statewatch

monitoring the state and civil liberties in the UK and Europe

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G6-G8-Prum: Behind closed doors

- policy-making in secret intergovernmental and international fora

Policy-making in EU institutions has its problems when it comes to getting access to the documents (positions, proposals etc) which shape and influence the final text. But when it comes to more shadowy gatherings it is even more difficult. Recently *Statewatch* applied to the UK Home Office for copies of the documents adopted at the G8 Ministers of Justice and Interior meeting in Moscow on 16 June 2006 (G8 = USA, UK, Germany, France, Italy, Russia, Canada and Japan). The request was not for the background or operational documents but formally adopted policies - that is, adopted by the UK government and seven others.

The response was outright refusal. The Home Office declared that the documents - which they admitted holding - were "exempt from disclosure" under the Freedom of Information Act (FOIA). "Exempt" because disclosure would "prejudice relations" between the UK and G8 and:

jeopardise the free and open exchange of information within G8

Further they argued that the FIOA exempts "confidential information.. obtained from" another state.

But the information emanated from a meeting in which the UK was a partner. Moreover, surely we have a right to know what policies are being agreed to "in our name"? Statewatch has lodged an appeal.

A similar issue arose of the meeting of the "G6" (Germany, France, Spain, UK, Italy and Poland) of Home/Interior Ministers in Heiligendamm, Germany on 22-23 March 2006. The meeting agreed "Conclusions" covering a series of justice and home affairs issues (including police access to the planned Visa Information System, EURODAC - asylum-seekers fingerprint database, the "principle of availability" of all data being held by state agencies to every other agency in the EU).

Statewatch obtained a copy of the "Conclusions" and put them on its website. This led the House of Lords Select Committee on the European Union to set up an inquiry.

Giving evidence to the Committee *Statewatch* said:

there is no formal requirement to publish an agenda or minutes, there is no system of access to documents, there is no process of public consultation or impact assessment

And as to the position *after* the meetings take place they are:

utterly lacking in the rudiments of accountability as understood at national or EU level

The Committee took the view that although it "would certainly be desirable" for the agenda and papers to be published before the meeting - as they are arranged "months in advance" - it "would not wish to hamper frank exchanges of views in advance of the meeting". However, it did recommend that the results of G6 meetings "should be fully publicised by the Home Office [and] a written ministerial statement should be made to parliament".

Statewatch said in evidence that the Schengen Convention agreed by five EU states (Belgium, Netherlands, Luxembourg, France and Germany) and the recent Prum Treaty (the same five plus Austria and Spain) were "set in stone" so that any other member states joining up could not change "a dot or comma". Thus the Committee observed that:

Intergovernmental groupings of this type, which lack the basic democratic requirements of accountability and transparency have in the past led to the Schengen agreement and the Schengen Convention. Neither EU citizens, nor their representatives, nor indeed those Member States that were not originally part of the Schengen group, had any say on these policies of fundamental importance. They were presented with a fait accompli

It should be remembered that the 1990 Schengen Convention was never discussed by the five founding members' parliaments or civil society nor were the hundreds of implementing measures in the Schengen *acquis*. Between 1990 and 1996 all the remaining EU members (then 15) joined up except the UK and Ireland (who signed up to part of it). Under the Amsterdam Treaty, on 1 May 1999, the Convention and the *acquis* were integrated into the EU.

On 27 May 2005 the Prum Treaty was signed by Germany, Spain, France, Luxembourg, Netherlands, Austria and Belgium (Italy has since said it wants to join too). It covers a series of justice and home affairs issues including the "exchange of information" (in effect, the "principle of availability").

For example, Articles 2-12 allow *direct access* by the law enforcement agencies in the other participating states to their databases on DNA, fingerprints and vehicle registration on a

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hit/no-hit basis (if there is a "hit" the file is provided).

On the Prum Treaty the House of Lords Committee said:

This to our mind is a perfect example of the dangers of a small group of Member States taking steps which pre-empt negotiations already taking place within EU institutions

A view borne out in practice as working party after working party in the Council of the European Union (the 25 governments) refer to the Prum Treaty in their discussions as if it is already part of EU law.

Tony Bunyan, *Statewatch* editor, comments:

It goes without saying that we have an absolute right to know the content of measures after they are adopted in intergovernmental or international fora.

Moreover, the idea that measures should only be subject to scrutiny after they have been adopted cannot be squared with meaningful democratic accountability - by this stage they are set in stone.

Accountability in a democracy means parliaments and people knowing in advance the agenda and the documents circulated for discussion so that they can make their views known before the meeting takes place.

"Behind Closed Doors: the meeting of the G6 Interior Ministers at Heiligendamm", House of Lords EU Committee is on: http://www.statewatch.org/news/2006/jul/hol-behind-closed-doors.pdf; G6 Conclusions: http://www.statewatch.org/news/2006/mar/06eu-interior-minister-conclusions.htm; The Prum Treaty:http://www.statewatch.org/news/2005/aug/Pr%FCm-Convention.pdf

PRISONS

ITALY

Decree to introduce pardon underway

On 24 July 2006, the Italian parliament's justice commission approved a pardon for crimes committed prior to 2 May 2006 involving prison sentences of no more than three years and fines of up to 10,000 Euros. Scrutiny in the parliament and senate is now underway, with the lower chamber (parliament) voting in favour on 27 July 2006 by 460 votes to 94, with 18 abstaining. The pardon has caused a split in the governing coalition, as the former judge Antonio di Pietro, now leader of the *Italia dei Valori* party, opposed the measure by accusing the government of "selling out its political dignity" by giving in to "blackmail" by the opposition, most notably due to the failure to exclude certain corruption-related crimes from the measure in order to secure a consensus.

The measure is envisaged as a way of reducing the ever-increasing problem of overcrowding in Italy's prisons, where over 60,000 detainees are held in jails with an overall capacity for 42,000 people. It is estimated that over 10,000 detainees will benefit from this measure. A long list of crimes is excluded, including terrorist and terrorist-related offences, membership of an armed group or Mafia-style organisation, prostitution and child prostitution or pornography, people trafficking, sexual violence or sexual relations with minors, kidnapping, money laundering and drug offences. Patrizio Gonnella, president of *Associazione Antigone*, an organisation that promotes rights and guarantees in the penal system, and Franco Corleone, the Florence city council's ombudsman for detainees, issued a joint statement in which they welcomed this "good news" and called on the senate to approve the measure definitively prior to the summer break.

Ddl Camera 525 Concessione di indulto, full-text, in Italian, available at: http://www.cittadinolex.kataweb.it/article_view.jsp?idArt=43715&idCat=120; For ongoing coverage on the Italian penal system: Associazione Antigone, http://www.associazioneantigone.it; Repubblica 27.7.06.

Prisons - in brief

■ **UK: Ray Gilbert - ten years over tariff**. Ray Gilbert is now 10 years over tariff, still struggling to overturn his conviction for the murder of John Suffield, some six years after the quashing of the conviction of his co-defendant John Kamara. Ray has, over the years, refused to allow the Prison Service to treat him like an animal, and has paid a price in terms of the conditions in which he has been held. Until recently, Ray was held in the Close Supervision Centre at HMP Woodhill, but was transferred to the "therapeutic community" at HMP Grendon. In a discussion meeting, Ray made it clear that he felt "under heavy manners" from prison staff. Staff treated this as a threat on Ray's part. All 37 prisoners also present supported Ray's account. On the staff say-so he was shipped back to Woodhill. To write letters of support: Ray Gilbert H10111, HMP Woodhill, Tattenhoe Street, Milton Keynes MK4 4DA

■ **UK: Most women prisoners should be given community sentences**. More women are jailed in the UK than in any other European nation, except Spain and Ukraine, according to research conducted by the Howard League. A total of 4,494 adult women and 202 girls are behind bars. Three quarters suffer mental health problems. Two thirds are drug/alcohol dependant. One in ten have attempted suicide prior to imprisonment. Half have suffered domestic violence. One third have been sexually abused. The Howard League notes that female prisoners are suffering "shocking levels of suicidal behaviour, sexual abuse, mental illness and drug addiction." The League suggests that custody should be reserved for a handful of violent, dangerous women - with the majority of women offenders given community sentences instead. All 15 womens' prisons would close over the next five years under the Howard League's proposals. The research notes that there are 2,076 more women and girls behind bars since New Labour came into office in May 1997. *Howard League 2.8.06; The Independent 2.5.06.*

■ **UK: Prison staff corrupt says Prison Service report**. A study by the Prison Service's anti-corruption unit and the Metropolitan police, has concluded that prison staff are the primary source for drugs in jails. At least 1,000 staff are believed to be corrupt. The study relies on anecdotal evidence and concludes that corrupt staff commit illegal acts for financial gain. *BBC News 31.7.06.*

Prisons - new material

Recent developments in prison law - part 1, Hamish Arnott & Simon Creighton. *Legal Action* July 2006, pp.14-19. This update reviews recent developments in case-law regarding life sentences, lifers' parole hearings, determinate licenses and recall and offenders 'unlawfully at large'. LAG, 242 Pentonville Road, London NI 9UN, www.lag.org.uk

Abu Ghraib: imprisonment and the war on terror, Avery F. Gordon. *Race and Class* Vol. 48 no 1 (July-September) 2006, pp42-59. This piece considers the torture and sadism used in US run prisons in Iraq and elsewhere and the light it sheds not only on the nature of military imprisonment, but also accepted civilian prison norms. Gordon considers excessive force, civil disability and the loss of internationally guaranteed rights and indefinite detention, practices that amount to a condition of permanent imprisonment, arguing that they have been pioneered by the USA's super-maximum civilian prisons. Gordon concludes: "Permanent war and permanent imprisonment are not exceptional but increasingly the routine means by which the racial state organises the abandonment of surplus and potentially rebellious populations and attempts to quarantine the effects of global poverty." Available from IRR, 2-6 Leeke Street, London WC1X 9HS, Tel. +44 (0)20 7 37 0041

LAW

UK

Control orders breach European human rights law

At the end of July Lord Justice Sullivan quashed the government's use of control orders, which have been imposed on six men who are accused of terrorism, but who cannot be brought before a court of law because there is not sufficient evidence to charge them. Under the control order regime the men have had severe restrictions applied to their freedom of movement and association, which prevent them from leaving their homes between the hours of 4pm and 10am, limits who they can meet and bans the use of mobile phones or the internet. In his ruling Mr Justice Sullivan described the restrictions as "the antithesis of liberty" and the "equivalent to imprisonment". Pointing out that the orders break European human rights laws he said: "[The men's] liberty to live a normal life within their residences is so curtailed as to be non-existent for all practical purposes."

The control orders ruling is the latest in a series of setbacks for the government's anti-terrorist strategy. In December 2004 the law lords ruled that government actions in imprisoning terror suspects without trial or access to full legal advice was unlawful. This ruling led to the introduction of the control orders, but in April the High court overturned the first case where one had been used, stating that the suspect had not been permitted a fair hearing. Home Office minister, Tony McNulty, has said that the government would appeal against the decision and defended the removal of individuals from the safety of the judicial process by invoking public safety, while Home Secretary, John Reid, accused the High court judge of "misunderstanding" the law and making "errors" in its interpretation.

Guardian 2.8.06; BBC News 2.8.06

Law - new material

"Carc, un caso di accanimento giudiziario", A. Mantovani, *Il Manifesto*, 30.7.06, p.7. This article assesses proceedings involving a Marxist-Leninist group (CARC), twelve of whose members are under investigation and may face charges of "association with the purpose of terrorism and subversion". Inquiries have ended and the case is now to be put before a judge to decide if they will face trial. The author notes that the accusations do not refer to the carrying out, planning or raising the hypothesis of committing, acts of terrorism, but rather, of harbouring certain "purposes" and of possible cooperation with the new Red Brigades or Sardinian independentist groups that have used explosive devices. The year that Giuseppe Maj, referred to as the group's leader, has just served in France at the behest of the Italian authorities, is described as "unjustifiable", and Mantovani suggests that the best possible outcome would be for the case to be stopped due to the lack of "suitability" and "concreteness" to justify the charges.

Gypsy and Traveller law update, Chris Johnson, Dr Angus Murdoch & Marc Willers. *Legal Action* July 2006, pp. 20-22. This is the first of three articles on developments in this area of law; it concentrates on the new planning regime and government guidance on the provision of sites for Gypsies and Travellers published in February.

Time to stop justifying assault on our children, Kathleen Marshall. *Scolag Journal*, May 2006. The Commissioner for children and young people in Scotland addresses the issue of physically disciplining children. She covers the current legal basis for hitting children and its compatibility with international law and other EU member states. She also considers public opinion towards the issue and analyses the significance of recent opinion polls. Finally she considers the implications of giving children the same legal protection from assault as adults and argues that fear of prosecution appears to be the most important factor in resistance to legal change.

SECURITY & INTELLIGENCE

THE NETHERLANDS

Secret service leaks, journalist's observations and murky police practices

After a secret service scandal recently revealed that Germany's foreign intelligence service (*Bundesnachrichtendienst*, BND) unlawfully spied on journalists to ascertain the identity of their sources (see *Statewatch* Vol. 16 no 2), similar stories from Holland have revealed that this appears to be internal secret service (AIVD) practice in the Netherlands as well. But whereas in Germany, the scandal opened up a debate that questioned the adequacy of parliamentary control over the intelligence services, in the Netherlands the interior minister defended the surveillance of journalists, pointing out they are not protected by law against secret service eavesdropping. Furthermore, the two journalists concerned were interrogated and are now threatened with being charged with disclosing official secrets. The Dutch National Union of Journalists (*Nederlandse Vereniging van Journalisten* - NVJ) argues that both the interception and the criminalisation of the men not only violate their right to privacy, but also threaten the foundations of the democratic state and its principle of freedom of press and the protection of journalistic sources.

Joost de Haas and Bart Mos, two journalists working for *De Telegraaf*, Holland's biggest newspaper (which could be described as right-wing populist, favouring the coverage of sensational crime stories), were researching the case of the criminal Mink Kok, who was imprisoned in 1999 when police discovered an arsenal in his house. During his prosecution, Mink Kok collaborated with the public prosecutor Fred Teeven, who was hoping to receive information for his investigation into long-standing allegations of police corruption in the fight against serious crime. The allegations centred around police "controlled deliveries" of drugs, which were used to gain access to drug smuggling rings; the practice was uncovered when a special Amsterdam and Utrecht police unit was dissolved, leading to the so-called IRT affair, which in turn led to various inquiries and finally a parliamentary investigation in 1994 (the Van Traa Commission). Mink Kok was implicated in illegal arms trading and provided sensitive information to Teeven under the strict condition that this was to be confidential, to prevent possible reprisals from his former colleagues in the criminal underworld. It seems that Kok also passed on information to the Dutch secret service AIVD. Kok consequently received an unusually short sentence and was to be released in the summer of 2005, before he was rearrested in his prison cell in August 2005 on suspicion of involvement in the murder of Alkmaar drug dealer Jaap van der Heiden.

The *Telegraaf* journalists provided in-depth coverage of the Mink Kok case, using information that appeared to have been leaked by an AIVD employee. It showed that the AIVD's forerunner, the BVD, had carried out an investigation in the late 1990s into the alleged police corruption. The AIVD was further embarrassed by a series of stories the newspaper ran in January this year, claiming that top secret BVD files on Kok had been sold by one of their employees to the drugs mafia. On 4 May, Paul H, a former BVD employee, was arrested and accused of selling secret information to top criminals. Four more people

were arrested a few weeks later. But on 9 May, the two journalists were charged with "violating State secrecy" and interrogated for several hours; the accused made use of their right to silence. De Haas and Mos were fingerprinted and forced to provide DNA samples. On 20 May this year, the *Telegraaf* disclosed that the AIVD had intercepted the telephone conversations of the journalists and put them under observation for four months, acting on information from "trustworthy sources in The Haag". This triggered a minor scandal, with the Dutch Union of Journalists as well as the Association of Chief Newspaper Editors (*Nederlands Genootschap van Hoofdredacteuren*) condemning the intelligence service's actions. The interior minister Johan Remkes, defended the intelligence services in parliament at the end of May, also admitting that the allegations were true and that he had authorised eavesdropping on the journalists and putting them under observation. He also said that journalists were not protected by law from being bugged by the secret services. The newspaper responded by starting a campaign to demand an end to the surveillance and the destruction of all of the information gathered on the journalists.

