

statewatch

monitoring the state and civil liberties in the UK and Europe

vol 15 no 3/4 May-August 2005



EU: COSI - Standing Committee on Internal Security rescued from the debris of the EU Constitution

In Statewatch vol 15 no 1 concern was expressed as to the role of the proposed Standing Committee on Internal Security (COSI) to be set up under Article III-261 of the EU Constitution. Now that it seems very unlikely that the EU Constitution will be adopted it might be assumed that COSI would not see the light of day - on the contrary it is one of the first projects to be rescued.

The EU Constitution in Article III-261 said that a "standing committee" should be set up to ensure "operational cooperation on internal security". In February the Luxembourg Presidency produced a "Discussion paper on the future Standing Committee on Internal Security (COSI) - Constitutional Treaty, Art III-261" (EU doc no: 6626/05, 21.2.05).

In the Hague Programme on justice and home affairs adopted on 5 November 2004 it was agreed that a six-monthly interim committee should be set up:

to prepare for the setting up of the Committee on Internal Security, envisaged in Article III-261 of the Constitutional Treaty

The first meeting was held on 13 May 2005 and the report on the discussion was circulated by the Council Presidency on 8 June 2005. However, the "Subject" of this report was significantly changed to:

Summary report on the first six-monthly meeting for coordination of operational cooperation, as foreseen by the Hague programme

There is no mention in the subject nor the text of the EU Constitution or its Article III-261, instead the Hague programme is presented as the authority for the meetings of the interim COSI. So why the change? Between the meeting on 13 May and the report on 8 June the referendums on the EU Constitution in France (29 May) and the Netherlands (1 June) had rejected it.

The Council of the European Union (the 25 governments) of course has the power to set up any committee it chooses - though any such committee will be subject to the current rules of accountability and access to documents (issues which were not at all clear in Article II-261).

The membership of COSI is one of the subjects under discussion. At the moment it is comprised of the chairs of the Article 36 Committee (policing and judicial cooperation) and the Strategic Committee on Immigration, Frontiers and Asylum

(SCIFA) and representatives of the Commission, Europol, Eurojust, the Police Chiefs Task force, the Joint Situation Centre (SitCen) and the newly-created European Border Agency (EBA). Surprisingly it appears from the record of the 13 May meeting that "DG H of the Council Secretariat" (full-time officials from the Directorate-General on justice and home affairs) is also at the table as a policymaker rather than simply servicing the committee's work. Also worthy of note is the fact that neither the Police Chiefs Task Force nor SitCen have any legal basis for their existence.

In the report on the first six-monthly meeting of the "interim" COSI the Commission expressed the view that COSI should "prepare decisions of the Council" and "not a day-to-day tool for operational cooperation" (EU doc no: 8989/05). Thus its role should be: "setting out a legislative framework for operational action" but with "no link" to "budgetary issues". The Police Chiefs Task Force said it should be "integrated into COSI" as its officers "will be implementing the operational cooperation". While SitCen said it had no operational capacity but: "SitCen expects to be tasked by COSI as well as to provide it with spontaneous reports".

The UK, the incoming Presidency, took a quite different view on COSI composition saying it should be a high-level committee: "bringing together senior law enforcement specialists and Ministers' advisors from capitals" (see Statewatch vol 15 no 1). Similarly the UK and Europol said COSI should set the "priorities for operational cooperation".

Finally, the issue of "data protection, fundamental rights etc" was discussed as a "general policy point" (not one specific to COSI) and it was recorded that:

it might be difficult to entrust a law enforcement body with the specific task of a control authority as well

In other words should law enforcement agencies be allowed to be accountable "in house" and not subject to any external scrutiny - should they be self-regulating?

Tony Bunyan, Statewatch editor, observes:

In a democracy worthy of the name such an idea would not even be entertained.

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POLAND

Gay rights demo - banned and attacked by far-right

On 11 June, around 2,500 people took part in a gay rights demonstration in Warsaw against homophobia. German Green Party MPs Claudia Roth and Volker Beck as well as Polish deputy prime minister Izabela Jaruga-Nowacka and parliamentary vice president Tomasz Nalecz took part in the protest - and a conference on the situation of gay rights in Poland. Around 300 protesters from various fascist and right-wing organisations organised a counter demonstration and tried to attack participants. Gay rights, however, are not only attacked by the far-right in Poland; the demonstration was not authorised by Warsaw's mayor Lech Kaczyński who said it was "sexually obscene". This was not the first occasion that the Polish authorities have allowed gay events to be attacked. According to *Amnesty International*, in Krakow in May last year, around 3,000 participants of a Gay Pride march were "inadequately protected by the police when they were assaulted by 300 people, including some representatives of the *Sejm* [Lower House of the Polish Parliament] and local authorities."

In November last year, football supporters in Poznań assaulted several hundred demonstrators calling for greater respect for the rights of sexual minorities. Subsequently, nine people suspected of violent conduct were arrested. In April this year, the city of Poznań banned another gay rights demonstration, with conservative "Law and Justice" party city councillors declaring that the demonstration intended to propagate "deformities such as paedophilia, sodomy and necrophilia." When the organisers tried to initiate a legal action on grounds of slander, Poznań city court dismissed the case, arguing that the councillors' remarks were not insulting because "public opinion" equated homosexuality with the named practices.

In contrast to this judicial rebuff, and less than a week after banning the Gay Pride march, Warsaw's mayor Kaczyński issued a permit for a so-called "normality parade", which gay groups argue "was nothing other than an anti-gay demonstration whose main objective was an incitation to hate and intolerance towards LGBT [Lesbian, Gay, Bi-sexual and Transgendered] people." Kaczyński also closed a gay club in Warsaw last autumn with the argument that party goers were holding orgies there.

In an open letter to the President and Prime Minister of Poland and EU Leaders, the International Lesbian and Gay Association (ILGA) wrote:

The marching of openly fascist skinheads through the streets of Warsaw, preaching hate against vulnerable minorities and tolerated - if not supported - by government officials has not been seen in Europe since the dark days of the 1930s. As you know Lesbians and Gay Men were one of the target groups for Nazis. Who would have thought we would see ourselves again the target of fascists with no protection from a so-called modern European Government in 2005? It is a disgrace and threat to the values of peace and tolerance that European society has strived to create over the last 60 years.

European anti-discrimination and gay rights groups as well as parliamentarians have signed ILGA's petition in support of the right to hold Gay Pride marches and against institutional homophobia in Poland.

Süddeutsche Zeitung 13.6.05; *Amnesty International country report "Poland" (2005)*; *ILGA reports on the march and homophobia in Poland*: http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=58&ZoneID=4&FileID=643

GERMANY

Interior Ministers' security plans for the 2006 World Cup

Since the announcement that Germany will host football's World Cup in 2006, Interior Ministers have begun planning security measures that involve surveillance, biometrics, preventative policing and data exchange. On 25 May, a special Interior Ministers conference (IMK) in Stuttgart passed the measures, which envisage increased CCTV surveillance, the possible suspension of the Schengen Convention, preventative detention and increased international police cooperation. Radio Frequency Identification (RFID) transponders will be integrated into fans' tickets to check their movements and to "prevent fraud". Data protection officers believe that the World Cup will be used as a large-scale experiment to promote RFID technology in the commercial sector.

According to the newspaper *Berliner Zeitung*, but denied by the IMK chair Heribert Rech (from the conservative CDU), the classified version of the security plan includes new biometric technologies to be used at the matches. According to the newspaper, special cameras will be deployed that are able to identify people with the help of biometric data. The report suggests that even if a ticket-holder disposes of his/her RFID ticket after entry into the stadium, the cameras would be able to trace him/her. Facial recognition technology is already being used in a pilot project in the Netherlands at the Eindhoven football club, where the "FaceVACS-Alert" software is being provided by the German company Cognitec. Camera images will be compared with an existing "hooligan" photograph database. This is likely to include images from other Member States, particularly the Netherlands and the UK, which have also trialed facial recognition technology.

In Germany, the "violent sports offenders" databank currently holds around 6,200 records of people who are classified as either "violent" or "on occasion prone to violence". According to the Association of Active Football Fans (BAFF - *Bündnis aktiver Fussballfans*), inclusion in this database is arbitrary, being entirely at the discretion of the police. Inclusion in the system is often on grounds of non-violent acts, such as carrying a glass bottle to the game or urinating in public. The individual whose data is held is not informed and there have been cases where supporters have found themselves surrounded by police and taken for questioning at an airport or during a routine traffic check because they appear on police monitors as "violent offenders". As is the custom at international football events, other Member States will share their respective databases with the German police under the banner of international police cooperation.

According to the security plans, not only the stadia but also public spaces where the games will be transmitted will be put under CCTV surveillance. In addition, police will be equipped with mobile optical fingerprint identification systems that are linked to the central fingerprint database. A special anti-terrorist team of "experts", from the internal and external security services and the Federal Crime Police Authority, is preparing for possible terrorist attacks and will operate from a specially created "Information and Competency centre" in Berlin. Stadiums will be surrounded by two security rings, the first can only be crossed with the RFID ticket containing the personal data of the ticket holder. Arbitrary spot checks in the second security ring will then be used to verify that the ticket holder is the person authorised to hold it. Green party spokeswoman Silke Stokar criticised the planned large-scale CCTV surveillance and RFID use and said "Schily would like to know who is present and where he is sitting at every game". Interior minister Otto Schily,

however, has reassured the public that "we are going to organise it in such a way that no visitor will have the feeling that he lives in a police state". The authorities tested elements of the security plan during the Confederations Cup held in Germany between 15-29 June.

The BAFF severely criticises this criminalisation of football fans and points out that security measures are tested on fans every weekend. One police officer explained to a supporter angered by police intimidation that "there are no better training opportunities [than these games]". BAFF explains that entry on to the violent offenders database:

is the basis for further police measures, such as warning phone calls [Gefährderansprache], bans on travelling abroad, reporting obligations or preventative arrest...Arrest to ensure appearance in court [Hauptverhandlungshaft], accelerated court procedures with limited defence possibilities, increased periods of detention without charge or the change in passport laws allowing for a ban on leaving the country - more and more laws are being passed, based on the construed picture of a dangerous [football] fan.

Jungle World 1.6.05; Süddeutsche Zeitung 27.5.05; Berliner Zeitung 25.5.05; for more background information see Heise news online 31.5.05 under <http://www.heise.de/newsticker/meldung/60085>. Active football fans associations (BAFF): <http://aktive-fans.de>. The public version of the security concept is published (in German): <http://www.innenministerium.baden-wuerttemberg.de>.

Civil liberties - in brief

■ **UK: UK Watch launched.** A new resource for left activists and academics in the UK was launched in June. The UK Watch website (<http://www.ukwatch.net>) is modelled on the US ZNET site and aims to cover a similar range of issues, with comments, analysis and opinion pieces, as well as creating "a forum for developing broad cross-issue appreciation of the challenges facing the radical activist left in the UK." UK Watch is run on a non-profit basis and has a ten person advisory board consisting of: Michael Albert (ZNET), Alex Callinicos (SWP), David Cromwell (MediaLens), Mark Curtis (author of *Web of Deceit* (2003) and *Unpeople* (2004)), David Edwards (MediaLens), Eric Herring (author of *Iraq in Fragments* (2005)), Olivier Hoedman (Corporate Europe Observatory), David Miller (Spinwatch), John Pilger (author and film-maker) and Milan Rai (Voices in the Wilderness). The collective are working with limited resources and are looking for support to provide links to the best articles on the web and for original research.

■ **UK: GMB demands an end to tagging in "battery farm" workplaces.** The GMB trade union has called for an end to the "dehumanizing of work" through the electronic tagging of workers using new computer and satellite technology. The union made its call at its annual congress in Newcastle at the beginning of June saying that the growing use tagging, which is intended to improve the distribution and re-stocking of goods by monitoring staff, would lead to the workforce revolting. It is thought that about 10,000 low-paid workers in the UK have already been subjected to this degrading experience, but many others had refused to cooperate. The devices "consist of computers worn on the arm and finger computers linked to local area networks and to GPS systems" reducing the role of the worker to doing what the computer order requires. "These devices calculate how long it takes to go from one part of the warehouse to the other and what breaks the workers need and how long they need to go to the toilet. Any deviation from these times is not tolerated." The GMB's Acting General secretary, Paul Kenny, said: "...we will not stand by and see our members reduced to automatons." *GMB press release 6.6.05; see also the GMB report, <http://statewatch.org/news/2005/jun/gmb-tagging-at-work.pdf>*

Civil Liberties - new material

Snakes, beatings, sexual assaults; UK resident's shocking testimony of life in Guantanamo, Severin Carrell. *Independent on Sunday* 24.4.05, p4. This account is based on a document by Omar Deghayes, one of at least five British residents being held at the US "gulag" at Guantanamo Bay with the approval of the British government. His account describes repeated beatings and torture with electric shocks when detained in Pakistan and beatings (one of which caused him to be blinded in one eye) and the withdrawal of food, light and heat as coercive measures, in Guantanamo. Deghayes says that British intelligence officers interrogated him while he was held in Pakistan, adding to reports from other British Guantanamo detainees of MI5/MI6 collusion with the US abductors.

From My Lai to Abu Ghraib, Seymour Hersh interviewed by Andrew Burgin and Matthew Cookson. *Socialist Worker* 4.6.05, pp.8-9. Hersh, who in 1968 exposed the US massacre at My Lai and in 2004 revealed the torture and abuse of Iraqi prisoners at Abu Ghraib, discusses the "cult" that has taken control in the US and expresses his fears for the future. He also touches on US "operations in north Africa" and the "democracy movement in the former central Soviet republics". On the invasion of Iraq he says: "This is a war against Muslims...It's a strategic war in which we have very little concept of what we're doing. We don't have an endgame. My country has declared war on people who are non-citizens. They are constantly diminishing the rights of non-citizens. They can be kicked out of the country for the most trivial offence."

Informe 2004, Movemento Polos Dereitos Civís, pp.101, available from: Rúa Miguel Ferro Caaveiro, 10, Santiago de Compostela 15707, Spain; and mpdc@movemento.org. This annual report (in Galician) on the activities of the *Movemento Ppolos Dereitos Civís* (MPDC, Movement for Civil Rights) includes an overview of the association's activities in relation to civil rights in the north-western province of Galicia. It includes sections about freedom of information and censorship at a local level and especially in the cases of the sinking of the *Prestige* oil tanker (about which the MPDC filed a complaint before the European Parliament) and the 11 March 2004 bombings in Madrid, as well as systematically reporting developments in different fields of its activity, including privacy, political and trade union activity, education, linguistic rights, health, prisons and the environment. An in-depth assessment of the activities of the Galician political and judicial authorities, as well as the ombudsman, is included, with special reference to the complaints filed before these bodies by the MPDC (on issues such as illegal or disproportionate interventions against demonstrators by police officers, or the legality of video-surveillance cameras installed in the centre of Santiago de Compostela).

Africa's new best friends: the US and Britain are putting the multinational corporations that created poverty in charge of its relief, George Monbiot. *The Guardian*, 5.7.05. Timed to coincide with the G8 summit Monbiot discusses the "new consensus [that] denies that there's a conflict between ending poverty and business as usual" and maintains that "Justice...can be achieved without confronting power." He considers the roles of the Corporate Council on Africa ("the lobby group representing big US corporations with interests in Africa: Halliburton, Exxon Mobile, Coca-Cola, General Motors, Starbucks, Raytheon, Microsoft, Boeing, Cargill, Citigroup and others") and a similar organisation in the UK, the Business Action for Africa group which held a summit in July. It was chaired by the head of Anglo-American, and speakers included executives from Shell, British American Tobacco, Standard Chartered Bank and De Beers. Monbiot concludes: "At the Make Poverty History march, the speakers insisted that we are dragging the G8 leaders kicking and screaming towards our demands. It seems to me that the G8 leaders are dragging us dancing and cheering towards theirs."

Access to Information in Bulgaria 2004: report. Access to Information Programme, Sofia, 2005, pp. 84. Available from Access to Information Programme, 76 Vassil Levski Blvd, Apt. 3, Sofia 1000, Bulgaria.

