

# statewatch

monitoring the state and civil liberties in the UK and Europe

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## EU policy "putsch": Data protection handed to the DG for "law, order and security"

In a little reported decision the full European Commission meeting on 11 February 2005 the policy brief for data protection in the EU was transferred from the Directorate-General on the Internal Market to the Directorate-General on "Freedom, justice and security". There was no public debate and no consultation with national or European parliaments.

The Internal Market DG has been responsible for data protection since the 1980s. In 1990 after pressure from national data protection commissioners, the European Commission produced a series of proposals (COM(90)314). Five years later in 1995 the EU Data Protection Directive came into force. Its scope was limited to the "first pillar" (social and economic affairs) to provide protection to individuals whose data was held and processed by, for example, commercial companies and banks. It did not cover the "third pillar" (policing, law and immigration) and EU member states relied to a greater or lesser extent (as in the UK) on the 1981 Council of Europe Convention. The Council of the European Union (the EU governments) did set up a Working Party on Data Protection in the "third pillar" in 1997 and this met until April 2001 when it was simply abolished.

The "Explanatory memorandum" for the Commission's decision on 11 February 2005 simply says the following in justification:

*In order to strengthen coherence and visibility of the Commission's activities in the field of data protection, Commissioners Frattini and McCreevy propose to transfer that responsibility from DG MARKT to DG JLS. This is also in view of the fact that these activities fall increasingly into both the first as well as the third pillar, and hence into the area of responsibility of DG JLS.*

Why would this transfer "strengthen coherence and visibility"? This is simply nonsensical "Brussels-speak". Data protection has always fallen under the "first" and "third" pillars, it is just that the neither the Council or the Commission has bothered to propose a law to protect peoples' right under the latter. What the Commission's "explanation" allude to - without spelling it out - is the fact that there are a number of measures going through the EU at the moment on "law and order" (under the rubric of the "war on terrorism") which provide no protection whatsoever for

the individual. The draft articles in the draft Framework Decisions on exchanging information and intelligence between law enforcement agencies and on the mandatory retention and exchange of telecommunications data simply refer to the secure transfer of the personal data between the agencies. No rights are provided in either for the individual to be told what information is held nor who it has been transferred to (which can include non-EU states). This approach is backed by the so-called "principle of availability", namely that all information and intelligence held nationally by law enforcement agencies in all 25 EU member states should be available to all the other agencies. An unpublished overview report on this "principle" (EU doc no: 7416/05) says that EU citizens want "freedom, security and justice" and that:

*It is not relevant to them [citizens] how the competencies are divided (and information distributed) between the different authorities to achieve that result.*

The report ends by suggesting that the end-game is not just for all EU law enforcement agencies to have access to personal data regarding law and order (including DNA and fingerprints data) but that they should also have:

*direct access to the national administrative systems of all Member States (eg: registers on persons, including legal persons, vehicles, firearms, identity documents and drivers licences as well as aviation and maritime registers.*

"National administrative systems" no doubt will include personal medical records when these are available on national databases.

Tony Bunyan, Statewatch editor, comments:

*"The EU is heading down the road of to a Big Brother society where the law enforcement agencies will have access to masses of personal and intimate data without any data protection worth the name.*

*To hand this job to the DG that also deals with the "principle of availability" is like putting the wolf in charge of the sheep. While one Directorate in this DG is meant to provide protection for peoples' rights, another one down the corridor will be ensuring that peoples' rights do not get in the way of the "principle of availability. This will lead to be an inevitable, and unacceptable, conflict of interest"*

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## EUSKADI

## Interesting times

The Basque regional elections were held on 17 April 2005 and threw up some interesting results, as the outgoing government coalition formed by PNV/EA (Basque Nationalist Party/*Eusko Alkartasuna*), and EB (United Left) failed to secure a majority. Nonetheless, PNV/EA remained the party that won the highest percentage of the vote (38.6%) and the most seats (29, down from 33), and the PSE (the Basque branch of the Socialist party, up from 13 to 18 seats) overtook the PPE (its Popular party counterpart, down from 19 to 15) as the second largest party. This has produced deadlock, as the sum of PSOE and PPE seats in the Basque parliament is 33, one more than that of the outgoing PNV/EA and EB government, which obtained 32 seats. A smaller left-nationalist party, *Aralar*, appears to be supporting the outgoing coalition (it voted for the PNV candidate in the Basque parliament's presidential election) although it has not yet committed itself. 38 seats are needed to secure a majority in the Basque parliament. Thus, the result has been interpreted by the PPE and PSOE as a defeat for the Ibarretxe plan (see *Statewatch* Vol 15 no 1), as the *lehendakari* (head of the Basque government) had called the elections shortly after his plan was debated and rejected in the Spanish Congress after it had been approved by a slender majority in the Basque parliament in Vitoria. However, there is a piece missing from the equation: EHAK (the Communist Party of the Basque Lands) obtained its best-ever election result (over 150,000 votes, equivalent to 12.5% and nine seats) after calling on voters of the banned *Batasuna* party to vote for them "in defence of civil liberties", as did leaders of the party that was proscribed after it was deemed part of ETA.

Overall, the election results threw up a largely unchanged landscape, with Basque society divided into two large blocs, one nationalist (PNV/EA, *Aralar*, EHAK), which obtained slightly over half of the votes, and another non-nationalist (PSE, PPE, EB). Nonetheless, the PNV's role as the party of government in Euskadi (which is still the likeliest outcome of talks) appears to have been weakened by the last-minute possibility that EHAK offered former *Batasuna* voters to participate in the election.

A month on from the election, the composition of the future government is still unclear. Ibarretxe has conducted a round of conversations with other parliamentary groups to form a new government, while the leader of the Socialist party in Euskadi, Patxi López, has started his own series of consultations after staking a claim to become *lehendakari*. Nonetheless, the fact that any agreement with EHAK would inevitably lead to accusations of collusion between mainstream nationalist parties and ETA, and that the PPE is increasingly isolated as a result of its belligerent stance (EB and *Aralar* have indicated that they would not participate in any alliance supported by the votes of the PPE) mean that it will be difficult to break the deadlock. This became evident in the attempt to elect a president of the Basque parliament in mid-May, at which the Socialist and PNV candidates both repeatedly received the same number of votes (33), with the EHAK representatives abstaining. The only viable governments would involve a pact between the outgoing coalition and EHAK, a minority government by the PNV/EA and EB, or an unprecedented alliance between the outgoing coalition and the Socialists.

The political conflict has been further fuelled by the PPE's accusation that the failure by the Socialist national government to proscribe EHAK (as happened to another left-nationalist electoral list, *Auzkera Gustiak*) represents a betrayal of the Anti-

terrorist Pact between the two parties, and has allowed ETA to regain a presence within the institutions.

The Anti-terrorist Pact between the PSOE and PP was signed on 8 December 2000, with the goal of ensuring a consensus between the two largest Spanish parties that neither of them would use terrorism to "extract any political advantage, under any circumstance". While the PP was in power, the pact ensured that it was able to comfortably pass a raft of anti-terrorist legislation (including the *Ley de partidos políticos*, passed to criminalise *Batasuna* and its successors for reasons such as failing to condemn terrorist violence, and cooperating with an armed group) and measures with the backing of the PSOE. The PSOE responded by claiming that it had investigated this possibility in the case of EHAK, but there were insufficient legal grounds for such an initiative to prosper. When the EHAK candidature was first registered in August 2002, the PP was still in power and did not act against it. Moreover, in an incandescent debate on the "state of the nation", PPE leader Mariano Rajoy accused Zapatero, the Socialist prime minister, of "betraying" ETA's victims by suggesting that the government may negotiate with ETA to bring the conflict to an end if it laid down its weapons. Zapatero subsequently presented a formal request for the *Congreso* (the Spanish parliament) to authorise him to conduct negotiations with ETA which stated that "if the necessary conditions should arise for a dialogue to bring an end to the violence, based on a clear will to end it and on unequivocal attitudes that may lead to this conviction, we support a process of dialogue between the competent State powers and those who decide to abandon violence". This request was approved on 17 May 2005 with support from all the parties represented in the *Congreso* except for the PP.

## SPAIN/GERMANY/SWITZERLAND

## Trumped-up charges, extradition, preventative custody and plea bargaining

Case 10/95, involving the German defendant Gabriele Emilie Kanze, who was charged of collaborating with an armed group (ETA's *Comando Barcelona*) and for whom prosecutors demanded a 28-year prison sentence before reducing their demand, was tried in the *Audiencia Nacional* (a court that has exclusive competence for terrorist offences) on 29 November 2004. The case began in 1994, when Spain issued an international arrest warrant against Kanze following searches conducted in two flats used by the ETA cell in Barcelona, one of which she had been responsible for renting in the summer of 1993, shortly before returning to Berlin. She was arrested in Germany before being released following an extradition procedure in which a German court refused to extradite her due to lack of evidence of the offences of possession and storage of weapons for the ETA cell. German courts did not have competence to initiate proceedings into the offence of cooperating with an armed group, because national legislation only pursued domestic terrorism at the time. She was later arrested at a border point when travelling to Switzerland on 14 March 2002 and Spain requested her extradition, which was granted by Switzerland in January 2003, although Kanze filed an appeal to prevent her extradition based on the risk of her being tortured, which was turned down by the Swiss Federal Court, which also argued that it would be up to a Spanish court to examine the merits of the case.

Kanze spent ten months in detention in Switzerland before her extradition, and a further year and ten months in prison in Spain before her case was heard in the *Audiencia Nacional*. It emerged during the trial that Kanze had been out of the country

for several months before the weapons cache was found by police and that the charges of possession and storage of weapons and explosives were unsubstantiated, leading the prosecution lawyers (one representing the state, and the other representing the *Asociación de Víctimas del Terrorismo*, AVT, Association of the Victims of Terrorism) to withdraw them, and to reduce the length of the sentences that were requested (originally 22 years by the public prosecutor and 28 years, 14 for each of the offences, by the AVT lawyer). The prosecutors lowered their request further, to two years and eight months, as result of a deal that was struck with the defence, after arguing that Kanze had rented the flat (which they considered to be evidence of her collaboration with ETA) because of her "sentimental relationship" with her partner Benjamin Ramos, who she later married. Kanze admitted renting the flat, but denied any association with ETA, or knowledge that her partner was involved in the activities of the so-called *Comando Barcelona*.

At a press conference held on the day after the trial by the "Commission to monitor the trial of Gabriele Kanze in Spain", which travelled to Madrid to monitor the trial because of "concern over whether they could expect Mrs Kanze to receive a fair trial before Spanish justice", a number of concerns were raised in relation to the trial. Firstly, they expressed the view that without the presence of the delegation and of the German consul, the defendant may not have been offered the deal that was struck. They added that "justice was not done" in the trial, because there was a lack of evidence against Kanze, but that nonetheless, the most important thing was that she was free. The defence lawyer, Jone Goirizelaia, argued that in spite of her admission that she had rented the flat, Kanze had not admitted to charges of collaborating with an armed group, in spite of being found guilty. She claimed that the reason for accepting the deal was the long period of detention that Kanze had already experienced, the length of the sentence that the prosecutors initially requested, and the risk that the *Audiencia Nacional* could have found the defendant guilty on the basis of evidence that may have been extracted through torture, claiming that past trials indicated that this was a possibility. The commission also highlighted that claims by Rosario Ezquerria Pérez de Nanclares that she had been tortured were not examined any further during the trial. Pérez de Nanclares, who is serving a prison sentence for membership of ETA, denied having ever met Kanze before the court when she was called as a witness by the prosecution. She had previously admitted to knowing that she was cooperating with the cell in statements made to the *Guardia Civil* and before a judge in 1995 which, she claimed, had been a result of "constant torture".

A number of issues emerged from the Kanze case which are relevant to the development of judicial cooperation at an EU and international level (most notably the mutual recognition of judicial decisions, the EU arrest warrant, and the substitution of extradition procedures with a "handing over" procedure), and to the pursuit of terrorist offences through the use of highly dubious charges, lengthy periods of pre-trial detention and notions of "guilt by association". These include the risk of judicial authorities presenting trumped-up charges in order to secure automatic extradition from another EU member state based on insufficient evidence (as extradition will no longer depend on a court evaluating the evidence against a defendant). Moreover, these trumped-up charges, in association with prosecution demands for extremely long prison sentences and lengthy periods of preventative pre-trial detention (which be for up to two years in Spain), can provide prosecutors with important leverage when striking deals with defendants in order to secure a guilty verdict. Another aspect that was stressed by the Commission, was that the charge of possession and storage of weapons and explosives was maintained up until the final stages of the trial in spite of the fact that a German court had already ruled that it was unsubstantiated.

## UK

### "Schools Against Deportation" campaign launched

A group of students, teachers, headteachers, lecturers, trade unionist and others in the education system have issued a "declaration against deportations" expressing their concern "about the damaging impact which the threat of deportation or actual deportation can have on children and young people studying in schools and colleges." Schools Against Deportations have launched a website and are calling for signatories to their declaration. The declarations says:

*"We, teachers, headteachers, lecturers, teaching assistants, students, young people, trade-unionists, mentors and others working in the education system are concerned about the damaging impact which the threat of deportation or actual deportation can have on children and young people studying in schools and colleges. Deportation affects a child's educational progress, health and well-being. We are also deeply concerned about the detrimental effect on the wider school or college community when personal relationships are disrupted and friends are separated.*

*We also note that, in recent years, a number of schools and colleges across the UK have supported children and young people affected by the threat of deportation and have successfully campaigned for the rights of the families concerned, to stay. Many of these children and young people had settled in, made friends and progressed as part of the school community, prior to their facing a threat of deportation. The campaigns fought on their behalf have been widely supported by children and young people from all backgrounds.*

*Therefore:*

*We believe that the best interests of a child or young person studying in our school/college should come first and that these are best served by allowing her or him to remain in the UK.*

*We commit whatever support and care we can to any child or young person in our school/college who is threatened with deportation under Immigration Act powers.*

*We commit ourselves to use whatever legal means are available to persuade the Home Office to revoke any order of deportation affecting any child or young person in our school/college."*

On the website you can join the campaign and add your name to the declaration on: [www.schoolsagaisntdeportations.org](http://www.schoolsagaisntdeportations.org)

## SPAIN

### Regularisation process comes to an end

The three-month regularisation process that began on 7 February 2005 closed on the night of 6 May with a provisional figure of 691,059 applications submitted by immigrant workers seeking to obtain a status as legal residents under the rules that were established by the Zapatero government. The employment minister, Jesús Caldera, estimated that once all the applications have been processed, and definitive figures are available, their total number will be over 700,000. The autonomous regions in which the most applications were submitted are Madrid (159,795), Catalunya (125,734) and the Comunidad Valenciana, in the Spanish south-east (98,534), and the most highly represented nationalities of the applicants were Ecuadorians (21.47%), Romanians (17.16%) and Moroccans (12.22%).

Males accounted for 57.78% of the applications (365,382), among whom Moroccans were the most numerous, whereas 42.22% were women, over half of whom are Ecuadorian nationals.

The criteria that were applicable to the regularisation process were criticised by immigrant support organisations from the very start (see *Statewatch*, Vol. 15 no. 1), who argued that it was too dependent on employers who employed "illegal" immigrants providing them with a work contract, and that it was proving difficult for applicants to obtain the documents that were required (such as their registration in the *padrón*, the local council register of residents, or a certificate from their home country to confirm that they had no criminal records).

Reports also surfaced early in the regularisation process that the would-be applicants were suffering abusive treatment by officers in charge of public order as they gathered in large queues outside their consulates (most notably outside the Ecuadorian consulate), that employers fired some workers who asked them to help to regularise their position, and that some employees were being made to pay social security contributions for which employers should be responsible.

Migrants also staged a number of protests and lock-ins, most notably in Barcelona, to demand that the applicable conditions be relaxed. The government eventually agreed to widen the criteria for eligibility somewhat as the take-up rate had initially been less than was expected, although immigrant support groups argued that it was "too little, too late". The situation of a large number of migrants is set to improve, although there will still be a lot who were unable to apply for regularisation. Caldera argued that around 90% of the people eligible to be regularised will benefit from the regularisation, as a large part of the migrant population is either too old or too young to work, whereas the *Asociación pro Derechos Humanos de Andalucía* (APDHA, Andalusian Association for Human Rights) claimed that at least 800,000 will remain in an irregular situation following a process that was deemed "insufficient" and which was criticised for merely viewing migrants as a "labour force" rather than people who should enjoy basic human rights.

*El País*, 7.5.05; *Asociación pro Derechos Humanos de Andalucía press statement*, <http://www.apdha.org>, 6.5.05.

