the expanding prison systems across the Western world various forms of silent and quiet structural forces are in operation, silencing criticism and protest against the prevailing expansive policy. The same goes for the police. Inside both of these sectors of criminal policy, there is uneasiness about what is going on, but the uneasiness rarely comes out, or, alternatively it is subdued to such an extent that thinking is more or less totally changed. And after September 11, with the stepping up of the war against terrorism, voices claiming that alternative roads against terrorism should be used, were clamped down upon – such as the idea of an alternative 'war' against *international poverty* which fosters terrorism. For example, at university campuses in the USA, criticisms of the way in which the war on terrorism was waged, were stifled. Observers from elsewhere have testified that critically oriented academics in the USA, who wanted alternative roads and who believed that the war against terrorism only enhanced terrorist activity, didn't dare to speak up, at least not loudly, or more or less changed their minds. To speak up would be more or less tantamount to treason. The American public system is an open and critical one, but apparently there are limits. The important thing here is that the

methods of repressing alternative opinion were not noisy police methods and prison. Rather, they were largely silent ideological methods, including subtle forms of censorship. Deep inside academic workplaces across the nation, structural forces – especially power relations – shut many people's mouths.

The same thing happened after the war against Iraq got under way in 2003. Right before the onset of the war, there were loud international protests, also in the USA, and there have been protests throughout the war. But suave, silent and quiet methods of silencing protests against the use of the formidable war machine were employed to the utmost, in the media and in other ways. President George W. Bush's various sudden appearances among the American soldiers in the Iraq war, serving turkey on Thanksgiving Day and speaking as a tough leader on board a huge American warship, are cases in point, though in the light of Bush's peculiar kind of charisma they were not among the most silent and quiet ones. Bush's appearances were widely televised, bringing the message home not only to officers and rank and file soldiers, but to the public in general. It would require careful media research to find the specific effects of such appearances. But they were used as part of a vast battery of even more subtle ways, a wide range of censorious methods such as appeals to patriotism and duty to the nation as well as the importance of freedom and democracy which were presumably defended in the war, and so on. In line with this (and though other factors may also have been involved) the American opinion surveys for a long time showed a majority of the population supporting the war. On 20 March 2003, right after the military attack, 67 per cent approved of the job Bush was doing as President. Following the fall of Baghdad 73 per cent approved. Only then did the approval ratings start to decline, after among other things increasing coalition casualties and less victorious military results, down to 55 per cent in August 2003, a temporary boost but only back to 59 per cent after the capture of Saddam Hussein in December 2003, and further down to 51 per cent in March 2004 (CBS News Polls, March 2004). Today it is still lower; the majority has turned into a minority. The development has been similar in Britain, the other major country involved (and of course different in the other large countries of Europe, critical as they were from the outset). But we should note very clearly indeed that the minorities in the USA and Britain which now in various ways support the war and the occupation, are still very substantial – despite casualties, exposure of the Americans' use of torture and so on.

In short, silent ways of silencing are often used in defence of the loud and noisy ones. Also, they may interact with the loud and noisy ones, and go hand in hand with them. Today, in this day and age of prisons, police and military activity (Bob Woodward has reported that when the war against Iraq was first contemplated in the late autumn of 2001, the United States' Defense Department had 68 – *sixty eight* – secret war and other contingency plans worldwide!) we tend to forget the silent ways of silencing in the clamour of the noisy ones. We need to be forcefully reminded of silent silencing in order to understand our political situation as a totality.

Silent ways of silencing are relevant today not only on the highest political level as mentioned above. The signals from this level trickle down to the lower levels of administration in the sector in question, and become authoritative signs to be followed there. As such authoritative signs, they appear and silence silently and 'as a matter of course', without crude methods such as batons and prisons: The political signals are simply to be taken for granted, and any doubts are to be set aside. As implied already, silent silencing is vitally important to the tens of thousands of people working in various branches of public administration – be they social workers, lawyers, health care workers, economists or general administrators. To give but one little example: In a Norwegian questionnaire study of lawyers working in public

administration, 80 per cent of the respondents replied that 'correct law' 'at times' or more frequently has to give way to 'politically oriented assessments'. The feeling that politics overruns the work of lawyer as lawyers, and a rather resigned acceptance of this, is apparently widespread in public administration. Silent ways of silencing are equally important in the private sector, which is expanding in the Western world. Also here one little example: In a study of private court cases some years ago, I observed an insurance company suing a woman for fraud. She had twice lost a suitcase when travelling, and had claimed insurance both times. The company's lawyer tried to convince the court that the woman, who used high heeled shoes and had a rather dashing appearance, was an untrustworthy person. The company lost the case. When I called the lawyer afterwards, he forcefully stated that the case should never have been raised, and that it was an unreasonable and discriminating charge, but that he had simply done what was expected of him and that he had argued as best he could despite his doubts.