ITALY**Regional governors oppose detention centres**

Regional governors and representatives of 14 of Italy's 20 regions held a meeting on 11 July 2005 in Bari (Apulia) to express their opposition to the network of detention centres for migrants, known as CPTs. The initiative followed an appeal issued by Nichi Vendola, the newly-elected *Rifondazione Comunista* (Communist Refoundation party, PRC) regional governor of Apulia, which received the backing of 13 other regional governors after the regional elections in April 2005 saw the centre-left coalition winning in a majority of Italian regions. Representatives from all the southern Italian regions, with the exception of Sicily, which is governed by the centre-right, took part in the initiative. The *Mare Aperto* national forum saw the governors and representatives of regional governments signing an appeal entitled "Ideas for opening the borders and closing the *Centri di Permanenza Temporanea* (CPTs)", a policy which they criticise for framing the entire issue of immigration policy within the field of "repressive regulations", based on the questionable notion of "administrative detention". They criticised the treatment of immigration as a "public order" issue and the suspension of individuals' fundamental rights, describing the issue of CPTs as a way of re-opening the debate on immigration policy, because they represent the most "painful" failure in the policy choices made by Italy.

This initiative was particularly significant in light of charges made by interior minister Giuseppe Pisano about its illegality. Pisano also criticised the call to close the CPTs by Piero Fassino, the leader of the *Partito dei Democratici di Sinistra* (PDS, Democratic Left), the largest party in the centre-left coalition. He accepted that "CPTs are inhumane and fall below acceptable standards of civilisation", but argued that the solution is to "make them civilised and human for people who have to temporarily stay there and simultaneously efficient...to counter illegality" because "their existence is one of the conditions for being part of the [Schengen] system of free movement". Exponents of the centre-right, including Pisano, stressed that the CPTs were established by a centre-left government, and that the use of terms such as "deportations", "lagers" and "mass expulsions" offend him, as an Italian and as the interior minister.

On 14 July 2005, nine activists were sentenced to up to one year in prison for "resisting a public officer". It was a ruling which Alessandro Merz, a regional councillor in the north-eastern Friuli-Venezia-Giulia region, called a "political judgement". He remembered that videos and testimonies showed clearly that "we were attacked by policemen and customs officers in riot gear", although the testimonies by the police apparently carried greater weight. The campaign was portrayed by prosecutors as a "premeditated criminal act organised in military fashion", rather than a "legitimate initiative by activists and citizens against a place where rights and democratic principles" are violated. At another trial on 22 July 2005 concerning ill-treatment suffered by detainees from Maghreb countries in the *Regina Pacis* detention centre in San Foca di Medulugno (Apulia) after an escape attempt in November 2002 (see *Statewatch* vol. 15 nos 1 and 2), 15 of the 19 defendants, who included the centre's director, the priest Cesare Lodeserto, *carabinieri*, volunteers and doctors, were found guilty of offences including violence against individuals, misuse of coercive measures, failure to prevent ill-treatment and false testimony. Lodeserto received a 16 month suspended sentence;

seven *carabinieri* were also found guilty two, who forced detainees to eat raw pork (forbidden for Muslims) received 16-month sentences - while five others received a one-year sentence and four were acquitted; two doctors were sentenced for falsifying medical records to claim that the detainees had injured themselves during the escape attempt and some volunteers were also found guilty.

Forum Nazionale "Mare Aperto"; final document, Idee per aprire le frontiere e chiudere i Centri di Permanenza Temporanea (CPT), 11.7.05; available on: http://www.regione.puglia.it/quiregione/web/files/presidenza/mareaperto/at_to_finale.pdf; Further documentation, including audio files of the speeches: <http://www.regione.puglia.it/quiregione/schede.php?op=vedischeda&artid=254>. Press statement by Alessandro Merz, 15.7.05; Il manifesto, 30.6.15.7.05; ; Gazzetta del Mezzogiorno, 23.7.05; Further information is available at: www.meltingpot.org/archivio3.html

GERMANY**50,000 in danger of losing citizenship**

On 1 January 2000, a new citizenship law was passed in Germany denying the right to dual nationality (see *Statewatch* vol 9 nos 2, 3 & 4). Similar to the recent immigration law reform (see *Statewatch* vol 15 no 1), the citizenship proposals started out as an attempt to liberalise the existing law, which was based on the blood principle ('Jus sanguinis'), but was met with a populist campaign by the conservative *Christlich Demokratische Union* (CDU) and her sister party *Christlich-Soziale Union* (CSU), who launched a petition to "mobilise the population" against the reforms, particularly those amendments relating to dual nationality. They collected five million signatures with the result that existing citizenship law denies dual nationality. Children born of foreigners have to decide on their nationality by the age of 23 and revoke one passport.

Five years after these changes and backed by the recent immigration law reform, the German government has started a drive to track down and revoke the German citizenship of Germans of Turkish origin who applied for Turkish citizenship since 2000. In April this year, Interior Minister Schily, in a meeting with his Turkish counterpart Abdülkadir Aksu, demanded from him a list of people who applied for and received Turkish citizenship since 2000, which, according to the Turkish foreign office, amounts to around 50,000 people who would automatically lose their German citizenship under the current law. The loss of German citizenship obviously implies the loss of citizenship rights and, in the case of Turkish dual citizens, the necessity to receive non-EU residency and work permits. Aksu has neither confirmed nor denied that Turkey will pass this list to the German authorities.

Schily's initiative was paralleled by the regional authorities sending out letters to Germans of Turkish origin since the beginning of this year. In North-Rhine Westphalia alone, around 70,000 people were targeted. Almost all replied and 4,000 said that they took up Turkish citizenship after 2000. In June this year, the Hamburg authorities followed suit and sent letters to 6,000 Germans of Turkish origin, in which they call on them to inform the authorities about the status of their citizenship by 7 July. Both Schily and the regional authorities argue they want to update the electoral register for the upcoming regional and general elections. The replies therefore have serious consequences for the right to vote: if the authorities do not receive an answer, they will be "automatically deleted from the electoral register and from then onwards treated as a Turkish citizen", says Reinhard Fallak, spokesman of the interior ministry of the city state of Hamburg.

Mahmut Erdem, a Hamburg lawyer and member of the "No

loss of German citizenship" campaign, has criticised the initiative and argues it gives the impression that those naturalised are "second-class citizens". Further, he argues the initiative stigmatises Germans of Turkish origin, because other naturalised citizens who are in the same situation were not contacted. Eastern European and Russian immigrants of German origin who received citizenship on grounds of their "blood origin" but have also applied for Russian citizenship will now face the same problems.

Between 1991 and 2003, around 622,000 Turks applied for German citizenship and many of them then re-applied for their Turkish citizenship, often for reasons concerning Turkey's inheritance laws. Whilst former German law stipulated that applicants cannot have another nationality whilst applying for German citizenship, and Turkish law, contrary to that of Morocco or Greece, for example, does not protect people from expatriation, many Turks denaturalised, applied for German citizenship and re-applied for Turkish citizenship. This became almost standard practice over the past 15 years, but now has severe consequences.

Despite protests by German-Turkish associations, the government is insisting that dual nationality will not be tolerated and at most grants a swift re-naturalisation for those affected. However, those who received German citizenship before the reforms might fail due to barriers that did not exist before, such as language tests. Recently, a regional court in Baden-Württemberg ruled that it was possible to deny citizenship on grounds of lacking written German skills. It is also unclear what happens to those that have since been convicted of criminal offences. Although the legal situation has existed for the last five years, the recent immigration reform has created potentially disastrous situation for some of those affected: it stipulates that a former German citizen may receive a residency permit if s/he "has been legally resident in Germany for five years at the time of losing the German citizenship."

However, most of those affected have only received their Turkish and therefore lost their German citizenship in more recent years. Many of the 50,000 affected did not know about the changes in law, others applied before 1 January 2000, but the Turkish authorities only dealt with the application after that date. They might suddenly be given an inferior legal status although they have been living in Germany for decades. The situation is also difficult for those that have worked in Germany as guest workers and have gone back to Turkey and only make family visits to Germany. They also have to show adequate knowledge of the language to receive residency rights again.

The Turkish interior minister conceded that bureaucratic problems would continue to arise with an estimated 2.6 million Turks resident in Germany and appealed for a common solution to the citizenship question as it has "humanitarian implications". Schily, however, is pressing for a bi-lateral agreement that lays down that both countries are obliged to exchange information on the names of new citizens. Looking at the repressive character of the 2000 and 2005 legal reforms, it does not take much to guess where the German authorities are heading with regard to revoking German citizenship of around 50,000 people, who will lose the right to vote in the upcoming elections and possibly many more social and welfare rights if the authorities refuse to grant an unlimited residency permit.

Jungle World 2.2.05, 29.6.05; *Süddeutsche Zeitung* 12.4.05

Immigration - in brief

■ **Germany. Courts challenge authorities' orders to deport Imams.** Germany's new immigration law, which came into force on 1 January this year (see *Statewatch* vol 15 no 2), introduced increased powers to expel so-called "hate preachers" with accelerated deportation procedures. Now an immediately effective deportation order by the city of Berlin against the Berlin

based Turkish Imam Yakup T., which was initially confirmed by the Regional Constitutional Court of Berlin, has been revoked by the Germany's Federal Constitutional Court. The Federal Court thought the order lacked "findings based on facts" and ruled that Yakup T.'s fundamental right to legal recourse had been violated. Further, the court found that it had not been proven that the Imam had called on people to carry out suicide attacks, thereby confirming that the issuing of immediately effective deportation orders required considerable proof. Another Imam who was deported from Bremen recently won his appeal with the Regional Administrative Court of Bremen, which ruled that he was allowed to return to Germany to appeal against his deportation order there. *Süddeutsche Zeitung* 15.4.05, 24.6.05.

■ **Italy/Spain/Libya/Morocco: Deaths in the Mediterranean:** A 5-metre long boat carrying 27 "illegal" migrants sank in the Channel of Sicily, 60 miles off the Libyan coast, on 24 May 2005. Two corpses were found, eleven people were rescued by a fishing boat, and 14 others disappeared. Twelve migrants (six women and six small children) died after the dinghy in which they were seeking to reach Spain sank off the Moroccan coast after setting off from near Tangiers on 13 June 2005 - the dinghy had a capacity for ten people but was carrying around 90. Most of the occupants managed to swim to safety after the shipwreck, and there were pregnant women among the survivors. Increasing numbers of pregnant women and very young children are part of these dangerous sea-crossing. Some members of the Moroccan security forces were arrested in relation to bribes that they were allegedly paid in order to dissuade them from stopping the vessel's departure. Four border guards were reportedly paid 8,500 Euro. On 15 June 2005, the dead body of a pregnant sub-Saharan women was found floating 5 miles off the coast of Mogán, in the south-west of the island of Gran Canaria. On 4 July 2005, a Saudi Arabian stowaway was found dead in a boat that arrived in the catalan port of Tarragona from the Ivory Coast. On 19 July 2005, the *Asociación de Trabajadores e Inmigrantes Marroquíes en España* (ATIME, Association of Moroccan Workers and Migrants in Spain) announced that since the start of 2005, 163 people have died or disappeared in the territorial waters of Maghreb countries while they travelled in dinghies. At a press conference in Seville, the association's president Kamal Rahmouni stressed that this figure is "far lower" than the real one and provided a break-down:

126 deaths have been confirmed, 62 of which were in Tunisia, 37 in Algeria, 15 in Aaiún (Western Sahara) and 12 in Tangiers (Morocco), whereas 37 would-be migrants have disappeared at sea.

Corriere della Sera, 25.5.05; *El Mundo*, 7.7.05; *El País*, 13, 15.6.05; *Sur*, 16.6.05. *Infoapdha* 20.7.05.

Immigration - new material

Asylum legal aid crisis: evidence from the frontline, Kay Everett. *Legal Action* June 2005, pp. 7-8. Summary and commentary on the report *Justice Denied: asylum and immigration legal aid*, compiled by Bail for Immigration Detainees and Asylum Aid. The dossier presents evidence of the impact of cuts to legal aid that were introduced in April 2004 and considers 78 submissions from asylum seekers.

Support for asylum-seekers update, Sue Wilman. *Legal Action* June 2005, pp. 10-13. Covers welfare provision for asylum-seekers and other persons subject to immigration control.

Seeking asylum is not a crime: detention of people who have sought asylum. *Amnesty International*, 20.6.05. This report examines the plight of asylum-seekers detained for the duration of their asylum process under accelerated asylum-determination procedures. It concludes that thousands of people are detained unlawfully: "Detention was protracted, caused untold suffering, was unnecessary and, ultimately, in many cases failed to fulfil the authorities stated purpose of removal and was thus unlawful." Available on:

<http://t2web.amnesty.r3h.net/library/print/ENGEUR450152005>

Immigration law update, Alan Caskie. *SCOLAG Legal Journal* Issue 133 (June) 2005, pp. 158-162. Review of significant cases from Scotland and England in the field of asylum, immigration and nationality law.

Una regularización cerrada en falso, *Mugak*, n.30, January-March 2005, pp.59, Euro 6. This issue looks at the shortcomings of the recent immigrant regularisation process that took place in Spain, focusing on how Spanish immigration legislation provokes inequality and discrimination, as well as being ineffective, as is demonstrated by the fact that in twenty years, there have been five such regularisations. It includes testimonies about the disappointment that several migrants wishing to be regularised have experienced, on demonstrations that were held in Barcelona in favour of an expansion of the criteria for regularisation and on the "shameful" developments that are taking place beyond the southern borders of the EU, through the repressive activities of the Moroccan police and army against would-be migrants in northern Morocco. Available from: *Mugak*, Centro de Estudios y Documentación sobre racismo y xenofobia, Peña y Goñi, 13-1, San Sebastián 20002, Spain.

Get It Right: How Home Office decision making fails refugees. *Amnesty International*, February 2004. This report reveals that Home Office asylum decisions were "based on inaccurate and out-of-date country information, unresolved decisions about people's credibility and a failure to properly consider complex torture cases." It says: "Government figures show that the Home Office gets the initial decision wrong on nearly 14,000 asylum cases in the last reported calendar year (2002), meaning around 1 in 5 cases are overturned after costly appeals."

The Asylum and Immigration Tribunal: practice and procedure, Jane Coker, Judith Farbey & Allison Stanley. *Legal Action* June 2005, pp. 14-16. Introduction to the Asylum and Immigration Tribunal which came into being in April and replaces the immigration appeals structure created under previous statutes.

LAW

UK

Demonstrator wins right to protest outside Parliament

In July, Brian Haw, the anti-war protestor who has been demonstrating outside parliament for the past four years, won his High Court challenge against new laws that threatened to evict him. Under the Serious Organised Crime and Police Act, which became law earlier this year, from 1 August all protestors have to obtain police permission before staging a demonstration in the half-mile area around Westminster. Haw, who has been camping in Parliament Square since June 2001, sought permission from the High Court for judicial review on the basis that his protest pre-dates the new laws. On 29 July the three judges who heard his case ruled, by a 2-1 majority, that the law could not be used to evict Haw and further that he need not apply for permission to continue his protest. They confirmed what the government had already admitted; that the law had been badly drafted. Nathalie Lieven, a spokesperson for the Home Secretary, said: "Nobody is infallible, including parliamentary draftsmen. It is plain it was a mistake. The wrong words were used". The government had tried to rectify their error in June through a commencement order which stated that the new law applied to those continuing as well as starting new protests. Lady Justice Smith found that such secondary legislation could not be used "to criminalise conduct which would not otherwise be criminal."

To compound the government's embarrassment the decision

also meant that anyone could conduct a protest exempt from the new laws providing they initiated it before the start of August. Haw's solicitor, David Thomas, also warned that his client's case may be the first of many: "...it [the Act] will be susceptible to a human rights challenge, as it strikes at the heart of the right to peaceful protest". On the day of its introduction around 100 people staged a symbolic protest outside Westminster, five of whom were arrested. Lindsey German, convenor of the Stop the War Coalition, claimed the dictation of who can and cannot demonstrate to be "totally unacceptable". Jeremy Corbyn, a Labour MP who himself was breaking the new law by addressing the crowd, said: "This is absolutely absurd. Ordinary people have been arrested for taking part in a perfectly peaceful demonstration outside parliament during the recess...I suspect this provocative action by the police on the first day of this new law may encourage other demonstrations."