On 21 June, a court in The Hague ordered the AIVD to stop monitoring the journalists within two days and to destroy all of the information gathered within six months, without making copies of the material. According to the judge, the eavesdropping operation was not unlawful, but there was insufficient evidence to demonstrate that the men constituted a threat to national security. Interior minister Johan Remkes' declared the judge's ruling to be "very displeasing" and announced that he would appeal the decision. Meanwhile, the public prosecutor in Breda is still investigating whether de Haas and Mos can be prosecuted for revealing state secrets.

Elsevier online, 30.05.06; "Open letter by the Dutch National Union of Journalists to interior minister Johan Remkes and justice minister Piet Hein Donner, demanding an end to the observations and the protection of journalistic sources, available at:

http://www.villamedia.nl/n/nvj/nieuws/2006mei23brf.shtm

Background article from Jansen & Janssen (in Dutch): Observant 42, 15.07.06, http://www.burojansen.nl/nieuwsbrief_item.php?id=22#144

Security - new material

The European union Developing an Intelligence Capacity, *Joao Vaz Antunes, Studies in intelligence* (CIA) Vol. 49 no. 4, 2005 pp. 65-702

Beating for Britain, Naima Bouteldja. *Red Pepper* February 2006, p. 17. Article on British intelligence involvement in the kidnapping of 28 Pakistanis in Greece after the 7 July London bombings. The Greek newspaper, *Proto Thema*, named MI6 station chief Nicholas Langman as being involved in the illegal detentions along with 15 Greek agents. Several of the Pakistani migrants have said that they were beaten and were told that they would be killed if they dared to report their ordeal. The Greek government has blamed the British authorities whose response was initially to plead total ignorance before rejecting the allegations. Frangiskos Ragoussis, the lawyer for the 28 Pakistanis, has filed a petition with the Greek parliament to get the answers that both governments are unwilling to supply voluntarily; he is also suing the Greek government for kidnap and torture.

They had to die: assassination against liberation, Victoria Brittain. *Race and Class* Vol. 48 no 1 (July-September) 2006, pp. 60-74. This article surveys the use of political assassinations by western states and their agents from the 1960s onwards, observing that "Not only have some of the greatest of Third World leaders been killed but so, too, has the hope for political change that they embodied." Examining the "bloody legacy of killings of leaders from Algeria, Cameroon, Congo, Ghana, Guinea-Bissau, Morocco, Mozambique, Palestine, South Africa, Togo and Zimbabwbe" Brittain suggests that "today's daily diet of

CIVIL LIBERTIES

UK

"Are we sending our kids to school or to prison?"

Fingerprint identification systems are increasingly being introduced to British schools without parental consent. Roughly two and a half million children have had their fingerprints taken at over 5,000 schools and around 20 more are introducing the practice every week according to the "Leave them kids alone" campaign. The most popular system, "Junior Librarian", has been marketed by Micro Librarian Systems since 2002 and uses a scanner to check books in and out of a school library. Another newer system, used for registration and cashless catering, is provided by VeriCool and has sparked further controversy because its parent company, Anteon, provides technology and training to the US military.

The conditions under which these systems are implemented seem to vary dramatically. While some parents have been consulted and assured that participation in the scheme is on a voluntary basis, the first knowledge others have had of their child being fingerprinted came after the event. Further, often even if parents are notified they are not asked to give their consent. Some schools, such as St Matthew's Primary in Cambridge, have gone as far as to make the scheme compulsory and sixth-formers at Edgbarrow school in Berkshire claim to have been threatened with expulsion if they refuse to participate in a new thumbprint attendance scheme. Phil Booth of NO2ID asks: "Are we sending our kids to school or to prison? We wouldn't accept fingerprinting for adults without informed consent so it is utterly outrageous that children as young as five are being targeted."

Recently the "Leave them kids alone" campaign has been launched to bring attention to the escalating number of systems in place, but in general the fact that there has been so little objection and public debate highlights just how fully biometric based technology is beginning to pervade society. Rightly or wrongly fingerprinting is associated with criminality and represents a breach of a child's personal privacy at an age where they are unable to understand the implications. VeriCool say that children like the system because "they feel like they are in *Doctor Who*" but it serves to normalise the handing out of unique personal data.

This desensitisation is of particular concern given inherent worries over the security of and access to these fingerprint records. The fundamental concern with using biometric data as a method of verifying a person's identity is that, unlike a password or a pin number, it cannot be cancelled or changed but is permanently attached to you; if it is compromised it is compromised forever. It follows that such data needs to be especially well protected, particularly at a time when identity theft is an ever-increasing problem. An August 2006 YouGov poll found that 9% of Britons claim to have been a victim of identity fraud.

Accordingly, David Clouter of the "Leave them kids alone" campaign argues: "I do not think that a school is a secure enough place to store such information - if someone got hold of it they could use it for identity theft at any point in my daughter's future." Makers of the systems say that only a series of points on the finger are stored which cannot then be used to recreate the full fingerprint, and that the data is encrypted making it very hard to hack. Andrew Clymer, an IT consultant who has written on the subject, doubts these claims: "What we've seen in the last ten years is what's true in IT today isn't necessarily true in future.

Anybody who says it is secure and can't be compromised is a liar."

The potential for the misuse of data once taken was also highlighted in July 2006 when *The Observer* revealed that LGC, a private firm responsible for analysing data before it is submitted to the police National DNA Database, has been secretly keeping the biometric samples of hundreds of thousands of people. The paper also disclosed that the Home Office has authorised a controversial genetic study of these DNA samples to see if it is possible to predict a suspect's ethnicity or skin colour. And in September 2005 prison officers in Scotland were forced to abandon a new £3 million security system based on fingerprint recognition after it repeatedly failed. A prisoner demonstrated that he could get through the system and it later emerged that all 420 inmates had enjoyed full access to all parts of the high-security prison for over a month.

Clearly the latest technology is never infallible and access to it can never be fully safeguarded. It would seem prudent then for permanent unchangeable information to only be provided if there are justifiable and proportionate gains on offer given the grave implications of its misuse. At the very least it should not be taken without consent. While such a scheme may solve some administrative problems it will also create new ones and comes with a host of technological vulnerabilities alien to a pen and paper. While the press release for "Junior Librarian" says that: "Identikit biometric solution encourages school library lending" no evidence to corroborate a link between fingerprinting and the desire to learn is provided.

Similarly VeriCool queries on its website: "Absenteeism. Could it be a thing of the past?" without offering an explanation as to how registering attendance in a different way will remove a child's desire to truant. Another issue is the role of Anteon, VeriCool's parent company. The *Times Educational Supplement* reported on 26 July that Anteon is:

> *A military company connected to the US interrogators at Abu Ghraib in Iraq and Guantanamo Bay*

Anteon is also responsible for providing alien ID cards to Mexican citizens on the US border and running US military funded news websites in the Balkans and Africa to broadcast propaganda. The company also holds patent over the VeriChip, a human implant RFID chip (Radio Frequency Identification) used for personal identification. In May 2006 Anteon proposed the chip become mandatory for all immigrant workers entering the US.

VeriCool says that the company's defence and educational spheres are separate. However, after the murder of 11-year-old Scottish schoolboy Rory Blackhall in August 2005, Anteon UK Ltd sent an email to 340 local authorities promoting VeriCool:

> *Dear Sir or Madam like everyone else, we were shocked and saddened by the apparent murder of the young schoolboy in West Lothian. We believe that we can help reduce the possibility of such future tragedies and so wish to bring to your attention our new anti-truancy and first day contact system that is already in use by some schools in the UK.*

The Advertising Standards Authority banned the advert on the basis that the email was "offensive and distressing" as it "used a recent probable murder as means of promoting the product."

Leave Them Kids Alone website, www.leavethemkidsalone.com,

Times Educational Supplement 21/7/06; The Guardian 30/3/06, 9/8/06; The Observer 16/7/06; The Scotsman 20/9/05; The Register 16/11/05; The Mirror 3/7/06; Times Educational Supplement 21.6.06.

EUROPE

RFID-documents

RFID (Radio Frequency Identification) is an automatic data capture technology which uses tiny tracking chips that can be affixed to products (or passports and ID cards). These tiny chips can be used to track items at a distance, so that those who carry the chip around with them, knowingly or unknowingly, do not know which information about their purchasing behaviour, or in case of an RFID tagged passport, personal details, is transmitted to unwanted parties. RFID chips, often hidden, are already being used by businesses and the EU has agreed that the technology can be used in passports. The opposition to RFID and its implications for privacy, human rights and environmental effects, is growing, and campaigners are disseminating information on how to destroy the chips.

The German Chaos Computer Club, which campaigns on data protection and leads a "stop RFID campaign" in Germany, says that:

> *Small RFID tracking chips see increasing use all around us. Whether you are driving a car (ignition keys, immobiliser systems), or are a lumber jack dragging trees about in a forest, whether you use a ski-lift, visit a soccer game, or wish to register and track the yoghurt containers on the shelves of the small shop you own - almost everywhere you will encounter commercial solutions for the use of RFID once you start looking. And mostly for the sole benefit of the users, i.e. the companies. Personnel, customers and privacy are the ones that bear the risks.*

Chips can be read from up to 100 metres, as in cases of tagged car license plates, for example. There is a passive and an active variant, the latter runs on a tiny battery that needs to be changed once in a while. RFID can be used for all sorts of purposes, for example, to track products (used by retailers to make shoplifting more difficult or to spy on consumer behaviour) in the security industry or for personal use (e.g. tagging house keys). They are also found in tickets (football matches or transport), ID-cards, bank notes, books and are even used in forestry. With a small glass layer around them these small chips can even be implanted subcutaneously, which according to some is useful for tagging pets and cattle.

It did not take long before the wish to tag people was formulated. One of the first companies to implant its personnel with RFID chips was the security company CitiWatch in Cincinnati which now runs a unit whose doors only open to people with certain chips in their biceps (1). The patent holder and producer of the chip, the company VeriChip, has proposed implanting RFID chips in all immigrants to the USA, at least this is what Scott Silverman, VeriChip's chairman of the board, demanded on 16 May on Fox News Channel (2). Fortunately, whilst the use of RFID is growing, so is opposition to this technology. Aside from the obvious privacy concerns, basic human rights are endangered through the use of RFID chips. The implant of an RFID chip should be seen as a surgical procedure, human rights and civil liberties activists argue, and if applied against the will of the person concerned, should be treated as unlawful maltreatment (3). Resistance is also growing from within the tech-scene, which is showing how easily the chip can be read by unwanted parties, or even hacked or cloned (i.e. copied) (4). An increasing number of sites are giving tips on how to destroy the chips. Apparently, they do not survive a grilling in the microwave, which might not be of use if it is attached to your yoghurt container or implanted in your arm - the chips have been known to go up in flames when microwaved. The solution in the latter case might be a small portable EMP generator, which can be constructed from an old flash camera. RFID zappers are also on the market, as well as key rings that can detect and warn you if an RFID reading machine is active near you.

The EU agreed, in December 2004, that RFID chips containing peoples' fingerprints are to be included in new passports issued from 2007. The Commission has repeatedly tried to dictate the use of biometrics in ID cards, recently by way of JHA Council Conclusions, based on advice it requested from the Article 6 Committee (a technical committee set up by the Commission to work out the implementation of the uniform visa

format in 1995) on "common standards for national identity cards" (7). Opposition from the Czech Republic and Belgium, who complained that the use of biometrics was not a technical issue and required "a wide-ranging debate, which includes the protection of private life, budgetary and organisational aspects", led to all references to fingerprints and RFID chips being deleted from the Conclusions.

Meanwhile, the introduction of RFID chips continues at the Member State level: in the UK, a recent House of Commons report (8) on ID card technologies "identified weaknesses in the use of scientific advice and evidence" and was "disappointed with the lack of transparency surrounding the incorporation of scientific advice, the procurement process and the ICT [Information and Communication Technology] system". Although the report almost ignored the health, privacy and safety concerns linked to RFID chips, it did point out that the government is not transparent about its planned use of the technology. Andy Burnham, Minister of State for Delivery and Quality in the Department of Health has given contradictory statements on the matter: whilst on 10 October 2005 he gave a written answer stating that "We are considering the use of 'contactless chips', which contain radio frequency chips", on 13 December 2005, his written answer said: "There are no plans to use radio frequency identification tags in ID cards". A few months later, he said that the "identity cards programme has reviewed technical methodologies for anti-skimming measures for contactless cards which are compliant with International Civil Aviation Organisation (ICAO) recommendations for machine-readable travel documents".

The Italian Foreign Affairs Ministry came straight to the point on 25 November 2005 by issuing a decree introducing a new electronic passport that included biometric data contained in RFID chips with a minimum capacity of 64 kb embedded in the cover of the document (*Statewatch News Online*, February 2006). Hackers, at a conference in Las Vegas in early August this year (5), have pointed out that RFID chips in passports might not necessarily increase security: they were shown a film about a bomb that was developed by a security-concerned US citizen, with a detonator that reacted to an RFID signal so it exploded when detecting American passports.

1) http://www.securityfocus.com/brief/134

2) http://www.spychips.com/press-releases/silverman-foxnews.html

3) A film showing the surgical procedure of implantation http://www.youtube.com/watch.php?v=yDcZjd8UurQ

4) http://cq.cx/verichip.pl

5) Black Hat: Digital Self Defense: http://www.blackhat.com/main.html

6) Press release about the test: http://www.flexilis.com/epassport.html

7) EU: Commission to resurrect biometric ID cards?, Statewatch News Online, February 2006

8) House of Commons (Science and Technology Committee) Identity Card Technologies: Scientific Advice, Risk and Evidence, Sixth Report of Session 2005-06, HC 1032, 4.8.2006

For more information about RFID technology and what to do about it, see http://www.foebud.org/rfid/en/where-find

UK

FoI clearing house branded "secretive"

A Constitutional Affairs Committee report into the working of the Freedom of Information (FoI) Act, which came into force on 1 January 2005 to give people the right to access to information held by public bodies in the UK, has revealed an internal department that refuses to reveal information about its functions. The Department for Constitutional Affairs (DCA) set up a "clearing house" in 2004 to function as an "expert advice centre to which cases can be referred by central government departments for further assistance when assessing the duty to release or withhold information." However, when Professor Alisdair Roberts made a FoI request asking for information about the number of cases referred to the body, it was refused on the grounds that the disclosure of any such information "could prejudice the effective conduct of public affairs". A similar experience was had by Maurice Frankel, director of the Campaign for Freedom of Information, who told the Committee: "I started getting my requests refused and discovered that the clearing house had advised departments to refuse to release their internal reviews to me, on the grounds that the information was not held in the form requested. So they were not even using a particular exemption."

The department's refusals are described by the report as "an unacceptable position for the government department in charge of promoting FoI compliance" (p. 31). The Committee's report went on went on to make the following recommendation (no. 91) to the clearing house:

> *The clearing house must comply fully with the letter and the spirit of the FOI Act, be openly accountable for its work and respond to any individual requests for information which it receives in full accordance with the Act. (p31)*

Thus the department responsible for giving "expert advice" to other central government departments on the duty to release or withhold information has been found to be unaccountable and not acting in accordance with the FoI Act. The Committee is recommending "that the clearing house publish quarterly statistics about its case handling so as to provide clear information about its role", (Recommendation 92).

