

statewatch

monitoring the state and civil liberties in Europe

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EU REFORM TREATY

Cementing the European state

- new emphasis on internal security and operational cooperation at EU level

The Reform Treaty agreed by EU governments in Lisbon on 17-18 October is to be formally "signed-off" by the Council in December. All EU governments are then expected to get their national parliaments to adopt it by the end of 2008 so that it can come into effect by the time of the European Parliament elections in June 2009. National parliaments will be allowed to "debate" the contents of the Treaty but not to change a "dot or comma" - they either have to accept or reject the whole package.

A wholly undemocratic process

As Deirdre Curtin sets out on p18 the "process" of adopting the Reform Treaty was shrouded in mystery and secrecy. In June the Council adopted a "negotiating mandate" for the new Treaty which was utterly incomprehensible - it contained hundreds of changes to the two existing Treaties which could not be comprehended unless transposed into those texts. The Council did not provide this transposition until 5 October, just two weeks before agreement was to be reached.

In the whole of the EU only the *Statewatch* website carried the transposed texts (from 9 August) thanks to Steve Peers' (Professor of Law, University of Essex) superb and ongoing series of analyses which set out the legal changes to the two amended Treaties - the Treaty on the European Union (TEU) and the renamed Treaty on the Functioning of the European Union (TFEU) [1]

Overall it is hard not to conclude - as a number of commentators have - that after the debacle of the rejected Constitution EU governments did not want there to be a debate in national parliaments or civil society which might interfere. The Council was happy to leave the level of public debate pre-occupied with the sole question of whether or not the Treaty was the same as the Constitution.

The abolition of the "third pillar"?

Much play has been made of the fact that "third pillar" police and judicial cooperation is finally to be brought under "normal" EU

legislative procedures (immigration and asylum was moved over in 2006). This means the Council and the European Parliament having to jointly agree on new measures - this is currently called "co-decision" and will be called the cumbersome "ordinary legislative procedure". It is said to replace "consultation" where the opinion of the parliament was routinely ignored by the Council. The reality is somewhat more complicated.

First, the legal status of the third pillar *acquis*, some 700-plus measures adopted between 1976-2009 will be preserved (Article 9, Protocol 10) unless they are subsequently amended or replaced. The new powers for the European Court of Justice will not apply to this *acquis* for five years (ie: 2014).[2] Moreover, the third pillar *acquis*, to be inherited and perpetuated under the Treaty, lacks legitimacy as it was adopted with little or no democratic input by parliaments or civil society.

Second, the "third pillar" moves to the TFEU, Title IV where it is declared that, finally, it will all come under current co-decision procedure where the European Parliament (EP) has an equal legislative role to that of the Council. Since March 2006 the EP has had co-decision powers over nearly all immigration and asylum measures. However, all nine immigration and asylum measures that have gone through have been agreed in secret, "trilogue", negotiations with the Council - will the same happen when it has powers over police and judicial procedures? (see "Secret trilogies and the democratic deficit" in vol 16 no 5/6).[3]

Third, under the new Title IV there are ten areas covered by the new "ordinary legislative procedure". However, there are still four areas where the EP is only to be "consulted" and four areas where the new (that is, to justice and home affairs issues) concept of "consent" is introduced.

Under the "consent" procedures the Council will act unanimously and the EP will be "asked to consent" without changing a "dot or comma" - or will we see an extension of secret trilogies?

The "consent" procedure concerns: a) mutual recognition of

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judicial decisions and approximation of laws where "any other aspects of criminal procedure" can be added (Art 69.e.d); b) minimum rules defining offences and sanctions covering ten areas can be extended to "other areas of crime" (Art 69.f.1); c) the creation of a European Prosecutors Office to deal with financial crime but the scope can be extended by "consent" (Art 69.i.4) d) Art 69.i.1 is very confusing - a European Prosecutors Office may be set up under "special legislative procedure" (ie: consultation) *and* the Council shall act with the "consent of the European Parliament". At national level it would be unheard of to extend the scope of laws without going through normal legislative procedures (ie: co-decision).

One of area which the EP is only to be "consulted" is the highly contentious issue of:

measures concerning passports, ID cards, residence permits and any other such document

"Measures concerning" could refer not just to the issuing of documents but the databases on which the personal data, including biometrics are held, data-sharing, data-mining and data protection.

Under the Nice Treaty (Article 18.2, 2002) the EU is expressly precluded from laying down the law in these issues. If there are issues on which parliaments (national and European), let alone the people, should have say this is surely one of them.

Fourth, the European Council (that is, the Summit meetings of the 27 Prime Ministers or Heads of State) will in this area:

define the strategic guidelines for legislative and operational planning (Article 62)

This formalises the role taken by the European Council in adopting the Tampere (1999) and Hague (2004) programmes which were agreed without any public debate whatsoever.[4] These "programmes" effectively lay down the legislative priorities and expansion of EU operational actions in justice and home affairs on which the Commission has to present proposals.[5]

Fifth, there are two new bodies are being created concerning "internal security". The first is the Standing Committee on operational cooperation on internal security" (Article 65, known as COSI). There has been a debate as to its composition, is it to be a high-level committee of officials advised by the numerous agencies and bodies or will be latter be simply advisory? Article 65 leaves this open by saying the agencies "may be involved in the proceedings of the committee" (see *Stewatch*, vol 15, nos 1 and 3/4). What is absolutely clear is that the European Parliament and national parliaments are simply to be "kept informed" on its proceedings, which on past form will be will ensure neither scrutiny or accountability in any meaningful sense.

Sixth, the second new entity appears in the Treaty in Article 66 which resurrects intergovernmental cooperation between the member states to allow:

cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security

That is to say internal security agencies like MI5. The EU has long wanted to replace the "Club of Berne", an informal grouping of security and intelligence agencies formed in 1971. Its participants include agencies from the UK, France and Germany. However, it has never been a vehicle for intelligence-gathering available to the EU.

There are no provisions set out for scrutiny or accountability and its intergovernmental form access to its proceedings and documents will be highly problematic.

Both of these two new entities concern "internal security", a concept much, much wider than just policing, judicial cooperation and immigration - it encompasses all matters referring to the maintenance of law and public order and the

civil-military capabilities. Also, as constantly referred to by EU officials, there is an umbilical link between "internal" and "external" security which links to the next observation.

Seventh, the "second pillar" (defence and foreign policy) is to remain intergovernmental with the European Parliament, on occasion, "consulted".[6] Under this pillar it is proposed to set up a "European External Action Service" whose "organisation and functioning" will be decided by the Council. The Council has long wanted to establish such a "diplomatic" service to live alongside the Commission's world-wide Representations network in over 170 countries. This is because the Commission's remit does not extend to formal diplomatic relations and, crucially, intelligence-gathering (eg: military, counter-terrorism).

"Areas" of "freedom , security and justice

One of the achievements of the Amsterdam Treaty (agreed in 1997) was to bring inside the treaty-framework the Schengen *acquis*. However, since then the Prum Treaty was adopted by 17 EU member states (one part of it has been incorporated, another has not) and the emergence of "G6" - the six largest states meeting in virtual secrecy to agree a collective position on new initiatives to be pushed inside the Council structures.

In the judicial and police cooperation chapters of the Reform Treaty a single member state can suspend the "ordinary legislative procedure" and the European Council has four months to find agreement. On the other hand, is there is not agreement on a measure then nine member states (one third of the 27 governments) can establish "enhanced cooperation - they simply have to "notify" the Council, the European Commission and the European Parliament and then can proceed automatically.

"State-building"

The introduction of COSI, EU-wide internal security agency cooperation and the European External Action Service are classic instances of EU "state-building" - of which there are more examples in the new Title IV on judicial and police cooperation (and immigration and asylum).

"State-building" is taken to mean both the creation of bodies and agencies to act on an EU-wide basis (eg: SIS II, FRONTEX, Europol, Eurojust, European Gendarmerie etc) and where administrative (Article 67 covering the whole of Title IV)) and operational cooperation is centrally organised by the EU (eg: police cooperation, Article 69.i & j).[7]

Chapter 5 on police cooperation (and "other specialised law enforcement services") will establish "cooperation" covering *all* "criminal offences" embracing *all* agencies. This will include the establishment of measures for the:

collection, storage, processing, analysis and exchange of relevant information

and for "investigative techniques" (which means telephone-tapping, bugging, informants, agent provocateurs etc) for serious forms of organised crime.

In addition "operational cooperation" between the agencies will be established following "consultation" with the European Parliament (Art 69.j.3). The parliament will also be "consulted" (Art 69.l) on the rules for agencies to operate in another member state.[8]

Conclusion

Whatever the arguments over the Constitution-Reform Treaty in the area of justice and home affairs the Treaty is virtually the same - with some additions.

Tony Bunyan, *Stewatch* editor, comments:

Overall we are witnessing the extension, and cementing, of the European state with potentially weak democratic intervention on

policy-making and no scrutiny mechanisms in place on implementation and practice

Footnotes

1. See Statewatch's Observatory:

<http://www.statewatch.org/euconstitution.htm>

2. While the role of the ECJ is extended in the Treaty the restriction on looking at the actions and operations of member states' law enforcement agencies remain as now. This restriction takes on wider implications as EU-level police and security agencies' roles grow.

3. Back in 1999 the use of 1st reading agreements was first proposed to deal with highly detailed technical measures or an uncontroversial nature which is legitimate. However, the use of this procedure for controversial measures such as the Visa Information System (VIS), the Border Code and SIS II's EU-wide database is clearly not legitimate.

4. The next "programme" is being drawn up by a secret group coordinated by Germany for adoption in 2009. In evidence to the Constitutional Convention in 2003 Statewatch and the Standing Committee of Experts (Utrecht) said multi-annual programmes should be sent to national and European Parliament before adoption.

5. This does not preclude the Commission from exercising its powers to propose other measures but these are rarely of great significance.

6. Another casualty in the Treaty is in the second pillar Article 24 is that data protection standards - and the "free movement" of data on foreign policy issues, like PNR, SWIFT and telecommunications monitoring under the US FISA, will be decided solely by the Council - and excluded from the jurisdiction of the European Court of Justice.

7. The concept of "state-building also applies to the second pillar - defence and foreign policy.

8. Only for Europol are scrutiny "procedures" to be laid down" for national and European parliaments - but not for the myriad of other agencies and bodies created.

CIVIL LIBERTIES

UK

Protestors defy ban to march for troop withdrawal in Iraq

On 8 October around 5,000 people defied an attempt to ban a weekday march by the Stop the War Coalition calling for the withdrawal of British troops from Iraq. The march and rally was timed to coincide with Prime Minister, Gordon Brown's Commons statement on the Anglo-US invasion in which he announced planned troop reductions in Basra. While this was treated by much of the media as the British "end game", more than 2,500 soldiers will remain in Iraq to protect US convoys and patrol the Iranian border. A few days later the Greater London Authority removed the tents of protestors from a peace vigil in Parliament Square.

The rally at Trafalgar Square heard speeches from the former MP, Tony Benn, Walter Wolfgang (who was ejected from a Labour Party conference for objecting to the war in 2005), musician Brian Eno, comedian Mark Thomas, the Respect MP, George Galloway and Ben Griffin, a former SAS trooper. They urged the Prime Minister to use his October statement "to signal a break from George Bush's foreign policy and to bring all the British troops out of Iraq immediately, regardless of US plans." The march then made its way to Parliament in defiance of a police ban. According to the organisers of the march, police told them that all demonstrations within a mile of Parliament were banned while it was sitting and that they needed police permission to hold an event. Although, numerous demonstrations have been held there in recent years a "Sessional Order" creates special exclusion zones in order to

EU Reform Treaty

The Treaty amends the Treaty on the European Union (TEU) and the Treaty establishing the European Community (TEC - which is renamed the Treaty on the Functioning of the European Union (TFEU)).

The word "Community" is replaced throughout by "Union."

Justice and Home Affairs is renamed the so-called "Area of Freedom, Security and Justice"

A permanent President of the European Council will be "elected" for 2 and a half years and can be re-elected.

A "double-hatted" High Representative for Foreign Affairs will chair the Council of Foreign Affairs and be a Vice-President of the Commission.

From 2014 "qualified majority voting" in the Council will require a "double majority" with 55% of the States representing 65% of the population. Under the "Ioannina compromise" a minority of member states can ask for a re-consideration of a legislative proposal before its adoption.

From 2014 the number of Commissioners will be reduced to 2/3rds of the number of member states. A system of rotation will be introduced to ensure that each member is represented in two out of three "colleges" (one every five years).

silence demonstrators after some MPs complained that they made their life "intolerable".

In particular, Brian Haw and Mark Thomas have been highlighted this attempt to stifle freedom of speech in the vicinity of the Houses of Parliament. While the Home Office issued a last minute denial that there was any attempt to ban the protest a hyperbolic Metropolitan police spokesman argued that the final route met "the requirements to allow MPs to maintain the political process." The former Labour politician, Tony Benn, more accurately summed it up when he said: "The authority for this march derives from our ancient right to free speech and assembly enshrined in our history."

Stop The War Coalition website: <http://www.stopwar.org.uk>

Mark Thomas website: <http://markthomasinfo.com>

Brian Haw, peace protestor: <http://parliament-square.org.uk>

Tony Benn website: <http://www.tonybenn.com>

George Galloway website: <http://georgegalloway.com>

Civil liberties - in brief

■ **UK: Faslane 365 protest ends.** At the beginning of November the year-long Faslane 365 peaceful blockade of the naval base culminated with a rally attended by coachloads of supporters protesting against the hosting of the Trident nuclear weapons fleet in Scotland. A protest involving direct action, in which demonstrators chained themselves to the base's fence saw around 175 people arrested. Police used special cutting equipment to remove them from the main entrance while other protestors blocked the A814 road by lying on it. The campaign was attended by supporters from Belgium, Canada, France, Germany and Japan. Strathclyde police estimate that the cost of policing the protest at more than £5 million. The Scottish Green Party spokesman, Robin Harper, who joined the protest said on the organisation's website: "The use, the threat of use, and the planned replacement of Trident are all illegal. We should take a

lead in fighting wars of this century - the war against poverty, injustice and environmental destruction - not spend £25 billion on weapons of mass destruction aimed at civilians.". *Faslane 356!* website: <http://Faslane365.org>; *Scottish Green Party* : <http://www.scottishgreens.org.uk/site/id/1/title/Home.html>

Civil liberties - new material

Abandon Military Commissions, Close Guantanamo. *Amnesty International*, 4.7.07 (AI Index: 51/118/2007), pp. 10. Amnesty's latest report on at Guantanamo Bay, Cuba, focuses on the military commissions that were ordained, by presidential dictat, four years ago. Six unconvicted prisoners of the war on terror were deemed eligible for trial by Bush's military "kangaroo court", which was ruled unlawful by the US Supreme Court in June 2006. Three months later Congress passed the Military Commissions Act authorising a revised system of commission, under which the US courts were stripped of the jurisdiction to consider *habeas corpus* appeals from the so-called "enemy combatants". To date only one of the 800 "bad men" who have been held at the base has been convicted: David Hicks who pleaded guilty under a pre-trial agreement that meant he could leave the base and return to his native Australia to serve a nine month sentence. The report concludes: "Any detention facility which is used to hold persons beyond the protection of international human rights and humanitarian law should be closed." Available at:

[http://web.amnesty.org/library/pdf/AMR511182007ENGLISH/\\$File/AMR5111807.pdf](http://web.amnesty.org/library/pdf/AMR511182007ENGLISH/$File/AMR5111807.pdf)

Each DNA swab brings us closer to a police state, Henry Porter. *The Guardian* 5.8.07, p. 25. Porter considers Home Office plans to introduce "mass DNA testing by stealth". He argues that "taken in the context of the ID card database, the national surveillance of vehicles and retention of information about every individual motorway journey, the huge number of new criminal offences, the half million intercepts of private communications every year, the proposed measures to take 53 pieces of information from everyone wishing to go abroad, which will include powers to prevent travel, this widening of the DNA database for minor misdemeanours confirms the pattern of attack on us all." Porter concludes that "Britain is on the way to becoming a police state."