Guardian 26.7.05, 2.6.05; *BBC website* 26.7.05, 1.8.05

Law - new material

Why I gave up legal aid, Zoe Stevens. *Legal Action* June 2005, p. 6. The author, who has worked as an immigration solicitor and is now working for Bail for Immigration Detainees, explains her decision to give up practice as an immigration solicitor.

Briefing paper on US military commissions. *Human Rights Watch*, 26.7.05, pp11. Briefing on Hamden-v-Rumsfeld at the US Federal Appeals Court, which overturned a 2004 District Court ruling that resulted in the suspension of the military commissions at the US "gulag" at Guantanamo Bay, Cuba. With 15 Guantanamo prisoners deemed "eligible" by Bush to stand trial by military commission Human Rights Watch has raised "serious due process concerns" that will be likely to: a. deprive defendants of independent judicial oversight; b. improperly subject to military trial persons apprehended far from any battle; c. violate the 1949 Geneva Convention; d. deny defence counsel from mounting an effective defence; e. prevent defendants from seeing all the evidence against them; f. impose no obligation for the government to disclose exculpatory information; g. place review of important interlocutory questions with the charging authority; h. fail to guarantee that evidence obtained through torture shall not be used; i. allow the imposition of "gagging" orders defence counsel; j. deprive defence counsel of the normal protections from improper "command influence"; k. restrict the defendant's right to choose legal counsel, and l. provide lower due process standards for non-citizens than for US citizens. <http://hrw.org/backgrounder/usa/military-commissions.org>

MILITARY

EUROPE

Satellite wars

The German government has threatened to use "all peaceful means" (transport minister Stolpe) to stop France gaining control over Europe's £2 billion Galileo satellite program. Galileo is designed to break the strategic dependence from America's GPS (Global Positioning System). With 30 satellites in orbit by the end of the decade the network will offer pinpoint accuracy for mobile telephones, air traffic control, maritime navigation and "other uses" - ultimately including EU defence. Berlin was backing a bid by iNavSat, a consortium of the EADS aerospace group, Britain's Inmarsat and France's Thales defence group. France was pushing for a joint venture combining iNavSat with Eurely, made up of France's Alcatel, Italy's Finmeccanica, and Spain's Hispasat. The first combination has a strong German element, the second would have made France the dominant player. In the end the Galileo Joint Undertaking, the body set up

to drive the project's early phases, settled on a combined bid from the two groups. The final contract will give the companies the right to operate Galileo for 20 years.

The start-up costs are partly funded by the European Commission and the European Space Agency. The Commission claims that Galileo will generate £7 billion in annual business from 2008, creating up to 150,000 jobs. Although the US offers GPS free to civilian users worldwide, Brussels insists that Galileo is more accurate and also warns that GPS can be switched off by the Pentagon at any time for national security reasons.

China is investing £140 million in Galileo to the alarm of Washington. South Korea and Israel have also signed up.

Telegraph 24.5.05 (Ambrose Evans-Pritchard); BBC News 27.6.05

IRAQ/UK

British soldiers face war crimes charges

In July the Attorney General announced further charges against British soldiers for war crimes in Iraq. In all eleven soldiers have been charged in connection with two cases in which detainees, Baha Mousa and Ahmed Kareem, died. All of the soldiers will face a court martial. At the end of May two of the soldiers found guilty of physically and sexually abusing Iraqi prisoners as part of Operation Ali Baba at Camp Bread Basket in Basra had their sentences reduced (see *Statewatch* Vol. 15 no 1). The Army Reviewing Authority felt that it was unreasonable to expect them to comment on their decision. The Ministry of Defence has emphasised that British soldiers will not appear before the International Criminal Court in The Hague, Netherlands.

Seven soldiers have been charged over the beating to death of hotel worker Baha Mousa in Basra on 15 September 2003 after he had been detained in the custody of the Queen's Lancashire Regiment for three days with seven other prisoners. Colonel Jorge Mendonca, who commanded the Queen's Lancashire Regiment (QLR) is the most senior British soldier to face court martial over Iraq, but the media has widely reported the claims of the Regiment's Commanding Officer and other ex-officers that he is being "scapegoated". He is charged with negligence for failing to ensure that Mousa was treated in accordance with the Geneva Conventions.

Corporal Donald Payne was charged with the inhumane treatment and manslaughter of Mousa and with attempting to pervert the course of justice; he also faces charges of inhumane treatment relating to eight other Iraqis. Lance Corporal Wayne Crowcroft and Private Darren Fallon are charged with the inhuman treatment of prisoners; Sergeant Kelvin Stacey faces a charge of actual bodily harm. Two members of the QLR Intelligence Corps, Warrant Officer Mark Davies and Major Michael Peebles are charged with negligently performing their duties.

In the second case the Army Prosecuting Authority directed that four servicemen should stand trial for the manslaughter of civilian Ahmed Jabbar Kareem who was allegedly assaulted before being forced into the Shat al-Basra river and drowned on 8 May 2003. Ahmed could not swim. The four soldiers are Sergeant Carl Selman of the Scots Guards, Guardsmen Martin McGing and Joseph McCleary and Lance Corporal James Cooke all of the Irish Guards.

At the end of May, two of the British soldiers found guilty of abusing Iraqi prisoners at an Osnabrook court martial last February had their sentences reduced by the Army Reviewing Authority (ARA). L/Cpl Mark Cooley had his sentence reduced from 2 years imprisonment to 18 months and Fusilier Gary Bartram had his cut from 18 to 12 months; Bartram was removed from the Young Offenders Institution where he was serving his

sentence to the military correctional training centre at Colchester.

At the end of June, Bartram won a second challenge to the length of his custodial sentence, leaving him to walk free from the Colchester training centre. Both of the men appeared in photographs showing them orchestrating physical and sexual assaults on the Iraqi prisoners as part of Operation Ali Baba in May 2003 at Camp Bread Basket in Basra, (see *Statewatch* Vol 15 no. 1). The Reviewing Authority decided not to change the sentence of a third soldier, L/Cpl Daniel Kenyon, who was found guilty of failing to report abuse. A spokesman for the Ministry of Defence refused to comment on the reasons for making the reductions, but explained that "the Army Reviewing Authority will have looked at the evidence presented before coming to this decision."

BBC News 1.6.05, Times 29.6.05, 20-21.7.05

IRELAND/UK

Historic statement marks end of IRA armed campaign

The following is the full text of July's historic statement by the Provisional IRA announcing the end of their armed campaign for self-determination.

The leadership of Oglai na hEireann has formally ordered an end to the armed campaign.

This will take effect from 4pm this afternoon.

All IRA units have been ordered to dump arms. All Volunteers have been instructed to assist the development of purely political and democratic programmes through exclusively peaceful means. Volunteers must not engage in any other activities whatsoever.

The IRA leadership has also authorised our representative to engage with the IICD [Independent International Commission on Decommissioning] to complete the process to verifiably put its arms beyond use in a way which will further enhance public confidence and to conclude this as quickly as possible.

We have invited two independent witnesses, from the Protestant and Catholic churches, to testify to this.

The Army Council took these decisions following an unprecedented internal discussion and consultation process with IRA units and Volunteers.

We appreciate the honest and forthright way in which the consultation process was carried out and the depth and content of the submissions. We are proud of the comradely way in which this truly historic discussion was conducted.

The outcome of our consultations show very strong support among IRA Volunteers for the Sinn Fein peace strategy.

There is also widespread concern about the failure of the two governments and the unionists to fully engage in the peace process. This has created real difficulties.

The overwhelming majority of people in Ireland fully support this process.

They and friends of Irish unity throughout the world want to see the full implementation of the Good Friday Agreement.

Notwithstanding these difficulties our decisions have been taken to advance our republican and democratic objectives, including our goal of a united Ireland. We believe there is now an alternative way to achieve this and to end British rule in our country.

It is the responsibility of all Volunteers to show leadership, determination and courage. We are very mindful of the sacrifices of our patriot dead, those who went to jail, Volunteers, their families and the wider republican base. We reiterate our view that the armed

struggle was entirely legitimate.

We are conscious that many people suffered in the conflict. There is a compelling imperative on all sides to build a just and lasting peace.

The issue of the defence of nationalist and republican communities has been raised with us. There is a responsibility on society to ensure that there is no re-occurrence of the pogroms of 1969 and the early 1970s.

There is also a universal responsibility to tackle sectarianism in all its forms.

The IRA is fully committed to the goals of Irish unity and independence and to building the Republic outlined in the 1916 Proclamation.

We call for maximum unity and effort by Irish republicans everywhere.

We are confident that by working together Irish republicans can achieve our objectives.

Every Volunteer is aware of the import of the decisions we have taken and all Oglaiigh are compelled to fully comply with these orders.

There is now an unprecedented opportunity to utilise the considerable energy and goodwill which there is for the peace process. This comprehensive series of unparalleled initiatives is our contribution to this and to the continued endeavours to bring about independence and unity for the people of Ireland."

Military - in brief

■ **At least 25,000 civilian deaths from US-UK invasion of Iraq.** The first detailed account of civilian deaths resulting from the US-led invasion of Iraq has been published in a report by Iraq Body Count, *Dossier on Civilian casualties in Iraq 2003-2005*. Based on eye-witness accounts from mortuary officials and medics as well as analysis of over 10,000 media reports it says that 24,865 civilians were killed in the first two years since the illegal invasion. Twenty percent of the total is accounted for by women and children. The report finds that the majority of non-combatant deaths can be attributed to US-led military forces (37%) while post-invasion criminal violence accounted for 36% of the fatalities. Insurgents opposing the invasion forces killed 9% of the civilian victims. Over half of the civilian deaths were caused by explosions, with air strikes accounting for 64% of them. Children were the most likely victims of air strikes and unexploded ordinance. The figures, which are incomplete and therefore underestimated, fill an important gap left by the US/UK forces who "do not do body counts" - at least of Iraqis. The British and US governments have been described as "wholly irresponsible" in a press release by *Count the Casualties Campaign* (published on the *British Medical Journal* website) for their attitude towards Iraqi civilian deaths which they dismiss as mere "collateral damage". One of the report's authors, Professor John Sloboda, said: "On average, 34 ordinary Iraqis have met violent deaths every day since the invasion of March 2003. Our data show that no sector of Iraqi society has escaped." http://reports.iraqbodycount.org/a_dossier_of_civilian-casualties_2003-2005.pdf; "Failure to Count the Casualties"

Military - new material

The reality of this barbaric bombing, Robert Fisk. *Independent* 8.7.05, p. 33. Fisk's insightful article points out the absurdity of the government's claim that July's indiscriminate London bombings were aimed at some abstract notion of "destroying what we hold dear", by citing Osama bin Laden's warning that "If you bomb our cities...we will bomb yours." Fisk argues the intent was to force public opinion to persuade Blair to withdraw from his adherence to Bush's policies in the

Middle East, and Iraq in particular, as the Madrid bombings achieved in Spain. He points out the ease with which Blair describes London's bombings as "barbaric" asking "but what were the civilian deaths of the Anglo-American invasion of Iraq in 2003, the children torn apart by cluster bombs, the countless innocent Iraqis gunned down at military checkpoints? When they die, it is "collateral damage"; when "we" die, it is "barbaric" terrorism." He also points to the failure of the security services - so adept at finding nonexistent weapons of mass destruction in Iraq, so inept at uncovering "a months long plot to kill Londoners." Finally, Fisk warns, that part of the point of the bombings was to divide "British Muslims from British non-Muslims...to encourage the kind of racism that Tony Blair claims to resent." Here Fisk points out that the denial of the significance of the illegal invasion of Iraq and the lauding of the "values" argument advocated by Blair falls into the hands of the terrorist by encouraging racism. Fisk observes, as bin Laden has asked: "Why do we not attack Sweden"?

The Rise of Europe's Defense Industry, Seth G. Jones (RAND). *Brookings Institution US-Europe Analysis Series*, May 2005 <http://www.brook.edu/fp/cuse/analysis/jones20050505.htm>

Defence procurement in the European Union - the current debate, Burkard Schmitt. *EUISS Task Force report* (Paris) May 2005. <http://www.iss-eu.org/books/bk05-01.pdf>

Make nukes history, Bruce Kent. *Socialist Worker* 28.5.05. Article by the vice-president of the Campaign for Nuclear Disarmament (CND) that discusses the heavy involvement of the Labour Party - at leadership and the grassroots level - in CND demonstrations against Cruise and Trident missile systems while they were in opposition during the 1980s. He considers the Labour Party's move away, and eventual abandonment of supporting disarmament and the abandonment of the Labour Party by CND: "New Labour is not the party that I once joined - it's a privatising party, it's a party of big business. It has slick PR people working for it, but an awful lot of the membership has left."

EUROPE

GERMANY

Rebuff for European Arrest Warrant

A successful appeal by the German-Syrian businessman Mamoun Darkazanli (46) to his extradition to Spain under the European Arrest Warrant (EAW) has led to Darkazanli's release from prison, where he was detained since 8 October 2004 - as well as the revocation of the German law that implemented the EAW in June 2004. The EAW changed extradition procedures within the EU which now do not require the extraditing state to ensure that the crime in question exists in national law. The decision by the Federal Constitutional Court was welcomed by civil liberties groups and criticised by government officials as "a serious blow to the fight against terrorism" (Justice minister Brigitte Zypries). The European Commission has asserted that the German court decision only found the implementing law at fault and not the EU framework decision itself.

In April 2005, the Polish Constitutional Court also declared the EAW was incompatible with its Constitution, (see *Statewatch news online*, April 2005), but a court ruling has been postponed until November 2006.

The German constitutional court's press release (18.7.01) declared that the warrant did not respect fundamental rights and procedural guarantees and so was contrary to the German Constitution:

According to the Court, the Act encroaches upon the freedom from extradition (Article 16.2 of the Basic Law (Grundgesetz - GG)) in a disproportionate manner because the legislature has not exhausted

the margins afforded to it by the Framework Decision on the European arrest warrant in such a way that the implementation of the Framework Decision for incorporation into national law shows the highest possible consideration in respect of the fundamental right concerned. Moreover, the European Arrest Warrant Act infringes the guarantee of recourse to a court (Article 19.4 of the Basic Law) because there is no possibility of challenging the judicial decision that grants extradition.

The court therefore only criticised the manner in which the framework decision was implemented, not the legal text of the EAW itself. The Ministry of Justice is already rewriting the implementation legislation but it will not be passed by parliament before the expected general elections in September this year.

The EAW allows for extradition when the suspected crime is included on a so-called "positive list of criminal areas" which, according to Helmut Satzger, professor for European Criminal Law at the University of Munich, is far too vague. Interviewed by *Deutsche Welle news* (13.4.05), Satzger explained: "For example: what exactly does sabotage mean?...We don't have a provision on the books to deal with sabotage in German law". The same applies to racism and xenophobia. He thinks that the German court's judges "are using the arrest warrant to answer some very fundamental questions about the relationship between European law and national law".

The law is criticised for potentially leading to many cases of miscarriages of justice. Not only terrorist suspects have to fear accelerated proceedings. A Hamburg dentist is amongst the 20 Germans currently affected by the EAW. He could expect a 30 year sentence in Spain for alleged involvement in financial transactions that served an international cocaine smuggling operation, which Hamburg judges find "unbearably high". The lawyer of a truck driver, who is to be extradited to Spain on grounds of alleged drugs trading, fears an unfair trial as well. Two more cases were presented at the Constitutional Court hearings that demonstrated the danger of accelerated proceedings: a Munich businessman and saleswoman who were wrongly accused of separate crimes were detained for months in Germany and then in Austria before Austrian courts cleared them of all charges.

Last but not least, civil liberties and prisoner support groups have criticised the EAW because of the severe consequences routine extradition will have on the accused and their friends and families. Those extradited are taken to completely different surroundings and would face huge language barriers with inmates, authorities and even their legal representatives. Families and friends would have to spend vast amounts of money to travel to visit the prisoner, who could, after all, be sitting in Ceuta which is used by Spanish authorities to imprison Basques accused of terrorism, for example.

