

# statewatch

monitoring the state and civil liberties in Europe

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## EU: Eight years on the data protection fiasco continues

- the mass gathering of data on everyone is planned but not the right to know how it is used

The issue of how “data protection” should govern police and judicial matters is one the Council of the European Union (now 27 governments) has failed to resolve over the past eight years.

It was in 1998 that the Council set up a Working Party on data protection to develop and agree a measure to provide protection for people affected by the “third pillar” of the EU - as the 1995 EU Directive on Data Protection only covered “first pillar” (social and economic) matters.

A draft Resolution was drawn up and revised five times - the last being on 12 April 2001 under the Swedish Presidency of the EU (EU doc no: 6316/2/01) when agreement appeared to have been reached and the Article 36 Committee was asked to address outstanding reservations. From this point on there was silence, the Working Party never met again and was formally abolished in a Council re-organisation in 2002.

The Hague Programme (5 November 2004) introduced the “principle of availability”, namely, that all data and intelligence held by an agency in one EU state should be freely accessible by an agency in another state. At the same time a data protection measure was promised.

The Commission submitted a draft Framework Decision (DPFD) in October 2005 and the European Data Protection Supervisor (EDPS) issued an Opinion in December 2005. The European Parliament - which is only “consulted” as this is a “third pillar” measure - agreed its report (with 60 amendments) in May 2006 and adopted it in September 2006.

In September 2006 *Statewatch* launched its Observatory putting all the secret documents of the Council discussions online. In November 2006 the EDPS, unusually, issued a second critical Opinion and in December 2006 the European Parliament adopted a second report saying that it intended to re-examine the issue as the Council had ignored its views.

After the Commission put forward its proposed DPFD in October 2005 the Council gave the job of dealing with the issue not to a Working Party on Data Protection - comprised of member state representatives familiar with and informed on the issue - but to the Multidisciplinary Group on Organised Crime (MDG) representing the interests of EU law enforcement agencies - effectively “putting the wolf in charge of the sheep”. Peter Hustinx, the European Data Protection Supervisor, told the

UK House of Lords Select Committee that the membership of the Multidisciplinary Group on Organised Crime meant:

*national delegations tend to come from law enforcement areas which, up to now, largely prefer to ignore data protection.*

Between November 2005 and November 2006 the MDG produced 29 reports - substantially changing the Commission proposal, removing people’s right to be told that data on them was being passed to agencies in other states and ignoring the views of the EDPS and the European Parliament.

But in the MDG there were fundamental disagreements particularly over whether the measure should deal only with the transfer of data/intelligence between states or should extend to national laws on data protection as well. The idea it should cover both was very unpopular with a number of governments. These included the incoming German Council Presidency who, unusually, proposed that after 15 months of deliberations the European Commission should be asked to present a “revised” proposal - which means the whole process has to start again.

During the discussions the USA was adamant that Article 15 in the draft should go as this required any non-EU state to have adequate, comparable, data protection standards - which it does not. It wanted nothing to affect the bilateral agreements it has with individual EU states for the transfer of data to its agencies. The German Presidency (EU doc no: 5435/07) that in the new proposal:

*existing agreements between Member States on data transfer to third states should not be affected.*

In a strange twist the Council set up a Working Party on Data Protection again early in 2006, which met four times over the year.

Tony Bunyan, *Statewatch* editor, comments:

*When it does return to the table the Council must give the proposal to the Working Party on Data Protection and not to the working party comprised of law enforcement officials who have proved quite incapable of balancing their demands with the rights of citizens to meaningful data protection.*

*EU governments are very keen to gather masses of data, intelligence and biometrics on everyone but they are extremely reluctant to tell people what is held on them, who it is passed to and for what purpose.*

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**NETHERLANDS****Groningen makes "listening cameras" permanent**

*The unique aspect of this concept is not only that several (prisoners) can be housed in one cell, but that with the help of the most modern technology, surveillance is supported. All prisoners are furnished with tags, for example, which enables the determination of their exact position within the space they are allowed inhabit.*

(Sound Intelligence Systems, microphone technology company)

After a 12-month test phase, the northern Dutch city of Groningen has officially introduced new surveillance technology, the observation of public space with "listening videos", as a regular feature. On 15 November, 11 cameras with microphones were installed which, according to Sound Intelligence Systems, the company producing them, is the first installation of its kind. A pilot project last year resulted in 67 recordings at which no direct police assistance was needed. It is not known if the sound was saved.

Sound Intelligence Systems and the issuing authorities say that the system reacts to "aggressive sounds" such as screams, which trigger the camera to switch itself on and send a signal to the relevant control office or police station receiving the pictures. The microphone is therefore always switched on whilst the camera is not. This is the argument used to justify the new system: that privacy is improved in comparison to the old system in which the cameras were constantly recording. *The College Bescherming Persoonsgegevens*, the Dutch equivalent of the Privacy Commissioner, did not oppose the new technology.

Sound Intelligence Systems believes the new technology has a bright future. According to the newsletter of the privacy-watchdog, *Bits Of Freedom*, (1 February 2006), which recently ceased publication, the firm announced that "camera projects started in museums in order to nip in the bud aggression related to long waiting periods". The company has also said that the cameras will be tested this year in swimming pools and "places of bad news". Further, the company has told the public that the Ministry of Justice is planning to use the microphones (without cameras) for "prisoners with short-term sentences in group cells". The authorities thereby want to "detect aggression, fear and serious forms of distress in the cell". Moreover, this system can be used to "create a file on unmasking troublemakers in the cells".

The technology has already been used in "private" locations. The company says on its website that "in the first weekend after coming into operation" there was one arrest in Rotterdam city square in October 2006. According to *Bits of Freedom*, the cameras are installed by the Dutch national railway company *NS Spoorwegen* on the international train between Amsterdam-Brussels.

*Unlike the Privacy Commission, Bits of Freedom is seriously concerned about the civil liberties implications of this new step in surveillance technology: "If listening cameras are implemented on a large scale, it is only a small step to turn on the microphones at all times and possibly intercept and record conversations. The use of microphones in closed spaces such as trains increases this possibility even more".*

Website Sound Intelligence: <http://www.soundintel.com/>

Citations: <http://www.soundintel.com/nieuws-overig.html>

*Bits Of Freedom*: [http://www.bof.nl/nieuwsbrief/nieuwsbrief\\_2006\\_3.html](http://www.bof.nl/nieuwsbrief/nieuwsbrief_2006_3.html)

CPB on the technology: [http://www.cbweb.nl/documenten/uit\\_z2005-0481.shtml](http://www.cbweb.nl/documenten/uit_z2005-0481.shtml)

**NETHERLANDS****Journalists detained in attempt to discover source**

The drama surrounding the two journalists from the Dutch conservative daily *De Telegraaf* (see *Statewatch* Vol. 16 no 3) continues. Bart Mos and Joos de Haas were covering the fight against organised crime and corruption in the Netherlands, using classified information from the Dutch internal security service AIVD. At first, the case gained prominence because it became known that the AIVD had intercepted the journalist's communications in order to discover their sources within the service. What followed was a legal procedure against Mos and de Haas, leading to their detention for three days in November, an action that triggered declarations of solidarity by colleagues, the Dutch Journalists Union NVJ and even left-wing activists who politically disagree with the journalists' coverage and their populist paper. The men's detention was ordered by the examining magistrate with the aim of forcing the journalists to provide information on the former secret service agent Paul H., who is suspected to have leaked classified AIVD documents to the criminal underworld.

After three days the Chamber (*Raadkamer*) of the Amsterdam Court of Appeal released the pair, even though they had not disclosed their source, because the judges decided that state security was not under threat (the reason given for their detention). The incident led to public debate on improving legislation to protect the right to silence for journalists regarding their sources, a right which is not recognised under Dutch law.

The Amsterdam Court of Appeal (*Gerechtshof*) had earlier ruled that the AIVD interception of the mens' communications was, in principal, legal although it thought that it had continued for too long. The security service's parliamentary control commission (*Commissie van Toezicht betreffende de Inlichtingen en Veiligheid*) also dealt with the case and concluded that the surveillance was legal. While it did not conclude that the intercepts had lasted too long it did find some minor faults, such as the interception of certain telephone conversations that bore no relation to the case at hand, which were not destroyed according to law. The Commission ordered the services to delete these from their records.

Many saw an irony in the fact that the journalists complained bitterly about their treatment and conditions of detention, whilst promoting stricter police action against political activists.

*NVJ press release:*

<http://www.villamedia.nl/n/nvj/nieuws/2006nov27gijzeling.shtml>

**UK/USA/IRAQ****US soldiers "murder" of journalist a war crime**

In October a coroner ruled that US soldiers unlawfully killed the British television journalist, Terry Lloyd, as he covered the invasion of Iraq on 22 March 2003. Lloyd, who refused to allow his work to be compromised by becoming embedded with the invading military forces, had initially received a non-fatal wound to his back after getting caught-up in a firefight between US and Iraqi soldiers near the Shatt al-Basra Bridge. Despite the injury he was able to walk to an Iraqi civilian minibus that was acting as an ambulance, picking up the injured with the intention of taking them to hospital. As it drove off US tanks opened fire on the vehicle despite the fact that, according to coroner Andrew Walker, it "presented no threat to American forces, because it was a civilian vehicle and was facing away from the US tanks."

Walker added: "I have no doubt it was the fact that the vehicle stopped to pick up survivors that prompted the Americans to fire on that vehicle". If the killing had taken place under English law, he continued, "it would have constituted an unlawful homicide".

The coroner has said that he has "no doubt that it was an unlawful act to fire on this minibus". The 1977 Protocol to the Geneva Conventions is clear that journalists operating in areas of armed conflict should "be considered as civilians" and are entitled to the full protection of the Convention and its Protocols. The "wilful" or "indiscriminate" killing of a journalist can be a "grave" breach of the Convention and therefore a war crime. When this is the case there is an obligation on the British government to bring the perpetrators, "regardless of their nationality", before its courts (Article 146). Walker had already stated that he would be writing to the Attorney General and the Director of Public Prosecutions "to see whether any steps can be taken to bring the perpetrators responsible for this to justice."

In a statement read on behalf of the reporter's widow, Ann, solicitor Louis Charalambous said:

*The evidence on how Terry LLOYD was unlawfully killed has shown that this was not a friendly fire incident or a crossfire incident, it was a despicable, deliberate, vengeful act, particularly as it came many minutes after the initial exchange. US forces appear to have allowed their soldiers to behave like trigger-happy cowboys in an area where civilians were moving around and, importantly those who gave orders, should now stand trial. Under the Geneva Conventions Act that trial should be for the murder of Terry Lloyd and nothing else. (The Times 13.10.06)*

The journalist's daughter, Chelsey Lloyd, also condemned the US military, telling *The Times* newspaper that: "The killing of my father would seem to amount to murder which is deeply shocking." The US authorities, who refused to cooperate with the inquest, said that it was "an unfortunate reality that journalists have died in Iraq" and, clearly overlooking the widely publicised assaults by the US on the Baghdad offices of Al Jazeera and Al Arabiya, emphasised that "We do not, nor would we ever, deliberately target a non-combatant civilian or journalist." No US military officials were available to give evidence to the inquest. Moreover, the US withheld from the coroner 15 minutes of crucial video evidence claiming that it had been accidentally erased.

In December Walker criticised the British government for its "unforgivable and inexcusable" failure to adequately equip the first British soldier to die in the invasion of Iraq at an inquest into his death. Sgt Steven Roberts, who was killed by "friendly fire", was sent into battle lacking "the most basic piece of equipment." Walker continued: "To send soldiers into a combat zone without the appropriate basic equipment is, in my view, unforgivable and inexcusable and represents a breach of trust that the soldiers have in those in government." Walker also listed a series of flaws and inadequacies in the government's planning for the invasion in 2003. These included inadequate equipment for its forces, inadequate protection, a shortage of helicopters and questions about the effectiveness of the SA80 machine gun.

*BBC News 13.10.06; The Times 13.10.06; Independent 19.12.06*

## CUBA/USA/UK

### Say no to torture

Thursday 11 January 2007, exactly five years after the arrival of the first hooded, shackled and manacled prisoners at Guantanamo Bay, Cuba, has been declared an international day of action to demand that the US prison be shut down. The former US joint chief of staff, General Richard Myers, has justified the abduction and torture carried out at Guantanamo by describing the abductees imprisoned at the military base as "the sort of people who would chew through a hydraulics cable to bring

down a C-17 [transport plane]". His hyperbolic description, even if it were accurate, is entirely irrelevant to the legal rights to which the men are entitled under international law and the Geneva conventions. To date not one single prisoner has been brought to trial although around 70 of the prisoners are expected to eventually face trial before a US military court.

Among the 450 or so prisoners currently detained in the gulag are eight British residents who have been left unaided by the UK government because they are residents and not British citizens. The eight UK residents are: Jamil el-Banna, Binyam Mohammed, Shaker Aamer, Bisher al-Rawi, Omar Deghayes, Ahmed Errachidi, Ahmed Belbacha and Abdelour Sameur. The *Independent* newspaper recently (9.1.07) published the text of a letter to prime minister, Tony Blair, from the 9-year old British-born son of one of the UK residents, Anas Jamil el-Banna, aged 9. Written approximately one year ago, it read:

*Dear Mr Blair,*

*Firstly, how are you?*

*I sent a letter two years ago. Why didn't you reply?!? I was waiting for a long time but you did not reply. Please can you give me an answer to my question?*

*Why is my dad in prison?*

*Why is he far away in that place called Guantanamo Bay?*

*I miss my dad so much. I have not seen my dad for three years. I know my dad has not done anything because he is a good man. I hear everybody speak about my dad in a nice way.*

*Your children spend Christmas with you but me and my brothers and sisters have spent Eid alone without our dad for 3 years. What do you think about that?*

*I hope you will answer me this time.*

*Thank you,*

*Anas Jamil el-Banna*

Unfortunately Mr Blair was, once again, too busy to reply to Anas' letter, although on this occasion he did receive a note from the Foreign Office. It stated that because Jamil el-Banna was not a British citizen, although his wife and children are, nothing could be done. Jamil el-Banna, who has been imprisoned without trial at Guantanamo since March 2003, suffers from severe diabetes, but has not received medication nor have his dietary requirements been met.

*For more information on the London Guantanamo campaign contact: [guantanamoaction@amnesty.org.uk](mailto:guantanamoaction@amnesty.org.uk) and [London\\_Gitmo@yahoo.com](mailto:London_Gitmo@yahoo.com)*

*Witness Against Torture website: <http://witness torture.org/>*

*Amnesty events website:*

*[http://www.amnesty.org.uk/events\\_details.asp?EventsID=296](http://www.amnesty.org.uk/events_details.asp?EventsID=296)*

*Independent 9.1.07*

## Civil liberties - in brief

■ **UK: Royal Mail suspends postman for helping the environment.** A postman was suspended from work in Barry, Wales in September after advising his customers on how to stop unsolicited junk mail from being delivered through their letterboxes. Roger Annies was suspended and disciplined by his employer, The Royal Mail, who regard the delivery of advertising material as a lucrative part of their business, whether or not their customers wish to receive it. The scale of the problem was recently estimated in a marketing report cited in *The Scotsman* newspaper, which calculated that 3.4 billion pieces of unsolicited junk mail are dumped through British letter boxes every year. Annies was punished by his employers after telling people about their opt-out clause and informing them that "in the near future Royal Mail plans to increase your advertising

mail." He suggested that "You may well be interested in reducing your unwanted advertising mail and reduce paper usage in order to help the environment." The Royal Mail has since lifted Mr Annie's suspension and said that he will be allowed to keep his job, but will be transferred from his round and is likely to face relegation to the sorting office. If you would like to stop junk mail being delivered through your letterbox contact: Unaddressed mail: Opt-Outs, Royal Mail, Kingsmead House, Oxpens Road, Oxford, OX1 1RX. Addressed mail: MPS, Freepost 29, LON 20771, London, W1E 0ZT, Tel. 0845 4599. *The Scotsman* 28.9.06; *BBC News* 26.9.06.