## ITALY

### Detention centres: Hunger strikes, arrests and escapes

Between March and May 2005, there were a number of protests and actions against Italian detention centres, both inside and outside of these centres, which have been accompanied by disturbances, revolts and escape attempts within the centres.

On 8 February 2005, parish priests issued an appeal criticising the "inhuman management of immigration policy" and government plans to expand the network of CPTs (*Centri di permanenza temporanea*, Italy's immigrant detention centres) to every Italian region. It rejected the repressive anti-immigrant discourse that "augments racism and xenophobia" and the denial of human rights to people who have not committed any crime, as well as criticising the "preemptive censorship" that applies to these centres. Another of the criticisms involves the failure to remove the priest don Cesare Lodeserto from the post as director of the detention centre in San Foca di Medelugno (Lecce, Apulia). The priest, alongside 18 members of the staff of the centre (including medical staff, social workers and carabinieri), is on trial for the violent beating of a group of 17 Maghreb country nationals after an escape attempt in November 2002 (see *Statewatch*, vol.14 no.1). The priest resigned from his post after he was arrested on 11 March 2005, accused of the kidnapping a

group of Moldovan women, and of misusing correctional facilities to ill-treat them. He is currently under house arrest, and has also been found guilty of "fabricating a crime" (threats against him) to ensure he had an escort, and faces charges of misusing funds related to the CPT.

In spite of the lack of information concerning conditions in detention centres, testimonies occasionally surface, as was the case when an interview with Michele Pellegrino, a police officer who coordinates public order in the CPT in Borgo Mezzanone (Foggia), was published on 8 March, in which he expressed his surprise when he arrived in the centre: "Nobody knew they had won a competition to be a guard in a lager". He stressed that the caravans where the migrants are detained are boiling in the summer and freezing in the winter, adding that there is a lack of medical care, that when a fire broke out there was no fire-fighting equipment, as well as referring to a case in which a police vehicle ran over three people in the centre on 31 August 1999, killing one of them, Kamber Dourmishi, who was born in Pristina.

On 27 April 2005, the acquittal of the former Trapani (Sicily) *prefetto* (police chief), Leonardo Cerenzia, in relation to the fire in the city's *Serraino Vulpitta* CPT in which six migrants died in December 1999 (see *Statewatch*, vol 10 no 1), was confirmed on appeal. He had been charged with failing to adequately exercise his duties, of responsibility in relation to the fire and to a multiple manslaughter, crimes for which he was first acquitted on 15 April 2004. Thus, no one has been held responsible for the tragedy.

On 11 May, following a series of protests against the CPT (its status is set to change to that of an identification centre for refugees) in Lecce, 5 "insurrectionalist anarchists" were arrested under Italy's antiterrorist legislation, accused of having "instigated" revolts by detained migrants, of threatening its personnel, and of other actions such as vandalism against the Benetton clothes firm (accused of unethical policies in South America), AMTs of Banca Intesa (where the funds of Lecce's CPT are deposited) and Esso petrol stations (for providing fuel to the military coalition in Iraq). The charges they may face are of "promoting, constituting, organising, directing and taking part in an association aimed at carrying out violent acts" and other criminal acts aimed at "subverting the democratic order".

On 29 March, there was a mass escape attempt by 400 detainees in the CPA (*centro di prima accoglienza*, centre for early reception) in Isola Capo Rizzuto in the province of Crotone (Calabria) where they were transported following their arrival on the island of Lampedusa. An airplane was ready to deport them back to Libya from a nearby military airport. Over one hundred migrants appear to have to escaped, while others were captured, and beaten. The use of electric truncheons were also reported. Four of them had their legs fractured, according to authorities, because they fell when they were climbing the centre's fence. During a visit to the centre, the Green Party senator Francesco Martone was repeatedly told by detainees that they were beaten with electric truncheons, and many of them had burn marks to support their claims, although the police denied that they were equipped with such truncheons. Other worrying aspects included the presence of children and of people who may be asylum seekers (from Palestine, Iraq, Liberia) in the centre.

A revolt in Milan's via Corelli on 9 April resulted in the arrest of a Moroccan and a Brazilian migrant for damaging property. The revolt followed a suicide attempt, when one of the "guests" (as detainees are referred to in the relevant law) began cutting himself and drinking toxic liquids. When, after a long delay, an ambulance and medical staff arrived, a group left the rooms in which they were detained and began breaking windows, while some others set fire to a couple of mattresses. The police restored order, and carried out some "particularly harsh" searches, which reportedly included the ripping up of a

Q'ran. Following the revolt 30 detainees began a hunger strike.

In April, detainees in the CPTs in Milan and Bologna began hunger strikes and mobilisations to oppose their detention, supported by demonstrations and the establishment of a support group. A press statement by the support group in Milan claimed that interviews with the migrants highlighted that the detainees included disabled people, children, workers who have employment contracts and residence papers, mothers whose children are now without parents, people with AIDS and others who have been repeatedly detained, circumstances which contravene the laws regulating these centres. Another issue which was raised was that of the ill-treatment, both verbal and physical that several detainees claim they have suffered. An appeal issued by the detainees on hunger strike in Bologna's via Mattei CPT asked for them to be visited by journalists and by representatives of the institutions "to tell them about the situation and problems" they are experiencing with regards to "residence permits and documents", adding that "some were caught in their workplace, some in prison, some have family in Italy but cannot talk to them". They said that "it is right for you to know that many social workers here harm people who are demanding freedom", presenting this claim as the most important evidence "that this centre is becoming a prison".

On 18 May, there was a revolt in the Corso Brunelleschi CPT in Turin, which was reportedly an effort by the detainees to prevent the deportation of a group of migrants and involved the burning of mattresses and acts of self-harm, and was followed by a hunger strike. In the same week, efforts to "clean up" Turin with a view to the winter Olympics that are set to be held in the city, involved police raids against drug dealers which have targeted migrants, who face the added risk of detention if they are found to be undocumented. These operations resulted in the death of two Senegalese men, one of whom jumped into the Po river to escape and drowned, while the other was shot while the police searched a "suspect" car occupied by four African migrants (he was later found to have drugs in his stomach, a fact that was used to justify the killing as an accident). A revolt in Milan's detention centre in Via Corelli on the night of 23 May, which saw the detainees climbing onto the CPT's roof, starting fires and smashing up property and structures, resulting in the arrest of 21 Asian, African and South American migrants.

*Repubblica* 12.3.05, 24.5.05; *Il manifesto*, 15.3, 26.3, 10.4, 20.5.05; *L'Unità*, 12.5.05; *Girodivite*; 4.5.05 *Hunger strike support group press statements*, 19.4, 26.4.05; *Press statement by the migrants on hunger strike in Bologna*, 14.4.05; *Meltingpot*, 30.3.05; *Liberazione* 23.3.05.

All of the articles consulted are available in the section devoted to CPTs on the Meltingpot website: <http://www.meltingpot.org/archivio3.html>

## Immigration & asylum - in brief

■ **Austria: Constitutional Court partially revokes Asylum Act:** In October last year, the Constitutional Court in Vienna partially revoked restrictive parts of Austria's asylum legislation and ordered them to be redrafted. The judge further criticised the Act as incoherent as it referred to regulations that did not exist in law. Revoked were the clauses that laid down that no new evidence was allowed in an asylum appeal procedure, that asylum seekers were not protected from deportation once a first negative decision was taken (safety from deportation during appeal proceedings), that the Dublin Convention was applicable without individual case examination and that asylum seekers could be taken into immigration detention when submitting a second asylum application after their first application was rejected. The safe third country and country of origin principles were declared constitutional as were some exceptional social security provisions. <http://www.aufenthaltstitel.de/zuwg/0566.html>, <http://no-racism.net/article/985/>, *Süddeutsche Zeitung* 16 & 17.10.04.

## ■ Italy/Libya/Malta/Spain: Migrant deaths at sea continue:

On 24 March 2005, six Chinese migrants who attempted the sea-crossing from Malta to Italy after entering Malta for the purpose of studying, died, allegedly after they were thrown into the sea by the people who were smuggling them into Italy. On 31 March, *Salvamento Marítimo* (the Spanish sea rescue service) rescued a dinghy in which 23 migrants had attempted the sea crossing to the Canary Islands, thirteen of whom died, and the remaining ten were found in critical conditions. On 19 April, a three-month old baby died of hypothermia in a dinghy that arrived in Tarifa (Cádiz) after crossing the Strait of Gibraltar that separates Spain from Morocco. On 3 May, one dead migrant arrived in a boat that carried another 19 migrants and was spotted by the police on the coast of San Bartolomé de Tirajana, in the Canary Islands. Fourteen African would-be migrants drowned, and three disappeared as they set off on the sea crossing from Libya to Italy on 15 May in a boat carrying 23 people, after the vessel sunk in the high sea 30 km to the west of Tripoli. *Reuters* 16.5.2005; *La Sicilia online*, 7.4.2005, [www.korazym.org](http://www.korazym.org), 25.3.2005; *Sur*, 20.4.2005; *Diario Vasco*, 4.5.2005; *La Vanguardia*, 1.4.2005.

## Immigration - new material

**Il viaggio dei dannati** [The journey of the damned], F. Gatti. *L'espresso*, 24 March 2005. This article by investigative journalist Fabrizio Gatti recounts the story of the journey of migrants repatriated by Libya (including small unaccompanied children) as they were transported across the desert in lorries to return to their countries of origin, a journey which some of the migrants who were repatriated by Italy experienced. He reports that 106 deaths have been recorded by the Red Half-Moon (the equivalent of the Red Cross in Islamic countries) since repatriation operations from Italy began in September 2004, with the most serious accident occurring in October, when 50 migrants were crushed by a lorry that overturned near the Libya-Niger border. Other tragic incidents included a boy who was eaten by wild dogs in January 2005, and three Nigerian girls who died of thirst in March, while 19 other persons from the same group who ate their own faeces and drank their urine to survive, were rescued in critical conditions after they were abandoned by the people who organised their return. Libya's commitment in agreements with Italy to combat immigration has resulted in the targeting of dark-skinned Africans through raids and arbitrary detentions in the street. The full-text version of the article (in Italian) is available on: <http://www.meltingpot.org/articolo5076.html>

**Asylum & Immigration (Treatment of Claimants, etc) Act 2004**, Alan Caskie. *SCOLAG Journal*, April 2005, pp69-71. This is the fifth immigration act in eleven years and the Labour government's third. Caskie examines this new legislation on asylum appeals, reserving his most trenchant criticism for Section 8 - on the "credibility of asylum seekers" - which he describes as "the worst piece of drafting in the field of immigration law on the UK".

*Mugak*, *Centro de Estudios y Documentación sobre racismo y xenofobia*, no. 29, (October-December) 2004, pp.59, euro 8. This issue focuses on two main themes: the regularisation of migrant workers and the Regulation that has been agreed for the implementation of the Spanish immigration law. In both cases, the Spanish government is criticised for treating migrants as expendable labour rather than people. With regards to the regularisation, a large degree of the responsibility for it lies in the hands of employers as only workers who they choose to put under contract are eligible. The restrictive criteria that are applicable in terms of the documentation required for submitting applications are highlighted as negative factors (in fact, the government subsequently relaxed these requirements somewhat as the problems that migrant workers were facing became apparent). With regards to the Regulation, this issue includes an in-depth analysis by SOS Racismo entitled "You can't get a good regulation from a bad law" which calls for a radical change of an immigration policy that is described as "unfair and ineffective". Available from: Peña y Goñi, 13 1\_ - 20002, San Sebastián

## GERMANY

## Anti-discrimination law watered down?

On 28 April this year, Germany was reprimanded by the European Commission, which brought a case before the European Court of Justice, for failing to implement the EU guidelines against discrimination on grounds of race, ethnicity or gender. The law should have been passed at national level by 19 July 2003, and although the government has produced a draft (see *Statewatch* vol 14 no 6) it still has not been passed by the *Bundestag* (Upper House - the approval of the Lower House is not necessary). There is disagreement amongst members of the government coalition about the level of protection and in particular insurance companies, employers and landlords want to change the current version. The German draft law goes further than the EU guidelines in including discrimination on grounds of age, sexual identity, religion, world view or disability next to the grounds outlined at EU level.

In contrast to the EU guidelines, the draft text also includes a delegated liability clause for the employer, which, according to Dieter Hundt, head of the German Employers' Association, could possibly lead to a scenario where an employer is held liable for the discrimination against his or her employee if they were discriminated against by customers. The arguments were debated in a day long parliamentary hearing which invited 20 experts and 40 representatives of relevant associations, but agreement has not been reached.

Industry and employers representatives have a particular influence in the debate and they find support from Interior Minister, Otto Schily, Economic Affairs Minister, Wolfgang Clement, and government leader of North-Rhine-Westphalia, Peer Steinbrück (all from the *Sozialdemokratische Partei Deutschlands*), who think the law is too "far-reaching" and "bureaucratic". Steinbrück claimed the law represented an "additional strain on the economy", while Angela Merkel, head of the conservative *Christlich Demokratische Union (CDU)* thinks the law would be a "job killer". For Dieter Hundt, even the obligation for employers to keep application letters for at least 9 months in case of possible challenges was enough to call the anti-discrimination provision, the first one in Germany, a "bureaucratic monster".

*Süddeutsche Zeitung* 7.3.05

## Law - new material

**Know your rights**, Dave Sambrook. *Red Pepper* April 2005, pp. 11. Informed by the arbitrary detention of protestors (and passers-by) in central London's Oxford Street on May Day 2001 and the arrest of demonstrators under the Terrorism Act 2000 for picketing the DESi arms fair in 2003, this piece explains what to do if it happens to you. It covers Section 44 of the Terrorism Act, arrest and treatment at the police station and police interviews.

**They beat me from all sides**, James Meek. *Guardian* 14.1.05. This article describes the plight of a German car salesman, Khaled al-Masri, who was seized by Macedonian policemen while on holiday and rendered to a US-controlled prison in Afghanistan. There he was held incommunicado for weeks without charge and beaten until being released without explanation.

**This law cannot be justified**, Ian Macdonald. *Red Pepper* April 2005, pp. 25. Ian Macdonald is a barrister who was appointed as a special advocate to the Special Immigration Appeals Commission (SIAC) to deal with immigration cases involving questions of national security.

After 11 September 2001 the SIAC was given the task of hearing appeals against the Home Secretary's decisions to detain suspected terrorists indefinitely and without charge. In December 2004 Macdonald resigned from the SIAC saying: "I felt that whatever little difference I might make on the inside was outweighed by my conviction that my main role was to give legitimacy and respectability to a law I found odious."

**The Attorney General's advice**, Raymond Whittaker. *Independent on Sunday* 24.4.05. This article considers evidence indicating that the Attorney General, Lord Goldsmith, did not believe that the invasion of Iraq was legal. Goldsmith had listed six reasons why it could be in breach of international law and the paper cites John Bellinger, legal advisor to the US National Security Agency, who Goldsmith met in February 2003 saying: "We had trouble with your Attorney, [but] we got him there eventually."

## MILITARY

## UK/ISRAEL

## No accountability in IDF's "shooting range"

In April, an Israeli military court cleared an officer, known only as Lieutenant H, of the death of the British journalist James Miller. He was killed in May 2003 whilst filming a documentary, about the lives of three Palestinian children caught up in the conflict with Israel, in Rafah at the Egypt-Gaza border. James was shot in the neck in the small gap between his helmet (which bore the letters "TV" in fluorescent tape) and his bulletproof vest (which also carried journalist markings) as he left a Palestinian house at night. His group was also carrying a white flag. The Israeli military's initial claims that they were reacting to heavy fire from Palestinian gunmen smuggling arms across the Egyptian border were shown to be false by another camera crew who caught the incident on film.

Israel had already made it clear in March that the officer would not face public prosecution because of a lack of ballistic evidence proving that the bullet came from his gun - it took investigators 11 weeks to impound the weapon. The Israeli military advocate general found that the lieutenant had fired in clear breach of army rules of engagement and recommended that he face severe internal military disciplinary action. Lieutenant H had admitted to firing his weapon and yet proceedings were halted to the dismay of James's friends and family. His widow says the decision "makes a mockery of Israeli claims that they follow due process where IDF [Israeli Defence Forces] soldiers have acted criminally and outside their own rules of engagement." The British government has launched a formal protest over the case.

In April 2003, also in Rafah, Thomas Hurndall, wearing a fluorescent International Solidarity Movement (ISM) vest, was shot in the head by an Israeli sniper whilst shepherding children to safety. He was flown back to England but remained in a vegetative state until his death from pneumonia in January 2004. After a protracted battle for justice by his family Sergeant Wahid Taysir is currently on trial facing a total of six charges that include manslaughter, obstruction of justice and submitting false testimony. He initially argued the shooting was justified because Thomas was wearing camouflage clothing and carrying a gun but, in the face of 12 eye witness statements to the contrary, later changed his version of events and claimed that Thomas had moved his head into the path of a warning shot. In May 2005, his defence team attempted to deflect blame onto British doctors who they accused of administering too much morphine. Dr.