The second aspect of the German court's decision is the Darkazanli's case, which, like all terrorist prosecutions related to 11.9.01, is surrounded by questionable secret service activity and unverifiable rumours. According to the Spanish public prosecutor, Baltasar Garzón, Darkazanli is responsible for the logistical and financial support of al-Qaeda in Spain, Germany and the UK. Darkazanli, who is represented by lawyers Gül Pinar and Michael Rosenthal (who defended Mzoudi and Motassadeq, both of whom were cleared of all charges), has been under surveillance already since 1999 but is not facing charges in Germany. His case is intertwined with German and US secret service involvement and attempted recruitment within the Hamburg Muslim community since 1999.

The CIA started investigating Darkazanli after finding a business card with his telephone details on Wadi al-Hage, who was jailed in the USA for the bomb attacks on US embassies in Kenya and Tanzania. Al-Hage is thought be friends with Osama bin Laden, which, according to US security services, implicated Darkazanli. After tapping the phone of Darkazanli and another Hamburg based Muslim, Mohammed Haydar Zammar, the CIA

apparently reached the conclusion that Darkazanli was involved in attacks in Riyadh, Saudi Arabia in 1996. Darkazanli's business accounts were closed in the US in 2002. According to the *Chicago Tribune*, 17.11.02), the CIA tried to recruit both Darkazanli and Zammar as informants. It is unclear how far the German and US security services have worked together on Darkazanli's surveillance, it appears that the CIA has acted independently on some occasions, (i.e. without informing the German authorities).

In 2002, the Hamburg authorities said in a press release (18.11.02) that they were trying to "make it clear to Mr Darkazanli that the security services are keeping an eye on him. This took place against the background of general warnings about attacks from the al-Qaeda network that also relate to Hamburg. Due to investigation reasons, no further details are given on operational details". However, the German authorities have pressed no charges against Darkazanli. Considering that he was under surveillance for three years and learning from the court cases against Mzoudi and Motassadeq, it is likely that there simply is no hard evidence proving his involvement in terrorism. Under the European Arrest Warrant, however, this fact is of no relevance to his extradition.

Telepolis 17.10.04, 15.04.05; Süddeutsche Zeitung 18/19/20/23/24.7.05; Court: <http://www.bundesverfassungsgericht.de/bverfg/cgi/pressemitteilung.en>. See also Statewatch News online (July 2005).

Europe - new material

Surveillance in Greece - from anticommunist to consumer surveillance, by Minas Samatas. Pella Publishing Company, 2004, 245pp. Minas Samatas's book provides a valuable history and analysis of Greece in the post war period. It charts the different forms of surveillance from the Civil War and the military dictatorship (under the US backed coup which fell in 1974) through to democratisation, Europeanisation and globalisation: "From the "ugly" repressive anti-communist, political control state/police monopoly of surveillance in the past, the Greek people are now subjects of a galaxy of multiple electronic surveillance by the state and suprastate, institutions and individuals, public and private, with and without consent, for legitimate and illegitimate purposes, for security and profit, and even for entertainment and self monitoring". Consciousness of surveillance was heightened during the 2004 Athens Olympics when Greece joined the advanced surveillance states. There is, he argues, a traditional hostility to state surveillance but as yet not an anti-surveillance movement. "Hopefully this will happen when citizens eventually realise that like traditional state surveillance, all types of new surveillance even direct marketing and consumer profiles can cause new exclusions and discriminations; that every type of surveillance, regardless of its legitimacy, raises political issues, because it can be used to undermine democracy and human autonomy". Highly recommended - every European country would benefit from parallel studies of this kind.

POLICING

UK

Minister confirms that tasers are "dangerous weapons"

The Home Office minister, Hazel Blears, has belatedly joined criticism aimed at the safety of the Taser stun gun which was issued to some police officers in England and Wales last September (see *Statewatch* Vol. 14 no. 6). Blears made her unexpected intervention during an interview with the *Police Review* journal when she rejected issuing the stun guns to all

police officers arguing that it was a "dangerous weapon" and could "drive a wedge between the [police] service and the public." Her remarks, which echo concerns expressed by civil liberties groups over the past years, did not go down well with the Police Federation, whose vice-chairman, Alan Gordon, said: "Officers face dangers daily that require more than a pair of handcuffs and a truncheon."

Blairs' decision not to extend police use of the Taser for the time being, followed Amnesty International's release of new figures documenting 103 Taser-related deaths in the USA and Canada between June 2001 and March 2005. Their data shows that TASER-related deaths have occurred in 25 states of the USA and that the number of deaths has increased by 94% since June 2001. Manufacturer Taser International reacted to the shocking Amnesty figures arguing that counter to Amnesty's claims the taser had saved at least 685 lives and that "a reasonable and conservative estimate is that over 6,000 lives have been saved with TASER energy weapons". Amnesty analysed Taser International's assertions and found their figures to be "statistically impossible".

Amnesty International press release "TASER-related deaths hit triple-digits as Manufacturers (TASR) grossly exaggerates the number of lives saved by TASERs" 1 April 2005; Amnesty International "United States of America: Excessive and lethal; force: Amnesty International's concerns about deaths and ill-treatment involving police use of tasers" <http://web.amnesty.org/library/index/engamr511392004> See also: http://www.taser.com/documents/TASER_AIUSA-debate.pdf

SPAIN

Nine Guardia Civil officers suspended in death in custody case

The death in a Guardia Civil station in Roquetas de Mar (Almería) of Juan Martínez Galdeano, a 39-year-old farmer who had gone to the station because of a road accident in which he had been involved on 24 July 2005, resulted in nine officers, including the lieutenant in charge, being suspended for six months pending an internal investigation into the beating suffered by the man, which was a direct cause of his death, according to the autopsy. The man reportedly went to the station to seek protection from some Roma with whom he had had an accident and admitted that he had been consuming drugs previously. Police sources claimed that he reacted in an exalted manner when the Guardia Civil wanted to breathalise him, and that the blows suffered by the man resulted from efforts to restrain him. It subsequently emerged that two non-regulation truncheons were used by the officers to subdue him, one of them electric and the other one extendable. Following his resistance, he was detained for "challenging and resisting authority", and the events leading to his death apparently took place as the officers tried to make Galdeano get into a van to be transferred, in the street in front of the Guardia Civil station, when he was violently beaten, according to eye witnesses. The autopsy spoke of an "acute respiratory or cardio-respiratory insufficiency", and that the death was related to the man being restrained on his back and pressured on his chest. The injuries suffered included a broken sternum, a dislocated rib and bruises to almost every part of his body, including some that were caused by truncheon blows.

A lawyer representing some of the officers argued that the violence was "proportionate in the circumstances" and that "there was no active violence", adding that there may be parallel causes for the death, in a possible reference to the victims' use of drugs. The lawyer for the victim's family claimed that the autopsy reveals "that the death was a result of the beating that they gave him, because the body has evidence of blows on all its limbs". Events outside of the station have reportedly been

recorded by a CCTV camera, and eye-witnesses have also claimed seeing the Guardia Civil officers, some of whom were reportedly injured in the incident, beating him with kicks and punches, and reacting by placing their hands on their heads when they realised he had died.

A complaint for ill-treatment in custody against the officer in charge was reportedly filed in February 2005 by the father of a man who "was detained and ill-treated by the Guardia Civil lieutenant of Roquetas del Mar", and beaten while he was handcuffed, according to the text of the complaint. The man argued that no inquiries had followed the complaint. The head of the Guardia Civil, Carlos Gómez Arruche, argued that the officer's record was clean, and minimised the significance of the use of truncheons, whose use was not authorised by saying that "they are not weapons, but rather defence [instruments], which are used in some countries and not in others". Nonetheless, he announced that the officers involved had been suspended for six months.

El País, 2-5.8.2005.

Policing - in brief

■ **Austria: COE criticises Austrian police for violent conduct.** A report published by the anti-torture committee of the Council of Europe has condemned police violence against detainees. "Suspects" are said to have been maltreated with slaps in the face, punches and kicks. The report particularly condemned the physical abuse of youth, who reported they had been forced to give statements under duress. Police stations around the city of Linz seem particularly disposed to abuse. *Süddeutsche Zeitung* 22.7.05.

Policing - new material

Retire, who me? Brian Mackenzie. *Police Review (Jane's Police Product Review supplement)* 15.4.05. p. 23. Article on the Ex-Police in Industry and Commerce (EPIC) organisation which "was set up in 1980 by a small group of officers who were working in the security industry." Members of EPIC "must have worked for either a Home Office or Scottish force, or the Police Service of Northern Ireland or the former Royal Ulster Constabulary. They must also work in the private security field after having completed at least 25 years service." The group is "involved in just about every imaginable aspect of security and investigations in the private security sector, including biometrics, child-protection screening and counterterrorism".

France: the search for justice. The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment. *Amnesty International*, 2005, pp. 29. This Amnesty report considers "the way in which the criminal justice system in France has failed to provide victims of human rights violations with the right to redress and to obtain reparations." The report notes that "Almost the entirety of cases which have come to Amnesty International's attention have involved persons of non-European ethnic origin and are often of North African or sub-Saharan extraction, or from France's overseas departments or territories". It observes that "Racist police attitudes mean that certain people are particularly vulnerable to discrimination and ill-treatment" The report is available at: <http://web.amnesty.org/library/print/ENGEUR210012005>

Faces in the Frame. *Police Review (Jane's Police Product Review supplement)* 15.4.05. p. 23. This article discusses developments in facial identification technology, in particular the National Video Identification System (NVIS) and the Facial Images National Database (FIND), both of which were on show at the first Facial Identification Conference at Stratford upon Avon. FIND will create a national database of offender mugshots and in the longer term "as biotechnology develops, [it] will enable Automated Facial recognition from CCTV images." The FIND team is also looking at the US WINPHO system which "ties together nine databases of images and the equivalent of the

DVLA driving license images into one system." The NVIS system "will enable the development of a fully operational, effective and integrated systems for video identification parades". The article also touches on the automated facial recognition system being trialed by West Yorkshire police - this system searches CCTV images against the force's mugshot database "of more than 85,000 individuals."

visit) 22 hour lock-up on some wings, and some areas of the jail were observed to be dirty and infested with vermin. Inspectors noted that "systems for delivering primary health care were amongst the poorest we had seen-and were neither safe nor effective."

Prisons - in brief

■ **UK: Prison population reaches another new high.** The prison population of England and Wales hit a further record of high of 76,266 in July 2005. Meanwhile, figures from the International Centre for Prison Studies showed that England and Wales continued to jail more offenders at higher rates than any other major western European country, and that the use of imprisonment as the central plank of the government's criminal justice policy had increased by 15% since 1999. The UK prison population stands at 142 per 100,000. Geoff Dobson, for the Prison Reform Trust, asked: "Does this country really want to be seen to imprison far more of our population than our neighbours, France and Germany, and does this help to make ours a safer society than theirs?" *International Centre for Prison Studies; Prison reform Trust; The Guardian 27.6.05.*

Prisons - new material

Death at the Hands of the State. Professor David Wilson. *Howard League for Penal Reform 2005*, (ISBN 0909368378-4) £12.95. Primary research and first person accounts of deaths in UK prisons. A valuable resource and a scathing indictment of a system where two people a week take their own lives, and where the murder rate is higher than in the community at large.

Reducing the Prison Population: realistic alternatives, Rosemarie McIlwhan. *SCOLAG Journal*, June 2005, pp. 120-121. As Scotland's prison population continues to rise, this article considers a report by the Scottish Consortium on Crime and Criminal Justice *Reducing the prison population: penal policy and social choices.*

Recent developments in prison law - part 1, Hamish Arnott, Simon Creighton & Nancy Collins. *Legal Action* July 2005, pp. 12-16. Updates on the law relating to prisoners covering recent developments in policy, legislation and case-law regarding life and determinate sentences and parole.

Administrative Law Update - Prisons, Robert Sutherland. *SCOLAG Legal Journal*, Issue 331 (May) 2005, pp. 106-107, 109. Review of significant cases from Scotland and England.

RACISM & FASCISM

ITALY

"Parallel" anti-terrorist unit run by fascists

Inquiries conducted by judges in Genoa threw up a worrying discovery, in the shape of an unofficial self-styled anti-terrorist information unit, the *Dipartimento di Studi Strategici Antiterrorismo* (DSSA, Department of Strategic Antiterrorist Studies), which has been operating since 26 March 2004. It is under investigation for usurping and using powers reserved for the judicial police to carry out investigations and surveillance operations targeting Muslims, as well as enjoying access to information held in the databases of law enforcement agencies, as a result of involvement in the organisation by members of the police, *carabinieri* (Italy's paramilitary police force), the

PRISONS

UK

Prison suicides "a shaming indictment" of penal system

Thirteen prisoners took their own lives in June 2005.

The Howard League for Penal Reform published figures showing that 804 men, women and children have committed suicide whilst in the care of the prison service in the last 10 years, with a 46% increase in the prison population in the same period. Of these, 55% were on remand, despite remand prisoners only comprising 19% of the total prison population. Local jails suffered higher rates of suicide. Women prisoners were 30 times more likely to commit suicide in prison than male prisoners. In the period 1995-2004, 17 children took their own lives in jails in England and Wales. Frances Crook, for the Howard League, said: "The number of prison suicides in the last 10 years is a shaming indictment of our penal system. With the present level of overcrowding in our prisons, people are being literally condemned to an early death."

Howard League for Penal Reform

UK

HM Prisons Inspectorate reports

Recent reports by Anne Owers, HM Chief Inspector of Prisons, on the Young Offender's Institutions (YOI) at Stoke Heath and Brinsford were damning in their findings as to the treatment of young adults. At Stoke Heath, inspectors highlighted concerns about safety procedures and the inadequacy of provision for young adults in particular. Weaknesses in management of suicide and self-harm, anti-bullying and child protection measures were all identified. Some special cells were deemed to be unfit for their purpose. More than half of the young adults at Stoke Heath were locked up at any one point. One-quarter reported victimisation by staff. Owers noted that as well as local management failures there were clear systemic failures resulting from the under-resourcing of provision for young adults and the over-representation of vulnerable and mentally disturbed young people in the prison.

At YOI Brinsford, inspectors found high levels of use of force by staff, and repeated occurrence of unauthorised punishments. There were high levels of bullying and 43% of young adults felt unsafe. Brinsford had poor levels of cleanliness, and some double cells had unscreened in-cell toilets. The jail was found to be "struggling to provide appropriate levels of safety, respect and even basic cleanliness."

A review of HMP Pentonville found the jail to be "failing to provide the fundamentals of prisoner care, mainly due to inadequate management systems." Management systems were not adequate to ensure that agreed policies were being implemented safely or consistently. Inspectors noted bleak, often dirty cells, with no audible alarms, night staff without basic emergency procedure training and no awareness of prisoner location (all despite three suicides in the three months before the

Guardia di Finanza (customs and excise police) and the *polizia penitenziaria* (prison police). Giuseppe Pisanu, the interior minister, has suspended policemen involved in the network.

Twenty-eight searches were carried out in nine Italian regions on 1 July 2005, and three people were arrested, including the DSSA's two directors (Gaetano Saya and Riccardo Sindoca) and a former police officer who was detained for illegal possession of weapons. 24 persons were placed under investigation for "usurping public functions in the field of the investigation and prosecution of criminal activities", fraudulently seeking to obtain funding and illegally accessing personal data. The involvement of high ranking officials from the police and military is also being investigated.

Gaetano Saya, the founder and head of the centre, is a right-winger and founder of a party that split off from *Alleanza Nazionale* (AN) when the current foreign affairs minister Gianfranco Fini, disowned fascism and renamed the *Movimento Sociale Italiano* party AN. The website of Gaetano Saya's *Movimento Sociale Italiano - Destra Nazionale* (MSI-DN) referred to Fini as having betrayed the party's tradition, and Saya was charged in November 2004 with "divulging information based on ideas of racial superiority" from his party's website.