■ **UK/USA/Iraq: Journalists deaths reach a deadly new high in Iraq.** *The Committee to Protect Journalists* (CPJ) has recorded a new low in Iraq with the deadliest ever year for the press in a single country that is detailed in a special report, *In Iraq, journalists deaths spike to record in 2006*. The organisation has recorded the deaths of 32 journalists in the country for 2006, the majority of whom were murdered. The figure compares with a press death toll of 22 in 2005, 24 in 2004 and 14 in 2003. The CPJ observes that "for the fourth consecutive year, Iraq was in a category all its own as the deadliest place for journalists. This year's killings bring to 92 the number of journalists who have died in Iraq since the US-led invasion of March 2003. In addition, 37 media support workers - interpreters, drivers, fixers and office workers - have been killed since the war began." Worldwide the CPJ found that 55 journalists were killed in direct connection with their work in 2006. Afghanistan was - along with the Philippines - the next most dangerous datelines in 2006; three journalists were killed in these countries. Detailed accounts of each case are documented on the CPJ website at [http://www.cpj.org/Briefings/2006/killed\\_06.html](http://www.cpj.org/Briefings/2006/killed_06.html). *Committee to Protect Journalists "In Iraq, journalists deaths spike to record in 2006"*

## Civil liberties - new material

**How I was kidnapped by the CIA**, Mohammed Al Shafey. *Cageprisoners* website, 2.1.06. This article reports on a letter from Abu Omar al-Masri who is imprisoned in Egypt after being abducted from a Milan street by the CIA and handed over to the Egyptian authorities for "interrogation". His family received the letter from the Toro prison in Cairo and this article reveals new details about his abduction and the infiltration of his mosque by American intelligence agents. The article can be accessed at the excellent *Cageprisoners* website: <http://www.cageprisoners.com/articles.php?id=18144>

**Media Wars: News Media Performance and Media Management During the 2003 Iraq War**, Piers Robinson, Peter Goddard, Robin Brown & Philip Taylor. This academic study "evaluates media performance and government media-arrangement operations during the 2003 Iraq War." It considers three main areas of analysis: media performance during the conflict, coalition media-management operations and a comparative analysis of the coalition media agenda and media output. Available on the ESRC website: <http://www.esrcsocietytoday.ac.uk>

**Supplementary Evidence Submitted by Mr. Carne Ross, Director, Independent Diplomat: Submission to the Butler Review**, Carne Ross. *Select Committee on Foreign Affairs Minutes of Evidence*, 6.12.06. Carne Ross worked for the Foreign and Commonwealth Office in New York as the first secretary at the UK mission to the United Nations, responsible for Iraq policy. Unfortunately, he was foolish enough to submit accurate evidence on the government's pre-war intelligence to the Butler inquiry into Saddam Hussein's "weapons of mass destruction", resulting in Foreign Office suppression of his views until its belated publication by the Select Committee. Ross' devastating insider assault on the government's position resulted in his being threatened with charges under the Official Secrets Act. In his evidence Ross makes the following points: i. Britain never believed that Iraq posed a credible threat to the UK; ii. UN Resolution 1441 did not

authorise military action; iii. "inertia" led to the government failing to address the issue of sanctions busting, and iv. the UK believed that "regime change" would result in the collapse of Iraq. Available at: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cm/aff/167/6110801.htm>

**Deep in Le Carre country, the remote Polish airport at heart of CIA flights row**, Nicholas Watt. *Guardian* 4.1.07. While European governments cover up the scandal of US abductions and torture of their citizens and residents, journalists and NGOs strive to reveal the most basic details of the so-called extraordinary rendition programme. Almost inevitably, by the time the details are revealed the US (and their European collaborators) have moved on to new lands where they can override international law. This piece examines the role of the Polish airport at Szymany in the abductions, based on the evidence of Mariola Przewlocka, the director of the airport until she was sacked for "political reasons".

## IMMIGRATION

### NETHERLANDS

## Confederation accepts undocumented migrant domestic workers

After five years of relentless campaigning, the Dutch-based Commission of Filipino Migrant Workers (CFMW), which is part of the European RESPECT network of migrant domestic workers (MDWs), trade unions and NGOs, has attained union recognition for MDWs in the Netherlands. It is estimated that 80% of MDWs have no legal residency and/or work permits. CFMW will act as a go-between for the trade union and undocumented workers and has been given the right to collect membership fees, whilst workers without papers will not have to disclose their identity to the trade union, a compromise which lessened the workers' fear of identification and deportation. The Dutch Trade Union Confederation (FNV), which comprises 14 unions representing the interests of around 1.2 million workers, supported a new MDW section within the national trade union for social care and the public sector, AbvaKabo-FNV. The AbvaKabo-FNV women's group, together with the CFMW, are researching methods of supporting the often undocumented workers. They have developed a model employment contract and are working on collective agreements. The FNV confederation is an umbrella organisation. Its affiliated trade unions operate in their specific fields and enter into collective labour agreements and conduct negotiations with employers and government. The FNV coordinates these activities.

Often unknown to workers and employers alike, undocumented workers have rights under internationally binding law such as the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), notably not yet ratified by most migrant receiving countries. On 26 July the CFMW hosted a meeting of 60 people, mostly migrant domestic workers, at a historic first trade union meeting that brought together officials of the AbvaKabo-FNV and MDWs for the purpose of joining the trade union. CFMW spokesman Mr Nonoi Hachang emphasised the significance of this occasion:

*Five years ago when we started the campaign for the rights of MDWs in the Netherlands, this moment was unimaginable. Today we are making history as a result of the persistence of the MDWs and the response of the ABVAKABO FNV who have taken the significant step of recognising MDWs as workers and to welcome them whether documented or undocumented as members of the trade union.*

One migrant domestic worker commented on their working conditions:

*Is working a 54 hour week normal? What about my situation when employers go on holiday ? it's a case of no work, no pay...and being without contracts, our rights don't count and we are very vulnerable to threats from employers.*

Fe Jusay, co-ordinator of the CFMW Women's Programme, explained that the unionisation was the culmination of many initiatives by the RESPECT Netherlands campaign for the rights of MDWs in which their participation as principal actors was central: "It is the lack of recognition of domestic work as proper work or as a category for immigration which creates the conditions of vulnerability and violations of MDWs rights as workers and as migrants".

CFMW, under the slogan "Don't agonize, organize!" began organising domestic workers from the 1980s onwards, not only representing Filipinos but around 32 different nationalities. In the UK, the organisation has achieved a partial regularisation of domestic workers, improving social welfare and education rights. RESPECT and CFMW analyse the increase of (undocumented) migrant domestic work in industrialised countries as a central element of the globalised economy, where:

*European households are increasingly dependent on such migrant domestic workers and without them their employers could not go out to work in the "productive" economy. In this way, the transnational, globalised economy is brought into the private home, not just in goods consumed there, but at its very core in the organising and delivery of "reproductive" labour."*

The protection of this increasing sector of vulnerable workers, however, is politically sensitive and often not in the interest of states, who continue to criminalise undocumented workers and thereby exclude them from labour and social security legislation. The acceptance within trade unions is therefore the first step towards the improvement of their legal position. AbvaKabo spokesperson Jos van Dijk welcomed the new trade union section and reiterated that:

*For some time now, illegals could become members. As a trade union, we unite people who work, no matter if they are grey, black or white. The right to unionise, irrespective of someone's legal status, is paramount. We never make a difference between illegal or legal and we do not register these kinds of details either".*

In the past, the rights of undocumented migrants have largely been ignored by governments and, indeed, most migrant organisations, but campaigning on their behalf has increased considerably over the past few years, notably due to the migrant workers organising themselves in campaigns such as Justice for Janitors in the USA or the CFMW in Europe. The *Platform for International Cooperation on Undocumented Migrants* (PICUM) has strongly criticised this violation of basic social rights:

*Undocumented workers often work long hours, in dangerous and/or unhygienic conditions. Many do not receive their wages or receive less than was agreed upon and/or are fired without being given due notice, etc. If they suffer from an industrial accident, the lack of official proof of employment renders it complicated and often impossible to have any health care refunded. If they are apprehended due to illegal labour, undocumented workers will most of the time be deported without being able to claim their last wages.*

PICUM recently published a guide *Ten Ways to Protect Undocumented Migrant Workers* and together with the European Trade Union Confederation (ETUC), held a meeting on 23 March 2006 in Brussels on strategy and information exchange on the protection of undocumented migrant workers.

*MDWs of all nationalities are welcome to join AbvaKabo FNV ? Membership forms and further information are available at: CFMW office, De Wittenstraat 25, 1052 AK Amsterdam, The Netherlands, Tel: +31(0)20 664 6927; +31(0)6 4035 0811, e-mail: admin@cfmw.org, www.cfmw.org; Trouw 19.07.06, PICUM website: www.picum.org; CFMW press release "Breakthrough for Trade Union and Migrant Domestic Workers!" (27.2.06):*

*http://www.mfasia.org/mfaStatements/F59-CFMW.html; CFMW press release, 11.2.06: "Work in the Private Household: the Motor of the Dutch Economy", http://www.cfmw.org/files/MDWPRS.htm*

## BELGIUM

### Critical report shames detention centres

A report on conditions in detention centres for foreigners in Belgium published jointly in September 2006 by the Ligue des Droits de l'Homme, MRAX, CIRÉ, Vluchtelingenwerk Vlaanderen and the Jesuit Refugee Service, offers a critical snapshot of establishments for the temporary "administrative detention" of migrants whose identity has to be ascertained or who are awaiting expulsion.

After a brief introduction to the six *centres fermés* (literally "closed centres") in Belgium (Zaventem, Brussels airport; Melsbroek, next to a military airport; Steenokkerzeel, also in Brussels airport; Bruges, Merksplas and Vottem, near Liege), the report goes on to provide plenty of useful data. It estimates the number of detainees based on official figures (8,590 in 2002, 9,345 in 2003, 7,837 in 2004). It provides a breakdown of the population by nationality, with Bulgarians and Poles being the most numerous and by status, with a growing number of asylum seekers whose applications are being examined, although this figure is still marginal compared with people residing illegally in Belgium. It also notes that there was an increase in the number of foreign children detained in 2005.

The number of cases in which isolation is used as a disciplinary measure is rising steadily (616 in 2002, 658 in 2003, 778 in 2004). The average period during which detainees are held is also on the increase, moving beyond the month benchmark in 2004 (33.02 days), with the longest instances extending over 200 days. By law, detention should be "for the time which is strictly necessary", with a two month time limit that can be extended to four months and then by a further month, although this last extension is an exclusive prerogative of the interior minister. As regards the final outcome for detainees, official figures indicate that 5,612 experienced different kinds of "removals" (IOM "voluntary" repatriations, refoulements, repatriations and accompaniment to the border), whereas 1,866 were freed in 2004. The notion of "voluntary returns" is questioned, because:

*they involve detained people, that is, [people] who are deprived of their...freedom, who are thus subjected to strong pressure...this does not reflect our idea of what a voluntary return should be, that is, something freely consented to.*

The establishment of a Complaints Commission in September 2003 has resulted in 42 complaints being filed, of which only 11 were deemed admissible, two of which were rejected (eight are still under examination). The report notes that resorting to detention is becoming commonplace and is expensive, with a budget of 12 million euros allocated for the running of the centres in 2006.

Finally, the report provides a detailed analysis of two issues: the medical and psychological aspects of detention, and the coercion and violence surrounding expulsions. After noting that detainees in the centres are held as an administrative measure for "illegal residence" without facing criminal charges, the authors argue that their contact with detainees allows them to conclude that "the deprivation of freedom" and detention conditions have an impact on the foreigners' physical and psychological health". They go on to highlight the effects of different stages of this experience (arrest, detention, isolation, the case of minors, hunger strikes) on detainees' health, providing details of specific cases.

As for expulsions, the report notes that the opacity surrounding such practices and the "serious levels of degrading

treatment" ascertained during visits and in testimonies made it necessary to devote a section of the report to this issue. After Semira Adamu's death in September 1998, directives were adopted to prevent any kind of constraint involving obstruction of the respiratory system. After the *gendarmes* involved in the Adamu expulsion were found guilty by a Brussels court in September 2003, policemen responsible for expulsions in Brussels airport went on strike, leading to the establishment of a commission to examine expulsion practices. It is described as "unbalanced" in its composition and purpose, because its main focus was on ensuring that officers could escape judicial action, and its conclusions drew criticism from NGOs, some of which (like the *Ligue des Droits de l'Homme*) refused to take part.

Pressure exercised on detainees to make them agree to leave include: the detention itself; verbal pressure from staff in the centre and police officers; the use of family ties (including making parents see their detained child, or instances in which one parent appearing with a child is detained, because the rest of the family is expected to join him/her); the possibility of taking part in the IOM "voluntary repatriation" programme, which is detailed to detainees by social workers in the centres; placing detainees in isolation prior to their expulsion; and a progressive increase in levels of constraint and violence by police officers during repeated attempts to carry out expulsions. Social workers are tasked with "preparing them for possible expulsion" and "encouraging them to respect the expulsion measure that will be adopted" raising ethical concerns.

Airlines are made to speed up expulsions by charging them for the cost of detention of people they have carried who were arrested at the border, and the former Belgian airline *Sabena* signed an agreement in 2000 whereby it accepted responsibility for carrying out expulsions using its own security personnel, except for especially difficult cases.

People are sometimes placed in transit zones in airports in "inhuman and degrading conditions" when a judicial decision to free them is made, in a situation in which they are described by the Interior Ministry as no longer being in detention because "they are free, at any time, to board a flight that will take them back to their point of departure". This measure was deemed "inadmissible" by a Brussels court of first instance in 2003. After noting that when the media report instances in which violence was used by officers during a deportation the authorities tend to allege aggressive behaviour by the expelled foreigner to justify this use of force, the report goes on to describe the different stages of detention, providing details of cases and testimonies to document the different instances of ill-treatment that it refers to. The catalogue of abuses suffered by deportees includes beatings, being handcuffed throughout entire intercontinental flights, injections with sedatives and insults (some of them racist).

The report ends with a list of cases in which violent expulsions were carried out, running from January 2004 to July 2005. It concludes with a series of recommendations.

*Centres fermées: État des lieux, October 2006, Brussels. Organisations involved in drafting the report: CIRE: [www.cire.be](http://www.cire.be); Jesuit Refugee Service: [www.jrs.net](http://www.jrs.net); MRAX: [www.mrax.be](http://www.mrax.be); Ligue des Droits de l'Homme: [www.liguedh.be](http://www.liguedh.be); Vluchtelingenwerk Vlaanderen: [www.vluchtelingenwerk.be](http://www.vluchtelingenwerk.be)*

## Immigration - in brief

■ **Italy: 2006 additional quota for migrant workers:** As has regularly been the case since the introduction of the quota system for migrant workers in Italy in 1998, the original figure that was envisaged for 2006 was revealed to have been conspicuously inadequate for the requirements of Italian businesses. The decree adopted on 15 February 2006 allowed the entry of 170,000 workers, of whom 120,000 were to be for non-seasonal employment. By 31 May 2006, the number of requests submitted

by businesses for foreign workers was "considerably higher" than this figure. "In order not to penalise the Italian productive system", on 25 October 2006 the government decided to use the opportunity allowed by relevant legislation to issue an additional quota of 350,000 non-seasonal third country employees, to whom permits are to be issued for requests regularly submitted by employers by 21 July 2006. Third-country workers who have Italian origins on the side of at least one of their parents will have preferential treatment, as will those from third countries that have cooperation agreements with Italy. The fact that the quotas are regularly lower than the true requirements of the Italian labour market is indicative of the misrepresentation of migrants as a threat and security issue that must be limited by any means, when they are vital for host countries' economies. *Decreto del presidente del consiglio dei ministri, 25 October 2006; <http://www.interno.it/legislazione/pages/articolo.php?idarticolo=795>*

■ **UK: Harmondsworth IRC inimical to proper treatment of refugees:** The recent report by HM Inspectorate of Prisons into Harmondsworth was described by Anne Owers as "undoubtedly the poorest report we have issued on an IRC." Harmondsworth, the largest immigration removal centre, with a population of 500, was described as having "a culture and approach which was wholly at odds with its stated purpose, and inimical to the proper care and treatment of detainees." Over 60% of detainees said they felt unsafe. The main fear was bullying by staff: 44% of detainees (compared to 28% at other IRCs) said they had been victimised by staff. Detainees described custody officers as "aggressive" "intimidating", "rude" and "unhelpful". The centre management had an over-emphasis on physical security and control. Detainees were unable to have basic possessions such as tins, jars, leads and nail clippers. Movement was strictly controlled. Use of force was high, as was the use of temporary confinement in segregated conditions - sometimes for poor behaviour rather than for reasons of security or safety as specified in the Detention Centre Rules. The incentive scheme operated as a punishment system. Suicide and self harm work was weak, and the complaints system was distrusted and ineffective. When, on 28 November, KALYX (as UK Detention Services now brands itself) staff tried to stop detainees watching a news programme on the Inspection Report, detainees rioted and smashed and burned all four wings. *HM Inspectorate of Prisons Report of Unannounced Inspection of Harmondsworth Immigration Removal Centre, 17-21 July 2006*