Kugel speaking for the defence, claimed that "the critical cause of death was not the pneumonia, but, firstly, the large amount of morphine that he was getting." Thomas's mother insisted that: "you can't break the causal link between the shooting and his death."

Taysir also argued that he is being used as a scapegoat, by a military that is historically unwilling to prosecute its soldiers, because he is a Bedouin Arab. Hurndall's family have also argued that he is being painted as a "bad apple" to deflect blame from the senior officers responsible for creating a "trigger happy" climate in which activists are fair game. They cite the military's leaking of personal files, which show that he has been investigated for cannabis use, as an example of this. Speaking in May 2005, his mother said "the soldier might be convicted but the trial is not concerned with the wider justice to do with the chain of command and the culture of lies...you can only conclude that the command colluded in the soldier's original lies, and colluded in it for weeks until they couldn't sustain it any more."

The cases of James Miller and Thomas Hurndall are indicative of the Israeli military's behaviour in the Gaza area as is that of Rachel Corrie, an ISM volunteer, who, in March 2003, was run over and killed by the Israeli bulldozer she was trying to prevent demolishing a Palestinian house. As with the two other cases the Israeli military lied about the events leading up to her death, claiming that she "was not run over by an engineering vehicle" despite eye-witness and pathological evidence to the contrary. When the military police later carried out a criminal investigation they found that she had stumbled on building waste. Their deaths coincide with an ongoing Israeli campaign to stop independent coverage of military activity in the occupied territories. In May 2003, the ISM media office in Beit Sahour, near Bethlehem in Occupied Palestine, was raided by Israeli forces to seize computers, photos, files and CDs. International volunteers were detained and threatened with deportation.

Gideon Levy, an Israeli journalist who writes for the paper *Ha'aretz* claims the Gaza strip "has become the central shooting range of the Israel Defense Forces, the IDF's firing zone and training field...the rules of engagement lack the element of restraint, and punitive measures that Israel would not conceive of inflicting in the West Bank are par for the course."

In May 2005 an Israeli Bedouin soldier received an 18 month jail sentence the harshest yet handed out during the intifada for shooting a Palestinian who was attempting to fix an aerial on his roof.

*International Solidarity Movement*: <http://www.palsolidarity.org/> *The Thomas Hurndall Fund*: <http://www.tomhurndall.co.uk> Gideon Levy "The IDF's shooting range": <http://lists.econ.utah.edu/pipermail/rad-green/2004-February/012815.html> *Independent* 15/4/05; *Times* 15/4/05, 9/5/05; *Guardian* 23/5/05

## Military - In brief

■ **Germany: Commission supports MEADS.** The German parliament's budgetary commission has approved participation in the Medium Extended Air Defence System (MEADS) removing the final obstacle to the multinational \$19 billion programme. Germany can now join Italy and the US in design and development of the system. MEADS will replace the Patriot low-to high-altitude air defence system in the US and Germany and the Nike Hercules medium- to high-altitude system in Italy. MEADS is a defensive missile system against incoming ballistic missiles and makes participation in overseas military interventions less risky. As a slight concession to the German Green Party (a member of the ruling coalition) some conditions to MEADS participation were agreed. So will a civil crisis prevention group of the foreign ministry get EUR 10 million and will the Bundeswehr discontinue the use of sub-munitions with a dud rate of over one percent? The US is funding 58% of the MEADS programme, while Germany is providing 25% and Italy

17%. The contract is awarded to MEADS International, a consortium of Lockheed Martin from the US, EADS/LFK from Germany and MBDA-Italia. After design reviews and flight tests delivery of the MEAD systems should begin in 2014. *Jane's Defence Weekly* 27.4.05 (Joshua Kucera and Martin Bayer)

■ **EU: EU looks at protected defence markets.** The latest meeting of the European Defence Agency's (EDA) steering board, composed of national defence ministers and EU officials has formally responded to the European Commission's September 2004 green paper on defence procurement. The latter says two new EU policy instruments are needed. One is a so-called interpretative document to define when Article 296 (the article of the EU treaty that shields a huge range of military supplies from competition). The other would be a EU directive to apply rules of competition to the union defence market for non-296 transactions. In a statement the EDA lends its support to both instruments but hints at a big problem, namely the lack of transparency in member states practices in the Article 296 area. The EDA sees a directive as a longer term solution and will in the meantime explore the possibilities for a voluntary regime for the European defence marketplace. *Defense News* 7.3.05 (Brooks Tigner)

■ **EDA takes charge of European defence research groups.** The European Defence Agency (EDA) will absorb the activities of Europe's two main collaborative defence research and armament groups within the next year. The EDA steering board agreed that the agency should take over all armaments and defence research contracts of the Western European Armaments Organization (WEAO) and the Western European Armaments Group (WEAG). The two research entities belong to the near-defunct Western European Union. WEAG's armaments activity never reached the level expected and will be closed down in May. The nine-year old WEAO however has been more active. It oversees some 40 defence research projects worth approximately 200 million euros. The incorporation in EDA will take place from now till the first quarter of 2006. The value of WEAO's work equals about 5% of all collaborative defence research in Europe. *Defense News* 22.4.05 (Brooks Tigner)

## Military - New Material

**Die Europäische Verteidigungsagentur** [The European Defence Agency], Wolfgang Hermann. *Europäische Sicherheit* 4/2005 pp. 23-25.

**Die Situation der EU in ihrer geplanten strategischen Überdehnung** [The situation of the EU in its planned Strategic Superextension], Erich Reiter. *Europäische Sicherheit* 4/2005 pp. 34-43. Geopolitical and strategic aspects of the proposed Turkish entry into the EU.

**Report of Space and Security Panel of Experts.** March 2005. The panel was convened by the EC in June 2004 to provide the Commission with a report on the security issues raised in the White Paper on European Space Policy and make proposals for inclusion of security capabilities in the European Space Programme. The panel considered civil/military issues like response to terrorism, natural disasters, industrial accidents and shared threats to be within the scope of its work.

**End this bloody trade,** Emma Mayhew. *Red Pepper* March 2005, pp19-21. This article considers the practice of subsidising the arms industry and argues that it not only undermines human rights, fuels conflict and costs lives, but is economically and politically damaging for the UK.

**EU security and defence Volume V - Core Documents 2004.** *ISS Chaillot Paper* No. 75, February 2005.

**The democratic legitimacy of European Security and Defence Policy,** Wolfgang Wagner. *ISS Occasional Paper* 57, April 2005.

**Bradford Non-Lethal Weapons Research Project (BNLWRP)**, Neil Davison & Nick Lewer. Research report No. 7, (University of Bradford) 2005, pp. 77. The BNLWRP was established at Bradford University's department of Peace Studies in 1995 and its objectives are to monitor and review so-called "non-lethal" weapons and highlight the ethical questions that arise from the research, development and use of such weapons. This issue contains an article on the Non-Lethal Defense VI conference in Virginia, USA, where a military policeman, recently returned from Camp Bucca in Iraq, gave a presentation in which he discusses the role of NLWs as a "punishment tool". There is an extensive update on the various NLW technologies and a comprehensive bibliographical overview. Available from: [http://www.brad.ac.uk/acad/nlw/research\\_reports/docs/BNLWRPResearchReportNo7\\_May05.pdf](http://www.brad.ac.uk/acad/nlw/research_reports/docs/BNLWRPResearchReportNo7_May05.pdf)

## CIVIL LIBERTIES

### FRANCE

## ID card scheme criticised

In February 2005, the French interior minister, Dominique de Villepin, presented a draft law to establish a programme (INES, the secure national electronic identity scheme) to introduce a new ID card with a chip containing citizens' biometric data, facial and iris scans, digitised photographs and fingerprints, as well as encryption mechanisms to hide certain data, digital signatures and an authentication mechanism. The scheme seeks to begin introducing the new ID cards in early 2007, to make it compulsory to carry them (which has not been the case in France since 1955) and may charge people for the cost of the document. The reasons that were presented for introducing this new measure were to combat crime, illegal immigration, identity theft and terrorism.

Members of the *Commission nationale de l'informatique et des libertés* (CNIL, national commission for IT and liberties) have already expressed their "strong reservations" before it was asked by Villepin to offer an opinion. CNIL commissioner, François Giquel, expressed his concern:

*It is no longer a piece of card or a secret code, but an intimate part of your body that becomes an identifier. If you ask persons, as definitive proof [of their identity] to show an eye, a finger or a face, they are marked for life, it's a social revolution.*

As a measure to avoid the misuse of information, the data is envisaged to be stored and centralised into separate large-scale national databases; for fingerprints, for photographs, for cardholders, and for holders' addresses. Nonetheless, Alain Weber from the *Ligue des droits de l'homme* (LDH, Human Rights League), expressed his view that the separation of the data does not neutralise the possibility that they may be "interconnected". A former member of the CNIL, Louis Jonet, noted that if such a database had existed between 1940 and 1945, "some Jews would have been unable to escape the round-ups".

The INES scheme, on which a public consultation was opened on 1 February 2005, drew criticism from civil society groups, six of which issued a joint statement on 26 May 2005 entitled "INES, from suspicion to generalised trailing" and presented an appeal which is open for signature (see below) calling for the scheme to be withdrawn. The statement criticises the adoption of the draft law by an inter-ministerial committee on 11 April, before the public consultation period was over, arguing that rather than an open discussion, it is an exercise to "legitimate a government decision that has already been taken". It focuses on issues such as it being compulsory, or citizens having to pay for it, rather than on whether such a card is necessary. They dismissed the use of identity fraud and terrorism to justify the

electronic ID card scheme as "alibis", arguing that there had been insufficient investigation as to the extent of the first phenomenon to demonstrate that it is a real problem, and that it is only one of a range of means used by terrorist networks. They added that the majority of terrorist attacks have been carried out by "people using their own identity". They also argued that it will lead to the "multiplication" and "trivialisation" of identity checks, and that its multiple functions (to receive different kinds of services), presented as "comfortable" for users by the interior ministry, may end up making it indispensable for citizens even if it were not to be made compulsory by law, relegating those who do not acquire one to the status of "second-class citizens". They warn of the risk that the generalisation of the use of the new electronic ID card will result in the creation of an "exhaustive database of the entire French population", and that the establishment of a fingerprint database may lead to an increase in the number of people who are erroneously involved in criminal investigations, due to the imperfection of fingerprint recognition procedures.

*Libération*, 21.4.05; *IDG News Service*, 13.4.05; *Joint statement by the Ligue des droits de l'Homme (LDH), Syndicat de la Magistrature (SM), Syndicat des Avocats de France (SAF), Association Imaginons un Réseau Internet Solidaire (IRIS), Intercollectif Droits et Libertés face à l'Informatisation de la Société (DELIS) and Association Française des juristes démocrates (AFJD)*, 26.5.05, available at:

[http://www.ldh-france.org/actu\\_derniereheure.cfm?idactu=1059](http://www.ldh-france.org/actu_derniereheure.cfm?idactu=1059) ;

An outline of the arguments:

[http://www.ldh-france.org/media/actualites/argument\\_INES.pdf](http://www.ldh-france.org/media/actualites/argument_INES.pdf) ;

The appeal is open for signature at:

[http://www.ldh-france.org/media/actualites/petit\\_ines.pdf](http://www.ldh-france.org/media/actualites/petit_ines.pdf).

### UK

## NAPO calls for end to tagging

Research by the probation workers union NAPO has shown that electronic tagging is "extraordinarily expensive, does not effect crime and that aspects of the scheme are ineffective." Tagging was first introduced on a trial basis in July 1995, after being piloted as a condition of bail for unconvicted defendants. The curfew order, backed by electronic tagging, was introduced nationally for convicted adults in December 1999 and was extended for 10-15 year olds in February 2001. By 2003 nearly 15,000 curfew orders a year were issued by the courts against convicted offenders, who were fitted with electronic tags that are monitored by a private security company. The Home Detention Curfew Scheme, a form of early release of prisoners, was introduced with the provision of electronic tagging in 1999 and by the end of 2004 over 100,000 prisoners had been released under the scheme.

The NAPO research reveals that the government is paying the private sector £1,700 per order although "the outlay by the companies can be no more than £600 per order, and that for cases where there is a call out for a violation." The report estimates that Home Office curfew orders and the Home Detention Curfew Schemes have cost more than £220 million over four years, double the cost of supervising individuals by the Probation Service. Case studies reveal that curfew violations are not followed up by the companies - in one instance an offender violated the order 34 times before being taken back to court.

The Home Office, which recently signed a multi-million pound deal with two private security companies to double the number of tagging orders by 2008, acknowledged to NAPO that there is no evidence to show that it has any impact on crime. Harry Fletcher, assistant general secretary of NAPO, said: "Electronic monitoring is now a multi-million pound business set for a major expansion after the election, yet the figures clearly show that the profit is huge and hardly value for money. It is also extraordinary that the violations are not monitored or routinely



followed up. There is an overwhelming case for the withdrawal of the curfew order."

NAPO "Electronically Monitored Curfew Orders: Time for a Review" (NAPO) 24.4.05; [http://www.napo.org.uk/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=111&view\\_records=1&ww=1](http://www.napo.org.uk/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=111&view_records=1&ww=1)

## UK

### Criminalising headwear

In May 2005 Kent's Bluewater shopping centre banned the wearing of hooded tops and baseball caps as part of a crackdown on anti-social behaviour. This blanket measure comes in response to some shoppers expressing discomfort at children being able to hide their face from the 400 CCTV cameras operating in the complex. The Children's Society has called for a boycott of the shopping centre, denouncing the ban as "blatant discrimination based on stereotypes and prejudices that only fuels fear". Further, they said there is the ludicrous situation of "a shopping centre banning people who wear the items of clothing they sell at the centre."

The use of headwear has already been banned and criminalised through the use of anti-social behaviour orders (ASBOs). These are easily attainable civil orders which ban and individual from carrying out a certain act or being in a certain area. If breached an adult recipient could face a maximum penalty of five years in prison, and a child a detention training order lasting up to two years.

In an extraordinary statement, on 22 May, Lord Stevens, the former Metropolitan Police Commissioner, called for extra punishments for young criminals found to have worn hooded tops. Writing in *The News of the World* he claimed, "hoodies, if used to hide identity in a crime, are as much a criminal tool as a mask...both should lead to extra legal punishment."

*BBC News 13/05/05; News of the World 22/5/05*

### Civil liberties - in brief

■ **UK/Iraq: Colonel to face trial for over crimes?** Army prosecutors are reported to be preparing war crimes charges against the commander of the Queen's Lancashire Regiment (QLR), Colonel Jorge Mendonca, in relation to the death of an Iraqi civilian who was beaten to death by British troops in the Al-Hakimiya detention centre in September 2003. The allegations follow a 20 month long investigation into the death of hotel receptionist Baha Mousa, who was beaten to death while in British custody by soldiers from the QLR. Baha was one of a group of men who was assaulted; one of the men arrested with Baha, Kifah Taha, suffered a near-fatal kidney failure in the same incident. Mendonca was the commanding officer of the QLR at the time and a number of other soldiers are already being investigated for murder or manslaughter. *Independent on Sunday 22.5.05.*

■ **UK: Lie detectors to be introduced for benefits?** The government is reported to have "secret plans" to introduce lie detectors to monitor telephone conversations for benefit and compensation claims. Documents leaked to the *Independent* newspaper show that the Department of Trade and Industry and the Department for Work and Pensions are considering proposals for monitoring calls to "detect signs of stress in the voice that can betray false claims". The plan, which is being drawn up by civil servants, is based on a scheme used by insurance companies to catch "bogus" claimants. The project has been condemned by opposition politicians who point out that lie detectors belong to the world of pseudo-science and form no basis for determining the honesty of claimants. *Independent 28.12.05.*

### Civil liberties - new material

**Outsourcing torture**, Jane Mayer. *The New Yorker*, 14.2.05. In 1998 the US Congress passed legislation declaring that it is "the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States." Bush has told journalists that "torture is never acceptable, nor do we hand over people to countries that torture". This article describes in some depth several accounts of the rendering that Congress outlawed and that Bush denies, as well as the lengths the US administration has gone to cover-up its illegal practices.