Saya defended the legality of his organisation, which he claimed was composed of 150 members, arguing that the DSSA is a structure about whose existence the interior, defence and justice ministries, the Rome prosecutor's office, the secret services, the general command of the *Guardia di Finanza*, US and Israeli embassies and SHAPE (the Nato high command in Europe) knew about. Inquiries are reportedly underway to ascertain whether the centre had any official backing. Saya describes the DSSA as an inter-force body created to surveil and evaluate the terrorist threat, particularly Islamic, something that was deemed necessary within NATO. It has applied for 32 million euros in funding from Brussels. It passed on the information it gathered to the Italian secret services (SISMI and SISDE), as well as to the media, and Saya argues that it uncovered "underground mosques" and is carrying out a study concerning "money laundering and financing of Al Qaeda through call centres, kebab shops and Islamic butchers." Several commentators, including interior minister Giuseppe Pisanu, dismissed the credibility of the information provided by the DSSA, which was the source for a number of the scares that were reproduced in newspapers concerning terrorist threats in Italy. Saya refused to answer questions asked by judges, invoking norms governing state secrets, although he promised to give the police the organisation's membership records, whereas Sindoca handed judges an 800-page file documenting the centre's activities.

Saya considers the judicial initiative against the DSSA's activities as sabotage, adding that "if fighting against Islamic terrorism means being part of a "deviated" service, then the DSSA is a deviated service". Carlo Taormina, a lawyer and MP for Berlusconi's *Forza Italia* party, offered political backing to the DSSA by arguing that "we should be grateful to those who...sought to make up for the inability, unintentional or intentional, of the structures of the state", before launching into a tirade against illegal immigration "which has been infecting Italy in the last ten years" and judges "who release terrorists or highly dangerous persons", concluding that "it is natural for private initiative to make up for the absence of the state".

The DSSA's activities reportedly also included an attempt to track down and kidnap Italian exile Cesare Battisti (who is sought by Italian authorities and is currently in hiding) in France and, if confirmed, they constitute alarming evidence of the implications of the wholesale collection of personal and telecommunications traffic data, the creation of databases to which wide access is to be given to law enforcement agencies across the EU, and the possible creation of secret unaccountable units to combat the threat posed by terrorism.

The idea of unaccountable private groups composed of right-wingers carrying out surveillance operations targeting Muslim communities (mapping out Islamic butcher shops, questioning passers-by) and having access to information held by the interior ministry is worrying in itself. Furthermore, and in spite of the justifications that have been aired to defend the DSSA's activities, nowhere are the potential implications of collusion between state security or law enforcement agencies and right-wing groups more apparent than in Italy, where a series of attacks were carried out by the far-right from the late 1960s to the early 1980s (such as the explosion in Bologna central station on 2 August 1980, which caused 80 deaths, and the explosion in Piazza Fontana in Milan on 12 December 1969, which caused 16 deaths) to criminalise leftists, with the collusion of the Italian secret services and the CIA.

ANSA, 1-2.7.05; *Corriere della Sera*, 4.7.05; *Il manifesto* 2-3.7.05, *Repubblica* 1-2.7.05, *L'Unità* 2.7.05; *Destra Nazionale website: www.destranazionale.org*

Racism & fascism - in brief

■ **Italy: Piazza Fontana bombing suspects acquitted.** Judicial proceedings into the terrorist attack in the *Banca dell'Agricoltura* in Piazza Fontana in Milan on 12 December 1969 (see *Statewatch* Vol. 10 no 2, Vol. 11 no 3 & 4, Vol. 12 no 6), which killed 17 people and injured 84, ended with the acquittal of Carlo Maria Maggi, Giancarlo Rognoni and Delfo Zorzi, three neo-fascists from the north-eastern region of Veneto. The lengthy proceedings have included eight trials, the last of which resulted in sentences for life imprisonment being passed against the three defendants on 30 June 2001, before they were overturned by their acquittal on appeal on 12 March 2004. The acquittal was confirmed by the Court of Cassation on 4 May 2005. The Piazza Fontana bombing is one of a number of unsolved atrocities involving right-wing terrorist attacks in Italy with secret service collusion during the so-called "years of lead". *Global project*, 4.5.04; *Repubblica*, 12.3.04, 4.5.05.

■ **UK: BNP defeated in by-election:** The British National Party failed to win a seat in a local by election in the London Borough of Barking and Dagenham after running a campaign that attempted to exploit the tragic bombings in London on 7 July. The organisation had targeted the area believing that it could exploit white working class dissent by inaccurately claiming that the area had been "swamped" by asylum seekers and immigrants before opportunistically attempting to gain mileage out of the deaths that occurred on the number 30 bus that was blown apart at Tavistock Square. The organisation produced a leaflet reproducing a photograph of the carnage, asking: "Maybe it's time to start listening to the BNP". During the course of the campaign, BNP members attacked a local Labour Party canvasser who had narrowly avoided becoming a victim of the bombings. He told *Searchlight* magazine: "I wanted to clear my head but came across a group of bone-headed thugs from the British National Party...One of them put his fist into my face and asked me if I wanted a slap. I was shaking and terrified. We had to get the police involved." The BNP's candidate, John Luisis, would have become the BNP's first local councillor in London since they lost the neighbouring Barking seat earlier this year. *Independent* 15.7.05; *Searchlight*: <http://www.stopthebnp.org>

■ **UK: BNP founder dies:** John Hutchyns Tyndall, the founder of the British National Party (BNP), was found dead at his home on 19 July aged 71. The veteran of numerous fractious national socialist organisations, who had a penchant for dressing up in nazi uniforms, was ousted from the leadership of the BNP by Nick Griffin in 1999, leading to a series of expulsions, reinstatements and proscriptions. Tyndall's hard-line national socialism did not fit well with the rebranded BNP's European-

style "post-fascism". Griffin will now face little opposition within the party. Tyndall had a number of convictions for violence, the most serious of which saw him imprisoned for possession of a firearm, and was awaiting trial on charges of inciting racial hatred when he died.

Racism & Fascism - new material

Third Report on the United Kingdom. *European Commission against Racism and Intolerance*, June 2005, pp.82. This investigation into racial prejudice in Britain found that: "members of ethnic and religious minority groups continue to experience racism and discrimination. Asylum seekers and refugees are particularly vulnerable to these phenomena, partly as a result of changes in asylum policies and of the tone of the debate around the adoption of such changes. Members of the Muslim communities also experience prejudice and discrimination, especially in connection with the implementation of legislation and policies against terrorism. Continuing high levels of hostility, discrimination and disadvantage of Roma/Gypsies and Travellers are also a cause for concern to ECRI. The media has continued to play an important role in determining the current climate of hostility towards asylum seekers, refugees, Muslims, Roma/Gypsies and Travellers. Although it is in part the result of better reporting and recording techniques, the number of racist incidents is high. The disproportionate impact of criminal justice functions on ethnic minorities has continued to increase."

SECURITY & INTELLIGENCE

GERMANY

Rendition - Khaled el-Masri's claim substantiated

On 9 January this year, the *New York Times* broke the story of Khaled el-Masri, a German citizen of Lebanese descent, which has now become a delicate issue between the German and US authorities. El-Masri's ordeal started in December 2003, when he was travelling from Germany to Macedonia for a New Year's holiday, where he was seized by Macedonian police at the border, held incommunicado for weeks without charge, then beaten, stripped, shackled and blindfolded. In January 2004, he was brought, most likely by CIA agents, to a jail in Afghanistan, run by Afghans but controlled by Americans. In June 2004, five months after first being seized, he was flown back to Europe and dumped at the Albanian border.

After starting a hunger strike in the Afghan prison, el-Masri claims he was met by a German official, who, when asked by Masri if the German authorities knew that he was imprisoned there, replied that he could not answer that question. El-Masri told *Guardian* journalist James Meek after his return that

It was a crime, it was humiliating, and it was inhuman, although I think that in Afghanistan I was treated better than the other prisoners. Somebody in the prison told me that before I came somebody died under torture. Those responsible have to take responsibility, and should be held to account.

The public prosecutor later said that the German security services did not admit to any knowledge of an agent visiting el-Masri in prison.

Although el-Masri was told by his kidnappers not to tell his story to anyone because "no one will believe it", Masri went to the police on his return to Germany, where he retold his story consistently to the authorities, *Amnesty International* and journalists.

It is widely believed that el-Masri's abduction is a result of mistaken identity and that US agents thought he was a man that Ramzi Binalshibh (himself held at an unknown location by the CIA for years and implicated in the 11 September attacks) identified as "Khalid al-Masri" who had apparently urged Mohammed Atta's 11 September pilot crew to be trained in Osama bin Laden's camps in Afghanistan. Binalshibh allegedly also told the CIA that "al-Masri" had helped Atta's men establish contact with a senior al-Qaeda member in the city of Duisburg in western Germany's Ruhr region. However, statements alleged by the CIA to come from Binalshibh should not be taken as fact, firstly because his whereabouts is unknown and secondly because the methods by which the US authorities and their proxies extract information has been deemed neither legal nor trustworthy by German courts in the past (see *Statewatch* vol 14 nos 3/4).

The *Spiegel* newspaper has pointed out that with regard to existing evidence on el-Masri's involvement with al-Qaeda, in Germany, there:

isn't even enough for authorities to launch an investigation. The situation in the United States is completely different, though: Following [September 11], US President George W. Bush has authorized American agents to act outside of all internationally accepted legal norms in the fight against terror.

Although the CIA began its renditions program in the early 1990's, its use has considerably increased since the attacks of 11 September. According to the *New York Times*, human rights organisations, who criticise the policy as government-sponsored kidnapping, estimate that dozens of "high value" detainees are being held in secret locations around the world. An investigation by the *Washington Post* last year suggested that the US held 9,000 people overseas in known prisons such as Abu Ghraib in Iraq and unknown ones run by the Pentagon, the CIA or other organisations.

CIA officials have acknowledged that the agency conducts renditions, but say they do not condone the use of torture during interrogations. However, the *Washington Post* figure of 9,000 does not include those "rendered" to third-party governments (such as those in Egypt or Uzbekistan), who then act as subcontractors for Washington, enabling the US to torture detainees while technically denying that it carries out the practice. Such abductions and rendering to torturing states are known to have occurred in Sweden, Italy and Germany, amongst others.

Isotope analysis verifies claims of rendition victims

In August 2004, the German public prosecution, which is investigating el-Masri's allegations, initiated analysis of a hair sample to test his claims. The procedure, called isotope analysis, searches for trace elements to determine the recent whereabouts of a person. Their report from 5 March this year proved that el-Masri has undergone "extreme changes in his living conditions". Further, chemical tests measuring the ratios of specific trace elements allowing for conclusions on nutrition have led the scientists to conclude that el-Masri's food intake from the time of his alleged imprisonment "could actually fit Afghanistan". The test results also verified el-Masri's claim that he went on hunger strike. Isotope analysis has helped solve crimes in the past and it seems that Munich's Ludwig-Maximilians University, renowned for its expertise in the field, may see a change in the type of perpetrators incriminated by their tests in future: the Munich scientists have recently been asked by another rendition victim from Sweden to test his hair to verify his story.

White House involvement - Rice ordered el-Masri's release

On 23 April this year, the *New York Times* reported that it was US Secretary of State, Condoleezza Rice, who ordered el-Masri's

release five months after his imprisonment in an Afghan jail. The disclosure of the decision to free Khaled el-Masri has shed new light on the transfer of suspected al-Qaeda operatives around the world. US criminal defence attorney Jeralyn Merritt comments that:

Until now, it was believed that the transfers were carried out by the CIA under presidential directives issued after the 11 September attacks. Ms. Rice's involvement suggests that the White House may have played a more hands-on role than was previously known.

Working through the Federal Bureau of Criminal Investigation (*Bundeskriminalamt*), the German state prosecutor has sent inquiries to the police authorities of all of the countries allegedly involved, that is the FBI, the Macedonian, the Albanian and the Afghani authorities. The FBI said it would cooperate as much as possible, but avoided any specific response. However, the German authorities are not pursuing the case publicly and it is unlikely they will insist on the extradition of the responsible US agents.

As the German weekly news magazine *Spiegel* points out:

no state in the world can just look away when a foreign nation kidnaps and deports one of its citizens and acts as if it were outside or above the law. Nevertheless, German Foreign Minister Joschka Fischer's response was a grumbling "no" when asked if the case was on the agenda for his meeting [in January this year] with Rice.

German authorities show similar indifference with regard to the case of Mohammed Haydar Zammar, who is said to have encouraged the Hamburg men who later flew the 11 September planes to start take part in the Jihad. Zammar, a German national of Syrian decent, was arrested in Morocco in December 2001.

In October 2004, Amnesty International received information that Zammar was held in the Far' Falastin prison in Libya, where he was allegedly tortured and reduced to skin and bones. He had shouted his name to fellow prisoners and said he was being tortured.

Another former inmate told Amnesty that Zammar was transferred in October last year to an unknown location. The Hamburg lawyers Gül Pinar, who also defended Mouzli and Motassadeq, asked the German Foreign Office for help, but they say the Libyan authorities view Zammar's case as an internal affair.

New York Times 9.1.05, 23.4.05; The Guardian 14.1.05; Spiegel no 7 (14.2.05); Süddeutsche Zeitung 9/10.4.05; <http://talkleft.com> 23.4.05.

Security & Intelligence - in brief

■ **Lest we forget - these were "Blair's bombs"**, John Pilger. *UKWatch*, 12.7.05. Pilger discusses how the illegal Bush/Blair invasion of Iraq led to the carnage of the bomb attacks in London on 7 July: "While not doubting the atrocious inhumanity of those who planted the bombs (as if anyone could), no one should doubt that these were Blair's bombs; and he ought not to be allowed to evade culpability with yet another unctuous Bush-inspired speech about "our way of life". The bomber struck because he and Bush attacked Iraq, having been warned by the Joint Intelligence Committee that "by far the greatest terrorist threat" to this country would be "heightened by military action against Iraq."". See UKWatch website - <http://www.ukwatch.net>

UK: e-Borders plan to tackle "threats"

The scheme is one of the most advanced in the world - but will not be fully in place until at least 2018

When it comes to border controls the UK will be way ahead of both the EU and the USA. Whereas in the USA plans for introducing profiling system (CAPPS II) for all passengers was withdrawn after a damning report from the General Accountability Office (GAO) and opposition from civil liberties groups. It is being replaced by a straightforward watch-list monitoring programme, that is, checking all passengers against a list of around 125,000 people. So far in the EU plans were agreed in April 2004 for the mandatory collection of passenger name records (PNR) and for biometrics (eg: finger-prints) in visas and passports (introducing fingerprints on EU ID cards is planned). But there is, as yet, no overall plan for how each of the 25 member states will use the data collected.

The UK's "e-Borders Programme" is intended to be a comprehensive system with the mandatory collection of data and biometrics for everyone who enters and leaves the country.

It will build on new powers in the Immigration and Nationality Bill currently before parliament and some of its implications are given in a "Partial Regulatory Impact Assessment on data capture and sharing powers for the border agencies" (RIA).

Scope and objectives

Once in place the UK's "e-Borders" system will be with us for evermore and the original, legitimating purposes, terrorism and organised crime in this case, can grow exponentially. As the police purposes in the RIA spell, the system is not just need for "terrorism and organised crime" but "to support general police and criminal justice functions" (p35).

The overall "Objectives" are set out as:

1. *the "ability to deny travel"*

2. *"assessing in advance of arrival [of] the immigration and security threats posed by passengers"*

3. *to share information between immigration, police, security and intelligence agencies*

4. *to use "passenger information" and intelligence to inform the agencies.*

The agencies will "capture" passenger data through a "single window" and jointly analyse "bulk data" and retain the data for an indefinite period.

The immigration, police and security agencies already have powers to require carriers (air, sea and land) to provide information of people travelling to the UK and "in some cases" from the UK (ie: to the USA).

However, the decision to "share or disclose information must be considered on a "case-by-case" basis" where the agencies can rely on "certain information processing exemptions" under the 1988 Data Protection Act "but again, this is on a "case-by-case" basis". Nowhere is it spelt out how data protection is going to work when the agencies "hoover-up" the data on every movement, add comments to some entries, or pass it to any foreign law enforcement agency (as provided for in the Bill).

The e-Borders programme will be delivered in three stages between 2004-2014 and include the "Iris Recognition Immigration System" for automated entry controls using biometrics, the e-Borders Operations Centre (e-BOC) authorising "Authority to Carry" which will "roll out incrementally to all air, sea and rail carriers operating internationally to/from all major UK ports".

The shift in logic is explained as follows. They are many

"key drivers influencing the development of the e-Borders proposal" so in responding to these "drivers":

e-Borders seeks to move away from targeted use of the agencies' passenger information powers, towards the routine and comprehensive capture of data, underpinned by the "single-window" facility for carriers to provide passenger information to Government.