■ **Belgium: Detention guards speak out about abuses:** On 16 November 2006, four guards from Vottem detention centre told journalists from *Ciné-Télé-Revue* magazine about structural problems and questionable practices in this *centre fermé*, revealing that conditions are so deplorable that they sometimes "go home and cry". The guards did not reveal their names as this may cost them their job. In fact, when they take up service in the centre, they have to sign a confidentiality clause obliging them to treat events and practices in the centre secret. This regime of secrecy is a common policy in many EU countries, and in spite of laudable work carried out on this issue by NGOs, some politicians, public officials and journalists in reporting the lamentable conditions, when information surfaces from the inside it tends to go well beyond the problems highlighted in reports. In this instance, the guards highlighted the problems of dealing with people who suffer from psychiatric problems and the growing numbers of people who have no means of subsistence in the centre. The former are often placed in isolation if they are deemed to pose problems to communal living in the centre, an experience which is described by guards as "breaking" them. It sometimes leads to people who urinate or defecate themselves being left in unhygienic conditions in an empty room with no other sensory stimulation, something that is hardly appropriate in their condition. Moreover, the emphasis placed by the interior ministry (formally responsible for the centres) on

removal means that few people with psychiatric problems are passed over to psychiatric services, as this would delay their removal. *Ciné-Télé-Revue no. 46, 16.11.06. The full-text of this report is available at: <http://www.migreurop.org/>*

## Immigration - new material

**Driven to Desperate Measures.** *Institute of Race Relations*, September 2006, pp 28. This is an important database of 221 asylum seekers and migrants who have died in the UK or in attempting to reach the UK during the past 17 years. As this tragic roll call of death says in its introduction: "No section of our society is more vulnerable than asylum seekers and undocumented migrants. Forced by circumstances beyond their control to seek a life outside their home countries, prevented by our laws from entering legally and from working, denied a fair hearing by the asylum system, excluded from health and safety protection at work, kept from social care and welfare, unhoused and destitute, vilified by the media and therefore dehumanised in the popular imagination, their hopes of another life are finally extinguished." Available from the IRR, 2-6 Leeke Street, London WC1X 9HS, Website: [www.irr.org.uk](http://www.irr.org.uk)

**Regulating Rights, Recognising Responsibilities: the case for regularising irregular migrants.** *Joint Council for the Welfare of Immigrants*, July 2006, pp 52. This report calls for a cross-party political consensus on a regularisation programme to address the predicament of up to 570,000 people living irregularly in the UK - including those who have overstayed work and student visas, failed asylum seekers and trafficked persons - who are deprived of full rights and vulnerable to exploitation because of their immigration status. JCWI, 115 Old Street, London EC1V 9RT; the report is available to download at: <http://www.jcwi.org.uk/news/RegularisationReport.pdf>

## LAW

### UK/SPAIN

## Hilali tape "lost" as conspiracy collapses

Farid Hilali has been detained in various jails since 2004, on a European Arrest Warrant issued by the Spanish Central Criminal Court. The basis of the warrant is that Hilali telephoned the "al-Qaeda leader in Spain", Imad Eddin Barakat Yarkas, prior to the 11 September attacks, and claimed to be "ready to slit the throat of the bird." The Spanish state claims that Hilali, who has lived in Britain for the last 13 years, is also known as Shukri, or Shakur. An extradition order was made at Bow Street Magistrates Court on 1 June 2005, which has been upheld by the Divisional Court and the Administrative Court. The warrant, though, is based on a lie - and the facts behind the lie are facts of which both the British and Spanish states are fully aware.

On 26 September 2005 the alleged co-conspirator, Imad Eddin Barakat Yarkas, was found not guilty of murder, but guilty of a lesser charge of conspiracy to murder. Subsequently, this conviction was overturned by the Supreme Court. During the course of these proceedings, it emerged that the tape recording Spain relies on in seeking Hilali's extradition, does not in fact exist. In the High Court, the Crown Prosecution Service, acting for the Spanish state, claimed the tapes had been played in court during Yarkas's trial. This was untrue. The prosecutor in the Yarkas case admitted that the tape recordings - now claimed as "lost" - were of such poor quality that no voice analysis could be carried out. In the Spanish courts, the prosecution made no claim that Hilali was "Shakur".

Thus, Hilali is detained, facing extradition on the basis of

taped evidence that no longer exists, in relation to a conspiracy of which, according to the Spanish Supreme Court, his co-conspirator was not guilty. According to the Spanish Supreme Court, the telephone intercept evidence was illegally obtained, and the evidence of any conspiracy was "slim, precarious and inconsistently analysed." The Supreme Court has declared the telephone tap evidence "null and void" in relation to the Yarkas case.

Hilali's legal team have launched a *habeas corpus* action in a bid to release him.

*Letters of support to: Farid Hilali HP 8485, HMP Whitemoor, March, Cambs, PE15 OPR*

## What have the Baluchis ever done to us?

Ground troops and helicopter gunships yesterday "dismantled" several "terrorist" bases. "The helicopters achieved their target by destroying the positions of miscreants," a government official told *AFP*. "It was an early morning operation, we have no information about any casualties", he added. Militants claimed to have shot down one of the eight helicopters used in the raid but this was vehemently denied...

Had it made the papers, this report could be from Palestine, Iraq, Afghanistan or any other frontline in the so-called "war on terror". In fact, it comes from the mountains of Zain Koh in Baluchistan, where an almost entirely unreported war is waging.

You may have heard of it. Perhaps you recall the *Baluchistan Liberation Army* (BLA) becoming the forty-first group to be proscribed by the UK as an "international terrorist organisation" last summer? Apart from that, we have heard precious little else about a people whose plight was recently described as "slow motion genocide".

Baluchistan is split across western Pakistan, eastern Iran and southern Afghanistan. Like the Kurds, the Baluchis are victims of Empire whose resource rich territory has been conquered and divided by successive regional powers, from the Persians to the British. It was British colonial rule that determined the modern political geography of Baluchistan, in the 1947 agreement with India that created Pakistan.

The Baluchis resented and resisted their forced assimilation into Pakistan. By the time Bangladesh had gained independence from eastern Pakistan in 1971, they too were demanding greater autonomy from the political elite in Punjab. President Zulfikar Ali Bhutto's refusal to grant any meaningful powers to Baluchistan's first elected body in 1972 resulted in a bloody five year war for independence in which 3,000 Pakistani soldiers, 5,000 Baluchi fighters and many more civilians were killed.

The Pakistan air force carried out strikes throughout rural Baluchistan and napalm was used as part of a "scorched earth" policy. Iran, concerned about the future aspirations of its own Baluchi minority, also joined the military action. The war ended in 1978 when General Muhammad Zia-ul-Haq, who had ousted Bhutto in a military coup, offered an amnesty to Baluchi fighters.

Almost 30 years on and Baluchistan, despite producing more than one third of Pakistan's natural gas and accounting for only six per cent of the population, remains the country's most impoverished region. In recent years, acts of violence against the continued presence of Pakistan's military forces increased. This included a number of attacks on power lines and military checkpoints claimed by the BLA.

Following the alleged rape of a Sihndi woman doctor by a soldier at a hospital in Sui, in January 2005, insurgents launched a crippling attack on the Sui natural gas production facility, Pakistan's largest. President Pervez Musharraf's retaliation was swift and merciless. Warning that "this is not the seventies" and promising that "they will not even know what's hit them", he duly dispatched Pakistan's F-16s and helicopter gunships (newly

supplied by the US) into the mountains and deserts of Baluchistan to deliver the kind of collective punishment now all too familiar to those in occupied lands.

In the past year, six Pakistani army brigades, plus paramilitary forces totaling some 25,000 men, have been deployed to the province. Local groups claim that 450 Baluchi politicians and activists have been "disappeared" and that more than 4,000 Baluchis are now in detention, many in secret locations without charge or trial.

In August 2006, 79-year-old Nawab Akbar Bugti, a tribal chief, former governor of Baluchistan and leader of Baluchistan's largest political party (JLP), was assassinated in targeted Pakistani air-strikes. In December, two more prominent nationalist leaders were arrested. Baluchi tribes have now put aside their differences to unite behind the resistance.

Not surprisingly, Iran has also stepped-up its repression of Baluchi activists. Hundreds have been arrested and many sentenced to death. Public executions are commonplace. Alleged financial assistance to Baluchi fighters from India and countries in the west, renewed designs on the exploitation of Baluchistan's resources, and the presence of Taliban fighters in the region are all fuelling tensions. The political aspirations of Baluchi nationalism, however, should not be confused with those of the Taliban or 'al-Qaeda'.

In August last year, UNICEF called for immediate UN food and medical aid to 84,000 Baluchis already displaced by the troubles, including 33,000 children. But according to a leaked UNICEF report of 22 December, the federal Pakistani government has continually blocked or ignored repeated requests from the UN and other aid agencies for permission to operate in Baluchistan. Many of the refugees are now starving, some have starved to death.

The British government should caution Pakistan over its actions in Baluchistan. Instead, it has designated the Baluchi struggle as "terrorist" as part of a *quid pro quo* with General Musharaf. He supports our "war on terrorism", so we support his. In turn, the shadow of laws prohibiting material and ideological support for "international terrorism" hang over the Baluchis, their exiles, and any solidarity we may wish to extend them.

Herein lies the fundamental contradiction of the global "war on terror". When George Bush told the world "you're either with us or against us", he wrote a blank cheque for the global repression of those resisting occupation and tyranny. The various national and international "terrorist lists" have since enshrined his bogus distinction between "good" and "evil" into law, criminalising the oppressed, undermining diplomacy and conflict resolution and legitimising the state terrorism that fuels their struggles.

## SPAIN

### Constitutional court's racial profiling ruling challenged

On 12 September 2006, a coalition of civil advocacy groups including the Open Society Justice Initiative (OSJI), Women's Link Worldwide and SOS Racismo filed an application before the UN Human Rights Commission concerning a ruling by the Spanish constitutional court in 2001 which appears to condone the use of race as a criterion for police stops. Rosalind Williams Lecraft, an African-American woman with Spanish citizenship, was stopped and asked to show her documents in 1992 in Valladolid train station. When asked why she had been identified while white family members had not, a national police officer answered that he had been told to identify persons who "looked like her" adding that "many of them are illegal immigrants". The Constitutional court's ruling argued that physical or racial

characteristics are "reasonable indicators of the non-national origin of the person who possesses them" and "merely indicative of the greater probability that the interested party was not Spanish".

A press statement issued by the OSJI says that the application asks the "Human Rights Committee to make clear that racial profiling is unlawful" and stresses that the case is important "because racial and religious minorities are increasingly being subjected to police stops and scrutiny". It goes on to claim, referring back to a recent report on ethnic profiling in Spain that illustrates the pervasiveness of racial profiling in stop-and-searches by police, that this "was not an isolated event". The grounds on which the application is based are the breach of the plaintiff's right to non-discrimination and freedom of movement.

*OSJI press statement, Geneva, 12.9.06, available at: [http://www.justiceinitiative.org/db/resource2?res\\_id=103402](http://www.justiceinitiative.org/db/resource2?res_id=103402); "Ethnic Profiling in Spain: Investigations and Recommendations", Daniel Wagman, July 2006, available in English at: [www.justiceinitiative.org/db/resource2?res\\_id=103400](http://www.justiceinitiative.org/db/resource2?res_id=103400); and in Spanish at: <http://www.ecln.org/docbin-2006/OSI-profiling-Spain.pdf>*

## Law - new material

**Articles 2 and 3 of the European Convention on Human Rights: the investigative obligation - part 1**, Kristina Stern & Saimo Chahal. *Legal Action* June 2006, pp 30-31. This piece examines Article 2 (the right to life) and Article 3 (the prohibition of torture) of the ECHR and the investigative obligations arising from these articles.

**Immigration, Asylum and Nationality Act 2006: the main provisions explained**, Alison Harvey. *Legal Action* September 2006, pp 28-30. The IAN Act became law at the end of March, although only the administrative provisions came into force then. Harvey considers the six parts of the Act: Appeals, Employment, Information, Claimants and applicants, Miscellaneous and General.

## RACISM & FASCISM

### UK

### BNP leaders cleared of inciting racial hatred

In November the leader of the British National Party (BNP), Nick Griffin, and the organisation's Head of Publicity, Mark Collett, were acquitted at Leeds Crown Court of inciting racial hatred. The charges arose from a television documentary, *The Secret Agent*, which was broadcast in July 2004. The programme saw journalist, Jason Gwynne, infiltrate the party and covertly film BNP members boasting of racist attacks and other criminal activities. He also filmed speeches by Griffin, in which he abused Islam and the Koran, and Collett, as well as an anti-Semitic diatribe by former party leader and founder, John Tyndall (who died in July 2005 two days before he was to appear in court). All of the speeches were recorded in the build-up to the 2004 local elections. Around a dozen BNP members and supporters were detained by the police on the basis of the programme and several were later expelled from the party, (see *Statewatch* vol. 14 no 6).

At their first trial at Leeds Crown Court in January, the defendants played the freedom of speech card and claimed that their words were not intended to stir up racial hatred but were to motivate people to join the BNP. Griffin was cleared of two of the four charges that he faced and Collett was acquitted on four charges of eight. The jury failed to reach a verdict on the



remaining charges and the pair was told that they would have to return to court to face a retrial. The prospect of a conviction on the outstanding charges was remote, particularly as the prosecution was to take much the same line as in the initial trial, with predictably similar results.

The BNP exploited the media coverage of November's retrial, Griffin arriving clutching a crucifix and hyperbolically comparing himself to a soldier in the Second World War, (although he didn't specify on which side). He pledged that he was willing to die to keep the country "free, Christian and British" and denounced Islam as a "vicious and wicked faith" in a speech to party supporters outside the court. He continued in much the same vein inside the courtroom. The prosecution tack deviated little from the first trial, focusing on the recordings made during *The Secret Agent* rather than introducing Griffin and Collett's broader racist politics.

Collett, for example, was filmed in a 2002 Channel 4 documentary, *Young, Nazi and Proud*, expressing his support for the policies of Adolf Hitler and the loyalist terrorist Johnny Adair; he also verbally abused British-born black people and on other television programmes, homosexuals. The decision to prosecute the pair on the basis of *The Secret Agent* material alone had been criticised by many anti-racists and anti-fascists as naive.

Outside the court following their acquittal, Griffin and Collett corked bottles of champagne and celebrated. Lord Falconer, the Lord Chancellor, indicated that laws against inciting racial hatred would be tightened as did the Chancellor, Gordon Brown, while Home Secretary John Reid promised to "think carefully" and consult his colleagues.

The BNP's true agenda is also more accurately reflected by the arrest of their candidate for Pendle at the 2006 local elections. Robert Cottage (49), from Colne, Lancashire, appeared in court on explosives charges in October and he has been accused of possessing chemicals and other materials under the Explosives Substances Act 1883. A second man, David Jackson (62) was also arrested after police recovered rocket launchers, a nuclear biological suit, 22 different chemical components and BNP literature. The police described the material as "a record haul".

However, unlike the recent police raid on Mohammed Abdul Kahar and Abdul Koyair in Forest Gate, east London in June, which involved 250 officers including a CO19 assault team, the BNP operation was a sedate affair involving a small number of unarmed officers. Also unlike the Forest Gate raid, in which one of the two innocent men was shot and wounded, was the fact that the BNP raid merited hardly any publicity despite a police officer informing the local media that it was "the largest haul of chemicals of its kind discovered in someone's house."

*BBC News, Nelson News 6.10.06*

## GERMANY

### "Dirty old nigger" not racist for justice system?

In April 2006, Ermyan M., a German of Ethiopian origin, was severely injured in a racist attack in Brandenburg near Berlin. This incident, together with the increased sensitivity to racism with the expected arrival of foreign visitors for the World Cup, led to a heated public debate about the high level of racist violence and what to do about it. Anti-racist victim support groups, who received much media attention in the wake of the debate, reported that 28 right-wing extremist criminal acts are committed every day in eastern Germany alone, two of which are of a violent nature. Travel guides such as the Lonely Planet, Rough Guide and Time Out warn visitors of racist violence in

eastern Germany and even the US foreign ministry's webpage warns of racist attacks. But in the country itself, the high level of racism is met with denial by regional politicians and the judiciary alike (see *Statewatch* vol. 16 no 2).

When reporting the case of Ermyan M. and sketching an incomplete history of judicial denial of the racist nature of violent attacks against black people in a series of prominent court cases, *Statewatch* reported that "It remains to be seen if institutional court racism will define this case, or if the racist motivation of the attack will be reflected in the judgement". Now, almost one year later, the trial of two suspects, whose DNA was found at the scene of the crime and whose voices had been identified by several witnesses from a recording made with a mobile phone just before the attack, has started. The indictment, however, does not mention racist motives because the defendants, Thomas M. and Bjorn L., do not hold a membership card of a right-wing organisation; therefore, the police and prosecution are unable to find the attack racist. The fact that the two shouted "dirty old nigger" at the victim before kicking him in the face, or the fact that CDs of right-wing bands were found in Bjorn L.'s car, are not considered sufficient evidence for Germany's criminal prosecution to identify the attack as racially motivated.