The Use of Drugs as Weapons: the concerns and responsibilities of healthcare professionals. *British Medical Association/Board of Science* May 2007, pp 35 (ISBN 1-905545-16-9). This report, which starts from the case of the Moscow theatre siege in October 2002 in which approximately 120 people died, expresses doctors' fears that public safety could be compromised by "the widespread interest expressed by governments in the use of drugs as weapons". It points to ambiguities in the Chemical Weapons Convention (1993) that "leaves open the possibility of the use of a drug as a weapon for the purposes of law enforcement including domestic riot control." The primary conclusion of the report is that the use of drugs as weapons is "not feasible without generating a significant mortality among the target population...The agent whereby people could be incapacitated without risk of death in a tactical situation does not exist and it is unlikely to in the foreseeable future.": <http://www.ciomr.org/en/node/587>

Esulca bulletin. No 18 (Summer) 2007. Continues its ongoing efforts to oppose the involvement of institutional authorities in religious acts in spite of the state's secular character. It also features an analysis of the use of photographs as ultimate "truth" in spite of their subjective portrayal of events, or parts of them. News items on the lawsuit filed by Mamadou Kane against the re-admission of four local police officers found guilty of ill-treating him into the Vigo local police, on practices and regulations in Portugal that contravene the principle of the secular nature of the state and an appeal before the Supreme Court against the repealing of a Health and Consumption ministry order to establish a database of HIV carriers by the *Audiencia Nacional* on privacy grounds. Other matters reported on in this issue include cases brought against the illegal video recording of police interventions, CCTV cameras installed by private parties, on the punishment of trade unionists for criticising a judge, of *El Jueves* satirical magazine for

offending the royal family and of a Portuguese teacher for comments (treated as insults) about the current prime minister, José Socrates. Available from *Esulca*, Observatório para a defesa dos direitos e liberdades, Apdo. Correos 2112, 36208 Vigo

Fundamental Rights Report 2007. *Humanistische Union, Gustav Heinemann-Initiative, Komitee für Grundrechte und Demokratie, Bundesarbeitskreis Kritischer Juragruppen, Pro Asyl, Republikanischer Anwaltsverein, Vereinigung demokratischer Juristinnen und Juristen, Internationale Liga für Menschenrechte, Neue Richtervereinigung.* (German), June 2007, 246pp, Euros 9.95. Since 1997, nine civil liberties and human rights organisations have published a joint annual human rights report on Germany, in which they test the government's conduct against every legally binding human rights and civil liberties provision laid down in the German Constitution. With a plethora of examples of state surveillance, infringements, discrimination and violations of High Court decisions, the year 2006 will be known as a year in which fundamental rights were systematically violated by the authorities. The "legitimate use of torture" debate, the use of emetics against foreigners, indiscriminate data collection during the World Cup, the surveillance and interception of communications of civil rights activists, the electronic health card linking sensitive data between authorities, US-EU data transfers, unlawful detention and deportation to torturing states, police violence, employment bans, erosion of the protection of journalists' sources, unlawful police raids - the list of fundamental civil rights violations seems endless. The focus of next year's *Fundamental Rights Report* will be the criminalisation and curtailment of the G8 protests.

Ill-fated Homecomings: a Tunisian case study of Guantanamo repatriations. *Human Rights Watch*, September 2007, pp 41. This document examines the cases of two Tunisian prisoners, Abdullah al-Hajji Ben Amor and Lofti Lagha, who were held outside of international law at Guantanamo Bay, Cuba, as part of the USA's "war on terror". On June 17 the men were loaded onto a plane and returned to their home country, where they languish in a Tunisian prison in conditions even worse than those of the US detention camps, despite Tunisia's pledge to the US that it would treat them humanely. The report considers the case of other Tunisian prisoners still held in Guantanamo, as well as the documented use of torture in Tunisia itself, before discussing other nationalities of detainee at Guantanamo who are also at risk: "Of the 355 detainees still being held in Guantanamo, approximately four dozen from countries such as Algeria, China, Libya, Tunisia and Uzbekistan - all countries with known records of torture - have told their attorneys that they are so fearful of torture or other abuse that they do not want to return home". The report considers the international legal obligations that prohibit the return of people to countries where they are at risk of torture or ill-treatment and makes a series of proposals to the US executive and Congress as well as the Tunisian government and other governments. Available at: <http://hrw.org/reports/2007/tunisia0907/tunisia0907web.pdf>

Identity Crisis, Gary Mason. *Police Product Review* Issue 17 (December/January) 2007, p 12. This article is a discussion of the UK's national identity card scheme, which is variously estimated at between £5.4 billion and £20 billion to set up over a period of at least ten years. Mason places the technology within a mathematical context. In a country the size of the UK, with 45 million people above the age of biometric consent it would amount to a thousand trillion comparisons (10 to the power of 15)." He cites Dr John Daugman, a leading biometrics scientist at Cambridge University, who says: "The largest number of biometric comparisons that have been carried out to date is 200 billion for an iris scanning system. While this is a huge number it is intrinsically small compared to what would be required for an effective UK-wide identity system that does not produce a significant number of false matches. For example 200 billion is larger than the number of stars in our galaxy...It is also larger than the estimated number of galaxies in the universe and the number of neurons in the brain. Yet that number pales in comparison with what will be required. You need 5,000 times 200 billion to reach 10 to the 15th - the equivalent of the total number of stars in 10,000 galaxies." The planned ID card system with Russian roulette "where it would have to survive trillions of pulls of the trigger before firing a shot."

GERMANY**Immigration law infringes migrants' privacy rights**

Germany's new Immigration Amendment Act, which came into force on 28 August this year, was received by migrant communities and asylum rights associations with sustained criticism. Turkish migrant associations, in particular, are opposing newly introduced far-reaching remits to collect and exchange asylum seekers' and foreigners' data.

The Act extends EU biometric provisions (1) to apply to travel documents issued to third country nationals. Furthermore, visa applicants will now be photographed and fingerprinted; data exchange is increased between the immigration service and local authorities responsible for administrative registration; photographs are included in the central foreigners database (*Ausländerzentralregister*); electronic face recognition technology is used to compare stored data with various databases, and law enforcement and immigration authorities have increased access to the central foreigners database (*BT-Drucksache 16/5065*, page 4).

Moreover, the already existing provision that grants data exchange for "security checks" between aliens' authorities and law enforcement or intelligence agencies (which concerns all personal data collected in a visa procedure by German embassies or consulates or foreign representation of other Schengen states on the applicant and on the inviting party), has now been extended to apply not only to the above-name persons, but also to any other "reference person".

The relevant agencies the data is exchanged with are: the External Security Service (*Bundesnachrichtendienst*), the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*), the Military Intelligence Service (*Militärischer Abschirmdienst*), the Federal Crime Police Authority (*Bundeskriminalamt*) and the Custom's Crime Authority (*Zollkriminalamt*). The data exchanged may be collected and used by the security agencies "in as far as this is necessary for the fulfilment of their remits" (Article 73(3) *AufenthG*). An automatic data exchange between aliens' and local authorities is now regulated under Article 90 of the residency regulation (*AufenthG*).

Turkish associations have voiced particular concern about the regulation that orders public authorities, which in their regular work come across foreigners they find "in need of integration", to pass their personal data on to the aliens' authorities (Article 87(2) *AufenthG*). Data can be exchanged in accordance with Article 43(4) *AufenthG*, which gives the government powers to pass a regulation on data exchange between authorities with regard to those who "qualify" for integration measures. This way, says the Amendment Act, the aliens' authority can impose the integration course onto people they would not otherwise "have in their field of vision" (*BT-Drucksache 16/5065*, page 195).

Problematic here is, firstly, that the obligation to report presumes that public authorities are able to assess if a third country national is "in need of integration". However, neither the qualification for this assessment, nor a clear definition of what constitutes "in need of integration" are provided in the text. Secondly, the remits of the obligation to report are not defined, so that it is not clear if teachers, for example, may or even must report parents of schoolchildren who they believe are "in need of integration". Finally, public authorities whose work is based on trust between them and their clients are transformed into the helpers of aliens' authorities, thereby endangering relationships of

trust and the rights of third country nationals to have their privacy protected.

(1) Council Regulation (EC) No 2252/2004 (13.12.2004) on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385/1, 29.12.2004

For a detailed critique by the organisation Turkish Community in Germany, <http://www.tgd.de/index.php?name=News&file=article&sid=687&theme=Printer>

UK**Palestinian Youth Football Team denied visas**

A planned three-week tour to Britain by the Palestinian Under-19 football squad was stopped in its tracks in August when the British consulate in Jerusalem refused to grant visas to the entire team. The youth team, which had arranged several matches, including games against Blackburn Rovers, Tranmere and Chester youth sides, was due to arrive on 21 August for a three week tour of the UK; refusal notices were received by the Palestinians on the 22 August.

The reasoning behind the decisions was as follows:

paragraph 41ii of the Immigration Rules requires me to be satisfied that you intend to leave the United Kingdom on completion of your proposed visit. You have applied for entry clearance at a time when the borders to Gaza have been closed for over two months with no indications of when they will be open again. You have produced no evidence that you will be permitted by the Israeli authorities to exit Gaza for onward travel to the UK, or that if you are able to travel, you would be able to return home to Gaza on completion of your visit. You are habitually resident in Gaza and have provided no evidence that should you be unable to return there, you would be admitted to any other country after a stay in the United Kingdom. I am therefore not satisfied that you intend to leave at the end of your proposed visit.

The organiser of the tour, Rod Cox, was additionally told that the youths' poverty was another reason for the ban. In a "Catch 22" situation, it would seem that the western boycott of Hamas, imposed after it won elections in Gaza in January 2006, has achieved its aim in reducing the region to poverty and now that poverty itself is given as a legitimate reason for restricting the Palestinians' freedom even further.

Another result of the Israeli seige has seen the right of Palestinians to an education, as stipulated in the UN universal declaration of human rights, severely curtailed, as the case of Khaled al-Mudallal demonstrates. Khaled is a student at the University of Bradford but, along with thousands of others, has been unable to leave because of an Israeli Supreme Court ruling (October 2). In a letter to *The Guardian* on 5 October, academics from the Department of Peace Studies at Bradford University, described the court's ruling as: "a fragrant breach of a fundamental right to education. This judgement undermines both academic freedom and the very possibility of constructive dialogue across communities."

At the beginning of November the Labour MP, Diane Abbott, tabled an Early Day Motion calling for the government to take action on the case Khaled al-Mudallal. It reads:

"That this House is concerned at the situation facing Bradford University student Khaled al-Mudallal, who is currently confined to Gaza as a result of restriction on his movement imposed by Israeli authorities; recognises that Mr al-Mudallal has a British residency permit allowing him to stay in the UK to study until 2010; believes that Mr al-Mudallal should be allowed back to Bradford to complete his degree in business and management; and calls on the Government to take action to ensure Mr al-Mudallal's right to education is secured.

For more information contact the Palestine Solidarity Campaign, email: info@palestinecampaign.org

UK

Fourteen escape Campsfield House detention centre

Campaigners welcomed the escape of detainees imprisoned at the Campsfield House Immigration Detention Centre, Oxford, at the beginning of August. Twenty-six prisoners fled following a week of strikes and protests at the "appalling" and unsafe living conditions at the detention centre. The day after the protests, as tensions rose at the privately run centre, a fire was started near propane bottles near the kitchen and the 26 detainees fled. Over one month after the audacious escape 14 of the asylum seekers remained on the loose.

Prior to the escape, prisoners released a statement, accompanied by supporting photographs, explaining the reasons for their protest. The statement read:

"Detainees at Campsfield will be having a sit-out protest at 11.45 tonight 31 July 2007, followed by a hunger strike tomorrow. Newport immigration court, which is used for bail hearings and appeals involving Campsfield detainees, is very discriminatory compared to other courts in the UK: the bail application and appeal process rate there is less than 5%. Living conditions for detainees are appalling. Campsfield is a health hazard with 70% infection from flu. Paracetamol is the only medicine made available; two weeks ago even this ran out. Campsfield was rife with scabies, but only staff were issued with gloves. Although detainees are held civil detainees, not convicted prisoners or prisoners on remand, food, toilets and showers are a lot worse than prisons. Some detainees are being held even though they have won an appeal against deportation. Others have clearly stated that they want to go back to their country of origin but have still been waiting in Campsfield for months."

The last "disturbance" at Campsfield was in March when several detainees and staff were injured after a fire. A Home Office report predicted that overcrowding, poor physical conditions and bureaucracy could lead to further riots. The US company which runs the detention centre is Global Expertise in Outsourcing (GEO) - it also runs a migrant "operation centre" based at Guantanamo Bay.

For more information and regular updates on the plight of the Campsfield detainees visit the Campaign to Close Campsfield website: <http://closecampsfield.org.uk>

Immigration - in brief

■ **UK: Airline refuses to carry deportees.** The government's immigration policy suffered a serious blow in September when XL Airways announced that it would not charter its planes to the Home Office to carry deportees. The airline was one of several, including British Airways and Virgin Atlantic, which had been warned that they would face direct action by activists to end instances of abuse. Some of the evidence was published in *The Independent* newspaper (5.10.07), and there is a dossier of more than 200 cases where deportees have claimed physical and mental mistreatment by British escort teams. Campaigners have accused the airlines of profiting from the forced deportations and *The Independent* has revealed that "the Home Office paid British Airways more than £4.3 million in 2006 to carry failed asylum seekers and their escorts." In another new development the Home Office said that "its Borders and Immigration Agency, which is in charge of funding the removals, recognised the right of the captains of aircraft to refuse to carry a detainee for "security or commercial reasons"". In 2001 the *Vereingung Cockpit* pilots association in Germany instructed their pilots not

to take part in involuntary deportations and to ask deportees if they were willing to be transported, (see *Statewatch* Vol 11 no 1). XL Airways has a fleet of 24 aircraft and one of them was used in the deportation of 18 children and 14 adults from the UK to the Democratic Republic of Congo in February 2007. *Independent* 5, 10.10.07; *National coalition of Anti-Deportation Campaigns website*: <http://www.ncadc.org.uk>

Immigration - new material

Women Refugees and Asylum Seekers in the UK. *ICAR Briefing*, July 2007, pp 15. This briefing addresses four key issues relating to refugee women: the introduction of gender guidelines, female genital mutilation, the trafficking of women and women in detention. *The Information Centre: Asylum and Refugees in the UK* : <http://www.iocar.org.uk>

Workers, Serfs and Slaves: managed migration and employment rights, Steve Cohen. *Legal Action* August 2007, pp 9-10. Cohen considers the government's policy of so-called "managed migration" and the relationship between immigration status and employment rights observing that the mechanisms of immigration control are changing as the "agents and enforcers of controls are becoming employers. They are the managers of New Labour's 'managed migration'." Cohen says: "Whatever the merits of ex-Prime Minister Blair's retrospective apology for Britain's role in the slave trade, it would be less hypocritical if the government was not developing a modern system of slavery through the reshaping of immigration controls."

Undocumented Migrant Workers Have Rights! An Overview of the International Human Rights Framework. *Platform for International Cooperation on Undocumented Migrants*, March 2007, 52pp. The human rights of undocumented migrants are articulated within a variety of instruments and treaties on both the international and regional levels. This publication provides a clear picture of the different instruments that specifically relate to undocumented migrants, within the international human rights framework as well as those on the European level and clarifies why and how these instruments uphold the human rights of undocumented migrants. Available as a free PDF download at <http://www.picum.org>

Immigration Law Update, Alan Caskie. *SCOLAG Legal Journal* Issue 355 and 358 (May and August) 2007, pp 106-109 and 174-177. These articles review significant cases in the field of asylum, immigration and nationality law from England and Scotland. *SCOLAG, 148 Muirdrum Avenue, Glasgow G52 3AP, admin@scolag.org*

Refugees Number 146 Issue 2, 2007 (ISSN 0252-791X). This issue covers Iraq and the plight of the several million refugees who have been displaced by the Anglo-American invasion. Published by the *UNHCR, PO Box 2500, 1211, Geneva, Switzerland*; <http://www.unhcr.org>

"Beyond Comprehension and decency". *Medical Justice* July 2007, pp20. *Medical Justice* was formed two years ago, and this pamphlet was produced to accompany the organisation's fundraising party at Cargo on 3 July which was supported by a wide range of world acts including the ZongZing All Stars from the Congo, the Asian Dub Foundation Soundsystem and the dancehall dj's, Heatwave. The organisation was formed following a mass hunger-strike by over 100 Zimbabweans detained in Harmondsworth Immigration Removal Centre in July 2005, to facilitate the provision of independent medical and legal advice to asylum seekers detained in immigration removal centres. Dependent on donations, *Medical Justice's* work has assisted over 500 individuals held in detention and brings together "a unique and exciting collaboration between asylum seekers, ex-detainees, solicitors, barristers, doctors, nurses, campaigners, detention centre visitors and other volunteers." Membership for asylum seekers and ex-detainees is free while the waged rate is £10 for each £3,000 of your salary. *Medical Justice* can be contacted by phone (0207 561 7498) and email info@medicaljustice.org.uk

Mugak no. 39 (April-June) 2007, pp.75, Euros 6. Looks at education and linguistic models, with a special focus on the schooling of pupils with immigrant origins, as well as illustrating a claim against the