Campaign for Freedom of Information website: http://www.cfoi.org.uk/

House of Commons Constitutional Affairs Committee "Freedom of Information - one year on. Seventh Report of Session 2005-06" (HC 991) 13.6.06, available at:

http://www.publications.parliament.uk/pa/cm200506/cmselect/cmconst/991/991.pdf

Civil liberties - in brief

■ **US/Cuba: Guantanamo tribunals of "ghost prisoners" are illegal**. In late June the US Supreme Court ruled that the Bush administration does not have the authority to impose trial by military commission on its prisoners at Guantanamo Bay, Cuba. The ruling, which has been widely interpreted as a blow to the US' so-called "war on terror", does not order the closure of the gulag but does say that the proceedings have violated Geneva Conventions. The Supreme Court's decision followed a legal challenge by Salim Ahmad Hamden, who is alleged to have been Osama Bin Laden's driver, and is one of ten men facing a military tribunal. The court found that Common Article 3 to the 1949 Geneva Convention, which provides that all detainees, whether prisoners of war, civilians or unlawful combatants, are legally entitled to humane treatment in all circumstances, applies to the US conflict with al Qaeda. In its ruling the court said: "Whether or not the [US] government has charged Hamden with an offence against the law of war, cognisable by a military commission, the commission lacks the power to proceed." The court's ruling was welcomed by the Human Rights Watch organisation, which has called for the US to close Guantanamo and its other secret prisons; Kenneth Roth, the group's executive director said "We welcome the Supreme Court's repudiation of a system that failed to meet basic standards for a fair trial." *BBC News 29.6.06; Human Rights Watch press release 29.6.06. Human Rights Watch website, http://www.hrw.org*

Russia/Chechnya: Russia "war on terror" violated Convention. The European Court of Human Rights (ECHR) ruled in July that Russia was responsible for the death of

Khadzhi-Murat Yandiyev, one of thousands of Chechens who disappeared in the Kremlin's "war on terror". The case was brought by Fatima Bazarkina (Application no. 69481/01) on behalf of her missing son and the court found that Russia had violated Article 2 (right to life), Article 5 (right to liberty and security) and also Article 13 (right to an effective remedy); there was also a violation of Article 3 (prohibition of inhuman or degrading treatment) in respect of the applicant, Mrs Bazarkina. The judgement found Russia to be responsible for the disappearance and likely murder of Yandiyev who was probably executed by troops in 2000. A television crew had filmed General Baranov as he ordered Yandiyev to be taken away and shot; Baranov is now the commander of Russian forces in the North Caucasus. Human Rights groups believe that between 3,000 and 5,000 Chechens have "disappeared" since the second Russian invasion of Chechnya in 1999. Last February Russia was censured by the ECHR and instructed to pay compensation (135,000 euros) to eleven civilians killed by federal troops in 1999. *ECHR "Chamber Judgement Razorkina v. Russia", press release 27.7.06: http://emiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=&sessionid=7986087&skin=hudoc-pr-en*

Civil liberties - new material

Die alternativen der Friedensbewegung zum militärischen Konfliktaustrag [Peace movement alternatives to military conflict management]. *Kooperation für den Frieden*. March 2006, pp 16, EUR 1. The Peace Network initiated a Monitoring Project in January 2005 entitled *Civil Conflict Resolution - Violence and War Prevention*, by which it informs civil society about alternatives to violent conflict management and is trying to work towards a broad-based (international) peace movement that offers real solutions to international conflicts and does away with the myth of humanitarian interventions. Available from: friekoop@bonn.comlink.org

Enemy Combatants: Moazzem Begg on his imprisonment at Guantanamo, Bagram and Kandahar. *CagePrisoners* 1.8.06. This is the transcript of an interview with Moazzem Begg, a British citizen who moved to Afghanistan to become an aid worker in 2001, until he was abducted by the CIA in violation of international law but with the tacit approval of the British government. He was hooded, shackled and cuffed and "ghosted" to US bases at Kandahar and Bagram before being abandoned to the US gulag at Guantanamo Bay. Labelled an "enemy combatant" by the US government, Moazzem was never charged with a crime and was eventually released with three other British citizens following a long campaign by friends and supporters. In this interview he describes the 300+ interrogations that he was subjected to during his three year imprisonment and describes the murder of two fellow detainees. Moazzem was released in January 2005, but has received no apology or compensation. See: *CagePrisoners* website: http://www.cageprisoners.com/articles.php?id=15535

Back to the burqa, Sonali Kolhatkar. *Red Pepper* issue 144 (August) 2006, pp.18-19. This article discusses the "efforts of the Bush and Blair administrations to convince the world that the 2001 war "liberated" women in Afghanistan." The article concludes that the reality of the Afghanistan war was to simply exchange one set of misogynist rulers for another: "Celebrating the resistance of Afghan women or even admitting their oppression has not ended, unravels part of the justification for war and instead places blame on their purported "saviours". Now that US allies are in power, we are told that the country has been stabilised and Afghan women 'liberated'. No longer does one hear Laura Bush and Cherie Blair speaking out about women's rights in Afghanistan, she says. No longer do the mainstream western media sport exposes about the mistreatment of Afghan women, despite the fact that the women - and men - of Afghanistan continue to suffer under new tyrants. Afghan women are left to continue "alone with the hard work of liberating themselves from all forms of fundamentalism and foreign domination."

Informationen: *Komitee für Grundrechte und Demokratie* Issue 4, July 2006, pp 4, Free. This monthly newsletter of the German civil liberties organisation includes a survey of the World Cup and the infringement of civil rights it brought about: excessive data collection, systematic surveillance, preventative arrests, repressive police tactics and the planned increase of law enforcement powers are highlighted. Available from: info@grundrechtekomitee.de

MILITARY

NATO

Debate on European defence shield warming up

In May NATO announced that it had completed a 10,000 page Missile Defence Feasibility Study for a strategic weapons system to protect territory, forces and population in the NATO part of Europe from missile attacks. The study contains threat scenarios and detailed defence architecture to ensure successful interception of incoming ballistic missiles. It was developed by an international consortium of industries, led by the US firm Science Applications International Corporation after nearly four years of work.

The system will consist of a mix of sensors of different types, land-base sensors and possibly satellite sensors deployed in a "very small number at a very few possible different locations."

NATO's Assistant Secretary for Defence Investment, Marshall Billingslea, who delivered the study to the North Atlantic Council, refused to answer repeated questions by journalists on where the growing threat to NATO was coming from. He was able to confirm however that the European system would have a "logical interface" (that is: will be integrated) with the existing $10bn a year US missile defence system. Meanwhile the US is negotiating bilaterally with Poland, the Czech Republic and possibly Hungary as locations for a US missile base as part of their own system. NATO officials are now concerned that the US outfit might undermine unity by only protecting the countries that agree to base US interceptors on their territory.

After the North Korean missile tests in July NATO secretary-general De Hoop Scheffer tried to move the debate ahead and mentioned Pyongyang and Teheran by name as posing "increasing dangers". The NATO summit in Riga in November this year is expected to decide whether to approve or reject the missile system for Europe. NATO has already begun work on an sub-strategic anti-missile system that protects only deployed troops and is scheduled to be ready by 2010.

The British American Security Information Council (BASIC) has called for the NATO feasibility study to be declassified and placed in the public domain to allow for independent and parliamentary scrutiny, describing the project as a "Maginot line in the sky".

"NATO to build missile defence systems for Europe". Irna 10.5.06; "BASIC calls for declassification of NATO's missile defence study", BASIC Press Release 31.5.06; "Nato warms to plan for defence shield", Daniel Dombey, Demetri Sevastopulo. Financial Times 7.7.06; "North Korea missiles prompt NATO debate on defence shield", Lucia Kubosova. EUobserver 7.7.06

UK

Prisoner of conscience released and tagged

In April Flight Lieutenant Malcolm Kendall-Smith was jailed for eight months and discharged from the military for refusing to fight in Iraq after being found guilty of failing to comply with "lawful orders". The RAF officer and doctor, who is based at

RAF Kinloss in Morayshire, Scotland, was convicted on five charges, including refusing to serve in Basra, by a court martial panel of five officers. He is the first member of the armed forces to be charged with disobeying an order to deploy to Iraq and the ruling has generated widespread criticism. Kendall-Smith had argued that he was acting on moral grounds established at the Nuremberg Tribunal and was not prepared to participate in an "act of aggression" that was contrary to international law. He likened the US-led invasion of Iraq to a nazi war crime and has lodged an appeal against the decision. The RAF officer received widespread support for his arguments, including more than 500 letters that were sent to his solicitor. Civil liberties groups argue that he is being criminalised for acting according to his conscience, (see *Statewatch* Vol. 15 no 5 & 6).

The military panel of five RAF officers took only one and a half hours to reach their guilty verdicts. The court martial panel accepted that Kendall-Smith had acted on moral grounds but asserted that his actions in questioning military authority were "arrogant", (at a previous hearing Judge Advocate Jack Bayliss had instructed the doctor not to use this defence). Bayliss also refused to allow Kendall-Smith to present witnesses, including a fellow soldier and an Iraqi doctor, who would have described the collapse of the Iraqi state's infrastructure as a direct consequence of the invasion. Bayliss said that the eight month sentence was intended to make an example of Kendall-Smith and to serve as a warning to others who might follow his example. Kendall-Smith countered that after studying the legal advice given to the prime minister:

> *I satisfied myself that the actions of the armed forces in Iraq were in fact unlawful, as was the conflict...I believe that the current occupation of Iraq is an illegal act and for me to comply with an act which is illegal would put me in conflict with both domestic and international law.*

Bayliss' remarks concerning obedience to orders ignores the long-standing principal established at the Nuremberg war trials that obeying illegal orders was no defence against charges of war crimes.

In July Kendall-Smith was released from prison and placed under "home detention" until September after serving part of his sentence in the high-security Chelmsford prison. There was no explanation from the authorities as to why he should have been detained in a high-security jail. The conditions imposed on him mean that he has been tagged and placed under a curfew; he also has been ordered to pay £20,000 in court costs. The Military Families Against the War Campaign has set up a special fund to help cover some of these cost (see contact details below). Speaking shortly after his release from prison Kendall-Phillips said:

> *Do not believe government propaganda, the continuing use of force against the people of the formerly independent state of Iraq is motivated by political corruption, corporate profits and aggressive capitalism.*

Military Families Against the War:http://www.mfaw.org.uk/mkspage.html; Guardian 13.7.06; Independent 14.7.06.

SCOTLAND

Prestwick, a staging post for US armaments to Israel

On 28 July the *Daily Telegraph* newspaper revealed that Prestwick airport, near Glasgow, Scotland, was "being used as a staging post for major shipments of bunker-busting bombs from the USA to Israel". From the airport the weapons were being shipped to Israel for use in Lebanon. The Israeli air force's bombing of cities has been widely accused of indiscriminately targeting Lebanese citizens and the country's infrastructure. The Israeli attacks prompted many protests across the world, and a protest in London saw more than 100,000 people march through central London in solidarity with the Lebanese people. Prestwick has also been identified by the Scottish National Party as a transit point through which US rendition victims pass on route to Guantanamo Bay or other secret sites used by the US and its allies to incarcerate and torture political opponents.

The news that US cargo planes, filled with the 5,000 lb GBU-28 guided bomb units on route to Israel, had refuelled at Prestwick airport, and later at military bases, was greeted with outrage in Scotland. The GBU-28 guided bomb units, were designed to penetrate hardened targets before exploding, and it is capable of passing through 100 feet of earth or 20 feet of concrete. First used in the US invasion of Iraq in 1991, they were sold to the IDF in April this year as part of an arms deal that has been approved in the US. David Robertson, in *The Times* newspaper, reports that Israel has more than US $4 billion in outstanding military credit with the US, and it is thought that the 100 GBU-28's ordered by Israel could cost £30 million; an accompanying JP8 jet fuel order could be worth another $210 million. In all Israel receives $2.6 billion in military financing from the US annually and almost all of the money goes back to US companies in what European defence contractors have described as a subsidy.

The use of Prestwick as a staging post to send arms to Israel, initially without the US even informing the UK, prompted Foreign Secretary, Margaret Beckett, to lodge a formal complaint about the overriding of the normal procedures - which the US described as a "failure to complete the paperwork". Subsequent flights were diverted to a US military base. Politicians from the Scottish National Party (SNP), the Conservative Party and the even the Scottish Labour Party, whose Irene Oldfeather expressed her view that the arms shipment was "inappropriate", objected to British support for the Israeli invasion.

The Campaign Against the Arms Trade (CAAT) says that the UK government licensed the export of arms worth £2.25 million to Israel in 2005; this was more than twice the amount in 2004. The exports include bombs, rockets, torpedoes, machine guns, missiles, mines and components for tanks and combat aircraft. The F-16 fighter planes and Apache helicopters used by Israel to bomb Lebanese and Palestinian towns and villages contain components supplied by the UK. Despite the United Nations belief that "Israel violates humanitarian law" the sale of British arms occurs in disregard of the Consolidated EU and National Arms Export Licensing Criteria, which asses "the impact on regional peace, security and stability and the human rights record of the recipient." The UK also spends millions of pounds each year on arms from Israeli companies.

The Scottish National Party (SNP) called for the government to end UK involvement "as a staging post for supplying weapons of mass destruction" and a legal challenge to halt the use of all airports and military bases for US bomb flights was launched in Glasgow. The Trident Ploughshares group undertook a series of "weapons inspections" of US military planes at Prestwick to investigate "the involvement by the British authorities in covert and active collusion in Israeli air force crimes in Lebanon" after identifying freighters run by Atlas Air, "a civilian airline connected to the US military." A spokesperson said:

> *We acted as War Crime Detectives. Britain is breaching international law by allowing Prestwick to be used by the US to fly bombs to Israel, Britain is also defying the law by deploying weapons of mass destruction and developing a new generation of these weapons...*

With more than a thousand Lebanese civilians killed and a million people ethnically cleansed from southern Lebanon the CAAT has called for an immediate embargo on the sale of all UK equipment to and purchases from all parties involved in the

fighting, the cancellation of existing contracts and an end to the transport of military equipment from the UK. The CAAT said: "In arming Israel the UK is both providing material support for its aggression and sending a message of approval for its actions."

Campaign Against the Arms Trade, www.caat.org.uk; Trident Ploughshares, www.tridentploughshares.0rg/index.php3; Daily telegraph 28.7.06; Scottish National Party press release 26.7.06. Times 1.8.06.

EU/CONGO

Belgian "drone" crashes in Congo

A Belgian Unmanned Aerial Vehicle (UAV or drone) Eagle B. Hunter (BH285) crashed at Kingabwa, near Kinshasa, Congo on 28 July, setting a house ablaze and injuring five people. The UAV was deployed to Kinshasa in support of the 2,000-strong European Union Military Force (EUFOR) based in Congo and Gabon to back up a 17,000 strong UN peacekeeping force deployed across the Congo. The drone was on its maiden flight and a EUFOR press release said that it was "intended to take photographs and is not armed." The Israel Aircraft Industries (IAI) Eagle B. Hunter system was only declared operational by the Belgian force in July 2004, after being tested over territorial waters in 2003 and 2004 by the 80 UAV Squadron. The Belgian government originally purchased three UAV systems from IAI in 1998 in a contract involving Alcatel Etca SA, Alcatel Bell Space & Defense NV, SAIT Systems SA, Sonica SA and IAI's MALAT Division. IAI describes the upgraded drone, which is based on the Hunter systems used by the US and French armies, thus:

> *The principal upgraded capabilities of the B-Hunter are full automated takeoff and landing, advanced ground control station and advanced avionics. These advancements were based on lessons learned from the US Army's successful operation of their Hunter UAV systems and are applicable to the US Army's Hunter fleet.*

While the Belgian Kinshasa drone may have been used for surveillance purposes, the USA has recently used Preditor AUVs - in flagrant breach of international law - to assassinate terrorist suspects in the Yemen, Pakistan and Afghanistan. They have also been deployed by the Israeli's in support of their invasion of the Lebanon.

In his pamphlet *Arming Big Brother: The EU's Security Research Programme* Ben Hayes draws attention to other European projects involving UAVs including the EU's "Border Surveillance by Unmanned Aerial Vehicles" programme which seeks to "understand the problems posed by various types of borders and to define realistic UAV based systems that would answer those problems" and the MARIUS project, a helicopter based command post designed to monitor "crisis management operations" (pp. 30-31). The planned civilian use of unmanned drones at airports in the USA has been criticised by aviation safety campaigners, who argue that they are a risk to the safety of other planes, passengers on the ground and people living near the airports. Last May a US Border Patrol Preditor crashed in Arizona prompting representatives of the Aircraft Owners and Pilots Association to express their concern, arguing that the drones should not be allowed to operate "until they are certified to the same level of safety as unmanned craft." According to a report to the US Congress in 2005 the UAV accident rate is 100 times higher than that of manned aircraft.