On 10 January, the trial against the suspects will begin in the regional court of Potsdam. Sixty two witnesses will appear, one of the first to be heard will be the victim himself. Bjorn L. is accused of severe bodily harm (Ermyan suffered severe head injuries and broken ribs and spent weeks in a coma) while Thomas M. faces charges of "failure to render assistance" because he did not help the victim but ran away when a passing taxi driver discovered the two perpetrators bending over Ermyan. Both suspects deny the allegations and claim to have been at home on the night of the attack.

*Sueddeutsche Zeitung 3.1.07, Jungle World 24.5.06*

## Racism & Fascism - in brief

■ **Austria/UK: Anti-Semitic Holocaust-denier released early:** The discredited anti-Semitic "historian" and Holocaust denier, David Irving, was unexpectedly released from Josefstadt prison in Vienna, Austria after a Supreme Court ruling in December. The court ruled that Irving, who had spent just over one year of a three year sentence in prison, should serve the remainder of his term on probation. Irving was arrested in November 2005 after entering Austria illegally to address a meeting of far-right students. He was convicted of Holocaust denial in April for two speeches he made in 1989 which dismissed the Holocaust as a "fairytale" and denied the existence of the nazi gas chambers at Auschwitz. Austria is one of several countries, including Belgium, the Czech Republic, France, Germany, Israel, Lithuania, Poland, Romania, Slovakia and Switzerland, which have laws against Holocaust denial. The Austrian law targets "whoever denies, grossly plays down, approves or tries to excuse the National Socialist genocide". Explaining his decision, Judge Ernest Maurer claimed that Irving had undergone a "conversion" and now accepts that the Holocaust did take place and there was, therefore, no danger that he would reoffend; Maurer's opinion was described as extremely naive by anti-fascists who expect Irving to return to the Holocaust denial circuit once he arrives in the UK. He has already said that he will urge an academic boycott of historians from Germany and Austria until they stopped jailing historians. Several countries have banned Irving from entering their territory including Austria, Germany and Australia. *BBC News 21.12.06.*

■ **Belgium: Far right makes big gains:** The far right *Vlaams Belang* (Flemish Interest, formerly the Vlaams Bloc) made

significant gains in Belgium's local elections in early October. The party's vote increased by more than 5 percentage points to reach twenty per cent in the 308 municipal councils across Flanders, the northern Dutch speaking part of the country. It appears that in the organisation's stronghold of Antwerp, Belgium's second largest city, they failed to make further progress on the one third of the vote that the *Vlams Bloc* had attained in previous elections [confirm this]. These results would seem to indicate that the party has extended its influence beyond its Antwerp powerbase, although it is not clear if it has made enough progress to force other political parties to share power with it. Until now the mainstream Belgian parties have operated a cordon sanitaire to keep the *Vlams Bloc* out of power because of their racist, Islamophobic and anti-immigrant policies. Shortly before the elections the far right party's leader, Filip DeWinter, called on Jewish voters to join forces with *Vlaams Belang* "against the main enemy of the moment, the radical Islamic fundamentalism." The *Vlams Belang* is just the latest extreme right political party to make electoral gains; elsewhere the far right has had successes in Poland, Slovakia, Germany and France in recent months. *Independent* 5.10.06.

## Racism & Fascism - new material

**The Politics of Britain's Asian Youth Movements**, Anandi Ramamurthy. *Race & Class* Vol. 48 no 2, 2006, pp 38-60. This valuable article examines the Asian Youth Movements (AYM) of the 1970s and 1980s. Ramamurthy contextualises the AYMs in the political history of Asians in Britain and examines the influence of black politics and secularism that united different religious communities. Indeed, the author concludes that the importance of the AYMs "lies in their example of organising politically at a grass roots level across religious divides."

**Enlightened fundamentalism? Immigration, feminism and the Right**, Liz Fekete. *Race & Class* Vol. 48 no 2, 2006, pp 1-22. This article examines how the views and policies of Islamophobic and extreme right political parties have been absorbed into the process of governmental policy and decision making directed against the 'war on terror'. "National security agendas overlap with the immigration control programmes of the far Right and integration measures imposed by governments reinforce Islamophobia. 'Multiculturalism' is seen as a threat to European values and even some feminists are being recruited to an anti-immigrant politics via aggressively promoted stereotypes of Islam."

## MILITARY

### EUROPE

## Parliamentarians call for tougher EU defence

A report from the European Parliament's committee on foreign affairs calls for the inclusion of "geopolitical and geo-economic challenges of the increasing worldwide competition for sources of water and energy, as well as natural disasters and the security of the Union's external borders" as a strategic objective in the further development of the European Security Strategy.

The current European Security Strategy, contained in a document of December 2003 (the so-called Solana-paper) only mentions international terrorism, proliferation of weapons of mass destruction, failed states and organized crime as main threats facing the EU. The report, written by conservative MEP, Karl von Wogau, asks for updating the strategy every five years, to begin with 2008 "at the latest".

The report notes that the union "is on the way to developing into a Defence and Security Union as well", although NATO "remains the guarantor of collective defence". Furthermore the report calls for a standing EU naval force in the Mediterranean "to demonstrate European presence and enhance the EU's crisis management potential in this region" and for "the Civilian and Military Cell and the Operations Centre be upgraded to become a European Headquarters for carrying out civil-military missions."

The report was carried by a large majority (30-9) of the committee members. Greens and GUE/New Left voted against.

*European Parliament, "Report on the Implementation of the European Security Strategy in the context of ESDP". Committee on Foreign Affairs, 18.10.06: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=->//EP//NONSGML+REPORT+A6-2006-0366+0+DOC+PDF+V0//EN&language=EN>; *Defense News* 6.10.06 (Brooks Tigner); *AFP*, 16.11.06*

### EU

## Britain and France clash over EU military research

In a closed meeting of EU defence ministers in Brussels, Britain opted not to join a new EU defence research programme to develop high-tech battlefield protection for European troops. The move prevented the adoption of a three-year spending plan for the European Defence Agency (EDA). Instead, EU defence ministers were only able to adopt an annual budget for the body - 22.1 million euro for 2007. Nineteen European nations did sign up for the research project to spend 54 million euro to develop 'force protection technologies' such as body armour, sniper detection and secure communication. France, Germany and Poland will take the lead in the project. Other EU member states and Norway will contribute money.

Britain is arguing that it is already heavily engaged in research in such fields as a consequence of the current wars in Iraq and Afghanistan and that the EU project would duplicate those efforts. Britain spends 2.3 billion pounds on defence research, nearly half the total across the whole of the EU. The British defence secretary, Dan Browne, said that he was afraid of 'mission creep' under way at the EDA, e.g. the development of a 'separate defence budget' for the EU. Britain wants the EDA to only play a coordinating role, similar to a 'dating agency' that would bring European countries and research programs together.

*Reuters*, 10.11.06 (Mark John); *Ireland On-line* 13.11.06; *Financial Times* 14.11.06 (George Parker)

### UK-KENYA

## Mau Mau veterans seek compensation

Six victims of Britain's 1950s colonial "counter-insurgency" war in Kenya lodged a formal claim for compensation against the UK government in October. Their lawyers said that they will give the government four months to respond before taking the case to the High Court. The men allege that they were subjected to inhumane treatment in British-run detention camps. Legal papers said that Britain was responsible for atrocities carried out during its rule of the west African country. British war crimes in Kenya (and further afield) are well documented by historians of the period, whether directly through torture and physical beatings or through the use of "pseudo-gangs" of ex-guerillas, as advocated by Kitson in his book, *Low Intensity Operations*. The Kenya Human Rights Commission has estimated that 160,000 Kenyans were detained in appalling conditions and over 90,000 people were executed, tortured or maimed over the course of the British

military operation. Claims are being pursued in Kenya by 2,000 more former Mau Mau detainees.

A spokesman for the British embassy in Kenya told the Independent newspaper that all claims of government responsibility passed to the Kenyan government at independence. Mucheke Kioru detained during the brutal Operation Anvil offensive to wipe out the Mau Mau on 1954, is one of the ten men who are seeking compensation through the UK court. He said that he was tortured, starved and beaten while detained in a British interrogation centre after being caught smuggling food and weapons to rebels fighting for independence. The men's solicitor, Martyn Day, said: "It is right that the British government should accept responsibility for the devastation of these Kenyan lives and should pay compensation for what they went through." British officials have indicated that they will contest the case vigorously, no doubt fearful that it would open the floodgates for thousands more claims of torture and abuse carried out under the colonial regime.

*The Kenya Human Rights Commission has a website: <http://www.khrc.or.ke/news.asp?ID=31>; Independent 26.9.06*

## Military - in brief

■ **UK/USA/Iraq: 655,000 dead after illegal US-UK invasion of Iraq.** A new statistical analysis published in one of the world's most prestigious medical journals, *The Lancet*, estimates that the human toll of the 2003 invasion of Iraq may have topped 655,000 deaths as the country descends further into civil war. Most of the fatalities came about as a direct result of violence the study says, estimating that the total represents 2.5 per cent of the Iraqi population. It attributes 200,000 violent deaths directly to British and US forces. The death toll means that more than 500 people have been killed every day. Two years ago a study by a team from John Hopkins University estimated that at least 100,000 Iraqis had been killed as a consequence of the invasion, but the current study implies that the cost of "democratisation" is much higher. The findings contradict claims by President Bush and Tony Blair that the situation in Iraq has improved since the invasion. However, it should be recalled that while neither the United States nor the UK feels that there is any need to count those they kill, they are in a position to dismiss the findings of both of the recent studies. *Gilbert Burnham, Riyadh Lafta, Shannon Doocy & Les Roberts "Mortality after the 2003 invasion of Iraq: a cross-sectional cluster sample survey". See <http://www.thelancet.com/webfiles/images/journals/lancet/s0140673606694919.pdf>; The Lancet, 11.10.06,*

■ **Europe/US: Guantanamo boss to become Nato's Supreme Commander.** Colonel Bantz J. Craddock, who was head of the US Southern Command from November 2004 to December 2006, has been appointed Supreme Allied Commander Europe (SECEUR) for NATO. He replaces US Marine General James L. Jones who had served in post since the beginning of 2003. As head of the US Southern Command in Miami, Craddock was responsible for running the interrogation centre at Guantanamo Bay, Cuba. In 2005 Craddock personally overruled the disciplining of a prison commander who abused a prisoner at the interrogation centre. The Europe Command covers 93 countries in central and eastern Europe, Africa and parts of the Middle East. *Times 8.12.06*

## Military - new material

■ **Corporate Mercenaries: the threat of private military and security companies.** *War on Want*, October 2006, pp. 29. With as many as 48,000 mercenaries operating in Iraq this report examines the role of private military and security companies (PMSC). It attacks the British government for its attempts to privatise the Iraq war, pointing out that

no prosecutions have followed "hundreds of accounts of personnel from private military and security firms committing abuses". The UK has one of the most developed PMSC sectors in the world but has no legal or democratic controls over it, despite commitments made by the government four years ago. Among the companies operating in Iraq is Tim Spicer's UK-based, Aegis Defence Services, whose security guards were recently shown randomly shooting automatic rifles at civilian cars in a film on a website run by a former employee. Aegis, which co-ordinates private military and security firms in Iraq, has seen its turnover soar from £554,000 in 1993 to £62m in 2005 - three-quarters of this comes from Iraq. The report makes five recommendations: i. The UK government must legislate "to control the PMSC sector as an urgent priority"; ii. "Legislation must outlaw PMSC involvement in all forms of direct combat and combat support", iii. Other PMSC services must be "made subject to individual licensing requirements and open to prior parliamentary and public scrutiny."; iv. Strict controls should be put in place to ensure "senior defence or security officials or ministers of state are not allowed to take up any lobbying role for five years after completing their government service." and v. Any government department which outsources a service must remain fully responsible for the conduct of the PMSC. Available at: <http://www.waronwant.org/Corporate+Mercenaries+13275.twl>

■ **Report on postwar findings about Iraq's wmd programs and how they compare with prewar assessments together with additional views US Senate Select Committee on Intelligence.** 8.9.06, pp. 148. This report has been described by the Democratic Senator for Michigan as a "devastating indictment of the Bush-Cheney administration's unrelenting, misleading and deceptive" attempts to create a link between two of the USAs former allies, Saddam Hussein and Osama bin-Laden. While the belief that Saddam Hussein was responsible for the 11 September attacks is still widely credited in the USA, for the rest of the world these claims were neocon propaganda from start to finish. Unfortunately, this report doesn't offer any proposals for the hundreds of thousands who have suffered as a result of the totally unfounded claims. This is the second Senate Intelligence Committee investigation, the first looked at another hoary old neocon myth - Saddam's weapons of mass destruction: <http://intelligence.senate.gov/phaseiiaccuracy.pdf>

■ **A very honest general,** Sarah Sands. *Daily Mail* 13.10.06, pp 12-13. This is an interview with the most senior commander of the British Army, General Sir Richard Dannatt, in which he calls for British troops to be pulled out of Iraq because their presence exacerbates the security problems in the country and will allow the "Islamist threat" to make "undue progress". Dannatt says: "We are in a Muslim country and Muslims' views on foreigners in their country are quite clear. As a foreigner you can be invited into a county, but we weren't invited, certainly by those in Iraq at the time. Let's face it, the military campaign we fought in 2003 effectively kicked the door in. That is a fact. I don't say that the difficulties we are experiencing around the world are caused by our presence in Iraq, but undoubtedly our presence in Iraq exacerbates them." Putting aside the illegal Iraq war, Dannatt has a more benign view of Blair's Afghanistan adventure believing that "we can get it right in Afghanistan"; seemingly by pulling troops out of Iraq and sending them to Helmand province. However, he describes the Helmand situation thus: "Our troops are stretched to capacity. We have only one spare battalion." As if the Iraq/Afghanistan debacle was not bad enough Martin Hickman in *The Independent* newspaper reports: "In February, when he was Defence Secretary, John Reid revealed that British military planners were already preparing for conflicts arising from the scramble for resources in 20 to 30 years time."

■ **Arms Without Borders: why a globalised trade needs global controls.** *Oxfam, Amnesty International and the International Action Network on Small Arms*, October 2006, pp. 45. This report examines the globalisation of the arms trade which has seen military spending rising steadily since 1999 and which is predicted to overtake peak Cold War levels by the end of 2006. This process has seen national regulations flouted allowing the industry to "outsource" to countries where there are few controls and thereby breach embargoes. The report says: "Faced with an arms industry that operates globally, governments cannot rely solely on traditional national or regional export control systems; effective control of a global arms trade requires new international

standards and regulations based on international law. It concludes that existing arms regulations are dangerously out of date and that states must agree a legally binding international Arms Trade Treaty" [http://www.controlarms.org/documents/Arms%20Without%20Borders\\_Final\\_21Sept06.pdf](http://www.controlarms.org/documents/Arms%20Without%20Borders_Final_21Sept06.pdf)

## PRISONS

### GERMANY

## Juvenile's murder highlights prison conditions

In November 2006, a young prisoner was tortured to death by inmates. His death coincided with a debate over German prison conditions, which are predicted to worsen after the transfer of competencies from the federal to regional states. This will see varying implementations of court sentences in different regional states, a development that legal experts, trade unions, churches and many politicians criticise for undermining the principle of harmonised punishment. Criminologists and civil liberties campaigners also warn that taking prison remits out of federal hands will give an opportunity for regional state governments trying to portray their parties as tough on criminal prosecution. In 2003, then interior minister of Hamburg, Roland Koch, was re-elected with the promise that after the reform he would introduce the toughest prison regime in the country.

The 20 year old, who was imprisoned in JVA Siegburg, was murdered by cellmates between 11 and 12 November after they allegedly had beaten and raped him for hours in their cell before forcing him to hang himself in the shower to feign suicide. The three perpetrators are 17, 19 and 20 years old and have been charged with murder, serious bodily harm and rape. The prison authority was criticised because the victim was able to trigger the cell's alarm system but the prison officers were allegedly told by the victim's inmates that the incident had been an accident and they apparently did not detect the abuse. The public prosecution has begun preliminary investigations to identify any responsibility on behalf of the prison authorities; the head of the JVS Siegburg, known for its old-style approach to punishment rather than reintegration, has been transferred.

The murder, however, seems to highlight the deeper problem of prison conditions, harassment and lack of care. One month after the incident, two young people tried to commit suicide; a 21 and a 22 year old who were on medication had collected their pills for a month. They were discovered before they died and hospitalised.