"inhumane" conduct of the Spanish and European administrations in their implementation of controls on immigration. It draws on a number of recent events, concluding that FRONTEX has increased the loss of human lives at sea, that rights and laws are regularly contravened (particularly in the case of the Marine I) and that the UN should hear this case and reach a decision without a need to exhaust possibilities under domestic jurisdiction as the events concern several countries and incidents in international waters. Moreover, there are also comments on the death during deportation of Osamuyia Aikpitanhi, in-depth reports on discrimination in housing in Catalunya and Bilbao and on the media's treatment of this matter, and news of how CEAR (*Comisión Española de Ayuda al Refugiado*) convinced a court to rule against the expulsion of an unaccompanied minor. Available from: Centro de Estudios y Documentación sobre racismo y xenofobia, Peña y Goñi 13 -1º, 20002 San Sebastián

La situación de los refugiados en España. *Informe 2007, Comisión Española de Ayuda al Refugiado*, Entimema, pp 281. This exhaustive report on the situation of refugees in Spain analyses the exodus of refugees from their countries of origin and its causes, with emphasis on the situation of Palestinians and on the increase of large boats that increasingly substitute for dinghies; the difficulty of gaining access to the asylum adjudication process; analysis of statistics indicating a decrease in the concession of refugee status; the integration of refugees into society and the employment market; the situation of unaccompanied foreign minors; and the situation of refugees abroad who do not enjoy protection. It offers a wealth of statistics, illustrates a number of proposals by CEAR and provides background documents on the implications of the war against terrorism on basic human rights and migrations, on preparations for the 3rd World Social Forum on Migrations and on refugee's participation in volunteer work. Available from: CEAR, Avda. General Perón, 32, 2ª dcha., 28020 Madrid

Highly Skilled Migrants: changes to the immigration rules. Joint Committee on Human Rights (House of Commons/House of Lords), July 2007, HL 173/HC993, pp 28. The Highly Skilled Migrants programme was introduced by the government in 2002 to encourage those with "exceptional" skills to relocate their homes, families, jobs and businesses to the UK. In 2006 the government made a number of "unfair and unlawful" changes to the rules that have left as many as 49,000 highly skilled migrants facing deportation the report says. It particularly criticises the government for making the new rules retrospective and urges Immigration minister, Liam Byrne, to change the rules so that they only apply to new applicants. Available at: <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/173/173.pdf>

LAW

Law - new material

Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning. *House of Lords and House of Commons Joint Committee on Human Rights* 30.7.07, pp. 62 (+ 96 pages of evidence). This report considers government proposals to increase pre-trial detention from the recently increased period of 28 days. It concludes that "extending the 28 day period does not meet the strict test of necessity which must be satisfied where any new power would constitute an interference with civil liberty" (Paragraph 52). Instead it recommends "thorough scrutiny of the evidence, stronger judicial safeguards and improved parliamentary oversight" (p 3). The Committee also concludes that the Special Advocate system for control order proceedings "does not afford the individual a fair hearing and recommends changes" (p 3, Paragraphs 176-205). The report welcomes "in principal" the review of the use of intercept evidence. See <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/157/157.pdf>

Justice Matters: independence, accountability and the Irish Judiciary, Tanya Ward. *Irish Council for Civil Liberties* 2007, pp. 116.

This report looks at the issue of judicial independence in Ireland. Among its key recommendations are the establishment of a Judicial Council for complaints, transparency around the judicial appointment process and increased resources for the District Courts. *ICCL, 9-13 Blackhill Place, Dublin 7, Ireland, <http://www.iccl.ie>*

Reforming the Rehabilitation of Offenders Act 1974, Dan Mace. *Legal Action* July 2007, pp 18-20. This article considers the plight of people with a criminal record who are often unfairly discriminated against in their search for employment. Mace argues that "a programme of information, education and reform is long overdue and that, with responsibility for ex-offenders moving to the new Ministry of Justice, it is time to look at these issues again."

MILITARY

Europe

Military role for Galileo conceded

Now that the idea of public-private financing for the European satellite radio navigation programme Galileo has been abandoned in view of lack of interest of the industry, the military goal of the project is more openly emphasized. Jacques Barrot, the vice-president of the European Commission (EC) told the press in early May, "You cannot exclude a [navigation system] user because he is military. It will be civilian-controlled, but there will be military users." And in the European parliament the subcommittee for security and defence policy led by MEP Karl von Wogau demanded a military dimension for Galileo "to become independent from foreign nations".

Galileo has run into trouble due to lack of money. The European Commission now proposes to launch the project with 3.4 billion euro of community funds. In the financial framework for 2007-2013 1 billion euro is already earmarked for this purpose. The Commission now proposes to finance the extra 2.4 billion euro from "unused agriculture funds" and "margins for other policies" within the EU budget. This idea has met resistance from Germany, the UK and the Netherlands. The December European Council will take the final decision.

Euractive, 3.10.07; Europäische Sicherheit 7/2007; World Socialist Website, 7.7.07; Le Monde 6.10.07

UK

UK evades planned cluster bomb ban by "creative" renaming

According to the human rights organisations Oxfam, Amnesty International, Human Rights Watch and Landmine Action, the UK, the world's third largest user of lethal cluster bombs over the last ten years, has renamed one of its two remaining cluster munitions in an effort to beat an expected worldwide ban next year. Cluster bomblets are notoriously unreliable and many fail to explode on impact, remaining a lethal hazard to civilians months after the initial attack. Even under test conditions, around 6% of these bombs malfunction.

London Director of Human Rights Watch, Tom Porteous, said that "Human Rights Watch's investigations in Kosovo, Afghanistan, Iraq and Lebanon have all shown that cluster munitions, no matter how sophisticated, do not work as advertised, and instead get used in ways that violate international humanitarian law." In December last year Hillary Benn, the then Secretary of State for International Development, said that cluster munitions "represent a threat to aid-workers, peace-keepers, medical services, internally-displaced persons" after the

cessation of hostilities. In July 2007 an opinion poll showed 82% of the British public are in favour of a cluster bomb ban.

The move would mean that the Hydra CRV-7 rocket system, which can deliver 171 "M73" bomblets from a helicopter-mounted rocket pod, would remain part of British arsenals. As recently as 23 November 2006, the government listed the CRV-7 as a cluster munition. But on 16 July this year, just months after it said it would back a worldwide cluster bomb ban, the Government said the CRV-7 was no longer a cluster bomb.

Ten years after it championed a treaty banning landmines the UK has a chance to do the same with cluster bombs – but instead it is spinning a cluster bomb con," said Simon Conway, Director of Landmine Action. "This is a deeply cynical move. The UK Government needs to announce an immediate end to the use of these indiscriminate killers.

US forces used the rocket-delivered M73 bomblets in Iraq in 2003. Human Rights Watch reported contamination by unexploded bomblets left behind after the strikes.

Press release Oxfam, Amnesty International UK, Human Rights Watch, Saferworld, 18.9.07. There is more information on: <http://www.landmineaction.org/resources/resource.asp?resID=1082>

FRANCE

France closer to rejoining Nato

France has made a series of proposals aimed at a return to the military organization of Nato. The country had left the military branch of Nato in 1966 under general De Gaulle because it mistrusted the US nuclear guarantee for the defence of continental Europe. Since then France stayed only in the political organization of Nato. Now new president Sarkozy has sent a document to the alliance's political headquarters in which four ways of sharing information and strategic thinking between Nato and the EU common foreign and defence policy are mentioned. The EU high representative for foreign affairs should regularly brief the Nato Atlantic Council. The secretary general of Nato should be invited at the meetings of EU foreign ministers. Nato and EU bodies for arms procurement should have close working contacts. New procedures should facilitate exchange of information between Nato and EU crisis and disaster agencies.

In the eyes of the Paris correspondent of *The Independent* these ideas "seem merely technical but they represent almost a U-turn from previous French hostility towards EU-Nato links". Washington officials "are said to fear that M. Sarkozy is trying to build up EU defence policy as a cuckoo within the Nato nest, rather than a rival outside it." Earlier Sarkozy told the *New York Times* there were two French conditions for reintegration in Nato – a boosted EU military headquarters in Brussels and a guarantee for senior French posts inside Nato's top command structure, for instance that of the European Nato commander. A new French defence white paper is due in March next year.

The Independent, 10.10.07 (John Lichfield); Le Monde, 9.10.07 (Laurent Zecchini); AFP, 25.9.07;

Military - new material

Leave No Marks: enhanced interrogation techniques and the risk of criminality. *Physicians for Human Rights and Human Rights First*, August 2007, pp. 44. This report examines the "enhanced" interrogation techniques advocated by former US Secretary for Defence, Donald Rumsfeld. These include stress positions, beating, temperature manipulation, waterboarding, threats of harm to a person, his family or friends, sleep deprivation, sensory bombardment (noise and light), violent shaking, sexual humiliation and prolonged isolation and sensory deprivation. It concludes that such practices "may cause severe physical and mental pain upon detainees" and says that: "Given this knowledge, US policy makers and interrogation personnel should understand that if

such techniques are practiced, it would be reasonable for courts to conclude that the resulting harm was inflicted intentionally." PHR: <http://www.physiciansforhumanrights.org>

As British leave, Basra deteriorates: violence rises in Shiite city once hailed as a success story, Karen DeYoung and Thomas E. Ricks. *Washington Post* 8.7.07. As the remaining 5,500 British troops stationed there beat a retreat from their former headquarters at Basra palace, a senior US intelligence officer has told the *Washington Post* that "The British have basically been defeated in the south" and, as another official put it, they are now "surrounded like cowboys and indians" - which is evidenced by the number of military fatalities in the city in recent weeks. Meanwhile the major Shia political groups and their militias are extending their influence in official institutions, municipal offices and the neighbourhood streets, waiting to fill the vacuum left by the British troops. It is widely predicted that these warring militias, each with its own representatives in the government of Nouri al-Maliki, will escalate the street battles as they fight for control of neighbourhoods and resources.

Hollanditis.Nu, pp36, Euro 3 (print version). This new publication by Dutch peace and anti-militarist groups was named after the anti-nuclear protest movement of the 1980s which saw mass demonstration in Amsterdam (1981) and The Hague (1983). It is an attempt to unite the peace movement after its demise in the 1990s during a time when consecutive wars in the Balkans, Afghanistan, Iraq and Sudan brought mass action. The publication provides information about war zones and the arms industry, aiming to work towards building a world without war and violence. Published and edited by: *Haags Vredesplatform, Vredesbewegingvereniging Pais, Antimilitaristies Onderzoekskollektief VD AMOK* and the Dutch branch of the *Women's League for Peace and Freedom*, available in print from bestelling@hollanditis.nu, articles free online at <http://hollanditis.nu>

Torturer's bazaar, Mark Thomas. *The Guardian* 8.8.07. The comedian and political activist discusses the Defence Systems and Equipment International arms fair where he found three companies "offering electro-shock torture equipment", just around the corner from the Association of Chief Police Officers stall. Most of the remainder of the article deals with his frustrating attempts to persuade Customs officers to take action against the "banned stun guns and leg irons" advertised at the arms fair. The Mark Thomas website can be accessed at: <http://www.markthomasinfo.com>

The Iraqis don't deserve us. So we betray them... Robert Fisk. *The Independent* 23.8.07, p 2. One of the important things about Fisk's writing is that, unlike the architects of the illegal Iraq invasion, he actually knows something about the region and its history. Here he takes us on a guided tour of Iraq's recent failed leaders imposed and appointed by the US or "elected" with its financial backing. He starts with Ahmed Chalabi, the fabricator of Iraq's "weapons of mass destruction" who is wanted on fraud charges, and concludes with Nouri al-Maliki, a man "with whom Bush could do business": "He couldn't get the army together, couldn't pull the police into shape, an odd demand when US military forces were funding and arming some of the brutal Sunni militias in Baghdad." And now it's time for the US to dump Chalabi because: "These creatures - let us use the right word - belong to us and thus we can step on them when we wish."

Circle of Impact: the fatal footprint of cluster munitions on people and communities. *Handicap International* May 2007, pp. 184.

'Off the Rocker' and 'On the Floor': the continued development of biochemical incapacitating weapons, Neil Davidson. *Bradford Science and Technology Report* no. 8, 2007, pp. 63. This paper explores the development of biochemical incapacitating agents (defined by the military as "...a chemical agent which produces a temporary disabling condition that persists for hours to days after exposure to the agent (unlike that produced by riot control agents)") and their delivery systems, focusing on events in the USA. It tracks the weapons programmes administered by the Department of Defense and related research efforts sponsored by the Department of Justice. It also considers developments in Russia and the Czech Republic as well as France and the UK. Available from: http://www.brad.ac.uk/acad/nlw/research_reports/docs/BDRC_ST_rep

RACISM & FASCISM

RUSSIA

Activist killed by neo-Nazis in protest camp

At 5am on the morning of 20 July 2007, Russian neo-nazis attacked an anti-nuclear protest camp in Angarsk in Siberia, killing the anarchist and anti-fascist activist, Ilya Borodayenko, and seriously injuring several others. In the past two years, three anti-fascists have been killed in nazi attacks in Russia; many more migrants and people from ethnic minority groups have fallen victim to far-right violence.

The action camp, organised by *Autonomous Action Irkutsk*, was set up in protest at the planned International Uranium Enrichment Centre in the industrial town of Angarsk. *RosAtom*, Russia's nuclear industry authority wants to establish the centre at the Angarsk Chemical Electrolysis Combine, in operation since 1954, with the aim of supplying fuel to Russian and other nuclear power stations and to provide an international uranium fuel bank for countries that want to develop nuclear power but do not have native uranium deposits. It would be the first such centre in the world. According to the *Bellona Foundation*, an international environmental NGO based in Oslo, Norway,

The project has the nod from the UN's International Atomic Energy Agency and the verbal endorsement of the United States, both of which see the centre as a way to control the uranium supply and discourage the efforts of perceived rogue nations to pursue nuclear power and, in turn, nuclear weapons.

The plant is situated within the boundaries of the town of Angarsk, 30 km from Irkutsk and 100 km from Lake Baikal, with neither a buffer safety area nor radiation-control zone. Since 2006, tens of thousands of tons of nuclear waste have been transported from Germany and other West European countries to Russia. According to *Bellona*, in the current plans for the Centre,

only 10 percent of the uranium-containing source materials the plant would be receiving for reprocessing would end up on its way home to the end consumer, while the waste would be left in the region for storage for an indefinite period of time. Environmentalists say this amounts to nothing less than importing radioactive waste into Russia.

For obvious environmental, health and safety dangers that the plan poses to the population, activists and environmental NGOs have been organising against the government's plans.

Neo-nazis, who according to the camp activists came from the region, attacked the camp early in the morning whilst people were sleeping in their tents; they were armed with iron pipes and beat people up, set fire to tents and stole bags and mobile phones. Ilya was on guard duty at the time and was so severely beaten that he died the following day in hospital from his various injuries and blood loss.

According to the Dutch solidarity fund *XminY*, which supports the action camp financially, the Russian authorities confiscated the camp's materials and told activists to leave the area as their safety could no longer be guaranteed. They also told them not to contact the press. The authorities said that the attack was not organised and classified it as vandalism.

On 30 July, assault charges were brought against the attack's alleged perpetrators. But in an unexpected turn of events, police searched the apartment of Marina Rikhvanova, a co-chair of the environmental organisation *The Baikal Ecological Wave* (BEW), and detained Rikhvanova's son, Pavel Rikhvanov, who

according to his confession to the police on 26 July, had been among the attackers. The police confiscated BEW materials and a computer hard drive during the search of the apartment. Environmental groups are saying the local authorities are engaging in a defamation campaign, suspicious of the fact that the local public prosecution service leaked the alleged participation of Pavel in the attack to the local media. The camp's organisers have come out in support of the BEW and are demanding that the Russian authorities prosecute the perpetrators:

We do not know whether Pavel participated in the attack; it was dark and we did not see and could not remember the faces of the assailants. But we are certain that Marina Rikhvanova and other members of The Baikal Ecological Wave had nothing to do with this incident. We will continue our cooperation with the Wave and hope that the investigators will get to the bottom of what happened.

Rikhvanova believes the authorities are aiming at discrediting her organisation and weaken its position as an opponent of the Angarsk enrichment centre plans.

I take it as a provocation. There are very serious suspicions about the circumstances in which my son met one of the assailants not long before what happened and then got involved in all this without knowing he would end up at the activists' camp. I do not believe that he took part in the beatings,

She told *Bellona Web* in an interview.

Practically all the attackers have been arrested, but the assistant to the prosecutor only named one of the accused to the press – my son Pavel. We are extremely wary about this situation. We demand a fair and conclusive investigation into all the circumstances of the attack and punishments for those who are really guilty of it

A vigil for Ilya Borodayenko and solidarity actions demanding an independent investigation into the violent attack took place in Moscow and at Russian embassies in various European cities including, The Hague, Minsk and Berlin. The solidarity campaign is calling for financial support for the camp and the victims of the attack.