Ben Hayes "Arming Big Brother" (Statewatch/Transnational Institute) 2006; New Scientist 27.6.05; European Observer 31.7.06; Reuters 29.7.06

Military - in brief

- **EU: Bulletin board for arms sales**. Twenty-two EU nations have signed a voluntary code designed to open the 25-nation bloc's 30 billion euro arms industry to cross-border competition. Spain and Hungary have notified the EU that they will not take part in the "code of conduct" on defence purchases, that took effect on 1 July. Denmark had already an opt-out on the whole EU defence and security policy. For other EU-countries defence equipment contracts are now posted on an electronic bulletin board that is operated by the European Defence Agency. EU officials say that at the moment more than half of the annual spending on military equipment in Europe lies outside the EU free-market rules. The voluntary code will apply to defence contracts of over 1 million euros. Defence research contracts and highly strategic buys like nuclear, satellite or encryption technologies are exempted. Exemptions will also be allowed if ongoing operations (wars) dictate that nations need quick supply. Article 296 of the current EU treaty excludes war material from competition rules. Half of July's 584 million euros worth of defence tenders had been posted to the bulletin board. Remarkably, the bulk of this amount came from EU president Finland (532 million), followed by the Netherlands (18m), Germany (15.5) and Britain (14.5). France had posted three tenders but calculated their value as zero. *"Arms sales to become more competitive in the EU", International Herald Tribune 22.5.06; "Agency reports 532m Euros in Defense Buys open to Pan-EU bidding", Brooks Tigner, Defense News 27.7.06*

Military - new material

Fatal Strikes: Israel's indiscriminate Attacks Against Civilians in Lebanon. *Human Rights Watch*, August 2006, pp. 49. This report documents some of the violations of international humanitarian law by the Israeli Defence Forces in their invasion of Lebanon (between 12-27 July, when the number of civilian fatalities was estimated at over 500). The report focuses on attacks on civilian homes and fleeing civilians, documenting a number of cases, with a section on the applicable international law. The report contains a series of recommendations aimed at the Israeli government, the United Nations, the US government and the government of the United Kingdom "and other countries through which weapons, ammunition, or other military material may pass in transit to israel", as well as to Hizbollah and the governments of Syria and Iran. Available at: *http://hrw.org/reports/2006/lebanon0806/*

Weltmacht Europa Auf dem Weg in weltweite Kriege [World power Europe on its way toward worldwide wars], Tobias Pflüger/Jürgen Wagner (eds.). VSA-Verlag, Hamburg 2006

Graduates and gun runners, Mike Lewis. *Red Pepper* February 2006. p.10. This article examines the "growing corporate influence on our universities and the threat it poses to academic freedom" in light of a CAAT study which "found that nearly half of British universities hold significant investments in six of Britain's largest arms exporters."

Dossier I: Der Iran Konflikt. *Kooperation für den Frieden* April 2006, pp 20, EUR 1. The Peace Network is monitoring political developments in Iran around nuclear enrichment and examines the background to developments. It reports that Iran is acting within its international obligations under the Nuclear Non-Proliferation Treaty, gives a geographical overview of US military bases in the Middle East, puts the current danger of war into its historical context of occupations of Iran and its current context of other conflicts and clashes of interest in the region. This information leaflet is intended to form the basis for an informed campaign against the danger of war on Iran. Available from: friekoop@bonn.comlink.org

The ugly truth about everyday life in Baghdad (by the US ambassador), Zalamay Khalilzad. *The Independent* 20.6.06., pp1-2. This front page article reprints an edited version of a confidential cable - "Snapshot from the Office" - signed by the US ambassador in Baghdad, Zalamay Khalilzad. In an accompanying article Patrick Cockburn describes the memo as painting "a grim picture of Iraq as a

country disintegrating in which the real rulers are the militias, and the central government counts for nothing." The memo includes Khalilzad/s observations from the Green Zone on women's rights, dress code, evictions, power cuts, kidnappings, mistrust of the security forces, risks to staff, sectarian tensions, mistrust and neighbourhood governments.

Pound for pound, Greg Palast. The *Big Issue* no 703 (July 24-30) 2006, pp.10-11. Palast is the investigate journalist who "revealed how governor Jeb Bush purged thousands of predominantly Democrat-voting black citizens from the voter rolls before the 2000 [US] elections and so served up a victory on a silver platter to his brother George W." Described as a "liar" by Tony Blair and a "son-of-a-bitch" by the White House, here Palast gives an interview about his new book, *Armed Madhouse* (Penguin Books), in which he argues that "the invasion of Iraq wasn't about the US grabbing Saddam's oil, but actually about stopping the flow of oil. The real decision-makers weren't Washington hawks, but the big business leaders behind them, and they want to keep global supplies restricted, which in turn keeps prices high and the people who really run things - the Texas oil companies, Saudi princes and members of OPEC - fat and happy."

Who blew up the Samarra shrine? Mike Phipps. *Labour Left Briefing* June 2006, pp. 6. This article examines the destruction of the Shia Askari shrine in Samarra, Iraq on 22 February noting that "evidence is emerging that "Sunni factions" or "terrorist elements" are unlikely to have been able to carry out the attack". With increasing evidence of US death squads - the "South American option" - operating on the ground in Iraq, Phipps notes that: "The blast bears all the hallmarks of an expert operation, beyond the capability of Iraqi groups. Eyewitness accounts confirm that the US maintained checkpoints around the shrine at all times and Iraqi troops were active throughout the night in the area, withdrawing ten minutes before the bomb detonates. Many are asking how the attack could have been executed without them knowing.". Labour left Review, www.labourbriefing.org.uk

RACISM & FASCISM

Racism - new material

Britain's shame, A. Sivanandan. *Catalyst* July-August 2006, pp.18-20. Sivanandan considers "the mounting campaign against multiculturalism by politicians, pundits and the press" in Britain and across Europe, observing that it is "neither innocent nor innocuous" but "a prelude to policy that deems that there is one dominant culture, one unique set of values, one nativist loyalty - a policy of assimilation." He articulates "the route by which Britain became multicultural", pointing out that historically racial discrimination prevailed in employment, housing, social services and that the media and populist politicians undermined any notions of mutual tolerance; all that was left was a cultural diversity that came not from "government edict", but "from the joint fight against racial discrimination - on the factory floor and in the community - by Asians, African-Caribbeans and whites." It was the successes of the fight against racism that "were instrumental in making multiculturalism government policy" thereby "void[ing] it of anti racist roots and remit". It was this "distorted analysis" that has served as "a pointer to the way that culturalism, disguised as multiculturalism, is now being used by European governments as whipping boy to enforce assimilation, by law if necessary."

Antifaschistisches Infoblatt. No. 72, Summer 2006, pp 58, EUR 4.10. In 1986, German historians embarked on a project to rehabilitate the German nation from its fascist tendencies, which the Frankfurt school, based on their analytical approach to explaining the Holocaust and German modernity, had earlier identified as specific to the German *Volk* and its history of authoritarianism. Habermas first warned about the "apologetic tendencies" that started to characterise German history writing shortly after the conservatives took power in 1982, when chancellor Kohl announced an "intellectual and moral sea change". Historians started to call for the "normalisation" of the way Germans should analyse, interpret and feel about their Nazi past, and specifically the Holocaust. The historian Ernst Nolte vigorously pursued the theory that the fascist's drive to eradicate Jews and 'non-Arians' was in fact fuelled, even triggered, by the crimes of the Bolsheviks, the Gulag and 'class murder'. This so-called 'historians dispute' (*Historikerstreit*) has characterised German politics and history writing ever since, taking various revisionist forms; it is linked to right-wing apologetic justifications for the Holocaust, used by Neo-Nazis to gain a veneer of legitimacy, and it is frequently used to vilify Communism. This issue of AIB shows how the seemingly outdated historians dispute is still important today. It also includes a CD-Rom featuring various bands and anti-fascist initiatives talking about the fight against Neo-Nazis in Germany and regular news columns on the fascist and anti-fascist scene. Available from aib@nadir.org.

Racism and Islamaphobia in France: the far Right and the grassroots, Tim Cleary. *IRR European Race Bulletin* No 56 (Summer) 2006, pp9-15. "The negative media portrayal of young French citizens from the banlieues has often failed to see how political activism is growing at grassroots level in order to fill the void of political representation. In their activism, people are continuing a long-tradition of anti-racism, demanding long-overdue equal rights and equal treatment for all citizens, whatever their colour, ethnic origin or religious beliefs."

White off the scale, Neil Mackay. *Observer Music Monthly* January 2006, pp.20-26. Examination of the European "white power" music scene and its relations with the far right British National Party. The article profiles some of the "musicians" - the far right has never been known for its musical skills - and key players, including Steven Cartwright, "a fat Scotsman and former member of the ultra-extremist group Combat 18 and also one of the organisers of Blood and Honour", and Chris Telford "a leading light in the BNP in and around Newcastle and a member of the white power band Nemesis". The article also looks at the German scene, focusing on the role of Henrik Ostendorf and the role of the NPD.

suicide bombings and the targeting of civilians by both western governments and *jihadis*" is one consequence of the brutality effected by the policy of political assassination in support of western imperialism.

IMMIGRATION

GERMANY

Naturalisation law introduces compulsory culture

Many have commented on the irony that recent language and culture tests introduced in various EU countries as a precondition for receiving citizenship were failed by many of the citizens of the country and culture they were supposedly representing. The German polling institute *Omniquest*, for example, found that 64 percent of Germans questioned did not know the foundation year of the Federal Republic of Germany (1949), almost 50 percent could not name the number of regional states in Germany (16), 80 percent did not know the title of the German national anthem (*Deuschlandlied* or *Lied der Deutsch*, the "Germany Song" or "Song of Germans"), 60 percent did not know the official name of the German constitution (*Grundgesetz*, Basic Law) and 32.7 percent did not know the official name of the German head of state (*Bundespräsident*, Federal President, who has mainly a representative function).

Similar gaps in general knowledge amongst native populations have been recorded in the UK, France and the Netherlands, yet all of these countries have decided to introduce these tests into their naturalisation laws. On closer inspection, of course, the tests appear not to aim at the improvement of general knowledge among the applicants. Particularly in Germany, tests

implemented provisionally in Hesse and Baden-Württemberg attempted to screen Muslims on "Western values". Further, it should not be forgotten that Germany and Holland have combined the culture tests with a substantial future source of income for the state by hiring agencies to implement the tests and making the applicants pay for them.

German regional and federal interior ministers agreed on common criteria for naturalisation at their Permanent Regional Interior Ministers Conference on 5 May 2006 in Garmisch-Partenkirchen. Knowledge of the German language was already required, as was a legal long-term residency permit of eight years. The compulsory test, however, is new, as is an official ceremony on passing the test. Whereas it could be argued that integration or naturalisation courses in themselves are not a bad idea, given they provide some information that could be useful to the applicant, such as guides to the bureaucratic and administrative systems of a resident country, the controversial aspect of the naturalisation test is its content defining a constructed "national culture" and the fact that it is obligatory.

The Federal Office for Migration and Refugees, created with the new Immigration Act that came into force January 2005 with the specific task, amongst others, of developing and implementing the integration courses for foreigners (see *Statewatch* Vol 15 no 2), will develop the standards for the course. It will cover the areas of 'democracy', 'constitutional state', 'social welfare state', 'individual responsibility for the collective good', 'participation in political developments', 'gender equality', 'constitutional rights' and 'state symbols'. The interior minister's conference did not include the controversial questionnaires devised by the regional state of Hesse and Baden-Württemberg, which were widely criticised for racism and for their obvious attempt to identify, presumably, Islamic world views by posing questions about homosexuality, wife beating and polygamy. In September 2005, Baden-Württemberg's interior minister Heribert Rech had issued an internal order to 44 immigration offices instructing them to use a specific questionnaire for the purpose of assessing the "loyalty to the basic constitutional order" of applicants intending to naturalise. The minutes of the preparatory meetings of the questionnaire, however, revealed that the interior ministry thought that:

> *There are general doubts concerning Muslims [...] But because no one can recognise whether the Muslim applicant for naturalisation adheres to the traditional interpretation of the Koran or the "enlightened" so-called Euro-Islam, there are generally doubts concerning [Muslims about their loyalty to the basic liberal democratic order]. Landtag von Baden-Württemberg, 22.12.05 Drucksache 13/5015*

The Islamic Human Rights Commission, which assessed the test in detail, commented that:

> *the German authorities do not seem to take the issues of citizenship, integration and social peace seriously enough, by asking questions wholly irrelevant to the issues of the state [and] by asking imbecilic questions on family life. The question should be assessed as to whether the authorities could be sued for their racism since the 7/7 bombings. [The tests] most clearly showed that even "Western Muslims" are threatening and this test is therefore simply xenophobia garbed in unifying fear.*

Under the current regulation, applicants still have to give an oath of loyalty to the democratic order and immigration authorities can access information about them from the internal security services. Applicants also have to answer questions about membership or support of extremist organisations. The form this questioning will take is left to the regional states to decide. Another restriction introduced with the new decree is that anyone who was convicted in court for an offence with a sentence of up to 90 days imprisonment is excluded from consideration for naturalisation. The 90 days limit can be built up through a series of minor offences including traffic misdemeanours. The old regulation had a limit of 180 days which had to be a single offence.

Migration & Bevölkerung Newsletter, issue 5, July 2005.

Briefing on the recent naturalisation tests in Germany by the Islamic Human Rights Commission: http://www.ihrc.org.uk/show.php?id=1

Kölner Stadt-Anzeiger 23.3.06

IRELAND

Afghan asylum seekers removed from cathedral

On 14 May 38 Afghan men and youths who are seeking refugee status in Ireland occupied St Patrick's cathedral in Dublin city centre and began a hunger strike in despair at the asylum application process. The group, which included seven minors, staged the action to protest against moves to return them to Afghanistan which has become a "land of warlords and payees of foreign powers", according to Mehmooda Sheikibam, an activist with the Revolutionary Association of the Women of Afghanistan (RAWA) in the country. She continued:

> *All of the fundamentalist bands, including Taliban, were created, funded and trained by the CIA, turning a blind eye to the higher interests of the Afghan people and to the consequences of such sinister support to the fate of freedom and democracy in our country...Afghans will not see as their "liberators" those who drove the Taliban wolves through one door and unchained the rabid dogs of the Northern Alliance through another.*

In a recent statement (16 May) Amnesty International stated that it believed:

> *conditions in Afghanistan are generally adverse to the return of rejected asylum-seekers as there are no sufficient guarantees ensuring that such returns are safe and dignified"*

Nonetheless, after a week long impasse at the cathedral, during which the asylum seekers had threatened to kill themselves rather than be forced to return, a large force from the Irish police's (*Garda Siochana*) Public Order Unit arrived and removed the protestors. The Church of Ireland said that it had been instructed by the Department of Justice to desist from all negotiations with the asylum seekers, and that the department had rejected a series of proposals agreed between church officials and the hunger-strikers. The minors, who had earlier been made wards of court, were the first to leave the building and were taken away by ambulance. It took several hours of negotiation before the men came out and they were taken to a special sitting of the Bridewell court. The men said did not leave voluntarily, but did not resist. All of the men were remanded on bail until their court hearings.

Irish Anti War Movement "Irish anti War Movement supports the Afghan asylum seekers on hunger strike in St Patrick's Cathedral", 15.5.06, IAWM, PO Box 9260, Dublin 1, Ireland, Amnesty International "AI Requests Irish Government Not to Return Afghan Asylum Seekers, Public Statement", 16.5.04; Indymedia Ireland, http://www.indymedia.ie

GERMANY

Refugee politics and its deadly consequences, 1993-2005

The Anti-Racist Initiative Berlin (ARI) documents deaths and injuries occurring as a consequence of Germany's refugee policies. The 13th edition of their documentation can be ordered via ari_berlin_dok@gmx.de. This is a translation of the summary:

In 2005, the number of refugees applying for asylum in Germany (28,914) was the lowest since 1983. At the same time, of 48,102 decisions taken by the Federal Office for Refugees,

only 411 people were granted refugee status (0.9%). On the publication of these statistics on 8 January 2006, interior minister Schäuble announced that "the duty of those who have no right to remain to leave, will be implemented even more effectively". The hopes of most refugees, who have lived in Germany for ten years or longer, to receive a residency permit on the basis of the new immigration law which came into force in January 2005, were not fulfilled.

On the one hand, the practice of issuing "chain tolerations" (*Kettenduldungen*) continues. This bureaucratic measure forces people into a state of limbo for years and which - apart from the reduction of social rights - has a traumatic effect on those concerned because of their continuous fear of deportation. Particularly affected are children and those who are traumatised through their experiences of war and torture. On the other hand, this document highlights that the deportation authorities' methods are becoming increasingly brutal. It describes how people in psychiatric institutions are violently dragged from their beds at night to be deported. Refugees are forced to take tranquillisers. Under-age children are separated from their father or mother through deportations. More "effective", as Schäuble demands, is unimaginable.