In June, the Federal Constitutional Court used a negative judgement (on a constitutional complaint by a prisoner against disciplinary measures taken against him in prison) to criticise the lack of specific legal regulations for juvenile detention. The court pointed out that young prisoners should receive different treatment from adults because they were "biologically, psychologically and socially in a state of transition which is typically [related to] tension, insecurities and difficulties to adapt". The court pointed out that youth crime was often related to peer pressure and that incarceration and solitary environment had a more destructive effect on them. More emphasis should therefore be given to offering training and education possibilities as well as longer visiting hours and the use of sports facilities. However, now that prisons have come under the remit of the states, regional governments have already said that they are unwilling to pay the costs for reintegration measures as demanded by the court.

Alongside the lack of social care and reintegration

measures, there is the problem of overcrowding. In September 2006, one month before the murder, the JVA Siegburg, which was built for 649 inmates, was holding 715 prisoners. In some federal states one social worker has to take care of 100 prisoners. Although the Council of Europe's Anti-Torture Committee urged in 2003 that juvenile prisons should provide adequate support for suicidal prisoners, the standard answer to self-harm by prison authorities is to use group cells. Germany has a prison population of around 80,000 and except for Bremen, Brandenburg and Hamburg, all federal states' prisons are overcrowded.

The tendency in Germany, similar to that in the UK and modelled on the US prison system, is to increasingly privatise the prison system. The state of Hesse introduced a partially privatised prison at Hünfeld in December 2005, after a series of consultations with British counterparts and private investors (see *Statewatch* vol 13 no 2). The Serco company has taken over not only the kitchen, work rooms, cleaning and maintenance in the Hünfeld prison, but also the psychological and pedagogic support of inmates.

*Der Tagesspiegel On-line 16.11.2006; K"lner Stadtanzeiger 13.12.06, Jungle World 13.12.06.*

### UK

## Prisons unfit for purpose

A series of damning reports by HM Prisons Inspectorate has again exposed the squalid, brutal regimes in place in the UK's overcrowded prison system.

*HMP Shrewsbury:* Shrewsbury has the dubious reputation of being the most overcrowded prison in an overcrowded system. According to the report it is "ageing - in some cases crumbling". Despite a history of suicide and self-harm at the jail, suicide risk information was often not received from elsewhere in the criminal justice system. A further death occurred at the jail just after the inspection took place. Conditions for both prisoners and staff were overcrowded and unsatisfactory. Many cells were unfit for purpose, walls were often damp and water pressure could not cope with demand for showers. To the credit of staff, the jail remains safe and well-managed, but, as the Inspectorate puts it: "it is unacceptable that prisoners and staff are compelled to live and work in accommodation that, in parts, ought to be condemned, and the barely adequate regime is simply not sufficient for a 21st century prison." *Report of Full Announced Inspection of HMP Shrewsbury 22.11.06*

*HMP Leicester:* Leicester is a small, old, inner-city prison. At time of inspection it was operating under acute overcrowding pressures. The prison had experienced nine deaths in custody in the 28 months preceding inspection. On inspection, the assessment and care in custody procedures for managing and supporting those at risk of self-harm was not effectively managed. Healthcare had deteriorated since the last inspection and lacked clinical governance and supervision. Standards in education had fallen. Over half the prisoners had no activity at all. There was no effective personal officer scheme. "Leicester shows, in microcosm, some of the problems faced by an overcrowded and stretched prison system." *Report of an Unannounced Follow-up Inspection at HMP Leicester 29.11.06*

*HMP High Down:* The Inspectorate was greatly concerned by credible allegations of intimidation of prisoners by certain staff and of staff collusion with the abuse of vulnerable prisoners by other prisoners. The Inspectors' concern was compounded by the inadequacy of investigations into prisoners complaints of abuse by staff. There had been a history of excessive use of force by staff and over-use of special cells. *Report of Inspection of HMP High Down 31.10.06*

*HMP Pentonville:* The Inspection found that Pentonville was a prison "that lacked the systems to ensure fundamental

aspects of safety and decency." Prisoners were routinely locked in their cells for most of the day. Prisoners reported much poorer relationships with staff than at the last inspection, and there was a high number of allegations of assault and victimisation. More prisoners than previously said they felt unsafe on their first night. Many internal areas of the prison were dirty and vermin-infested, and too many prisoners lacked basic requirements such as pillows and toothbrushes. Prisoner requests through the formal application system were often ignored. Forty percent of prisoners said they had been insulted or assaulted by staff. Use of force was high, and recording of how and why it was used was insufficiently precise. Prisoners were locked up for around 22 hours a day. Overcrowding, old buildings and inadequate facilities severely inhibited the prison's ability to deliver a safe, decent and purposeful environment for prisoners. *Report of Unannounced Follow-up Inspection of HMP Pentonville 28.9.06*

Meanwhile, Peter Quinn, author of an internal Prison Service report on staff violence at HMP Wormwood Scrubs between 1992 and 2001, has made public his findings that 160 officers at the jail were involved in inflicting and covering up a regime of torture, beatings, death threats and sexual assaults on inmates. Mr Quinn, a prison governor with 30 years service, estimated the regime of systematic violence at the Scrubs amounted to a "concentration of sustained malpractice." Quinn estimated that at least 100 officers involved remained in the Prison Service, with more than 50 at Wormwood Scrubs, all of whom had escaped any disciplinary action. Falsified records, showing for instance Officers Invisible, Non-Existent and Absent as being on duty on the day of an assault, were regularly signed off by managers. Since 1998 three officers have been jailed for violence at the jail and the Prison Service has paid out almost £2m in compensation to inmates. The Home Office refuses to hold a public inquiry into the violence inmates have been subjected to at HMP Wormwood Scrubs.

*Guardian 13.11.06; Quinn report (2004)*

## Prisons - in brief

■ **UK: Islamophobic frenzy at HMP Woodhill:** On 17 November 2006 Woodhill prison officers stormed into Friday prayers held by Muslim inmates at the jail, attacked two Muslim prisoners and deliberately served ham to Muslim inmates. About 30 prison officers stormed Friday prayers and attacked one Muslim prisoner following a dispute over the searching of a Qu'ran. A stand-off ensued between prison officers and 60 inmates until the situation was brought under control by the Imam. Farid Hilali was assaulted by staff when he refused to be transferred to another prison on the basis that he had social and urgent legal visits pending. His solicitors have reported the assaults to the police. Earlier in the day, staff continued to feed sandwiches contaminated with ham to Muslim inmates after the contamination was drawn to their attention.

■ **UK: Foreign nationals in prison troubles:** In the last decade the number of foreign nationals in prisons in England and Wales has trebled. In April 2006, there were 10,000 - 13% of the prison population as a whole - and one in five of the female population. A thematic report by HM Prisons Inspectorate revealed there to be no proper support for foreign nationals while in prison and no coherent and timely planning for what happens to them afterwards. Few prisons have effective foreign national prisoner strategies. Most prisons do not even know how many foreign nationals they hold. Foreign nationals were identified by the Inspectorate as having a recognisable cluster of specific needs - language, family links and immigration. Over 80% of comments from foreign national prisoners referred to staff intolerance of language or cultural difference. Staff meanwhile complained of consistently poor communication with the Immigration and

Nationality Department criminal casework team, to ensure swift action regarding foreign nationals at the end of their sentence. The end result was a prison population all too often unsure whether it faced removal or deportation, and often left in detention long after sentence expiry. *Ann Owers Foreign National Prisoners: a thematic review, 3.11.06.*

## Prisons - new material

**Blunkett said he didn't care about lives. Prisoners should be "machine-gunned"**, David Narey. *The Times* 17.10.06, p 21. This article is a riposte to claims aired by ex-Home Secretary David Blunkett in his bibliography. In the book Blunkett accuses Narey, a former permanent secretary at the Home Office and director general of the prison service, of dithering over a prison riot at Lincoln in 2002. Narey presents his recollection of events, recalling that an "hysterical" Blunkett phoned him: "David was certainly furious. He was also hysterical. He directed me, without delay, to order staff back into the prison. I told him that we did not have enough staff in the prison to contemplate such a move but that many more staff were on their way from other prisons. I insisted, however, that although I was determined to take back the prison as soon as possible, I could not, and would not, risk staff or prisoner lives in attempting to do so. He shrieked at me that he didn't care about lives, told me to call up the Army and "machine-gun" the prisoners. He then ordered me to take back the prison immediately. I refused. David hung up."

## POLICING

### UK

## Christopher Alder Review criticises police

On 27 March the Independent Police Complaints Commission (IPCC) published its report into the events leading up to and following the death of Christopher Alder on 1 April 1998, (see *Statewatch* vol. 8 nos 3 & 4, no 6, Vol 9 no 5, Vol. 10 no 5, Vol. 11 no 2, nos 3 & 4, Vol. 12 no 5, Vol. 13 no 1, Vol 14 no 1). Criticism of four of the five police officers involved in the events surrounding Christopher's death, who were found to be guilty of the "most serious neglect of duty", were welcomed by civil liberties groups and Christopher's family. The IPCC report also acknowledges that police racism played a role in the death, a fact that has long been highlighted by anti-racist groups who point to the grossly disproportionate number of deaths of young black men in police custody. Family members have expressed their disappointment that the IPCC, as well as successive Home Secretaries, have rejected their call for an independent public inquiry into the circumstances of the death.

Christopher Alder, a 37-year old black man, was injured during a scuffle outside a nightclub in April 1998 and taken to Hull Royal Infirmary for treatment, where he acted in a confused and uncooperative manner, refusing medical treatment. He was arrested for a breach of the peace and taken in a police van to Queens Gardens police station; on arrival he was found motionless in the back of the vehicle. No explanation was ever presented for a number of unexplained features of his journey; crucial blood staining in the police vehicle was cleaned and the presence of mud, found on Christopher's thighs, was never explained. CCTV footage of events at the police station showed that Christopher was dragged to the custody suite and placed face down on the floor. The videotape revealed police officers laughing and joking as Christopher lay dying on the floor in a

pool of his own blood and with his trousers around his ankles. Despite his disturbed breathing the assembled police officers took ten minutes to go to his assistance, by which time he was dead.

In 2000, after hearing seven weeks of evidence, an inquest into Christopher's death returned a verdict of unlawful killing and ruled that his death was due to positional asphyxia. The police investigation of his death, held under the supervision of the Police Complaints Authority, has been criticised for its incompetence. The INQUEST organisation, which works with families of those who die in custody, described some of the flaws in this investigation:

*Failure after failure occurred in the police investigation held under the supervision of the Police Complaints Authority. The death was never treated as potential homicide and the custody suite never sealed and preserved as a scene of crime. Crucial blood staining was wiped from the custody area and van. No proper enquiry was ever made as to why Christopher's trousers were around his knees with mud on them and on his thighs. The clothes of the police officers who had been involved with him were not the subject of any examination report and were sent for dry cleaning. The clothes and [a damaged] tooth of Mr Alder himself were destroyed.*

Five police officers, Sgt John Dunne and Constables Martin Barr, Neil Blakely, Nigel Dawson and Mark Ellerington were suspended from duty and, after the inquest, faced trial on charges of manslaughter in April 2002. On 21 June, at the end of the prosecution's case, the judge ruled that there was insufficient evidence to prosecute the men and directed the jury to find them not guilty. As a consequence of the failure of the prosecution and of the police exercising their right not to incriminate themselves under the Coroners Rules at the inquest the officers have not been required to answer a single question or offer any kind of explanation for the events of 1 April 1998.

As a result of these legal failures, in April 2004 that Alder family called on the then Home Secretary, David Blunkett, to hold a public inquiry into Christopher's death. Their decision followed a BBC television documentary, *Death on Camera*, which used police video evidence to reveal the full horror of the events in the custody suite at Queen's Gardens police station. The programme prompted Blunkett to initiate the IPCC review of the lessons to be learnt from Christopher's death that was delivered to Parliament on 27 March 2006.

The IPCC review levels criticism at four of the five police officers immediately involved in the events surrounding Christopher's death and who refused to co-operate with the IPCC review and acknowledges "very serious failings by many of the individuals and organisations involved." In his press statement Nick Hardwick, the chair of the IPCC, criticised the officers saying: "I think they owed it to Mr Alder's family" to account fully for their actions on the night of Mr Alder's death.

The report also acknowledges that racism played a role in the events of 1 April with Hardwick commenting that "the fact that he [Christopher Alder] was black stacked the odds more heavily against him." He says that the officers' failure to assist Christopher meant that he "did not matter enough for them to do all they could to save him", leading Hardwick to consider them "guilty of the most serious neglect of duty." However, this is hardly new as families and campaigns have been pointing to the disproportionate number of deaths of young, black men in police custody for 30 years and complaining at the lack of any serious attempts by the authorities to rectify the problem. As Humberside police force had already introduced a "significant number of changes" in the eight years since Christopher's unlawful killing.

Although no police officer is to be held accountable for Christopher's death, Humberside police did find the time to arrest Jason Paul who was detained in January 2006 on suspicion of Christopher's murder during the fracas outside the nightclub that

initiated the events of 1 April 1998. He was subsequently charged by the police with grievous bodily harm (gbh) but at court the jury believed that it was "more likely than not that the police charged [Paul] with causing gbh with intent to deflect potential criticism of the circumstances of Christopher Alder's death." Their view was shared by the Alder family who said in a statement: "We have never believed that Jason Paul was responsible for Christopher's death."

*INQUEST can be contacted at: <http://www.inquest.org.uk/>*

*"Report, dated 27th February 2006, of the Review into the events leading up to and following the death of Christopher Alder on 1st April 1998", Independent Police Complaints Authority (HC 971-1) 27.3.06, see:*

*[http://www.official-documents.co.uk/document/hc0506/hc09/0971\\_i.asp](http://www.official-documents.co.uk/document/hc0506/hc09/0971_i.asp)*

*"Damning Report on the death of Christopher Alder falls short of family's demand for public inquiry" INQUEST press release, 27.3.06*

*"Alder Review: Publication of Report", Charles Clarke statement to Parliament 27.3.06*

*"Review of Events Relating to the Death of Christopher Alder" IPCC press release 27.3.06*

*"Christopher Alder" Tim Hollis, Chief Constable, Humberside police press statement 27.3.06*

## UK

### Promotion for senior officer in Menezies slaying

In September Commander Cressida Dick, the officer who supervised the Metropolitan police operation that ended with Brazilian Jean Charles de Menezes being shot dead as he sat on an underground train at Stockwell tube station, was selected for promotion. The Metropolitan Police Authority announced that Ms Dick is one of four police officers who will be promoted to the status of deputy assistant commissioner as soon as the positions become available. Jean Charles was shot seven times by undercover police officers as he travelled to work on 22 July last year, following a terrorist alert the previous day, (see *Statewatch* vol. 15 no 6). The killing was followed by police secrecy and leaks which "covered the true facts and lies and false scenarios...[were] allowed to hold good" (Birnberg Peirce & Partners press statement, 17.8.06). No charges were brought against any of the police officers involved in the fatally flawed operation after the Crown Prosecution Service ruled out any prosecutions; the Metropolitan police force only faces charges of breaching health and safety law.

Following the slaying of Jean Charles, Dick was interviewed under caution by the Independent Police Complaints Authority (IPCC) as the officer responsible for the tactical delivery of the operation. The IPCC's report has yet to be published, but leaks indicate that they examined Dick's key role in failures of communication and the ensuing confusion that contributed to the killing. It is possible that she will face disciplinary charges. Meanwhile, the highly unusual decision to prosecute the Metropolitan police under health and safety laws means that any inquest into Jean Charles' killing will have to wait until it has concluded. Therefore the inquest into Jean Charles' death is unlikely to take place until 2008 to prevent its outcome prejudicing the legal proceedings.

The Menezies family and their supporters have expressed their outrage and dismay at both the decision to delay the inquest and the promotion of the police officer who bears ultimate responsibility for Jean Charles' death. They challenged the rulings by protesting outside Southwark Crown Court on 7 September (Brazil's Independence Day) arguing that further delays would make a mockery of the judicial system. A spokesman said:

*We have not even seen the beginning let alone the end of the legal*

process as to who is culpable and responsible for the death of an innocent man. How can the Metropolitan Police Authority give the green light to promote Cressida Dick, someone who is centrally involved in the court case.

Jean Charles de Menezes Family Campaign: <http://www.justice4jean.com>

Jean Charles de Menezes Family Campaign "Menezes Family to Challenge proposed Inquest Adjournment" undated; Birnberg Peirce & Partners "Press statement #2" 17.8.05; Metropolitan Police Authority "MPA appoints new Deputy Assistant Commissioners to the Metropolitan Police Service" 12.9.06; Independent 8 & 13.9.06.