Moscow Times 23.7.07; http://www.bellona.org/articles/angarsk_attack,

<http://www.infoshop.org/inews/article.php?story=2007101003521513>,

http://www.gipfelsoli.org/Home/Other_Protests/3841.html. Support:

Webmoney: www.wmtransfer.com USD- Z433321563841, Ruble – R525695018139, Euro – E260359289266

Racism & Fascism - new material

Election Special. *European Race Bulletin* no 60 (Summer) 2007, pp 40.

This issue assesses the impact of recent presidential elections in France and the general election (November 2006) and provincial elections (March 2007) in the Netherlands. It also contains summaries of events in other European countries. Available from the Institute of Race Relations, 2-6 Leeke Street, London WC1X 9HS, email: info@irr.org.uk

Report on Racism and Xenophobia in the Member States of the EU. *European Union Agency for Fundamental Rights* (FRA) 2007, TK-AK-07-002-EN-C, pp 172. This annual report records an increase in racist violence in eight (Britain, Denmark, Finland, France, Germany, Ireland, Poland and Slovakia) of the 11 European Union member states that supplied data covering the last six years. The rate was down in Austria, the Czech Republic and Sweden. However, the full picture could not be ascertained due to the lack of national data with a number of countries publishing no information for 2005-2006. Available at: http://fra.europa.eu/fra/material/pub/racism/report_racism_0807_en.pdf

Modell Wurzen, Arthur Leone. *Jungle World* 30.8.07, p 3. Useful background German-language article on the far-right scene in the East German region of northern Saxony, where there was a racist pogrom against eight Indian migrants in the small town of Mügeln in late August 2007 which received much international media attention. The

standard official response to such daily attacks in Germany is a denial of their racist nature. This article does away with myth of unorganised criminal youth committing the attacks and highlights far-right organisation in the area surrounding Mügeln, located only a few km away from the stronghold of the National Democratic Party of Germany (NPD) in the town of Wurzen. There is a general racist consensus that has developed since German "reunification" in the early 1990s that allows for attacks, not only against black people but also activists, to carry on without the comprehensive prosecution of perpetrators or civic outrage. The only counter-forces to the far-right threat in the eastern German regions are anti-fascist networks. This article details the work of anti-fascist and other networks in the region and – despite the continued existence of far-right activities and racist violence – the changes that they have brought about. Available at <http://www.jungle-world.com/seiten/2007/35/10504.php>

Europe's Heart of Darkness: plan to expel immigrants is symbol of new extremism, Paul Vallely. *Independent* 7.9.07. Article on the rise of the "new extremism" in Switzerland, in the form of the Swiss People's Party (*Schweizerische Volkspartei*, SVP) which has the largest number of seats in parliament and is a member of the coalition government. It will be contesting October's general election using propaganda that, according to the United Nations, is a "sinister symbol of the rise of the new racism and xenophobia at the heart of one of the world's oldest democracies"

This is not a 1938 encore, Ian Buruma. *The Guardian* 26.6.07. Buruma discusses the oxymoronic notion of "Islamofascism", a keyword favoured by neoconservatives "sympathetic to the idea of using American armed force to further the cause of human rights and democracy". He argues that "Revolutionary Islamism is undoubtedly dangerous and bloody. Yet analogies with the Third Reich, though highly effective as a way of denouncing people whose views one disagrees with, are usually false. No Islamist armies are about to march into Europe...and [Iranian president] Ahmadinejad, his rhetoric notwithstanding, does not have a fraction of Hitler's power." He sees this rhetoric as deriving from a neoconservative philosophy "in which a belief in revolution from above was commonplace" and describes armchair support for the US-led crusade as "the blind cheering on of a sometimes foolish power embarked on unnecessary wars that cost more lives than they were intended to save."

A Pyrrhic Victory, Nick Lowles. *Searchlight* September 2007, pp. 4-6. Article on July's British National Party's leadership election, the first since Nick Griffin seized control of the far-right organisation from John Tyndall in 1999. Griffin won with 91% of the vote on a 43% turnout, which correlates with a membership of around 8,604 "well below the boasts regularly circulated by the party."

journalists. It is their duty to publish matters of public interest. They should not be criminally charged for doing their job.

The move to investigate the journalists came from Siegfried Kauder, Conservative party member and chair of the parliamentary investigation committee set up with the aim of examining the German government's and secret service involvement in, amongst others, the CIA rendition flights and the Iraq war. As the parliamentary investigation committee had "as many holes as a Swiss cheese", Kauder urged committee members to initiate criminal proceedings to stop the breach of secrecy. It is somewhat ironic that journalists were investigated, however, as the breach of secrecy is committed by the very committee members that have now initiated legal proceedings against those that they leak the documents to.

The ensuing scandal forced many committee members to withdraw their support for the investigation, which is now blamed on Kauder alone. The regional public prosecution offices in Berlin, Munich, Hamburg and Frankfurt are obliged to investigate any complaints lodged, but the Hamburg public prosecutor is already reported to have dismissed the inquiry as "nonsense" (*Spiegel online* 2.8.07). In addition to the clearing of four *Süddeutschen Zeitung* reporters, editors from the *Spiegel*, the *Zeit*, the *Frankfurter Rundschau*, the *Tagesspiegel*, the *Berliner Zeitung*, the *taz* and the *Welt* are still awaiting a decision by the relevant public prosecution offices on the investigation.

There is a good chance that they will be dropped, as the Federal Constitutional Court decided in February this year in the so-called *Cicero* case, that the mere publication of classified information is not enough for a criminal investigation of journalists for a breach of secrecy or to uncover their sources; "concrete actual facts" would have to substantiate the allegation that the informant passed on the classified information with the aim of publication (Decision 1 BvR 538/06 and 1 BvR 2045/06).

Committee investigates German role in US anti-terror practices

The parliamentary investigation committee, set up by the Lower House of the German Parliament on 6 April 2006, examines a range of secret service cases. Alongside the kidnapping of Khalid el-Masri in Macedonia in 2003, the committee deals with alleged German involvement in rendition flights and the foreign intelligence service's (*Bundesnachrichtendienst* – BND) conduct in Baghdad during the US-led invasion of Iraq in 2003. As well as el-Masri, the committee also heard Murat Kurnaz, who was detained for five years at Guantanamo Bay without any charges being brought against him, whilst German authorities frustrated attempts by Kurnaz' lawyer to get him released. German officers are also said to have engaged in the irregular interrogation of prisoners abroad. Finally, in early June, the Lower House decided to include within the committee's remit the case of Abdul-Halim Khafagy, an Egyptian publisher who had been living with his family in Munich since 1979. Khafagy was brutally arrested in Sarajevo two weeks after 11 September 2001 and interrogated – and allegedly tortured in breach of various international human rights instruments – by US officials at their base in Tuzla. German officials from the Crime Police Authority (*Bundeskriminalamt* – BKA) and a BND interpreter visited the base and reported back to their head office (and allegedly also to the BND) about the illegal interrogation methods used against Khafagy and his violent arrest. If leaked information from secret service files is verified, it will show that the-then head of the chancellor's office and current foreign minister, Frank-Walter Steinmeier, and therefore the German government, knew two weeks after 11 September 2001 that the US was torturing terror suspects and denying them basic human rights. The government, however, continues to claim that it heard about the US interrogation practices only through media reports.

The committee has already interrogated a series of prominent politicians, including foreign minister Frank-Walter

SECURITY & INTELLIGENCE

GERMANY

Prosecution ends investigation of "rendition" journalists

On 9 August, the Munich public prosecution ended criminal investigations against four of the 17 journalists accused of "breaching secrecy" by publishing information contained in classified documents from the parliamentary investigation committee examining Germany's involvement the US-led "war on terror". The investigation of the journalists in an attempt to find the source of leaks within the parliamentary committee was severely criticised by journalists, trade unions and civil liberties organisations who said that it constituted an undemocratic attack on press freedom. The New York based *Committee to Protect Journalists* (CPJ) stated:

With respect to the sensitivity of the information published, whoever leaked the classified documents should be investigated, not the

Steinmeier (*Sozialdemokratische Partei Deutschlands* - SPD), former foreign minister Joschka Fischer (Green Party), former home office minister Otto Schily (SPD) and current (Ernst Uhrlau - SPD) and former (August Hanning - independent) presidents of the BND. Hanning is currently state secretary of the interior.

Not an isolated incident

The attempt to prosecute journalists writing about politically sensitive secret service scandals related to the US war on terror is not the first of its kind. In September 2005, Berlin police raided the home and editorial office of journalist Bruno Schirra and the Potsdam-based monthly *Cicero*, and confiscated Schirra's entire research archive after he had profiled al-Qaeda leader Abu Musab al-Zarqawi in the April 2005 edition of *Cicero*. Authorities claimed that sensitive information on al-Zarqawi included in the story came from a classified BKA document and that Schirra had therefore violated secrecy laws. The BKA had also tapped Schirra's and the editorial office's telephones and collected traffic data prior to the raid and put Schirra under surveillance. The above-named decision by the constitutional court declared the raid unlawful.

However, judicial restrictions on executive powers do not appear to stop police and prosecution authorities in their quest. At the beginning of this year, it became known that the regional public prosecution office in Hamburg is investigating three editors of the weekly magazine *Stern* and a *Financial Times Germany* journalist, also for abetting breach of secrecy. They had cited undisclosed federal files on the el-Masri kidnapping case, also investigated by the parliamentary committee.

Given the political sensitivity of the investigation, it might come as no surprise that parliament and government are not keen to see sensitive information leaked, especially because not only the government but also the former government and therefore current opposition is under investigation. The choice to prosecute the media for the leaks, however, is a worrying trend that characterises the increasing use of authoritarian state practices to deal with the global war on terror and its consequences, (see *Statewatch* Vol 15 no 6, Vol 16 nos 1 & 2)

Spiegel online 2, 3 & 10.8.07, <http://www.tagesschau.de/27.2.07>

UK

Two jailed for disclosing White House "Al Jazeera" memo.

On 9 May, as Tony Blair resigned as Prime Minister, David Keogh, and Leo O'Connor were jailed for breaching the Official Secrets Act (OSA) by attempting to leak an "extremely sensitive" four-page memo that purportedly disclosed British concerns at US military tactics following the 2004 US massacre of hundreds of civilians in Fallujah and the military use - initially denied - of white phosphorus as a weapon of war. In November 2005 the *Daily Mirror* said the memo also made reference to President George W. Bush's proposal to bomb the Qatari offices of the widely respected *Al Jazeera* satellite television station. *Al Jazeera* sought clarification of the allegations through a Freedom of Information Act application in the UK in 2006 noting that:

"Any substantiation of the contents of the memo would be extremely serious not only for Al Jazeera but for media organisations across the world. It would cast significant doubts on the US administrations versions of previous incidents involving Al Jazeera's journalists and offices. Both Al Jazeera's Kabul Bureau and Iraq bureau were bombed by the US resulting in the death of Al Jazeera journalist Tareq Ayoub.

David Keogh (50), a Cabinet communications officer, leaked the memo to Leo O'Connor (44), a researcher for anti-war Labour

MP, Anthony Clark, who alerted the authorities. Keogh told the court that he felt strongly about the issue and thought that it exposed Bush as a "madman". Keogh was found guilty of breaching the OSA and jailed for six months while O'Connor was found guilty of a similar charge and jailed for three months, at a trial that was largely held *in camera* - in front of a jury, but with the press and public banned. The judge told O'Connor that his disclosure was a "reckless and irresponsible action" although the then-Foreign secretary, Margaret Beckett, has implied that government embarrassment was the actual reason for the action.

Following the trial Mr Justice Atkins imposed sweeping gagging orders on the media, but these were quashed at the appeal court at the end of July. Lord Phillips also ruled that speculation about the contents of the memo should not claim to be an accurate representation of the evidence held in secret.

Al Jazeera "UK Men in Court" 25.1.06; Guardian 10.5.07; Free Press nos 157, 158 (March-June) 2007

UK

Does Diego Garcia make UK complicit in US war crimes?

In May 2005 families banished from their homes on the Chagos Islands 30 years ago to make way for a US military base won their legal battle to return home. The court of appeal upheld a High Court ruling from May 2006 that found the government's arguments "repugnant" and "irrational", adding that it found the delaying tactics used by the British as unlawful and an abuse of power. It said that thousands of people had been tricked, starved and terrorised from their homes to make way for the American military base on the island of Diego Garcia. The Chagosian's, who are British subjects, had not sought to return to Diego Garcia, but to other islands in the archipelago. However, despite the scathing criticism of what can only be described as ethnic cleansing, the government has announced that it will launch a further appeal, this time to the House of Lords, (see *Statewatch* Vol. 11 no 2, Vol. 14 no 5, Vol. 16 no 1, 2).

An insight into the government's thinking behind its long-term treatment of the Chagosian's is seen in the persistent allegations that the government has allowed the base to be used by the US military for the purpose of torture. While UK representatives, from the former Attorney General, Lord Goldsmith, to Meg Nunn (the parliamentary under secretary, Foreign and Commonwealth Office), have denied being aware of torture, other sources contradict this. In June the second Marty Council of Europe report into rendition said:

we have received concurring confirmations that United States agencies have used the island territory of Diego Garcia which is the international legal responsibility of the United Kingdom, in the "processing" of high value detainees. It is true that the UK government has readily accepted "assurances" from US authorities to the contrary, without ever independently or transparently inquiring into the allegations itself, or accounting to the public in a sufficiently thorough manner.

Now the Conservative MP, Andrew Tyrie, has written to the Foreign Affairs Select Committee requesting that it investigate allegations of the use of British territory in the US "rendition" programme as part of its inquiry into the Overseas Territories. Mr Tyrie said that the government had done "next to nothing" to investigate the allegations. He added:

The UK government continues to turn a blind eye to breaches of the rule of law. Extraordinary rendition, whereby people have been kidnapped around the world and taken to places where they may be maltreated or tortured, demands its attention. It is high time our government took its head out of the sand and looked into these allegations for itself.

The *Independent's* Law Editor, Robert Verkaik, has observed:

Should Britain be found to have played a complicit role in the use of torture or other breaches of human rights undertaken by the Americans forces in Diego Garcia, then ministers could be held to account in a UK court of law or even face charges at the International Criminal Court.

Dick Marty (rapporteur) "Committee on Legal Affairs and Illegal Transfers of Detainees Involving Council of Europe Member States: second report" 7.6.07 (Parliamentary Assembly) <http://assembly.coe.int>; *Independent* (Robert Verkaik) 17.10.07; see also *Minority Rights Group International website for background*: <http://www.minorityrights.org>

Security - new material

Shifting Targets: the administration's plan for Iraq. Seymour Hersch. *The New Yorker* 8.10.07. This article starts from the premise that the US administration knows that it has lost the propaganda campaign to convince US public opinion that an Iranian nuclear attack is imminent and that a major bombing campaign is necessary to prevent it. Instead the US regime is considering a modified proposal consisting of limited strikes on the country which will be sold as a "defensive action to save [US] soldiers in Iraq." Bush's attempts to try and find a justification for attacking Iran are all too similar to those he and Blair made to justify the invasion of Iraq, more surprising is the information, imparted by the US ambassador to Iraq, Ryan Crocker, that the "British are on board" for the venture. Hersch writes: "The bombing plan has had its most positive reception from the new government of Britain's Prime Minister, Gordon Brown. A senior European official told me: "The British perception is that the Iranians are not making the progress they want to see in nuclear-enrichment processing. All the intelligence community agree that Iran is providing critical assistance, training and technology to a surprising number of terrorist groups in Iraq and Afghanistan, and, through Hezbollah, in Lebanon, and Israel/Palestine, too." Another reason given to Hersch for the British interest is "shame over the failure of the Royal Navy to protect sailors and Royal Marines who were seized by Iran on March 23rd in the Persian Gulf." http://newyorker.com/reporting/2007/10.8.071008fa_fact_hersch

How the anti-apartheid movement was spied on by Special Branch, Robert Verkaik. *Independent* 15.9.07, p 32. This article summarises material released under the Freedom of Information Act regarding the infiltration of an anti-apartheid movement

POLICING

UK

IPCC rules no disciplinary action over Sylvester death

In August the Independent Police Complaints Commission (IPCC) said that the eight police officers involved in the restraint related death of Roger Sylvester should not face any disciplinary action. The ruling, which flies in the face of the 2003 inquest jury verdict of unlawful killing, that was later overturned at the High Court, means that not one police officer has been deemed responsible for Roger's death in January 1999 following his arrest under the Mental Health Act. INQUEST, the non-governmental organisation that works directly with the families of those who die in custody, pointed out that the inquest was the only forum where all the available evidence has been subject to public scrutiny, and its conclusion that Roger's death amounted to unlawful killing, was because the restraint used "amounted to the use of unlawful and dangerous force." In 2005 the Crown Prosecution Service announced that there was "insufficient evidence" to bring criminal charges against the police officers,

(see *Statewatch* Vol. 9 no 1, Vol. 10 no 6, Vol. 11 nos. 3/4, no 5, Vol. 13 no 5).