Death after deportation

It is now possible to investigate a particularly tragic case that took place in 2004. Family B. had been living with their three children in Germany for almost ten years. After a deportation order, which was stopped when the father broke down in Amsterdam, the family went into hiding. When the pregnant Tschianana Nguya tried to get treatment because of her ill-health she was arrested. After a long period in detention she was deported in a desolate condition and with two of her children (aged 2 and 10) to the Republic of Congo. There she was immediately arrested and imprisoned - detained by the police she was later held in a military camp. Due to prison conditions her health continued to deteriorate. Only one week before she was expected to give birth, she was admitted to hospital. The child lived for one hour and the 34-year old mother died eight hours later.

She left behind - somewhere in Europe - two small children and her husband and 16-year-old son.

The document examines more than 4,700 cases to describe the impact of institutional racism on its victims. The evidence reveals the impact on refugees who had hoped to find protection and security in Germany, and who finally died as a consequence of the system or who suffered injuries. The annual figures cited by the document do not, in comparison with other years, show a downward trend, they remain constant. It can be expected that there is a considerably higher number of unreported cases.

The documentation from the period of 1.1.93 to 31.12.05

- 162 refugees died on their way to Germany or at its borders, 121 of them died at Germany's eastern borders,*

- 439 refugees suffered injuries crossing the border, 259 of those at the eastern borders,*

- 131 committed suicide in face of the threatened deportation or they died in the attempt to flee from deportation, 49 of them died in deportation detention,

- 629 refugees harmed themselves because of fear from deportation or protesting the threatened deportation (the risk of hunger strikes) or tried to commit suicide, 393 of them in deportation detention,

- 5 refugees died during deportation, and

- 299 refugees were injured during deportation because of police measures or maltreatment,

- 23 refugees died in their country of origin after their deportation, and at least 397 refugees were abused and tortured by police or military after their deportation,

- 62 refugees disappeared after their deportation,

- 12 refugees died due to police measures not related to their deportation,

- 380 refugees were harmed by police or security personnel, 127 of them whilst in prison,

- 67 people died during fires or arson attacks on refugee centres,

- 725 refugees were injured as a consequence of fire, sometimes severely,

- 13 people died of racist attacks in the streets.

Conclusions

Because of measures implemented by the German state, 333 refugees died - 80 refugees were killed in racist attacks or fires at asylum seekers homes.

* The figures for 2005 will increase because the official interior ministry statistics have not been published yet.

A hard-copy of the documentation (DIN A4 B 358 pages, ring bound) and soon the CD-Rom can be ordered for EUR 13.00 (plus EUR 1.60 mail costs) online under http://www.anti-rar.de/doku/bestell.htm, or via ANTIRASSISTISCHE INITIATIVE E.V., Dokumentationsstelle, Mariannenplatz 2 (Haus Bethanien, Südflügel), 10997 Berlin, phone: +49(0)30 743 95 432, fax: +49(0)30 627 05 905, ari-berlin-dok@gmx.de

A free online copy (currently only the 12th edition) is available under www.anti-rar.de/doku/titel.htm

Immigration - in brief

■ **UK: Enforced removal to "safe" Zimbabwe**: At the beginning of August the government got its way and won a court ruling that will see the enforced removal of Zimbabweans who sought sanctuary in the UK. It is thought that as many 9,000 people could be affected by the Asylum and Immigration Tribunal ruling which said that their deportations were fair in principal and that those returned did not *automatically* face persecution upon their return. While Immigration Minister, Liam O'Brien, hailed the government's victory as defending a "fair and robust" asylum system, commentators pointed out that while the government had won a legal victory it had lost the argument. Tim Finch, of the Refugee Council, said: "We still think it's not safe to remove anybody to Zimbabwbe in the present circumstances. Ministers should exercise the principle of safety first." *Independent 3.8.05*.

■ **UK: London Against Detention formed.** Following a vigil outside Harmondsworth Immigration Removal Centre in January after the death of Bereket Yahannes, a 28-year old Eritrean man who was facing deportation and was found hanged there, a meeting took place to inaugurate the newly formed organisation London Against Detention. The meeting was attended by campaigning organisations such as Barbed Wire Britain, the National Coalition for Anti-Deportation Campaigns, No Borders London, student groups, volunteers and others concerned about the welfare and treatment in the UK of immigrants, refugees and asylum seekers. At the meeting, which took place in London during February, "it was decided that London Against Detention would build a sustainable and vigorous campaign for the closure of the detention centres in the London area by holding regular meetings, demonstrations, producing publications, holding fundraising events and street stalls. Contact will be made with other humanitarian organisations, including churches, student organisations, immigrant and asylum support groups, refugee centres and others." For more information contact Mrs

Jacqueline Rigden, jackierigden@hotmail.com

Immigration - new material

Hinterland. *Bavarian Refugee Council*, Issues 0/2006 (pp 38) & 1/2006 (pp 62), EUR 6. The newsletter has changed its name and strategy: the editorial for the first issue of the relaunched journal promises to "cover various themes - in an anti-cyclical manner - that are currently put on the back shelf in Germany for all the self-pitying naval gazing exercises and loud immigration and security talk". Flight and migration are definitely "out" at the moment. This critical quarterly journal intends to counterbalance this tendency. The first two issues have certainly lived up to the expectations and its promise to go beyond "single-issue" politics. Personal stories of refugees, their deportation and their struggles against racism and social and economic destitution in Germany are accompanied by well-researched and informative articles on an array of themes related to flight and migration. A summary on Mike Davis' book on slums in today's global mega cities (Verso, 2006) reports about increasing urbanisation, impoverishment and polarisation of wealth. Other articles report on the situation in northern Senegal, country of origin of many African refugees who receive mass media attention in Europe (and quickly lose it again) when trying to reach the Canary islands, as well as police violence in Mexico and sexual torture in its prisons (issue 1/2006). The launch issue focuses on theAvdija family from Kosovo, who under the Dublin II regulation was deported to Slovenia on 1 July. All six family members are interviewed, their case history is presented and the bureaucratic insanity of the German deportation state and methods used by its authorities (lying about the deportation date, refusing to communicate with the family about the course of events, using violence during deportation) are uncovered (issue 0/2006). Available from abo@hinterland-magazin.de

The 'Mediterranean Solution': rescinding the rights of boat people, Liz Fekete. *IRR European Race Bulletin* No 56 (Summer) 2006, pp2-8. Article on the "south European front states", where border officials draw on Australia's "Pacific solution" to drive African migrants from their borders, by force if necessary. Available from the IRR, 2-6 Leeke Street, London WC1X 9HS

Rapporto 2005. Gli immigrati in Lombardia, *Osservatorio Regionale per l'integrazione e la multietnicità, Fondazione ISMU*, pp. 274, February 2006. Available from: *Fondazione ISMU*, Via Copernico 1, 20125 Milano. This report marks the fifth year of activity by the regional observatory on integration and multi-ethnicity in the northern Italian Lombardy region. Its seven chapters, which feature plenty of empirical data, focus on the presence of foreigners in Lombardy (special emphasis is placed on their role in the labour market), secondary schooling and professional training, employment and quotas, the training of public officials dealing with migrants, health issues, structures for reception and, finally, the forms of self-organisation adopted by migrants.

Undicesimo Rapporto sulle migrazioni 2005, *Fondazione ISMU, Franco Angeli*, pp.432, 2006. This eleventh report on migrations in Italy features a wealth of statistical data on the presence of migrants, in prisons (32.26%), on weddings, birth rates, regularisations, residence permits, etc. It is an in-depth study that ranges from an analysis of the general framework of immigration policy in Italy and the EU, to different aspects of integration into society in the host country (employment, health, schooling, housing, crime and the attitudes of Italians), and the international setting (including cooperation with Libya, border controls and the expansion of the EU and its effects on European identity).

Les caricatures françaises du droit d'asile ou la fin d'une "utopie divine", Vincent Geisser, *Migrations Societé, CIEMI,* vol. 18, n.104, March-April 2006, pp.3-16. This essay details the political and legislative keys to the dismantling of protection for refugees in France since the 1980s, with successive attacks on "economic refugees" and "false asylum seekers", the introduction of new obstacles at every stage, and the use of misleading euphemisms such as "shortening delays", "simplification" and "improvement" to conceal the curtailing of refugee protection, as well as the underlying principle of "dissuasion". The result has been a sharp decrease in asylum claims since the turn of the century (from 10,176 in 2001 to 2,390 in 2004), an increase in expulsions, and the failure to examine individual cases of asylum seekers who are systematically suspected, *a priori*, of seeking to deceive authorities. The latest chapter in this process of "trimming the edges of the right to asylum to such an extent that, today, one may state that the portrayals of 'false asylum seekers' and 'false refugees' appear to inspire the majority of regulatory and legislative measures, to the detriment of a careful and fair assessment of the situations that have been experienced" by asylum seekers, which is described as turning the French asylum system into a "caricature", is the proposed reform of immigration legislation promoted by Nicolas Sarkozy.

POLICING

ITALY

Lengthy sentences for Milan anti-fascist protestors

On 18 July 2006, the trial for disturbances during an antifascist demonstration in Milan on 11 March 2006 finished, with 18 of the 27 defendants receiving four-year sentences to be served under a regime of house arrest and ten being acquitted; one had plea bargained on lesser charges, for which he was fined. 25 of the defendants had spent four months in pre-emptive custody since the demonstration to counter a march organised by the neo-fascist *Movimento Sociale – Fiamma Tricolore* (MS-FT), during which disturbances occurred in Corso Buenos Aires, including the burning of cars, the setting up of a makeshift barricade, the damaging and burning of some shop entrances, a charge and the firing of teargas canisters by the police, and the throwing of stones and a flare by demonstrators. The events led to 46 people being stopped (five of whom were released), 41 of whom were placed under arrest.

Key elements in the trial included the proportionality of the charges of “devastation and sacking” and the sentences called for by the prosecuting magistrate in relation to the actual events, the use of collective punishment in response to the absence of proof of specific individuals’ active involvement in the disturbances, the positive identification of certain defendants and the nature of their arrest, and whether it was justifiable for individuals to have been present at the demonstration in response to a fascist march, or whether this presence could be construed as “contribution” to the violence.

The prosecuting magistrate (pm) illustrated charges of “contribution” (including “moral contribution”) to offences of “devastation and sacking” by arguing, beyond the merits of evidence of the involvement of specific persons in specific violent acts, that the mere, “non-neutral”, presence of the accused on the scene, near to a barricade, should be interpreted as an “essential”, “indispensable”, contribution to the commission of the “criminal” acts, by strengthening the criminal intent of its perpetrators. Demonstrators concealing their faces behind scarves or motorbike helmets, and the carrying of sticks by some of them, was deemed to be further evidence of involvement. Moreover, an anonymous message posted on Indymedia about the counter-demonstration was presented as evidence that the disturbances were pre-ordained. The pm requested eight-and-a-half year sentences for the accused, and nine for the two who were repeat offenders – these were lowered by a third (to five-and-a-half and six years respectively) because the defendants accepted to undergo fast-track judgements.

Defence lawyers including Mirko Mazzali, who took part in the defence of 24 of the 28 defendants, stressed the disproportionate nature of the charges, highlighting the seriousness of charges of "destruction and sacking", which envisage situations such as popular insurrections or revolts during which public order is seriously undermined. These charges are increasingly being used to deal with public disturbances during demonstrations, especially since events at the G8 summit in Genoa in 2001. Mazzali noted that the incidents in question took place during a total of 38 minutes, that there was a stand-off during most of this time, that shoppers and onlookers were watching the disturbances rather than fleeing, and that a single "real" charge by the police was sufficient to control the situation and carry out arrests (a previous police charge was described as half-hearted). Mazzali also referred back to events that he considered more serious, both from the recent past (when fans took over the stadium in Avellino (Campania) at an Avellino-Napoli football match in after the death of a Napoli fan, causing widespread damage and attacking police officers), and from the decades of the 1960s and 1970s (demonstrations involving gun-toting demonstrators and the loss of control of public order by the police over sizeable areas of cities), to note that these events did result in charges of "destruction and sacking". He felt that, even in the most serious cases, it would be excessive for a stone-throwing incident to merit a sentence of nearly ten years for someone found guilty of this act. Defence lawyers stressed that charges of causing criminal damage or resisting public officers would have been more appropriate.

Mazzali was also critical of the notions of "contribution" and "moral contribution" to criminal acts, arguing that mere presence cannot be interpreted as involvement, particularly as the reason for presence at the demonstration was legitimate, to prevent a march by fascists. Examining the evidence, the defence team also claimed that resorting to "contribution" was a reflection of the weakness of the case against the defendants, for most of whom the available photographic and video evidence only proved their presence on the scene (in some cases with their faces covered, in some others holding wooden sticks or flagpoles), but not their personal involvement in specific violent acts. Moreover, lawyers also questioned the quality of the identification of certain defendants, the fact that possession of individual items (liable to be used as weapons) was attributed to several individuals, and that the reconstruction of events by the pm often did not coincide with the video footage that they viewed. This, and the fact that many testimonies regarding the arrests were identical, led them to suspect that some arrests were carried out randomly against people who were present. Vanni, another lawyer who was involved in the defence of the accused also claimed that the notion that the violence was preordained was unrealistic, in view of the fact that the counterdemonstration (attended by 300-400 people) was convened three hours before the scheduled right-wing march, that its participants had called the media to attend a press conference, and that the video footage of the moments that followed the police charge indicated that no escape route had been planned.

Commenting the sentences, *Supporto Legale* (see below) issued a statement describing the sentences as "scandalous" and the result of a media campaign (the events took place during the campaign for the general election), as well as noting that resorting to "moral contribution" rather than to identification of the actual culprits of violent acts, sets a dangerous precedent that undermines the right for people to demonstrate or go on a march.

Corriere della Sera, 19.7.2006; Cronaca di una sentenza annunciata, Supporto Legale press statement, 19.7.2006:

https://www.supportolegale.org/?q=node/842

Supporto Legale, an organisation providing legal support in trials involving activists, has been posting transcriptions of the court hearings in this and other cases, on its website at: http://www.supportolegale.org

Dossier by Supporto Legale, "Fenomenologia di una strategia. Il reato di devastazione e saccheggio per i fatti dell'11 maggio a Milano"; available: https://www.supportolegale.org/files/20060801_dossier_18_innocenti.pdf

UK

Stephen Lawrence police investigation "was corrupt"

Thirteen years after the racist murder of black student Stephen Lawrence in south London, allegations that police corruption undermined the case against a gang of white racists have re-emerged. Five men, Neil Acourt, his brother Jamie, David Norris, Gary Dobsen and Luke Knight were arrested during the police investigation, but were never convicted of Stephen's murder. The MacPherson inquiry into the events found that police investigations were "marred by a combination of professional incompetence, institutional racism and a failure of leadership" within the Metropolitan police force. However a strong "whiff" of corruption among detectives was found to be unproven by the inquiry, to the disgust of Stephen's friends and supporters.

At the end of July the *Daily Mirror* newspaper and a *BBC* documentary revisited the allegations, after receiving new evidence that the police investigation was "sabotaged by a corrupt cop", Detective Sergeant John Davidson, who has since retired on a full pension. Davidson was named by another detective. Neil Putnam, a drugs squad officer who turned supergrass and served a jail sentence. He claims that Davidson received payment from Clifford Norris, the father of one of the murderers, to obstruct the police investigation. The claims, which have been widespread throughout the 13 years since Stephen's murder, have been described as "extremely upsetting" by Davidson who denies them.

According to the new evidence, Davidson was "looking after" David Norris, allowing the gang to stay one step ahead of the police inquiry. Putnam says that Davidson, who now runs a bar in Spain, received payments from Clifford Norris who was a wanted drugs smuggler. Putnam told the *Guardian* newspaper:

> *Davidson told me that he was looking after Norris and that to me meant that he was protecting him, protecting his family against arrest and any conviction... From my conversation... with John Davidson on that day, I would say that [he] was receiving cash from Clifford Norris.*

While the corruption allegations have been dismissed by the Metropolitan police, they have prompted an inquiry by the Independent Police Complaints Commission, following requests by Stephen's parents. They will be consulted on the investigations terms of reference. The Lawrence family barrister, Michael Mansfield, is insisting that the police reopen the case to investigate if other police officers were in the pay of Norris.

BBC News 31.7.06; Daily Mirror 26.7.06; Guardian 26.7.06

UK

Brian Haw - what price parliamentary democracy?