## SPAIN

### Security guard shoots Angolan woman

On the night of 31 October 2006, a private security guard on the Madrid commuter railway network (*Renfe Cercanías*) shot a 40-year-old Angolan woman in both legs. He found her sleeping in a carriage and she resisted as he tried to forcibly remove her when the train arrived in the depot at Mestoles-El Soto station. The officer reportedly had knuckle-dusters and a knife in his bag. He claims that the woman, Ana Lourdes Da Silva, reacted violently when he tried to handcuff and remove her from the train. They were both taken to hospital, and the guard had marks from blows, scratches and a bite. The security firm Vinsa, the guard's employer, is conducting an internal investigation, and the security guard was released from custody on 1 November 2006. He is still under investigation for causing the woman's injuries and to ascertain whether he used unwarranted violence by firing his gun. An intervention by members of Vinsa resulted in a death in May 2006, when an off-duty security guard died after being restrained and handcuffed.

Madrid metro and railway security guards have been accused of using excessive force and discriminatory treatment in a number of instances. *SOS Racismo* has an office that records complaints about discriminatory treatment, and has been made aware of a growing number of cases of abuse, often involving violence or insults, by private security guards. Figures included in *SOS Racismo's* 2006 annual report indicate that 54% of

incidents reported (71) involved security personnel, in 44% public and in 10% of cases private. A spokesman for the association's Madrid section argued that one of the main problems is the climate of impunity surrounding such cases. Victims are often reluctant to report the incidents and, when they do, offending agents often respond by filing lawsuits against the victims for disobedience, resisting authority or attacking them, so that they appear in court as defendants rather than as plaintiffs. Moreover, fellow private security guards often provide evidence in support of their colleagues and the fast-track judgements which are often held in such cases make it difficult for discrimination victims to prepare their defence properly. Armed security guards are routinely present on commuter railway lines in Madrid.

*El País*, 2-3.11.06; *El Mundo*, 2.11.06.

## Policing - new material

**Report of the Independent International Panel on Alleged Collusion in Sectarian Killings in Northern Ireland.** *Center for Civil and Human Rights* (Notre Dam Law School, Indiana, USA) November 2006, pp.115. In 2004 the CCHR panel was invited by the Pat Finucane Centre to investigate 25 cases of alleged collusion between members of the Royal Ulster Constabulary (now the Police Service of Northern Ireland) and Ulster Defence Force and loyalist paramilitaries. It found evidence indicating collusion in 24 of the cases, involving a total of 74 murders. Their report documents evidence of direct participation by RUC officers and UDR soldiers in some of the attacks and says that superiors within the security forces failed to prevent, investigate or punish those responsible. The authors believe that in some of the cases there is "a prima facie showing of State responsibility" but point out that the mechanisms available for victims of British state terror are deficient in terms of providing restitution in line with international law and standards. See: <http://www.serve.com/pfc/sarmagh/collusion.pdf>

**Greece: policing racist violence in the 'fenceless vineyard'**, Georgios A. Antonopoulos, *Race & Class* Vol. 48 no 2, 2006, pp 92-100. This article draws on interviews with Greek detectives to survey police attitudes towards migrant communities and racist violence. The author says that migrant communities, particularly the Albanian, are viewed as "hotbeds of crime" and that racist acts against these communities are often viewed as "incidents of self-defence".

## Viewpoint

### By agreeing to negotiate new laws in secret trilogues is the European Parliament deepening the "democratic deficit"? by Tony Bunyan

The European Parliament (referred to as "parliament" hereafter) and the Council of the European Union (the 27 governments) are currently discussing a revision of the "Joint Declaration on practical arrangements for the codecision procedure".

The parliament has two different powers over new measures: a) codecision (under Article 251, TEC) was introduced in the Maastricht Treaty (1993) whereby the Council and parliament have to agree on the adopted text. In the Council qualified majority voting applies. This covers all "first pillar" measures (economic and social) and most immigration and asylum measures (since 2005) and b) consultation where the parliament is asked for an Opinion which is routinely ignored (Article 250, TEC). Unanimity in the Council is required. Consultation covers Title VI of the TEU on police and judicial cooperation ("third pillar").

Within the codecision process there are a number of stages. The ultimate stage is where there is no agreement between the Council and the EP and a "Conciliation Committee" is set up.

This has equal numbers of Council representatives and MEPs - the Council voting by qualified majority and the EP by a majority of members.

A Conciliation Committee is only set up after the parliament has gone through a number of stages: committee stages, first and second reading (in plenary sessions).

The Council and the parliament are co-legislators on the basis of a Commission proposal under codecision. First, the parliament adopts its Opinion then the Council adopts a Common Position (having seen the parliament's views) - this is known as "first reading" by both parties. When the Council has adopted its Common Position the parliament can make amendments which the Council can accept or reject in the "second reading".

However, since the Amsterdam Treaty came into effect in 1999 a plethora of informal and semi-formal meetings have taken over from the formal process above in many instances.

This feature looks at this development and draws on articles

by Henry Farrell and Adrienne Heritier ("The invisible transformation of codecision: problems for democratic legitimacy", 2003) and by Anne Rasmussen and Michael Shackleton ("The scope for action of European Parliament negotiators in the legislative process: lessons of the past and for the future", 2005). It then looks at the proposed revised "Joint Declaration" on codecision between the Council and the parliament.

### Codecision and legitimacy

The process is confusing enough for the outsider or interested researcher (let alone the media). This is further complicated as there are *two* different kinds of "trilogues" in the codecision process. The first kind of "trilogue" prepares meetings of the Conciliation Committee and takes place between representatives of the Council, Commission and the parliament.

While the differences on codecision measures at the committee and plenary stages in the parliament are public, as are the debates and the votes, these trilogues remove from public view "compromises" reached in secret meetings between the institutions. These semi-formal trilogues involve the Vice-Presidents, committee chair and rapporteur of the parliament and the Council Presidency and the working party.

Far more insidious is the second form: informal trilogues. These secret meetings try to avoid any meaningful public and open sessions in committee and plenary in the parliament.

They seek to reach an "early agreement" between the Council and the parliament and often lead to "fast track legislation" or "1st reading compromises".

Farrell and Heritier argue there is an additional factor, namely that the larger member states:

*use their clout in parliament to manipulate the legislative process in a non-accountable, and non-democratic fashion*

An associated factor - particularly in justice and home affairs matters - is the "unholy alliance" of the two largest groups in the parliament, the PPE (Conservative) and the PSE ("Socialist"). On access to EU documents (2000), privacy in telecommunications (2002), biometric passports (2004) and mandatory data retention (2005) they steam-rolled through the Council's measures.

Farrell and Heritier observe that trilogues to "fast-track" legislation was put in the Amsterdam Treaty at the request of the Council's General Secretariat (permanent officials). Rasmussen and Shackleton note that prior to the Amsterdam Treaty (coming into effect in 1999) codecision measures could only be concluded at second reading or after the full conciliation procedure - under Amsterdam "it became possible to conclude at first reading".[1]

These trilogues are intended for agreement to be reached before the Council adopts its "Common Position" or the parliament adopts its formal opinion. Moreover, these "fast-track" trilogues were originally intended, or rather legitimated, as being for non-controversial or highly technical measures - a practice that was soon to extend to highly controversial measures.

The aim of these secret informal trilogues is to reach agreement and by-pass the formal machinery in place on codecision measures. Farrell and Heritier comment:

*Negotiations on early agreement dossiers are almost entirely informal - it is extremely difficult for others within the parliament, let alone outsiders, to have any idea of what exactly is going on... Efficiency is enhanced at the expense of accountability.*

The "outsiders" include the media (unless given a tip-off), NGOs, the public and national parliaments (who end up giving their views on the first text which bears little or no relation to what is actually being discussed).

While "outsiders" do not have a clue what is being done in

their name the "power brokers" from the two big parties can exercise hidden and often decisive influences on the "compromise" text - and the smaller party groups are marginalised. As Rasmussen and Shackleton note the power of "a small number of influential negotiators" may lead to the parliament losing control of the process. Indeed they say that in practice:

*there is rather little informal control of the work of the key negotiators*

This is because no formal position has been taken by the parliament (or the Council) so:

*all sorts of amendments can be tabled to the Commission proposal by the key negotiators*

and:

*deals are often made with the Council that are very difficult to change in practice*

The parliament committees and plenary sessions (where all party groups and MEPs are represented) are not allowed to change a "dot or comma" of the "compromise" position agreed in informal trilogue meetings. Thus the public processes of proposals, debates, amendments and votes become meaningless. The parliament negotiators are tied in a "deal" to deliver the votes to push through the "deal" agreed in secret.

Farrell and Heritier conclude that codecision was introduced under the Maastricht Treaty (1993) to give the parliament a stronger role and to "bolster the democratic legitimacy of the EU" however, the:

*proliferation of informal meetings and early agreements mean the debate is not as open or transparent as it might be. Important decisions are made in meetings outside the formal legislative process, with little accountability.*

The Guide to Conciliation drawn up by the Conference of Presidents (the leaders of the party groups) in November 2004 set out new procedures. Concerned about the loss of control the Guide says that negotiations should not normally take place until:

*the committee has adopted its first or second reading amendments. This position can then provide a mandate [for negotiations]*

The very obvious "gap" in these Guidelines is where the committee has not adopted its "first reading" position and a "fast-track" trilogue results in compromises and amendments agreed in secret which the committee and plenary can simply only say "yes" or "no".

### The 1999 Joint Declaration and the 2006 draft text

The Joint Declaration between the Council and the parliament in 1999 coincided with the Amsterdam Treaty coming into force - and is quite a bit shorter than the 2006 draft proposal. Brief sections cover a Preamble, first reading, second reading and conciliation and the word "trilogue" does not appear.

The two paragraph Preamble simply says that existing practice of "contact" (meetings/trilogues) should continue and that this practice should be "extended to cover all stages of the codecision procedure."

The new 2006 Preamble, termed "General Principles", has ten paragraphs. The most significant are:

- that the institutions cooperate: "clearing the way, where appropriate, for the adoption of the act at an early stage of the procedure" (Point 4). The phrase "where appropriate" is unclear and undefined. Is it appropriate to push through a controversial measure "at an early stage" (implying at first reading)?

- "appropriate interinstitutional contacts" (the power-brokers) will monitor the "convergence" of positions "during all stages" (including first reading) (Point 5).

- Point 7 spells out the central role of trilogues:

*Cooperation between the three institutions in the context of*



codecision often takes the form of tripartite meetings ("trilogues"). This trilogue system has demonstrated its vitality and flexibility increasing significantly the possibilities for agreement at the first or second reading stages, as well as contributing to the preparation of the Conciliation Committee

Thus the "General Principles" allow secret, trilogues at all stages of the codecision process, crucially at first reading.

- trilogues are says the 2006 draft:

*conducted in an informal framework. They may be held at all stages of the procedure and at different levels of representation (Point 8). In other words if things are not going well the heavy-weights can be brought in to lay down the law.*

- "as far as possible draft compromise texts" should be circulated in advance - but do not have to be? (Point 9)

The section on "First Reading" in the 1999 Joint Declaration is very simple. Namely that the institutions should cooperate so that "wherever possible acts can be adopted at first reading" and monitor the progress.

The "General Principles" having set the tone the 2006 draft says that if agreement has been reached through "informal negotiations in trilogues" prior to first reading then the Council will send a letter to the chair of the parliamentary committee setting out the agreed amendments:

*the chairman [sic] of COREPER shall forward, in a letter to the chairman of the parliamentary committee, details of the substance of the agreement, in the form of amendments to the Commission proposal. This letter should indicate the Council's willingness to accept the outcome.. should it be confirmed by the vote of the plenary (Point 1.4; the Commission get a carbon-copy).*

Thus the "deal" done in informal, secret trilogue meetings becomes formal and effectively binding on the parliament.

The 1999 Joint Declaration then moves to the procedure at second reading - but the 2006 draft version adds a completely new stage before the second reading, thus extending the "life" of first reading trilogues.

So "contacts" [trilogues] may be continued with a view to concluding an agreement at the common position stage"

To re-cap the Council adopts its "Common Position" after the parliament had adopted its amendments to a proposal in committee and plenary sessions but this is *prior* to the formal start of the second reading procedure.

It is worth noting that Point 6 under the Conciliation committee stage in the 1999 Joint Declaration has been *deleted* in the 2006 draft text. Point 6 said:

*The outcome of votes and, where appropriate, explanations of vote, taken within each delegation on the Conciliation Committee, shall be forwarded to the Committee.*

Even more significant is an addition in Point 14 of the 2006 draft text. This says:

*The working documents used during the conciliation procedure will be accessible in the Register of each institution once the procedure has been concluded*

This is the only mention in the 2006 draft text of the documents produced being made accessible to the public - **but only after the measure in question had been adopted.**

Moreover, all the documents produced during many trilogues (prior to 1st reading, common position and second reading, and the conciliation committee stage) are termed "informal" meetings and thus are not listed in the public Registers of documents at the time of adoption of a measure.

### The European Parliament, codecision and trilogues

The focus here is how codecision, especially first reading informal trilogues deals, affects justice and home affairs issues - immigration and asylum (Title IV, TEC). However, there have been a number of relevant codecision "first pillar" measures like:

- the Regulation on access to EU documents (2001)

- Privacy in telecommunications (2002)

- Mandatory data retention (2005)

All three concerned fundamental issues of access, civil liberties and privacy and were effectively steam-rolled through the parliament with the votes of the "unholy alliance" of the two big parties - the last two were the subject of committee and plenary discussion and contested amendments rather than secret trilogue deals.

Immigration and asylum moved over from "third pillar" decision-making (where parliament is only consulted) to the "first pillar" (codecision) at the beginning of 2005. This timing was itself part of a "dirty deal" as at the end of 2004 the parliament was being "consulted" on biometric passports (fingerprinting) a measure then "third pillar" but one that would have been "first pillar" with the transfer of Title IV. The parliament was told that if it did not agree to the biometric passports measure in December 2004 then immigration and asylum would not be moved over until May 2005 - the "unholy alliance" of the two big parties ensured the Council's wishes were met.

From 1999 to 2005 the parliament had only been "consulted" on immigration and asylum, meaning in effect it adopted an opinion, sent it over to the Council (to comply with the formal rules) who simply ignored its amendments. Thus many in the parliament argued vehemently that it should have the full powers of codecision so that it could do its job properly - and with the implication this would improve measures by protecting the rights and liberties of refugees, asylum-seekers and migrants.

The reality has been somewhat different. Since 2005 seven immigration and asylum measures have been adopted under the codecision procedure - *all of them have been adopted at first reading through secret trilogue meetings.*

These measures are:

- Recommendation on use of short-term visas for researchers (OJ 2005, L 289/23)

- Regulation 2046/2005 on special rules for Turin Winter Olympics

- Regulation 562/2006 on a code for crossing of borders by persons

- Regulation 1931/2006 on a regime for local border traffic at external borders

- Regulation on SIS II (1987/2006)

- Two Decisions on transit via new member states

Four out of the seven measures concerned proposals of substance and of concern to citizens and/or the affected groups and could in no sense be seen as uncontroversial.

The Border Code and Local border traffic measures were it is true highly detailed but raised substantial issues of rights and risks. On the Border Code Steve Peers observed:

*A detailed analysis of the agreed text of the Borders Code shows that the EP had some success in getting a number of its more modest amendments accepted. But more radical changes were either rejected by the Council or not tabled at all by the EP.[2]*

There are also a number of proposed measures (either on the table or soon to be):

- Regulation on the creation of Rapid Border Intervention Teams (euphemistically referred to as "RABITS")

- Regulation establishing visa Code (COM 403, 2006)

- Directive for returning illegally staying third country nationals

- Regulation on the Visa Information System (VIS)

- Amendments to the Common Consular Instructions (to meet VIS requirements in countries of origin)

- Decisions on the Returns Fund, Refugee Fund and Borders Fund

- A proposal on sanctions on the employment of illegally resident people is expected.

The VIS proposal (rapporteur Sarah Ludford) has been the

subject of very lengthy and on-going trilogues. Trilogues are expected to start on the Common Consular Instructions soon. It is also anticipated that first reading agreement will be attempted on RABITS too.

### Observations

This examination of the codecision procedure involving the Council and the parliament is primarily concerned with the agreements reached in their secret trilogue meetings at first reading stage before the committee (in this case the Committee on Civil Liberties) has adopted its position.

The adoption of the committee position involves the circulation of a draft report from the appointed MEP rapporteur, a first discussion, the putting down of amendments to the draft report from the political groups, and a discussion and vote on the amendments. The amended report represents the parliament's view at first reading stage when it is subsequently, possibly further amended, and adopted by the plenary session. The draft report, the amendments, the discussion on them and the voting is all carried out in public session and available on the parliament's website.