The IPCC's decision left the Sylvester family "disappointed but not surprised", as it is only the latest in a long line of such irrational rulings; similar outcomes have been seen in the cases of Harry Stanley, Christopher Alder, Mikey Powell and Jean Charles de Menezes, to name a few. In light of these controversial circumstances Roger's mother, Mrs Sheila Sylvester said:

We are not surprised that the IPCC, apparently because of their fear of vested interests within the police, have come to this sorry decision. They and we know that the independent inquest jury which heard all the evidence was able to express its satisfaction beyond reasonable doubt that Roger Sylvester was unlawfully killed. Even Mr Justice Collins, who quashed that verdict on a technicality, had to concede that there was sufficient evidence for the inquest jury to conclude that Roger was unlawfully killed. Similarly, while refusing to prosecute any officer involved in the restraint, the Crown Prosecution Service had to concede that the restraint had caused Roger's death. It is clear to us, as it must be to all of them, that they have Roger's blood on their hands...

BBC News 8.8.07; *IPCC press release* 8.8.07; *INQUEST website*: <http://inquest.gn.apc.org>

UK

Widening deployment of Tasers marks "a slippery slope"

Amnesty International has expressed "grave concern" at the ever widening deployment of the Taser, the so-called "less-lethal" weapon that was described as a "dangerous weapon" by the former-Home Office minister, Hazel Blears. Use of the Taser electro-shock gun, which has resulted in hundreds of deaths in the USA, had been confined to specialist firearms officers until their deployment to ten police forces in the UK which are participating in a year-long trial that began on 1 September. Until then, about 3,000 electro-shock weapons had been issued to police firearms units since September 2004, and it is widely predicted that the latest extension will lead to a dropping in standards for police use of the 50,000 volt weapon. Amnesty has said that it fears that police using the weapon in the trial may not be properly trained. Its Arms Programme Director, Oliver Sprague, said that he feared a situation like that in the USA "where Taser's have been widely misused and people have died." He added:

Because these weapons are potentially lethal, police officers must be trained to the same high standard as they are for using a firearm, receiving intensive, ongoing training to ensure that they only use these dangerous weapons in the right situations.

The Northern Ireland Human Rights Commission is also opposed to the introduction of TASER's in Northern Ireland, "even as a pilot". According to the organisation's Chief Commissioner, Professor Monica McWilliams they should only be introduced:

following the proper processes of assessment, and then can only be used in accordance with the principal of minimum force. There remain genuine concerns about the safety of this particular technology. As such, concerns have yet to be addressed around the potential for violating Articles 2 and 3 of the European Convention on Human Rights concerning the right to life and inhumane treatment

An Amnesty investigation has found that more than 220 people have died after being shot with Tasers in the USA.

Amnesty International press release "Tasers: Increased deployment marks the start of a slippery slope" 31.8.07; Northern Ireland Human Rights Commission press release "Commission highlights concerns around TASERs" 3.10.07; see also "DSAC Sub-Committee on the Medical

Policing - new material

Young Black People and the Criminal Justice System, Volume 1. House of Commons Home Affairs Committee (HC 181-1), 15.6.07, pp 98. This report concludes that "young black people are overrepresented at all stages of the criminal justice system. Black people constitute 2.7% of the population aged 10-17, but represent 8.5% of those of that age group arrested in England and Wales. As a group, they are more likely to be stopped and searched by the police, less likely to be given unconditional bail and more likely to be remanded in custody than white young offenders. Young black people and those of "mixed" ethnicity are likely to receive more punitive sentences than young white people." The report also notes that "Young black people are also more likely to be victims of crime". Given this data it is more than surprising to find that racism is only mentioned in four of the paragraphs (Para 120, 122, 159 and 195) of the hundred page document while the main focus of the volume discusses measures directed at:

<http://www.publications.parliament.uk/pa/cm200607>

[/cmselect/emhaff/181/181i.pdf](#)

Researching Minority Ethnic Young People in Edinburgh and the Greater Glasgow Area, Liz Frondigoun, Hazel Croall, Bill Hughes, Lani Russell, Rachel Russell & Gill Scott. *Glasgow Caledonian University*, July 2007, pp 80. This report was commissioned by Strathclyde and Lothian and Borders police forces and found that many young people from ethnic minority groups in Scotland lacked confidence in the police and would not bother reporting incidents to them. It criticises officers for their heavy-handed policing of religious events, for their poor communication and untrustworthiness. Police officers have rejected the claims and the Police Federation said that it was "wrong" to suggest that they are racist. Available at: http://www.lbp.police.uk/press_release/articles/2007/August/14/3rdraftreport.pdf

Shoot to Shock, Gary Mason. *Police Review* 17.8.07, pp 29-30. Article on the next generation of stun gun weapons, Taser International's XREP - the eXtended Range Electronic Projectile. This "breakthrough", which maintains the incapacitating capability of the hand held X-26 used by UK police forces but has the capacity to be delivered from 30 m, is currently undergoing trials.

Prisons

UK

HMP Foston Hall still to "come to terms with its new role"

A follow-up inspection by the Prisons Inspectorate at HMP Foston Hall took place following changes in the womens' estate, which meant that Foston Hall become a local womens' prison, having been previously a training prison for sentenced women, with a relatively settled population. At time of inspection, over a quarter of its population were women on remand. The inspection found that the prison had not yet come to terms with its new role and population. Suicide and self-harm procedures and reception and induction processes were not robust enough to deal with the levels of self-harm and vulnerability among remanded women. Use of force had increased, often to remove ligatures from self-harming women.

Relationships in the prison continued to be broadly good. Women on the convicted wings had adequate time out of cells, with good levels of education and activity. Resettlement work with convicted women was good. However, there were no

custody plans for short-sentenced and remand prisoners. Work to support family links, for all women, continued to be unacceptably weak. The prison had failed to adjust to its new role.

"Report on an unannounced short follow-up inspection of HMP Foston Hall 1-3 May 2007", HM Chief Inspector of Prisons (2007) and see also:

http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/hmp-yoi-inspections.html?Foston_Hall.pdf?view+binary

UK

No change at unstable HMP Rye Hill

This was the Inspectorate's third inspection of HMP Rye Hill, a contracted-out Category B prison, run by Global Solutions Ltd (GSL), that opened in January 2001. In 2005, the Inspectorate reported that Rye Hill was "an unstable environment, both for prisoners and staff." The main recommendations at that point were that the Office for Contracted Prisons should take urgent action to reinforce staff and management and should review staff recruitment, retention, deployment and management, including risk assessment of safe staffing levels.

In 2007, as Chief Inspector Ann Owers put it, "many of the passages of the 2005 report could be repeated verbatim." Staff lacked the experience or support to ensure that proper boundaries were in place, take decisive action to challenge misbehaviour, or actively support prisoners. The fundamental changes needed to ensure safety, decency and good practice had not been made. At the time of the first inspection, only 17% of prisoners reported ever feeling unsafe. By 2007 that number had risen to 52%, with 26% feeling unsafe at that moment. The Inspectorate found inexperienced, often young, staff, at most in pairs, and too often actually or effectively on their own, unable to set boundaries, engage positively with prisoners, respond to their requests and concerns, or carry out agreed procedures. Aggressive behaviour was rewarded, in that it attracted staff attention. The incentives scheme had been subverted. Prisoners who refused to engage with the regime, and many of those who were in segregation, were on enhanced or super-enhanced levels. Use of force and adjudications were over-used.

There was a lack of robust management to support staff. Management of race relations, foreign nationals and disability fell well below best practice, and in some cases below the current legal minimum. Suicide and self-harm procedures were poor. Food was of poor quality. Healthcare provided only a basic service, without proper chronic disease management, and with inadequate pharmacy services and poor links to external NHS facilities. Activity was seriously inadequate for a training prison. Over a third of prisoners at any one time were not engaged in any activity, and classroom efficiency was measured by whether the teacher, rather than the prisoners, turned up. There was no coherent resettlement strategy. The prison had a large number of high risk offenders, ran offending behaviour programmes, and was the regional centre for sex offenders serving indeterminate sentences, but had no forensic psychologist on site.

The Inspectorate found that Rye Hill performed so poorly and was so unsafe an environment for staff and prisoners "that the National Offender Management Service should consider sending in a team of experienced public sector senior and middle managers for a period to assist the Director to stabilise the prison."

Report on a full unannounced inspection of HMP Rye Hill, 11-15 June 2007" HM Chief Inspector of Prisons (2007)

http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/hmp-yoi-inspections.html/Rye-Hill.pdf?view=binary

UK

Attacks on Muslim prisoners

A campaign of threats and attacks on Muslim prisoners has resulted in a serious assault on Esa (Dhiren) Barot at HMP Frankland. Esa was physically assaulted and suffered serious burn injuries after having boiling water poured on him. Threats have also been made against Hussein Usman, and Omar Khyam is in self-imposed isolation for his own protection. The Prison Service response to the attack on Esa was to refuse to relocate him on the basis that HMP Frankland remained the jail best suited to his safety and the safety of others. There are also rumours of floating contracts being taken out on some Muslim prisoners, including Andrew Rowe.

Alongside this, prisoners are regularly ghosted around the dispersal system - purportedly to "curb their influence". Baber Ahmed has been moved from Woodhill to Belmarsh and then to Manchester, while Abu Qatada has been ghosted from Belmarsh, to Full Sutton, to Frankland and is at present at HMP Long Lartin. The notion of "political influence" and the reported "fear of radicalisation" of other inmates is a smokescreen for the fact that the Prison Service is aware that where prisoners have been threatened in jails where there were substantial numbers of Muslim prisoners, they have been able to organise for their own protection and co-ordinate a unified complaint to the prison authorities.

A number of groups - including Cageprisoners and the Islamic Human Rights Committee, along with solicitors for some of the prisoners, have come together to co-ordinate pressure on the Prison Service to meet their duty to protect Muslim prisoners, and discuss ways of organising to protect them, collect information about their conditions and publicise their concerns.

For more information, contact: Cageprisoners PO Box 45789, London SW16 4XS, contact@cageprisoners.com; <http://www.cageprisoners.com>; Eesa Dhiren Barot, Omar Khyam, Hussein Usman, Andrew Rowe, HMP Frankland, Brasside, Durham DH1 5YD; Omar Otham (Abu Qatada) MX8756, HMP Long Lartin, Evesham, Worcs WR11 8TZ; Babar Ahmed MX5383, HMP Manchester, Southall, Manchester M60 9AH

Prisons - in brief

■ **UK: Report on poorly designed HMYOI Brinsford.** The Prisons Inspectorate found Brinsford Young Offenders Institution to be poorly designed, with the site split awkwardly into juvenile and young adult facilities. Neither site was built with sufficient activity places to occupy the difficult and challenging young people held. Brinsford was still not sufficiently safe. Safeguarding was not well co-ordinated and

child protection, anti-bullying and self-harm prevention had all improved. However, there was over-use of strip clothing for those at risk of self-harm. Juveniles were strip-searched on arrival. Use of force and adjudication levels remained high. There was no clear strategy to manage vulnerable young people, who, as a result, were dotted around the prison in a variety of locations. The quality of the juvenile accommodation had deteriorated. Access to showers and phones remained poor. There was no personal officer scheme in place. There was no effective race relations structure and the racial incidents complaint box had not been emptied for four years. There had been a deterioration in support arrangements for foreign nationals, despite an increase in their numbers. The quality of purposeful activity remained poor-particularly for young adults. Many young people had no form of custody planning. The needs of young people facing indeterminate or life sentences were poorly addressed. "Report of an unannounced full follow-up inspection of HMYOI Brinsford, 5-9 February 2007" HM Chief Inspector of Prisons (2007)

http://inspectors.homeoffice.gov.uk/hmiprison/inspect_reports/hmp-yoi-inspections.html/Brinsford.pdf?view=binary

Prisons - new material

Justice Delayed? Eamonn O'Neill. *The Guardian G2 supplement* 28.8.07, pp 4-9. Article on Ray Gilbert, who has served 22 years, ten years over his tariff, for the murder of John Suffield, a crime that he has consistently maintained that he did not commit. His view is shared by the father of the victim, and by his co-defendant, John Kamara, who has had his conviction quashed. Ray Gilbert has tirelessly campaigned for the overturning of this miscarriage of justice and it is widely held that the only reason he is still incarcerated is because he refuses to admit his guilt. This article concludes with the words of John Suffield's father who says: "[The] evidence should be looked at in detail...Nobody, least of all my family, wants an innocent man imprisoned."

Population in Custody: monthly tables. Ministry of Justice July 2007. <http://www.justice.gov.uk/docs/pop-in-custody-july2007.pdf>

Face the Facts: prison does not work, Mark Oaten. *Independent* 8.8.07, p.31. Liberal Democrat MP, and their former home affairs spokesman, Oaten, begins with the obvious premise that the government's Victorian prison system isn't working and proposes a package of alternative measures. These include "a new national network of educational and vocational training centres, specialist treatment centres for the mentally ill and drug-addicted, and greater use of tough community sentences for those who don't pose a threat to society."

Prisons Statistics Scotland, 2006/07. Scottish Executive, [Http://www.scotland.gov.uk/Resource/Doc/196743/0052707.pdf](http://www.scotland.gov.uk/Resource/Doc/196743/0052707.pdf)

Germany

Crime by association - Terrorist law criminalises critical research

Over recent years, political opposition and investigative journalism have come under attack by police and the security services in Germany. In line with a general erosion of civil liberties in Europe, exacerbated by the "war on terror" and egged on by shady secret service activities, investigative journalists have been spied on (see *Statewatch* Vol. 16 no 1), G8 protesters have been criminalised (*Statewatch* Vol. 17 no 2) and most recently social scientists have been accused of membership of a terrorist organisation for being associated with social movements and using words

such as "gentrification", "precarisation" and "Marxist-Leninist" in their publications; words that also appeared in letters by a group claiming responsibility for arson attacks against cars and buildings in and around Berlin since 2001.

Alongside the social scientists, one of whom was arrested, three activists were arrested and accused of having attempted to set fire to military vans on industrial land near Berlin. All of the accused have been charged with membership of a terrorist organisation; the police claim that they form part of a group that calls itself *militante gruppe* (militant group, mg), but hard

evidence to corroborate this claim is still missing. Whilst earlier terrorist proceedings criminalising the oppositional left received little attention from the mainstream media, a mass of protest letters has reached the German public prosecutors office regarding this case. Distinguished professors such as Mike Davis and David Harvey and university and educational institutes such as the Centre for Urban and Community Studies or the Global Union Federation Education International are demanding, in strongly-worded statements, an end to the proceedings that are endangering freedom of research and thought.

In addition to the worrying trend of prosecuting people for their writing, the recent arrests have led to a more far-reaching debate about the application of terrorist law to "regular" criminal acts. A judge of the Federal Court of Justice asked himself the same question, so that from 11 October onwards, a criminal division of the same court will now deliberate whether the mg can be classified as terrorist. Since the new definition of terrorism, introduced in Germany with the transposition of the EU Council framework decision combating terrorism into national law in 2003, criminal acts would have to "fundamentally threaten" the order of the state to be classified as terrorist, a definition that obviously leaves room for interpretation. The question is whether the mg's arson attacks, none of which have injured persons or even remotely disrupted public life, can be defined as terrorism. The ruling will therefore not only decide on the imprisonment and defence rights of those accused, but impact on the definition of terrorism in Germany as a whole.

The "suspects": investigating social movements

According to the investigation files, the four activist researchers were under investigation since at least September 2006. The three others came under investigation after two alleged meetings between Andrej H. and Florian L. in February and April 2007. On the night of 31 July this year, Florian L., Axel H. and Oliver R. were arrested whilst driving in a car in Brandenburg, after allegedly planning to set fire to army vehicles in the area. The police blocked off the road, stopped their car, smashed the windows, beat at least one of them whilst he was still in his car seat with his safety belt on, and dragged them out of the window, injuring one in the process. Andrej H., a sociologist at the Humboldt university of Berlin and father of three, experienced less violent, but equally intimidating, treatment when police raided his home and arrested him at 7am in the morning. All four were flown by helicopter – three of them dressed in Guantanamo-style suits - to the public prosecutors office in Karlsruhe the same night and put into investigative detention. The same day, the homes of three more people were raided. Matthias B. and two more activist researchers - Andrej H. and Matthias B. write on urban gentrification, social and economic poverty - were charged with membership of a terrorist organisation.

After three weeks in solitary confinement (confined to his cell twenty-three hours a day with almost no access to lawyers and little contact with family) Andrej H. was released by a judge's ruling; but the arrest warrant is still valid, awaiting a decision on the prosecution's appeal against his release which will be decided by the Federal Court of Justice in October. Florian L., Axel H. and Oliver R. remain in prison, under the same conditions described above, which the authorities can enforce on grounds of the applied anti-terrorist legislation. Apart from stringent prison conditions, their defence rights are severely curtailed and contact with their lawyers takes place only through a Plexiglas window. Their correspondence is monitored (see below).

