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## EU agrees US demands to re-write data protection agreement

**by Tony Bunyan**

**Having got its way in a series of EU-US treaties on justice and home affairs cooperation, the USA is now seeking to permanently circumvent the EU's "problematic" privacy laws**

Since 11 September 2001 the EU and the USA have concluded six agreements covering justice and home affairs issues: 1: Europol (exchange of data); 2: Mutual assistance; 3: PNR (passenger name record); 4: SWIFT (all financial transactions, commercial and personal) 5: Extradition; and 6: Container Security Initiative (CSI). The first four involve the exchange of personal information on individuals.[1] All have been controversial with the one on PNR going to the European Court of Justice with the result that its legal basis had to be changed.

Having to negotiate each agreement individually with many of the same problems raising their head each time was not to the USA's liking. One such "problem" is the lack of redress available to EU citizens under the US Privacy Act (which only gives rights to its own citizens) against the misuse of their personal data. Nor did it like the adverse publicity. In July 2007 the US government wrote to the Council of the European Union asking it to agree that all the documents regarding the negotiations leading to the controversial new EU-US PNR (passenger name record) agreement be kept secret:

*for at least ten years after the entry into force of the agreements.[2]*

What the US wanted was an over-arching treaty authorising all future agreements of this kind. So on 6 November 2006 a EU-US High Level Contact Group on information sharing and privacy and personal data protection was set up – with its brief drafted by the USA. Its terms of reference were to carry out:

*discussions on privacy and personal data protection in the context of the exchange of information for law enforcement purposes as part of a wider reflection between the EU and the US on how best to prevent and fight terrorism and serious transnational crime.*

On 28 May 2008 the Group produced its Final report and on 12 December the US and EU Justice and Home Affairs Ministerial meeting in Washington declared that negotiations were to start on a "binding international agreement as soon as possible."

However, unreleased EU documents show that prior to this meeting there were major reservations about US demands and further that COREPER (the high-level committee of permanent Brussels-based representatives from each of the 27 Member States) wanted to:

*rethink the EU input in all areas of the transatlantic dialogue.*

### EU-US High level group report

The report sets out 12 very general "Principles". Its scope cover:

*"law enforcement purposes", meaning use for the prevention, detection, investigation or prosecution of **any criminal offence.** (emphasis added)*

Thus "any criminal offence" however minor, is affected. Nor is there any guarantee EU citizens will be informed that data and information on them has been transferred to the USA or to which agencies it has been passed or give them the right to correct it.

The agreement would apply to individual requests and automated mass transfers and allow the USA to give the data to any third state "if permitted under its domestic law".

As Barry Steinhardt of the ACLU commented the 1974 US Privacy Act only applies to US citizens and there is:

*no oversight or legal protections for non-U.S. persons… We believe that this situation clearly violates European legal requirements for the fair and lawful processing of personal information.*

### EU's major reservations

A Note from the Council Presidency (15307/08, dated 7 November 2008) sent to COREPER raised alarm bells about how the negotiations were proceeding.

It said that at the EU-US Senior Officials Troika on 30-31 July 2008 the USA raised again their proposal of: "a political declaration to cover the interim period" before the international agreement was adopted. The EU side rejected this idea but at another EU-US meeting on 6 October 2008 it was raised again.

The Council Presidency and the Commission agreed that the EU-US JHA Ministerial Troika meeting in Washington on 12 December 2008 should consider the possibility of a declaration but in view of EU data protection rules:

*it would not be possible to implement such a declaration, especially with respect to third parties.*


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On 17 October 2008 the EU "forwarded a draft declaration" to the US. However, at the beginning of November the US replied with "an alternative text, which reflects a different approach". The US had added five new "Principles", which:

*can hardly be put on the same level as the principles agreed in May.*

These new "Principles" introduced by the US included protection for "private entities" and the:

*equivalent and reciprocal application of data protection regulations, avoidance of any adverse impact on relations with third countries.*

Moreover, the:

*wording on the outstanding issues listed in the final report differ significantly [from text in May 2008]*

The Council Presidency concluded that it was "not possible in a political declaration, to bring about the effects expected by the US side", especially as they expected such a declaration to have "legal effects during the interim phase."

### 12 December 2008 - Washington

The headline news from the EU-US Ministerial meeting on 12 December was a statement that a legally binding international agreement would be put in place – though after, and if, the Lisbon Treaty is adopted. The EU side also put on record that there were two issues outstanding: the lack of legal recourse for non-US people under US law and a ban or restriction on passing on data to third countries (*Agence Europe*, 15.12.08).

However, the detailed statement issued is more revealing. First, they agreed to: "ensure the continuation of law enforcement exchanges and practices between the United States and the EU" until such time as a binding agreement is in place – which may take over a year. No indication is given whether these "exchanges" simply refer to the legal agreements already in place or to law enforcement "exchanges" in general – it if means the latter then the US side has, in effect, got an interim agreement.

Second, and most significantly, it sets out the new "Principles" introduced by the US in November 2008 – their incorporation was agreed at the High Level Contact Group on 9 December. Yet these are the very same new "Principles" that the EU had said: *"can hardly be put on the same level as the principles agreed in May."*

They include 1) ensuring there is no "adverse impact on private entities" which should be "avoided to the greatest possible extent"; 2) "preventing an undue impact on relations with third countries" by avoiding:

*putting third countries in a difficult position because of differences relating to data privacy including legal and regulatory requirements.*

3) "mutually-recognised conflicts of law" should be sorted out using "specific conditions"; 4) the two sides are to resolve "matters arising from divergent legal and regulatory requirements". The High Level group still has to resolve the issue of redress under US law and the "reciprocal application of data privacy law".

Each of these new "Principles" would undermine those agreed in the final report of 28 May 2008 – and "Principles" One and Two (above) would drive a "coach and horses" through the legitimacy of any international agreement. The EU, having set out strong reservations ended up – as usual – substantially acceding to US's changing demands.

### Re-thinking EU-US relations

It has been apparent for years to observers able to get access to unreleased EU documents that EU-US meetings are one-sided affairs with the US side making all the running.[3] Now it seems the Council of the European Union (representing the 27 governments) is getting concerned too.

A newly-formed Council Working Party, JHA-RELEX Ad Hoc Support Group (JAIEX), discussed a Note from the Council Presidency in December (EU doc no: 17136/08) the:

*broad feeling among many in the past years that it was essentially left to the United States to determine what was on the agenda of EU-US relations and that the EU has been insufficiently strong to set its own objectives, its own requests and where appropriate, also its own "red lines".*

This belated realisation is particularly significant in the light of the recommendation from the Future Group for the new JHA "Stockholm Programme" that by 2014 there should be a decision on the creation of a:

*Euro-Atlantic area of cooperation with the USA in the field of Freedom, Security and Justice.*

This goes way beyond the existing mechanisms for cooperation. The USA would be sitting at the table with a very powerful voice and its demands and influence hidden from public view.[4]

Sources

*1 The agreements on extradition and mutual assistance have yet to come into effect.*

*2 See: http://www.statewatch.org/news/2007/sep/02eu-usa-pnr-secret.htm*

*3 EU/US security "channel" - a one-way street?*

*http://www.statewatch.org/news/2008/aug/03eu-usa-sw-art.htm*

*4 See: The Shape of Things to Come - the EU Future Group:*

*http://www.statewatch.org/analyses/the-shape-of-things-to-come.pdf*

# Italy: Making sense of the Genoa G8 trials and aftermath

## by Yasha Maccanico

**This article seeks to identify some of the key points for understanding the outcome of the trials involving demonstrators and police officers in relation to events during the G8 summit in Genoa in July 2001, and to investigate the implications for public order policing and the right to demonstrate.**

The events of 19-21 July 2001 represent a wake-up call in terms of the brutality of policing and pre-emptive criminalisation used against a mass popular and international demonstration. It resulted in the death of protester Carlo Giuliani and in thousands of people from the European Union and beyond experiencing an array of repressive measures. These measures included temporary detention in humiliating circumstances and physical violence. The two key trials of police officers concerned events at the Bolzaneto barracks, which was turned into a make-shift prison to hold protesters for the duration of the summit, and the *Diaz* school. The school was used as a dormitory, where a late-night police raid, justified on the basis of fabricated evidence (a Molotov cocktail brought into the school by police officers), and spurious claims (for instance "the presence of black tops") resulted in injuries to scores of protesters, many of whom were sleeping when they were attacked.

The main trial involving protesters saw 25 people (supposedly members of the so-called "black block", or others

acting in association with them) charged with offences including "destruction and looting" for carrying out violent acts in the streets of Genoa during the days of the summit. The alleged acts included smashing the windows and doors of shops and banks they entered, stole from and vandalised and fighting and hurling missiles at the police. There were also legal proceedings into a number of specific incidents, such as the shooting of Carlo Giuliani by Carlo Placanica, a young *carabiniere* conscript (the police force with military status) and instances in which police are accused of unlawfully attacking protesters. The case against Placanica was shelved on request from the prosecuting magistrate who argued that the shot may have been deflected by a rock and that, even if this had not been the case, he had fired in self-defence as the *Defender* vehicle he was riding in had come under attack from demonstrators. Another notorious case, involving a police officer kicking a defenceless minor in the face, which was shown on television news programmes, ended with an out of court settlement.

## Asymmetrical justice

Although events in Genoa marked a watershed in the policing of protests in Europe, with one protester shot dead and broken limbs and other injuries inflicted on hundreds of protesters, they did not happen in a vacuum. They had been preceded by worrying scenes of coercive policing at demonstrations in the cities of Seattle, for the WTO ministerial conference in 1999, Gothenburg for the EU summit in June 2001 (which set precedents including the holding and ill-treatment of protesters without charge in a make-shift detention centre until the event was over and the firing of live ammunition by police resulting in one protester, Hannes Westberg, ending up in a coma for several weeks) and Naples (where, again, arrested demonstrators were ill-treated) for the Global Forum on e-government in March 2001. The latter was identified in Italy as the event that set the tone for what happened months later, on a far larger scale, in Genoa.

More recent events, at least in Italy, have confirmed that demonstrators are likely to face more serious charges than they were in the past. There have been attempts by prosecutors to lower the burden of proof needed to secure convictions through notions such as "psychological connivance" in cases in which personal responsibility in incidents and violent actions is difficult to pin down.

On the other hand, the responsibility of police and law enforcement officers and officials, and the possibility of charging them, is undermined by the difficulty of identifying who was responsible for specific actions (they wear uniforms and helmets, thus their faces are seldom visible), and by the shortcomings of a criminal justice system that appears not to view the sanctioning of abuse as a priority. This is epitomised, for example, by the absence of a crime of torture in the Italian penal code. Had it existed, it may have been applicable to the treatment protesters were subjected in Bolzaneto. The argument that violent incidents are caused by a few "rotten apples" belies their scale and the fact that large numbers of officers from Italy's numerous security bodies routinely engaged in "fascist-inspired" behaviour and ill-treatment of protesters. For example they mocked, slapped and struck people who were detained at the entrance of Bolzaneto in a "reception committee". It also means that the higher echelons in the chain of command are unlikely to face the consequences of failures in guaranteeing public order and the right to demonstrate.

Another interesting element concerns the timing and outcome of the trials. Demonstrators who were found guilty have been sentenced to long terms in prison, whereas officers have emerged from the proceedings with lower sentences than might have been expected. Further, their appeals will run long enough to stop them serving their sentences because the term set by the statute of limitations will have expired. Another aspect that is worth noting involves the treatment and possible sentences envisaged in proceedings for attacks targeting property and those involving violence against people, both in terms of clashes in the streets, raids such as the one on the Diaz school and violence to which people who were held in custody and unable to defend themselves were subjected.

## Sketches from the key trials

Firstly, it is worth looking at the sentences requested by the prosecuting magistrates in the trials and to what crimes they were related. We will then look at the rulings in each trial.

**Bolzaneto:** In the Bolzaneto trial, involving 45 defendants, the longest sentences requested were: five years eight months and five days for "ABG", three years, six months and 25 days for "GVT", who was in charge of medical services, and three and a half years for deputy *questore* "AP" and head superintendent "APo", the highest-ranking police officers on the scene (both of them from the *Digos*, the state police's general directorate for special operations), and three others. The main charges included "abuse of [public] office" (art.323 of the penal code), "abuse of authority" (art.608) and "private violence" (art.610) against people arrested or held in custody. Thirty defendants were acquitted in a trial which highlighted that the Italian legal system does not perceive torture in custody to be a criminal offence. The latest attempt to incorporate it was unsuccessful as the government of the time sought to introduce it on condition that the violence involving torture was "repeated".

> *"ABG" was the prison police officer in charge of security and the organisation of services in Bolzaneto. He was identified as being responsible for ordering that prisoners be held in stress positions facing the wall with their legs spread and arms held up for long periods. He also knew about a series of other incidents that amounted to "degrading and inhuman treatment". "ABG" himself was accused of violent acts, insults and vexatious and humiliating treatment of prisoners. "ABG" was also identified as being responsible for violent acts against the plaintiffs and, as officer in charge, for instigating others to do likewise. Specific incidents involving him included violence aggravated by the use of a truncheon, banging someone's head against the wall, spitting at a detainee [not proven, according to the court], comments such as "you have no dignity", and forcing someone to march with his right hand raised in a fascist salute.*

By virtue of their rank and job description on the day, "AP" and "APo" also had a duty to ensure that detention was carried out within the bounds of the law. The charges against "AP" included violent acts such as kicking someone in order to force them to say "I am a shit", slapping someone and threatening children to coerce them into signing reports on their arrest.

Evidence from the 252 people who passed through Bolzaneto (197 arrested, including those from the raid in the Diaz school and 55 held temporarily) told of how they were variously: "threatened, insulted and struck with a truncheon", "forced to say 'viva il duce' [hurray for Mussolini]", "struck with kicks and blows, beaten in a cell with punches to the kidney", "cursed, struck with boots and a truncheon, causing bleeding…, made to stand with legs spread, struck in a cell, made to wait in a corridor and then fainting", "burned with a cigarette", "kicked, punched", "beaten on the nape of the neck and shoulders, badly beaten in the infirmary, forced to go to the toilet and threatened with sodomy", "spat at", repeatedly "struck on the genitals and legs" "made to kneel and punched twice in the face and kicked in the bottom", received "sexual insults in the toilet, forced to place her head in the squat-toilet", "sprayed with irritating gas, taken to shower where an officer strikes him", "had his ponytail cut off", "hand burned with a lighter", "made to listen to *faccetta nera* [a fascist anthem] on a ringtone", "beaten and feels ill, is kicked and spat at on the floor, is made to strip and rest on all fours and bark like a dog".

Individuals subjected to these forms of treatment came from across Europe (Spain, Switzerland, England, Germany, France and Lithuania) and beyond (New Zealand, Canada, USA, Morocco, Turkey). The prosecuting magistrate notes that most of them testified willingly.