Thus not only can the parliament be publicly "seen" to be doing its job but crucially those in and outside Brussels, right across the EU, can follow the debate and make their view known prior to the vote both at committee and plenary stage.

When "deals" are reached in secret trilogue meetings between the Council and the parliament at first reading stage the MEP rapporteur produces a draft report and amendments are submitted but there are no votes on them in committee. The agreed text reached in secret is presented to the committee (and the plenary) as a "done deal". No amendments to the text are allowed, or rather if submitted the rapporteur and their supporters (a majority) are committed to routinely voting them down.

Under the 2006 draft text for a Joint Declaration this process is further formalised in the form of a letter from the Council (from Coreper, the committee of high-level permanent Brussels-based representatives of all the governments) to the chair of the committee setting out the agreed text.

The 2006 draft text reflects the Council's love of trilogues with their "vitality and flexibility" and they can comprise "different levels of representation". While "shadow rapporteurs"

(from party groups other than that of the rapporteur) can be involved in the initial trilogue meetings when things get tricky the committee chair can be wheeled in as can parliamentary "power-brokers". In decisive discussions the shadow rapporteurs can thus be marginalised especially if they are from the smaller party groups.

By way of example, the trilogues during the adoption of the Regulation on access to EU documents were at first compromised on the parliament side of the rapporteur and shadow rapporteurs. When an impasse was reached the shadow rapporteurs were excluded and parliamentary "brokers" wheeled in to finalise the deal.

What is crystal clear is that the crucial debates, differences and options are sorted out in secret - out of sight of other committee members and absolutely excluding civil society and the public at large.

The process of secret trilogues has led to shoddy trilogue "deals" on a series of crucial civil liberties issues on immigration and asylum. If the parliament were to get codecision on police and judicial cooperation (so-called "passerelle") would this not simply extend trilogue negotiated first reading deals?

**The critical issue for legitimacy is only partly whether we are witnessing a shift in the locus of decision-making in the parliament, from committees to trilogues.**

**Much more important is the shift of decision-making from a public, accessible, forum to one which is secret and thus removed from public scrutiny, comment, debate and possible intervention.**

The EU has a well-recognised, and still unresolved, "democratic deficit". One reflection of this is the pitiful low turnout for elections to the European Parliament. For the parliament to agree to the 2006 draft text, in the name of so-called "inter-institutional loyalty", can only further divorce it from the people it is meant to represent.

### Footnotes

1. Rasmussen and Shackleton says that during the Maastricht era 40% of codecision required the full conciliation process but this dropped to 20% in the following five years.

2. Revising EU border control rules: A missed opportunity? Steve Peers: <http://www.statewatch.org/news/2005/jul/eu-border-code-final.pdf>

## The dream of total data collection

### - status quo and future plans for EU information systems

The broad use and the extension of EU information systems in the field of policing and especially policing of immigration is a clear indication of the EU growing together - but in a way that is not desirable.

Justice and home affairs policy in the EU is about to make a technological quantum leap: the second generation Schengen Information System (SIS II) was expected to go online in 2007. The new system marks a generational change, not only in terms of the technology it uses but also in terms of the data it contains. Biometrics has now become a central component of EU police data systems and the Commission is already planning "interoperability" with other systems: namely, with the Visa Information System (VIS) which was also expected to go online in 2007, and with Eurodac, the database which has been used since 2003 to collect and compare fingerprints of asylum seekers at the EU level. In November 2005, Europol started its "information system" and thereby finalised - for the time being - its information technological instrument.

Only 25 years ago, it would have been unthinkable that data collection would exceed the national framework. This was not only due to technical but also political barriers. The first attempt

to introduce such a system for Interpol failed in 1981 on grounds of sovereignty questions and a lack of trust towards the professional standards of the National Central Bureaux of particularly Third World countries.

In comparison, the SIS, for which the concrete planning began in 1988, could build on a political framework. At first, on that of the Schengen Group and from 1999 onwards, on that of the EU, with the coming into force of the Amsterdam Treaty. In March 1995 it went online, initially only for then seven participating states. Currently, 15 states are connected, namely, the "old" EU Member States excluding the UK and Ireland and including the non-EU states Norway and Iceland.

### The first step - the SIS

The fact that the development of EU police data systems started with a system for wanted persons and objects such as the SIS is no coincidence: Wanted persons/objects systems are "hit/no hit" systems which only allow for simple queries. They indicate if data on a relevant person or object exists or not. Data entries in the SIS are (as yet) very small. Next to details on identity, personal data entries merely contain the specification of the

alerting authority and the reason for the alert, as well as a possible indication "violent" or "armed". The exchange of background information relating to the alerts - in case of a "hit" - takes place outside of the SIS via the SIRENE national contact points that are located in the national police centres - in Germany, for example, in the Federal Criminal Investigation Bureau (Bundeskriminalamt - BKA).

At the same time, alerts are data which should be broadly available within police organisations so that the basic police forces - i.e. officers controlling at the borders and inland - can take relevant law enforcement measures. Altogether 30.000 terminals were connected to the SIS within the EU in 1995. Today, the number of German terminals connected alone, exceeds this number considerably: the Federal Police (the renamed Border Guard) and customs have around 1.700 stationary and mobile terminals at their disposal at the borders. In addition, SIS data can be accessed to a large extent through the working place computers connected to INPOL (the central police data system in Germany). As a recent parliamentary question by Linkspartei MPs (the Left-Wing Party) revealed, this amounts to "approximately" 10,500 computers located with the Federal Police and customs. There are no figures concerning the regional police forces. (1)

Alerts for objects - such as bank notes (registered notes), arms, vehicles, identity papers and blank documents - massively dominated the SIS from its initiation. Explanatory remarks on alerts for the years 2003 and 2006 (table 1) show that their share in the total figure has increased again. Identity papers show an above-average increase in the database.

At first sight, data entries relating to persons appear not have changed much. The total number of persons seems to have increased only marginally since 2003. What has remained is the disproportionate amount of alerts issued on grounds of Article 96 of Schengen Implementation Agreement (SIA) in respect of third country nationals for the purpose of refusing entry (in 2003 this was 89 per cent, in 2006 it is 85.2 per cent of person records).

Differences to 2003 only appear when considering which states issue alerts: the German contribution to Article 96 data has been disproportionately high since 1995. With almost 270.000 alerts in 2003, Germany then already "owned" more than 23 per cent of all entry bans in the SIS. When questioned by the German civil liberties journal *Bürgerrechte & Polizei/CILIP* about the fact that this figure had fallen by more than 100.000, the Bundeskriminalamt (BKA) replied this was due to the accession of Central and Eastern European states in May 2004. The accession meant that citizens of these states could no longer be entered in the SIS database for the purpose of refusing entry. Italy is now the front-runner with regard to this data category: with 378,381 persons it is responsible for almost half of all Article 96 data.

First and foremost, the SIS therefore remains an electronic instrument for border control and not one of police investigation in the normal sense. Since the SIS came online, alerts issued under Article 95 SIA for arrest and extradition (which requires an international (or EU) arrest warrant) never reached 2 per cent of all data relating to persons. The number of persons entered under Article 98 for judicial purposes (wanted to appear in court as witnesses or accused of petty crime) is now three times higher than the number of alerts issued for the purpose of arrest. The SIS therefore indicates an altogether low crime rate.

In comparison to 2003, the number of people entered for the purpose of police "observation" ("discreet surveillance") has doubled. This measure is devised, under Article 99 SIA and also in German police law, as a preventative action. This means the persons in question are not accused of a crime, nor are they necessarily under concrete suspicion. A police prognosis that holds that if the person in question will commit a crime in future is enough grounds for inclusion in the database. In case of a police check, the circumstances, identity of fellow passengers

etc. are to be reported to the issuing authority. It is not possible to deduce from the statistics the number of "observations" which are possibly entered in the database. When questioned about the increase of Article 99 alerts, the BKA gave the succinct yet circular reply that the increase was because they had used it more often. This "increased use" is presumably a consequence of the "fight against terrorism" which generally starts long before a concrete suspicions exist. According to Article 99 SIA, intelligence services are also entitled to issue surveillance alerts, as far as national law allows them to. With its new Anti-Terrorism Amendment Act, the Bundestag has granted this power to the German intelligence services. (2) The present statistics do not show if other states are currently using Article 99 in this way or not. In 2003, only 5 cases were recorded.

The statistics on "hits" (table 2) do not show all "successful" controls but only the hits that police of Schengen states had inside the EU on the basis of an alert issued by another Schengen state. This means that if officers come across an alert issued by their own state, it is not counted. The statistics do, however, provide a picture of how control strategies connected to the SIS work on the ground.

First of all, it becomes clear that most of the successful checks concern persons from non-EU states. The extremely high "hit" rates in the years 2002 and 2003 are, according to the BKA, explained by the fact "that a Member State practiced a deviating procedure of data collection during this period". Which state exactly this was, the BKA did not want to disclose. Still, when looking only at the validly collected data from the years 2001, 2004 and 2005, the fact remains that around a third of all SIS related arrests are entry refusals. The reasons for this are to be found not only in the high number of data entries in this category but also in the increase of control measures applied against immigrants in the EU.

### **Second step: the SIS of customs authorities**

Similar to the SIS supporting police controls (of persons) at the external borders and in the common "investigation area", a Customs Information System (CIS) intends to facilitate goods control in the internal market. At least this was the argument used during the first negotiations on the legal basis of the CIS. In 1995, justice and home affairs ministers signed the Convention "on the use of information technology for customs purposes". In 1997, a Regulation followed on mutual assistance between administrative authorities.(3) The latter was drafted with view to the application of EU law on customs and agricultural matters. The Convention, however, relates to cooperation in the area of criminal matters relating to customs and therefore to the unlawful import or export of goods (including, for example, illegal drugs and arms). In technical terms, the Convention and Regulation use two different systems, which are connected through a common search engine. Both are located with the Commission, or rather the European Anti-Fraud Office OLAF, and they are accessible from national customs authorities. Because of, amongst other things, the slow ratification process of the Convention, the CIS went live only in March 2003. The current OLAF activity report says that "over 3,000 users located in the main ports, airports, border posts, risk analysis services, investigation and intelligence services" are connected to the CIS through the terminals of the AFIS (Anti-Fraud Information System). It is reported that the CIS handled 16.000 search requests during the activity period (mid-2004 to the end of 2005). But the OLAF team is not content and finds the "initial level of use of the CIS by national authorities has been disappointing". At the end of 2004, only 140 cases were registered in the database, by the end of 2005 it had risen to 537.(4)

The CIS allows for alerts on goods, transport vehicles, companies and persons. As in the first generation SIS personal data entries in the CIS are relatively short. Next to names, date of

birth etc., entries can specify "objective and permanent characteristics", a warning note with regard to violent behaviour, carrying of arms or danger of flight, the license plate number of the vehicle as well as the reason for the alert and the proposed action to be taken in case of a "hit". The latter concerns, next to "recording and informing" – eg: arresting or confiscating a person or goods - "secret registration", that is police or customs surveillance. This measure can be applied to persons as well as arms, vehicles and containers. Whilst this alert category plays a quantitatively minor role in the SIS, it takes first place in the CIS.

With a Protocol to the Convention on the use of information technology for customs purposes, the EU complemented the CIS by creating a customs files identification database for grave customs violations (FIDE – Fichier d'identification des dossiers d'enquêtes douanières) which is planned to go live in November 2006.(5) The data entered covers the following categories: the field covered by the investigation file, the file number, the name, nationality and the contact information of the Member State's authority handling the case. With regard to personal data, the 'customs files identification database' can hold the names of persons and companies who are suspected of committing a serious infringement of national laws, or who have been "the subject of a report establishing that such an infringement has taken place" or who have been the subject of an "administrative or legal sanction for such an infringement". Data relating to current investigation files can be stored up to three years. When it has been "established" that an infringement has taken place, data can be stored up to six years and data retention is granted for a period of ten years in case an investigation file has led to a conviction or a fine.

### **Third step: "Intelligence" with Europol**

In July 1995, the justice and home affairs ministers signed the Europol Convention, which extended the remit for the Europol agency to hold personal data. "The Europol Computer Systems" (TECS) were to be comprised of three parts: firstly, an "information system", that is a register on persons and cases relating to the remits of the authority, with national police forces entering and searching data. Data here refers to convicted and suspected persons as well as "persons who there are serious grounds for believing will commit criminal offences for which Europol is competent". The "information system" therefore unites convicts, suspects and not-yet-but-soon-to-be suspects.

The second component intends to represent the actual added value of the Europol agency: "work files for the purposes of analysis", to be held for a limited time period and function as a working instrument for analysis groups. Access to the data held therein was only to be given to the relevant participating national experts and liaison officers. The range of persons to be entered is accordingly broad: next to convicted persons, suspects and the above-named not-yet suspects, these work files also hold details on witnesses, potential witnesses, victims, potential victims, contacts and associates as well as "persons who can provide information on the criminal offences under consideration". In other words, Article 10(1) of the Convention lays down that anyone who the police officers believe to be of any interest to them at all, can be entered in the files. Finally, the third component is an index system "for the data stored on the files referred to in Article 10(1)".

When Europol, after the ratification of the Convention in 1999, lost its provisional status of a "Europol Drugs Office" and officially started its operations, an "interim system" with work files came into operation. In December 2004, the authority operated 19 of the files, altogether hold the data of 146,143 persons.(6) Around 10,000 people were registered in the work file "Islamic terrorism", 22,500 were registered in a file on Turkish, and around 14,000 in a file on Latin American

organisations involved in drugs trade. Data on 3,200 persons were held in a file on the smuggling of Indian citizens. 2,200 persons were registered in a file on the illegal immigration of Iraqi Kurds, which was created whilst the US was still bombing the country. The biggest work file, with tips from financial institutions on financial transactions pointing to money laundering and cross border cash transfers unites information on over 68,870 persons. Considering the open definitions contained in the Convention, this high number of registrations in the work files was to be expected. Whether this mass suspicion, however, will actually lead to concrete investigation results is very questionable.

According to the current activity report, the agency operated 18 work files at the end of 2005: three on the drugs trade, three on "crimes against persons", five on financial and property crime, four on "organised crime groups", two on terrorism and one on forgery of money.(7) The agency refuses to disclose the number of registered persons, however, the report notes that the amount of data provided by the Member States has increased during the activity period.

Europol only started operating the information system in October 2005. Initially, only three of the 25 Member States were involved: Sweden, France and Germany. No detailed information on this matter has been published so far.

### **Fourth step: with Eurodac towards less asylum**

In 1991, the "ministers responsible for immigration" announced their intention to create a common information system for the comparison of fingerprints of asylum seekers. One and a half years before, they had signed the Dublin Agreement: consecutive asylum applications in the EC/EU - in official jargon: "abuse of the asylum system" or "asylum shopping" - was thereby supposed to be prevented. The Agreement, which came into force only in 1997 and was replaced by a Regulation in 2002, regulates the procedure by which the state responsible for handling an asylum claim is determined.(8) In the best case scenario, this would be the state which the asylum seeker first entered. In practice, it is the state in which a person first lodges an asylum application. The "not responsible" state can deport the person in question back to the "responsible" state.

The realisation of Eurodac, however, necessitated an additional legal basis because the Dublin Agreement did not foresee an automated data comparison system. In 1998, a final draft of a Eurodac Convention was presented, which was transformed into a Regulation after the coming into force of the Amsterdam Treaty.(9) Like all automated fingerprint identification systems (AFIS), Eurodac registers "no personal details such as name, but relies on a biometric comparison, which represents the most secure and precise identification method".(10) However, this reassurance offered in the press release of the European Commission, which operates the system, has little to do with data protection. The dactyloscopic data (dactyloscopy = fingerprint identification) are entered together with a reference number and can therefore always be allocated to personal data contained in an asylum application.

Fingerprints of all asylum seekers from the age of 14 onwards are registered in the Eurodac database and compared with already existing data. The fingerprints of those who are apprehended crossing borders illegally or residing without a residency permit within the EU are only compared but not retained. In cases of "apprehension" the comparison is aimed at establishing whether a "sans-papiers" has already applied for asylum in another Member State (and therefore can be deported back to that state).