On an early morning in late May a Metropolitan police squad, comprising more than 70 officers, launched a raid on the lone anti-war protestor, Brian Haw, who has been demonstrating outside parliament since 2 June 2001. Initially Brian began his demonstration to protest at economic sanctions on Iraq, which are estimated to have cost around a million Iraqi lives, and the bombing of the country by the USA and the UK. He later extended his protest to cover the war on terror, in support "of

those innocent people who suffer and die in other countries, as out governments seek to further their own economic, military, political and strategic interests around the world." The police have repeatedly attempted to remove Brian from outside the mother of parliaments, but in October 2002 he won a major case at the High Court in which it ruled that he was exercising his freedom of speech; his placards did not constitute advertising and his pavement obstruction was not unreasonable.

In 2005 the government passed the Serious Organised Crime and Police Act (SOCPA) aimed at preventing protests at designated areas, such as Parliament Square. While section 132 of the Act appeared to be tailored to get rid of Brian, it also severely restricted the right to protest for 1 km around parliament. Days before it came into force in August 2005 a High Court hearing ruled that, because of poor drafting, the Act did not apply to Brian as police authorisation for his demonstration was not retrospective; this ruling was overturned at the Court of Appeal in May 2006. The police have imposed increasingly restrictive conditions on his protest since the appeal.

On 23 May 2006 the Metropolitan police mounted a huge night-time operation to remove almost all of Brian's placards and exhibitions to comply with the new SOCPA conditions that stipulate that they must fit into a space of 3 square metres. The raid required at least 70 police officers and left only two or three placards; three people were arrested. The Metropolitan Police Commissioner, Ian Blair, told the Metropolitan Police Authority that the raid had cost £7,200 (including £3,000 for police overtime). However, the *Daily Telegraph* newspaper has revealed that the raid on the lone protestor actually cost the taxpayer £27,750. The Liberal Democrat spokesman on the police at the London Assembley has said that the mass deployment of police officers to evict the peace protestor brought the Metropolitan police force in to disrepute: "Brian Haw's protest is seen as an irritant by the authorities, but the right to be an irritant is a fundamental part of out democratic process. The whole operation was an embarrassment for the Met and a waste of money and officer time that could be spent in protecting the capital."

Parliament Square Peace Campaign, www.parliament-square.org.uk

Policing - in brief

■ **Scotland: Coordinator for Counter Terrorism**. Scotland appointed a coordinator for counter-terrorism on 20 June. John Corrigan, the assistant chief constable of the Strathclyde police force, took up his position as "dedicated chief officer" after being appointed by the Association of Chief Police Officers in Scotland (ACPOS). He revealed that Scotland has established a permanent Guardian group of chief officers to coordinate the forces' responses to terrorist attacks. The Guardian group in England and Wales incorporates security services and the military but it Scotland it is said to comprise the chief constables and transport police. He said of Scotland's Guardian group: "It is not an exact replica of the Guardian group down south as it is just a policing body. It looks at coordinated response." *The Herald 21.6.06; Police Review, 30.6.06.*

Policing - new material

Ethnic Profiling in the Moscow Metro. *Open Society Justice Initiative and Jurix* 2006, pp70. This survey set out to determine whether and to what extent ethnic profiling by police occurs on the Moscow metro. The report "documents the highest odds ratio proving the disproportionate targeting of ethnic minorities by police ever detected through similar studies. While non-Slavs make up only 4.6% of the riders on the Metro system they are on average 21.8 times more likely to be stopped by the police than Slavs. This discrepancy is so high that it is unlikely that it can be explained on non-discriminatory, legitimate law enforcement grounds." For more information: Open Society Justice Initiative, 400 West 59th Street, New York NY 10019, USA, www.justiceinitiative.org or Jurix, 12564 PO 64, Moscow, Russia, www.jurix.ru

"Perfil racial en España: Investigaciones y recomendaciones", Dani Wagman, *Grupo de Estudios y Alternativas 21*, pp.68, July 2006. A report that was presented in Madrid on 17 July 2006 on racial profiling and the treatment of members of ethnic minorities by the Spanish police forces. It highlights the fact that members of these collectives (including the Roma) are disproportionately stopped, identified and searched by police officers, as well as questioning the validity of this practice, and noting that their treatment during these encounters with the police, or when they are arrested, is "less respectful" than when Spanish nationals are stopped. Other concerns expressed in the report focus on the fact that ethnic profiling becomes a self-fulfilling prophecy, as greater police activity targeting minority groups results in statistics in the field of criminal justice that indicate high percentages of criminal activity by these groups, and that data collection, evaluation, supervision and indicators of effectiveness of police practices are underdeveloped and sometimes non-existent. Extracts from interviews with police officers and from ten discussion groups composed of migrants and Roma are also included in the report, which is a pioneer study in this field in Spain.

50,000 volts for five seconds... *Just News* June 2006, p.3. This article came out of a seminar organised by the Northern Ireland Human Rights Commission following the announcement by the Police Service of Northern Ireland that they are considering the introduction of Tasers to the Six Counties. It contains factual information about the operation of the "stun gun" before considering the many "horrendous stories of abuse of the weapon [by police forces] in situations in the US" and the danger of "mission creep". It notes that the weapon "can all too easily become used as a "pain compliance" tool and expresses concern at its potential use on pregnant women, people with heart problems and vulnerable people. *Just News, 45/47 Donegall Street, Belfast BT1 2BR, Telephone (028) 9096 1122*

UK

Zahid Mubarek Inquiry report published

The public inquiry into the murder of Zahid Mubarek at HM YOI Feltham in March 2001 has published its final report. The inquiry resulted from a protracted legal battle by Zahid's family to force the Home Office to hold a public inquiry into Zahid's death. The inquiry commenced in 2004. The inquiry's starting point was that racism was central to its concerns - not solely because Zahid had been killed by his cellmate, a known racist, but because of the fact that it was indeed well-known that Robert Stewart was a violent racist - and the issue therefore to be determined was whether explicit or unwitting racism had played a part in the decision to pair Zahid with Stewart, in full knowledge of his history. By the time of Zahid's death, the Prison Service was not in a position to deny knowledge of Stewart's racist beliefs - a letter full of racist invective had been intercepted by Feltham staff - who told him merely to rewrite it so that it could be sent out. Feltham had already received damning reports from HM Prisons Inspectorate in 1995 and 1998, (see *Statewatch* Vol. 15 no 2, Vol. 13 no 5, Vol 12 no 2,

Vol 11 no 5, Vol 10 no 2 & 6).

The inquiry concluded as follows:-

Cell-sharing: The most obvious and dramatic way of reducing in-cell prisoner-on-prisoner attacks is by eliminating cell-sharing. Enforced cell-sharing should be eliminated and the achievement of this goal should be a high priority. If current funding is insufficient, central government should allocate further funds to eliminate enforced cell-sharing. While such moves are implemented, prisoners who have to cell-share should if possible be of common ethnic/religious background. Decisions on cell-shares should be made if possible by a senior officer, and compatibility regularly reviewed.

Reducing risk in cells: The Prison Service should formulate a policy about the most appropriate from of furniture for use in-cell, balancing the need to keep prisoners safe from their cellmates with the need to maintain a measure of homeliness. The Prison Service should take a fresh look at its cell search policy, with the emphasis of more regular cell searches rather than the daily fabric checks (designed to detect escape attempts.) Cells should be searched at least once every three months.Every prison should have a functioning elected prisoner council to provide prisoners with a say in the way prisons are run, as an incentive to ensure prisons are safe.

The flow and use of information: The report concludes that for the six weeks that Stewart remained in a cell with Zahid, almost all the wing staff had no knowledge of Stewart's racism, his possible involvement in a murder at another Young Offenders Institution, nor his severe personality disorder. The inquiry identified severe problems as regards flow of information about prisoners, and a tendency for officers to "use their judgement" rather than read up on prisoners. The National Offender Management Service has now created a national database of offenders who come into custody or have dealings with the Probation Service. This database, NOMIS, will flag up areas of concern re racist behaviour, self-harm, risk to others etc. At present there are no plans to include security information on NOMIS, and the inquiry recommends that plans should be made to incorporate such information, or where the information is too sensitive to for wider dissemination, NOMIS should incorporate an alert system. Probation officers should ensure that necessary reports are provided to escort contractors when they collect prisoners from court, and escort contractors should have a checklist of documents required. Prisoners transferred from one prison to another should not leave unless their files are ticked off at reception in the sending establishment. The receiving establishment should be given clear reasons for transfer. Prisoners should not be admitted onto a wing without a copy of their wing file, cell-sharing risk assessment etc being present. New information should be properly and accurately recorded in the wing observation book-with important information recorded in red.

Assessing risk: Following Zahid's death a cell-sharing risk assessment tool was drawn up at Feltham, in direct response to the murder. Previously, assessing the risk a prisoner posed to staff and inmates was not part of the culture of the Prison System, the inquiry concluded. The inquiry proposes multi-disciplinary reviews of cell-sharing assessments, risk management etc and that this should be linked in with the OAS's risk assessment re sentence planning and release.

Dealing with prisoners: The relationships that officers establish with prisoners holds the key to good prison relations and, the inquiry concluded, is at the heart of prison work. Officers should earn the respect of prisoners on the wing and be aware of what is happening on the wing. The basic training course should prioritise these skills. All establishments should have a personal officer scheme, with personal officers assigned to individuals, not to a group of cells. The role of the personal officer should be clearly defined. There should be clear access to external support and confidential advice written in to the Prison Service whistleblower policy. Making a false and malicious allegation should be expressly a disciplinary offence.

Mentally disordered prisoners: Feltham had a large number of mentally disordered prisoners serving short sentences. The care on offer was unacceptably poor at the time of Zahid's death. The inquiry recommended a comprehensive review of the quality of care provided to prisoners with mental health problems. The reception health screen questionnaire should trigger a referral to a mental health professional if the prisoner has a history of self-harm, in custody or outside. The mental health assessment should address the risk they pose to staff and other inmates. The number of frontline staff attending mental health awareness courses should be increased. Prisoners with mental health problems should not usually be placed in a shared cell. Their personal officer should be aware of their mental health history. Correspondence should be checked and cells searched more often that would otherwise be the case. The Prison Service should prepare a readable guide setting out the circumstances wherein healthcare staff can disclose personal information about a prisoner to staff on the wing.

Racism and religious intolerance: Eradicating racism and religious intolerance in prisons should be the Prison Service's priority. Diversity training should encourage training in black and ethinci minority (BME) perspectives for non-BME staff. Officers trained to deal with complaints re racism should be aware that corroboration, while desirable, is not essential. The Lawrence Inquiry definition of what constitutes a racist incident should be adopted by the Prison Service. The Prison Service should consider whether there is a need for complaints of racism to be investigated independently. The Prison Service should consider the desirability of recruiting Race Relations Liaison Officers from outside the Prison Service. The Home Office should consider accepting the concept of institutional religious intolerance, so as best to avoid discrimination against Muslim inmates.

The Inquiry's report was greeted by most observers as a resounding condemnation of the Prison Service's institutional racism - to which the Prison Service had in any event already confessed. This is strange, given the report's conclusions. The inquiry centred around a set of circumstances in which a known racist with a personality disorder killed his Asian cellmate. It ought to be clear that the Prison Service failed both Zahid Mubarek and Robert Stewart. It failed Zahid by rendering him vulnerable to attack by a known, violent racist. It failed Robert Stewart, in effect, by not protecting him from the consequences of impersonality disorder - by failing to recognise the risk he posed, and in failing to offer him any appropriate health care while he was within the prison system. Yet the report admits that its recommendations are limited to consideration of the issue as being about in-cell violence at Feltham YOI: "An investigation as comprehensive as would have been necessary (into institutional racism in the Prison Service) is far best left to the professionals in the field. Secondly, there are many factors which contribute to a prison's poor performance, and which create the setting for violence on the part of prisoners to be more prevalent. Racism and religious intolerance are just two of them." Thus, having stated that racism was central to its concerns, the inquiry proceeded on the basis that it was in fact only one factor in the issue of poor performance at Feltham. The agenda of the Inquiry subtly moved from being concerned with racism to being focused on procedural failings. Not surprisingly, therefore, the report then treats the issues arising from Zahid's death, and the recommendations which follow as being entirely issues of procedure.

Thus, the murder of Zahid Mubarek is put down to "missed opportunities" - the lack of information Feltham received from Hindley YOI about Stewart; the fact that the security department

at Feltham did not know of Stewart's racism because the officer who had intercepted a racist letter from Stewart had not informed them. The report accepts that "some staff on the unit sensed that there was something odd about Stewart but it never crossed anyone's mind to question whether Zahid might be uncomfortable about sharing a cell with him. In part, that was down to Zahid's personal officers. They never tried to get to know him, or build up any kind of rapport with him which might have made him sufficiently trusting of them to tell them why he did not want to continue to share a cell with Stewart." The inquiry accepts the conclusions of the Prison Service's own Butt report and the Commission for Racial Equality's report into Feltham's failings and institutional racism. It notes the extent to which staff failed to deal effectively with racist tensions and abuse between prisoners, and a "softly-softly" approach to dealing with and reporting racial incidents.

It is undoubtedly the case that there were numerous procedural failings which led to Zahid's death - that probably if routine reading of Stewart's correspondence had taken place, his virulent racism would have been recognised by the Security Department at Feltham and action taken to relocate him etc but the reality is that 1) wing staff failed to note Zahid's distress as regards his cell mate 2) apparently failed to pick up on Stewart's racism - such that they thought a skinhead with "RIP" tattooed on his forehead was a safe choice of cellmate for a young Asian boy. When police recovered Stewart's correspondence during his time in prison, it was little more than a series of disturbed racist rants. Yet we are expected to accept that wing staff noted nothing in Stewart's personality which led them to think he might be a threat to Zahid. According to Mr Justice Keith, wing staff and Zahid's personal officer were at fault in not getting to know Zahid - but what was the reason why they "didn't they get to know him"?

"Institutional racism" has become the *mea culpa* of every wing of the state with black and Asian blood on its hands. The Zahid Mubarek murder blew a hole in the attempt of the Prison Service under Martin Narey to repackage itself as an organisation seeking to provide care and an opportunity to change for those in its custody. The events at Feltham put the reality behind Narey's spin all over the front page. His response was to invite in the CRE and confess "institutional racism" - but institutional racism provides a framework within which both racist practice and explicit racist behaviour can safely take place. The Mubarek Inquiry report accepts the *mea culpa* but absolves all involved in Mubarek and Stewart's care in practice by concluding the murder was ultimately a result of a failure of process.

Mr Justice Keith's assumption appears to be that when prisoners make complaints of racism they do so predominantly against other prisoners, and fails to consider that when staff take a "softly softly" approach to such complaints they are acting in the interests of themselves and their colleagues. Moreover, if staff do ignore racism between prisoners there is a simple explanation for it. For all the PR to the contrary from Narey and his successors over recent years, the Prison Service exists to contain and control on behalf of the state. Racism within prisons serves much the same function as in society outside. For prison staff, racism can be a means to divide and rule - a useful weapon faced with a prison population already overcrowded, in deteriorating conditions. Thus, staff who are not themselves racist have a vested interest in maintaining racial tension between inmates. The Mubarek inquiry skips over the evidence presented to it about Gladiator games - the staging by prison staff of battles between white and non-white inmates, but Gladiator games are only an extreme manifestation of the local management of prison wings in any event. The death of Zahid Mubarek (and in April 2004 the murder of Shahed Aziz at HMP Armley in similar circumstances) is one consequence - the brutalisation of black and Asian prisoners at the hands of prison staff (see for example *Statewatch's* recent reports on the treatment of Muslim prisoners at HMP Belmarsh, and the assaults by prison staff on Sean Higgins) another.

Thus, we are left with a report-produced only after a long legal battle by Zahid's family - which delivers suggestions for improvement in training and information management for Prison Service employees - (a "Come on chaps we can all do better" strategy) and more checks for prisoners in the form of more regular and vigorous cell searching as its one real proposal with teeth.