**Taysir Alouny, puesto bajo arresto domiciliario, insiste en su inocencia** [Taysir Alouni, placed under house arrest, insists that he's innocent], Gladys Martinez. *Diagonal*, 17-30.3.05, pp.4-5. This article examines the situation of Taysir Alouni, the *Al Jazeera* journalist who faces charges of being a "relevant member" of a Spanish-based Al Qaida cell, in relation to which he is accused by judge Baltasar Garzón of "activities of support, financing, control and coordination". Alouni, who is currently on trial, was arrested in September 2003, before being released on bail because of his heart condition, re-arrested in November 2004 and released and placed under house arrest on 14 March 2005. This report includes testimony from Alouny's lawyer Luis Galán and describes his conditions in detention (without adequate medical care and in 20-hour isolation in a cell of 1.6 x 2.5 metres). It also looks at his journalism, particularly his interview with Osama bin Laden in October 2001, which Galán considers to be the underlying cause for the prosecution. Some of the evidence comes from the US, a country whose government is openly hostile to Al Jazeera. Much of the evidence against Alouni is based on mistranslated transcripts of telephone calls, examples of which are included in the article.

**Torture's dirty secret: it works**, Naomi Klein. *The Nation* 13.5.05., Article on the Syrian-born Canadian, Maher Arar, an early victim of US rendition, "the process by which US officials outsources torture to foreign countries". The "evidence" tortured from him in a rat infested Syrian cell was later discredited, but as Klein points out: "As an interrogation tool, torture is a bust. But when it comes to social control, nothing works quite like torture."

**Big Brother: the spy in your shopping trolley**, Steve Boggan. *The Times*, 28.4.05. Article on Radio Frequency Identification (RFID), a technology that uses computer chips to monitor items at a distance. Boggan largely devotes himself to the commercial "benefits", while the case against is put by Chris McDermott, one of the founders of UK Consumers Against the Pervasive use of RFID in our Society. While proponents claim that "Retailers don't want to use this technology in any ways that the consumers don't agree with" McDermott criticises the end of the "anonymous transaction" and points out: "They say the item you bought can be linked to you only by the store you bought it in, and that the store is prevented by data protection legislation from sharing that information with anyone else. But only this week in the US, the personal data of 310,000 people was stolen from the database of the data broker NexisLexis. Imagine if that happened with your supermarket chain - the idea that the information wouldn't be used by unscrupulous people is ridiculous." See [www.notags.co.uk](http://www.notags.co.uk)

**Break them down: systematic use of psychological torture by US forces**. Physicians for Human Rights, 2005, pp.129. This report is the first comprehensive review of the use of psychological torture by US forces as an instrument in their "war on terror" in Afghanistan and Iraq and at the interrogation centre imposed upon Cuba at Guantanamo Bay. Counter to the rhetoric spouted by Bush (and Blair in the UK) It explains how the use of torture - including sensory deprivation, isolation, sleep deprivation, enforced nudity, cultural and sexual humiliation, mock executions, intimidation with military dogs and threats of violence and death - is not the result of a "few bad apples" but is situated at the heart of the interrogation of prisoners. Examining the health consequences of the methods the report finds that they have led to self-harm and suicide attempts. In conclusion this report recommends: a. the end of the use of psychological torture, b. the

withdrawal of legal opinions that permit psychological torture, c. the disclosure of interrogation rules, d. hold perpetrators accountable, e. rehabilitate and compensate victims of torture, f. permit ongoing monitoring and g. promote ethical practice by military medical personnel. See: <http://www.cageprisoners.com/articles.php?id=7064>

## RACISM & FASCISM

UK

### BNP election hopes fade as leaders charged with race hate charges

On 19 May the British National Party's current leader and their founder appeared at Leeds Magistrates Court charged with offences of inciting racial hatred following statements they made during a BBC television undercover investigation of party activists, *The Secret Policeman*, which was broadcast last July. Party leader, Nick Griffin, has been charged with four counts of inciting racial hatred under Section 18 of the Public Order Act while the party's founder, John Tyndall, has been charged with using words or behaviour likely to stir up racial hatred. The organisation's Youth Organiser, Mark Collett, faces similar charges. All of the men were granted unconditional bail and will reappear on 16 June for committal to crown court. Anti-fascist demonstrators jeered the fascists, and a small group of supporters, as they arrived.

The charges against Griffin and Tyndall were announced in the run-up to May's general election and were seen as an embarrassment for the party, which has been attempting to "air-brush" its nazi philosophy and racist violence and substituting it with a more benign, community based nationalism, in the fashion of European far-right organisations. Putting up a record 118 candidates the party leadership was optimistic that it would achieve a good election result and had even mooted the possibility that they could win one seat to gain their first MP.

However, the statistics showed that only three BNP candidates had managed to attain more than 10 per cent of the vote. These included Len Starr (Burnley 10%); David Exley (Dewsbury, 13%) and a "rising star" in the BNP, Richard Barnbrook who achieved 16.9 % in Barking to take third position. The party leader, Nick Griffin, came last in the Keighley contest, where a strong anti-fascist campaign opposed his presence in the area. The organisation also failed to make any inroads in mayoral contests and several local elections that they contested, but they will want to use the experience gained to improve on their performance at local elections in May 2006. The BNP currently has 22 local councillors. The National Front contested 14 seats without making any noticeable electoral impact.

GERMANY

### Far-right murders in Dortmund

Far-right skinheads have increasingly come under discussion in the mainstream media, since the government undertook legal action to ban the *National Sozialistische Partei Deutschlands* (NPD). This unsuccessful court case exposed the involvement of security force informants on the NPD's executive, demonstrating the authorities' knowledge of the existence of an organised skinhead movement and its connections to NPD party structures. They would also have been aware of its violent attacks against black people, refugees and left-wing activists, (see *Statewatch*

vol 14 no 5). And yet, despite two recent murders by neo-nazi skinheads in Dortmund, a council spokesman still maintained that "we do not have a far-right scene". Similarly, when one of the assailants appeared in court the prosecution claimed that the incident was "not politically motivated" despite the attacker provoking his victim with a Hitler salute.

The first incident occurred in a Dortmund underground station on 28 March and involved a 17-year old neo-nazi who, after an argument with the 32-year old punk Thomas S., stabbed his victim to death and ran away. The police arrested him shortly afterwards and he remains in custody. The local skinhead movement provided him with a lawyer and a demonstration in Dortmund attracted several thousand people (it was called by the local trade union *Deutscher Gewerkschaftsbund* and the charity *Diakonisches Werk*). Less than three weeks later another death occurred in a small town near Dortmund. On 15 April, the 34-year old Christian W. approached a group of youths and gave the Hitler salute. When challenged by Arthur K., he pulled a knife and stabbed his victim 5 times, leaving Arthur to die of internal bleeding.

A statement issued after the first murder by 37 anti-fascist groups from the North-Rhine Westphalia region points out that "the Neo-Nazi scene in Dortmund has become increasingly active over the last few years and has been able to successfully recruit new members". The organisations they refer to are the *Kameradschaft Dortmund*, the *Autonome Nationalisten östliches Ruhrgebiet* (Autonomous Nationalists eastern Ruhr Area) and the band *Oidoxie*. The Dortmund police estimate that the far-right movement includes 60-80 persons. Between 2003 and 2004 around 400 criminal acts were classified right-wing, four that occurred in 2004 involved bodily harm. A central figure in the far-right scene who was particularly active after the murders is Axel W. Reitz, who calls himself the *Gauleiter Rhineland* of the Combat Alliance of German Socialists. He likes imitating Hitler and signed his name on posters threatening anti-fascists with death after the murder of Thomas. He also spoke at a rally organised by the far-right against the building of a mosque in Dortmund in autumn 2004. The *Komerradschaft Dortmund* worked with the NPD in the regional election in May and the NPD is collaborating with members of the DVU (*Deutsche Volksunion*) which has three seats on the local council. The DVU councillor Axel Thieme in turn will stand for the NPD in the regional elections.

Despite these links and the increase in far-right violence, the authorities are playing down and depoliticising the situation. The interior minister for North-Rhine Westphalia, Fritz Behrens, described the far-right in his region as a "toothless tiger". In a press conference after the second murder, public prosecutor Bernd Maas continued to emphasise that the incident was not politically motivated. A member of the local anti-fascist group from Hagen disagrees and said: "the murder can definitely be called politically motivated."

*Jungle World* 6 & 27.4.05

GERMANY

### Neo-nazi bomb-plotters jailed

The trial against neo-nazis Martin Wiese (29), Karl-Heinz Statzberger (24), Alexander Maetzing (28) and David Schulz (22) concluded on 4 May, when they were sentenced to 7 years, four years and three months, five years and nine months and two years and three months respectively. All four, and in separate proceedings four more members of the *Kameradschaft Süd* ("Comradeship South"), were facing charges of membership of a terrorist organisation and some of violating the firearms law (see *Statewatch* Vol 15 no 1).

On 8 March, the trial against Wiese had taken an unexpected turn when two of the accused, Maetzing and Schulz,

incriminated Wiese by admitting their guilt. All four had at first denied charges of terrorism and the planning of a bomb attack at the inauguration ceremony of the Jewish cultural centre in Munich. Schulz admitted that the group had carried out target practice with airguns which was intended to serve the "later use of live ammunition". He also admitted knowing of the group's explosives depot and "having had no doubt" about its intended use for bomb attacks. Maetzing admitted that the group had discussed an attack on the Jewish cultural centre in Munich for 9 November 2003 several times but said there had been no "detailed plan" at the time of his arrest, which was a few months before the remainder of the group was arrested.

Presiding judge Bernd von Heintschel-Heinegg believed that there had been no "detailed plan" but argued that the group fulfilled the definition of a terrorist organisation because "the will to commit murder has to be present, and of this the court is convinced." Further, he reasoned that "the [group's] aim to abolish the free democratic legal order was intended to be carried out through a bloody revolution." In April, in a parallel trial against four more members of the *Comradeship South*, younger members of the group were given probation of 16 to 22 months. They received a lighter sentence on the grounds of their age and because they promised to leave the far-right scene. They included an 18-year old female apprentice (18 months on probation), a 20-year old female school pupil (22 months on probation), a 23-year old woman (18 months on probation) and a 19-year old male school pupil (16 months on probation).

No further comment was made by the court about the involvement of the secret service informant Didier Magnien in buying the explosives and allegedly acting as an agent provocateur in the group. Magnien and other group members were actively carrying out so-called "anti-anti-fascist" work, which consisted of collecting information and personal details on members of the left-wing scene, journalists and politicians and compiling a hitlist to attack them. Those targeted complained that they read about their inclusion on the hitlist in the newspapers rather than the police and authorities informing them.

Meanwhile, anti-fascist groups are reporting the continued activities of neo-nazis in Munich. On 8 May it was reported that the police brutally held back a counter-demonstration of around 2,000 people who tried to stop a nazi rally on the Marienplatz on the anniversary of Germany's liberation from the nazi regime. Eighteen arrests were made. The city of Munich had tried to ban the nazi rally using a newly passed law allowing for banning demonstrations at places of particular symbolic value, arguing that the Marienplatz had been a symbolic place for the nazi regime as the fascist propaganda minister Joseph Goebbels had announced the beginning of the Reichspogromnacht from there in 1938. The Bavarian administrative court however disagreed and finally allowed the rally to take place.

*junge Welt* 10.05.05; *Jungle World* 11.5.05; *Süddeutsche Zeitung* 9.3.05

For regular updates about the far-right in Munich see <http://www.indynews.net/inn/news/muenchen1/>

## UK/SPAIN

### RTF and B&H organisers arrested

In April Spanish police officers arrested the founder of the Racial Volunteer Force (RVF), Mark Atkinson, in Benalmadena (Malaga) Spain. Atkinson's detention followed the arrests of five men and a woman from the organisation in the UK in January in relation to material published on the RVF's website and their magazine *Stormer*. Spanish police also arrested members of the Blood and Honour organisation within days of Atkinson's arrest. The RVF is an offshoot from Combat 18 (C18) which collapsed after internal feuding in 1997-1998 that saw one of their founding members, Charlie Sargent, jailed for murder. Long-

standing rumours that Sargent was a police informer were confirmed at his trial leading to a haemorrhaging of support and the destruction of C18's credibility among the wider fascist movement.

Infighting in the rump organisation between Sargent's former partner, Will Browning, and Atkinson saw defections to the British National Party and the growth of the moribund Blood and Honour (B&H) music scene. It also led to the creation of the RVF, which is linked to C18 but remains independent of it. Some sources have also linked the RVF with Northern Ireland's paramilitary Loyalist Volunteer Force (LVF). Members of the RVF are said to have helped settle LVF members, in the northern town of Bolton after they were driven out of Belfast in a territorial dispute over illegal drugs.

Atkinson was arrested in the Spanish resort town 18 months after jumping bail in the UK on charges of publishing or distributing material intended or likely to stir up racial hatred. The charges in the UK relate to the RVF's magazine *Stormer* allegedly incited violence against Black, Jewish and Muslim people living in the UK. Atkinson now faces extradition back to Britain. Five men and a woman have been arrested on related charges in a national police operation (Operation Attend) involving six forces in Bedfordshire, Lincolnshire, Surrey, London, Merseyside and Manchester. Those arrested are: Elizabeth Hunt (36, from Merseyside), Nigel Piggins (39, Hull), Jonathan Hill (33, Oldham), Steven Bostock (27, Manchester), Michael Denis (30, South London) and Kevin Quinn (40, Bedford). They are accused of conspiracy to publish material intended to stir up racial hatred.

Also in April a nationwide operation by the *Guardia Civil* (Spain's paramilitary police force) against members of the neo-nazi Blood and Honour group led to 21 arrests in Madrid, Seville, Jaén, Burgos and Zaragoza. Nineteen houses and a meeting centre were searched resulting in the confiscation of weapons, including two guns, ammunition and knives, as well as neo-nazi paraphernalia. The arrested face possible charges of crimes against fundamental rights and liberties, *apología* of genocide, possession and sale of weapons and of forming an illegal association.

*El País*, 26.4.05

## Racism and fascism - in brief

■ **Austria: Haider splits FPO to rebrand himself with a new party:** A split within the far-right Freedom Party (*Freiheitliche Partei Österreichs*, FPO) has seen the organisation partly replaced as a junior government coalition member by the Alliance for the Future of Austria (*Bundis Zukunft Österreich*, BZO). It is thought likely that the new organisation's coalition with the Austrian People's Party (*Osterreichische Volkspartei*, OVP) will hold until the end of the parliamentary term in late 2006. The announcement of the BZO's formation took place at a hastily-called press conference on 4 April when many members of the FPO and most of its government ministers defected to join the new party. Haider's sister, Ursula Huubner who had led the FPO at the federal level, announced her immediate resignation. The FPO had been in crisis since entering into coalition and its popularity, which reached 27% in the elections of 1999, had plummeted to 10% by the parliamentary elections of 2002. This is the umpteenth time that Haider has attempted to abandon his past and rebrand himself as a respectable politician. However, his frequent expressions of admiration for the policies of Adolf Hitler continue to expose his real beliefs. *Independent* 5.4.05.

■ **Germany: Berlin bans far-right groups:** The city of Berlin has taken action against far-right violence by banning neo-nazi organisations. The groups in question belong to the *Comradeship* network which seem to have become the principle form of organisation, together with regional far-right alliances,

of the skinhead movement in Germany. Police searched the houses of nine members of the *Berlin Alternative South East*, the *Comradeship Tor* and the latter's *Girl Group*, confiscating propaganda material. Six preliminary investigations were started against group members for threatening behaviour against left-wing youth, police and journalists and incitement to racial hatred. The core of the group is reported to consist of 10-15 members, who are also linked to the NPD (*National Sozialistische Partei Deutschlands*). The *Berlin Alternative South East* organised itself around the ex-NPD member René Bethage, a leading neo-Nazi organiser. *Süddeutsche Zeitung* 10.3.05

■ **Germany: Jail for "terrorist" *Freikorps* members:** On 7 March, the Brandenburg regional court passed sentences against 12 young racist arsonists ranging from 8 months to four and a half years. The gang, which called itself *Freikorps* (Free Corps), had set fire to ten Turkish and Vietnamese owned take-away shops in the region of Havelland. No one was injured but the damage was estimated 600,000 Euros. The group's ringleader, Christian H, received the four and a half year sentence. The *Freikorps* was organised like an association, with membership fees and "statutes" which laid down the group's aim to rid Brandenburg of foreigners. The statutes provided the main argument in the public prosecution's case, defining the group as a "terrorist organisation" under paragraph 129a of the German Criminal Code (StGB). This is the first time since 1988 that the state has defined a far-right organisation as terrorist. The anti-terrorist clause, which allows for far-reaching interception powers, extendable remand imprisonment, curtails defence rights and allows for high sentences without the prosecution having to prove participation in criminal acts (only "membership"), is typically used against the left, where preliminary investigations are used to spy out left-wing networks and criminalise them, while the charges are usually dropped after a few years for lack of evidence (see *Statewatch* Vol 11 no 1 & vol 14 no 1); *Süddeutsche Zeitung* 8.3.05.