Article 129a procedures are – when considering the groups they have historically targeted and the nature of the charge

(posing a fundamental critique against the state) - *politically motivated* prosecutions (see below). The political background and ideology of those accused is therefore central to the prosecution's reasoning. To understand the current prosecutions therefore necessitates a mention of the political background of the accused. The four activist researchers in question were all involved in an eastern German dissident movement critical of the political system of the former German Democratic Republic (GDR). Three of the accused were part of the editorial board of the last remaining nonconformist newspaper and public debating forum of the left-wing east German movement called the *Telegraph* (<http://www.telegraph.ostbuero.de/>).

After the breakdown of the Communist Bloc and the capitalist transition in eastern Germany, three of them were actively involved in researching and acting against the gentrification processes (i.e. the replacement of the lower class - through an increase in house prices – by middle and upper class populations in "prime location" urban areas). In particular, the eastern parts of Berlin underwent a large-scale and - for low-income households – devastating restructuring processes that were triggered by the privatisation processes introduced after reunification. The studies conducted on this transition, however, were not only academic in nature but aimed at social change by way of a neighbourhood organisation called "We will all stay", in which two of the accused were active. Moreover, research conducted by one of the accused showed that more than 50 percent of the 140,000 inhabitants of the gentrified district of *Prenzlauer Berg* had left the area, concluding that this development "diametrically opposes the council and district policy that claims to aim at rehabilitating and conserving existing social structures". This scientific foundation, illustrating actual social and economic developments that were severely criticised by activists and residents at the time, triggered controversial political debates.

By way of association, the prosecution is now constructing a causal relationship between the – in essence anti-capitalist - political ideology of those accused and the militant practices of the mg. The prosecution's argument goes as follows: the four academics are the intellectual leaders of the mg and the three others form the operational arm of the organisation. This construction is based on two alleged meetings some months before the arrests between Andrej H. and Florian L. The prosecution is not bothered by the fact that it does not know what the two talked about in their alleged meetings. On the contrary, the reason for their failed interception (that Andrej and Florian left their mobile phones at home when they supposedly met) is precisely the evidence against them. To not carry ones mobile phone is conspiratorial and therefore suspicious behaviour likely to involve criminal, and in this case terrorist, activity.

Legal basis: many applications of anti-terrorist law

The anti-terrorist law applied here is Article 129a of the German Criminal Code, introduced by parliament in August 1976 to deal with the militant Red Army Fraction. The Article criminalises membership, promotion and support of a terrorist organisation rather than criminal acts themselves, so that the construct of a terrorist organisation stands at the beginning of any attempt to prosecute. Because this is an "organisational crime", an individual can be prosecuted and punished for all crimes committed by an organisation if he or she is found to be a member, even if no actual involvement in any of those acts is proven by evidence. Initially, the organisation deemed terrorist had to aim at committing serious crimes such as murder, kidnapping or bomb attacks, but the list of crimes was continuously extended; until 2003, a definition of terrorism was lacking entirely from the legal text.

Article 129a is traditionally used to criminalise left-wing

movements. From 1870 onwards, the then feudal Empire criminalised the Social Democratic Party with Article 128 (banning clandestine organisations) and 129 (banning organisations deemed "enemies of the state") of the Criminal Code. In the early 1900s similar provisions were used against communists and socialists, criminalising for example distributing leaflets as "preparation for treason". After the fascist era, the Communist Party was banned under a new political crimes law, followed by the introduction of the terrorism Article 129a in 1976.

The core of the anti-terrorism Article is its emergency status leading to the suspension of basic civil rights guaranteed under regular criminal and procedural law. Incarceration is a central element of the law, as suspects are typically put in detention awaiting trial for months and often years, without any indication that they are in danger of absconding. Fathers with regular jobs and fully integrated into societal structures, for example, are kept in prison on grounds of scanty evidence. Visitation rights are almost non-existent: suspects are kept in solitary confinement for 23 hours a day, allowed only one visit a week, whilst even lawyers have to talk to their clients through bullet-proof windows. Often suspects are kept in prisons remote from their homes making it almost impossible for friends and relatives to visit. Lawyers do not have full access to investigation files which makes the preparation of their clients' defence considerably more difficult, as does the fact that correspondence with their clients is monitored by a judge.

In 1987, the list of crimes that can be committed with terrorist intent was extended to include: dangerous intervention in train, boat or air traffic with the aim to disrupt arms transports or traffic blockades during militant strikes; the "disruption of public companies" (e.g. sawing down electricity masts) and the destruction of public buildings or police and army vehicles. In 2002, Article 129b was introduced to extend the anti-terrorist provision to include organisations that exist and are active only outside of Germany, but that are supported or promoted by persons living in Germany. This Article is applied predominantly against Islamic organisations but can be applied to any solidarity movement supporting an organisation deemed terrorist. In 2003, the EU terrorism definition was introduced in national law, and it now has to be tested whether crimes, in their nature or context,

may seriously damage a country or an international organisation were committed with the aim of seriously intimidating a population, or unduly compelling a Government or international organisation, to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.(1)

In 1989, the Crown Witness Regulation was introduced, offering those accused under Article 129a a deal with the prosecution for a more lenient sentence if they incriminate other persons, the German version of the disastrous use of "paid perjurers" or "supergrass" in Northern Ireland (2).

During the past 30 years, between 5,500 and 6,000 preliminary investigations were carried out by the police on grounds of Article 129a, sometimes against "unknown" persons and often more than one person was under investigation. Around 20,000 people have been affected by 129a procedures, as suspects and/or relatives and friends. Although exact figures are not recorded and can only be deduced from answers to parliamentary questions, various lawyers estimate that between 1980 and 1989, there were around 3,000 investigative procedures, and from then onwards around 200 investigation procedures per year. The majority of procedures concern supporting and promoting an organisation, not membership.

According to official figures, a mean of only five percent of legal proceedings initiated on grounds of Article 129a of the Germany Criminal Code leads to charges being brought against

the suspects, the current quota is even lower (3%). The quota in regular criminal investigations is almost 50%. In other words, in 95 percent of the cases, proceedings are dropped because they lack evidence.(2)

The experience of 30 years of the use of Article 129a has shown that house searches lead to the long-term confiscation of files, computers, hard drives and address books; large-scale interception of telecommunication pries into the private lives of whole social scenes, social profiles are made and through GSM monitoring and the movements and whereabouts are constantly monitored. Finally, activists are forced to spend money and often many years of their lives on unpaid anti-repression and defence work. Rolf Gössner, president of International Human Rights League, sums up the use of Article 129a to law enforcement as follows:

For the investigation authorities it is not decisive whether the relevant procedure actually comes to court and therefore ends in a conviction; to them the investigation in itself is much more significant. With the complex set of special powers triggered by Article 129a, they have at their disposal a practical instrument to get access to the targeted scenes that are otherwise difficult to enter, to hack into communication structures beyond the individual level, collect data and formulate sociograms of resistance that are used not only for repression but particularly for prevention and operational purposes. The consequences of this strategy of criminalisation are the intimidation of the movement, breaking solidarity and deterrence. (3)

The construction of a terrorist group

The entire legal construction of terrorism will be tested in the current case. The presiding judge of the third criminal division of the Federal Court of Justice, who is responsible for ruling on the prosecution's appeal to the preliminary release of the arrested sociologist Andrej H., decided that not only the suspension of investigative detention but the very application of the anti-terrorist provision Article 129a in this case had to be tested, and thereby its related investigation and prosecution powers.

Florian L., Axel H. and Oliver R. are accused of having attached an arson device to army vehicles parked on an industrial terrain in Brandenburg. This alleged attempted arson, the police argue, shows similarities to a series of attacks against cars and buildings carried out by the *militante gruppe*, which describes itself as social-revolutionary, communist and anti-imperialist. According to the Federal Crime Police office (*Bundeskriminalamt* – BKA) website the group has claimed 10 arson attacks since 2001 - some newspapers cite more than 20 claimed attacks - against police and army vehicles as well as buildings, such as the local tax and unemployment offices and a Berlin police station. Burning cars have indeed become a popular sport in and around Berlin these last years, with 91 cars, typically luxury vehicles, having suffered this fate this year alone (*Die Zeit* 23.8.07); a website has even been set up, dedicated to updating the list of cars targeted (4). However, the authorship of these arson attacks and the *militante gruppe* itself remain unclear and, with left-wing projects and publications, until now, not having given much attention to their actions, they were rather insignificant in the broader social movement in Germany.

Despite police investigating the case for more than five years, including searching a plethora of houses of anti-G8 protesters in early 2007 - allegedly within the framework of the *militante gruppe* investigation - there have had no success in relation to the *militante gruppe* and its claimed arson attacks. The three arrested were allegedly caught red-handed in an attempt to attach arson devices on army vehicles at night. Their relation to the *militante gruppe* is deduced by the nature of the incident (attempted arson) and the time of the incident (at night). The police allegation of "membership" appears to rest entirely on this incident, the *militante gruppe* letters claiming responsibility and the fact that some of the accused knew and met each other.

No evidence but criminal by association

In the police files disclosed to the defence so far, there is no evidence against Andrej H., Mathias B. and the two researchers showing their involvement in the *militante gruppe* attacks. Yet they are still charged with membership of a terrorist organisation by way of "association". The BKA believes that their choice of words in various published articles, such as the terms "reproduction", "political praxis", "gentrification" and "Marxist-Leninist", makes them not only "intellectually capable" of having written the "complex texts of the "militant group"", but the association of one suspect with the university gives him access to libraries, which he "can use inconspicuously to carry out the research necessary for writing the texts of the "militant group"". One suspect is deemed a member of the *militante gruppe* because he wrote an article about a conference at which speakers discussed a RAF attack from 1972, which was also mentioned by the *militante gruppe* some months before.

The link between the circle of left-wing academics and one of the other three arrested, which at the same time serves as evidence for the construction of "membership", is an alleged meeting between Andrej H. and Florian L., which the Crime Police Authority says was conspiratorial because Andrej left his mobile phone at home. Further, Andrej's involvement in organising protests against the G8 this summer, is construed by the police as left-wing extremism.

The police's attempt to ascribe the label of extremism to the diverse G8 summit protests began in 2005. The *militante gruppe* was used as a justification to raid the homes of some of the political organisers in early 2007, without any evidence being uncovered. Nevertheless, the police continue to use the G8 summit protests to construct an apparent investigative success in relation to the *militante gruppe*. Moreover, the ascription of guilt for allegedly evading surveillance by leaving a mobile phone at home, is a whole new way at looking at the principle of burden of proof. The evidential base is therefore described as a "legally weak and politically dangerous construct" by defence lawyers.

International protest

Although Article 129a procedures have become a rather common policing strategy against political movements in Germany, this time law enforcement might have gone too far. The attempt by police and politicians to criminalise those mobilising against the G8 summit from 2005 onwards, spectacularly failed due to broad civil support for the demonstrators and organisers (see *Statewatch* Vol. 17 no 2). Protests formed straight after the arrests with demonstrations and solidarity actions not only in Germany but other parts in Europe. A Coalition for the Immediate End to the Section 129a Proceedings and the release of the accused has been formed, which runs a website dedicated to providing information about Article 129a, case updates and press coverage (see www.einstellung.so36.net/en), and the German Green Party has vowed to raise the issue in parliament. Moreover,

more than 3,000 urban scholars from universities and academic organizations around the world, together with activists and organizers, have signed open letters protesting the arrests and demanding the repeal of Section 129a. A strongly worded resolution was passed at the American Sociological Association's annual meeting in New York in mid-August; a protest was lodged by the International Critical Geography Group; and another letter of protest was issued by a recent gathering of international urban scholars in Vancouver. Two Britain-based US academics have described the charges and incarcerations as "Guantánamo in Germany" (5)

Test case: terrorism and democracy

The outcome of the case will be interesting insofar as it will test the limits of anti-terrorist legislation, notorious for its deliberate

lack of definition and applicability. From the start statements by the broad solidarity campaign supporting the accused placed the abolition of Article 129a at the centre of its demands. Since its institution in 1976, civil liberties groups and political activists have pointed to the undemocratic nature of the anti-terrorist law and the destructive effect it has on social movements, freedom of expression and the criminal justice system as a whole. By outlining the effects of anti-terrorist laws in Northern Ireland, Paddy Hillyard warns that UK and EU anti-terrorist legislation will have disastrous effects on civil society without hampering terrorist activity, and in the case of Northern Ireland, it even increased levels of violence and impeded political settlements.

All anti-terrorist provisions share certain core elements of emergency law: organisations are banned, poorly defined criminal offences are introduced such as "aiding and abetting", freedom of speech with regard to these organisations is curtailed, and supergrasses and paid informers are used to spy on movements. In this way, two parallel but interrelated criminal justice systems are formed: one for those suspected of terrorist activities and another for those suspected of "ordinary decent crime". These parallel worlds, however, are conflated through daily police and judicial practice, undermining basic democratic principles that should protect citizens from unchecked state powers:

The development of a separate criminal justice system to deal with political violence has corrupted the ordinary criminal justice process in three significant ways. First, powers and procedures, for example, relating to the length of detention under anti-terrorist legislation were subsequently incorporated into the ordinary criminal law. Secondly, anti-terrorism legislation was constantly used to deal with ordinary criminal behaviour. Thirdly, the whole criminal justice system became discredited as the rule of law was replaced by political expediency and the Northern Ireland judiciary did little to uphold the independence of the law. (6)

Whilst there are significant differences between the former situation in Northern Ireland and its related human rights abuses against political activists and the current political situation in Germany, the general observations cited above also apply to Germany. It will be interesting to observe if the judiciary is willing and able to uphold its independence in this case. Various criminal law professors have demanded a restrictive interpretation of Article 129a, to apply only when "the state as a whole" is threatened by, for example, "large-scale attacks on energy supplies" and not "setting fire to individual vehicles", as in the current case. Some judges have commented that current legislation excludes acts with "merely subordinate consequences without significant effects felt" (8). Surprisingly, the current minister of justice, Brigitte Zypries, went even further in her delimitation of the definition of terrorism. When asked which terror attacks could threaten the polity and democratic foundation of the German state, she replied: "an attack such as 9/11 would be a terrible tragedy, but it would remain a criminal act and would not question the existence of our state" (*Der Spiegel* no. 39/2007, 24.9.07).

Even if ignoring the lack of evidence linking the accused to the *militante gruppe*, according to these statements and the current evidence supporting the prosecution's case, the group in question would not even constitute a terrorist organisation.

All relevant information on the case is available on the website of the campaign Immediate End to the Section 129a Proceedings <http://einstellung.so36.net/en>. The campaign is asking for donations and financial support for its anti-repression and solidarity work.

(1) Council Framework Decision of 13 June 2002 on combating terrorism, OJL 164/3, 22.6.02

(2) "The 'War on terror' - Lessons from Northern Ireland" (2005) by Paddy Hillyard, *Statewatch*, Vol 15 no 5.

(3) *Der Terror-Paragraph - 1976 trat der Strafrechtsparagraph 129a in Kraft: eine juristische Mehrzweckwaffe (2006)* by Heinz Jürgen Schneider, *junge Welt*, 18.8.06.

(4) <http://www.brennende-autos.de/>

(5) *German GWOT Misfire*, by Neil Smith, *The Nation*, 24 September 2007, <http://www.thenation.com/docprint.mhtml?i=20070924&s=smith>

(6) Paddy Hillyard, *Statewatch* Vol. 15 no 5.(8) *Der Spiegel*, 27.08.07, <http://einstellung.so36.net/de/ps/221>

EU Reform Treaty

The rhetoric of transparency and public debate in the EU

One of the main victims of the failure of the Constitutional Treaty on the EU and its replacement by the new 'Basic Treaty' is transparency and its counter-part public debate. However ones views can differ as to whether it was wise politically to hold a referendum on the issue in the Netherlands one cannot deny that there was public debate on various issues relating to the European integration process as a result. As the Dutch Council for Scientific research put it in a report earlier this year, *Europe in the Netherlands*, "in the run-up to the referendum the EU was for the first time in history the subject of discussion in the hairdresser, in the pub, newspaper and the public and commercial broadcasting channels" (authors translation). Before that the Constitutional Treaty was the product of a "Convention" that discussed and deliberated largely in the open and with input from a broad range of actors, including substantial delegations from national parliaments.

Precisely because of this recent history the manner in which the new 'Basic Treaty' has been rushed through behind closed diplomatic doors is poignant. National parliaments were consulted as far as I can see only on the mandate for the new inter-governmental conference that started on 19 July 2007. This detailed mandate was contained in a document of the German presidency setting out the main lines of the to be drafted new treaty dated 19 June 2007. According to the European Scrutiny Committee of the House of Commons those representing the UK at the European Council meeting in Brussels less than 48 hours later "did not see the draft IGC mandate until 5pm on 19 June". Presumably this was also the case for their Dutch and other national counterparts. Less than 48 hours later this "draft IGC mandate' provided the basis for discussion and agreement at the European Council meeting. On 25 June the Dutch parliament (tweede kamer) was informed of the final mandate and the agreement reached on the immediate convening of an IGC.