This book is perhaps especially relevant to silent silencing as it appears and operates over and against the wide range of professional and semi-professional civil servants and other workers in public administration and the private sector, including penal institutions of various kinds. An interest in punishment and penal institutions lies behind many of the theoretical notions presented in this book, and is the basis of many of the examples.

Please note clearly that what follows is not a denial of the fact that open criticism and protest exist in modern society. The last years' great protests and demonstrations against aspects of globalisation constitute a case in point. It may even be argued, as the Swedish researcher Stellan Vinthagen has done, that the globalisation – and peace movements – which are mobilised throughout the world today may involve more people than protests and demonstrations did during the 1970s. If I had denied that vocal criticism and protest exists, I would again have gone fundamentally against much of what I have been doing myself during most of my adult life, in areas such as criminal policy and political control. I am fundamentally an optimist as far as criticism and change go. What follows is, however, an ideal-type emphasis on the other side of the coin, the (silent) repression of protest, also necessary in order to understand our society.

Thomas Mathiesen
Oslo, August 2004

Thomas Mathiesen is Professor of Sociology of Law at the University of Oslo. He was one of the founders of the Norwegian Association for Penal Reform. His many publications include The Defences of the Weak (Tavistock, 1965), The Politics of Abolition (Martin Robertson, 1974) and Prison On Trial (Second English edition, Waterside Press, 2000). Earlier versions of Silently Silenced have appeared in Norwegian, Swedish and German. This is the first English edition.

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UK: Egyptian national “unlawfully detained” after intervention by Prime Minister

“We should use whatever assurances the Egyptians are willing to offer, to build a case to initiate the deportation procedure”

Tony Blair’s office

In July 2004, Mr Youssef, an Egyptian national, won his High Court case against the government for false imprisonment after Justice Field ruled that the final two weeks of his near ten-month detention, between 1998 and 1999, were unlawful. Of particular interest, in this case, are the Prime Minister’s frequent interventions against the advice of his Home Secretary, Jack Straw, and officials. As documentation cited in the judgement shows, Youssef remained in detention along with three other Egyptian nationals, after 3 June 1999, largely because of the Prime Minister’s intransigence regarding the legal requirements of the case. Furthermore, the case serves to demonstrate the role of political considerations in handling cases sensitive to bilateral relations between two countries, arguably at the cost of the detainee.

The power to detain is predicated on the ability to deport, but to do so the government would need to fulfil its responsibility of ensuring that the Article 3 rights (of the Convention for the Protection of Human Rights) of the defendants would not be breached. Thus they would either have to be removed to a safe third country or assurances would be required from the Egyptian government that Youssef would not face torture or other human rights violations should he be returned. Moreover, these assurances would need to satisfy a court both of their validity and comprehensiveness. This was never likely to be an easy task in the face of a damning Amnesty International Country Report and a UN Committee Against Torture report, from May 1996, which claimed “that torture is systematically practised by the security forces in Egypt” and argued “the Government should make particular efforts to prevent its security forces from acting as a State within a State, for they seem to escape control by superior authorities”.

The detention of the four men was justified only whilst there existed a legitimate chance of either one of these eventualities taking place, but arguably, by 3 June, there was not. The Home Secretary, clearly aware of the now precarious legal basis for their detention, was ready to release the four men and accordingly asked the Prime Minister for a decision within 48 hours as to whether he wished to pursue the matter personally with the Egyptian President. Blair’s response, coming 11 days later, “must have come as a considerable shock to both the Home Office and the FCO” (Foreign & Commonwealth Office) according to the judge. Blair intended to replace a carefully constructed package of assurances designed to fully guarantee the upholding of Article 3 with a single “no torture” assurance. Moreover, Article 3 itself is non divisible. A “no torture” assurance is incapable of also covering the “inhuman or degrading treatment” aspect. Within 48 hours, two negative letters from the FCO had undermined the proposal but it still took almost a month for the detainees to be released.