In relation to Robert Stewart, there are still more questions unanswered. Stewart was treated throughout as a "problem prisoner". The one time he was assessed by a registered psychiatric nurse, Mr Kineally - who concluded after a 45 minute discussion with Stewart, without the aid of other professionals - psychiatrist, section-12 doctor etc - that he had an untreatable personality disorder of long standing. Stewart was 19 when Kineally handed down his prescription to do nothing. Best diagnostic practice suggests that "untreatable personality disorder" is not a label that should be pinned so easily on a so young a man. In any event "personality disorder" is a heterogeneous term describing a number of specific maladaptive personality types, with various levels of treatability. After this Stewart received no further psychiatric/medical intervention - no screening for other possible diagnoses - whether organic (ie a brain injury or illness) or some other psychiatric illness. He continued to be treated as a problem prisoner and received no healthcare input whatsoever. Those who flinch at suggesting the Prison Service failed Robert Stewart should consider all of the above - that a damaged young man with a history of self-harm was "diagnosed" by one healthcare professional following an consultation lasting 45 minutes. Mr Justice Keith might wish the conclusion we draw to be only that someone should have acted on Kineally's diagnosis to prevent Stewart sharing a cell. We should also be asking whether we are content that a 45 minute discussion, which constituted the extent of health care input into Stewart's prison life, meets the standard of care which the damaged and vulnerable in our jails have a right to expect.

It is true, as Zahid's uncle, Imtiaz Amin, states, that the report "exposes a litany of failures from prison staff to senior management all of which are culpable for the circumstances in which Zahid was placed in a cell with a known racist and psychopath." But the Prison Service is not only a failing institution, with "a pernicious and dangerous cocktail of poor communications and shoddy work practices". The Mubarek family's condemnation of the Prison Service as guilty of "institutional murder" is what should stand as a verdict on the vents leading up to Zahid's death.

Report of the Zahid Mubarek Inquiry: Final Report (HC-1082)
The report can be accessed at:
http://www.zahidmubarekinquiry.org.uk/article.asp?c=374&aid=2848

France

Police repression of CPE protest movement

In May 2006, a student lawyers' collective (*Collectif Assistance Juridique*) produced a report that details significant aspects of the police repression of demonstrators who opposed the so-called law on equal opportunities, particularly the introduction of the *contrat de première embouche* (CPE, first employment contract, applicable to people under 26). The movement against this law became active in early February, drawing hundreds of thousands of marchers in over 200 cities on 7 March 2006, with violent incidents first occurring during the expulsion of occupants from Sorbonne University in Paris a few days later. One million reportedly demonstrated on 18 March, when clashes took place in Paris. The movement continued to gather steam, with between one and three million people demonstrating on 28 March and 4 April and violent incidents occurring in several cities.

Based on testimonies and the monitoring of legal proceedings that followed the setting up of a legal support service by the collective, the report highlights a number of procedural irregularities and abuses as it reviews events that took place between February and May 2006. These are broken up into sections on the stopping of protesters, the period when they were held in custody (*garde à vue*) and identified, and the subsequent judicial process and imposition of penal and administrative punishment. It also assesses the role of the media and presents the introduction of an amnesty as "indispensable". The starting point for the report is the:

> *objective observation that French law neither makes a political claim a cause for stopping [someone] nor an aggravating circumstance for an offence, this report seeks to provide an account of the policing and judicial reality experienced by the movement to oppose the law on equal opportunities.*

Holding protesters and "quotas"

With regards to the initial stopping and holding of demonstrators, the report notes providing testimonies, that it was often the people who stayed on longer, rather than the ones involved in disturbances, who were stopped following demonstrations. It suggests that the number of arrests was subject to a sort of "quota" that was deemed to be necessary in order to convince the media that the police had been doing their job. One man who was arrested in Paris claims that a policeman told him that, "We need some figures, and you are the quota of vandals* for the day". Moreover, the report also highlights the use of "pre-emptive controls" on metro and railway lines serving suburban towns. These were justified as a means of dissuasion and to stop criminals by the interior minister, Nicolas Sarkozy, who drew a link between the anti-CPE demonstrations and disturbances in the French suburbs last November:

> *There are some vandals who come from a certain number of neighbourhoods and who are the same [people] as the rioters from last November, that is, they come to break things, they come to carry out aggressions, they come to steal, that's undeniable.*

The report notes that this approach both contravenes the presumption of innocence and is based on racial and social criteria, thus leading to the denial of the right for students from the suburbs to express their political convictions in a demonstration like ordinary French citizens can. In the event, these checks led to tensions in certain suburban towns (Saint Denis, Savigny sur Orge), sometimes resulting in confrontations and more people being stopped or held.

According to justice ministry figures, around 4,350 people were stopped in relation to the demonstrations, and the highest figures came from large cities, although protesters in smaller towns also experienced police repression. In spite of the same reason being repeatedly mooted to justify someone being stopped, that is, "carrying out violent acts", the people held were seldom asked about this charge, and were often released following identification or sent before a judge to face different allegations. No police officers have been brought before the courts, despite testimonies of ill-treatment and of serious injuries suffered by demonstrators - one person is in a coma, another one came out of a coma after a day. A lawsuit has reportedly been filed against the police by lawyers defending trade unionist Cyril Ferrez, the man left in a coma. Plainclothes *Brigade Anti Criminalité* (BAC) officers are described as having "often acted illegally" as they disguised themselves as trade unionists and vandals and acted with "inexcusable violence". Details of testimony before the court by detainees who suffered police brutality (two of them were detained with a "truncheon blow to the head") is also included, as is the fact that video cameras in the Place de la Nation were not working on 18 March, when the disturbances resulting in Ferrez going into a coma unfolded. The issue of trade union stewards cooperating with police forces by acting violently towards some demonstrators and handing others to the police is also raised in the report.

Identification and fast-track sentencing

Important anomalies are referred to, most notably the fact that 4,350 people were taken to police stations for their identity to be ascertained, and 1,950 people were placed in *garde à vue* (meaning they were suspected of committing offences), a measure whose time limit is of 24 hours, renewable to 48 hours. Detention for identification is only allowed for the time that is "strictly necessary" (for no more than four hours) in law if someone refuses to provide their details, provides manifestly incorrect information, or if they have no way of proving their identity. The vast majority of these people had no difficulty in proving their identity straight away using their ID cards, making their detention for several hours unlawful. Dozens had their photographs and fingerprints taken in police stations, and there were even instances in which DNA samples were taken for offences such as the "degradation of private property" (for fly-posting). Over 500 people spent their first ever night in a police cell, and while the reason for being held and then placed in *garde à vue* was violent behaviour, most were only asked about their failure to disperse. Detainees were given the choice of signing a statement recognising their guilt in relation to violent incidents or to be held in *garde à vue*; thus, some people admitted their guilt to avoid spending time in a police cell, including a 77-year-old who admitted to attacking the police. Complaints about conditions in police custody included overcrowded and filthy cells, absence or poor quality of food, impossibility to rest and verbal abuse that included racist and degrading treatment and as death threats.

By 18 April 2006, 637 people faced criminal charges, generally for "violence against people entrusted with public authority". The charges made no reference to specific events, officers or injuries but mainly concerned throwing missiles. Evidence was largely based on officers' statements, and the vagueness of the charges made it very difficult for defendants to prove their innocence and escape a penal sanction. Sarkozy referred to the people who were stopped as "vandals" who were well known and had been previously identified by the police. This branding preceded their court appearances even though the profile of the people detained did not match the minister's claims, at least in Paris, as a considerable majority of them were students and workers who did not have prior criminal records. Charges

were brought against 15% of the people who were taken to police stations, and many of the cases filed with the courts lacked formal elements to prove the charges against the accused. New techniques used to attempt to prove the involvement of demonstrators in disturbances included the taking of photographs and the throwing of paint pellets at them during the demonstrations.

The treatment that the courts reserved for demonstrators is described as "heavy-handed" and as being in line with the instructions issued by justice minister Pascal Clement in a circular on 24 March 2006. Clement called for "indispensable firmness when dealing with these acts of delinquency" and "not to hesitate to request firm prison sentences on any occasion when a serious disturbance has been caused to public order", as well as indicating that "immediate appearance [before the court] is to be favoured", in reference to fast-track sentencing procedures. In fact, the speed of proceedings is one of the elements that is highlighted in the report, with 42% of the defendants tried using the fast-track procedure straight after being held in *garde à vue* (for between one and three days), often without having the opportunity to wash, contact relatives or prepare their defence properly. Refusal to be tried by this procedure would generally result in prosecutors calling for provisional detention which could last for up to a month. The second key element is the heavy-handedness and "exemplary" nature of the sentencing, with 70 people facing prison sentences (of up to six months) which, the report notes, would not have been passed outside of the "exceptional circumstances" that surrounded the anti-CPE movement. Moreover, 167 people were found guilty and face administrative sanctions including suspended prison sentences, community service or probation. Even though the authorities present these as "lighter", the report notes that they effectively serve as a form of black-listing, as well as carrying significant implications, such as their inclusion in criminal records, exclusion from civil service jobs, and the possibility of imprisonment if further offences are committed over the three-year probation period.

The report criticises the fact that exceptional procedures and harsh sentencing practices are adopted in situations when there is a "threat to public order", and "exemplary" justice is adopted to dissuade protesters, even though participation in a demonstration or political movement should not be considered an aggravating circumstance for an offence under the criminal justice regime. This view is supported by the fact that defendants who did not undergo fast-track sentencing received lighter punishment following the withdrawal of the controversial CPE measure (article 8) from the law on equal opportunities on 25 April 2006, as tension decreased. Comparisons are drawn with protests from earlier periods during which far more violence had occurred without such heavy sentences being imposed upon demonstrators, and with the suburban troubles that occurred in November 2005, during which the treatment of the people held is deemed to have been even worse than for the CPE protests (with 70% of the people who were charged tried by "immediate appearance" and 422 prison sentences passed, according to figures dated 18 November 2005). The conclusions drawn by the report highlight the need for an amnesty due to the fact that many of the sentenced individuals were "sacrificed" for the sake of limiting the impact of a "massive and essentially peaceful protest movement" and that the degree of judicial independence is limited in times of social conflict. Sarkozy's dismissal of the protesters as vandals belonging to the "far right, far left", "hooligans" and "thugs from a certain number of neighbourhoods" is indicative, all the more so as the profile of the detainees did not match the description. Clement's call for fast-track, exemplary, sentencing is another aspect of the same process.

Final remarks

The significance of this report is the well-documented snapshot that it provides into policing and judicial practices that are increasingly targeting activists in different European countries. These include the dismissal of protesters (described as "thugs", "hooligans", "violent anarchists") by government ministers as criminal elements prior to demonstrations regardless of the lawfulness of their claims or actions, and police practices on the ground such as arbitrary arrests, heavier sentencing for public order offences than in the past, the use of fast-track proceedings, police violence or ill-treatment of demonstrators that goes unpunished. Most importantly, the increasing use of "collective responsibility" for people on demonstrations during which violent disturbances occur, which makes their defence more difficult. Events in Genoa and Gothenburg in 2001 and the heavy sentences (of up to four years) passed against demonstrators on an anti-fascist protest in Milan on 11 March 2006 which was marked by clashes (see *Statewatch*, this issue) are also indicative of these practices. In addition there were efforts by the police in Barcelona to collectively brand protesters against a detention centre in the Catalan city in June 2006 as "anarchists" who had expressed solidarity in the past for someone accused of planting an explosive device.

** "casseurs", literally "breakers", in the original claims by Sarkozy.*

La repression policiere et judiciaire du mouvement d'opposition à la loi sur l'egalité des chances, Collectif Assistance Juridique CPE, 23 May 2006; summary of events from February-May 2006. The report is available (in French, pdf) at: http://repression-printemps.samizdat.net/IMG/pdf/RapportAssistancejuridiqueCPEmai2006.pdf; Collectif Assistance Juridique website:http://repression2006.blogspot.com/

Germany

Reports from a developing country: On the failure of the anti-discrimnation law and the perspectives thereafter by Marcus Lippe*

The committee created by the Upper House on 8 July 2005 represented its second attempt to implement EU Directives relating to anti-discrimination measures in Germany (1). Public debate accompanying the issue gave the impression that the government's draft law, as passed by the Lower House, was going further than the EU Directive required, while opposition parties demanded that the Directives be implemented in full. A closer look at the situation reveals a different story. Ideological turf wars and party political battles have been fought out on the backs of those the law is intended to protect. Nonetheless, the legal situation for the victims of discrimination is not as hopeless as the failure of the German Anti-Discrimination Act (ADA) makes it appear.

Daily discrimination

The failure of the law and the polemical discussion (2) accompanying it demonstrate that, in the field of anti-discrimination politics, Germany is still a developing country.

Statistical evidence supports this claim. The Eurobarometer Survey of May 2003, for instance, found that only around two thirds of all German citizens are opposed to discrimination on grounds of ethnic origin, religion, sexual identity, age, gender or disability. Germany lies far behind the European average and is the worst in Europe.

Significantly, there is no single study on the extent of discrimination although some studies exist in the area of employment. (3) A study in 2000 on discotheque entry policies in Brandenburg (a region around Berlin) concluded that one third of those checked clearly discriminate about who they allow entry. Three young men of non-German ethnic origin visited 15 discotheques to test the results. Six venues rejected them at the door, usually with the excuse that they were full, despite other white guests being granted entry.(4) Other facts on discrimination under civil law are limited to news articles. There are numerous reports, for example, of estate agents and landlords refusing to sign contracts with foreigners.(5) Further, when a German insurance company failed in its attempt to significantly increase the premium of its automobile liability insurance for Turkish, (then) Yugoslav and Greek citizens, some companies tried to stop its insurance salesmen from recruiting foreigners by reducing or scrapping the commission for the recruitment of non-German customers (6). Another example appears to be the rejection of interested customers by gyms: "headscarf-wearing women"(7), foreign women, but also Germans of Turkish origin are, according to news reports, refused membership when company rules on "foreigner quotas" are exceeded (8). When confronted with their discriminatory behaviour, the businessmen argued that members of the rejected group would be unreliable in their payments, that they had a tendency towards vandalism or that they would harass other customers. With regard to discrimination against disabled people businessmen made even more scandalous remarks (9).

What would be possible

The EU Directives oblige Member States to implement effective legal protective mechanisms against discrimination (10). Member States, including Germany, are required by EU law to implement the Directives into national law within a certain timeframe. For the Anti-Racism and the Employment Equality Directives, this time limit has already lapsed.

Regarding gender and ethnic origin, the protections offered under the EU Directives are extensive as it also applies to civil law contracts and not only to employment in the broad sense (11). Unfortunately, this comprehensive protection is not extended to other areas. It is also regrettable that the institutional discrimination of refugees was removed from the scope of the Directives, which does not stipulate a refugee law free from discrimination. This should not come as a surprise considering the increasing number of hostile immigration policies in EU law-making. The limited nature of the clause that obliges the state to make it easier for victims to prove discrimination (shared burden of proof) also deserves criticism. Although this clause marks a step in the right direction, it would have been better to introduce a limited reversal of the burden of proof, as even the mere establishment of facts can pose considerable difficulties for the victim of discrimination (12). Further, the creation of individual legal recourse in the area of anti-discrimination is not a solution to the problem (13). Despite these shortcomings, the implementation of the Directives in the form of a national ADA would have constituted a big step forward.

Political mock fights

It is tragic that the draft law failed because of the stalling tactics of the CDU/CSU and the FDP in the run up to the elections. This despite the fact that criticisms which could have justified a refusal to agree to the draft law, often ignored EU requirements. The main criticism was that the proposed national law implementing the Directives would significantly infringe on the constitutionally guaranteed freedom of contract and trade and therefore hamper legal dealings between businessmen and private individuals. However this is not a problem as the Directives ensure a limitation in this area. Although the draft law goes further than the Directives by extending civil law protection against discrimination in religion, belief, age and handicap (14), this is not a problem in the constitutional sense (15).

Further, it is claimed that the reversal of proof included in the draft law was a *de facto* invitation to make false discrimination claims. This argument is misconceived because the clause is a mere facilitation of proof (shared burden of proof) as is laid down in the Directives. The same applies to criticism against the creation of a central contact point for anti-discrimination cases (16). The Directives only require such a contact point in cases of discrimination on grounds of gender and ethnic origin, whilst the failed draft law went further and extended the remits of the contact point to include all the forms of discrimination listed in the Directives (17).

Also the argument against the extension of the remit of shop stewards' committees (*Betriebsräte*), or rather trade unions, to enable them to fight discrimination within companies more effectively (18), and the argument against the introduction of the right of anti-discrimination associations to attend to the rights of employees in discrimination cases (19), both ignore the fact that the scope of the Directives are narrowly defined. Furthermore, the criticism that a general compensation liability, which is independent from the concrete occurrence of a loss, would not comply to German liability laws lacks a proper basis (20). Although the Directives leave a wide scope of application for legislators, they explicitly lay down compensation for loss suffered.