In other words a process that had taken two years, of shock and reflection, was bounced into the European Council in two days, with no time for consultation with national parliaments, not to mind public debate. The IGC mandate was in itself relatively incomprehensible to all but relatively expert insiders as it simply lists subjects and articles for revision and insertions (of existing Treaties). It was only a month later, 25 July, that at the first IGC meeting the Portuguese Presidency presented a draft text of the entire Reform Treaty, article by article (available in **French only** initially). On 30 July 2007 an initial draft text on the Basic treaty became available in English (although not other languages it seems, at least these language versions are not available on the Councils dedicated web-site). At no stage was a consolidated text made available by the IGC including the two existing Treaties as amended by the new Treaty. In other words the substance of what was being proposed was hidden in an extremely complex and convoluted outer shell, at best comprehensible to a small group of specialists.

Given the sitting terms of national parliaments they have only rather recently been able to respond -and then only on the original mandate for the IGC. In the UK for example the House of Commons Select Committee only on 9 October published a quite critical report on the mandate and UK White Paper. In the Netherlands the Dutch Council of State (Rand van State) in its

advice of 12 September did not take into account the draft Basic treaty text of 23 July 2007, only the IGC mandate. When the Dutch parliament (Tweede Kamer) debated this advice in early October the reference point was still the IGC mandate as such.

In the meantime the clock had not stood still nor indeed the work and progress made by the IGC and in particular its group of legal experts who had been busy for a two month period putting the broad provisions into precise legal wording and text and cross-checking for inconsistencies, overlaps and redundant provisions. On Friday 5 October the Council finally made available through its web site an updated draft of the new basic treaty including all the protocols and declarations, "resulting from technical negotiations" in the Council's own words.

The compressed timetable is that this is the text that will be discussed - and presumably agreed-at the European Council meeting to start on 19 October. National parliaments had barely two weeks to debate the outcome of the "technical negotiations" and to give very clear indications to their government as to what they do not wish to see included on the basis if an actual treaty text. If the ongoing process of steamrolling is anything to go by this draft of 5 October is what will be agreed to by the heads of state and government European Council in Brussels on 19-20 October. Once agreed it will be very difficult for national parliaments to play any role of meaning or substance. Other than to say 'yes' or 'no'.

Is there anything new in the 154-page treaties text plus 76 pages of protocols plus 25 pages of declarations? Yes! In particular there are amended protocols (which are legally binding and an integral part of the Treaties to which they are attached) largely concerned with the opt-ins and opt-outs that certain Member States managed to negotiate for themselves over the course of the past weeks (mainly the UK). The devil is as always in the detail: hidden away in a new protocol, number 10 on "transitional provisions", there is a new general provision that excludes the full jurisdiction of the European Court of Justice for a five year period as and from the date of entry into force of the new treaty (expected in 2009 plus 5= 2014) for " acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force" of the new treaty. From the perspective of the citizen this prolongation of the status quo and the very fragmented and partial jurisdiction of the Court is less beneficial than what had been regulated in the Constitutional Treaty and what was indicated in the IGC **mandate**.

With the publication of this very complex treaty amendment text barely two weeks before the European Summit that should agree on its adoption there was quite simply no more time for information and public debate. Of course on the one hand this follows from the method of the IGC that decisions are taken behind closed doors. On the other hand the recent history of the EU and the progress already made on more transparency and public debate than hitherto makes it all the more regrettable that this IGC was so secretive and so rushed. And national parliaments have been entirely sidelined.

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Germany

Amendment Act marks continued hostility towards foreigners and second generation immigrants

Decades of restrictive handling of asylum and migration rules have, in Germany as in the rest of the EU, led to a large number of asylum seekers and migrants living permanently without a secure legal status. Forced into illegality, undocumented migrants are economically marginalised and often excluded from basic social services that help to meet a decent standard of living with regard to housing, food, clothing, health care, legal advice, education and training. As a result of this structural violation of migrants' basic rights in Europe, the *sans papiers*, asylum and migrant rights groups in Germany and other EU countries are demanding the regularisation of undocumented migrants and rejected asylum seekers living in the EU without a secure residency status.

Germany has now introduced the possibility of regularisation for a certain group of these *de facto* residents, as well as introducing a plethora of amendments to existing residency and family reunion laws in the name of EU harmonisation. However, the overall reform package introduced with the Immigration Amendment Act, which came into force on 28 August this year and claims to implement eleven EU migration and asylum Directives, (1) was received by migrant communities and asylum rights associations with serious criticism. For one, the legal changes continue to favour highly-skilled workers over and above refugees and those deemed economically worthless for the economy. Then the government presented the law as a straightforward implementation of EU law into national law, whilst legal experts argue it fails to do just that. Furthermore, certain restrictions in family reunification procedures are presented as an instrument in the fight against trafficking and forced marriages, which is perceived by human rights campaigners as cynical as it fails to implement typically humanitarian and generous aspects of the EU Directives whilst introducing unrelated immigration restrictions. However, it was particularly the restriction of family reunion and compulsory integration courses which created discontent in the migrant communities and are criticised as hostile towards the integration of Muslims. Turkish associations have therefore announced legal action with the Federal Constitutional Court to test the new rules.

Regularisation of *de facto* residents

The Amendment Act (2) reforms existing laws on residency, freedom of movement, asylum procedures, the foreigners' database and citizenship. With regard to the regularisation of long-term undocumented *de facto* residents, the Amendment Act follows a decision by the regional interior ministers' conference in November last year, (3) which for the first time introduced the possibility of large-scale regularisation in Germany. The regional regulation grants third country nationals who have been living without interruption for six (families) or eight (individuals) years the right to apply for a residency permit until 17 May 2007. Applicants had to prove they could support themselves financially, whilst families with small children were granted certain exceptions with regard to employment. Although the introduction of residency rights for long-term *de facto* residents is generally seen as a positive move by the government towards the integration of foreigners, the preconditions applied to qualification are so strict and exceptions and exclusions in practice so far-reaching that it is estimated that only half of the estimated 170,000 to 190,000 migrants concerned will be able to receive residency (4). Preliminary statistics have shown that depending on the situation in the employment market in the

different regional states, the acceptance quota is between 2.7% and 31.5%. (5) The low acceptance quotas are explained by the various criteria for exclusion, particularly the precondition of finding work.

The residency provision passed by the regional interior ministers' conference was taken over by the Amendment Act and is thereby now regulated at the federal level, with one important difference, namely, that applicants initially do not have to be employed to receive a residence permit until the end of 2009. Until then, they are given time to support themselves financially and their situation will be reassessed. The federal regulation, however, also restricts the application to a time limit. According to the Federal Interior Ministry, the regional regularisation has led to 14,750 persons receiving a residency permit so far and a further 28,000 received the status of toleration with the possibility to seek employment; 25,000 applications have not yet been decided on. (6) The new application deadline under the federal regulation was set for 31 September 2007.

Disqualification criteria stop large-scale regularisation

Alongside the above named restrictions, if applicants are found by the aliens' authorities to have committed an act that constitutes a reason for deportation, they can be excluded from the regulation. These acts are, however, typically violations of asylum or citizenship regulations that only third country nationals are able to commit: for example, applicants who are found not to own a passport, can be, and already have been, excluded. (7) Given that it is difficult or impossible for many refugees to obtain a passport from their embassies, and given that more than half of the target group for the residency regulation do not have identity documents – that often being the reason they cannot be deported and that they received the status of toleration – this exception is perceived as cynical by refugee groups. Another case documented by the Bavarian Refugee Council is that of an asylum seeker who travelled twice to a neighbouring town without permission from the aliens' authorities and was fined 1,800 EUR, which disqualified him from the residency regulation. (8) The aliens' authorities are also given discretionary powers to find that an applicant in the past has not cooperated sufficiently with the authorities in their attempt to deport him or her, which constitutes a reason to exclude persons from the residency regulation.

An inherent problem with these reasons for disqualification is not only that the acts that constitute a violation can only be committed by asylum seekers and third country nationals, thereby not constituting actual criminal law violations in the traditional sense. It is also problematic that an aliens authority's assessment of the violation is sufficient to find someone "guilty", as the violation does not have to be tested in court; a mere procedural offence is given the status of a criminal offence under aliens law. Furthermore, even though the violations are defined as "reasons for deportation", asylum seekers are still excluded from the residency regulation if no deportation order is issued as a result of the offence. (9)

Pick and choose from EU law – the race to the bottom

The Amendment Act claims to implement the EU Council Directive on the definition of refugee status, content of refugee status, and subsidiary protection (hereafter Qualifications Directive) (10). All major asylum rights organisations in

Germany, however, argue that important protection provisions of the Qualifications Directive are not implemented: the comprehensive Articles defining refugee status (Chapters 2 to 4 Qualifications Directive), for example, are squeezed into one paragraph, whilst subsidiary protection principles (Chapters 5 and 6 of the Qualifications Directive) are added to the existing text with only a few sentences. Similarly, the Qualifications Directive criteria for refugee protection are transposed as "additional" provisions, rather than applied directly. Critics argue this violates the principle of EU law offering substantive rights rather than merely guidelines for the interpretation of existing national laws. (11) Last but not least, Article 15(c) of the Qualifications Directive, (12) which defines "serious harm" as a qualification for subsidiary protection, is transposed but simply omits the words "indiscriminate violence". This criterion for qualification of subsidiary protection particularly concerns civil war and internal armed conflict. Such a drastic shortening of the legal text and deliberate omissions clearly weaken protection standards and fall short of the Qualifications Directive. Continued exceptions and discretionary powers of asylum authorities to define reasons for exception from protection, such as the unwillingness of asylum seekers to cooperate, furthermore stand in contradiction to substantive protection rights. (13) Finally, references to religious persecution and conscientious objectors, as laid down in the Directive, are not explicitly transposed.

Dublin II and "integration" used to increase deportation powers

Apart from the Qualifications Directive, the existing Dublin II Regulation, (14) which allocates responsibility for examining an asylum application to Member States and obliges them to take back applicants who are irregularly in another Member State, is also taken as an opportunity by the German government to implement restrictive changes in its Asylum Procedures Law. Given that the necessary implementation of EU Directives is the proclaimed aim of the Amendment Act, the reference to Dublin II indicates that EU law is generally taken as an opportunity to introduce unrelated restrictive changes in national law: Dublin II is a directly applicable EU Regulation that came into force in 2003 and for the past seven years, law-makers have not found it necessary to change national laws in order to apply the Regulation. The main change introduced here is the abolition of the possibility to apply for an emergency procedure to stop a deportation. An asylum applicant falling under Dublin II is now treated under procedural law as having an "unfounded application" which leads to the immediate invocation of a deportation order, automatically excluding any emergency measures that could put a stop to the deportation. (15) Alongside increasing deportation powers, the refusal of entry of asylum seekers is facilitated by changing existing law that lays down that it has to be *certain* that an asylum seeker is entering from a safe third country, to that there are *indications* to that effect. This weakening of the text, however, considerably increases the possibility that entry is refused whilst the responsibility of another Member State has not been established and therefore works against the proclaimed aim of the Regulation to stop the "refugee in orbit" phenomenon.

More deportation powers are also introduced under amended residency provisions related to integration measures. If foreigners are found to be hostile to integration, they can be sanctioned and deported. Already the 2005 Amendment Act increased constitutionally questionable powers to deport so-called "hate preachers", i.e. fundamentalist imams. (16) These powers are further increased, as orders can be issued to persons who are found to create or increase hatred amongst children or youth towards members of other ethnic minorities, persons who stop others "in a despicable manner" from taking part in

economic, cultural or societal life, and persons who force or attempt to force a person into marriage. Whilst the intention to foster integration, protect victims of abuse and combat racial hatred, can only be welcomed, it is questionable that these aims will be achieved by way of deportations. The introduction of evidence-based procedures to identify abuse, the improvement of substantive rights, and the support of migrant organisations promoting emancipation and equality rather than fundamentalist viewpoints, on the other hand, might help to achieve them. (17) Furthermore, the failure to clearly define the violations that constitute reasons to deport provides aliens' authorities with far-reaching interpretation remits.

Victims of torture, health care, travel restrictions

The Amendment Act fails to explicitly implement any of the provisions contained in the Reception Conditions Directive, which defines minimum standards for the reception of asylum seekers. (18) This means that the rights of victims of torture are not protected by national law as laid down in Article 20 of the Directive, which says that "Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts."

This implies that applicants who are found to have suffered these forms of violence must first receive psychological and other medical support before being forced into the regular asylum trajectory. In order to assess if the applicant falls under this provision, Member States have to implement proper procedures to identify victims of torture and violence, which many EU Member States have so far failed to do. Asylum rights groups in Germany are also demanding the suspension of all accelerated airport procedures for asylum seekers who might be victims of torture and violence and grant them entry until their case has been assessed. (19)

Furthermore, the right to "necessary" health care (Article 15(1) Reception Conditions Directive) only applies to "acute" illnesses in the national law regulating social security for asylum seekers in Germany. The comprehensive rights for persons in need of special care as laid down in Articles 15(2) and 17-20 of the Reception Conditions Directive are also not implemented. (20) Finally, social security provisions for asylum seekers are worsened by the Amendment Act. As in most EU Member States, asylum seekers are granted less social security than the minimum standard applicable to citizens. The period in which asylum seekers receive less, however, is restricted to a time period, which has now been increased from 36 to 48 months.

The Reception Conditions Directive unfortunately followed the example set by Germany and fails to uphold a citizen's right to freedom of movement within a state (21) for asylum seekers, as it allows Member States to confine asylum seekers in designated areas (Article 7). However, German law sanctions "repeated violations" of the travel restriction ban with up to one year imprisonment or a fee amounting up to Euro 2,500 (i.e. constituting a criminal offence), whilst the Reception Conditions Directive only allows sanctions "applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour" - a much stronger definition than "a repeated violation". Furthermore, the Directive mentions sanctions only in relation to the "Reduction or withdrawal of reception conditions", which fall under procedural and not criminal law. A case is therefore made by legal experts that these criminal law sanctions violate EU norms and should be abolished. (22)

The right to family life restricted

As mentioned above, the most controversial issue surrounding the Amendment Act is family reunification and compulsory integration measures. Under the new law, family reunification is

made dependent on language tests, an assessment whether the marriage is "genuine" and economic means testing of the resident spouse. Similar to legal changes introduced in the Netherlands last year and recent French proposals, spouses may now only join their partner if, on arrival in Germany, they would not be obliged to follow an integration course. In practice, this means they have to have "adequate" knowledge of the German language, which in turn puts a *de facto* stop to family reunification if the spouse in question cannot speak German and is not able to successfully follow a German language course in his or her country of origin. The German law-makers have thereby twisted the non-binding Article 7(2) of the EU Family Reunification Directive, (23) which holds that "Member States may require third country nationals to comply with integration measures, in accordance with national law", into an obligatory precondition that is furthermore applied even *before* entry. Particularly controversial was the exclusion of those countries from this provision that Germany has visa agreements with. These typically include industrialised countries such as the USA, Canada, Israel and Japan.

Next to structural barriers to learning the German language in migrants' countries of origin, asylum advocacy groups point out: "Not only are people from middle and lower class backgrounds discriminated here by law, but also people from specific countries of origin, because the Amendment Act explicitly excludes citizens of the USA, Canada, Israel and Japan from this regulation, as it finds "the immigration of citizens of these states lies in Germany's special migration-political interest."" (24) The reference to Germany's migration-political interest refers to the reasoning used by the government when it justified the move with the argument that the immigration of citizens of the exempt states lies in Germany's interest and that "existing privileges [are granted] on grounds of special close economic relations" between Germany and the named states. (25) Again, legal experts argue the restrictions will lead to violations to the right to family life as laid down in the EU Directive, Articles 6(1,2) of the German constitution and Article 8(1) of the European Convention of Human Rights.

Forced "integration", citizenship and the construction of national culture

Integration-related measures form a large part of the legal changes, the term "integration" being used 70 times in the amended Residency Act. New measures allow for integration courses to be made compulsory and introduce sanctions if they are not followed. Now not only the participation but the "successful participation" in integration courses is made a precondition for residency and other rights and the aliens' authority can order foreigners to take part in integration courses by "administrative fiat" (*Verwaltungszwang*). Receiving social benefits is now a reason for authorities to demand participation in an integration course, as is an identified "special need of integration".