Or put another way, instead of targeting suspects information and data will be "captured" on everyone entering or leaving the UK.

Current statutory powers allow agencies to share information to "fulfil their own individual statutory functions", but:

They do not envisage the Border Agencies participating in joint activities for the greater corporate good, including the joint analysis of carrier data to enhance border security in the wake of the prevailing levels of threat to UK homeland security.

The "capture", sharing and analysis of passenger data is:

is not confined to a single journey. In this respect, it is essential that law enforcement and intelligence agencies can retain passenger information for a sufficient period of time to achieve the aim of maintaining an effective border security capability... An audit trail of movements which illustrates a passenger's compliance will weigh in that passenger's favour while evidence of non-compliance will clearly attract closer examination by an immigration officer.

It is thus clear that the UK will also set up the equivalent of the US Visit programme which keeps a historical records on all entrants.

Passenger information, or PNR (Passenger Name Record) as it is more widely known, is provided when a person books a ticket. This is to be supplemented by Advanced Passenger Information (API) whereby airlines flying to the UK will have to install passport readers at check-in desks and supply a list of those actually travelling to the agencies. The cost of this may be passed onto passengers by the airlines.

The PNR and API schemes are to be supplemented by the "Authority to carry" (ATC) scheme are "geared to the perceived risk" thus:

"An authority to carry (ATC) scheme will allow the Immigration Service to prevent specified categories of passenger from travelling to the UK by requiring carriers to request a check against government databases before departure.

Profiling and "low risk" passengers

The Border Agencies will make use of profiling which involves running a series of pre-defined profiles against reservation data. Most profiles are based on information obtained from actual results or from intelligence received

Under another new scheme "low risk" passengers will "qualify for faster clearance" which will be open to UK citizens, those permanently or temporarily resident, visa-holders and "frequent visitors who meet certain criteria" for whom:

There will be a one-off enrolment process, for those wishing to use the system. When they subsequently arrive at any of the UK ports with IRIS barriers, they will bypass the queues to see an immigration officer and look into a camera. If the system recognises them as being admissible, a barrier will open automatically and let them into the UK. Use of the IRIS barriers may be extended in the future to holders of biometrically-enabled travel documents, without the need to pre-register.

This logic begs a number of questions. First, if a person is not a suspect then they will pass through the whole system with ease, both those who do so legitimately and those not known to or being targeted by the agencies. Second, so too will those who have established a false, unblemished, identity. Third, as the "IRIS barriers" become established at all points of entry those who do not have biometric passports or choose not to give the

state yet another personal biometric may find their "profile" records this fact. Finally, the whole system depends on "profiles" whose content is undefined and may be extended to new categories depending on the climate of "fear".

"Enhanced powers" for the agencies

New powers are to be given to customs, police and immigration agencies which will make mandatory the provisions of passenger data in advance of arrival for journeys to and from third countries (non-EU) and to and from EU countries by carriers. This will allow:

sufficient time for the information to be used for profiling and targeting of individuals of potential interest, and allow time for a decision to be made as to whether an intervention is appropriate

Targeting is to be directed not just at individuals to record their "patterns of travel" but also at "high risk flights", that is, flights to countries like Pakistan and Saudi Arabia.

The Immigration Service will have extended powers to request additional Advanced Passenger Information (API) biometric data from travel documents and "additional reservation data to the extent that it is known to the carrier" in electronic format.

Checking biometric data on arrival

The EU Directive on passenger information will require carriers to provide this data in advance of departure:

an obligation for carriers to transmit at the request of the authorities responsible for carrying out checks on persons at external borders, by the end of check-in, information concerning the passengers they will carry to an authorised border crossing point through which these persons will enter the territory of a Member State

In the discussions on the Directive the UK led the demand for passenger information to be handed over in advance of departure on a journey to the EU - this is to allow intervening to stop a suspected person travelling.

An amendment in the Immigration and Nationality Bill will:

require any arriving passenger to provide information of an external physical characteristic to verify their identity and confirm they are the rightful holder of that document.

Everyone arriving will be subject to these checks - UK residents, EU residents and non-EU people. The check will involve the taking of a biometric "on the spot" to check against the biometric held on the chip in a travel document.

The new system will develop in a number of stages. Under EU measures all new passports issued in the 25 member states have to include a facial image, that is, a digitised image of the normal passport photo by August 2006. All new passports after February 2008 have to hold real biometric finger-prints. As the current norm for EU passports is 10 years it will take until 2016 for all passports to have a facial image (though in the later stages this may well be an image taken with special facial recognition which plots up to 1,820 unique features on a person) and until 2018 for all to carry finger-prints.

The new powers mean that an immigration official will i) access the information held on the "chip" of all those who have chips in their passports/travel documents and ii) check that the data relates to the person presenting the document.

EU nationals and all other third country nationals arriving will be required to "provide biometric information" which can be compared with the information held on the document presented - this will be a "one-to-one" check involving the mandatory taking of a biometric if the travel document contains one. That is until a EU-wide database is set up to conduct "one-to-many" checks.

For British citizens it will mean comparing the biometric information provided against that contained in the passport or "that contained in any future "national identity register".

UK "roll-out"

The UK's "e-Borders" system will, when implemented, be one of the most comprehensive in the world and potentially the most intrusive. As it rolls out there will be an initial stage (when only a few people have biometric passports starting in the autumn of 2006 or are registered on the IRIS automated entry system), an intermediate stage (in about seven years' time when half the issued passports will have biometric facial images and fingerprints and the take-up on the IRIS automated entry system may well have increased) and the final stage (when all UK residents will, in theory, have biometric passports around about 2018).

So there will, at the intermediate stage, be a number of different queues at border control points:

1. Those using the automated entry IRIS scheme
2. Those with biometric passports/ID cards from the UK (allowing "one-to-one" and "one-to-many" checks) and from other EU countries (allowing "one-to-one" but not "one-to-many" checks until there is an EU-wide database)
3. Those with biometric passports from non-EU countries (allowing "one-to-one" but not "one-to-many" checks)
4. Those with biometric visas issued by the UK/EU (if the "collision" of chips whereby an EU visa chip would clash with a national e-passport chip is resolved; then checked against the Visa Information System, VIS)
5. Those with old-fashion (current) passports from UK/EU
6. Those with old-fashion (current) passports from non-EU countries with biometrically "chipped" visas in their passports if third countries agree to this. All that every country is obliged to put in their passports under the ICAO standard (International Civil Aviation Organisation) is simply a digitised image of the usual passport picture inserted onto a readable chip - this is not a biometric and does not require any "enrolment" by the individual.

At the intermediate stage category 5 could constitute 50% of UK and EU passport holders. Or put another way by 2013 around 50% of UK passport holders will have, theoretically, "secure" identities established by biometric checks and 50% will not and the same will be true for EU citizens too. Moreover, the EU is only just starting to think about how to impose fingerprinting and the insertion of "EU chips" in other nations' passports (category 7).

Patchwork across the EU?

There are many stages in setting up such a system. First, the biometrics have to be collected (through so-called "enrolment") and the biometrics and personal data linked and stored on a central database. Second, "readers" have to be installed at every point of departure (ie: at all check-in desks for all airlines flying to the UK/EU from anywhere in the world). Third, the mass of data has to be checked against "watch-lists" held by the receiving country's agencies and decisions taken on whether to "authorise" travel. Those given a "green" will be able to travel, those given a "yellow" would be subject to extra checks before boarding or placed under surveillance on arrival, and those given a "red" will be refused boarding, be detained or taken into custody. The

"yellow" category is the most problematic as this could be because a person is wrongly identified as a potential suspect, as Senator Edward Kennedy was several times before his real identity was established.

It might be thought that having taken the decision in December 2004 to introduce biometrics onto EU passports a standard system for gathering and checking the data would be in place too, or at least planned. However, it is apparent from a questionnaire sent out from the UK Presidency of the Council of the European Union that a great variety of systems could be in place (Note from UK Presidency: Reading systems for biometric e-Passports at EU border control points, EU doc no: 10559/04, 1.7.05).

When the responses to the questionnaire have been collated there will be a meeting of the Council's Frontiers/False Documents Working Party on 12 October 2005 to which will be invited: "technical representatives from Canada and the United States of America". Among the questions asked is whether: 1) member states are going to carry out checks at "all border control points, or only selected locations"; 2) "Do you intend reading all e-Passports or just a sample?"; 3) Are you going to carry out "one-to-one checks" or "one-to-many"?; 4) Are you going to carry out "full biometric verification checks" by comparing captured images on the spot or simply display the image stored in the chip for manual comparison? 5) Are you planning for reading e-Passports at other locations, eg: airline check-in?; 6) Do you have any plans to introduce "automated border control facilities" - for example, through iris scans? 6) does the reading of the machine readable zone automatically link to the Schengen Information System or "your national suspect/warnings database?"

It is clear from the questions that the level of checks and the assumed level of protection from "threats" could vary greatly from EU state to EU state.

What is the point?

The UK e-Borders system will be the first of its kind, and also the first of many. The shift from "targeting" suspected individuals to placing everyone's movements under surveillance raises all kinds of privacy and data protection issues. This is especially as the scope of system which although presented as necessary for countering terrorism and serious organised crime can very easily be extended to cover all crime or all suspected crime however minor.

Equally the "profiling" of an individuals' travel habits or individuals going to or from certain countries raises serious concern that certain groups (eg: young men) and nationalities (northern African, Middle eastern or from Pakistan) will be targeted and subjected to extra checks and surveillance.

The value of the system's product to counter-terrorism is going to be extremely limited for years - biometric checks on less than 50% of those travelling leaves a gaping hole. However, the time scale for the full implementation of the UK, and EU, systems - around or after 2018 - suggest that the scope and use of the biometrics and data collected will have greatly expanded by that time.

UK: "The rules of the game are changing" (Tony Blair)

Extending the "war on terrorism to a "war on (Islamci) extremism"

On 7 July 2005 came the terrorist attacks we had long been told were inevitable. The real shock came several days later, when it transpired that the "suicide bombers" were young British men. The issue of "why" they bombed London, however, has proved dangerously divisive. While pretty much everyone accepted that the decision to go to war in Iraq made London at least a more

likely target, the government and its supporters have, predictably denied this at every opportunity.

For the Home Secretary, "the view that the decision to go to war in Iraq turns you in to a potential terrorist" target is: "completely fallacious". For Tony Wright MP (Labour) it is "dangerous nonsense". Anyone who says otherwise is "on the

train to terrorism”, said the Prime Minister. It is ironic that that a government that has defined terrorism so broadly as to cover almost any act of *political* violence – to the point that the concept of actually causing “terror” is lost – has, in the face of that terror, denied that it could have had anything other than a religious or “extremist” motivation. Within the “war on terror”, this paves the way for a new “war” on Islamic extremism. The “rules of the game are changing” said Blair chillingly announcing the latest in a developing raft of proposals to “fill in the gaps” on an already crowded statute book.

Three new offences

On 18 July 2005 the Home Secretary met with his counterparts from the two main opposition parties to discuss the intention to introduce three new terrorism offences when parliament reconvenes in October. Parliament was dissolved two days later with the three main parties having reached a “consensus” on new laws to prosecute “acts preparatory to terrorism”, “terrorist training” and “indirect incitement to terrorism”. The Home Secretary also announced the government’s intention to deport “extremists” irrespective of any prohibition from doing so under the Human Rights Act.

The reason for creating new offences of “acts preparatory to terrorism” is still quite unclear. Under the Terrorism Act 2000, the “possession of an article in circumstances which give rise to a reasonable suspicion that [it] is for a purpose connected with the commission, preparation or instigation of an act of terrorism” already carries a ten year jail sentence (s.57). It is an equally serious offence under the Terrorism Act to “collect information” or “possess documents” that could be used for terrorism (s.58). The Home Secretary has stated that “the new offence will *lead to the capture* of those planning serious acts of terrorism”, implying surveillance powers rather than additions to an already broad offence [1]. It is also possible that visiting a “jihadist” website could also be in some way criminalised, notwithstanding the fact that visiting a website is obviously quite different to planning “a serious act of terrorism”.

A “new offence” of “terrorist training” can similarly add little to the existing Terrorism Act under which those who give or receive training in the making or use of weapons or explosives, or recruit persons for this purpose, are also liable to ten years in prison (s.54). The scope for “new” offences appears to be limited to visiting “training camps” in another country, or a wider concept of “recruitment” (which is arguably covered by existing UK laws on conspiracy and incitement), both of which have been mentioned. Things are clearer as far as “indirect incitement to terrorism” is concerned since the Home Secretary has announced that this will allow the UK to implement the Council of Europe convention on the prevention of terrorism agreed in April 2005. Article 5 of that Convention defines “public provocation” as:

the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed. [emphasis added, 2]

The concept of “indirect incitement”, drawn from the Spanish law of “*apologia de terrorismo*”, is based on the principle of criminalising people for what they say rather than what they do. It is at the heart of a number of the current proposals.

From two weeks to three months

On 21 July, the day after parliament was dissolved, the Association of Chief Police Officers published proposals that called for an extension of the time limit terrorist suspects can be held without charge from two weeks to a staggering three months, an extended role for MI5 to act outside of the UK and a new offence of “inappropriate internet usage” (discussed above)

[3]. All this was overshadowed by four more attempted bombings on London’s transport network which mirrored those a fortnight earlier. Things got worse the following day when undercover officers pinned down a frightened Brazilian on a tube train and fired eight shots into his back and head in front of equally frightened commuters as part of a new shoot-to-kill policy for suspected suicide bombers. There was nothing in the successful “manhunt” for the bombers that followed to suggest the police lacked any powers of investigation whatsoever and they have swiftly charged more than a dozen people in connection with the 21 July attacks (though no “mastermind” for the 7 July bombings has been found). Rather than *lacking* powers there was now palpable concern that the “shoot-to-protect” policy is a power too far.

A fortnight later, on the 5 August, the Prime Minister set out in a statement a “comprehensive framework for action in dealing with the terrorist threat” [4] and the Home Office published a “consultation document” on excluding and deporting people from the UK [5]. The three planned new offences had now become a twelve point plan. Some of the points are clearly “hot air”, a sign some said of a government desperate to be seen to be doing all it can, or to fill the newspapers in “silly season” (meaning the parliamentary recess). Others warned more accurately that the new proposals are “terrifying”.

Condoning, glorifying or justifying terrorism

The Prime Minister suggested that the new offence of “indirect incitement” will now cover the “condoning”, “glorifying” or “justifying” of terrorism (point 2 of the statement). The obvious concern is that people who express support for armed resistance to the occupation of Palestine or Iraq, for example – resistance that, irrespective of the methods used, many people around the world feel is legitimate – then they could be caught-up in the new laws. On Tony Blair’s “train to terrorism” there is an extremely thin line between empathising with the Palestinian cause, for example, and being seen as justifying and condoning the actions of suicide bombers. For example, when Cherie Blair, the Prime Minister’s wife, commented to reporters in June 2002: “*As long as young people feel they have got no hope but to blow themselves up you are never going to make progress.*”

Others will not get off so lightly, condoning, glorifying or justifying terrorism will be grounds for excluding and deporting people (point 1), closing down Mosques (point 11) and the “more extensive” use of control orders (point 7). Interestingly, the only people that have been subject to control orders since the legislation was enacted in March 2005 are the eleven foreign nationals that were interned without trial in 2001 in Belmarsh high security prison, rather belying the suggestion that Britain is teeming with *known* terrorists or other men so dangerous that these sanctions are necessary.

Extended powers of proscription

The government has also announced its intention to proscribe “Hizb-ut-Tahrir” and any successor organisation to “Al Muhajiroun” (point 9), extending the powers of proscription under the Terrorism Act 2000 if necessary to cover “extremist” as well as “terrorist” organisations. Hizb-ut-Tahrir, while condemned for its “extremist” views, has been committed to non-violence for 50 years. Shami Chakrabarti, director of *Liberty*, suggests it is “unwise to emulate the banning tendencies of Middle Eastern regimes that radicalised generations of dissenters by similar policies”. It must also be pointed out that “proscription” is an extremely serious sanction: members of a proscribed organisation can be jailed for ten years and many forms of active *and passive* support are criminalised. Wearing clothing or displaying a symbol suggesting support for a banned organisation, for example, carries a five year jail sentence.