At the entrance to the barracks there was a multitude of officers from different police and prison service bodies, including plainclothes officers referred to as the "reception committee" by the prosecuting magistrate. They created a hostile environment by kicking and "spitting, issuing insults, political insults and threats, which were particularly serious when they were directed at women and were sexually demeaning". Marker pens with different colours were used to separate different kinds of detainees, a procedure described as "disrespectful". During the search, belongings were thrown to the ground, damaged and sometimes never returned. The positions in which individuals were held for long periods included kneeling against a wall with their legs spread, or on tiptoes with fingers against the wall. Political insults against left-wing political figures, ditties supporting fascist dictators and anti-Semitic comments were heard, amid frequent mocking reference to Carlo Giuliani's death and comments such as "welcome to Auschwitz".

Different phases of the detention led to different types of abuse. The treatment of the detainees in the infirmary was deemed particularly noteworthy as it was a moment when one might expect some understanding. But the vexatious treatment continued as they stood naked, for search or health-related reasons, in the presence of a number of prison police officers. The question of how they received their injuries was omitted, earrings were sometimes removed brutally, and going to the toilet was a harrowing experience in which ill-treatment and a complete lack of privacy prevailed. Moreover, the punishment meted out was no better for people who had physical disabilities, such as a Moroccan who had a prosthetic leg and was physically assaulted when he could no longer maintain the position he had been ordered to hold. A man who was very short was referred to as a "paedophile midget".

The court convicted 15 of the 45 defendants, with "ABG" sentenced to five years imprisonment, "MLP" to three years and two months, "AP" and "APo" to two years and four months each, "DM" to one and a half years, "AG" to one year and three months, "GVT" (in charge of the medical service) to one year and two months, five others to one year and three others to between five and ten months imprisonment. The sentences against ten of those convicted were suspended. Of the remaining five, three saw their actions effectively condoned by virtue of a general pardon approved for sentences of less than three years in 2006 to relieve the problem of overcrowding in Italian prisons. There was a three-year tariff discount for the two remaining offenders, "MLP" and "ABG".

Nonetheless, as appeals have been filed against the guilty verdicts proceedings will last longer than the statute of limitations allows and nobody will serve a prison sentence. It is also worth noting that the sentence recognised that inhuman and degrading treatment took place in Bolzaneto and that "fundamental human rights were substantially compromised", in violation of article 3 of the European Convention on Human Rights and the Italian Constitution.

## The 25 demonstrators

The trial against 25 protesters saw one acquittal. Fourteen defendants were sentenced to between five months and two-and-a-half years in relation to clashes arising from a *carabinieri* attack against an authorised march on 21 July in via Tolemaide and subsequent confrontations; one received a five-year sentence for injuring the driver of the *carabinieri*'s Defender 4x4 vehicle from which Carlo Giuliani was shot in Piazza Alimonda. Ten people who were found guilty of "destruction and looting" as part of the "black block" were sentenced to between 6 and 11 years in prison. Cumulatively, the 24 who were found guilty received sentences amounting to 110 years.

Another significant aspect of the ruling was that the claim filed by the Council Presidency (the Cabinet) calling for the demonstrators to pay for the harm caused to Italy's image (the value must be set in civil court proceedings) was accepted by the court. Thus, it was the demonstrators' violence and not the police's brutality soiled that Italy's image. Finally, the statements of four officers (two from the police and two *carabinieri*) have been sent to the public prosecutor's office to investigate whether they should be prosecuted for perjury.

One specific offence that the prosecuting magistrate charged the defendants with was "destruction and looting" (art.419 of the penal code, the most serious charge applicable for public disturbances). This is a crime that, if proven, has a sentence of between five and 12 years. The prosecuting magistrate requested a total of 225 years for the 25 protesters regardless of whether they were identified as taking part in the "black block's" destructive spree (including the entry and smashing up of a number of estate agents, banks and commercial premises, the burning of cars and erection of barricades in clashes with the police that included the throwing of Molotov cocktails) or in clashes in the street during authorised demonstrations. The highest sentence requested was 16 years for "CM", a woman identified as having taken part in different acts involving the "black block". Sentences of between ten and 15 years were requested for seven others. At the other end of the spectrum, the shortest sentences requested were either six or six and a half years for ten defendants. The duration of their violent behaviour and whether they were repeat offenders were factors taken into account, along with mitigating circumstances. Other considerations were the use of weapons, acting in a group of more than five people and the intent to provoke public insecurity. The increasing use of article 419 is viewed as an important development by activists, because it is an offence that has passed from being exclusively reserved for popular revolts or insurrections to incidents involving football hooliganism and political demonstrations.

Of the 24 defendants who were found guilty, "CM" was sentenced to 11 years imprisonment, "PF" and "VV" to ten and a half years, "FL" to ten years (all with three years probation), "FA" to nine years, "CC" to seven years and ten months, "VA" to seven years and eight months, "AC" to seven and a half years, UD to six and a half years, "MI" to six years, "MM" to five years, "PP" to two and a half years, "DP" to one year and eight months, "DAAF" to one year and six months, "DRF", "DAF" and "DPA" to one year and five months, "BD" and "CS" to one year and four months, "FA(2" and "TF" to one year and two months, "FTO" to eleven months, "DIM" to six months and, finally, "CD" to five months. The sentences against ten were suspended, of the 13 who had their prison sentences of less than three years fully "pardoned" [see above], and the remaining eleven had three years of their sentences condoned. Thus, the longest sentence to be served is eight years, with two others serving seven and a half years, one serving seven years, one serving six years, and six others serving between two years and four years and ten months.

The sentencing explanations filed by the court threw up some interesting details. Firstly, the charges of destruction and looting were thrown out with respect to incidents not pertaining to the black block's vandalism. Clashes with police, arising in the context of the march in via Tolemaide that developed around the sites of the main demonstrations in central Genoa, were deemed to be a reaction against "arbitrary acts by public officers" initiated by a *carabinieri* unit that was not supposed to be there. Thus responsibility for the incidents was deemed to have been shared between the protesters and police acting outside their

remit of guaranteeing public order. The court's reconstruction of the incidents leading up to the clashes around the authorised march saw video material that often contradicted the testimony of police officers. The reconstruction found that the clashes were started by an unprovoked launch of teargas by a unit of *carabinieri* that had been instructed to go elsewhere [Marassi, where the so-called "black block" was engaged] and to use a different route so as to avoid the bulk of the demonstration. The instructions had been ignored. Constant references to large-scale confrontations and missile throwing that forced the police intervention were not visible in the film footage submitted to the court, with the exception of one or two isolated objects.

Thus the firing of teargas canisters (including some that were fired at body height contravening public order guidelines) and initial police charges when the demonstration was not only on its authorised route, but essentially peaceful, are described as "unlawful", "disproportionate", "needless" and "arbitrary". The widespread use of dangerous weapons that were not *carabinieri* regulation issue is well documented and they were used against demonstrators before there was any reaction. In the words of the court:

> *the acts ... reached levels of violence [that were] entirely unjustified, in some cases well beyond the limit of gratuitousness ... They are people who did not take to the streets to maintain or re-establish public order, but to cause harm and arouse fear that are entirely unlawful.*

The sentence explanation also says that in the first two phases of the police operation, as well as subsequent clashes in the side-streets:

> *the arbitrariness of the conduct of public officers constitutes a reason of justification for the conducts of resistance ascribable to private individuals.*

In subsequent charges involving armoured vehicles:

> *if possible, even more ... arbitrariness in the conduct of public officials can be appreciated.*

Pointing to the breaking down of barricades, "their manoeuvres in the midst of the crowd, the chasing of demonstrators fleeing on foot even on sidewalks" violated public order guidelines, [extracts from "*Motivazioni*", chapter II, pp. 184-194].

These, and other considerations, ruled out charges of "destruction and looting" in relation to protesters involved in these and subsequent clashes. However, causing criminal damage, attacks against officers and vehicles (some of which were set alight), the throwing of missiles, the erection of barricades, and even the stealing of two mopeds that occurred subsequently, resulted in demonstrators being found guilty. It is also worth noting that the firing of teargas prevented any possibility of negotiations between a contact group and police officials that were expected to take place in an attempt to symbolically breach the "red zone" once the demonstration had reached the end of its agreed route.

Secondly, the punishment of some protesters was deemed to have implications that went beyond the actual events that took place, as is indicated in the explanation of the sentences by the court:

> *The black block does not systematically seek contact with police forces, which they only meet on few occasions, or opposition with other forms of protest, that they meet directly only in Piazza Manin; theirs can be read as the message of a "global", totalising protest, destructive towards anything they come across. In doing this, they leave in their path a landscape of rubble: banks and shops destroyed and emptied, cars and barricades set alight and a deep sense of insecurity, in other words, the disturbance of public order, that will also project its effects onto the clashes of the afternoon of the 20 July, making them somewhat more serious.*
>
> *For this reason, it would be a mistake to minimise the reach of these people's behaviour on the basis of the factual element that they seem to strike, or rather, to act ruthlessly, only against things, external expressions of the right to property. What happened in those days in Genoa must be read not only as a chronological sequence, but also according to a "logical" sequence in which what is done precedes what happens later, not only temporarily, but also in the conscience and awareness of the protagonists beyond the evidence, which is lacking in this case, that the conduct of the different groups may somehow have been agreed or co-ordinated between them.*

Thus, their destructive spree was deemed to have altered the situation and to some extent have given the go-ahead for the repression that followed.

**Diaz:** In the trial into the police raid on the Diaz schools complex, 16 out of 29 defendants were acquitted and 13 received sentences adding up to 35 years and seven months in total.

As there has been some confusion on the matter, it should be noted that the four-storey Pascoli school hosted a media centre, the Genoa Social Forum's legal and medical assistance services, Indymedia and other activist media groups, and had a gym and office facilities such as photocopying. The Pertini school had become a dormitory for protesters. The raid on the Diaz schools complex took place just before midnight on 21 July at the end of the summit when many people were leaving the Pescoli media centre or sleeping, or preparing to do so, in the Pertini school. Two columns of police offices arrived on the scene. The first person they came across while approaching the schools was English media activist Mark Covell, who was badly beaten in spite of raising his hands. He was injured so badly that in a later radio communication one officer suggested that he may have died; he had sustained life-threatening injuries.

In the Pascoli school, much of the violence was directed towards lawyers, doctors and computers belonging to media activists. Hard drives were confiscated and people were made to sit facing the walls and, in some instances were beaten. In the Pertini school, almost all of those present were arrested (93); 75 were taken to Bolzaneto, and the extent of the violence against them is demonstrated by the fact that 70 were injured. Three people ended up with very serious injuries, one of them in a coma. The descriptions of the beatings in the victims' evidence make for gruesome reading: one notes that after a situation on the first floor, (described by one officer in court as "Mexican butchery"), on the ground floor there were:

> *these officials who were in the gym when this happened. I also remember very well the fact that at a certain point these officials, while [...] someone was still beating some of us, these officials turned around, I remember well because this... in that moment I interpreted this as a gesture, as if they wanted to turn a blind eye before a prank that these police officers were carrying out.*

The basis for the attack on the Diaz schools complex was claimed to be an intense bombardment of police cars with missiles carried out by numerous people, presumed to belong to the "black block", hours earlier (at around 21:30). That the complex may have been where they were hiding supposedly justified the police intervention because it aimed to find weapons or explosive material. However, the evidence was at best contradictory. The service report from the night spoke of a "bombardment of large stones from various directions" and an attack against officers and their vehicles. Witnesses agreed that there was a lot of shouting aimed at the police cars but only a single bottle was thrown.

A meeting to organise the raid took place in the *questore's* (police chief in a given town or city) office, presided over by the now-deceased *prefetto* (government official responsible for security) Arnaldo La Barbera, in charge of preventive policing. It was attended by Francesco Gratteri (head of the *Servizio Centrale Operativo*, SCO, central operative service) and his deputy Gilberto Calderozzi, Giovanni Murgolo (deputy *questore*) and Spartaco Mortola (head of the Genoa *Digos*, police special operations general directorate). Vincenzo Canterini, head of the Rome mobile unit, was informed by Valerio Donnini of the need to bring together his unit for the operation. Deputy Head of

police, Ansoino Andreassi, expressed scepticism and did not take part in the meeting.

Andreassi told the court that checking who was in the school was not the only purpose of the raid, as there had been disturbances that the police had been unable to prevent and the arrest of a number of people from extremist groups was possible. In the event, all 93 of those arrested were accused of forming a "criminal association aimed at destruction and looting", charges that were thrown out by the Genoa court. The court also initiated proceedings against the police for violence against defenceless people on the basis of the evidence of those arrested. A sentence of five years was requested by the prosecuting magistrate for one officer (due to his involvement in planting Molotov cocktails in the school), four and a half years for ten others including "VC", four years for seven officers, three and a half years for nine others, and three months for another. Charges were dropped against the last defendant. The charges involved falsehood by a public officer in public acts (art. 479), defamation, or the simulation of a crime used to accuse or charge someone (art. 368), illegal arrest (art. 606), causing bodily harm or grievous bodily harm (arts. 582 & 583) or conspiring in such crimes (art. 110).

The police officials involved in the organisation of the raid emerged unscathed from the trial, with the exception of "VC", the chief of the unit to which most of the guilty officers belonged, against whom the longest sentence was passed. "VC" was sentenced to four years' imprisonment, eight other defendants ("FB", "CT", "CL", "EZ", "AC", "FL", "PS" and "VCo") received three years, "PT" three years and a fine, "MB" two and a half years and a fine, "MF" two years, and "LF" one month. Suspended sentences were given to "MF" and "LF" and of the remaining eleven officers, ten had their sentences pardoned; one ("VC") had three years struck off his sentence. Nobody will serve these sentences as appeals have been filed and the statute of limitations will intervene before a firm sentence is handed down.

## Political and professional accountability, activists as a "subversive association"

One of the most surprising aspects of the Genoa affair is that many of the high-level officials from the ranks of both the police and *carabinieri* have since been promoted even, in some instances, when found guilty. Not only was public order not preserved but substantial evidence surfaced showing how they actively undermined any possibility of the G8 taking place with any semblance of normality. Vincenzo Canterini has been promoted to the rank of *questore* (police chief); Francesco Gratteri, acquitted in the Diaz trial, is now the head of the *Direzione Centrale Anticrimine* (Central Directorate against crime); Giovanni Luperi, also acquitted in the Diaz trial, passed from being the co-ordinator of the European task force investigating anarchist insurrectionalists to being head of the analysis service of AISI (internal security intelligence agency). Alessandro Perugini, the officer who was caught on camera kicking a youth in the face and was found guilty in the Bolzaneto trial, has been promoted.

The same applies to politicians involved in the events. The then interior minister, Claudio Scajola, has again been given ministerial responsibilities (as the minister for productive activities) after the Berlusconi-led coalition won the election in May 2008. Gianfranco Fini, now president of the chamber of deputies, was present in the *carabinieri's* operations control room in Forte San Giuliano and claims that he was there merely to greet them and offer support. As deputy prime minister, and in the absence of Berlusconi who was at the summit, he was the highest government representative, and has repeatedly condemned criticism of law enforcement officers, to whom he expresses his gratitude for defending Genoa. This is the position frequently voiced by members of the current government. Yet these promotions and the lack of accountability for police officials in charge during the days of the G8 had also been obvious under the centre-left government.