A draft law with deficits

When faced with these criticisms, which claim that the draft law is too far-reaching, it is easy to forget that it falls short of at least three requirements of the Directives. These concern firstly, victim protection which in the draft law is restricted to labour law (21). Under EU law, however, discrimination on grounds of ethnic origin and gender also has to be regulated under general contract law.

Secondly, the draft law generally excludes relationships of proximity (*Näheverhältnisse*) from the remit of the discrimination ban (22). After all, the draft law allows for differential treatment when letting property with regard to the "creation and sustaining of socially stable tenant structures and balanced residents structures as well as balanced economic, social and cultural conditions" (23). Both exceptions are, apart from the political implications of accepting discrimination in certain cases, legally unacceptable in this form at least when the discrimination occurs on grounds of ethnic origin. Further, there is no indication of the introduction of such exceptions in the anti-discrimination Directives. Although Point 4 of the introduction to the Directive reads: "It is also important, in the context of the access to and provision of goods and services, to respect the protection of private and family life and transactions carried out in this context", this consideration does not provide a basis for the justification of discrimination on grounds of "race" and ethnic origin. The considerations preceding the actual text of the Directive may only be used to interpret the Directive, not to reverse the wording of the text. According to the Directive, however, discrimination is only permissible if it concerns genuine and determining occupational requirements (Article 4) or positive action (Article 5) (24).

Finally, it is also unlawful when owners of small businesses, which are undoubtedly characterised by or develop a special "relationship of proximity", are, under labour law regulations,

not allowed to discriminate on grounds of skin colour in their employment practice, whilst landlords of a housing estate with, say, a hundred flats are allowed to discriminate on grounds of skin colour with argument that the "social tenants structure would become unstable". This also stands in contradiction to criminal law: the explicit refusal to let a property to someone because of his/her skin colour constitutes an insult according to Article 185 of the German Criminal Code (*Strafgesetzbuch* - StGB), whilst it would be permissible under the draft anti-discrimination law under civil law. From the text of the draft law, it could even be inferred that liability under Article 823(2) of the German Civil Code (*Bürgerliches Gesetzbuch* - BGB) in combination with Article 185 StGB would also no longer apply (25).

Almost defenceless

Despite the flawed draft law, its implementation would nevertheless have been an improvement, as existing protection is, with a few exceptions, almost non-existent. Alongside the claim for damages because of gender-related discrimination laid down in labour laws according to Article 611a of the German Civil Code (BGB), only insurance law forbids discrimination on grounds of nationality or ethnic origin as a basis for determining insurance premiums.

Furthermore, in cases of discrimination by businessmen victims can seek recourse with the relevant supervisory body, (26) as industrial law, particularly the German Restaurant Licensing Act, foresees (in recurring cases) the possibility of banning a businessman from carrying out his/her business if she/he is found to be unreliable (*fehlende Zuverlässigkeit*). This is possible if the discrimination has an insulting character, for example. However, the authorities only rarely make use of this power. Also, in the field of public transport permission can be withdrawn in cases of unreliability (*mangelnde Zuverlässigkeit*). This is possible if Article 25 of the German Commercial Transport of Persons Act (*Personenbeförderungsgesetz*) is violated. It lays down that transport companies have to offer their

EU Anti-Discrimination Directives

The Racial Equality Directive 2000/43/EC (1)

Protects from discrimination on grounds of racial or ethnic origin.

Applies to the area of employment - access to regular and freelance employment including training, career guidance, wages, trade union membership - as well as access to and provision of goods and services available to the public, including housing.

Provides protection against discrimination in the area of social protection, including social security, healthcare, social support and education.

Positive measures are excluded from the Directive, that is measures in which certain groups are favoured over others in order to prevent or balance the discrimination they are facing, on grounds of the characteristics named in the Directive (e.g. quota regulations).

Discrimination is lawful if a certain ethnic origin or racial origin is an essential requirement for the nature of a specific job.

Excluded from the protection from discrimination are those regulations that concern the conditions for the entry of third country nationals or stateless persons to a Member State or that concern their residency in a Member State including their treatment in that state in as far as it results from their legal status.

Provides for the establishment in each Member State of an organisation to promote equal treatment and provide independent assistance to victims of racial discrimination.(2)

The implementation deadline of the Guideline has passed. The European Court of Justice (ECJ) ruled on 28 April 2005 that Germany has breached EU law by failing to transpose the Directive.(3) The Employment Equality Directive 2000/78/EC (4)

Protects from discrimination on grounds of religion or belief, age, sexual orientation or disability.

Is restricted to the area of employment and training.

Allows - when compared to the Racial Equality Directive - for more exceptions to the principle of equal treatment:

Necessary regulations guaranteeing national security, the defence of public order and prevention of criminal acts, the protection of health and the protection of rights and freedoms are excluded, as are state or state-authorised services including social security or protection services.

Concerning the characteristics of disability and age, armed forces regulations are also excluded from the scope of the Directive.

Discrimination on grounds of age can, under certain circumstances, not be characterised as discrimination in as far as it is objective and reasonable as well as fulfilling a legitimate aim, whereby aim here particularly refers to legitimate intentions within the areas of employment policy, labour market and professional training (e.g.: age limit for pilots).

The implementation deadline, save the characteristic of age, has expired.

Equal treatment in access to goods and services (gender equality) (5)

Protects from discrimination on grounds of gender in the access to and supply of goods and services that are available to the public.

Extends protection of the Gender Directives from 1976 (6) and 2002 (7), which only apply to the area of employment.

In addition to the exception contained in the Racial Equality Directive concerning insurance companies, it grants the continued difference in insurance premiums so long as they are based on relevant statistical facts. Costs arising from pregnancy and motherhood, however, are not allowed to be included in the data.

Provides for the establishment of an organisation to promote equal treatment and provide independent assistance.

More information see also the European Commission website on anti-discrimination: http://www.stop-discrimination.info/99.0.html

1) Directive 2000/43/EC, L 180 from 19.7.2000, p. 22

2) Compare Dern, in diesem Heft, S.

3) ECJ press release IP/05/502, 28/04/2005

4) Directive 2000/78/EC, L 303 from 2.12.2000, p. 16

5) Directive 2004/113/EC, 373 from 21.12.2004, p. 37

6) Directive 76/207/EEC, L 039 from 14.2.1976, p. 40

7) Directive 2002/73/EC, L 269 from 5.10.2002, p. 15

services to all customers when it is available and providing that the customer adheres to company rules. This makes it possible to withdraw the licences of taxi drivers who are unwilling to transport people on grounds of their skin colour or ethnic origin.

Article 2 of the German Telecommunications Customer Protection Regulation (*Telekommunikations-Kundenschutzverordnung*), which lays down the minimum requirements for customer protection for private telecommunication companies, dictates that market-dominating telecommunication service providers have to offer their services to the general public under the same conditions, except when differences are justified on objective material grounds (*sachlich gerechtfertigt*). Market-dominating telecommunications service providers therefore violate Article 2 if customers are being discriminated against on grounds of their ethnic origin (27).

Improvements without the law?

Despite these shortcomings, the options for victims of discrimination have improved since the coming into force of the Directives, even without a German Anti-Discrimination Act. Regardless of whether the discriminating bodies are state or public institutions, the Directives, (which are clear, unambiguous and unconditional), can be applied directly in national courts; by definition they have a *"direct, vertical effect"* (*unmittelbare vertikale Wirkung*). This means that even if a Member State has not implemented the Directives individuals who claim to have been discriminated against by a state authority can seek recourse in national courts on the basis of them. Whether the victims of discrimination are individuals or private entities, national courts have to respect the *"indirect effect"* (*mittelbare Wirkung*) of the Directives and do everything in their power to interpret national law in accordance with EU law. This means that they must interpret national law, as far as possible, according to the wording and purpose of the Directives. It is irrelevant here if the national law was legislated before or after the Directives (28).

A first attempt to reach a common EU interpretation of civil code norms in the area of anti-discrimination was taken by a plaintiff who was refused entry to a party. The affected person made a compensation claim. The court found that an EU interpretation would fall outside the framework of national law as it would abolish the autonomy rule of private individuals, which would be alien to the German legal order (29). Here, it can be seen how ideological polemics have affected the independence of the judiciary. The court believes it is defending the German legal order but in doing so displays total disregard for the balancing of freedom with equality and ignores the fact that Article 611a of the German Civil Code in the area of work contracts foresees limits on private autonomy. The EU-common interpretation of labour law is more accomodating where a disabled person successfully challenged the refusal of employment by a public authority (30).

Another method of seeking redress if you have suffered discrimination is to claim compensation from the German Federal Republic.

According to EU law from the moment the Directive should have been implemented a Member State has to compensate any damage resulting from its failure to do so. In order for a state to be liable, a few conditions have to be met: 1. The intent of the EU law being violated has to be the granting of rights to an individual. 2. The violation has to be severe. 3. There has to be a causal relationship between the failure of the state to implement and the damage to the victim. Here also legal proceedings are instituted at first instance courts. A Cameroonian made a compensation claim because he was refused entry to a restaurant; this attempt failed. The court justified its decision with the reasoning that the Directive does not necessarily foresee damages as the only form of sanction. Damages were only one possibility, over which the law maker decides, the court argued. Therefore, the necessary causality was missing in the claim for damages (31).

Not possible without the law

The above examples of protection against discrimination outside of a German anti-discrimination law show that protection is not guaranteed with the implementation of the EU Directive. Either the victims have to go through many legal trials because first instance courts are not willing to pass sentences in favour of anti-discrimination principles, or the victim is dependent on the good will of the authorities to take steps against discrimination. An Anti-Discrimination Act is therefore essential. However, it is more than likely that the next attempt will fall even further short of the Directive than its predecessor. The only option open then is the European Court of Justice.

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Footnotes:

1) On the first attempt, compare with Armbrüster, Christian, *Zeitschrift für Rechtspolitik* 2005, 41, Fn. 6 and 7.
2) Compare Obermeyer, "Gesetze als Bedingung und Grenzen der Freiheit", *Forum Recht* 4/05, 117 ff.
3) Compare e.g. Knoll, Christopher/ Bittner, Monika (et al.), 'Lesben und Schwule in der Arbeitswelt. Ergebnisse zur Diskriminierung von Lesben und Schwulen in der Arbeitssituation', Munich 1996; Golderg, Andreas & Mourinho, Dora: "The occurrence of discrimination in Germany", in: Zegers de Beijl, Roger: 'Documenting discrimination against migrant workers in the labour market: A comparative study of four European countries', ILO, Geneva 2000, 53-63; Eurostat, 'Das Leben von Frauen und Männern in Europa. Ein statistisches Porträt'. Themenkreis 3 Bevölkerung und soziale Bedingungen, Luxemburg 2002.
4) "Bericht der Ausländerbeauftragten im Land Brandenburg Almuth Berger", in: Klein, Eckart (eds.), 'Rassische Diskriminierung Erscheinungsformen und Bekämpfungsmöglichkeiten', 2002, 41, 43.
5) Compare Nickel, 81 ff. m.w.N.; see also the example of a Turkish family in: *Berliner Mietermagazine* 3/2005, 9.
6) Reply by the parliamentary state secretary Rainer Funke in the ministry of justice to the questions of FDP MP Dr. Gisela Babel, 07.04.1995, Bundestags-Drucksache (BT-Drs.) 13/1127, 25f.
7) Compare *taz* 18.02.2000
8) Manuscript of the TV report "Kontraste", 10.06.2004, www.rbb online.de/_/kontraste/beitrag_jsp/key=rbb_beitrag_1143477.html.
9) Compare e.g. the so-called "Behindertenlärmurteil", OLG Köln, *Neue Juristische Wochenschrift (NJW)* 1998, 764.
10) see boxes
11) see boxes
12) see boxes
13) Compare Dern, 'Wer den Schaden hat ... ist auch für die Beseitigung zuständig?', *Forum Recht* 4/05, 120 ff.
14) Compare 'Entwurf eines Gesetzes zur Umsetzung europäischer Antidiskriminierungsrichtlinien' (ADG-E), BT-Drs. 15/4538 v. 18.03.2005, ' 19 Abs. 1.
15) Compare Obermeyer, *Forum Recht* 4/05, 117 ff.
16) Compare press release of the CDU/CSU faction in German Parliament on the occasion of the first reading of the ADA on 21.01.2005.
17) Compare ADG-E, BT-Drs. 15/4538, ' 27 Abs. 2.
18) Compare Bundesvereinigung der Deutschen Arbeitgeberverbände, *Presse-Information* Nr. 79/2004, 15.12.2004.

19) Compare Steinau-Steinbrücke, Robert von/ Schneider, Volker/ Wagner, Tobias, "Der Entwurf eines Antidiskriminierungsgesetzes: Ein Beitrag zur Kultur der Antidiskriminierung?", *Neue Zeitschrift für Arbeitsrecht* 2005, 28, 31.
20) Compare 'Stellungnahme der Bundesvereinigung der Deutschen Arbeitgeberverbände zum Entwurf eines Gesetzes zur Umsetzung europäischer Antidiskriminierungsrichtlinien Artikel 1, Gesetz zum Schutz vor Diskriminierung', Berlin, 25.02.2005, 3.
21) Compare ADG-E, BT-Drs. 15/4538, ' 16.
22) Compare ADG-E, BT-Drs. 15/4538, ' 19 Abs. 5.
23) Compare ADG-E, BT-Drs. 15/4538, ' 19 Abs. 3.
24) Compare Mahlmann, Matthias, 'Stellungnahme zum Entwurf eines Gesetzes zur Umsetzung europäischer Antidiskriminierungsrichtlinien vor dem Ausschuss des Deutschen Bundestages für Familie, Senioren, Frauen und Jugend', 07.03.2005 (Stellungnahme), 5 f.
25) Compare Nickel, Rainer, 'Stellungnahme', 7.
26) Compare Klose, Alexander, "Gewerberecht und Rassendiskriminierung", Gutachten im Auftrag des Türkischen Bundes in Berlin-Brandenburg e.V., Berlin 2005 (to be published).
27) Mahlmann, Matthias, 'Gesetzgebung über Antidiskriminierung in den Mitgliedstaaten der EU - Ein Vergleich einzelstaatlicher Rechtsvorschriften gegen Diskriminierungen aus Gründen der Rasse oder der ethnischen Herkunft, der Religion oder der Weltanschauung mit den Richtlinien des Rates: Deutschland', Vienna 2002, 25 f.
28) Compare Thüsing, Gregor, "Richtlinienkonforme Auslegung und unmittelbare Geltung von EG-Richtlinien im Anti-Diskriminierungsrecht", *NJW* 2003, 3441-3445.
29 Compare *Informationsbrief Ausländerrecht* 2005, 162-116.
30 Decision ArbG Berlin of 13.07.2005, Az. 86 Ca 24618/04.
31 Decision of the regional court Berlin of 12.04.2005, Az. 23 O 43/05.

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Europäische Zeitschrift zum Antidiskriminierungsrecht 01/2005, download europa.eu.int/comm/employment_social/fundamental_rights/index_de.htm.

Nickel, Rainer 'Gleichheit und Differenz in der vielfältigen Republik', Baden-Baden 1999.

Statements of the expert hearing to the draft ADA of 07.03.2005, download: www.bundestag.de/parlament/gremien15/a12/oeffentliche_sitzungen/20050307/.

German draft law: http://dip.bundestag.de/btd/15/045/1504538.pdf

Which protection applies to which kind of discrimination?
(applies to all Directives)

Direct discrimination
applies where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of the discrimination characteristics laid down in the Directives.

Indirect discrimination
applies where an apparently neutral provision, criterion or practice would put persons at a particular disadvantage compared with other persons (on grounds of the discrimination characteristics laid down in the Directives), unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Harassment
means unwanted conduct related to the discrimination characteristics laid down in the Directives takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Victimisation
means that individuals must be protected from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment

Sharing the burden of proof
Member States are obliged to take measures, in civil and administrative proceedings, to ensure that when a suspected victim establishes facts from which it may be resumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

Support from third parties
Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of the Directives are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under the Directives.

Sanctions
The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. Member States shall lay down the rules on sanctions and shall take all measures necessary to ensure that they are applied.

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