Deportation, exclusion and “unacceptable behaviours”

The obvious problem of legal certainty around the new offence of “indirect incitement” will be partially circumnavigated since it is for the government to decide who is to be excluded or deported from the UK for “fomenting hatred”. The Home Office’s list of “unacceptable behaviours”, which applies to “any non-UK citizen whether in the UK or abroad”, is “writing, producing, publishing or distributing material”, “public speaking including preaching”, “running a website” or “using a position of responsibility such as a teacher, community or youth leader”:

to express views which the Government considers:

- *Forment terrorism or seek to provoke others to terrorist acts*
- *Justify or glorify terrorism*
- *Forment other serious criminal activity or seek to provoke others to criminal acts*
- *Foster hatred which may lead to intercommunity violence in the UK*
- *Advocate violence in furtherance of political beliefs*

While limited at present to the power to deport or exclude, this interpretation of “unacceptable behaviour” has much wider implications for the ever-expanding concept of “indirect incitement” and any related new powers. The Foreign Office is already working on a database of foreign “extremists” and the Home Office a “list” of “specific extremist websites, bookshops, centres, networks and particular organisations of concern” in the UK.

The Home Secretary has long enjoyed wide-ranging powers to exclude and deport people from Britain that he deems “not conducive to the public good” and, under a law drawn-up ingeniously to cover a single individual, can also strip British nationals of citizenship if they have a second nationality (the “abu Qatada law”, which notably failed to lead to the deportation of Mr. abu Qatada). The “problem” (as the government sees it), is Article 3 of the ECHR (as incorporated into the UK Human Rights Act) which prevents the government removing people to third countries in which they face a risk of torture or inhuman or degrading treatment (a proviso which has been upheld by the UK courts time-and-time again). The government’s solution is a series of “Memoranda of Understanding” (MoUs) with third countries that persons being returned there will not be mistreated. The first such “understanding” was reached with Jordan, though it is not at all clear from the text that the MoU even expressly prohibits the death penalty. “Not worth the paper it’s printed on” said *Amnesty International*. Should the UK courts agree, the government has stated that will amend the Human Rights Act.

Asylum and extradition

The government has conflated the issues of asylum and extradition with its intention to deport “extremists” from the UK. “Anyone who has participated in terrorism or has anything to do with it anywhere will be automatically be refused asylum” said Blair (in point 3 of his statement), in the knowledge that the security services have been vetting refugees from targeted countries for years.

As for extradition: “cases such as Rashid Ramda wanted for the Paris metro bombing ten years ago and who is still in the UK” are “completely unacceptable” said Blair (point 4), we “will set a maximum time limit for all future cases involving terrorism”. What this ignores is the fact that the Home office has taken *five years* to make a decision on the Ramda case, and that the Extradition Act 2003 has already introduced fast-track procedures. The European Arrest Warrant (EAW) legislation contains a maximum time limit of 60 days and in 2004 the Home Office reported to the European Commission that its average

EAW proceedings lasted a mere seventeen days. Two EU countries, Poland and Germany, have now ruled the hastily adopted EAW legislation unconstitutional and a third, Belgium, has referred the matter to the European Court of Justice. There are likely to be similar challenges in other EU countries because constitutional protections were simply discarded in the desire to speed-up proceedings.

“Special” court procedures and “special” judges

ACPO’s call to hold terror suspects for up to three months without charge must be seen in the context of the government’s intention to revisit administrative detention (without charge) which was struck down by the House of Lords, leading to the “control orders” legislation. It proposes “new court procedures” (point 6) and more money for “special judges” (point 8). Both of these proposals are shorthand for detention without trial, a government appointed prosecuting judge, secret evidence, secret hearings, court appointed defence lawyers, and so on – procedures that all concerned have long recognised violate the right to a fair trial and the prohibition against arbitrary detention under Article 5 of the ECHR, from which the UK has already infamously derogated.

“Securing our borders”: ID or not ID?

The proposals to secure Britain’s borders have so far been limited to the creation of a database on international extremists to be refused entry (discussed above) but are likely to encompass a much wider agenda. The idea of a “border police” has been floated, though it must be said that joint operations of immigration and police officers increasingly resemble such a force. The government has been careful not to be drawn into debate around the unpopular ID Cards Bill and both Blair and Clarke have been unequivocal in admitting that “all the surveillance in the world” could not have prevented the London bombings. Yet in the same breath, Mr. Clarke was in Brussels on the 13 July for a specially convened meeting of the EU Justice and Home Affairs Council proposing to his twenty-four counterparts that they all introduce a biometric ID card in response to the bombings. [6] Predictably, the attacks were also used as a justification for the long-standing and long-opposed proposal to introduce the mandatory retention of *all* telecommunications data in the EU. [7]

Good citizens and stop-and-search

Presenting the London bombings as an attack on “our way of life”, the government argues that the problem is that “our freedom” and generosity has for too long allowed people to come to this country without fully accepting “our values”. “The time for multiculturalism is over”, said the Conservative’s Shadow Home Secretary. What he means is “assimilate or leave”. UK law already requires people being granted British citizenship to take an English test, attend a “citizenship ceremony” and swear allegiance to Britain and the monarchy (something many existing British citizens would refuse). What is now proposed by the government is an “Integration Commission” to focus on “those parts of the community presently inadequately integrated” (point 10 of the Blair statement). The irrevocable flaw in this argument is of course, as one commentator succinctly put it, that “being born in a barn doesn’t make you a horse”.

To prepare the ground for the integration commission the Home Office Minister, Hazel Blears, went on a bus tour of northern cities to reach out to young Asian youth. Blears was a surprising choice because she had outraged British Asians before and after the bombings by telling them that, contrary to the Race Relations Act, they should expect to be disproportionately stop-and-searched. “Why are you disaffected?”, asked Blears in Leeds, Bradford and elsewhere. To which there were two

overwhelming and entirely predictable responses: disproportionate stop-and-search and UK foreign policy, particularly Iraq.

The shape of things to come

Since the 7 July bombings the *Institute of Race Relations* has been documenting the UK-wide increase in racially motivated attacks and widespread violence against individuals, their homes and families, businesses and places of worship, including a Sikh temple so blind are racists. [8] The British National Party has been distributing leaflets with images from the London bombings and the question "isn't it about time you started listening to the BNP"? They have been spurred on – "indirectly incited" perhaps – by an almost constant media barrage, the effect of which can be summed-up by two enduring headlines: "got the bastards", *The Sun's* front page headline on the capture of the failed bombers, and "the cult of the suicide bomber", a three-part TV series advertised so often it appears to be on every night. It is almost impossible to escape the simplistic and inflammatory portrayal of Islam as a "dangerous" religion.

Since the 7 July, *Statewatch News Online* has been documenting the political response to the bombings. At the time of writing, the latest addition to the website is a statement from the solicitors *Birnberg Peirce and Partners*:

This morning a number of individuals we represent were taken from their addresses. All of these were individuals whom the Home Office had agreed were appropriate to be granted bail. We were not notified by the Home Office of these arrests. Those who have families contacted us immediately through their families. So far as those who do not, we have been forced to speculate; one single man we know was seized from the psychiatric hospital where he has been an inpatient since his release from detention under the discredited 2001 Anti Terrorism Crime and Security Act. Of those likely to have been arrested today, five are the subject of serious psychiatric concern as a result of the damage each was caused by his previous indefinite detention. Despite the Home Office knowing that those individuals were legally represented, and by whom, we were provided with no information for hours as to their identity, since when all the individuals have disappeared. No legal access has been provided. Some families were told that they were being taken to Woodhill prison. We were refused all access by Woodhill prison and now understand informally that the individuals taken there have been moved again, possibly separately to destinations unknown. This is the precise scenario of arrest and thereafter deprivation of access to lawyers that occurred for the same men when they were seized in

December 2001. The Home Office undertook then that the same would never happen again.

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For latest news see <http://www.statewatch.org/news/>

Observatory on asylum and immigration

www.statewatch.org/asylum/obserasylum.htm

ASBOwatch

www.statewatch.org/asbo/ASBOwatch.html

"Terrorist" lists: proscription, designation and asset-freezing

<http://www.statewatch.org/terrorlists/terrorlists.html>

Nothing doing? Taking stock of data trawling operations in Germany after 11 September 2001 by Martina Kant

After 11.9.01, nationwide data-trawling operations based on profiling (*Rasterfahndung**) led to the collection and classification of personal data from around 8.3 million people. This infringed the constitutional data protection right to "self-determination about personal data" (*Grundrecht auf informationelle Selbstbestimmung*) of every tenth inhabitant of the Federal Republic of Germany. What for? That the *Rasterfahndung* was accompanied by failures and mishaps is revealed in a classified report of by Federal Crime Police Authority (*Bundes kriminalamt - BKA*).

"The aim of detecting more "sleepers" in Germany has not been achieved yet", concludes the BKA Commission for State Security in their evaluation, which is still classified [1]. The BKA's Commission for State Security was assigned to analyse the experiences of regional data-trawling operations and the so-

called consolidation of information (*Informationsverdichtung*) or data comparison, carried out by the BKA after 11.9.01. A reading of the evaluation not only allows for a reconstruction of events but also reveals the extensive problems encountered during implementation. The conclusions drawn by the BKA do not point towards a decline in these operations, but the contrary: the future of data protection rights appears to be bleak.

Flashback: eight days after the horrendous attacks in New York and Washington, the Berlin and Hamburg interior authorities were the first to authorise data-trawling in search of alleged terrorist "sleepers". The chief public prosecutor had refused to initiate a nationwide database trawl based on the Criminal Procedural Act (*Strafprozessordnung*). Introduced by the regional states (*Bundesländer*), it was based on the police hypothesis that Germany was harbouring more anonymous

potential "Islamic" terrorists who were planning attacks. Criteria for data collection by profile, or so-called grids, were defined on the basis of evidence the security services had collected on some of the Hamburg cell around Mohammed Atta. Other regional states started with slightly different criteria. The Coordination Group on International Terrorism (KG IntTE) [2] was created on 26 September 2001 and its "Sub-Working Group Grid" was responsible for establishing uniform criteria to be applied at the national level: age: 18-40, male, (former) student, resident in the regional state the data was collected from, religious affiliation: Islam [3], legal residency in Germany and nationality or country of birth from a list of 26 states with predominantly Muslim population, or stateless person or nationality "undefined" or "unknown". This data was to be collected by regional authorities on the basis of their respective police regulations from the databases of registration offices (*Einwohnermeldeämter* - EMÄ), universities/polytechnics and the German database on foreigners, and the Central Foreigners Register (*Ausländerzentralregister* - AZR). A problem arose immediately as Schleswig-Holstein and Lower Saxony had no powers for data-trawling in their police regulations; Bremen had abolished the relevant powers in August 2001 with the reform of its police regulation. This "shortcoming" was, however, remedied by 24 October [4].

Data on those persons who appeared in all three databases (EMÄ, Uni, AZR) and who met the criteria were passed on by the regional authorities to the BKA. Their data was stored there - as so-called "base stock" - in a specially created database on "sleepers" called "*Verbunddatei Schläfer*". However, some *Länder* did not follow the grid pattern. Data that obviously did not correspond to the profile had to be "sorted out" by the BKA, "partly automated but in large part manually". The "sleeper" database contained almost 32,000 data entries that corresponded to the criteria, (see table below). Also, from the BKA's perspective, the so-called "investigation cases" (*Prüffälle*) proved unmanageable due to the quantity of data and had to be "limited by means of further labour intensive comparisons".

Number of "base stock" entries in the BKA database of "sleepers"

<i>Land/LKA</i>	<i>Data entries</i>
Baden-Württemberg	3,800
Lower Saxony	2,588
Bavaria	2,053
North-Rhine Westphalia	11,004
Berlin	710
Reinland Pfalz	1,792
Brandenburg	333
Saarland	416
Bremen	546
Sachsen	1,317
Hamburg	811
Sachsen-Anhalt	1,292
Hessen	3,739
Schleswig-Holstein	534
Mecklenburg-Vorpommern	895
Thuringia	158
	31,988

First "automated consolidation of information" ...

To reduce the number of data entries, the *Länder* and the BKA collected more information to compare the base stock. According to the terrorism working group KG IntTE, additional data needed to be collected from persons who had received information relevant for an attack, who had access to special resources that could be used for an attack or who had been present at potential

targets for attack. Even personal data on visitors to the Berlin parliament or nuclear power stations would be collected. Bavaria actually passed on data on people visiting nuclear power stations, but it was not used in the comparison.

Ninety-six different data sets were ultimately included in the comparison. They included personal data on people holding flight licenses, flight students, users of flight simulators, members of flying associations and even the customer database of a company distributing aeronautical supplies. The Goethe Institutes also delivered data because many foreign students receive their German language certificate required for their studies there. Data from license holders authorised to transport dangerous goods and airport employees, nuclear power stations, 24 chemical companies, the German railway, biological laboratories and research institutes were collected. Alongside police data gathered from the INPOL system [5] information gathered from police searches of the "Taliban offices" in Frankfurt/Main on February and June 2001 was used as well. The office was suspected of having constituted a sort of consulate for the Taliban regime in Afghanistan, but there were no facts indicating terrorist links [6]. Here also, the data trawling did not deliver a single "hit".

Altogether, the comparison data amounted to 4 million entries; and this excludes police data held in the INPOL, PIOS and DOK systems. On 8 March 2002, six months after the attacks, the BKA began to compare the comparison data sets against the "base stock".

...then "manual" comparison

After the computerised comparison, 101,314 entries of both data sets initially correlated. This refers to the correlation of at least two parts of one name and the date of birth. These "hits" were sent back for examination to the *Land* from which the data entry originated. The data entries were then, by means of manual selection and further clarifications, reduced to 3,450 "personal identities". 1,926 of these were marked as possible suspects; because of double entries, 1,689 persons were individually examined by regional police forces. A closer look at the suspects uncovers the nonsense that the data-trawl produced: of the 1,926 data entries, 825 (42%) come from the Goethe Institutes' databases. The BKA evaluation report sheepishly admits that some of the hits from the Goethe data entries had not been marked as suspects as they did not fulfil any profile criteria other than that of being a "student". So what was the point of this exercise? A similarly large proportion of the suspects (744 marked entries) resulted from a comparison of INPOL databases, but almost exclusively related to records created after the 11 September attacks. Here also, there was no indication of terrorist suspects.

The BKS's "consolidation of information" took over a year; on 31 March 2003, the authority stated that the exercise had ended. The "sleeper" database was erased on 30 June 2003, as was all of the comparative data on 21 July 2003.

Failures and flops

The BKA report lists a long series of problems that arose during the 20 month long database trawl. The extensive time frame is one of them, which "required considerable resources"; the evaluation does not provide precise figures. It is known from North-Rhine Westphalia that up to 2002, nearly 400 officers had been deployed for the operation and related inquiries and were therefore unavailable for regular police investigations [7].

The report points out that there were serious shortcomings in the preliminary phases of the operation which led to "considerable additional work in the coordination". Concretely, the BKA criticises the far-reaching and ill-defined criteria which, it is said, was a result of time pressure. In future it "is imperative to ensure there is sufficient time for planning". The criteria of

being resident in the relevant regional state from where the data originates also proved unsuitable as many students did not live and study in the same state. This led to laborious coordination of remits amongst the regional states. One of the biggest problems during the collection of the data was the fact that date of birth, an essential element in the identification of a person, was not held on every database. There were also different spellings of first and surnames of the same person. Data was also sent to the BKA in different formats with different software on different data carriers. Sometimes, complete data bases were delivered without preliminary classification. In other words, the BKA had to deal with chaotic data compilation which thwarted the benefits of computerised data comparison, such as the swift filtering of a small number of "suspects" from vast amounts of data.