Meanwhile, activists around Italy have faced a series of trials. The trial for "subversive association" against the "*Rete del sud ribelle*" in Cosenza, which recently ended in an acquittal against which an appeal by the state prosecution service is pending, showed how some prosecutors are willing to construe disturbances, during demonstrations and anti-establishment discourse, as not far removed from terrorism (see *Statewatch* news online, November 2002, *Statewatch bulletin* Vol. 13 nos. 2 & 3/4). In a trial against activists in Milan relating to an anti-fascist demonstration on 11 March 2006 during which clashes occurred, the use of "destruction and looting" charges against protestors led to prosecutors demanding prison sentences of up to nine years They were lowered by a third due to fast-track proceedings being used to try them, and eventually resulted in four-year sentences (*Statewatch*, Vol. 16 no. 3). On the other hand, we have seen from the outcomes of the trials how, even in the presence of extreme forms of unlawful violence by police officers, it is highly unlikely that they will be subjected to similar sentences.

Following the Diaz trial, there were cries of "shame" in the courtroom. Politicians from opposite ends of the political spectrum referred to "one of the saddest pages in Italy's history" or to the defeat of "the violent campaign against the forces of order carried out so far by some people", as a majority of them were acquitted. The German Green party MP Hans Christian Strobele, who visited the school and German prisoners in the aftermath of the Diaz raid and published a report (*Statewatch News Online*, August 2001), spoke of a "defeat for justice" in relation to the "heavy and premeditated violation of human rights" and the failure to attribute any responsibility to police officials. Nonetheless, he notes that:

> *Having managed to conduct an investigation against important police officials, having managed to charge them, having uncovered their lies about the Molotov [cocktails] or the phantom attempt to knife an officer, is already an important result. I know, from direct experience as a criminal lawyer, how difficult it is to bring pieces of the state apparatus who feel untouchable to trial, in every country in the world.*

It is important to consider that, in spite of the slightness of punishment meted out to those responsible, the trial and its findings document, recognise and condemn a number of very serious abuses committed by members of law enforcement agencies. Professionals engaged in fighting the cases and the judges interpreting the material available to them should be commended, in spite of an overall sense of dissatisfaction with the outcomes at the trials.

## Keys for research

Regarding the general outlook adopted in the build-up to the G8, Professor Salvatore Palidda of Genoa University has identified some keys for research. He notes that it coincided with a stage in a neo-conservative shift that included a trend towards:

> *discouraging peaceful negotiations, diplomacy and formal respect for the norms of the State based on the rule law to benefit permanent war, and hence, of the supremacy at all costs for the strongest actors. This trend is based on an increasingly heightened asymmetry between force and power on one side, and the weaker actors [on the other].*

Palidda highlights the alarmist campaign conducted by the media, a "worrying" militarisation of the city, the suspension of certain rights including the closing of the courthouse and university campuses, or the curtailing of freedom of movement for EU citizens (see *Statewatch Vol. 11 nos 3/4*), alongside a policing operation organised by the higher echelons of the police and a choice of personnel to be deployed that:

> *did not agree with the goal of guaranteeing the negotiated and*

*peaceful holding of the protest demonstrations.*

The use of the *Tuscania* military battalion, with experience in conflict situations abroad (including in Somalia in 1997, an operation that was followed by accusations of torture including the use of electricity during interrogations), as well as a special unit headed by Vincenzo Canterini that was reportedly incited to "teach the reds a lesson..." points in this direction. The bringing together of military and public order operations is another aspect that he considers to have direct relevance. For example, the incidents leading to the shooting of Carlo Giuliani, in which *carabinieri* who had been in military operations abroad were involved.

He also highlights the fact that while members of the so-called "black block" (and there have been allegations of them being infiltrated by agents provocateurs) were engaged in vandalism they could have been isolated and their activity curtailed. A decision was made to go after the bulk of largely peaceful demonstrators, and to conflate the identities of the anti-globalisation movement and the "black block". Noting that the police force does not only comprise violent fanatics but also moderate and democratic components, he argues that the current context ("frame") is contributing to their marginalisation. It has discouraged them from contributing to revealing the mechanisms, dynamics and actors that were responsible for these events.

*Exhaustive information including transcripts and court documents about the Genoa trials is available at: http://www.processig8.org*

*Genoa 19/21 July 2001: An Italian view of "public order policing" Italian style: http://www.statewatch.org/news/2002/jul/08genoa.htm*

*Salvatore Palidda, "Appunti di ricerca sulle violenze delle polizie al G8 di Genova", Studi sulla questione criminale, July 2008*

*Gothenburg, June 2001: report on the trials (Buro Jansen & Jansen), March 2003: http://www.statewatch.org/news/2003/mar/04goth.htm*

*Other resources:*

*http://www.supportolegale.org , http://www.piazzacarlogiuliani.org ;*

*Il manifesto, 15.11.08.*

# THe shake-up in UK immigration control

## by Frances Webber

**With a budget of over £2 million and more than 25,000 staff, the new UK Borders Agency will have a host of powers to enforce yet more draconian immigration legislation**

Immigration has been one of the most frequently legislated issues over the past two decades, and the speed of new legislation, rules and guidance has increased exponentially in the past five years. Now, the department of the Home Office dealing with immigration has reinvented itself into what it calls a 'shadow agency' with a vastly wider remit; two major pieces of legislation are planned for the 2008-9 parliamentary session; and at the same time the (non-statutory) criteria and procedures for immigration for work or study are undergoing massive change. The main changes are set out here.

### Structural changes: from IND to UKBA

The Immigration and Nationality Department (IND) of the Home Office was famously castigated as being 'unfit for purpose' by John Reid in May 2006, early in his short tenure as Home Secretary. In April 2007 Reid created the Borders and Immigration Agency (BIA) and appointed six regional directors, giving more autonomy to regional immigration policing. The BIA morphed into the UK Borders Agency (UKBA) a year later, taking on responsibility for issuing visas abroad (formerly a Foreign Office responsibility) and customs functions from HM Customs and Excise. In a speech to staff at the launch of the agency on 3 April 2008[1] then immigration minister Liam Byrne described UKBA's purpose as to:

*protect our borders and our national interests. That means we will tackle border tax fraud, smuggling and immigration crime and facilitate the legitimate movement of people and goods. That means we will stop things like firearms, drugs and paedophile material from entering our country*

a description which played down UKBA's overwhelming emphasis on immigration, and the disturbing way its website appears to equate undocumented migrants with dangerous drugs or weapons.

The sheer size and global reach of the Agency is unprecedented with, as Byrne remarked,

*a span that stretches from local communities up and down the UK, to 13,000 staff deployed at our borders to nearly 3,000 officials in 135 countries around the world. The new agency will marshal resources of over £2 billion. It will deploy over 25,000 staff. It will employ over 9,000 warranted officers. That makes the agency the second largest body of warranted officers in the country.*

Never has there been such unrelenting emphasis on 'illegals', preventing the unauthorised and undocumented from getting into the country, and getting rid of them if they manage to sneak in. To that end, the UKBA already presides over biometric visa controls abroad to ensure that the person who travels is the person to whom the visa was granted, and biometric ID cards in the UK, which are set to become entitlement cards for access to basic services (to which the Parliamentary Joint Committee on Human Rights has objected.[2] The borders agency got into trouble with the Information Commissioner in March 2008 with its plan to fingerprint all passengers entering the transit lounge at Heathrow's Terminal 5, where domestic and international passengers mingled, to ensure transit passengers did not switch identity to enable them to sneak onto domestic flights.[3] The e-borders pilot programme screens all passengers before they travel to the UK against immigration, customs and police watch-lists, and had prevented the travel of 3,000 passengers in the three months to July 2008.[4]

In order to protect our borders with the requisite efficiency, UKBA staff are to have unprecedented powers. In Liam Byrne's words:

*no other agency in the country is as powerful as the UK Border Agency in the pursuit of th[is] purpose ... [Officials will have] powers to board and search vehicles or planes or trains to search for people or goods, the power to stop and question, the power to search, the power to seize things that we believe should not be moving into our country, the power to detain an individual. Where needed our front-line staff will have designated powers under the Terrorism Act to support the fight against terrorism.*

Stop and search powers, to examine anyone to establish their nationality and entitlement to be in the UK, are set to extend beyond the ports to anywhere in the UK, in draft legislation published in July 2008, and expected to be inserted into

legislation later in the parliamentary session. Meanwhile, the Borders, Citizenship and Immigration Bill, which received its first reading in the House of Lords on 15 January, puts the UKBA's new customs functions on a statutory footing and codifies its powers. It envisages pooling of information for customs, immigration and asylum, national security and policing purposes, giving officials access to a vast range of information and increasing the scope for abuse. But there is no significant strengthening of mechanisms of accountability. PACE Codes of Practice will only apply to the Border Agency to the extent that the Secretary of State directs, the BA Inspectorate monitors only for 'efficiency and effectiveness', and the IPCC, which was given statutory responsibility for dealing with complaints about the conduct of immigration officials, can only deal with the most serious (e.g. involving death or serious injury) - and its website gives no hint of this jurisdiction. That leaves a mass of immigration policing, much of it carried out by private security companies, which lacks any external accountability mechanism.

### The legislation

The draft (partial) Immigration and Citizenship Bill, published on the UKBA website in July 2008, was intended to be the first stage in the consolidation and simplification of immigration law, replacing the 1971 Immigration Act - the cornerstone of immigration control - which had been amended and added to haphazardly by at least ten Acts over the years. The draft sought to bring together in one place all the 'primary' immigration control provisions - on who needs permission to enter and stay in the UK, who is authorised to perform immigration control functions, and the procedures, powers and regulation of admission, examination, detention and expulsion - together with the regulation of immigration appeals, the codification of immigration offences, carriers' liability, employers' liability and criteria for naturalisation as a British citizen. And it was only a partial draft. Sensibly, the government has since decided to break up this monster into (at least) two pieces of primary legislation.

### The long and winding road to naturalisation

The Borders, Citizenship and Immigration Bill covers 'earned citizenship', in addition to adding customs functions and powers to the UKBA (referred to above). We were promised new, simplified and fairer criteria for naturalisation to replace those in the 1981 British Nationality Act. The provisions on naturalisation in the Bill are an improvement on the very complicated draft, but are still fairly complicated, involving different qualifying periods for naturalisation depending on whether the candidate has complied with an 'activity condition', which means unpaid community work of some sort which will be 'prescribed' by regulations. The basic qualifying period under the Bill is increased from five to eight years (from three to six years for spouses and family members), but can be reduced by two years if the unpaid work has been performed. Someone who came in as a worker but has been made redundant will not be eligible for citizenship under these provisions, and nor will someone whose family relationship with a British citizen, relied on for residence, has ended.

The rationale of these provisions is encapsulated in the mantra 'earned citizenship', which is part of the government's drive towards the cultural assimilation of foreigners who wish to settle in the UK. The press releases and public comments on this subject give the misleading impression that the current provisions give automatic naturalisation to anyone who has lived in the country for five years. In fact naturalisation has never been automatic - there have always been language competence and good character requirements, and these were enhanced and expanded to include 'life in the UK' tests under the 2002 Nationality, Immigration and Asylum Act. The complexity of the new provisions is not helped by the introduction of the concept of 'probationary citizenship leave', which is not defined in the Bill. Unless there is substantial redrafting, the naturalisation provisions in the Borders, Immigration and Citizenship (BIC) Bill are set to make the path to naturalisation longer and considerably more complicated than it is now, to no useful purpose.

The only welcome provisions of the draft BIC Bill are the new statutory duty to have regard to the need to safeguard and promote the welfare of children in the pursuit of immigration or customs functions - a result of the withdrawal of the immigration reservation to the UN Convention on the Rights of the Child - and provisions to redress historical sex discrimination which prevented British mothers from passing citizenship to their children.

### Simplification?

The other piece of proposed legislation on the table for 2008-9 is the Immigration Simplification Bill, not mentioned in the Queen's Speech but since flagged up as a draft Bill for the current session. The Simplification Bill is not published at the time of writing, but its stated purpose is to replace the ten pieces of immigration legislation since 1971 with a single simplified Act, and to ensure 'sharper and more consistent' immigration rules which can be more easily adjusted to changing circumstances.

We have been given a glimpse of what the government means by 'simplification' in the naturalisation proposals, above. Another clue is the way the immigration rules relating to visitors have been changed. In the past, a visitor was just that - someone who might be coming to the UK as a tourist, to visit family, to transact business, to undertake a short course or even to run in the marathon - all would be eligible for visitor visas, provided they did not intend to remain beyond six months. Recent changes now mean that prospective visitors must apply for a visa as a general visitor, a child visitor, a student visitor, a business visitor, a sports visitor, or an entertainer visitor. If this is simplification, it is solely for the benefit of UKBA staff, who are steadily being de-skilled.

### The July 2008 proposals

Under the heading of 'simplification', the 2008 partial draft proposed to remove the right of abode of long-resident Commonwealth citizens, who are currently treated as if they were British. All who are not British or EEA nationals would need 'immigration permission'. The unitary concept of 'immigration permission' (IP) would also replace entry clearance. IP could be granted before, on and after entry. 'Indefinite leave to remain' under the 1971 Act would become 'permanent immigration permission'; limited leave 'temporary immigration permission'. Permission granted for protection reasons (on an application for refugee status or humanitarian protection) would be 'protection permission'. Groups previously exempt from control such as seafarers and diplomats would need IP. Some of these proposals, such as withdrawal of the right of abode and diplomatic exemption, are unlikely to have survived the consultation process in the autumn of 2008 - but they give an alarming indication of Home Office thinking.

The July 2008 draft proposed a merger of the separate processes of deportation (for criminal offences or conduct conducive to the public good) and administrative removal (following refusal of entry or cancellation of leave, for illegal entry, breach of conditions, overstaying and other immigration irregularities) into one process of expulsion. An expulsion order (EO) could be made in all these situations, and would be mandatory (subject to statutory exceptions) against 'foreign criminals', ie non-EEA nationals committing offences for which they are sentenced to 12 months or more, or specified offences. An expulsion order could also be made against someone outside

the country, replacing current exclusion orders. In all cases expulsion would entail an automatic bar on re-entry, either for a limited or an unlimited period. This means that someone who has breached a condition of permission, e.g. by failing to notify the UKBA of a change of address, or as a student taking a part-time job for 22 hours per week instead of 20, could be expelled and banned from re-entry in exactly the same way as a murderer or rapist. In addition, the draft would make it a criminal offence to try to re-enter following the making of such an order.

Proposed new powers for immigration officers to stop people in the street and demand to see proof of entitlement to be here have already been referred to. Other objectionable features of the July 2008 proposals include new powers for immigration officers to examine passengers leaving the country to ascertain whether they have committed any immigration offences in the UK, and if so, to stop them coming back. There are no plans to place a statutory limitation on the length of immigration detention - not even for children, despite the December 2008 Code of Practice on keeping children safe from harm, and the proposed new statutory duty to have regard to children's welfare when exercising immigration functions.

Under cover of 'simplification' and consolidation of the law, the government's proposals represent a massive accretion of power for the executive, and further micro-management of immigration which would in fact represent an abdication of justice, by on the one hand an over-prescriptive regulation (as has happened in the denomination of different types of visitor), and on the other, a failure to distinguish cases which ought to be distinguished (as in powers of expulsion). The draft represents the government's thinking before the consultation process, and changes are fervently hoped for in the final simplification proposals.