## Racism & Fascism - new material

**Hitler was great; I can't say more.** Roger Boyes, *The Times*, 12.3.05. Article detailing the views of Udo Voigt, leader of the German far right National Socialist Party (NPD), who is facing prosecution for glorification of the Nazi era. Also outlines the development of the NPD and its strategy for Germany's national elections in 2006, for which Voigt, who initiated an NPD recruitment drive targeting skinheads, is preparing a national alliance of far-right parties, known for their divisive nature.

**De la laïcité égalitaire à la laïcité sécuritaire. Le milieu scolaire à l'épreuve du foulard islamique** [From egalitarian secularism to security-based secularism. The school environment tested by the Islamic veil], Pierre Tévanian. Chapter 7 of *La machine à punir. Pratiques et discours sécuritaires*, L. Bonelli & G. Sainati (eds.), L'Esprit Frappeur, 2004, Euros 7. This insightful chapter, written by a teacher from a school attended by a large number of pupils with ethnic minority backgrounds, focuses on the debate surrounding the introduction of the headscarf ban in French schools. He views the debate as artificial, misleading and as being framed in imperialist terms, in terms of Republican values (and "security") having to reclaim school territory from "savage" pupils (the use of "colonialist" terminology in the debate is an aspect that is highlighted in the article) through punitive and/or discriminatory measures. He questions the degree of support that this "unjustifiable" measure enjoyed among teachers (to restore respect for authority, undermined by a growing teacher-pupil division), feminists (to fight a symbol of oppression) and part of the left, noting that the Stasi commission, whose report laid the foundations for the ban, listened to several actors but ignored the views of students. Tévanian challenges the ban on a number of grounds, including the following: the betrayal of the Republican principle that no one is to be excluded from

the public education system, regardless of their faith or background; that a denial to provide schooling to girls who wear a veil (whether they do so by choice or under constraint), far from liberating them, will deny them schooling as well as the intellectual weapons to fight this battle within their family or community; and the fact that girls who wear headscarves to school in France do not have a record of being particularly troublesome or disruptive ("it is rarely the girls who wear a veil who complain loudly"), at the same time as they represent an "easy target". The book is available from: *L'Esprit frappeur*, 9, passage Dagorno, 75020, Paris, France.

## SECURITY & INTELLIGENCE

### NORTHERN IRELAND

## JSG/FRU leaves Ireland for Iraq

It has been reported that the Joint Support Group (JSG), the successor of the Force Reconnaissance Unit (FRU) - which was a key element of the government's counter terrorist strategy in Northern Ireland in the 1980s, who gave information to loyalist paramilitary death squads to assassinate republican activists and civilians alike - is to be pulled out of Northern Ireland and posted to other operations overseas.

According to *The Times* newspaper the Northern Ireland Secretary, Paul Murphy, announced in February that the JSG would be one of a number of units to leave the six-county statelet as part of a "normalisation" process. He added that MI5, which worked directly with the FRU when it was most active during the 1980s, will take over as the prime source for intelligence by 2007.

The FRU, which was led by Brigadier Gordon Kerr, remains at the centre of continuing investigations by Sir John Stevens into allegations that its members colluded with RUC Special Branch officers and Ulster Defence Association (UDA) paramilitaries to kill a number of prominent republicans during the 1980s. Steven's inquiries have played a key role in staunching information about the FRU from reaching the public domain. He has been reluctant to discuss the unit, neutrally describing it as "the Army's agent handling unit in Northern Ireland". The government has also threatened legal action against newspapers who report on the FRU. The *Sunday Herald* has faced legal action and *The Times* was threatened with gagging orders to prevent from reporting disclosures.

The Cory report, which investigated allegations of collusion by members of the security forces in the deaths of lawyers of Patrick Finucane and Rosemary Nelson, civilian Robert Hamill as well as that of loyalist paramilitary leader Billy Wright, found that the army had turned a blind eye to the FRU's activities in an act that could be characterised as collusive. In fact, as the case of Brian Nelson - a UDA intelligence officer and one of the FRU's top agents - demonstrated, it was implicated in at least five cases of conspiracy to murder. Recently the Irish-language television channel, TG4 has linked the FRU to the UDA/UFF hit squad that murdered Donegal Sinn Fein councillor, Eddie Fullerton, at his Bunrana home in 1991. Sinn Fein spokesman, Aengus O Snodaigh TD, believed there was "strong evidence of British Security force collusion in the murder."

## Security - new material

**10th Anniversary Newsletter.** *Freedom & Justice for Samar & Jawad*, pp. 14. This is the tenth anniversary issue of the newsletter, which reminds readers that the campaign to overturn the convictions of Samar Alami and Jawad Botmeh continues. The campaign is calling for an end to the cover up and the quashing of their wrongful convictions for

bombing the Israeli embassy in 1994. The campaign has a website: [www.freesaj.org.uk](http://www.freesaj.org.uk) and can be emailed at: [postmaster@freesaj.org.uk](mailto:postmaster@freesaj.org.uk)

## PRISONS

### UK

## Mubarek Inquiry

The public inquiry into the murder of Zahid Mubarek at HMP YOI Feltham, chaired by Mr Justice Keith, finally began hearing evidence in November 2004 and concluded its investigations in March 2005. During that period over 70 witnesses were heard.

As far back as April 2000 Zahid Mubarek's family called for a public inquiry into his murder. The Prison Service's internal investigation - the Butt inquiry - never made public its report. A Commission for Racial Equality investigation began in November 2000, and was used by the Home Office as sufficient to make a public inquiry unnecessary. It was left to Imtiaz Amin, Zahid's uncle, to apply to the High Court in pursuit of a public inquiry, ordered by Mr Justice Hooper in September 2001, on the basis that in refusing a public inquiry the government was in breach of Article 2 of the European Convention on Human Rights. The then Home Secretary David Blunkett appealed immediately, and, initially, was successful. It was left to the House of Lords in October 2003 to uphold Mr Justice Hooper's initial decision, ordering both that a public inquiry be held, and that the family be legally represented at the inquiry.

Zahid Mubarek was bludgeoned to death with a wooden table leg by his cell mate Robert Stewart in March 2000. He was attacked on 21 March and died in hospital on 28 March 2000. Zahid was serving a 60 day sentence for stealing razor blades with a total value of £6.00. Robert Stewart had been identified as a violent, racist, psychopath, but was housed with a vulnerable Asian cellmate. After he attacked Zahid, Stewart wrote "have just killed me pad mate" and drew a swastika on his cell wall.

As Nigel Griffin QC, counsel to the inquiry made clear, prison officials missed 15 opportunities to intervene and take action that could have saved Zahid's life. Prison officers either failed to read or ignored medical notes which showed that Stewart was dangerous, and during cell searches, failed to identify the carved piece of wood in his cell as a potential weapon. Warnings about Stewart's violent conduct, including his alleged involvement in the murder of an inmate at Stoke Heath YO1, were never passed to the wing on which he and Zahid were held. Letters from Stewart referring to "niggers" and "Pakis" were intercepted, but their contents never noted on his security file. Staff did not know the full details of Stewart's past when he arrived at the jail, but once they became aware, they left him in a cell with Zahid for a further two weeks. The inquiry heard from Julie Goodman, a warder at Feltham, who had placed Stewart with another Asian youth, despite being aware that there were at least two other spare cells. Goodman admitted she had been warned Stewart was danger to staff, but did not consider that this might mean he posed a risk to his cellmates.

The most disturbing evidence given to the inquiry came from Duncan Keys, assistant general secretary to the Prison Officers Association (POA). He told the inquiry that he had been told that Zahid was killed because staff at Feltham were engaged in a game of "Gladiators", initiated at the jail by the chair of Feltham POA, wherein staff pitted prisoners against each other and placed bets on the outcome. Mr Keys attempted to raise his concerns through the POA, but, after being told to keep quiet, he alerted the CRE anonymously in May 2004.

Judy Clements, the Prison Service's first race equality adviser, told the inquiry that in her experience, the prison system

was institutionally racist, and that serious allegations of violence against ethnic minority inmates were not investigated, while prisoners who reported racist incidents were themselves disciplined by the prison authorities. Prison staff and management at a local level were in complete denial that prisoners were subjected to any form of racism. The inquiry was also told that three prison officers at Feltham, still serving at the time of Zahid's death, had been found to have handcuffed a foreign national inmate to cell bars and smeared his buttocks with black boot polish. For carrying out a racist attack at the jail, they were given a written warning. Reports revealed to the inquiry demonstrated that staff at Feltham routinely referred to black inmates as "monkeys" and "black bastards" and that the Feltham POA was completely resistant to attempts to tackle staff racism. Moreover, it was only after two damning inspection reports in 1998 and 1999 that the Prison Service began to acknowledge that Feltham was in and of itself a problem that needed to be addressed.

As the inquiry retired to begin Part 2 of its remit - consideration of submissions and formulation of recommendations - it would have been obvious on the evidence before it that the death of Zahid Mubarek was as a result of a decision made in ignorance - in that Stewart's inmate medical records and security notes did not arrive at Feltham with him. However, once that information was available to them, staff did nothing to act on it. They knew that Stewart had been diagnosed by a psychiatric nurse at HMP Altcourse as a psychopath with a long standing, deep-seated personality disorder, implicated in a previous murder, and with known racist views. In light of all of this, they chose to leave Zahid Mubarek in a cell with Robert Stewart.

Both the CRE investigation and the public inquiry appear to have treated former Director General Martin Narey as something of a force for positive change within the prison system. It is true that Narey accepted immediately that the prison service was to blame and that Zahid's death was preventable. It is though, also true (albeit for the most part overlooked) that Narey told the CRE inquiry that, to address serious overcrowding at Feltham, he had begun to divert prisoners to HMP YO1 Chelmsford - where Christopher Edwards was kicked to death by his schizophrenic cellmate in 1998.

In April 2004, at HMP Leeds, Shahid Aziz had his throat slit by his cellmate Peter McCann, for speaking Urdu. McCann was deemed safe to share a cell despite assaulting a previous cellmate two months earlier.

In formulating its recommendations, the inquiry ought to give some thought to what may be an unpalatable truth - that the system failed Robert Stewart as much as it failed Zahid Mubarek. Stewart was diagnosed by Chris Kinealy, a psychiatric nurse at Altcourse, as a psychopath with a severe personality disorder. Kinealy though recommended no further action and made no psychiatric referral, deeming Stewart untreatable, that "only time will influence his behaviour." At the time he was deemed "untreatable" Stewart was 19. He had a history that included repeated attempts at suicide and self-harm, including cell fires and on one occasion, an attempt to set himself alight. No proper risk assessment was carried out at Feltham and, as a result of this, and the decision not to treat Stewart at any stage during his prison life, Zahid Mubarek was murdered, and Robert Stewart is now the Close Supervision Centre at Woodhill. Unsympathetic as he may be, Stewart is as much a victim of institutional failure as was Christopher Clunis when he killed Jonathan Zito.

There is clearly a real problem for the growing number of vulnerable inmates in custody. It would appear that it is only the efforts of families, such as Zahid Mubarek's, that will bring the Home Office to account.

*The Zahid Mubarek Inquiry:*

<http://www.zahidmubarekinquiry.or.uk/article.asp?c=403&aid=2746>

UK

## End-of Term Report

At the end of New Labour's second term in office, the prison population stood at a record high of 75,550. According to a recent Howard League report, Leicester is the most overcrowded jail, with 90% more inmates than it has places for, followed by Preston, which has 80%, and Shrewsbury, with 73%. Seventy six of the 139 prisons in England and Wales were overcrowded in January 2005. In 2003-4 the average rate of "doubling" - putting two to a cell built to accommodate one prisoner - was 21.7%

The pressure from both overcrowding generally, and the specific effects of prison on the most vulnerable, continues to manifest in riots in local jails - invariably the most overcrowded - and in the growth of a culture of self-harm and suicide within the jails. Five prisoners involved in a riot at HMP Exeter were jailed in March for a total of 12 years. Peter Turner was jailed for 3 and a half years, Richard Bilsborough for 27 months. As they were being sentenced, 40 inmates rioted at Doncaster after refusing to return to their cells. Press and prosecutors invariably seek to blame minor incidents and drink for the riots, but the ultimate cause can be found in the conditions generated by overcrowding in local jails.

A report by the Liberal Democrats, "Mothers Behind Bars", found that more than 17,000 children are separated from their mothers each year, through their mothers being sent to prison. Almost half of those jailed lose all contact with their families, and a third lose their homes and possessions. Only 5% of children with mothers in prison remain in their family homes. A third of children with mothers in jail develop serious mental health problems. Family contact is made more difficult by jails failing to facilitate visits outside school hours.

The extent to which the Home Office has sought to improve prison conditions by intervention and ministerial pressure can be seen by a recent report by Anne Owers, Chief Inspector of Prisons, following an inspection at HMP Holloway. Nearly a decade ago, the then Chief Inspector of Prisons, Sir David Ramsbotham, walked out of Holloway in disgust at the conditions observed there. Following Anne Owers' recent visit, it was found that 4 out of 7 key recommendations from an inspection 4 years ago had not been met. The inspection team found serious infestations of mice, pigeons and insects, and prisoners having to use sanitary towels to improvise toilet seats. None of the staff working with children and young adults had received enhanced Criminal Records Bureau checks. No action had been taken on a key recommendation that the jail cease to hold under-18s.

Prison reformers remain concerned at the level of drug abuse, self-harm and suicide at Holloway, and in women's prisons generally. A recent inquest into the death from overdose of Julie Walsh at HMP Styal in August 2003 found staff to be responsible for her death. Julie died after drinking 500ml of the anti-depressant Dothiapan to help her sleep through heroin withdrawal. There was no drugs detoxification unit at Styal in 2003. The anti-depressant had been left unattended on a hospital trolley. Julie's was one of six deaths at Styal in 2003. The coroner condemned the peremptory treatment of Julie's family by the prison authorities, who failed to notify the family of a memorial service until it was already underway, and handed them Julie's possessions in a black bin bag.

A recent report by the Prisons Ombudsman Stephen Shaw into the deaths at Styal describes the current use of imprisonment for mentally ill and drug dependent women to be "disproportionate, ineffective and unkind." Deborah Cole, for INQUEST, said:

*Since Julie's death, another 25 women have died in prisons around the country. There needs to be a wide-ranging public inquiry that*

*examines the wider issues-sentencing, allocation and whether prison can ever be an appropriate place for vulnerable women.*

On 28 April 2005, Mr Justice Munby ordered a public inquiry into a suicide attempt by a vulnerable remand prisoner, D, which left him with permanent brain damage. In a ruling which paves the way for public inquiries into suicide attempts by other "at risk" prisoners, the judge said the attempted suicide of D "raised real and very worrying doubts" as to whether there was sufficient protection for those who posed a serious suicide risk while in prison. D had a history of self-harm, and had made two other attempts at suicide, one on the same day as the incident which led to his brain damage. D was remanded in custody on charges of attempted armed robbery and taken to Pentonville in November 2001. He had already harmed himself at court, and arrived at the jail from hospital, with a form stating that he was a suicide risk. On three occasions in December he harmed himself, and was put on suicide watch on December 13, after a suicide attempt. On 27 December a broken razor and noose were discovered in his cell. D then received a phone call in which he was told his daughter had been taken into care. He was extremely distressed and staff were warned to be vigilant. At 3.45 that afternoon he hanged himself using bed linen which had been left in his cell. He was discovered, cut down and revived, but had by then suffered permanent and irreversible brain damage. In his ruling, Mr Justice Munby found the Prison Service's methods of investigating attempted suicides -internal review - failed to meet its legal duty under the Human Rights Act to "protect life". He also stated that he found it "profoundly disturbing" that important documents relating to D's case had been "lost". This suggested an alarming level of carelessness and incompetence, "not merely in a major prison but also in Prison Service headquarters."

*Howard League for Penal Reform; Office of the Chief Inspector of HM Prisons; Prisons Ombudsman: INQUEST; Independent 5.3.05; Guardian 30.3.05, 29.4.05; BBC News 31.3.05.*

## Prisons - in brief

■ **UK: FRFI banned from Belmarsh.** HMP Belmarsh has banned prisoners from receiving copies of *Fight Racism! Fight Imperialism!* on the grounds that it is a "racist" publication. This has occurred despite a recent Prisons Ombudsman ruling against such a ban at another jail, and in violation of the prisoners' rights under Article 10 of the European Convention on Human Rights. Campaigners are asking that letters of protest be sent to the governor of the jail at: MMP Belmarsh, Western Way, Thamesmead, London SE28 OEB Fax: 0208 331 4401

## POLICING

### GERMANY

## Another suspicious death in police custody

On 7 January, 21-year old Oury Jalloh from Sierra Leone burned to death in a police cell in Dessau in Saxon-Anhalt, whilst his arms and legs were handcuffed to the bed (see *Statewatch* vol 15 no 1). Weeks after the fire, a lighter was produced, police officers claiming to have found it in his cell. The officer in charge was suspected of involvement in a similar incident in 2002, when a detainee died in his care from a fractured skull and internal injury. No charges were brought. But now legal proceedings have been initiated against police officers for

grievous bodily harm resulting in death.