What the judge termed an “entirely new strategy” was also entirely unworkable. Not only would a single assurance never have a chance of satisfying a court, but the Egyptians had already indicated that the idea of a written assurance itself was objectionable. Just like his proposal to take the matter up personally with the President of Egypt, Blair failed to acknowledge that not only had the issue of assurances already been considered at the highest level by officials in the Home Office and Foreign Office, but their reluctance to support his idea stemmed from the potential for humiliation should the case

go to court - a likely rejection, should they proceed with the one assurance, on the basis of Egypt’s human rights record, would be embarrassing. Moreover, even had they provided all of the original assurances there was still no guarantee a British court would be satisfied of their validity. This was not an issue the Egyptian government felt at ease with. In fact, as the FCO minute dated 15 June shows, the pursuit of a single assurance would have been equally embarrassing for the British government. Having sponsored an EU resolution encouraging countries to reject extradition requests when no legitimate assurances against the employment of capital punishment were in place, the Prime Minister would now be guilty of encouraging just such a transgression.

But crucially the decision and responsibility lay with the Home Secretary, not the Prime Minister, and having adopted a pragmatic stance to the case throughout he was now at fault for entertaining Blair’s unworkable proposal. It was not even a suggestion he could entertain because of the obligation to satisfy the detainees’ Article 3 rights. If somehow he did not know this himself, then he should have been quickly enlightened by the FCO letters and advisors within his own Office. Accordingly the judge found that “by 18 June 1999 the Home Office knew that the chances of persuading a court as to the adequacy of a single non-torture assurance were bleak indeed”. It took him an inexplicable length of time to make, what should have been, an easy rejection of the proposal. The judge held that the Home Secretary should have reached a decision by 25 June at the very latest.

Of particular interest is the question of what motivated Blair’s proposal and caused the delay in the release of the detainees. It seems that as soon as it became clear that the removal of the men was unlikely, the question of how to present their release became paramount. The case became largely about managing relations with the Egyptians and minimising political embarrassment, as clearly expressed in the Prime Minister’s Private Secretary’s 14 June letter in which he outlines Blair’s desire to let the courts shoulder the burden of release. We would assume that the Prime Minister would not willingly seek the deportation of the men in spite of the clear Article 3 risk, so the only rational explanations are either that he was trying to abdicate responsibility or that he was woefully ill informed. Either way, the legality of detention was not of principal concern; rather the interests of the state dwarfed those of the individual.

Chronology of key correspondence

- 6 May 1994 Youssef arrives in the UK, claims asylum and is granted “temporary admission”.
- 23 September 1998 Youssef is detained, along with three other Egyptian nationals, under the Prevention of Terrorism Act and questioned about links with Egyptian Islamic Jihad.
- 27 September Youssef is released and immediately rearrested under powers contained in the Immigration Act and detained on the basis of national security “pending a decision to give or refuse him leave to enter”.

- 3 December Special Immigration Appeals Commission judge refuses bail, having been told his application would be decided within three weeks.
- 14 January 1999 Home Secretary (HS) informed by advisors that there is no safe third country to which Youssef can be removed and that the possibility of returning him, and the three other detainees, to Egypt should be explored.
- 12 March Youssef's *habeas corpus* application is dismissed.
- 17 March - Text of requested assurances telegraphed to the British Embassy in Cairo. Included in the list are assurances against ill treatment whilst in detention, a fair and public hearing in a civilian court, access to legal representation and witness statements, that if convicted of a capital offence the death penalty would be commuted, and that during any term of imprisonment they would receive visits from British Government officials and independent medical personnel.
- 22 March - Egyptian Minister of the Interior rejects the request for written assurances arguing that they would "constitute an interference in the scope [of] the Egyptian judicial system and an infringement on Egyptian national sovereignty."
- 1 April - Letter sent to Prime Minister's (PM) Private Secretary (PS) from the Home Office (HO) informing him of initial rejection. Letter read by PM who wrote across the top "**Get them back**". He also wrote next to the paragraph setting out the assurances Egypt had objected to: "**This is a bit much. Why do we need all these things?**"
- 18 April - Youssef sentenced, in absentia, to life imprisonment with hard labour by an Egyptian Military Court.
- 19 April - Letter from the PM's PS makes clear the PM's view that the "demands" being placed on the Egyptians are excessive. The PM sees "*no obvious reason why British officials need to have access to Egyptian nationals held in prison in Egypt, or why the four should have access to a UK-based lawyer*".
- 5 May - HS responds emphasising that "*any weakening of what we request from the Egyptian authorities would reduce still further the slim chance we have of effecting the group's removal*". That there is "*ample evidence from a range of sources of serious human rights abuses*" and that "**it would be unreasonable to argue, without assurances, that the four would not face an Article 3 risk if returned to Egypt**". Furthermore he claimed that three of the four men had submitted plausible claims of suffering torture, and that there could be no flexibility on the issue of access if returned. Thus if such assurances are not given "*there is probably very little scope for pushing deportations any further*". PM writes on the letter: "**This is crazy. Why can't we press on? Let us see how Egyptians respond**".
- 28 May - letter from the PM's PS to the FCO maintains that the PM "*remains very keen for us to be able to deport the four to Egypt*" and that the next step should be for him to "*write to President Mubarak himself setting out our willingness to deport the four and the assurances we need to achieve that*".
- 1 June - Final request for assurances was met with rejection by the Egyptian government.
- 3 June HS writes to PM confirming that "*the Egyptians see no future in discussions on assurances*" and that "*you should now write to President Mubarak; but that you should not press him further about assurances.*" He affirms that:

Once there is no possibility of receiving assurances the men will have to be released as there would no longer be any basis for their continued detention or deportation. I can continue to detain the men while you consider the Foreign Office advice although an early decision within 48 hours would be appreciated.

- 4 June - PM's PS writes to the HS's PS and informs him that the PM has not yet reached a decision and wishes "*to reflect further, and to discuss with others*".
- 14 June - PM's PS writes to the Foreign Secretary's PS and informs him of the PM's view that:

We should use whatever assurances the Egyptians are willing to offer, to build a case to initiate the deportation procedure and to take our chance in the courts. If the courts rule that the assurances we have are inadequate, then at least it will be the courts, not the Government, who will be responsible for releasing the four from detention.

The Prime Minister's view is that we should now revert to the Egyptians to seek just one assurance, namely that the four individuals, if deported to Egypt, would not be subjected to torture. Given that torture is banned under Egyptian law, it should not be difficult to give such an undertaking."

Argues further that an independent expert witness would be needed to back up the suitability of such an assurance.

- 15 June - Minute from FCO official to head of North Africa Section in FCO's Near East and North Africa Dept alerting him of the potential political embarrassment if a death penalty assurance is not sought. This is because earlier in the year the government had co-sponsored a successful EU resolution at the Commission of Human Rights regarding the right to reject an extradition request in the absence of legitimate assurances that capital punishment will not take place.
- 16 June - Letter from Counter-Terrorism Policy Department of FCO to HO confirming the limitations of seeking a single assurance and arguing that there exists no realistic possibility of finding a credible independent expert to substantiate Egyptian assurances.
- 16 June Head of Egyptian intelligence confirms that any kind of formal written assurance is unacceptable.
- 18 June Application for *habeas corpus* made by one of the other Egyptian detainees adjourned for four weeks. Home Office directed to serve their evidence in reply in three weeks time, on 9 July.
- 23 June Telegram from British Ambassador in Cairo outlining Egyptian desire not to have a potentially embarrassing public discussion of Egypt's human rights record in the British courts.
- 5 July Minute from HO official to HS confirming that there has been no progress in discussions since 2 June, and that it is highly unlikely that the Egyptians would be willing to give even a single assurance.
- 9 July Youssef and the three other detainees are released.
- 30 July 2004 Justice Field rules that Youssef "*was unlawfully detained for the period 25 June 1999 to 9 July, a period of 14 days*".

(bold emphasis added)

Amnesty International 1997 Country Report

UN Committee Against Torture 3 May 1996

Judgement available: http://www.courtservice.gov.uk/judgmentsfiles/j2758/youssef-v-home_office.htm

Statewatch's new searchable database

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Statewatch website

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Contributors

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Editor: Tony Bunyan. News Editor: Trevor Hemmings. Reviews Editor: Nadine Finch. Lee Bridges, Paddy Hillyard, Ben Hayes, Steve Peak, Phil Scraton, Joe Sim, Mike Tomlinson, Frances Webber, Ida Koch, Catherine Weber, Dennis Töllborg, Francine Mestrum, Kees Kalkman, Christian Busold, Heiner Busch, Peio Aierbe, Mads Bruun Pedersen, Vassilis Karydis, Steve Peers, Barbara Melis, Katrin McGauran, Yasha Maccanico, Frank Duvell (Antiracism Office, Bremen), Nick Moss, Max Rowlands, Eleanor Rees, Nicos Trimikiniotis. The Centre for Studies in Crime and Social Justice (Edge Hill College, Lancashire), Liberty, the Northern European Nuclear Information Group (NENIG), CILIP (Berlin), Demos (Copenhagen), Omega Foundation, AMOK (Utrecht, Netherlands), Jansen & Janssen (Amsterdam), Kommitee Schluss mit dem Schnuffelstaat (Bern, Switzerland), Arturo Quirantes, Micaela Messina.

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Statewatch,
PO Box 1516, London N16 0EW, UK.
Tel: (00 44) 020 8802 1882
Fax: (00 44) 020 8880 1727
e-mail: office@statewatch.org