### Emphasis on enforcement

The other major change is the replacement of the work permit system by what the government always calls an 'Australian-style' points system, whereby non-EEA economic migrants must achieve a certain number of points (awarded for attributes such as income level, academic qualifications and youth) in order to qualify for entry (unless they work in a 'shortage occupation', as defined in the lists published following recommendations by the Migration Advisory Committee).

Behind this change, however, are more radical changes in the policing of economic migrants. Employers wishing to employ non-EEA nationals have to obtain a sponsorship licence, which will be withdrawn if employers fail to comply with ongoing immigration control obligations. Not only do they have to check new recruits' entitlement to work in the UK (on pain of fines which have been increased to up to £10,000 per worker), but they also have to report employees who leave the job or are absent from work for a period. The same obligations are imposed on colleges and universities wishing to take foreign students. No wonder only a fraction of employers who previously sought work permits have signed up for sponsorship licences. The obvious and immediate effect of these changes, which came into effect in November 2008, is that employers will close their doors to anyone who looks or sounds foreign, including refugees and other long-term migrants who speak with a foreign accent, for fear of trouble with the Borders Agency. Indeed, the mantra 'British jobs for British workers' uttered by senior politicians including the prime minister positively encourages such conduct.

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# Virtual walls in the South East: Turkey on its way to Schengen

## by Emre Ertem

**The EU will only grant freedom of movement to Turkish workers when Turkey fulfils the criteria of the Schengen acquis. To facilitate EU accession, Turkey is therefore trying to close its south-eastern borders to unwanted immigration. Amongst other developments, Turkey is planning "reception points" for around 5,000 asylum seekers and is creating a new paramilitary border police force.**

In October 2005, Turkey began association talks with the EU. Around the same time Turkish newspapers reported that citizens will soon have new passports with an integrated chip digitally holding their biometric data.[1] The authorities argue that the new e-passport will protect against forgery and misuse, but they also claim that Turkish citizens will be able to travel more "easily" to the EU.

The EU is putting Turkey under pressure. Although Turkey will probably not achieve accession in the foreseeable future, it must still fulfil Schengen criteria. In return, the EU is promising Turkish citizens "freedom of movement" - a strange offer, because according to the Additional Protocol, signed in 1970, to the Association Agreement between the then European Economic Community and Turkey, Turks are already free to travel to the EU without a visa - provided EU states recognise that right. To date, however, they only grant it in so far as they are forced to by the European Court of Justice (ECJ).

In September 2007, the ECJ yet again reminded Member States of Article 41(1) of the Protocol.[2] In a complaint by a Turkish national against restrictive UK entry procedures, the ECJ interpreted Article 41(1) of the Additional Protocol as:

> *prohibiting the introduction, as from the entry into force of that protocol with regard to the Member State concerned, of any new restrictions on the exercise of freedom of establishment, including those relating to the substantive and/or procedural conditions governing the first admission into the territory of that State, of Turkish nationals intending to establish themselves in business there on their own account.*

In Germany, as well as the UK, the Protocol came into force in 1973, so that:

> *as of 1 January 1973, Turkish citizens in Germany did not have to possess a residency permit in order to enter Germany or reside in the country for the purpose of tourism (for three months), and in the case of providing services (e.g. truck drivers, businessmen) for two months; they could therefore enter without a visa. A visa was also not necessary for the purpose of long-term residency, as long as there was no intention to take up employment.*[3]

Despite this stipulation of the Additional Protocol, Germany has required Turkish citizens to have an entry visa since 1980.

## Detention centre plans

As an asylum and migration political buffer state, Turkey has been of strategic interest to the EU for at least a decade. In January 1998, EU justice and home affairs ministers passed an "Action Plan" intended to stop the mass flight of Iraqi Kurds towards the EU.[4] The integration of Turkey, however, failed at its first attempt. The Turkish parliament did not pass the laws against "illegal immigration" that the EU had expected her to. The training of Turkish borders guards as well as an increased information exchange could not be realised.

Nevertheless, the plans did not vanish from the EU's agenda. In October 1999, the special Justice and Home Affairs Summit at Tampere approved several Action Plans drafted by the High Level Working Group on Asylum and Migration - including a revised one on Iraq.[5] This now included plans for negotiations with Turkey to achieve cooperation in the deportation of Iraqi Kurds through the country and the creation of detention centres financed by the EU.

In 2003, The British government under Tony Blair came up with a "new vision" for refugees: asylum seekers should no longer lodge their applications in EU states but only in "protected zones", namely, from within detention or 'reception' centres in third states financed by the EU. Only a positive decision on their claim would allow them entry to the EU. A possible partner country envisaged by the Blair government for these plans was Ukraine, but Turkey's potential as a buffer state was also recognised:

> *For example, Iraqis who claimed asylum in the UK could be moved to a Protection Area in, say Turkey, Iran, or the Kurdish autonomous Protection Area. In such an area they would receive protection and could in due course apply for a resettlement place [in the EU or a third country]*.[6]

This suggestion would have implied the abolition of the Geneva Refugee Convention, which the EU decided against at the time. Although a complete legal re-haul appeared to be inappropriate, in practice, the EU tried to export its asylum problem out of EU territory through increasingly restrictive border surveillance.

Blair's "protection areas" now became "protection programmes". In September 2005, the Commission presented a corresponding Communication.[7] The basic idea was retained: building EU-financed detention centres in third states in order to create "durable solutions" - all of them outside of the EU: "repatriation, local integration or resettlement in a third country". The Commission envisaged pilot projects in African countries as well as the "Western Newly Independent States", in particular Ukraine.

In the course of Schengen integration, Turkey followed the EU in its detention centre plans. According to Turkey's "national action plan on the integration of the European acquis concerning migration and asylum", it will build seven "reception centres" with a capacity of around 5,000 asylum seekers.[8]

## Conditional asylum

However, there is a legal problem because Turkey only signed the Geneva Convention with a geographical limit on the agreement's applicabilition only refugees from Europe can apply for asylum in Turkey. The EU has repeatedly called on Turkey to withdraw its geographical reservation. Although Ankara promised in July 2004 to pass a law without the restriction by the following year, it has since postponed the plans until 2012.[9] According to Prof. Kemal Kirisci, Turkey's decision to postpone the law reform is related to her mistrust of the EU:

> *the biggest nightmare scenario for officials, is that the geographical reservation is withdrawn, whilst their wish to join the EU is not taken seriously. Many officials as well as a large portion of the population do not trust the EU ..."*[10]

Despite this scepticism, Turkish authorities have just passed the second phase of the asylum "twinning" project with British and Danish experts in October 2007.[11] According to the vice president of the Turkish security services (police), Emir Arslan, the next two phases of the project will be realised by 2012.[12]

## New border police and technical arms build-up

2012 will be an important year for Turkey's border management. This is when a newly created police force will take control of Turkey's borders.[13] This paramilitary border guard force will have 70,000 officers. Although the precise technical equipment of the new force has not yet been defined, it is known that Turkey will buy five F-406 REIMS aeroplanes and that the STAMP weapons system - developed by the state-owned arms manufacturer ASELSAN - will be deployed at the southern borders.

Furthermore, an electronic security system will be implemented to ensure an integrated border administration. ASELSAN and the Turkish security technology company STM are taking part in the development of the EU security project TALOS (Transportable Autonomous Patrol System for Land Border Surveillance). Furthermore, STM is a project partner of OPERAMAR (InterOPERAble Approach to European Union MARitime Safety and Security Management).[14] "Since 2007, shared databases have been used by the authorities to screen people crossing the borders," the EU Commission notes in its report on the country's progress in the adoption of the community acquis.[15] Since 2004, "a national office within the Interpol service acts as the central authority in accordance with the Schengen agreement and, since 2004, as the Europol and OLAF [European Anti-Fraud Office] contact point." The Commission also notes, however, that Turkey still needs to step up "efforts" if it wants to participate in the Schengen Information System.

Turkey also takes part in two early warning systems: that of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi), through which information on "first indications of illegal immigration and facilitator networks, particularly in the countries in which migration originates" is transmitted. [16] In addition, Turkish airports participate in ECFALIS (European Civil Aviation Conference Facilitation Information System on illegal immigration) for early warning against illegal migration.[17] Last but not least, Turkey ratified the agreement laying down the prerogatives and privileges of the International Organisation for Migration (IOM) in October 2003.

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# Spain: Reports detail abuses committed by police forces in demonstrations, prisons and against migrants by Yasha Maccanico

**Social movements and people in detention are often on the receiving end of police violence and brutality at the hands of the Spanish state**

In July 2008, the *Coordinadora para la prevención de la tortura* (Cpt, composed of 44 groups and associations) published its fourth *Annual Report* on allegations of abuses committed by officers of Spain's various police and security agencies, as well as members of the prison service. It provides detailed information and brief *resumés* of individual cases, as well as monitoring developments in judicial proceedings arising from lawsuits filed concerning incidents in past years. Since the report was released, the UN Committee for the Prevention of Torture (CPT) has formulated observations and recommendations in response to a report submitted by Spain, within the framework of co-operation with the Spanish government, in which it welcomed the resumption of dialogue after 12 years.

Further interesting developments have included the recognition by the European Court of Human Rights, in January 2009, of damages for a man injured by a teargas canister fired by the police during a demonstration in 1991, and a ruling by the *Audiencia Nacional* (the Madrid-based court with exclusive competence for serious crimes including terrorism and organised crime) on 21 October 2008. This dismissed a terrorist suspect's confession on grounds that it was not "certain" that the claims were rendered in complete freedom in a "spontaneous and voluntary" manner. Moreover, in December 2008, the CPT wrote to Prime Minister, José Luis Rodríguez Zapatero, to complain about its exclusion, after initial involvement, from the drawing up of plans to implement Spain's commitments under the Optional Protocol to the Convention against Torture, to which it adhered in April 2005, ratifying it a year later.

## Report on instances of ill-treatment by officers in 2007

The 2008 report by the Network of Associations for the Prevention of Torture, which covers events in 2007, documents 319 cases of violence or ill-treatment affecting 689 people, adding that a large number have not been included at the request of the alleged victims, or because it was impossible for the associations involved to confirm the allegations. Moreover, the report argues that there are many instances when cases are not reported something that previously happened mostly when undocumented migrants were involved.

This is now spreading to people experiencing such treatment in the context of social protests and is occurring partly to avoid having lawsuits filed against them in response to their allegations or from a lack of confidence in the bodies responsible for investigating the allegations.

This means that the number of cases reported for each year is liable to increase over time. Thus, the 2005 report mentioned complaints by 755 people in 2004, whereas the figure for 2005 has now grown to 917. The cases included fall under the definition set in the 1984 UN Convention against Torture:

> *any act whereby a person is subjected to pain or serious suffering, both physical and mental for the purposes of obtaining information, punishment, intimidation or coercion, when they are inflicted by a public officer or another person in the exercise of their public duties at their behest or with their permission.*

The figures in the 2008 report are similar, though marginally higher, to those recorded in 2007 when it documented 304 cases affecting 659 people. The data is broken down by region [autonomous communities], the responsible police bodies and details on who the people on the receiving end of violence are and the progress of lawsuits concerning torture and/or ill-treatment in the Spanish courts. The geographical distribution of the claims saw a continuing disproportion in Catalonia, Madrid, Andalusia and Euskadi (the Basque Country), which accounted for just over two-thirds (67.58%) of the complainants and slightly under two-thirds of the cases reported (63.13%). Next was Valencia, which had the same number of cases as Euskadi (28), although they involved slightly over half the people (56 compared to 100). La Rioja remained the only region from which no allegations were received, one of eight autonomous communities (alongside Asturias, Castille-Leon, Extremadura, Balearic islands, Cantabria, Murcia, Castille-La Mancha, as well as the Spanish north African enclaves of Ceuta and Melilla) where less than ten cases were reported, although there were more than ten people who reported ill-treatment in Asturias (12) and Castille-Leon (11).

Excluding Ceuta and Melilla (as they have under 100,000 inhabitants), if one considers these figures for autonomous communities in relation to their populations, the highest rate of people reporting such incidents was in Navarre (5.61/100,000 inhabitants), Euskadi (4.67), Madrid (2.27) and Catalonia (2), with a nationwide average of 1.52 complainants per 100,000 people. There were significant increases in Euskadi (from 46 to 100), Madrid (from 72 to 145) and Navarre (two-fold, from 17 to 34), possibly as a result of the worsening situation that followed the breakdown in the ceasefire and negotiations between ETA and the Spanish government and a resumption of terrorist attacks. Some cases involved people arrested in Euskadi and Navarre who were later taken to Madrid and are listed as pertaining to both the autonomous communities. After a considerable decrease noted in the report for 2006 concerning complaints by prisoners held *incommunicado* (6 cases), the figure shot up (to 43, 6.24% of the total) in 2007, probably due to the same developments. The other most significant increases were in Aragón (a 137% increase that was largely due to complaints filed by prisoners in Zuera prison) and in the Valencia region (up by 44%).

As for the people who were on the receiving end of alleged police brutality, the largest number were involved in social movements (227, equivalent to 32.95%), followed by migrants (14.80%) and prisoners (11.90%). Sixty deaths in custody are also reported, and the wide-ranging "others" category that

includes incidents during sports events and city feasts, among others, accounted for over a quarter of the complaints. The police forces against which the most complaints were filed were local police forces (215), followed by the national police (187), autonomous community police forces (153, they operate in Euskadi, Navarre, Galicia and Catalonia, where the *Mossos d'Esquadra* accounted for half the complaints -72 out of 144-, whereas complaints against the *Ertzainta* were more than half of those in Euskadi -62 out of 100-), prison officers (83) and the *Guardia Civil* (76). Of the 60 deaths in custody reported, one third (20) was in Andalusia, and over half (36) occurred in prison establishments, ten in the custody of the national police (5 in Andalusia), four of the *Guardia Civil*, four of the local police forces, three of the autonomous community police forces and the same number in centres for minors.

### Human Rights Committee recommendations

On 27 October 2008, the UN's Human Rights Committee in Geneva issued its response to a report submitted to it by the Spanish government, in which it welcomed a number of positive developments including a National Plan for Human Rights. It also highlighted several ongoing concerns and formulated recommendations to address them. Among these, it stressed the need to define terrorism in a more restrictive way by limiting the application of articles 572 and 580 of the penal code (on sentencing for terrorist crimes) to offences that are unquestionably of a terrorist nature. As regards continuing reports of torture and ill-treatment, the report notes the failure to draw up a global strategy to ensure its eradication, calling for a national mechanism for the prevention of torture to be adopted in accordance with the Optional Protocol to the Convention against Torture which was ratified by Spain in April 2006.

The continuing use of *incommunicado* detention for up to 13 days in cases involving terrorism and organised crime, without allowing suspects to choose their own lawyers, is cited as another cause for concern. The Commission recommends that measures be adopted to suppress this regime that is liable to lead to ill-treatment, that suspects be allowed to appoint their lawyers of choice and that audiovisual means be systematically used during interrogations in police stations and other places of detention. The long period of preventive detention, up to four-years, is listed as another instance of non-compliance with human rights instruments, as is the secrecy of judicial proceedings when the defence in criminal trials is denied access to information needed for litigation. Judicial proceedings before the *Audiencia Nacional* dealing with offences of association or co-operation with terrorist groups "may restrict freedom of expression and association in an unjustified manner".