On 18 February a homeless person was taken into police custody by Magdeburg police, after his friend raised the alarm after finding him unconscious. An ambulance apparently refused to collect him as he was not visibly ill, but only incapacitated through drink. In such cases, according to a spokesperson of the Interior Ministry, the police would usually take people into custody until the drink wears off. In this case within four hours the man was found dead in his cell. The case has led to heated debates in regional parliament about police methods in Saxon-Anhalt. Regional MP Matthias Gärtner (*Partei des Demokratischen Sozialismus*) said that anyone found lying collapsed in winter should be taken to hospital, even if the person in question was unable to pay for treatment.

Silence still surrounds the death of Oury Jalloh. The mayor has not made a public statement nor expressed regret for his death. An initiative against right-wing extremism, together with Oury's friends, the local church and the police, have organised a commemoration ceremony.

*Süddeutsche Zeitung* 22.2.05

## WALES

### Police arrested over "Cardiff Three" murder conspiracy

Retired police officers were among 22 people arrested in April as part of an inquiry into the death of Cardiff prostitute, Lynette White, who was brutally murdered in 1988. Lynette had been stabbed more than 50 times and her killer had attempted to decapitate her in what has been described as the most savage murder in Welsh criminal history. Within hours of the killing police had arrested a suspect, a white man in a distressed state who had bloodstains on his clothing. Later the police investigation changed course and five black men were charged with the murder. This resulted in a notorious miscarriage of justice when Yusef Abdullahi, Steven Miller and Tony Paris, who became known as the "Cardiff Three", were jailed for life for murder in 1990 after a trial that lasted for 117 days. Two other men, who had been named as the killers were acquitted.

The Cardiff Three had their convictions quashed on appeal in December 1992 when it was revealed that eyewitness testimony and forensic DNA evidence against them was unreliable. The then-Lord Chief Justice Lord Taylor of Gosforth, said that one of the convicted men, who had the mental age of 11, had been "bullied and hectorred" for 13 hours before implicating the other two men in a confession that was a "travesty of an interview". At the mens' appeal their convictions were ruled unsafe because the recorded interviews should not have been put before the jury. An internal South Wales police inquiry cleared the force of any wrongdoing.

In 2003 security guard, Jeffrey Gator, pleaded guilty to Lynette's murder and was jailed for life. After his conviction South Wales police announced that they would hold another inquiry, which is being overseen by the Independent Police Complaints Commission, into the murder investigation that led to the miscarriage. It is this investigation that has resulted in the arrest of nine former police officers, and 13 other people. The police officers were arrested for conspiracy to pervert the course of justice, false imprisonment and misconduct in public office. The other 13 people, including former Cardiff prostitutes and pimps, have been questioned about information that they provided to the police.

*For a detailed, early account of the case see Satish Seker "Fitted In: the Cardiff 3 and the Lynette White Inquiry" (1998) available from the author at: editor@lifebloom.com Independent 25.4.05, BBC News 13.4.05.*

## UK

### High Court overturns jury's verdict in Harry Stanley case

The family of Harry Stanley, a 46-year old Irish man who was shot dead by Metropolitan police officers as he left a public house in September 1999, has expressed "outrage" at the overturning of the unlawful killing verdict secured at his inquest by the High Court. Harry was shot in the head as he returned home from his local public house when SO19 officers mistook a table leg that he was carrying for a gun; Inspector Neil Sharman and PC Kevin Fagan were acting on a tip-off that warned them of an Irish man with a sawn-off shotgun. An inquest took place in June 2003 and a jury returned a unanimous "open" verdict after it was denied the opportunity to consider whether he was unlawfully killed by coroner Dr Stephen Chan. As a result of Chan's procedural errors the family took a judicial review of the decision which ordered that a fresh inquest take place. In October 2004 the second inquest jury returned an unlawful killing verdict (see *Statewatch* Vol. 10 no 2, Vol. 13 no 1, 2).

Harry's wife, Irene, has condemned the High Court ruling, saying: "With everybody's help I intend to fight on and to challenge this decision. Harry was unarmed and two inquest juries did not believe that the police officers were under threat when they shot him dead. The attempt to turn the police officer who killed my husband into a victim has further compounded the injustice suffered by my family." Deborah Coles of INQUEST, an organisation that works directly with the families of those who die in custody and who has worked closely with the Stanley family, pointed out that the High Court's verdict "puts police officers above the law" and argued that "The rule of law must apply equally to all citizens including those in police uniform." Irene's solicitor, Daniel Machover, said that "Today's judgement doesn't allow for the obvious possibility that the jury rejected any basis for the shooting to be lawful". He continued: "[the ruling] calls into question the current criminal law of murder and the conduct of criminal trials and inquests in similar cases."

*INQUEST website: www.inquest.org.uk; INQUEST press release 12.5.05.*

## FRANCE

### Amnesty report damns "effective impunity" of police officers

On 6 April 2005, Amnesty International published a report on the "effective impunity" that police officers enjoy in France with regard to cases involving shootings, deaths in custody or torture and ill-treatment. The report identifies a number of factors which contribute to this situation. These can be loosely divided into a) structural issues pertaining to law enforcement activities and the police, b) questions arising from the biased functioning of the criminal justice system, and c) questions of accountability.

Under the first heading (a), there is "the lack of prompt legal access for an increasing number of persons detained for wide range of alleged offences or crimes" including organised crime or terrorism; the failure to respect the rights of people held in police custody; a distorted "esprit de corps" that encourages cover-ups and efforts to obstruct the identification of officers responsible for certain acts; and the failure by internal police complaints mechanisms to investigate allegations of ill-treatment, disputed shootings or deaths in custody "promptly, thoroughly and impartially".

With regards to the failings of the criminal justice system (b), the report highlights the criminal justice system's failure to address allegations of racist abuse or discriminatory conduct by

law enforcement officers adequately (as the offences are often accompanied by racist and/or discriminatory behaviour); the failure by prosecution services to bring effective prosecutions against law enforcement officers accused of serious human rights violations; questionable interpretations of notions of "legitimate defence", "necessity" and of lack of training to justify lenient sentencing "which does not reflect the gravity of offences", or acquittals; and the lack of adequate appeal mechanisms.

The difficulty that victims of police abuses experience when seeking judicial redress also involve accountability and transparency (c), or the lack of these. Here, the Amnesty report focuses on the difficulty of registering complaints against police officers and the frequent use of counter-claims to intimidate plaintiffs (see *Statewatch* Vol. 14 no. 6); the failure to establish an independent mechanism to investigate serious human rights violations by law enforcement officers; and the failure by courts to publish reasons for their decisions. The authors note that, in almost all of the cases brought to their attention, the people on the receiving end of police violence are from ethnic minority backgrounds. Although this is not presented as "evidence" of "institutional racism", it is deemed to demonstrate the existence of:

*a pattern, whereby reckless conduct has taken place, or a "series of blunders" to use a phrase common in the courts to justify light or nominal sentences - have been predominantly made against such persons.*

This is viewed as a factor that heightens mistrust between people living in "sensitive areas" (where most of the alleged police abuses take place) and the police.

The report outlines a number of cases (both recent and more dated) and of the judicial proceedings that they have given rise to, to illustrate the failings in various stages of the justice system with regards to illegal acts carried out by the police, which give rise to an "effective impunity" for officers which, among other things, contravenes France's international human rights commitments.

The report is available (in English) at:

<http://web.amnesty.org/library/index/engEUR210012005?open&of=eng-FRA> and (in French) at:

[web.amnesty.org/library/Index/FRAEUR210012005?open&of=FRA-FRA](http://web.amnesty.org/library/Index/FRAEUR210012005?open&of=FRA-FRA)

## Policing - in brief

■ **Scotland: G8 policing and security costs approach £100 million:** *The Times* newspaper has estimated that the cost for the UK of hosting July's G8 summit, which is to be held at the £500 per night Gleneagles Hotel in Perthshire, "is spiralling towards £100 million". The paper includes in its estimate £50 million for the cost of policing with a further £9 million accounted for by travel, catering and accommodation. The remainder is made up from an "undisclosed sum, thought to extend to tens of millions of pounds [that] has been set aside for additional security arrangements and contingency plans...". This works out at £30 million per day or £12 million a head. Among the subjects the G8 members - Britain, France Russia, Germany, Italy, USA, Japan and Canada - will be discussing is poverty in Africa. Thousands of policemen who will be guarding an "exclusion zone" will be accompanied by several hundred US secret service agents. The Scottish media has reported that a US aircraft carrier, packed with hundreds of US marines, will be stationed off the west coast of Scotland during the summit and that fighter planes will be stationed at an RAF base at St. Andrews. A military source told the *Scotsman* newspaper: "The Americans want to do everything themselves. They want to have their own helicopters, their own armoured limousines...They also want their own command post if Bush decides they have to carry out their own

operation." See <http://www.gleneagles.org.uk/> for the G8 alternatives website. *Times* 20.5.05. *Scotsman* 19.5.05

■ **UK: "I'll smash your fucking Arab face in":** An 18-year old Kurdish youth had charges against him dismissed after the court was played a recording of a police officer threatening to frame him and to "smash his face in". The youth, from west London, appeared at West London Youth Court in May and faced evidence from the Paddington Green police officer and a colleague who claimed that he had used foul language towards them. The officers were unaware that the youth had recorded them threatening and swearing at him on his mobile phone. When the recording was played before the court the charges against him were thrown out because, as district judge David Simpson, said "I could not believe a word of the police evidence." He continued: "No magistrate, judge or jury could convict on the evidence of these officers. I cannot believe anything these officers have told me." In a transcript of the recording the police officer, PC David Yeats, tells the youth: "Just shut the fuck up you cunt, otherwise I'm going to smash your fucking face in [laughter] 'cause you're a fucking robbing, raping arsehole" and "this is one [charge] you won't fucking get off at court because I'll write it up properly". The Metropolitan commissioner, Ian Blair, said that Yates would be sacked if the case was proved against him; he is currently suspended from duty and is being investigated for racial harassment. *Independent* 19.5.05.

## Policing - new material

**Police misconduct and the law - part 1**, Stephen Cragg, Tony Murphy & Heather Williams. *Legal Action* April 2005, pp 20-23. This article reviews developments in police misconduct law, discussing developments in common law torts.

**Atomic force**, Patrick Glover. *Police Review* 1.4.05, pp. 16-18. Article on the Civil Nuclear Constabulary, which replaced the UK Atomic Energy Authority Constabulary on 1 April. The UKAEA was widely considered to be "in the pocket" of the nuclear industry and in this piece the chief constable of the new force, Bill Pryke, says that it has been "separated out" from the industry, "with greater transparency and accountability through a statutory police authority as other forces have."

**Police station law and practice update**, Ed Cape, *Legal Action* April 2005, pp 15-19. Latest in bi-annual series covering developments in law and policy affecting police station practice.

**Under fire**, Nick Hardwick. *Police Review*, 26.11.04, p24. Hardwick, the chairman of the Independent Police Complaints Commission, discusses the case of Harry Stanley, who was shot dead by Metropolitan police officers in September 1999.

### Statewatch News Online

[www.statewatch.org/news](http://www.statewatch.org/news)

### Statewatch's Observatory on asylum and immigration

[www.statewatch.org/asylum/obserasylum.htm](http://www.statewatch.org/asylum/obserasylum.htm)

### Statewatch's ASBOWatch

[www.statewatch.org/asbo/ASBOWatch.html](http://www.statewatch.org/asbo/ASBOWatch.html)



# Germany new Immigration Act

## More restrictions on refugees and migrants introduced

On 1 January 2005, a new Immigration Act entered into force. It had been debated since August 2001, when the first draft was published. The parliamentary process was frustrated by the conservative parties which opposed the law, deeming it too liberal and they demanded more restrictions on foreigner's rights to work and more powers to deport "terrorists" (see *Statewatch* Vol 14 no 2). After the Madrid bombings on 11 March 2004, the debates exclusively focused on terrorism and led to the introduction of far-reaching security measures. With the watering down of more liberal proposals, the final draft was published on 5 August 2004 (BGBl. I S. 1950) and is called the *Law on the management and restriction of immigration and on the regulation of the residency and integration of EU citizens and foreigners*. It excludes undocumented immigration. Its main aims are claimed to be the facilitation of skilled labour immigration, the integration of foreigners and the inclusion of EU guidelines on asylum law. However, the asylum law was considerably restricted and labour migration is allowed only for entrepreneurs with vast amounts of starting capital.

The Act amends existing law in the areas of freedom of movement for EU citizens, asylum procedural law, citizenship and asylum law. The former Aliens Act (*Ausländergesetz*) was replaced with the Residency Act (*Aufenthaltsgesetz*). Below is an outline of the main aspects of the new law and the critique put forward by migrant and refugee support organisations.

### Structural changes

1. Residency permits are reduced from five to two different kinds: limited and unlimited permits, which are determined on the grounds of the purpose of the stay (education, work, family reunion, humanitarian reasons).

2. The newly formed Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) replaces the existing Federal Office for the Acceptance of Foreign Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*) and takes over the following tasks:

- developing and implementing of integration courses for foreigners
- managing the central data bank of foreigners registered in Germany (*Ausländerzentralregister*)
- implementing measures promoting "voluntary return"
- carrying out research on migration
- coordinating information exchange on labour migration amongst the foreigners authorities, the German labour office and German representations abroad.

### Labour migration

1. Highly qualified workers are eligible for a residency permit (§ 19 AufenthG), their family members are allowed to work (§ 29 AufenthG).

2. Promotion of settlement of entrepreneurs, who can receive a limited residency permit if they invest 1 million EUR and create 10 new jobs. In other cases an individual case examination may follow.

3. Students will have one year to look for a job in Germany after the completion of their studies (§ 16 Abs. 4 AufenthG).

4. Formerly separate procedures for granting work and residency permits are conflated (§ 39 Abs. 1 AufenthaltG).

5. The existing labour recruitment restriction that was introduced in the 1970's for low skilled labour migrants remains, with possible exceptions for certain sectors.

6. The existing labour recruitment restriction for highly skilled labour remains, with possible exceptions for certain sectors and if there is "public interest" (§ 18 Abs. 4 AufenthG).

7. Qualified labour migrants who are citizens of EU accession countries receive more favourable conditions to access the German labour market than third country residents but only if no German citizens can fulfil the position (§ 39 Abs. 6 AufenthG).

The demand for easing immigration controls for demographic and economic reasons that has also been voiced through official channels in recent years has not been met as the criteria for becoming eligible for a work permit remain strict and hard to fulfil for the majority of migrants.

### Humanitarian immigration

1. The Geneva Convention refugee status may also be granted in case of non-state persecution, thereby introducing the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection (§ 60 Abs. 1 AufenthG).

2. Gender specific persecution is introduced as grounds for persecution (§ 60 Abs. 1 AufenthG).

3. Subsidiary forms of protection are made a central form of protection (§ 25 Abs. 3 AufenthG).

4. If a pending deportation order cannot be carried out for more than 18 months due to reasons other than lack of identity, limited residency may be granted.

5. The weak residency status of "toleration" is kept with the argument that it serves more "precise management" (§ 60a AufenthG).

6. A hardship case regulation is introduced but not on grounds of a substantive right: the highest regional authority may order a specially created Hardship Case Commission to grant a limited residency permit to a foreigner that has an outstanding deportation order. The creation of such a Commission is in the remit of the *Länder*.

The implementation of the hardship case regulation is entirely up to the regions and therefore has no substantive right in law. Further, it will expire over a period of five years. *Pro Asyl* further criticises the new law because it does not contain an "old case regulation" that would regularise or give humanitarian status to refugees who have been in Germany for a long time. *Pro Asyl* argues that Germany remains far behind its European neighbours with regard to regularisation.

Subsidiary protection is introduced as the new principle of humanitarian protection, as opposed to the long-term and substantive right to asylum.

### Immigration of children

The existing age limit of 16 years for children to have a right to join family members remains, making them subject to a regular asylum procedure after that age. For children of accepted asylum seekers, convention refugees, family reunion or in the case of German language skills or a "good integration prognosis" the age limit is 18 years (§ 32 AufenthG).

### Integration

1. Introduction of the right to integration measures for new immigrants permanently resident in Germany.

2. Sanctions affecting their status of residency can be ordered against migrants if they do not attend the courses (§ 8 Abs. 3 AufenthG).