In order for this failure not to be repeated, the report demands a "sensible stocking of data" in the future. This means, alongside technical harmonisation, the harmonisation of content in order to be able to swiftly provide the police with necessary data - all within the "the framework of legal possibilities", of course. This refers to, for example, registration office data, which should start using standardised fields. (What kind of data the report refers to here can only be guessed. To date, there is no harmonised collection of data on religious affiliation, for example). Further, it is suggested that authorities should only store data which can be cross-checked with official documents to guarantee the correct spelling of names and an accurate date of birth. To leave no doubt, the "introduction/creation of unambiguous identifiers is necessary (e.g. biometric data, social security numbers...)". A personal identification or registration number (PKZ) was declared unconstitutional by the Federal Constitutional Court in 1969 and again in 1983 in the decision on the population census, because it would allow for the creation of personality profiles of a person by linking different database entries [8]. Further, centralised registration and the recording of the population with definite PKZ's, as it was practised in the German Democratic Republic, was abolished after reunification on the grounds of being in violation of Germany's constitution [9].

The BKA faced additional difficulties with regard to the comparison data. It had collected some of it on its own - illegally - by contacting umbrella organisations which in turn passed on the request to their members [10]. Of the 4,000 associations contacted, 212 provided their databases. The quality of the data left much to be desired; either it was not related to the search for terrorists or it had not been pre-selected. Even the comparative data provided by the regional states had to be revised - it had evidently not always been defined according to its purpose. Further, the data used for the security checks entered the authority at the same time, with the result that no one knew exactly "which sets of data had been delivered and for what purpose". The confusion was complete.

The limitless "wishlist" of the BKA

The BKA wants better cooperation with security services in future trawling exercises. Although the working group on international terrorism (KG IntTE) had agreed that only "suspicious cases" would lead to a request for additional information from the internal security service (*Verfassungsschutz* - Office for the Protection of the Constitution) and the Foreign Intelligence Service (*Bundesnachrichtendienst* - BND), this was not an agreement that would last: "it would be desirable to have a complete comparison of the information collected by police from the data-trawl". The BKA does not seem to think this requires the slightest justification, it simply "appears necessary to interlock the data from the services and the police". A thorn in the BKA's side is not only the principle of separate remits but also the principle of discriminate collection of data for a specific purpose.

The Sub-Group Grid had suggested that it pass on all the comparative data collected by the BKA to the regional states - in contravention of the law - for additional comparison. This idea was discarded. What followed though, were efforts to harmonise regional police regulations. Guidelines drawn up by the Ad Hoc Working Group Grid of the AK II, were adopted by the interior ministers' conference on 31 May 2002. They included, amongst other things: harmonised data-trawling controls with low prerequisites with regard to the required "threat", powers of initiation to be given to the police instead of judges and the obligation of public and private authorities to provide the data demanded. The BKA further recommends that the regional states harmonise their laws on long-term observation, surveillance of telecommunications, bugging and the use of undercover officers or informers. The "hits" resulting from these controls should then be checked at a "standardised nationwide level".

The BKA must have been very unhappy with the development and the results of the data-trawling operation. It appears that the regional states did not fully comply and relinquish their powers to the BKA. Some of them examined their "hits" on their own accord without waiting for the results of the BKA comparison. The BKA disappointedly found that "the result of information consolidation [...] in the end received little attention" and that "the data entries of the [sleepers] database that were marked with great effort [...] were deleted as a whole in 2003".

General uncertainty

Gloating in the face of the database-trawl failure is not appropriate. It has, after all, not only resulted in immense financial expense but also massive civil liberties "expenses". Those who were presented in the media as quasi-'apersonal' "hits" experienced the police investigation directly in the form of a summons, surveillance of their social environment, questioning of their employers etc. This occurred despite the fact that there was no tangible evidence against them - they merely fitted a certain profile.

In the framework of the database-trawl, the BKA has given itself a role which, legally, it has no powers to carry out; it has exceeded its support function, and thereby made itself a master of procedures. Simultaneously, it is spearheading legal developments in which data protection and the right to self-determination about personal data are being sacrificed for a purportedly efficient fight against crime and the prevention of crime.

Despite the embarrassing outcome, the BKA, police and interior ministers continue to sell database trawling as an appropriate means of finding potential terrorists. The "deterrent effect" and the "investigation pressure" has led to "insecurity" in fundamentalist groups and this is seen as an achievement [11]. That is what it's like in a democratic state.

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[1] *Bundeskriminalamt, Kommission Staatsschutz: Evaluation der Rasterfahndung der Länder und der Informationsverdichtung im Bundeskriminalamt anlässlich des 11.09.01; unless otherwise indicated, all citations are from this report.*

[2] *The KG IntTE was set up on decision of a Working Group (AK II) of the Interior Ministers' conference (IMK); it is chaired by the BKA and includes the subcommittee "leadership, operations and fight against crime (UA FEK), AG Krip, Federal Border Guards, Foreign Intelligence Service, internal intelligence service, chief public prosecutor and army representatives.*

[3] *As categories of collected data currently only include "Catholic", "Protestant" and "Other", the profile of the databank included the category "Other".*

[4] *See, also for the further development of the control operation: Bürgerrechte & Polizei/CILIP 70 (3/2002), pp. 28-34 (33); Bürgerrechte &*

Polizei/CILIP 71 (1/2002, pp. 69-75; Bürgerrechte & Polizei/CILIP 73 (3/2002), p. 89.

[5] Here: INPOL, APIS, APR, APOK, SPUDOK-USA, DOK-DOMESCH, DOK-money laundering and a data base on "persons losing passports".

[6] Compare *Die Welt* 28.9.2001.

[7] Speech by interior minister Fritz Behrens at the press conference presenting police crime statistics in Düsseldorf on 17.3.2003.

[8] BVerfGE 27,1 (Mikrozensus), BVerfGE 64, 1 (population census).

[9] Compare *Deutsche Vereinigung für Datenschutz: Presseerklärung* 3.12.2003.

[10] On the legal problem with the role of the BKA see 16th Activity report 2001/2002 of the data protection officer of Lower Saxony, pp. 85-87.

[11] Prondzinsky, P.v.: *Rasterfahndung*, in *Deutsches Polizeiblatt* 2002, issue 6, pp. 15-18 (18).

* Literally: 'grid search', a Raster is a grid pattern by which large amounts of information can be classified and separated. The grid pattern here refers to profiles of suspected terrorists that are created according to certain criteria they are believed to have in common.

Germany: Return to an Aliens Police Law? Anti-terrorist legislation in Germany's new Immigration Act

by Marei Pelzer*

Anti-terror laws introduced after 11.9.01 particularly curtailed the rights of migrants and refugees living in Germany. The new immigration law is a continuation of this "aktionismus" [taking action for the sake of it] legislation. Its centrepiece is the deportation of terror suspects without prior conviction.

The Immigration Act, which came into force on 1 January 2005, contains immense reinforcements of security measures [1]. These were promoted particularly by the conservative parties CDU/CSU (*Christlich Demokratische Union Deutschlands & Christlich Soziale Union*), who could exert their influence because the law had to be approved by the Upper House of the German parliament. Rather than abolishing the threat prevention aspects that characterised the former "Aliens Act", the new law extended them. Instead of creating a modern immigration law, the regulation has extended measures resembling pre-democratic "Aliens Police Laws".

The centrepiece of the new law's security policy is the increased power to deport. As in the earlier debates that accompanied the anti-terrorist measures introduced at the end of 2001, the CDU demanded deportation powers on mere suspicion, in contrast to the argument that only persons who had received a final and binding sentence could be expelled and deported from Germany.

In their demands, it remained unclear who and how many people the measures were meant to target. Bavarian's interior minister Günther Beckstein was talking of up to 3,000 people [2], thereby obviously targeting members of foreigners' associations that have fallen out of favour. Furthermore, he presented a list of 20 people residing in Bavaria who had, until then, not been deported. However, as the liberal MP Max Stadler (*Freiheitlich Demokratische Union*) revealed, some of the named persons could not have been deported even if increased deportation powers had been in force, due to lack of evidence. In other cases, final deportation orders had already been issued and in one case, the person in question had already been deported. Finally, a third group of people could in fact not be deported for humanitarian reasons, which the authorities could not have circumvented even with more powers to deport.

Still, the CDU stuck to their restrictive proposals and deliberately misled the public. Even before the introduction of the anti-terrorist measures, a binding sentence, for example, was not a precondition for deportation [3]. According to s45 paragraph 1 Aliens Act (*Ausländergesetz*), foreigners could be deported if their stay "endangered public safety or order (*öffentliche Sicherheit oder Ordnung*) or other significant interests". Deportation regulations put in force after 11 September do not even require a preliminary criminal investigation anymore. Since the introduction of the so-called "security packages", a false statement made by a foreigner during

an interrogation by the authorities on grounds of security concerns already suffices. In any case, additional powers in deportation regulations were therefore unnecessary [4].

Deportation of foreign terrorist suspects

One of the newly introduced reasons includes the possibility to deport terrorist suspects. This new power goes hand in hand with a new accelerated deportation procedure. On grounds of the novel s.58a of the residency law (*Augenthaltsgesetz - AufenthG*), the highest regional authority (or the Federal Interior Ministry when the procedure is taken over by the same):

can issue a deportation order without a prior expulsion procedure against a foreigner on grounds of a prognosis supported by facts for the prevention of a particular threat to the security of the Federal Republic of Germany or a terrorist threat

The key aspect here is that extradition and deportation procedures are conflated. The deportation order is to be carried out immediately, there is no requirement of a warning.

The only prerequisite for the deportation order is a threat prognosis, which has to be based on facts. However, it remains unclear what evidential power these facts have to have. Every suspicion is based on facts. The danger here is that deportations will take place merely on the basis of suspicion.

Appeals have to be lodged with the Federal Administrative Court (s50 paragraph 1 No. 3 *VwGO*) within seven days. The issuing of refugee status or the finding of other humanitarian reasons that prevent deportation (s60 paragraph 1-8 *AufenthG*) by the Federal Office for Migration and Refugees are not binding in deportation decisions under s58a *AufenthG*. They will rather be examined independently again by the highest regional authority or by the federal interior minister. Refugee and other forms of humanitarian protection are thereby subjected to the disposition of those actors that have already developed a one-sided and very often political interest in the deportation in question.

It is still not clear how many people will be affected by the new regulation. During the parliamentary debates on the new measures, media reports claimed that police and internal security services estimated there were 270 so-called "top-threats" in Germany. At the beginning of this year, the news magazine *Der Spiegel* reported that judges practising with the Federal Administrative Court were anticipating up to 2,000 deportation procedures every year on the basis of the new law.

This claim was immediately rejected by the Court's vice president Marion Eckertz-Höfer. The judge said this number was an excessive speculation. She claimed that s58a *AufenthG* stipulated a considerable barrier to intervention. The threat, she said, would have to be of very considerable importance, "in the

same category as crimes against peace, war crimes and crimes against humanity - crimes therefore that resemble the main indictments of the Nuremberg trials" [5]. It is to be hoped that this reference acts as a deterrent for the interior ministers.

"Hate preachers"

The new security political arsenal also includes the possibility to deport so-called "hate preachers". Anyone who publicly condones or advertises terrorist acts, for example, in a manner that facilitates the disturbance of public safety or order, can in future be deported (*s55 AufenthG*).

In mid-December 2004, even before the coming into force of the new Immigration Act, the Imam of the Mevlana mosque in Berlin-Kreuzberg was expelled on grounds of making "hate speeches". The Turkish clergyman, who has been living in Germany since 1971, was claimed to have considerably disturbed the peace by condoning terrorist acts - at least this is what the highest regional court in Berlin decided on 22 March 2005, thereby confirming the expulsion order of the Berlin interior authority [6]. The Imam is claimed to have "praised martyrs in Jerusalem and Baghdad in a manner that glorified violence", thereby making associations with terrorist suicide attacks. The court found that the remarks were not within his fundamental right to freedom of speech and freedom of religion.

No matter how determined the expulsion of so-called hate preachers might appear, they have little effect. As a rule, people who have taken part in terrorist attacks have not made a public appearance as "hate preachers" before the attacks. To sanction expressions of opinion with expulsions, however, is undemocratic.

Obligatory information requests from security services

With much public furore, the CDU has enforced a long existing practice, namely, obligatory requests for information from the internal security service (*Verfassungsschutz*) on persons before their naturalisation. As a reaction to 11 September 2001, all German federal states (*Länder*) have already introduced this security check during naturalisation procedures. The legal basis, however, had already been provided by the red-green coalition's reform of citizenship regulations. On the basis of this regulation, the city of Hamburg, for example, ran security checks on 11,030 applicants for German citizenship in 2002 and on 8,302 persons in 2003 [7]. In practice, the automatic information request from the *Verfassungsschutz* leads to naturalisation procedures dragging on even more. Security relevant findings almost never appear or are of no substance. The security examination particularly leads to suspicion on the part of the migrant: for people that, in some cases, have lived in Germany already for several generations, the naturalisation procedure has become even more unattractive.

The now obligatory information request from the security services before issuing or extending a residency permit was already possible under the old laws. Here also, the results are the same: almost all findings are irrelevant, the procedures drag on, those affected are stigmatised.

Alert database

During debates on the new immigration law, the red-green government coalition announced it would to promote an "alert database on visa policy" at European level. All authorities issuing visa and residency permits should thereby get access to a central database holding data on persons and organisation who have ever been connected to illegal entry, etc. Further, the plans include the surveillance of persons who have entered from states "from which Islamic terrorists are primarily recruited" as well as data collection on persons who have become suspicious by having been invited by certain foreigners. The database,

according to the plans, should be created at European level for "the detection of reasons of failure or for the examination of security concerns in visa procedures" [8].

Last December, the Commission made a corresponding legislative proposal for regulating data exchange on visas between Member States [9]. This proposal is currently being examined by the Council and its committees. In European circles, German Interior Minister Otto Schily is pushing for the alert database to be integrated into the planned Visa Information System (VIS) of the 25 EU Member States. This system is intended for use by police as well. This misuse is problematic for data protection reasons. A corresponding Council regulation is expected to be passed by the end of 2005 [10].

Security detention: only postponed?

The UK was the only member of the Council of Europe to have introduced security detention in 2001, thereby derogating from Article 5 of the European Convention on Human Rights (ECHR, right to liberty and security of person) and declaring a state of emergency according to Article 15 ECHR. On 16 December 2004, the law lords declared security detention unlawful as it was incompatible with essential national and international human rights provisions. The law lords argued that the role of independent judges to interpret and apply the law - also against the executive authorities - was an outstanding feature of modern democratic states and fundamental to any democratic legal order [11].

In Germany, security detention for terrorist suspects has so far not been introduced. The debate accompanying the matter, however, represents an opening of the floodgates. Interior minister Otto Schily has condoned security detention of persons who cannot be deported on grounds of international humanitarian law. CDU politicians have proposed to limit this detention, which lacks the requirement of specific charges or a conviction, to two years and to allow for legal recourse [12].

CDU/CSU representatives, in all seriousness, called on Schily to enforce the necessary steps for the "relaxation of the absolute ban on deportations under the European Convention on Human Rights" so that criminal extremists could be deported, whereby they would also suffer torture as a result. They are therefore moving towards the US-model of "out-sourcing" torture.

* *Marei Pelzer is a lawyer and works as a legal consultant for the asylum rights organisation Pro Asyl. This article was first published in CILIP, issue 80, no 1/2005, pp. 21-26.*

[1] *BGBI. I 2004, No. 41, p. 1950*

[2] *Die Welt 25.3.2004; die tageszeitung 29.3.04*

[3] *Deutscher Anwaltsverein press release 18.3.04, www.anwaltsverein.de/03/02/04/17-04.html*

[4] *Marx, R. 'Terrorismusvorbehalt des Zuwanderungsgesetzes', in Zeitschrift für Ausländerrecht 2004, issue 8, pp. 275-282.*

[5] *Süddeutsche Zeitung 31.1.05*

[6] *File number: OVG 3 S 17.05*

[7] *Freie und Hanseatische Stadt Hamburg, Landesamt für Verfassungsschutz: Verfassungsschutzbericht 2003, Hamburg 2004, p. 14 [2003 Annual Report of the Regional Security Service Hamburg]*

[8] *Die Welt 27.5.04*

[9] *COM (2004) 835*

[10] *http://www.zuwanderung.de/2_eu-recht.html*

[11] *Lord Bingham of Cornhill, 2004, UKHL 56, A (FC) and others (appellants) vs. Secretary of State for the Home Department (respondent), amongst others number 42.*

[12] *Berliner Zeitung 24.5.05*

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Statewatch bulletin

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

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

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

ISSN 0961-7280

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