### Applicant wins damages on appeal to the European Court of Human Rights

On 8 January 2009, the European Court of Human Rights (ECtHR) reached a verdict in favour of Mikel Iribarren Pinillos against the Spanish state in relation to injuries he suffered in Pamplona (Navarre) when he was 19 years old during late-night disturbances in his hometown on 15 December 1991. The verdict granted him the payment of damages denied him by Spanish courts in relation to an incident in which a teargas canister was fired at body height at close range by the riot police, striking him on the head and leaving him in hospital in a serious conditions including a temporary coma and requiring surgery. The incident resulted in him being recognised as handicapped (with 37% invalidity) in 1995.

On 29 September 1995, the Provincial Court of Navarre found that security forces had been responsible of an offence of "blows and injuries", but was unable to identify the perpetrator, so no criminal charges ensued. In August 1996, Iribarren Pinillos filed a claim for damages demanding the equivalent of 283,826.86 euros before the Interior Ministry, which agreed to pay him a lower sum, equivalent of 88,017.27 euros, in view of his participation in disturbances that created a situation of danger for him that he was responsible for. After submitting his observations and reiterating his request, the amount was raised to 101,037.71 euros, half of what he would have received if he had not been involved in the disturbances. The claim was later rejected after a report from the *Consejo de Estado* (Council of State, acting as the highest court to which the legal affairs of the state can be referred, among other competencies) on 11 September 1997 that argued that while the person who fired the canister had not been identified, it had been proven that Iribarren Pinillos had taken part in the disturbances. Therefore the damage caused was not the administration's responsibility and regulations against the misuse of the legal system made it impossible to grant the applicant's request.

An appeal was then filed before the *Audiencia Nacional*, which agreed to grant him 60,101.21 euros, leading to further appeals from both parties up to the Supreme Court. It ruled in favour of the state's attorney on 31 January 2003 as the injuries had been caused by police officers but their conduct had not been illegal or disproportionate due to the demonstrators' actions, including the erection of barricades. Hence, he was injured by chance in circumstances that he had contributed to. A further appeal was filed before the Constitutional Court on grounds including the right to fair trial within a reasonable time-period, the right to dignity, to physical and moral well-being and honour, the prohibition of torture and the right not to be discriminated against, which the court declared inadmissible in October 2003.

The applicant's submission to the ECtHR interpreted his injuries as inhuman and degrading treatment affecting his private life, stressing that the criminal proceedings had established that they were caused by an "agent of the State who concealed his identity" before the judge instructing the case. He went into a coma and nearly died after a gas canister fired at him from a short distance, meaning that the injuries were not "unintentional and fortuitous". He has had to support his losses resulting from a crime committed by a state agent on his own, after the state was cleared of any economic responsibility towards him. Moreover, neither the police authorities nor the officer responsible assisted the judicial authorities in clarifying the events and circumstances that led to his injuries.

The government replied that he contributed to the situation in which he was injured by partaking in an illegal and violent demonstration, and that police intervention was fully justified by the serious disturbance of public order. In ruling that there was a violation of articles 3 (prohibition of torture or inhuman and degrading treatment or punishment) and 8 (the right to private and family life) of the European Convention on Human Rights (ECHR), the court found that: "The use of the canister and the way in which it was used necessarily entailed a potential risk for the physical integrity or even the life of those present". The ruling also agreed with the applicant that there was a violation of the principle of the legal proceedings reaching a conclusion within a "reasonable delay". The damages the court ordered Spain to pay Iribarren Pinillos were 100,000 Euros for material damages, 40,000 euros for moral damages and 30,000 euros litigation costs.

### Confession inadmissible in the *Audiencia Nacional*

On 21 October 2008, Arkaitz Agote Cillero was charged with attempting to cause terrorist criminal damage by placing an explosive device outside a justice of the peace's courthouse in Zarautz (Guipúzcoa, Basque Country) on 2 November 2005. The public prosecutor requested an eight-year prison sentence but the defendant was acquitted in a ruling by the third section of the criminal court of the *Audiencia Nacional* (sentence 45/08). In the event, the device was defused by the *Ertzaintza* (the Basque

autonomous police force) after it was warned of a suspicious package by a neighbour who noticed a warning note attached to it that read "Danger Bomb".

The defendant had refused to testify in court and alleged that he was tortured. However, there were two statements by Agote Cillero rendered in custody of the *Guardia Civil* on 30 March 2007. Other statements were collected by the forensic doctor and a judge that he saw while in detention. The *Guardia Civil* officers stressed that the details in the statements "corresponded exactly with the facts..." and included information that was unknown to them. They said that all the procedures undertaken were proper, including checks on the prisoner by the forensic doctor and the presence of a lawyer. It is worth noting that Agote Cillero was not arrested in relation to this incident, but rather, for "membership of a terrorist group" due to "something" [unspecified] found during a search of his vehicle. The case had been shelved and was re-opened following his arrest.

It was proven that ETA was responsible for the attack, due to the device's characteristics and a claim that appeared in the newspaper *Gara* and the prosecutor stressed that the defendant was on trial for membership of ETA. The defence lawyer argued that there was no evidence linking the man to the placing of the explosive device apart from his self-incriminating statements. A complaint of ill-treatment during detention had been filed and he had subsequently told a judge that he had confessed as a result of the threat of a bag being placed over his head; this was something which he alleged had already occurred "five times", twice resulting in a "loss of consciousness". Moreover, even if the statements were accepted in the trial, it was argued that they were insufficient because although they contain details that are correct, in the two years between the incident and the confessions, the *Guardia Civil* could well have learnt about them.

By comparing the defendants' claims and the formal acts that were undertaken during his detention the ruling concluded that there was "no reason nor justification" for him to be held in a police cell from 3 p.m. on 28 March 2007 to 10 p.m. on 30 March [first in Intxaurrondo and later in Madrid]. There was "even less" reason for *incommunicado* detention as no procedure was carried out other than identification, which occurred immediately when he was first arrested. He alleged various acts of ill-treatment such as not allowing him to sit (he alleges that he was violently forced to get up if he did) and keeping his light on permanently. He claimed that when he declared "everything they wanted", they "had prepared all the questions and answers". Moreover, he had told the forensic doctor that he had been interrogated before there was any official act that mentioned interrogation. He also told her that he was "on the verge of suicide".

This resulted in the court rejecting the statements as evidence "due to the agreement" of what the defended stated in terms of times and the phases of his arrest:

> *in view of the time spent in police offices without justification, the autonomy and willingness of the declaration provided cannot be presumed.*

In dismissing the charges, the ruling also noted that while his voluntary statements were laden with detail, the confessions were vaguer and included details that were questionable; one statement, about when the device was placed, was in error. Moreover, there were no corroborating elements beyond the statements so the defendant would have been acquitted even if his "confession" had been accepted by the court.

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# Germany: Permanent state of prevention (pre-emption)

## by Katrin McGauran

**Reform of the Federal Police Authority is the latest in a series of legal, institutional and technological developments underpinning Germany's increasingly authoritarian "security architecture".**

It has been widely observed that the security architecture of post-Cold War western Europe is defined by a conflation of the police and security services: political intelligence gathering, that is the tailing, bugging, surveillance, data collection and profiling of citizens, has become part and parcel of the *modus operandi* of police forces. The use of surveillance is not restricted to foreigners or domestic political activists and terrorists, but can now affect the population as a whole. Legally, institutionally and technologically, this development manifests itself in the expansion and merging of databases, 'projects', personnel, remits and police force instruments, with the internal and external security services. One consequence of this conflation of activities is that law enforcement acts in an increasingly repressive and authoritarian fashion towards its own citizens, particularly those who challenge the status quo, such as social movements and investigative journalists. The causalities of this new security architecture are civil liberties and basic democratic rights such as privacy, data protection, the right to protest and freedom of the press, with systematic discrimination against particular groups (political activists and foreigners) profiled as potential terrorist threats. This article traces some of the milestones of Germany's new 'security architecture' [1] before outlining the recent controversial reform of the law regulating the Federal Crime Police Authority (*Bundeskriminalamt*, BKA).

## "I would rather have the Communists, than a political police in Germany"

Much has changed since General Clay uttered these words in 1948 [2] in reaction to the conflation of police and intelligence service powers in Germany that resulted in the fascist secret police, *Gestapo* (*Geheime Staatspolizei* - Secret State Police). In a letter to the parliamentary council dated 14 April 1949, the allied military governors gave the green light for the future German government to set up an internal intelligence service to look at activities that aimed to destabilise or overthrow the state. However, they asserted that this agency "shall not have police powers". In an attempt to avert a renewed centralisation of power within the German security apparatus, policing again became a regional affair and policing and political intelligence became the task of different services, whereby the latter was given intrusive, but not coercive powers, and the former was forbidden to employ secret service methods.[3] This so-called *Trennungsgebot* (law of separation) was part of (West) German constitutional law until 1990, but its legal status since unification is contested. Nevertheless, the laws on the different secret intelligence services still forbid their unification with police services at federal or regional level. [4]

The German "security and intelligence community" consists firstly of the internal intelligence services (*Verfassungsschutz*) both at federal and regional level. Secondly, there is a relatively small military intelligence service (*Militärischer Abschirmdienst* MAD), whose functions are legally restricted to investigating "unconstitutional activities" within the army. Thirdly, there is the foreign intelligence agency (*Bundesnachrichtendienst*, BND), which is under the control of the Chancellor's Office and amongst other things engages in wiretapping and electronic surveillance of international communications to pre-empt attacks by foreign states. On paper, the BND is barred from undertaking domestic operations, although a series of scandals since 2005 have shown that the agency intercepts journalist's communications within Germany as well. [5] The *Trennungsgebot* is unique to Germany, as international comparisons show that this separation is not a given in other western European states with internal intelligence departments located in police authorities in France, Spain, Sweden and Switzerland, for example.[6]

## Separation on paper but not in practice

The *Trennungsgebot* has been widely debated in recent years in Germany, as successive Interior Ministers, including the current conservative one, Wolfgang Schäuble, increased security service and police powers and extended their cooperation in gathering, analysing and using political intelligence. The latest example is the reform of the law regulating the Federal Crime Police Authority (BKA), scrutinised below. A series of security law reforms introduced since 1989, and especially during the Social Democratic/Green coalition (1998-2005) under then Interior Minister Otto Schily (*Sozialdemokratische Partei Deutschlands*, SPD), had already eroded this traditional separation, by way of joint databases, bodies and 'think tanks'.[7] A series of "security packages" provided for easier information exchange between the BND, the *Verfassungsschutz* and law enforcement authorities, mainly with regard to the monitoring of the immigrant population and asylum seekers.

The joint anti-terror agency *Koordinierungsgruppe Terrorismusbekämpfung* (KGT), set up 1991, is the first example of a series of bodies in which both the intelligence services and the police work together on a regular basis. These working bodies are not based in law, but typically by ministerial decree, thus formally maintaining the *Trennungsgebot*. The KGT is comprised of representatives of the regional and federal crime police department, internal intelligence services as well as the Federal Prosecutor's Office (*Bundesanwaltschaft*, BAW). A distinctive feature of the expansion and meshing of tasks is the undefined nature of the anti-terror groups' remits and joint projects: the KGT was instructed to meet regularly (in the year of its inception alone there were 29 meetings), whilst its remit (to coordinate the rapid and comprehensive exchange of information, to assess threat scenarios, harmonise measures and maximise the deployment of resources and develop new concepts in the fight against terrorism) remains vague enough to encompass all forms of criminal or preventative activity and cooperation.[8]

## Common Database

The same can be said about the Common Databases Act of 2006 [9]. It created an "Anti-Terror Database" holding personal data on terrorist suspects, accessible by regional police offices, the Federal Police (formerly Federal Border Guard), the Federal Criminal Investigation office (*Bundeskriminalamt* - BKA), the internal secret service(s), the BND, the MAD, and last but not least, the Customs Investigation Bureau (*Zollkriminalamt* - ZKA). The data categories include terrorist suspects, those who "support, prepare, endorse or through their doing deliberately generate" violent acts as well as "contact persons", whose personal details could provide information on (*Aufklärung*) the fight against international terrorism. Aside from personal data, associations, objects, bank details and telecommunications traffic data such as addresses, telephone numbers, internet sites and e-mail addresses can be entered, and the 'comments' field remains subject to police or intelligence services' interpretation. The law not only obliges the police and secret services to enter and share data they collect that "relates" to any of the above-named categories, it is also a green light for data collection because of the lack of clearly defined parameters: "Leads" are legitimate when, "according to intelligence or police experience, they justify the evaluation that the findings will contribute to the knowledge on or fight against international terrorism". The widest possible definition was chosen here, which makes anti-terrorism first and foremost a *preventative* activity that does not take a suspect as its starting point but rather internal law enforcement assessments on what, in the eyes of police and secret services, constitutes a threat to security, supporters of terrorism or supporters of the supporters.[10]

## The Common Anti-Terror Centre

A series of working groups have been set up since the inception of the KGT, but a new phase of cooperation was introduced with the creation of the common anti-terror centre in 2004 (*Gemeinsames Terrorismusabwehrzentrum*, GTAZ), the "logical consequence" of the increasing volume and scope of informal and ad hoc cooperation between the police and secret service.[11] The GTAZ joins 40 regional and federal authorities which include 19 secret service agencies, 18 police departments, customs and immigration services. They have 229 permanent staff and other resources in a common building in Berlin. Their remit includes Islamic terrorism, internet research and translation, threat analysis, thematic and case analyses, as well as operational information exchange for the harmonisation of executive measures and investigative approaches. Central to the GTAZ is the analysis of the status of Muslim immigrants in relation to Germany's immigration and asylum law, where immigration, police and security services work together to facilitate the denial or revocation of the status of unwanted foreign groups, in particular Muslims suspected of extremism.[12]

## The BKA, a Federal Investigations Bureau

The new BKA law [13] is the most recent, but while only one of many, it is nonetheless an important step in expanding the law enforcement apparatus *vis a vis* civil liberties and the freedom of

the press in Germany. After initially being approved by the lower house of parliament (*Bundestag*) it was rejected on 28 November 2008 by the upper house (*Bundesrat*), which represents the 16 regional state governments. The federal government then made an appeal to the conciliation committee and the cabinet agreed to call the committee a few days later. The primary reason for the law's rejection in the *Bundesrat* was the question of whether in "urgent cases" the BKA needed to seek a judge's approval for remote searches of computer hard drives, so-called "cyber patrols"(See article on pp1-2). After a judge's order was added to the otherwise unchanged bill, [14] the upper house approved it on 19 December by a narrow vote of 35-34, a day after the lower house had backed the new version. German President, Hans Köhler, signed and thereby approved the law over Christmas, and it came into force on 1 January 2009.