3. Obligatory course attendance for certain foreigners (those

receiving benefits and "in particular need of integration").

4. Non-attendance can lead to benefit cuts (s 44a Abs. 3 AufenthG).

5. Introduction of integration courses for EU citizens (s 11 Abs. 1 FreizügG/EU).

6. The federal state pays for the integration courses which are estimated to cost 188 million euro per year.

7. Foreigners will have to pay a private contribution, according to their income.

"Integration" here is an entirely enforced and repressive measure, the content of the integration courses on "German" culture is debatable and questionable.

### Security measures

Despite far-reaching security packages introduced after 11 September 2001 allowing the deportation of a "suspected terrorist", the Madrid bombings on 11 March 2004 served as a justification to introduce further security aspects into the law that was originally intended to liberalise immigration (see *Statewatch* Vol 14 no 2). These measures include:

1. Introduction of a deportation regulation (s 58a AufenthG) if there is a "threat prognosis based on facts". Appeal rights exist only in one instance, with the Federal Administrative Court. In case of a failed deportation (due to threat of torture or the death penalty) reporting obligations, restriction of movement or restricted communication rights are supposed to "increase security" (s 54a AufenthG).

2. Human trafficking is now a reason for deportation in cases where a suspect received a sentence without probation (s 53 Nr. 3 AufenthG).

3. Automatic deportation if "conclusions justify that a foreigner is or was a member of an association that supports terrorism or he has supported or still supports such an organisation". This also applies if the suspicion lies in the past if it justifies a current threat (s 54 Nr. 5 AufenthG).

4. Automatic deportation of leaders of banned associations (s 54 Nr. 7 AufenthG).

5. Introduction of the possibility to deport "ideological arsonists" (e.g. Islamic extremist Imams) (s 55 Abs. 2 Nr. 8 AufenthG).

6. Automatic check for the existence of intelligence on anti-constitutional behaviour before permanent residency permits (s 73 Abs. 2 AufenthG) or naturalisation requests are granted.

### EU citizens

Residency permits for EU citizens are abolished. Like German citizens, EU citizens will have to register with their district authority (s 5 FreizügG/EU).

### Asylum procedure

1. Asylum seekers with the so-called "small asylum" status (those who cannot be deported for humanitarian reasons or where reasons for persecution develop after leaving their home country, who used to receive the Geneva Convention status) will receive the status of regular accepted asylum seekers (s 25 AufenthG). They will receive a limited residency permit that may become permanent after three years if the conditions of their asylum still remain. They will also have access to the labour market.

2. Before issuing permanent residency permits to asylum seekers the authorities will examine whether the situation in the home country has changed (s 26 Abs. 3 AufenthG).

3. The asylum decision procedure will be harmonised between the individual case examinations and the federal officer for asylum questions.

4. Asylum applicants who asked for asylum with foreigners office border authorities but who fail to report to the authorities on time afterwards, will have their asylum claim assessed in a

so-called follow up asylum procedure (*Asylfolgeverfahren*), which only accepts grounds for asylum from the moment the asylum seeker entered Germany (i.e. it disregards persecution in the home country before that date).

5. So-called "small asylum" (Refugee Convention status) will not be granted anymore if the asylum seeker left his/her country without a fear of persecution and (subjective) post-persecution is created by him or herself later (s 28 Abs. 2 AsylVfG). This clause targets asylum seekers who become politically active once in Germany and would face persecution on return. Currently these are usually African refugees campaigning on human rights violations in their home countries as well as criticising the asylum regime and the racism they have to face in Germany (see <http://www.thevoiceforum.org/>)

6. Undocumented migrants who do not lodge an asylum application and who cannot be detained or deported will be allocated to different regions (*Länder*) until the decision on their deportation or residency status is taken (s 15a AufenthG).

According to an analysis by *Pro Asyl*, contrary to earlier political declarations of intent to abolish the practice of "chain permits" (ie the issuing of limited residency permits for years on end thereby denying a secure status) is not fulfilled and in some instances even made worse through the new regulation. The promise to integrate those affected by "chain permits" is not fulfilled. The *Berlin Refugee Council* points out that the status of refugees who have lived and in many cases been brought up in Germany (around 230,000 nation-wide and 20,000 in Berlin alone) remains insecure. They have no right to work, to education, to German classes or housing and are still threatened with internment in homes. The switch to a permanent residency permit on grounds of humanitarian reasons is even more restrictive in the new law (s 23a, 25) than before (s 30 AuslG).

Further, the law promotes so-called "departure centres" which are de facto prisons where asylum seekers who cannot be deported are "encouraged" to leave Germany, or rather, leave the benefit scheme and disappear into illegality (see *Statewatch* Vol 13 no 5). *Pro Asyl* predicts that "under the red-green coalition possibly more people than ever before will live in prison-like conditions".

Finally, the automatic exclusion from the regular asylum process on grounds of late reporting with authorities bears a high risk of *refoulement* as it abolishes individual case examination on purely procedural grounds.

### Spätaussiedler ('ethnic' German immigrants from eastern Europe and Russia)

1. Family members of so-called *Spätaussiedler* will have to prove their knowledge of the German language before being taken into the programme (s 9 Abs. 1 BVFG).

Given that the law started out as an attempt to liberalise Germany's immigration regulations which have always been restrictive, with citizenship law based on the "blood principle" (*Jus sanguinis*). The final result of the four year long debate has been described by *Pro Asyl* as follows:

*The slender results of this enormous law can be reduced to this: pseudo-modernisation in quasi big coalition unity [involving labour and conservative parties]. Hardly any problem is resolved permanently through [the new law]: the conservative party [CDU] has announced it will push for an extension of the security aspects of the law. German entrepreneurs, in neo-liberal tradition, will push for more immigration of "useful migrants". The politically weak SPD [labour party] will claim an apparent victory, while the CDU can present the restrictive law it wanted. The Green party supports their coalition partner with the motto: "eyes closed and through with it". For the majority of people who have been here long-term with an insecure status and for most refugees the law offers little. At the end of this legislative procedure, more than ever, a regulation for the right to stay remains necessary.*

The legal outline of this article is translated from the following site, which includes the whole legal text:

<http://www.aufenthaltstitel.de/stichwort/zuwg.html>

For a brief chronology of how the law was debated over the years see:

<http://de.wikipedia.org/wiki/Zuwanderungsgesetz>

In-depth critiques can be found under

<http://www.proasyl.de/texte/2004/Kettenduldungen.htm>,

<http://www.dbein.bndlg.de/action/#ZuwG>

For a critical monitoring of the implementation of the new law see:

<http://www.dbein.bndlg.de/action/link.html>

## IFJ-Statewatch report: "Journalism, civil liberties and the war on terrorism"

On 3 May 2005, World Press Freedom Day, the International Federation of Journalists and Statewatch launched a joint report in Brussels setting out serious concerns for journalism and civil liberties as a result of the "war on terror"

### Introduction

Benjamin Franklin:

*"Those who sacrifice liberty for security deserve neither liberty nor security."*

Five years into the 21st Century a dark and sinister cloud hangs over journalism around the world. More editors, reporters and media staff are killed, targeted, kidnapped and subject to violence than ever before. Independent media are under intolerable pressure.

This pressure comes directly from ruthless terrorists, with no respect for civilisation and human rights, who have targeted and murdered journalists in all continents. In Iraq alone, more than 50 media staff have been killed by political extremists and criminals, in pursuit of a grotesque agenda of hatred.

In society at large a deep anxiety and fearfulness has arisen following indiscriminate acts of terrorist violence against civilians on a massive scale in the United States, Indonesia, Spain, Russia, Morocco, Turkey and other countries of the Middle East.

These attacks are challenging to democrats everywhere because they are carried out by shadowy groups with whom it is impossible to make a moral compact.

How do democratic countries respond to this threat? Are new laws now in effect proportionate to the threats posed by terrorists? What is the impact on our systems of accountability of new forms of international co-operation with decisions taken behind closed doors? And what are the challenges for journalism when policies restrict freedom of movement, increase surveillance of individuals and their communications, and undermine the cardinal principles of democracy -- free expression, open government and the people's right to know?

This report, prepared by the IFJ, with the assistance of the civil liberties group *Statewatch*, makes an analysis of international co-operation as well, as a review of the situation in some selected countries. It concludes that new national laws and unaccountable policy-making at global level have cut deep into the fabric of civil rights protection.

These questions were discussed in detail at the conference Journalism, War and Terrorism in Bilbao, Spain on April 2-3rd 2005.

While governments have very different views on the question of pre-emptive military action, particularly against so-called "rogue states" (Afghanistan, Iraq and potentially others), they share very similar policy ideas from a national security perspective.

Worryingly, in their pursuit of common strategies, some governments seem all too willing to sacrifice national traditions of scrutiny, open government and natural justice in the name of security.

This report identifies a number of global themes all of which impact upon human rights and the work of journalists. Taken together they reveal that fighting a war with no set piece military confrontation, no hard-and-fast objective, no clearly defined boundaries, and no obvious point of conclusion, inevitably leads to restrictions on civil liberties and principles that constitute the

moral backbone of democratic society.

The findings are troubling and should ring alarm bells within media. It asks critical questions about international governance, about the mission of journalism in combating secrecy, about threats of self-censorship and, perhaps most importantly, about the role of media in alerting civil society to the erosion of basic rights.

But it is a crisis that cannot be solved by journalists alone. The report issues a timely rallying call to a wider coalition, of trade unions, media professionals, civil society groups and human rights campaigners among them. Democratic rights that have been secured after decades of struggle and sacrifice should never be lightly set aside.

### Conclusions

1. Having considered the current state of policy-making at national and international level, it is impossible not to conclude that the war on terrorism amounts to a devastating challenge to the global culture of human rights and civil liberties established almost 60 years ago.

2. While terrorist attacks in a number of countries have claimed many lives and while steps must be taken to ensure public safety, the response by governments to the threats posed by terrorism is out of all proportion.

3. Some countries are using the perceived threat of terrorism to justify new laws to stifle political opposition and free expression.

4. Of broader concern is the fact that global migration controls and new international security strategies divert attention and resources away from the root causes of global migration and insecurity -- poverty and inequality.

5. At the same time, increased police powers to monitor the communications of citizens and the collection and storage of personal data on an unprecedented and global scale are leading to the creation of a surveillance society in which the citizen is increasingly accountable to the authorities and the state.

6. These powers undermine democratic standards, because they are introduced in covert processes which are secretive and outside the orbit of parliamentary accountability.

7. The war on terrorism has legitimised the renewal of "emergency powers" and "civil contingencies" legislation, much of it untouched since World War II and the height of the nuclear threat during the Cold War.

8. The legislation developed since September 11th 2001 hands new emergency powers to govern governments covering civil administration, communications, transport, electricity and other key aspects of material life. In the UK, the US, Australia and other western states, these updated powers mean that in times of emergency, the military and other organs of state will assist the government of the day and parliaments will be by-passed.

9. This brief synopsis and the selected regional and country reports reveal that the war on terrorism is undermining more than half of the minimum standards in the 1948 UN Universal Declaration on Human Rights. It is hard to justify such an assault on fundamental rights.

10. Though these rights were by no means absolute before September 11, the message that they can be sacrificed to fight terrorism is a new and dangerous one. This understanding is now widespread within the apparatus of state – particularly among the military, the police, immigration and intelligence agencies. And it is with unflinching conviction that governments increasingly insist civil liberties need to be sacrificed in the defence of national security and public safety. They believe they are doing the right thing.

11. Governments appear oblivious to the fact that the mechanisms they choose to fight terrorism – military action, increased power for police, risk profiling, immigration controls, propaganda and manipulation of media – also nurture anxiety and more fearfulness within society.

12. As a result, the war on terrorism has fomented a new intolerance in many societies over migration and asylum-seeking, buttressed by fears over religious, ethnic and cultural difference, that are exploited by unscrupulous and extremist politicians.

13. The updated information in this selection of country reports confirms that the effects of the war on terrorism are even more pronounced in the world of journalism.

14. Media need to be more active in the scrutiny of government and those dealing with security, particularly at a time when laws are consolidated and refined into a permanent legal framework and which, through unprecedented levels of international co-operation, can form the basis of a global mechanism for social control.

15. However, it is increasingly difficult for journalists to track changes in policy, to investigate the actions of states and to provide useful and timely information to citizens because of laws and policies that discourage legitimate journalistic inquiry into terrorism and its root causes.

16. Journalists and media face a range of problems – restrictions on freedom of movement, increasingly strident demands from authorities to reveal sources of information, and undue pressure from political leaders to toe the official line on security issues.

17. When media are constrained from investigating and exposing the impact of changes in national and global security policy and when they are the victims of political spin and propaganda it adds significantly to the weakening of civil liberties and democracy.

See: <http://www.statewatch.org/news/2005/may/03iff-statewatch.htm>

## International Campaign Against Mass Surveillance (ICAMS) launched

The International Campaign Against Mass Surveillance (ICAMS) was founded by the American Civil Liberties Union, Focus on the Global South, the Friends' Committee on National Legislation, the International Civil Liberties Monitoring Group and Statewatch. ICAMS was launched on 20 April 2005 in London, Manila, Ottawa and Washington - 146 groups from around the world have now signed-up. The ICAMS report, "The Emergence Of A Global Infrastructure For Mass Registration And Surveillance", published with the launch, see: <http://www.i-cams.org/>

### ICAMS Declaration

Global security and the "war on terror" now dominate the global political agenda. Driven largely by the United States, a growing web of anti-terrorism and security measures are being adopted by nations around the world. This new "security" paradigm is being used to roll back freedom and increase police powers in order to exercise increasing control over individuals and populations.

Within this context, governments have begun to construct, through numerous initiatives, what amounts to a global registration and surveillance infrastructure. This infrastructure would ensure that populations around the world are registered, that travel is tracked globally, that electronic communications and transactions can be easily monitored, and that all the information that is collected in public and private databases about individuals is stored, linked, data-mined, and made available to state security agents. The object of the infrastructure is not ordinary police work, but mass surveillance of entire populations. In its technological capacity and global reach, it is an unprecedented project of social control. Already, the United States and other countries are aggressively using information gathered and shared through this infrastructure to crack down on dissent, close borders to refugees and activists, and seize and detain people without reasonable grounds. And, all of this is taking place at a time when the U.S. and its allies are maintaining a system of secret and extraterritorial prisons around the world, in which unknown numbers of prisoners are facing indefinite, arbitrary detention and torture.

The current situation reaches beyond the issue of privacy as it is often encountered in everyday life. What we are confronting are intrusions that reach to the very nature of the relationship between the individual and the state. Basic justice and human rights are at stake, and this will affect us all.

Governments around the world must abandon the intrusive and discriminatory measures inherent in the practice of mass registration and surveillance, and put the genuine protection and

development of citizens – in the fullest sense, including the protection of our rights – at the centre of any approach to "security":

- *All data collection, storage, use, analysis, data mining and sharing practices that erode or are contrary to existing data protection, privacy and other human rights laws and standards must stop immediately. Governments must resist efforts by the United States and other countries to pressure them into weakening their existing privacy standards.*
- *Mechanisms must be put in place to allow individuals to correct personal data and challenge misuse (including placement on a "watch list").*
- *International transfers of personal data between states should occur only within the context of formal agreements and under internationally recognized data-protection principles.*
- *Governments must stop the wholesale, indiscriminate collection and retention of information on citizens, including the acquisition of databanks from private companies.*
- *Governments must halt implementation of a universal biometric passport and the creation of "sharing standards" for passenger name record (PNR) information until the issue has been openly debated at the national level and privacy and other human rights protections are established.*

Inter-governmental bodies must commit to operating with greater openness and accountability. They must not become a means of circumventing civil liberties and democratic processes at the national level. Any initiatives must respect existing data protection, privacy and other human rights laws and standards. The United Nations – particularly the Office of the High Commission for Human Rights – must use all available mechanisms for the protection and promotion of human rights to urgently address the threat posed by the development of the global surveillance infrastructure.

# European Commission technical mission to Libya: exporting Fortress Europe

On 4 April 2005, a report was published on the European Commission technical mission in Libya from 28 November to 6 December 2004 involving experts from 14 member states, the Commission and Europol, and aimed at developing cooperation with Libya on illegal immigration. The mission's stated goals involved obtaining an in-depth understanding of migration-related issues in Libya, identifying concrete measures for EU-Libyan cooperation in this field and to illustrate EU policy on this issue to the Libyan authorities.