On 15 January 2003, Eurodac went online. The result of the first two years is evaluated by the Commission and by the Member States as a success. During the first year (15.1.03-15.1.04), Member States transferred 246,902 data entries of

asylum seekers to the Commission's Eurodac central unit. Seven per cent of the newly registered persons had already lodged an asylum application in another Member State. In addition, 7,857 people were "apprehended" at the border and 16,814 inside the EU. Because Eurodac started as an empty database, this was a significant result - so the Commission celebrated itself in its annual report. During the second activity year (the whole of 2004), the central unit received 232,205 data entries and achieved 13 per cent duplicate or multiple applications. Despite the increase in persons "apprehended" (16,183 at the border, 39,550 inland), the Commission still complained that Member States were neglecting their tasks in this area.(11)

The German Federal Office for Migration and Refugees (BAMF) also compliments its own achievements. Because of Eurodac, the number of requests for "responsible" states to take back asylum seekers had increased and secondly, the "evidence" had improved: the alerts issued by Germany had increased from 1,249 in 2003 to 6,939 in 2004. Since July 2004, the percentage of applications related to Eurodac "hits" reached over 50% and an "increasing tendency" can be detected.(12)

The fact that Eurodac is working is also known by refugee organisations. They report that refugees who already applied for asylum in another Member State were now being deported back to Member State that do not or only minimally guarantee support for traumatised persons.(13) Furthermore, the risk of chain deportations back to the torturing state is growing. In many cases, the Dublin's "one chance only" rule means practically "no chance at all".

Although 12 years passed since the ministers' first declaration of intent for the creation of Eurodac, it is a fact that the EU's repressive asylum policy has led to the first modern biometric database. From the start, the police had a vested interest in using such a database beyond the area of asylum.

#### **Fifth step: Biometric control thanks to SIS II and VIS**

At the end of the 1980s, when the plans for the existing SIS were first drafted, the Schengen group comprised five states. The system was therefore initially only created for connecting eight states. When in 1998, the Nordic states were connected, the SIS had to be updated to an "SIS plus". Already by December 1996, the Schengen Executive Committee had toyed with idea of a second generation SIS (SIS II). The planning for such a system started in 2000 but gained an additional impetus after 11 September 2001. The SIS II, which is to go online in 2007, not only offers new technological functions, but it will also fundamentally change the police practice based on the system. Some changes relating to the existing SIS will already come into force in October and November this year.(14) On 31 May 2005, the Commission presented two draft Regulations on aspects of the system relating to the EU's first pillar (external borders, visa policy, etc.) as well as one draft Council Decision for the third pillar (police matters in the strict sense of the word).(15)

In June 2006, the Council finished its internal debate.(16) The regulations, however, will have to be adopted by the European Parliament. The co-decision procedure in principle would have given a significant power to the parliament, to introduce not only better data protection, but also a different policy regarding the rights of non-EU-citizens – mainly affected by the existing SIS. The EP, however, accepted from the start the calendar set up by the Council and the Commission. According to that, the SIS II was supposed to be ready in March 2007 and should go online in October of the same year. This would have also been the date for the full integration of the ten states who had entered the EU in 2004, into the group of Schengen users, including the lifting of controls on persons at the borders to and between these new member states. The latter was the official reason, why the EP once again agreed into a secret dialogue procedure without any chance for a public debate, which led to a

false "compromise" with the Council in September 2006 and the adoption of the whole SIS II-package at first reading at 25 October 2006.

This is even more annoying as the time table presented by the Council and the Commission has proved unrealistic – a fact which was evident at least since the summer of 2006. It suffered from technical and organizational problems. In 2005, the Commission even had to stop the whole process of the construction of the SIS II due to a decision of the European Court of first instance in a legal row with one of the companies which did not succeed in the submission process.

In summer 2006, the Council began to work on a second plan. The Portuguese Ministry of the Interior presented a feasibility study for a "SISone4all", a once again updated version of the existing SIS, which will include also the access by the ten new member states. According to the new time table, the "SISone4all" shall be ready for the loading of data in June 2007. After another evaluation, internal border controls at land and sea borders of the ten new member states shall take place in January 2008 and at the airport at the end of March.

Thus, the SIS II is now calculated to go online in 2009, three years after its legal fundaments have been adopted in a needless and undemocratic fast track procedure. The results of that procedure are as follows:

- The alert categories will be differentiated and extended: alerts for arrest (up to now Article 95 SIA) will now relate to the European Arrest Warrant. Entry bans (up to now Article 96 SIA) will be separated into "restrictive measures" on grounds of danger for "public security" or "internal security" (e.g. entry bans issued after a conviction has been made) and "purely" aliens law related removal orders (e.g. from rejected asylum seekers). Alerts can also be issued on "vehicles, boats, aircrafts and containers" for the purpose of "discreet surveillance". For the purposes of seizure or use as evidence in criminal proceedings (formerly Article 100 SIA), alerts can be issued on trailers and caravans, driving licenses and visas, vehicle registration certificates and vehicle number plates as well as banknotes, securities and means of payment. A new alert category on "violent offenders" as it has been discussed for a while is as yet not included.

- The data retention period will be extended: up to now, data related to discreet surveillance had a "conservation period" of one year, all other data could be kept for three years. In the SIS II, after one year in the case of alerts for discreet surveillance and after three years for all other alerts on persons, there will be an examination, to see if the data still are needed. If the respective member state thinks that this is the case, the storage period is prolonged for the same time. The introduction of an obligatory examination is the only point where the EP got a slight success. The original proposal of the commission wanted a conservation period of five years for data on discreet surveillance and ten years for the rest of alerts on persons. The extension of storage periods will necessarily lead to a massive increase of data contained in the SIS.

- Alerts can be linked. Although the SIS will remain a hit/no-hit system, it will have an, albeit limited, possibility to carry out investigative actions through the linking of data.

- More authorities will be able to access SIS data, even if it is specified which data certain authorities can access. These are Europol, Eurojust and the national public prosecutors, or rather, prosecutor's offices (alerts on persons wanted for arrest), surveillance and judicial procedure (witnesses and accused), immigration authorities (alerts for the purpose of refusing entry), Vehicle Licensing Agencies (alerts on vehicles).

- Alerts relating to persons will contain biometric data in future, namely, pictures and fingerprints. This will particularly apply to non-EU citizens, because asylum seekers and, with the creation of the Visa Information System (VIS), also visa applicants are subjected to fingerprinting and photographing.

The already dominant function of the SIS as a control instrument of citizens from non-EU states receives even more importance with the parallel creation of the VIS. Both systems will be run on the same technical platform. Further, the "wanted persons/objects system" SIS II can be accessed by consulates issuing visas as well as by immigration authorities, whilst the police on the other hand will get access to the VIS. The VIS will be linked to 27 Member States and, currently, three associated states. This implies at least 12,000 VIS users and 3,500 consulates connected worldwide.<sup>(17)</sup> The feasibility study of the Commission reckoned with 20 million visa applications annually. With a retention period of five years, this implies a volume of 100 million data entries.

The VIS is to contain on the one hand alphanumerical data: the personal identification data (names, date of birth etc.) of visa applicants, type and number of travel document, if applicable, details on the invitee or inviting company, details on earlier applications, including their positive or negative results, extension of stay etc. and the reasons for the same as well as the "status" of the processing of the claim by consulates and national "visa authorities" and, finally, the number of the visa sticker to be applied in the passport. Next to this, the entry will contain biometric data (digitalized photos and fingerprints).

The collection of data will be carried out by the relevant consulates, who will also have the remit to run common visa authorities or to outsource parts of the issuing process of visa to private companies.<sup>(18)</sup> The VIS is an instrument that serves the EU's restrictive visa politics, created with the intention to stop "visa shopping" and "abuse" of the system. Access, however, is also granted to immigration authorities, "for the purpose of identifying third country nationals staying illegally in the territory in order to enforce a return decision or removal order" and the asylum authorities for the purpose of identification and the determination of the Member State responsible for examining an asylum application.

The VIS is also to serve police functions. This means first, it can be used for controls at the external borders and inland. VIS and SIS II will therefore lead to a fundamental increase in repression and restrictions for non-EU citizens. Up to now, "third country nationals" had to undergo at least a check of the passport and visa as well as a search request on them in the SIS. Now the controlling officers will run an additional search request in the VIS on visa related data. Following the wishes of the Council and the Commission, this data will not be searched on the name, but the fingerprints should be the decisive search criterion. The Commission justifies this in its Communication "on improved effectiveness, enhanced interoperability and synergies among European databases" with the argument that an alphanumerical search with data as large as contained the VIS database would result in "long 'hit' lists", which must then be "verified through a labour-intensive process that is sometimes impossible to perform in a border-control environment". The use of biometric searches would allow for "unprecedented accuracy", says the Communication.<sup>(19)</sup>

The European Parliament (EP), which agreed in principle to the collection of biometric data for the SIS II as well as for the VIS, now practices damage control with regard to the use of such data, based on the critical statements of data protection officers. According to the EP, police should request VIS data via the number of the visa and only use fingerprints as search criteria if a request through the number is not possible or when they have doubts as to the authenticity of identity papers.<sup>(21)</sup> This doubt, however, has been the basis of border police practice for years now. The proposed regulation is therefore nothing but a fallback position and it is moreover questionable if the EP will be able to maintain this position in the face of the existing time pressure.

In the case of the SIS II, The EP had already drawn back. The original commission proposal on the SIS II did not contain such a practice of biometric controls. In its revision of the

Commission proposal, the Council states that "as soon as technically possible, fingerprints can also be used to identify third country nationals on the basis of their biometric identifier".<sup>(20)</sup> The EP accepted this version – in clear terms, this compromise means, that biometric controls on the basis of fingerprints are only to be used, when they are technically possible!

Border control, however, is not the only policing purpose the two new systems will serve. Access will also be given to the internal security authorities, which means to political police forces and internal intelligence agencies. For the SIS II this was included in the commission's original proposals for the articles 17 of the regulation and 37 of the council decision. The Council for the moment withdraw these provisions in its negotiations with the EP on the adopted SIS II package. The Council, however, already, announced the need for additional legislation on this subject.

The model for this is the Commission's proposal for a Council decision on the access of Europol and the "national authorities responsible for internal security" to the VIS, presented in November 2005. According to this, the agencies shall access the VIS via central access points located in each member state and at The Hague for Europol. <sup>(22)</sup> Access, says the proposal, is necessary for the purpose of the "prevention, detection or investigation of terrorist offences or other serious criminal offences" and in each individual case, a written or electronic request must be submitted to the central access point, justified on "factual indications". Further, access requests must relate to a "specific event determined by date and place, or to an imminent danger associated with crime, or to a specific person in respect of whom there are serious grounds for believing that he or she will commit terrorist offences or serious criminal offences or that he or she has a relevant connection with such a person" (Article 5). In May 2006, the Police Working Group of the Council at least showed awareness of the fact that this definition of internal security authorities could also encompass intelligence agencies. This awareness, however, had disappeared by the time it published its preliminary consultation report from the beginning of August 2006.<sup>(23)</sup> Every Member States is to decide which authorities should be authorised to access the VIS and moreover, they should have "fast and practical", that is direct access to VIS data. The Council is not interested in requests and justifications.

The Commission is hardly going to oppose these demands. In its Communication on the efficiency and interoperability of EU data systems, it advocates that authorities responsible for combating crime and terrorism get access not only to the VIS but to all data held in the SIS II (that is not only to judicial or police alerts relating to arrest and surveillance) and Eurodac. It also calls for a European criminal Automated Fingerprints Identification System (AFIS). Moreover, the Commission proposes the creation of an "entry-exit system", to "ensure that people arriving and departing are examined and to gather information on their immigration and residence status". Whereas Germany, when introducing the new passports resisted the construction of a central biometric passport register, the commission now calls for the creation of a European passport register to improve the identification of EU citizens as well. This will be the last step towards the implementation of biometric control. What will soon be reality for third country citizens, is already becoming a tangible reality for EU citizens as well.

Heiner Busch

(This is an updated article that first appeared in *Bürgerrechte & Polizei/CILIP* 84 (2/2006)

#### Footnotes

<sup>1</sup> German Parliament publication, *BT-Drs.* 16/1044, 24.3.2006.

2 Documented on [www.cilip.de/terror/gesetze.htm](http://www.cilip.de/terror/gesetze.htm). cf. comment on this law in *Bürgerrechte & Polizei/CILIP* 85 (3/2006)

3 Convention on the use of information technology for customs purposes (OJ C 316 of 27.11.1995) and Council Regulation on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82 of 22.3.1997).

4 EU Commission, *OLAF: Sixth Activity Report for the period 1 July 2004 to 31 December 2005*, Brussels 2006, p 57.

5 Council Act of 8 May 2003 drawing up a Protocol amending, as regards the creation of a customs files identification database, the Convention on the use of information technology for customs purposes (OJ C 139, 13.6.2003).

6 Reaction to the reply of the German government to the question by the PDS MP Petra Pau during parliamentary question time on 24.9.2003. See *Bürgerrechte & Polizei/CILIP* 77 (1/2004), pp 90-92.

7 [www.europol.eu.int/publications/ar2005/EuropolAnnualReport2005.pdf](http://www.europol.eu.int/publications/ar2005/EuropolAnnualReport2005.pdf).

8 Convention: OJ C 254, 19.8.1997, Dublin II Regulation: OJ L 50, 25.2.2003.

9 Council Regulation of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000).

10 Press release of the European Commission, 14.1.2003, IP/03/37.

11 See the Commission's annual reports SEC (2004) 557, 5.5.2004 and SEC (2005) 839, 20.6.2005.

12 BAMF: Statistik Migration und Asyl, [www.bamf.de/cln\\_043/nn\\_564242/DE/DasBAMF/Statistik/statistik\\_node.html\\_mnn=true](http://www.bamf.de/cln_043/nn_564242/DE/DasBAMF/Statistik/statistik_node.html_mnn=true).

13 See, for example, Langthaler, H. (*Asylkoordination Österreich*): *Schub und Recht*, in: *Solidarité sans frontières* 2005, Bulletin 3, p 4.

14 Council document 11336/06, 20.7.2006 and 11337/06, 17.7.2006.

15 Com (2005) 230, 236 and 237 final, all from 31.5.2005.

16 Council document 5709/6/06, 6.6.2006.

17 Com (2003) 771 final, 11.12.2003.

18 See the proposal from the Commission on amending the Common Consular Instructions: Com (2006) 269 final, 31.5.2006.

19 Com (2005) 597 final, 24.11.2005; see the approving statement by France and Spain, Council document 9680/06, 22.5.2006.

20 Council document 5709/6/05, 6.6.2006 - new Article 14c.

21 Compare the synopsis of the versions from Commission, Council and EP, Council document 11632/06, 13.7.2006.

22 Com (2005) 600 final, 24.11.2005.

23 Council document 9199/06, 11.5.2006 and 11405/06, 3.8.2006.

**Table 1: Persons and stolen/missing objects in the SIS**

Article/Reason 2003	SIS total 2006	German data 2006	SIS total 2003	German data
95 Arrest	15,460	4,400	13,826	4,155
96 Entry ban	751,954	162,294	775,868	269,359
97 Missing	39,011	2,377	33,581	2,246
98 Wanted in court	45,189	1,414	34,379	2,752
99 Surveillance	31,013	1,104	16,378	544
Missing persons	882,627	171,590	874,032	279,056
100 Bank notes	252,442	141,808	380,710	208,500
100 Blank documents	403,900	184,266	265,929	141,514
100 Firearms	297,021	103,225	301,348	143,966
100 Identity documents	11,353,906	1,789,271	7,687,008	1,514,427
99/100 Vehicles	1,472,531	131,947	1,106,626	150,217
Missing objects	13,779,800	2,350,477	9,741,511	2,158,624

Source: BT-Drs. 16/1044, 24.3.2006; BT-Prot. 15/62. 24.9.2003

**Table 2: "Hit" statistics**

Article/Reason	2001	2002	2003	2004	2005
95-arrest	1,398	1,486	1,497	1,873	1,935
96-entry ban	15,971	25,537	23,328	12,707	11,594
97-missing persons	1,020	1,028	999	1,115	1,258
98-wanted to appear in court	1,896	2,169	2,091	2,535	3,582
99-persons under surveillance	1,138	1,156	1,253	1,579	2,236
<b>Persons total</b>	<b>21,423</b>	<b>31,373</b>	<b>29,170</b>	<b>19,809</b>	<b>20,605</b>
99-Vehicles under surveillance	136	168	202	318	328
100-vehicles	7,996	7,755	7,057	6,871	5,827
100-Firearms	143	133	137	158	141
100-Blank documents	1,853	1,928	1,653	1,564	1,565
100-Identity papers	2,853	3,616	3,279	3,022	3,193
100-bank notes	2,863	6	7	7	4
<b>Objects total</b>	<b>13,991</b>	<b>13,606</b>	<b>12,317</b>	<b>11,980</b>	<b>11,058</b>
<b>"Hits" total</b>	<b>35,414</b>	<b>44,877</b>	<b>41,485</b>	<b>31,749</b>	<b>31,663</b>

Source: BT-Drs. 16/1044, 24.3.2006

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