The BKA, with a staff of 5,500 and an annual budget of 362m euro, functions, firstly, as a central coordinating authority - especially with regard to technology - for the national police departments, secondly, as a contact point for international police cooperation, and finally, since the 1960s, as an investigative authority. [15] Its remit covers organised crime and, under the auspices of the Prosecutor's Office, investigations into internal political threats. Since the 1970s it has targeted the Red Army Faction and political activists under Article 129a of the Criminal Code ("terrorist association"). In this context, the BKA could use a series of secret police powers under the code of criminal procedure, such as long-term surveillance, use of undercover agents, bugging and phone tapping. Due to the fact that anti-terror investigations were - and are - directed against the perpetrators of bomb attacks or other offences that one might call "terrorist", but also against a supposed organisational and political background, the BKA already had *de facto* "preventive" powers in its traditional remit as a law enforcement and prosecution agency.

With the new BKA law, however, the authority will gain official preventative remits which until now were the competences of the *Länder* police forces. Article 4a of the new law entitles the BKA to prevent dangers of international terrorism. The federal government left no doubt that this new competence also includes preventive activities before and beyond specific cases of concrete threats and dangers of terrorist attacks. These new preventative powers lie outside of a specific investigation and thereby outside of any external judicial control mechanisms. [16]

Secret service techniques will now be part of the federal police's working methods, but it is not only the creation of new powers (such as cyber patrols) that makes the law so controversial. After all, existing police powers that were (and still are) part of the regional police remit have merely been transcribed into the BKA law, such as issuing subpoenas, banning individuals from certain public spaces, detaining people, searching persons and places, confiscating and entering and searching private homes. But for the first time these powers are systematically collated under a federal structure within a powerful institution which acts not only as a national but as an international hub for law enforcement's data collection and analysis. Moreover, these methods will be deployed not only against suspects, but - in the name of "prevention" (similar to "pre-emption" in other EU states) - will target anyone who ends up in the authorities' vast data grid. Secret service data, centralised in the Common Anti-Terror Database, includes information collected from credit institutions, airline companies, postal and telecommunication services, taped conversations and fingerprints of foreigners. [17] This, combined with biometric passport data and executive power, creates a state institution beyond parliamentary, let alone civil, control. Far from being a 'neutral' institutional arrangement, the convergence of police and secret services with executive power mirrors, and makes possible, authoritarianism and repressive practices.

### Attacking the freedom of the press

Under the new law, only three professions (clerics, criminal lawyers, and politicians) are exempted from surveillance and interception, as well as the right to refuse to give evidence, leaving most lawyers and journalists and doctors open to state spying and eavesdropping in the name of vague notions of prevention and national security. This will also undermine the confidentiality of their sources/clients and, in relation to investigative journalism, the independence of the press as well as medical confidentiality and ethics. According to the German Federation of Journalists (DJV), raids on press offices and journalist's homes are increasingly being normalised in criminal investigations by applying Article 353 of the Criminal Code (*Strafgesetzbuch* - StGB), on abetting or inciting the disclosure of official secrets. The prosecution uses this clause against journalists if they publish documents marked "confidential" by the authorities. Between 1987 and 2000, the trade union documented 164 cases where journalists' houses were raided, often on grounds of suspicion or incitement to the 'breaching of state secrets' (*Geheimnisverrat*).[18]

Media lawyer, Johannes Weberling, told *SPIEGEL ONLINE* [22] that the BKA law will "rock the very core of what journalism stands for:

> *because investigators would no longer need to show probable cause before initiating surveillance, and sources would therefore think twice before speaking to the press: "One of the media's roles is that of a watchdog. [...] there is a separation of powers in this country and [...] a free press is a vital component of that separation. It is incredibly irresponsible to destroy this watchdog function.*

At this point it is worth remembering the police raids on the offices of the magazine *Cicero* and journalist Bruno Schirra in 2005. The raids were carried out on the basis of an article that appeared in *Cicero* (April 2005) about the Jordanian terrorist Abu Mussab Al Zarqawi, which cited a classified BKA report. The BKA wanted to find the source of the leak. Schirra's and the editorial office's telephones were tapped and traffic data collected prior to the raid; Schirra had also been put under surveillance. [19] The incident triggered widespread criticism from civil liberties groups, press freedom organisations and MPs, who warned of an alarming increase in the criminalisation of investigative journalism by the state. The new law, *SPIEGEL ONLINE* correctly pointed out, could very well accomplish the same goal in a "much less dramatic fashion: remote data mining instead of editorial office raids. Either way [...], the effects will be the same." Similarly, Bascha Mika, editor in chief of the daily *Die Tageszeitung*, points out that "there are many ways to prevent investigative journalism; the easiest is to scare away informants. The planned law will certainly have that effect."[20]

### State power meets technology: Online raids, Trojan horses, audio-visual surveillance

Alongside systematising, centralising and enshrining existing secret service practices in law, the new Act introduces an entirely new legal base for online raids (§ 20k BKAG-E), the remote search of personal hard drives [21] - provisionally granted until 2020. The BKA thereby has a legal base to access personal computers and search data stored on them, if concrete facts support the supposition that there is a threat to life, physical integrity or freedom of a person or a threat to the basis or the existence of states or people. In particular, it allows the BKA to use Trojan horses carrying so-called "Remote Forensic Software" that can search through hard drives and send potentially incriminating evidence back to investigators and, for example, track and record Skype conference calls or other services using Voiceover Internet Protocol (VoIP).[22]

The only restriction to these remote searches in Germany is

that they are inadmissible if it is suspected that *only* data relevant to someone's personal life would be collected in such a "cyber patrol", an unlikely scenario once an individual has caught the law enforcers' attention. The technical side of such searches or the placing of Trojan horses is not defined at all in the law, leaving a high risk of non-suspects being affected by this extraordinary invasion of privacy. [23]

Audiovisual surveillance of private homes is also enshrined in the new BKA law, requiring no judge's order if the threat is classified by police as urgent. The Green party thinks that this amounts to a "State Peepshow", and has said that it will test the law's constitutionality in court. [24]

### Profiling and data mining

Data mining, namely, acquiring personal data held by private and public institutions for comparison, will become a preventative measure rather than forming part of the criminal proceedings following a terrorist attack. Profiling (*Rasterfahndung*) was introduced in the fight against the Red Army Faction and other political activists in the 1970s, to narrow down groups of suspects by way of 'profiles' based on suspicious 'criteria' drawn up by the police and intelligence agencies. Some of today's criteria are: being male, Muslim, between 20 and 40, studying technical subjects at university, originating from certain 'source' countries, or being linked to certain international bank transactions. The police can force public institutions to disclose the personal data of anyone matching these criteria, to compare and store them in the Anti-Terror Database without the knowledge of those targeted.

The last *Rasterfahndung* was carried out after the attacks of 11 September 2001 and accumulated data on about 8 million people, which were then "matched" by the BKA. At that time, police had to get a judicial warrant in each of the 16 regional states. With the new law only one judicial authorisation will be necessary.

### Pre-emptive justice *vs.* democracy

Many commentators have questioned the constitutionality of the law, as it leaves broad remits undefined. [25]

> *We will be looking for appropriate cases to challenge the constitutionality of the law if it goes through*

said media lawyer Weberling, who also represented Bruno Schirra in the Cicero BKA scandal. The Green party faction in the German parliament is also committed to testing the legislation through the courts as is the former regional state interior minister, Gerhart Baum, from the liberal *Freiheitlich Demokratische Partei* (FDP). In particular, the remote searches of computer hard drives and the right to remain silent for doctors and lawyers will be tested to see if a constitutional case can be made.

However, even if the Constitutional Court rules some aspects of the law unconstitutional the fact is that common databases, joint projects and operations, eavesdropping and audio-visual surveillance have become common, rather than exceptional police and intelligence service practices in western Europe and the USA. They are being used not only against terrorist suspects but against ordinary citizens, and in particular, social movements, as the criminalisation of globalisation, migration and labour activists over the past decade have shown. [26] It is not the BKA law but democracy itself that is being tested, because it is clear that the proposed powers engender a very different vision of democracy than that taught in school text books.

Then, two days after the so-called BKA compromise law was narrowly accepted, Schäuble and Justice Minister Brigitte Zypries announced plans to press terrorist charges against people who "make contact or are in regular contact with terrorist organisations" if this contact takes place with the intent of receiving instructions on how to carry out terrorist attacks. Anyone under suspicion of such contact will be subject to the secret service methods described above. [27] Visiting terrorist training camps was used as the most extreme example - one that no parliamentarian dares argue with – and it successfully rallied political support behind the plans. However, even if a journalist could eventually prove that they did not intend to build a bomb while investigating a militant group (that under arbitrary state rule and without legal recourse found itself on the EU or the UN anti-terror list) the fact that their home was raided and computers seized might well suffice to make them think twice before seeking independent information in investigating the wrongs committed in the war against terror. [28]

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*[1] For an overview of legislative changes, see http://www.cilip.de/terror/gesetze.htm*

*[2] Heiner Busch, Neue "Sicherheitsarchitektur" für Deutschland? Revised version of a speech given at the assembly meeting of the RAV in Berlin on 7 December 2007, http://www.rav.de/infobrief100/Busch.html*

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*[4] Articles 2(1) and 8(3) of the Act regulating the internal intelligence service (BVerfSchG, http://bundesrecht.juris.de/bverfschg/) explicitly deny the internal security service police powers, any authority over police departments, or an incorporation of its activities into police departments.*

*[5] See Statewatch News Online (November 2005) and Statewatch bulletin Vol. 16 nos 1-3 (2006) and Vol 17 nos 3/4 (2007).*

*[6] Heiner Busch, ibid.*

*[7] For a historical overview of institutional cooperation between police and intelligence, see Jan Wörlein Unkontrollierbare Anziehungskraft. Institutionelle Kooperation von Polizei und Diensten, in Bürgerrechte und Polizei/Cilip, 2/2008, pp 50-61.*

*[8] Jan Wörlein, ibid*

*[9] Heiner Busch Es wächst zusammen ... Zum Gemeinsame-Dateien-Gesetz in Bürgerrechte & Polizei/CILIP 3/2006, pp 52-59. In English: See Common database links secret service and the police in Statewatch bulletin Vol. 17 no 1 (January-March 2007), pp 15-16.*

*[10] Jan Wörlein, ibid.*

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*[12] Gesetz zur Abwehr von Gefahren des internationalen Terrorismus durch das Bundeskriminalamt (BKAG-E)*

*[13] See Helmut Lorscheid Der nächste Schritt zum Überwachungsstaat in Telepolis 18.12.08*

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*[14] Fredrik Roggan, Das neue BKA-Gesetz. Geschäftsgrundlage einer Bundesgeheimpolizei in Bürgerrechte und Polizei/Cilip, 2/2008.*

*[15] Fredrik Roggan, ibid. pp 13-20*

*[16] Heribert Prantl Viele Jäger sind der Freiheit Tod in Süddeutsche Zeitung 17.12.2008. See also Süddeutsche Zeitung 7,12 & 13.11.08, 13-16 & 30.12.08.*

*[17] See Statewatch bulletin Vol. 16 no 1 (2006) for more background information.*

*[18] Charles Hauley New Anti-Terror Legislation. Journalists Worry 'Big Brother Law' Will Kill Press Freedom, Spiegel Online 17.12.08 http://www.spiegel.de/international/germany/0,1518,596807,00.html*

*[19] Statewatch bulletin Vol. 16 no 1*

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*[21] See Statewatch Bulletin, Vol. 18 no 3 (2008)*

*[22] Big Brother Worries. German Parliament Passes Anti-Terror Law, Spiegel Online 13.11.08,*

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*[23] Fredrik Roggan, ibid.*

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*[25] For a legal analysis, see Fredrik Roggan, ibid.*

*[26] For a recent example from Germany, see Crime by association - Terrorist law criminalises critical research, Statewatch bulletin Vol. 17 nos 3/4 (2007), p 16. For a US example, see Gene Ray On the targeting of activists in the war against terror, Statewatch bulletin Vol. 18 no 3, available online at*
*http://transform.eipcp.net/correspondence/1202292557*

*[27] For details, see Peter Mühlbauer Zypries und Schäuble wollen "Beziehungen" zu verbotenen Vereinigungen unter Strafe stellen, in Telepolis 20.12.08,*
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# UK: Joint Committee on Human Rights enquiry into policing and protest

## by Max Rowlands

**As the right to protest in the UK is steadily eroded, civil libertarians, trade unionists and journalists put their concerns to parliament**

Between June and December 2008, the UK Joint Committee on Human Rights looked into human rights issues arising from policing and protest. The Committee, comprised of twelve members appointed from both the House of Commons and the House of Lords, heard oral evidence first from human rights organisations, campaigning groups and trades union representatives, then from members of the police force representing the Association of Chief Police Officers (ACPO), the Metropolitan Police and the Police Federation, and finally from the government. This article outlines some of the key issues raised in these evidence sessions.

### Pre-emptive policing

Giving evidence in the same session, James Welch, Legal Director of Liberty, and Eric Metcalfe, Human Rights Policy Director of JUSTICE, both argued that the police should be reluctant to take pre-emptive action against demonstrators even if they suspect some intend to break the law. Metcalfe said that:

> *the mere risk that violence may occur in a protest is not, in our view, certainly, sufficient grounds to abridge the right to protest completely.*

Further:

> *we are concerned that there is a tendency towards prior restraint [by the police]…the proper approach should be if someone says something unlawful, for the action to follow subsequently, rather than to prevent the speech being made in the first place.*

Welch said that the majority of legal proceedings brought against police by demonstrators originate from ill-advised pre-emptive action. He cited, as examples, the cases of Lois Austin and Geoffrey Saxby who were detained, along with several thousand other people, in Oxford Circus for seven hours during the 2001 May Day demonstration in central London, and that of Jane Laporte, who was part of a group of anti-war protestors held on their coaches for two and a half hours to prevent them reaching an RAF base in Gloucestershire. Both are

> *clearly cases where the police anticipated trouble… they acted precipitately and wrongly in doing what they did.*

Concern was also expressed over the wide use of section 5 of the Public Order Act 1986 under which individuals can be arrested for causing "harassment alarm or distress." For example, in 2008 a 15-year-old was given a court summons for holding a sign which said that scientology is a cult, and in 2006 a free speech protestor was arrested for wearing a t-shirt bearing a cartoon of the prophet Muhammad. In both cases police intervention was based on the presumption that there might be a breach of public order.

In a later evidence session, Phil McLeish, a lawyer representing Climate Camp, voiced similar concerns over the heavy-handed policing of demonstrations. He said that police are increasingly preoccupied with quashing any sign of trouble before it materialises, and often over-police marches with officers including riot police - in the past they would not be deployed unless it was absolutely necessary in order to avoid provoking demonstrators. In 2008, peaceful protests at Climate Camp were met with three rows of riot police fully equipped with truncheons, shields and helmets:

> *It is either psychological, just trying to intimidate people, or it is simply that they have got the stuff, they have to pretend to use it, otherwise the budget is going to get cut [the cost of policing Climate Camp was £5.9 million, roughly £4,000 per person]…this kind of micro-management and total over-control of protests is a death of (sic) a thousand cuts.*

The committee conveyed these concerns to the Metropolitan Police Acting Assistant Commissioner Chris Allison, ACPO Public Order Lead Sue Sim and Police Federation member Neil Hickey in November 2008. The default police line was that if a possibility of illegal acts being committed exists, pre-emptive action is justified because:

> *if you know that a crime is about to take place and you can do something about it, then you should do it (Allison).*

The committee pointed out that they were not disputing the existence of circumstances in which the police would be fully justified in intervening (Welch, Metcalfe and others who gave evidence also acknowledged this). Allison was asked specifically whether preventative action taken through the employment of section 5 powers represented an overuse of the law. He maintained that it has been appropriately employed. In the case of the protestor arrested for wearing a t-shirt of the prophet Muhammad, he believed the arrest to be justified because the police waited until they received complaints before taking action. He also emphasised that individuals can seek redress through the courts if they feel they have been mistreated.