Some key findings include the fact that Libya is not only a transit country towards the EU, but is predominantly a destination country, although the Libyan transit route to cross the Channel of Sicily to reach Italy (particularly the island of Lampedusa) or Malta is being used by increasing numbers of migrants. After a long period during which they applied an "open-door" policy in this field, Libyan authorities now perceive illegal immigration as a "growing threat with the dimension of a national crisis", while the EU is concerned about the relationship between the emergence of the Libyan transit route and increasing pressure on EU borders.

Libya has a population of around 5.5 million, with 660,000 legal foreign workers in the country and between 750,000 and 1,200,000 "illegal" immigrants, with between 75,000 and 100,000 illegal entries on a yearly basis. Italy has reported that 14,017 migrants arrived from North Africa in 2003 and 12,737 arrived after setting off from the Libyan coast and landing either in Lampedusa, Sicily or the Italian mainland after crossing the Strait of Sicily. Malta recorded 1,369 arrivals by boat in the first ten months of 2004. Almost 2,000 would-be migrants are recorded as having perished out of approximately 15,000 who attempted the sea-crossing.

Obstacles to effective border control include the length and characteristics of the Libyan border (4,400 km of land borders with 6 countries, much of which crosses the desert, and a 1,770 km coastline). The mission deemed that there is a need for a dramatic increase in the number of staff, improvement of training, the provision of appropriate equipment, the development of cooperation at an international level and between relevant services within Libya. The report highlights the lack of a refugee policy and Libya's failure to sign the 1951 Geneva Convention on refugees, although provisions on this Convention and forbidding the repatriation of refugees exist in the national Constitution and in the Organisation of African Unity Convention on this issue that has been ratified by Libya. The return policy and related repatriation operations that the Libyan authorities are carrying out have resulted in the repatriation of 54,000 illegal immigrants in 2004 (5,688 of whom were deported using a charter flight program funded by Italy), whose return appears to be decided "without due consideration to detailed examination at an individual level", and involves the use of reception camps whose conditions is described by the mission as varying "greatly, from relatively acceptable to extremely poor". Bilateral cooperation only exists with Italy, involving repatriation of illegal migrants (including non-Libyans) arriving in Italy after transiting through Libya, training, permanent liaison for combating organised crime and illegal migration, supply of materials, the financing of a programme of charter flights to repatriate "illegal" migrants from Libya to their countries of origin, and of a camp for illegal migrants (two more have been planned), and Malta, with which a draft readmission agreement which includes third-country nationals has been reached.

The report stresses that although the absence of formal

relations between the EU and Libya hinders cooperation on illegal immigration, available funding opportunities and instruments exist to develop initiatives (under the AENEAS, ARGO programmes and the Cotonou agreement for complementary actions in sub-Saharan countries bordering Libya). Libya is urged to grant an official status to the UNHCR as a first step towards the establishment of "a comprehensive long-term global approach... which should also include combating criminal networks as well as the protection of refugees", and to "reconsider some aspects of her external policies having a direct effect on migration".

The report calls for the establishment of a "*specific dialogue mechanism*" [emphasis in original] without delay and the development of a "coherent Action Plan on migration issues" between the EU and Libya. The areas identified for cooperation with Libya include : 1) reinforcing institution building; 2) training initiatives; 3) management of asylum; 4) increasing public awareness. With regards to countries of origin, the steps for cooperation would involve: 1) discussions to identify areas for cooperation; 2) a pilot initiative, in the form of a mission to Niger to explore possible areas of cooperation; 3) improving border management cooperation between Libya and bordering countries. An increased focus on migration is advocated for a number of fora, including the EU-African dialogue, African Union activities, discussions in the Mediterranean "5+5" setting and with the Arab Maghreb Union, with CEN-SAD (community of states bordering the Sahara and Sahel deserts), and the establishment of dialogue associating origin, transit and destination countries.

## Shortcomings and remedies: building a repressive immigration infrastructure

The problem areas identified in the field of Libyan border management include the following: an insufficient number of personnel; superficial training for border guard activities (including the investigation of travel documents and border guard tactics); "inadequate" technical means for border surveillance; reaction capabilities of law enforcement bodies are insufficient; "very limited" maritime border control capabilities; lack of knowledge by immigration and border control officials of statutory international laws, "very poor" knowledge of document falsification, a lack of appropriate training, investigation equipment and documents for making comparisons for officers working at border points; "underdeveloped" cooperation between bodies responsible for national security, and international cooperation with bordering countries has only been established at a central level and is underestimated by officials at the regional level.

## Libyan immigration policy and recent developments

Libya issues four types of travel documents: an individual passport, a collective passport, a temporary travel document and a travel document for Palestinians. Nationals from Arab states, Sudan, Ethiopia and Eritrea are allowed entry into Libya without a visa, although this policy has been recently revised to exclude Palestinian and Iraqi nationals, and may be introduced for Afghans. A visa regime is in force for nationals of other countries, although no centralised statistical data is available concerning visas issued by the Libyan authorities. Two kinds of residence permits exist for foreign nationals: a red card for short-term residence is issued to those with illegal status (if they obtain an employment contract within three months they will receive a

green card) and a green card for long-term residence is issued to those in a legal situation who are holders of an employment contract. Libya used to grant naturalisation “to nearly every Arab under the age of 50 residing in Libya” (not applicable to Palestinians) until 2000/2001 due to labour needs, although this policy was subsequently suspended and now applies exclusively to spouses of Libyan nationals and to “a small number of exceptional cases”. The perception of illegal immigration as a threat has resulted in the creation of a new department in the Libyan interior ministry to deal with immigration and naturalisation issues, with investigations conducted on traffickers, on detaining and deporting illegal immigrants, and inspecting companies and analysing data. A new law (2/2004) to introduce stricter penalties for illegal immigrants and people facilitating their stay (at least 1 year imprisonment and/or a €1,160 fine) is being implemented and has led to the creation of a new unit to enforce this law.

Under the heading “reinforcement of institution building”, the document sets out a path to be followed to enforce immigration controls in Libya which includes “enhancing the legal framework” (presumably to introduce stricter conditions) in the fields of visas, entry conditions, residence permits, asylum, trafficking in human beings and repatriation. Changes are envisaged for the administrative structure and legal status of bodies involved in combating illegal immigration, the establishment of cooperation mechanisms between these services is encouraged, as is the creation of a “permanent Libyan task force” for coordinating these activities.

### **Visits to border points**

Field trips were conducted in the northern and southern border regions to assess the situation, hold discussions with local authorities, visit reception centres and Tripoli International Airport and conduct interviews with illegal immigrants and border control officials.

The mission’s experts noted that the current total staffing for border control (3,500) is “insufficient”, although there are plans for Libya to raise this figure to 42,000 and training, which is deemed to be superficial, is being improved through cooperation with Italy, most notably through training on falsified documents (although courses have also been undertaken in the fields of investigative techniques, Italian language, combating drug smuggling and terrorism, including through the use of dogs). Much of the southern Libyan border crosses the desert, and border control activities in this region are hindered by a lack of technical and communication means (vehicle patrols have no radio links), coordination and infrastructure. Lack of training and investigative equipment was also highlighted as a shortcoming on the Libyan-Algerian land border checkpoint. With regards to the northern coastal border, the mission highlighted that the Naval Coast Guard (which is part of the Navy) “is not equipped with enough patrol vessels and boats”, and Libya does not accept foreign vessels in its territorial waters to assist Libyan law enforcement authorities, as was offered by Italy. Furthermore, there is a lack of communication between the Navy and police patrolling the coast. As for Tripoli airport, the mission’s report notes that Libyan authorities do not accept the repatriation of refused non-Libyan persons who are returned, that visas can be issued on-the-spot for tourists in the airport and that “there is little or no knowledge in recognising false or counterfeit documents”.

They gathered information in conversations with staff of the Dutch airline KLM indicating that €300-fines are imposed for transporting someone to Libya without a valid travel document, that there is no system for registering the names of people entering or leaving the country, and that no currency checks on people leaving for Amsterdam are carried out by the airport officials. In the framework of Italian-Libyan cooperation, Italy

has been providing equipment (including humanitarian rescue material, 4x4 vehicles, forged document kits, binoculars, night-time viewers, fingerprint kits, underwater cameras and lamps, wetsuits, GPS systems, signalling rockets, Zodiac life-boats as well as, worryingly, “1,000 sacks for corpses transport”) and is set to provide material including dogs to locate drugs and explosives, and bullet-proof vests in 2005.

### **Detention centres, open camp-villages, repatriation centres**

The technical mission also visited a variety of detention centres and camps, divided into four categories: short-stay detention centres, long-term detention centres, open camp-villages and repatriation centres. In the short-term detention centres, migrants are held under armed police guard. In Sulman, in the north of the country, 200 migrants were held in an isolated barn-like structure and sat on the ground: hygiene were described as being “at a minimum”, with an absence of kitchens, places to eat and places to sleep in beds. The centre was reportedly cleaned just prior to the visit, and several detainees claimed they were arrested arbitrarily (several had jobs) the day before the visit. In another centre, they met a group of 16 people who said they wanted to make the sea-crossing to Italy, although the mission later noted contradictions in their account, and some claimed they wanted to work in Libya, save up some money and return to their countries. Long-term detention centres can reportedly “be assimilated to prisons”, one of which was composed of rooms with a capacity of approximately 200 persons, with no divisions according to sex, age, race or other characteristics. Another one in Tripoli was described as a “brand-new prison” holding 1,100 persons, and a further one in Misratah held 250 persons (although detainees claimed 700 were registered in previous days), under police guard. The director of this centre claimed that detainees had the possibility to wash and eat well in the centre, although the detainees countered the claim by stating that “their normal food was limited to bread and water”, adding that they had washed the centre the day before the mission’s visit. The presence in the centres of persons who claimed they were refugees who had been unable to claim refugee status was also reported. Another kind of structure visited by the mission were open camp-villages established on land which is rented to Africans communities, where Africans reside divided by nationality and set up their own facilities and businesses and from where they travel to nearby cities to find work. Access to the centres is open and “without apparent police control”. The mission described these camps as “a form of social control” of illegal immigrants who do not have access to state housing, and as giving “the distinct impression of a ghetto-like atmosphere, a way for the authorities to keep undesirable foreigners away from the Libyan citizens”. A repatriation centre for carrying out voluntary returns was also visited, in which migrants “sit still with their luggage” awaiting to be interviewed by a Consular officer from their country, to be issued a Travel Certificate and to be flown home.

### **The significance of the document**

The significance of this report by the technical mission in Libya is the attempt to export the EU’s immigration policy beyond its borders into Africa and, unlike in the case of cooperation with Morocco, it is planned for implementation in a country which acknowledges having immigration problems of its own (with concern expressed over possible consequences such as “criminal activities, a degradation of the overall health situation..., economic disruption due to an excess availability of cheap labour, cultural difficulties resulting in tensions between Libyan and foreign communities, and the possible infiltration of terrorists”) as a result of its privileged economic situation (in terms of per capita GNP) in comparison with its Maghreb and sub-Saharan neighbours. The mission’s assessment of the

inadequacy of Libyan border management activities and infrastructure helps to give an idea of what the Commission considers to be the requirements for border controls starting from a relatively clean slate, particularly in view of previous Libyan policies in this field aimed at encouraging the migration of a foreign labour force into the country that it required for its own economic development.

### Clash of visions

A number of issues arising from underlying conceptual differences on immigration surface in the report which seemingly hinder the understanding of EU immigration policy, including the failure of Libyan authorities on the ground to acknowledge the need for a global approach to combating migration:

*there seems to exist little understanding of the need for a strategic approach, except at the level of a few interlocutors at a high level*

*their reluctance to accept the argument that illegal immigration networks are in fact "organised crime" syndicates that "lure migrants to travel across the sea";*

and the reluctance by Libyan authorities to establish a clear distinction between asylum seekers and economic migrants, which is reportedly due to fears that such a distinction may "push an important part of the economic illegal migrant population to claim for international protection" which, in turn, "would result in problems for processing a large number of unfounded applications". Within the EU, this approach has resulted in a concerted attack on asylum rights in several member states precisely because of the submission of unfounded applications by "economic" migrants.

The position of the government of Niger, whose opinion was sought in relation to the possibility of instigating wider regional dialogue in the region, highlights the beneficial effects of the migration of Niger nationals into Libya. It describes immigration flows as "a source of revenue" and its nationals who migrate as "economic and temporary migrants" who generally "do not intend to go to Europe" but rather, stay in Libya long enough to make some money before returning to their villages. With regards to the flow of non-Niger nationals through the country, it is stressed that the migrants are, in the main, from ECOWAS Region countries (the Economic Community Of West African States is a regional group of fifteen countries, founded in 1975). and consequently "authorised to cross the border of Niger without any formalities", and that Niger "does not want to be in conflict with its Southern neighbours" due to its need for "access to their port facilities". The flow of migrants through Niger is also deemed to benefit individuals, both through legal activities (like selling products to passengers) and illegal activities (corruption, smuggling networks), particularly in view of the poverty and steady trend of population growth in Niger. Nonetheless, possible areas of cooperation and understanding on immigration are identified: a) with regards to rebels in the north of Niger and international concern about terrorism; b) Niger may be prepared to help gathering information on flows; c) EU-Niger cooperation, due to the size and characteristics of its border, would involve the provision of equipment for the army, police, customs and other services; d) Niger is interested in "a stronger dialogue" with northern countries, and would benefit from "more formal trading... with the North and indeed with Europe"; e) and it would be prepared to explore the possibility of a technical mission to Niger.

Also in the context of establishing wider regional dialogue, the mission aims to start discussions with CEN-SAD, an organisation established in 1998 which includes 21 African countries including every Libyan neighbour apart from Algeria. In relation to immigration, the mission noted that "CEN-SAD members seem to have no real policy in that area" and that the

Commission should take part in the organisation's meetings to "inform the CEN-SAD countries about its policies and possibly assist them in the definition of their own migration policies". In fact, this kind of cooperation would run contrary to some of the organisation's aims, most notably that of "ensuring the free movement of persons, capitals, goods, products and services" between these countries, and to its objective to "suppress entry and stay visas" between its member countries. Referring to plans to enhance Libya's ability to contain immigration, most notably through the establishment of reception camps and repatriation operations, CEN-SAD country officials "expressed concerns about the consequences for migrants originating from their countries of a reinforcement of the Libyan immigration and security policy".

Overall, the "dialogue" encouraged by the European Commission appears to be somewhat blinkered, and aimed at divulging its own "comprehensive long-term global approach in migration" (which is questionable although hardly questioned within the EU institutions) on countries and regions beyond its borders. While it shares some concerns over immigration with Libya (due to its being a pole of attraction for migrants, and for its geographic and economic situation), it is faced with a country whose need for foreign labour and whose regime's pan-Arab and pan-African stance, until very recently resulted in policies that encouraged immigration into the country. Thus, the notion of establishing a clear distinction between refugees and "economic" migrants aimed at criminalising the latter group is not considered reasonable, particularly in view of the practical problems it would pose (see above). Likewise, its insistence that smuggling networks, and Libyans involved in providing shelter at local nexus points and in providing vessels to attempt the sea-crossing are to be considered organised crime syndicates appears not to be shared by Libyan authorities, which, while they acknowledge the existence of "limited regional networks" or "highly organised facilitation networks", state that "there are simply no international criminal organisations that organise illegal immigration for sub-Saharan Africans", an assertion that appears to dismay the technical mission. Moving to the subject of "wider regional dialogue", examples of the dialogue with Niger and CEN-SAD highlight that countries of origin tend not to share the same view of immigration as a purely negative phenomenon that must be fought by any means necessary, and highlight its beneficial aspects, and the CEN-SAD goal of increasing freedom of movement as a way of encouraging economic development and prosperity in the region, in a way that is not dissimilar to the reasons for which the EU itself was set up, runs contrary to the Commission's goals. The assertion by Niger that closing off its border would have negative implications for its access to its southern neighbour's sea-ports illustrates the possibility that the extra-territorial implementation of EU policy on combating immigration may provoke highly disruptive effects on local and regional economic relations. Furthermore, the fact that the absence of a procedure for granting refugee status in Libya and its failure to grant an official status to the UNHCR office in Tripoli does not preclude cooperation with the EU on immigration is at least objectionable, and the signing and ratification by Libya of the 1951 Convention on refugees is not deemed to be a condition for cooperation. The perspective from which the mission was carried out even leads to social policies carried out by the Libyan authorities being viewed as negative in that they strengthen the economic "pull" factors for immigrants: "the 'distributive' policy of the Libyan regime towards its own nationals generates a strong demand for foreign workers".

*Council of the European Union, NOTE from the General Secretariat to Permanent Representatives Committee, "Technical Mission to Libya on Illegal Immigration", Brussels, 4 April 2005, 7753/05, LIMITE, ASIM 12, RELEX 143, LIBYE 1 - the full-text is on:*

*<http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>*

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