The compulsory approach towards integration has also led to strong criticism and concerns about the cultural bias of the Amendment Act, which migrant groups argue is hostile towards integration rather than promoting social cohesion or supporting migrants through the provisions of useful information. Particularly the arbitrary wording of "in special need of integration" is criticised as indirectly referring to Muslims. A perceived failure to integrate and the belief that "integration" can be enforced through courses teaching a "national culture", rests on ideological foundations that many argue has racist tendencies. As studies on the nature of fascism and new far-right tendencies in Europe have pointed out, (26) after the discrediting of race theories in the post-fascist era, many sociologists and far-right thinkers have since reconstructed 19th century thought on racial variation by substituting "race" with "culture", whereby it is

often assumed and sometimes actively promoted that fundamental and incommensurable differences exist between "cultures" (Huntington's clash of civilisations theory is but one example). 'Culture', in popular and academic discourse, has come to define ethnically and religiously distinct groups as, if not inferior, then certainly *different* from each other, which in turn is often used by authorities to explain social conflict in today's industrialised societies. This position typically mystifies actual political and economic power structures within and across states, the contestation of which often takes cultural forms. When using the term "national culture" today, which cultural integration courses do, it cannot be ignored that European "culture", certainly German "culture", has historically been defined by Europeans as superior to other cultures and it comes as no surprise that a far-right ideologue, Henning Eichberg, who fights against the "global American TV civilisation" and for a "German Germany", helped to coin the term "national culture" in post-war Germany. "Identity is always collective identity", he wrote in 1978, "it constitutes itself on grounds of demarcation, insight into the Other, the foreign and its idiosyncrasies".

A worrying development here is that under the new immigration rules, public authorities are not only given powers but are obliged to notify the aliens' authorities and exchange personal data of foreigners who are identified by them as "in need of special integration", without defining what this "need" entails, again providing authorities with unchecked powers of interpretation. The potential of this provision to lead to racial discrimination makes it a highly questionable and likely to violate racial equality principles. The data protection violations committed in the reporting of such identification needs is another denial of foreigners' privacy rights in a long list of unchecked data collection mechanisms (e.g. SIS II, Eurodac and the German Central Foreigners' Register AZR).

Further restrictions in the citizenship law will make it more difficult for foreigners to naturalise. Apart from "sufficient" knowledge of the language and the "legal and societal order and living conditions in Germany", young people under 24 years of age who apply for citizenship (typically second generation migrants who were born and brought up in Germany) are no longer excluded from the obligation to prove they can support themselves financially before qualifying. Moreover, spouses or partners of German citizens are now obliged to speak German before qualifying for naturalisation. The Turkish community will particularly feel the effect of the novel imposition of language tests on spouses before they qualify for family reunification as well as the requirement for spouses of German citizens to speak German before qualifying for citizenship. In their joint position on the Amendment Act, Turkish associations criticise the above restrictions as "neither necessary with regard to integration politics, nor reasonable, and [the language requirement for spouses of German citizens will lead] to different legal positions within the family". (27)

Anti-trafficking veneer

The government presented the reforms as a step up in the fight against human trafficking. Rather than following guidelines by anti-trafficking NGOs or the Council of Europe in this respect, who generally recommend strengthening the human rights of trafficked persons, improving identification mechanisms, and prevention by means of facilitating legal migration routes, the German government finds restricting family reunification an adequate tool to counter trafficking and forced marriages. A new provision gives authorities the power to refuse family reunification if they suspect that the marriage exists for the sole purpose of migration or residency ("*Scheinehe*"). This, together with increasing the minimum age for spouses to qualify for family reunification from 16 to 18 is argued to protect women from trafficking and forced marriages. (28) In their common

declaration against the Amendment Act, Turkish associations warn that the provision legitimises existing prejudices and gives the authorities powers to violate the privacy of those concerned. They also see a danger that it "will lead to the recurring and unlawful refusals of entry." (29) Although the law foresees a temporary residency permit for victims of trafficking, this is only under the precondition that she or he collaborates in criminal proceedings against the perpetrator. Furthermore, the minimum reflection period for the victim is merely one month, which the authorities can handle at their discretion. The minimum period recommended by the EU Experts Group on Trafficking in Human Beings is three months. (30)

The proposed policy has no basis in evidence as parliamentary questions (31) revealed: the police do not yet register cases of forced marriages separately and there is no concrete empirical evidence to prove that the right to family reunification enables or enhances forced marriages. (32) The government's reference to "practitioners" claiming that marriage on false grounds (*Scheinehe*) is a "problem" is not only vague but curious, given that practitioners in the anti-trafficking field have demanded for years now that the phenomenon of trafficking is partially created and certainly exacerbated by restrictive immigration legislation. The legal right to migrate and, moreover, the right to work in countries of destination would protect potential victims from abuse as they are not so dependent on irregular entry channels. The improvement of working conditions and the rights of undocumented workers in sectors that are notorious for being linked to the trafficking industry (e.g. sex industry, low-income agricultural and garment sector) is another practical and much-cited demand by practitioners. Even the IOM is urging states to provide more legal immigration channels in an effort to combat trafficking. "It is [the] tension between the intense demand for labour and services on the one hand, coupled with too few legal migration channels on the other that creates opportunities for intermediaries. When the demand is for cheap labour and cheap services specifically, the human trafficker steps into the breach," Ndioro Ndiaye, Deputy Director General of IOM, recently observed. (33)

The government's reasoning is cynical also because despite intense lobby efforts by NGOs and recently the Council of Europe through its Campaign to Combat Trafficking in Human Beings, Germany has not yet ratified the Council of Europe's *Convention on Action against Trafficking in Human Beings*, which is due to enter into force. (34) Anti-trafficking organisations have urged governments to ratify as the Convention as it is not exclusively an instrument for combating organised crime, (35) but could ensure better protection of the rights of trafficked persons by providing governments with comprehensive guidelines on how to combat trafficking. But rather than introducing sound protection mechanisms for victims of trafficking or forced marriage, which would allow for a stronger position of people to escape slavery-like working and living conditions, the Amendment Act remains restrictive in its approach.

Global migration management: selecting the useful, waging war against the unwanted

In line with the by now common call for more flexible labour migration routes necessary to ensure Europe's competitiveness in the global and fast-changing market economy, Germany has made another attempt to combine conservative electoral politics with neo-liberal flexible labour demands. Through the partial implementation of EU Directives 2004/114/EC (36) and 2005/71/EC (37), residency and mobility of foreign students and researchers are made more flexible. However, third country nationals still have to earn 85,000 EUR per annum if they want to qualify for a residency permit; independent investors now have to invest 500,000 EUR instead of 1 million and create at

least five new staff positions instead of ten in order to qualify for residency. At the same time as introducing more flexible rules concerning highly skilled workers, powers for authorities to pass sanctions against undocumented workers and employers using undocumented migrants' labour are increased with fines and up to one year imprisonment. (38) Furthermore, research institutes have to sign an agreement to take over any costs related to the possible return of the third country nationals employed by them; a provision which trade unions argue violates the EU Directive 2005/71/EC. (39) The trade union umbrella organisation *Deutscher Gewerkschaftsbund* (DGB) has demanded lowering the minimum wage for qualifying for a residency and work permit, improving the perspectives for foreign students to receive a long-term residency permit, and facilitating the immigration of highly qualified workers by way of a points system. (40) Germany's restrictive approach to labour migration, expressed in unfavourable reception conditions and denial of family reunification, has reportedly kept would-be immigrants away, (41) but liberalisation attempts continue to be sabotaged by the conservative parties who pander to, or promote, nationalist and racist sentiments.

Conclusion

In summary, it can be said that the Amendment Act will have far-reaching consequences for migrants and refugees living in Germany as well as German nationals with an ethnic minority background. Whilst for long-term *de facto* residents with an insecure residency status, the Amendment Act contains certain improvements when compared to the regional residency regulation, the residency regulation contains a series of exemptions which when scrutinised, are disproportionate and lie in the decision power of individual aliens' agencies, therefore providing wide remits for refusal. Legal experts particularly criticise the failure to implement EU Directives concerning asylum and migration. The scope and nature of the critique make it likely that the legality of the Amendment Act will be tested in courts and the failure to implement EU Directives within the given timeframes might also lead to fines imposed by the EU Commission. The strong opposition to the Amendment Act, not only by asylum and migrants' rights groups but especially the Turkish community, indicates the extent to which the German government has failed to promote integration and yet further alienate the estimated 7 million foreigners living in Germany. The joint declaration by Turkish organisations points out that "integration processes should not be shaped by threatening sanctions or the threat of ending residency, but have to convince with their content. The integration courses cannot be degraded to an instrument of sanction. Instead of threatening with sanctions, those who successfully follow these courses should receive a residency permit and be naturalised much more swiftly." (42)

In the context of the debate that dominated the EU in 2000/2001 on the economic need to accept more labour immigration, former French interior minister Jean-Pierre Chevènement once said that if EU governments wanted to succeed in liberalising their immigration laws, "public opinion needs to be enlightened and convinced, and more so in countries of recent immigration than others". (43) Germany's successive failed attempts at immigration law reform might indicate that it is not only the general public that is "in need of enlightenment" but rather the governments themselves. The 2005 Immigration Amendment Act led to the introduction of far-reaching security measures as more liberal proposals were watered down in the parliamentary process. Similar to the recent changes, the proclaimed aims of the Amendment Act of 2005 were the facilitation of skilled labour immigration, the integration of foreigners and the inclusion of EU guidelines in asylum law. In reality, however, the asylum law in particular was considerably restricted and labour immigration was enabled only for

entrepreneurs with vast amounts of starting capital. (44) Both the 2005 and the 2007 Acts promote a general hostility towards asylum seekers and a utilitarian approach to migrants by reducing their contribution to society as a whole to their economic usefulness. By reducing the human factor to the economic factor and combining selective entry with an inhumane treatment of poor refugees and undocumented migrants from the global South, the host society itself is damaged. The current treatment of migrants as well as human labour fosters social, economic and racial exclusion, in its turn leading to social fragmentation and racial tension affecting society as a whole. The fact that the regularisation of long-term *de facto* residents has been "bought" with the parallel introduction of restrictive measures that are generally hostile towards integration, will impact negatively on the social climate in Germany and the relationship between migrants and their not so welcoming host society.

Footnotes

1. Namely, EU Directives 2002/90/EC (28.11.02), 2003/86/EC (22.9.03), 2003/110/EC (25.11.03), 2003/109/EC (25.11.03), 2004/38/EC (29.4.04), 2004/81/EC (29.4.04), 2003/9/EC (27.1.03), 2004/83/EC (29.4.04), 2004/114/EC (13.12.04), 2005/71/EC (12.10.05), 2005/85/EC (1.12.05)
2. Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union [Law Implementing European Union Residency and Asylum Directives], BT-Drucksache 16/5065, 23.04.07. The government's white paper of 28 March became final on passing the second and third reading by the Lower House of German Parliament on 14 June.
3. The Decision (Bleiberechtsbeschluss der IMK vom 17.11.06) was passed at the interior ministers' conference in November last year and is published at <http://www.stmi.bayern.de>
4. Pelzer, M. (20.5.07) Wenig Humanität - viele Restriktionen. Bleiberecht für Geduldete [Little humanity – many restrictions. The right to remain for those with toleration status], in *Tendenz*, published at <http://www.linksnet.de/>
5. Süddeutsche Zeitung, 26.6.07. A full statistical overview is published at <http://www.bleiberechtsbuero.de/>
6. Bundesministerium des Innern (29.8.07) Reform des Zuwanderungsgesetzes ist in Kraft getreten [Reform of Immigration Act in force], published at <http://www.bmi.bund.de/>
7. See <http://www.bleiberechtsbuero.de/?p=145> for a case study.
8. See <http://www.bleiberechtsbuero.de/?p=161> for a case study.
9. See Kabis, M. (March 2007) Passlosigkeit und Verletzung von Mitwirkungspflichten als Ausschlussgrund für ein Bleiberecht nach dem IMK Beschluß vom 17.11.2006 [The failure to own a passport and the violation of the obligation to cooperate as reasons for exclusion for a right to remain according to the IMK Decision from 17.11.07], published at <http://www.proasyl.de/>
10. OJ L 304/12, 30.9.04
11. See PRO ASYL et al. (March 2007) "Gemeinsame Stellungnahme zu dem Entwurf des Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union in der Fassung vom 8. Februar 2007", [Common position paper on the draft law on the implementation of residency and asylum guidelines of the European Union, version 8 February 2007] available at <http://www.proasyl.de/>
12. Article 15(c) defines serious harm as a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict" (OJ L 304/19, 30.9.04).
13. Article 24(2) of the Qualifications Directive grants persons who qualify for subsidiary forms of protection a residence permit, "which must be valid for at least one year and renewable, unless compelling reasons of national security or public order otherwise require." Article 25(3) AufenthG, however, still outlines exceptions, such as the unwillingness to cooperate with the authorities or if the removal to a third country is "possible and reasonable". This provides asylum authorities with the discretion to refuse residency for refugees who qualify for subsidiary protection and is not in accordance with the text of the Qualifications Directive.
14. OJ L 50/1 (25.2.03).
15. See Marx, R. (16.5.07) Stellungnahme zum Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union vom 23. April 2007 BT-Drs. 16/5065 [Position on the draft law on the

implementation of residency and asylum Directives of the European Union], p.36, published on <http://www.ramarx.de/>

16. See Pelzer, M. (2005) Fremden-Polizeirecht: Anti-Terrorismus und Zuwanderungsgesetz [Aliens Police Law: Anti-terrorist legislation in Germany's new Immigration Act], in *Bürgerrechte & Polizei/CILIP*, issue 80 (1/2005), pp. 21-26.
17. See a detailed analysis of and opinion on these provisions by the trade union position paper Deutscher Gewerkschaftsbund (15.5.07) Stellungnahme zum Entwurf des Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union, beschlossen vom Bundeskabinett am 28. März 2007, published at <http://www.bilisim.de/>
18. Council Directive 2003/9/EC (27.1.03), OJ L 31/18, 6.2.02.
19. PRO ASYL et al. (March 2007) (id.), page 8-9.
20. PRO ASYL et al. (March 2007) (id.), page 8.
21. Article 13 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of movement and residence within the borders of each state."
22. Marx, R. (16.5.07) (id.), page 43.
23. 2003/86/EC (22.9.03), OJ L 251/1
24. Flüchtlingsrat (Refugee Council) Baden-Württemberg press release (6.7.07), Teuer erkaufte Kompromisse hilft zu wenig Geduldeten [Costly compromise helps too few with status of "toleration"], published at www.fluechtlingsrat-bw.de/
25. BT-Drucksache 16/5201 (id.).
26. Heni, Clemens (2007) Salongfähigkeit der Neuen Rechten. "Nationale Identität", Antisemitismus und Antiamerikanismus in der politischen Kultur der Bundesrepublik Deutschland 1970-2005 [Acceptance of the New Right. "National identity", Anti-Semitism and Anti-Americanism in the Federal Republic of Germany 1970-2005", Tectum Verlag, Marburg.
27. <http://www.tgd.de/index.php?name=News&file=article&sid=687&theme=Printer>
28. BT-Drucksache 16/5065 (id.), p. 152.
29. Türkische Gemeinde in Deutschland et al., Joint press release (10.7.07), published at <http://www.tgd.de/>
30. Report of the Experts Group on Trafficking in Human Beings, 22.12.04, European Commission, Directorate-General Justice, Freedom and Security.
31. BT-Drucksache 16/5201 (27.4.07), published at <http://dip.bundestag.de/btd/16/052/1605201.pdf>
32. BT-Drucksache 16/5498 (25.5.07), published at <http://dip.bundestag.de/btd/16/054/1605498.pdf>
33. Published at www.iom.int
34. Seven countries have so far ratified: Albania, Austria, Georgia, Moldova, Romania, Slovakia and Bulgaria.
35. See NGOs urge to ratify Convention, Joint press release by La Strada International et al. (3.5.2007), available at <http://lastradainternational.org>
36. OJ L 375/12, 32.12.04.
37. OJ L 289/15, 3.11.05.
38. BT-Drucksache 16/5065 (id.), page 49, amending the Law Combating Illegal Employment (Schwarzarbeitsbekämpfungsgesetz) from 23.7.04 (BGBl. I p. 1842).
39. For a detailed critique of the transposition of this and other labour-related norms, see Deutscher Gewerkschaftsbund (15.5.07) (id.).
40. Deutscher Gewerkschaftsbund (15.5.07) (id.).
41. See Financial Times (19.4.00) Indian IT specialists lukewarm over Germany's invitation or Kolb, H. (2003) 'Ein Jahr "Green Card" in Deutschland: Ein Blick zurück - ein Blick nach vorn' in Hunger & Santel (eds.) Migration im Wettbewerbsstaat, Leske + Budrich, Opladen.
42. Türkische Gemeinde in Deutschland et al. (id.).
43. The Guardian (28.7.00) Europe 'should accept' 75m new migrants
44. See Statewatch bulletin (Vol. 15 no 2, March-April 2005, pages 17-18) for a detailed outline of the 2005 Act.

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