Allison also claimed that police are making determined efforts to reduce the amount of resources used at protest events and stressed that the manner in which they police demonstrations directly reflects the nature of intelligence information received. Hickey added that "risk assessment is a live document" and, as such, "if intelligence during the course of an operation suggested that there was likely to be violence we would expect preventative action to be available to officers and if that includes removing articles that are likely to cause danger or harm to people then we would totally support that action."

The committee queried whether the deployment of police in riot gear serves to raise tensions and create a "self-fulfilling prophesy" that increases the likelihood of conflict. They also cited police practice in Northern Ireland where, despite often facing a higher risk assessment, officers are always deployed in normal uniform in an attempt to de-escalate. Allison insisted that

riot police are never used when the risk assessment is low and that holding them in reserve, on occasions where their deployment is deemed necessary, would represent a waste of resources. Fundamentally, police seem to trust their intelligence unreservedly and to act pre-emptively upon it:

*If the intelligence is there that says people within this particular group are such that they are likely to attack us…our view is that we should not wait to get one or two officers injured as a result, but what we should do is right at the front put officers out in protective equipment.*

Giving evidence in December 2008, Vernon Coaker MP, Minister for Policing, Crime and Security, was more cautious. He said:

*the police certainly have to be aware of the impact of not only their style of dress but also the kit that they wear and the way they treat people*

and that:

*if you are not careful it [deploying police in riot gear] does become a self-fulfilling prophecy.*

It is therefore essential that those in command make well informed decisions regarding the appropriateness of police dress on a case by case basis. Coaker refuted suggestions that police can be hasty to use protective equipment because they feel they need to be seen making use of it.

The committee asked whether, in the case of Climate Camp, police should have combated the perceived minority of potential trouble makers with the more costly option of increased perimeter policing instead of inconveniencing everyone with stop and search procedures and the confiscation of tent pegs, umbrellas and other items deemed potentially dangerous. Coaker argued that budgetary factors do not, and never should, dictate the policing of demonstrations. He said he is willing to meet the organisers of Climate Camp to hear their concerns, revealed that the National Police Improvement Agency is conducting a "lessons learned" regarding the police's handling of the demonstration, and said he intends to meet with ACPO representatives to:

*get a proper assessment of what did take place there and, if necessary, we can look at the guidance that people put out to the various police forces across the country.*

Regarding section 5 of the Public Order Act, Coaker told the committee that he does not believe there to be an absolute right not to be offended; it is context dependent. Given this, it was asked whether he thought it proper that individuals who are easily offended can inhibit the speech and behaviour of others through the actions of the police (as in some of the cases detailed above). Coaker argued that section 5 powers cannot be used arbitrarily but remain heavily dependent on the intricacies of every given situation. Fundamentally, the decision over whether it is appropriate to act on complaints and make an arrest is left to the discretion of the police officer. He accepted that:

*the Crown Prosecution Service may then decide that it is silly, inappropriate and not something that they want to pursue.*

The committee pointed out that whether or not an individual is eventually prosecuted, they have still been arrested, fingerprinted and had a DNA sample taken. They warned against the police being able to interpret section 5 as widely as they like (for example it is unclear who exactly was offended by a protestor asking whether a police horse was gay). Coaker said:

*You do get these examples that are brought up which do sometimes make people wonder whether the power was used appropriately. I will take those examples back, talk to the police about them and see whether we can clarify and get some guidance out of it.*

### The role of the police as facilitators of protest

Welch and Metcalfe emphasised the positive obligation on the state to facilitate peaceful protest and free speech. Welch, in particular, criticised "bureaucratic obstacles" imposed by local authorities:

*I am thinking of things we have heard about at Liberty in the last few months, people being threatened with being charged for road closure orders; people being told that in order to protest at a particular location, they have to take out public liability insurance; I am aware of a group in Lancaster who have been told that if they played music on demonstrations, that would breach the Licensing Act. There seems to be a lot at present suggesting that some local authorities are throwing up other obstacles in the way of people protesting, and we would say that that is fundamentally wrong.*

Both argued that regulations restricting the right to protest should not be imposed unless proven to be absolutely necessary. In particular they warned against exceptional cases being used to dictate general policy: "hard cases make bad law" (Welch). Milan Rai, a peace activist and co-founder of the anti-war group *Justice Not Vengeance*, went further, affirming protest to be:

*an activity which ordinary people do and it is like sport or engagement in music and other entertainments, or a variety of things that people do which on occasion in certain forms causes a disruption or inconvenience to other people. So unless we are going to have licensing to go to a football match or to go to a major pop concert or things like that I do not understand the logic of requiring licensing…I do not see that it is such a separate category, it is something that people do, and in my view protest is not coming out of a human need for entertainment or sporting activity, it comes out of a human need to take responsibility for your society.*

The police representatives contended that restrictions on protests must be made on a case by case basis to ensure that a reasonable balance is struck between the right to protest, the rights of those being protested against, and the right of the public to go about their lawful business unimpeded. Allison claimed the imposition of restrictions on a demonstration to be rarely necessary, but said that if there is a risk of:

*severe disruption to the life of the community, serious criminal damage, serious disorder or intimidation… we can start to impose conditions that are proportionate.*

Further, it is vital to enter into dialogue with those organising the demonstration to ensure that this is done effectively. Sim said that most people organising a protest attend a police station, fill out an application form and negotiate the terms of their demonstration (time and place etc.) so that police conditions do not need to be imposed. She argued that problems tend to arise when demonstrators refuse to do this and "would like there to be compulsory dialogue". The committee suggested that some people are reluctant to deal with the police because:

*they feel sometimes that it is not a meeting of minds on an equal level and they feel that somehow in the back pocket the police have these powers and if they do not do what the police want then ultimately you will make them do it anyway (Chairman Andrew Dismore) [conditions can be changed without notice on the day of the protest by any senior police officer].*

Allison replied:

*the police service does need to have that ability to have conditions and to put them on protests. Why? Otherwise we end up with what I would describe as the situation of anarchy on the street where people can go and do exactly what they want.*

Coaker was similarly keen to stress the importance of striking a balance between the right to protest and the rights of others and the effectiveness of entering into dialogue. However, "I know one of the suggestions is to make it compulsory but I would not make the dialogue compulsory." He said that the police currently do a good job of facilitating protest and that "sometimes it does go wrong but I think the majority of people respect them" and contended that: "I do not think the majority of protestors do have a negative view of the police". He said that to further improve relationships and increase dialogue ACPO will be inviting

protestors to come to their conferences and police training.

## SOCPA

Welch and McLeish argued that sections 128-131 of the Serious Organised Crime and Police Act 2005 (SOCPA), which enable police to restrict access to "designated sites" deemed sensitive to national security, are prime examples of unnecessary restrictions to the right to protest. The same is true of sections 132-138 which place restrictions on a large designated area outside parliament and requires those wishing to hold a demonstration there to give the Metropolitan Police Commissioner six days advance notice (or 24 hours in special circumstances). Welch says that many organisers used to do this as a matter of course, but now balk at the idea of being required to do so and refuse on principle. Parliament Square has become an even greater focus point for demonstration and as a result, paradoxically, the need for regulation was created by the law itself.

This is of particular alarm because those who choose to demonstrate outside Parliament without correctly notifying the police can be arrested and ultimately jailed for up to 51 weeks and fined up to £5000: Maya Evans was prosecuted for reading out the names of British soldiers killed in Iraq. Similarly, those who fail to provide adequate notice of a moving demonstration can also face criminal sanction under section 11 of the Public Order Act. Welch highlights the "dissuasive" and "chilling effect" this has on anyone who might contemplate organising a demonstration.

Allison argued that SOCPA, and the limitations it has imposed on demonstrating in Parliament Square, have been misconstrued as restrictions to free speech and the right to protest when in fact the police are duty bound to allow any protest - albeit with restrictions. If a protestor outside parliament is unaware of the provisions of section 132 they are given a warning, an information sheet, and asked to stop. But those campaigners who ignore or persistently challenge the law through direct action (which Allison sees as "romanticised… direct action to me is people acting unlawfully") such as Mark Thomas, who imposed a "significant administrative burden" by making around 2,500 applications to protest outside parliament, would face prosecution.

> *Our view in those circumstances is the only place that it is right to take those individuals is before a court and the court make the decision; otherwise it becomes very difficult for us as a police service about what is acceptable unlawful activity and what is unacceptable.*

No details of the process by which police determine whether a protestor deserves to be warned or arrested were given, and committee members expressed concern over the inconsistent enforcement of section 132 to Vernon Coaker. They highlighted a case before Christmas where a group of Conservative Party campaigners, dressed as Father Christmas, wearing Gordon Brown masks and holding a banner outside Downing Street, were not arrested or even asked to desist because police decided their actions qualified as a publicity stunt, not a protest. The committee suggested that when individuals are being arrested for reading out a list of war dead – which is better classified as a publicity stunt than the case above – this represents a lack of judgement and poorly exercised discretion. They emphasised the fact that if some of the Conservative campaigners were politicians:

> *they should know the law absolutely clearly because we all know what the SOCPA rules are, I would have thought, in this building. They do not bother to apply, despite what the law says, and yet they are treated entirely differently (Chairman Andrew Dismore).*

Coaker acknowledged the difficulty of distinguishing between a protest and a publicity stunt, and confirmed government plans to repeal sections 132 to 138 of SOCPA in the current parliamentary session through the Constitutional Renewal Bill. The committee pointed out that this Bill is likely to be carried into the next year and run into the General Election and asked why this relatively minor reform could not be part of the upcoming Law Reform Bill or Policing and Crime Bill. Coaker said he would need to seek clarification, but did confirm that in the event of the repeal of these sections, the Public Order Act would be amended to include provisions for ensuring access to parliament.

## The Terrorism Act

Metcalfe and Welch expressed concern that the use of police stop and search powers on protestors, under section 44 of the Terrorism Act 2000, has had an intimidatory effect. Welch says:

> *whatever the police's motivation, the powers are being used in such a way as is likely to discourage people from participating in lawful, peaceful protest. We hear about people who say that they went on a protest, were stopped by the police, their bag was gone through, their diary was gone through, people find that very intrusive*

Metcalfe draws attention to the fact that in recent years security concerns have consistently overridden rights to freedom of assembly and that:

> *the Metropolitan police justified their blanket authorisations and rolling authorisations of stop and search powers within Greater Metropolitan London on the basis that pretty much any large scale gathering is a potential source of terrorist activity, and therefore, that justifies them using stop and search without reasonable suspicion.*

The Terrorism Act is not the only piece of legislation being misused in the policing of protests. Anti-social behaviour legislation can be used to disperse gatherings of two or more people and was employed in 2004 in Birmingham to end protests directed at a controversial Sikh play. Welch is also concerned that the Protection from Harassment Act 1997 has been used by large corporations to stifle protests:

> *Companies have gone out and got ex parte injunctions, so injunctions without notice [are] being given to the respective respondents, granted in a way that binds not just the named defendants but loads of others besides*

Asked if police were using counter-terrorism powers beyond their remit, Allison maintained that while " there are occasions when we have to accept that there may be those who wish to use the cover of lawful protest to undertake other activity and some of that may be counter terrorism", the powers are never deliberately used to prevent lawful protest. Despite this, there has been "significant learning out of a number of cases and this is the importance of us [the Metropolitan Police] being challenged through the courts." He said that the main lesson learned is that officers must be better briefed to ensure:

> *that when they do use the powers they use the right powers and they explain to all concerned, including recording it, why they used those particular powers.*

Police should know when it is appropriate to use other powers of stop and search such as those afforded under Section 1 of the Police and Criminal Evidence Act 1984 and section 60 of the Criminal Justice and Public Order Act 1994.

Coaker endorsed this view, emphasising that the use of anti-terrorism legislation must be frequently reviewed to ensure that it is appropriately utilised. He gave the example of a review of section 44 ordered by the Prime Minister towards the end of 2007 that resulted in changed guidance being published in November 2008. He contended that counter-terrorism powers should not be used to deal with public order or protest, but their use would be justified if a protest was being held at a sensitive location, such as a power station or an airport, and there was reliable intelligence indicating that individuals may attempt to infiltrate it in order to carry out a terrorist attack.

Given that 82-year-old Labour Party member Walter Wolfgang was ejected from the 2005 party conference for

shouting "nonsense" at then Foreign Secretary Jack Straw, and held under section 44 of the Terrorism Act when he tried to re-enter, the committee posed the question:

*How can we expect the police not to follow an example led to them by their elders and betters? (Earl of Onslow)*

### Police and the media

In his evidence to the committee, Jeremy Dear, General Secretary of the National Union of Journalists (NUJ), highlighted increasing police obstructions to media members' right to cover and publicise demonstrations (See *Statewatch* Vol. 18 no. 3).

*We have an ever-growing dossier of complaints from journalists and photographers, ranging from physical attacks to intimidating surveillance, confiscation of equipment or data cards, denial of access, restrictions placed on photography in public places. If dissent is criminalised and even covering dissent is criminalised, just because a demonstration may be unlawful it does not mean that it is unlawful for a journalist to cover it*

Alarmingly, journalists and photographers are being targeted by the Metropolitan Police Forward Intelligence Team (FIT). Dear says that despite being told that FIT does not routinely take pictures of "legitimate journalists" and only operates at protest sites, the NUJ has evidence of journalists being surveilled several miles away from the demonstration they were covering. The impact of this kind of police intimidation is to discourage the media from covering demonstrations altogether with alarming implications.

*What we are seeing is a group of journalists who regularly cover protests being stopped and searched, way away from the protest, being photographed, having information recorded about what they are wearing, where they are going, who they are working for and so on, and it is creating an intimidatory atmosphere that means people are less likely to go out and cover protests. If we are all saying that publicity is one of the reasons for protest, actually what the police are doing here is undermining that freedom of the media and the ability of protestors to be able to get their message across via the media.*

Every police force is supposed to adhere to media guidelines, agreed in 2006, and Dear claims that examples of good practice come when the police have engaged in dialogue with the media before an event and pre-briefed officers regarding the correct implementation of the guidelines. But this is such a rare occurrence that:

*these guidelines that we all agreed to – and we sat down for ages with the police to negotiate them – are useless because the police on the street do not know anything about them.*

This has resulted in a number of farcical arrests, both of members of the public and the media, such as for photographing the London Eye. Dear argues that improved police training is required to ensure that both the guidelines and media worker rights, enshrined in law, are correctly enforced.

Giving evidence to the committee, Allison offered assurances that officers are briefed on the rights of journalists and refuted any suggestion that they seek to impede upon their right to cover demonstrations. He said that in the past journalists had attended the training of police cadre officers and that this practice would be resumed to ensure that there is dialogue between both sides:

*We fully accept that we are accountable and we can be photographed and they have a right to operate and we try to ensure that that message gets to all our officers all of the time, and whenever issues or when incidents where we have not handled it properly are brought to our attention, then we take action against them.*

Coaker acknowledged the "extremely serious" nature of the NUJ's complaints stressing that:

*we must not under any circumstances unwittingly put ourselves in a situation where photographers, journalists or others may feel that they do not have the right and do not believe that they can pursue their professional job and the public interest.*

He said that he had recently met with Jeremy Dear to hear his concerns and as a consequence some of the police guidance on dealing with the media has been changed. He also said that changes have been made to Forward Intelligence Teams to reassure journalists of their right to cover demonstrations, but didn't go into detail. Coaker quoted from a recent letter he had written to Dear:

*We have addressed this directly in the revised guidance making it clear that the Terrorism Act 2000 does not prohibit people from taking photographs or digital images. The guidance also makes it clear that memory cards may be seized as part of a search but officers do not have a legal power to delete images or destroy film.*

He said that he had offered Dear the opportunity to meet with ACPO and to accompany police on future demonstrations to advise them on potential procedural changes.

*Links to written memoranda and transcripts of evidence sessions: http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/policing_and_protest.cfm*

# New material - reviews and sources

### Civil Liberties

**Die Rote Hilfe.** *Vol 34/2008, EUR 2, pp 82*. This quarterly magazine by the left-wing legal support association Rote Hilfe e.V. examines the new law regulating the Federal Crime Police Force and civil liberties infringements through data collection law and practice (health and tax systems, police databases, etc.) as well as providing updates on running trials against left-wing activists, notably those criminalised in the run-up and aftermath of the G8 summit protests. Available from redaktion@rote-hilfe.de, ++49 174 477 9610.

**Besieged in Britain**, Victoria Brittain. *Race and Class* Vol. 50 no. 3 (January-March) 2009, pp. 1-29. This though-provoking article examines how the war on terror is exacerbating Islamaphobia: "the rounding up, imprisonment and indefinite house arrest of a number of Muslim men resident in the UK [is] a situation analogous to Guantanamo. Held for years without charge, under restricted regimes of twelve to twenty-four hour curfews, with virtually no access to the wider world and kept in ignorance of the alleged evidence against them, the impact on them and their families has been devastating. Many had come to Britain as refugees seeking a safe haven; some have been driven to madness, some hhave attempted suicide, some have left their families and returned voluntarily to regimes where they may face imprisonment and torture. The mental and physical health impacts on the men and their families, of an inhumanity that beggars belief, masked under the bureaucracy of "control orders", SIAC deportation bail and tortuous legal process, is here unveiled." Institute of Race Relations, Tel. +44 (0)20 7837 0041.

**Senate Armed Forces Committee Inquiry into the Treatment of Detainees in US Custody.** *Senate Armed Forces Committee* December 2008. SAFC report holds the former US defence secretary, Donald Rumsfeld, directly responsible for the torture of detainees at Abu Ghraib, Iraq and in Afghanistan and Guantanamo Bay. Conclusion 19 reads: "The abuse of detainees at Abu Ghraib in late 2003 was not simply the result of a few soldiers acting on their own. Interrogation techniques such as stripping detainees of their clothes, placing them in stress positions, and using military working dogs to intimidate them appeared in Iraq only after they had been approved for use in Afghanistan and at GTMO. Secretary of Defense Donald Rumsfeld's 2 December 2, 2002 authorisation of aggressive interrogation techniques

and subsequent interrogation policies and plans approved by senior military and civilian officials conveyed the message that physical pressures and degradation were appropriate treatment for detainees in U.S. military custody. What followed was an erosion in standards dictating that detainees be treated humanely." :*http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf*

**To Tell You the Truth: the ethical journalism initiative**, Aidan White. *International Federation of Journalists*, 2008, pp. 184 (ISBN 978-90-9023846-3). This book introduces the "Ethical Journalism Initiative" (EJI), a global campaign launched by journalists' unions and associations from around the world. It provides background to the EJI and explores the traditions that underpin current journalism and media and "encourages journalist, media professionals, policy-makers and civil society to find new ways of embedding the first principles of journalism in the culture of modern media". These principles are: 1. Truth Telling, 2. Independent and Fair stories and 3. Humanity and Solidarity. It is available from: IFJ, International Press Centre, Residence Palace, Bloc C, Rue de la Loi 155, B-1040 Brussels, Belgium; email: ifj@ifj.org

Surveillance: Citizens and the state, Vol. I (Report) and Vol. 2 (Evidence) Select Committee on the Constitution. House of Lords (Stationery Office, London) February 2009. These reports were stimulated by the Information Commissioner's 2004 observation that the UK is "sleepwalking into a surveillance society": Commissioner Richard Thomas expressed concern about a raft of new government proposals, including the establishment of a national identity card scheme and the creation of a database containing the name and address of every child under the age of 18. The report charts the rise in surveillance and data collection by the private sector and the state, and warns that the relationship between the state and its citizens, the cornerstone of democracy, is being undermined. The report's opening paragraph says: "Surveillance is an inescapable part of life in the UK. Every time we make a telephone call, send an email, browse the internet, or even walk down our local high street, our actions may be monitored and recorded. To respond to crime, combat the threat of terrorism, and improve administrative efficiency, successive UK governments have gradually constructed one of the most extensive and technologically advanced surveillance systems in the world. At the same time, similar developments in the private sector have contributed to a profound change in the character of life in this country. The development of electronic surveillance and the collection and processing of personal information have become pervasive, routine, and almost taken for granted. Many of these surveillance practices are unknown to most people, and their potential consequences are not fully appreciated." The Committee makes 44 recommendations to protect individuals from invasions of their privacy related to surveillance and data collection. Available as a free download: http://www.publications.parliament.uk/pa/ld200809/ldselect/ldconst/18/1802.htm

**Homophobie/ZAG.** *Anti-Rassistische Initiative e.V., ZAG 53/2008, EUR 5, pp 11-24*. The focus of this issue of the bi-annual anti-racist magazine is homophobia. Articles examine racism in the prejudicial dogma - fed by 'integration' politics - that migrants, in particular Muslims, are inherently homophobic. It puts homophobia in former Ottoman regions into a historical (read: colonial) context and current homophobic attacks committed by second generation Turkish Germans into the current politic context. Also examined: homophobia against Lesbians in Poland, discrimination and homophobia in Reggae and Hip-Hop and new publications on homosexual Nazis, and homosexuality, migration and Islam. Available from: redaktion@zag-berlin.de, 0049 30 7857281.

## Immigration and asylum

**Migration Without Borders, Essays on the Free Movement of People.** *UNESCO, 2007, EUR 29, pp 304*. This is an in-depth exploration of the scenario of a world where people could move freely from one country to another and settle wherever they wished. Given the current context of strict border controls and a heightened social and political awareness of the issue, a world without borders may appear somewhat utopian. But today's Utopia could become tomorrow's reality and this publication attempts to analyse the ethical and economic challenges as well as the social consequences of totally free movement all over the world. With contributions by Aderanti Adepoju, Rafael Alarcón, Graziano Battistella, Alejandro I. Canales, Jonathan Crush, Han Entzinger, Bimal Ghosh, Nigel Harris, Jan Kunz, Mari Leinonen, Alicia Maguid, Israel Montiel Armas, Sally Peberdy, Mehmet Ugur and Catherine Wihtol de Wenden, this reference work is a mine of new ideas which fuel the debate and contribute to finding new angles for research into fair and balanced migration policies that respect human rights. Order from: http://publishing.unesco.org/

**Integration/Hinterland.** *Bayerischer Flüchtlingsrat, Hinterland 08/2008, EUR 4,50, pp 66.* This excellent resource for analysis and debate on migration, refugee politics, racism and related issues is published quarterly by the Bavarian Refugee Council. This issues focuses on integration politics in Germany. Articles explore (the lack of) definition and consequences thereof, historical origins of the concept of integration, cultural relativism and integration courses as colonial practice. Non-theme articles examine intersections of art and politics and refugee campaign strategies, amongst others. Available from redaktion@hinterland-magazin.de

**The Impact of the EU Qualification Directive on International Protection**. *European Council on Refugees and Exiles*, 2008, pp.258. This study examines the transposition of certain provisions of the Qualification Directive (Council Directive 2004/83/EC, deadline for transposition expired on October 10, 2006), the differences in practice brought about by transposition, and some of the substantive social rights EU Member States extend to recipients of international protection under the directive. This project is motivated by concerns about the directive's compatibility with international human rights standards. ECRE and UNHCR have taken the position that some of the directive's provisions do not reflect the 1951 Refugee Convention, and have urged states to adopt higher standards as provided for in Article 3. The study reveals positive developments that the Directive has brought about as well as a number of disturbing trends concerning intrinsic flaws in the Directive and a failure by member states to properly implement it: *www.ecre.org/resources/policy_papers/1234*

**Migration-related detention: a global concern**. *Amnesty International*, December 2008. This publication considers the practice of migration-related detention, a common European practice that is "often incompatible with international human rights standards. It often violates the rights of detainees and is distressing and harmful to those subjected to it." The report notes that: "Migrants, asylum seekers and refugees are regularly deprived of their liberty purely for administrative convenience." Available as a free download: http://www.amnesty.org/en/library/asset/POL33/004/2008/en/c4b6797b-c873-11dd-b5e7-cf1e30795cb4/pol330042008eng.pdf

**Closing the Door**, Don Flynn. *Chartist* No. 235 (November/ December) 2008, pp.16-17. This article examines how the "populistic politics" expounded by new Minister of State for Borders and Immigration at the Home Office, Phil Woolas MP, has led us "towards further nationalistic incitements against migration". Flynn observes that Woolas "has come down on the side of the anti-immigrant populists", by making headline-catching statements to further his career at the expense of the most vulnerable. The article concludes that if Woolas favours "number reductions aimed at appeasing popular sentiment we are in grave danger of moving into very dangerous territory indeed." *Chartist: www.chartist.org.uk*

**Support for Migrants Update**, Sue Willman. *Legal Action* December 2008, pp. 36-39. This is the latest update on welfare provision for asylum seekers and other migrants in the fields of policy and legislation and case-law.

**Immigration Law Update**, Alan Caskie. *SCOLAG Legal Journal* Issue 373 (November) 2008, pp 286-291. A review of significant court cases from Scotland and England, covering decisions from April to June 2008.

**Recent Developments in Immigration Law - part 1 and 2**, Jawaid Luqmani. *Legal Action* December 2008 and January 2009, pp. 40-45

and 12-18. This article reports on recent developments in politics and legislation relating to immigration. It examines the UK Borders Act 2007, changes in detention policy, identity cards, AIT procedure and has extensive coverage of the *Statement in changes in Immigration Rules* which took effect on 22 July**.**

**Returns at any cost: Spain's push to repatriate unaccompanied children in the absence of safeguards**. *Human Rights Watch*, 2008, pp.26. This report focuses on the lack of legal representation during repatriation procedures for children which have a fundamental impact on their lives and may put their well-being and the exercise of their fundamental rights at risk. Adult migrants, on the contrary, receive free legal assistance. In order to improve the situation, Spain has recently concluded a bilateral agreement with Morocco and Senegal to ensure that children are not repatriated to situations of risk. Spain has also financed reception centres in Morocco. However, according to the report, Spain has repeatedly sent unaccompanied children back to situations of risk in their country of origin. *Human Rights Watch* urges Spain to improve its safeguards for unaccompanied children who face repatriations: http://hrw.org/reports/2008/spain1008/spain1008web.pdf

## Law

**The Impact of the EU Qualification Directive on International Protection.** *European Council on Refugees and Exiles, 2008, pp258*. This study examines the transposition of certain provisions of the Qualification Directive (Council Directive 2004/83/EC, deadline for transposition expired on October 10, 2006), the differences in practice brought about by transposition, and some of the substantive social rights EU Member States extend to recipients of international protection under the directive. This project is motivated by concerns about the directive's compatibility with international human rights standards. ECRE and UNHCR have taken the position that some of the directive's provisions do not reflect the 1951 Refugee Convention, and have urged states to adopt higher standards as provided for in article 3. The study reveals both positive developments that the Directive has brought about, as well as a number of disturbing trends concerning intrinsic flaws in the Directive and a failure by member states to properly implement it. Available from www.ecre.org/resources/policy_papers/1234

**Censors Censured**, Tigran Ter-Yesayan and Kerimn Yildez. *Socialist Lawyer* no. 50 (September) 2008, pp.27-29. Article on the European Court of European Human Rights ruling, in *Meltex Ltd and Mesrop Movsesyan v Armenia*, which addressed Armenia's infringement of its citizens' right to freedom of expression since its accession to the Council of Europe in 2001.

**Human Rights Law Update**, Ken Dale-Risk. *SCOLAG Legal Journal* Issue 374 (December) 2008, pp.304-305. This piece reviews seven recent cases that fall under Article 6 of the European Convention on Human Rights, the right to a fair trial.

**Is the Criminal Cases Review Commission losing its appeal?** Jan Robin. *Legal Action* October 2008, pp.7-8. This article examines the role of the CCRC, the body set up by the government to investigate possible miscarriages of justice in England, Wales and Northern Ireland, and examines the likely impact of cuts to its budget and fees paid to criminal defence lawyers for miscarriage of justice work.

**Criminal Justice Update**, Kenneth B. Scott. *SCOLAG Legal Journal* Issue 373 (November) 2008, pp.284-285. Digest of issues and developments relevant to criminal justice in Scotland. It considers the following areas: recorded crime statistics, community policing, police powers (consultation) and the Police Complaints Commissioner for Scotland.

**Assessing Damage, Urgent Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism ands Human Rights.** *International Commission of Jurists* 2009, pp. 213. This three-year study by a panel of eminent lawyers and jurists from the Geneva-based ICJ reaches the indisputable conclusion that anti-terrorism measures worldwide have seriously undermined international human rights law. It identifies the United States and the UK, as being particularly culpable and argues that they have "actively undermined" international law through their actions. It recognises that totalitarian regimes with poor human rights records around the world have used the counter-terrorism polices and practices of the US and UK to justify their abusive policies. The panel maintains that the legal systems put in place at the end of the Second World War are adequate to handle current terrorist threats. Civilian legal systems should be used, not ad hoc tribunals, military courts and control orders that are unnecessary and unworkable because of their lack of safeguards. The ICJ recommends, among other things, an urgent review of counter-terrorism laws to prevent serious and permanent damage to fundamental human rights practices. Available: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/16_02_09_ejp_report.pdf

**Information Law Update**, Dr David McArdle. *SCOLAG Legal Journal* Issue 374 (December) 2008, pp.309-310**.** This article reviews the law relating to data protection, freedom of information and the media. It considers data protection (medical records), intellectual property and defamation.

## Military

**War Crimes: time for justice?** Phil Shiner and Bill Bowring. *Socialist Lawyer* no. 50 (September) 2008, pp. 24-26. This article covers talks given by Shiner (Public Interest Lawyers) and Bowring (International Secretary of the Haldane Society) as part of the Haldane Society's series of human rights lectures. Shiner focuses on accountability for war crimes, particularly the torture committed by the British Army in southeast Iraq. Bowring discusses attempts to bring Israeli military war criminals to justice using universal jurisdiction, his efforts to prosecute the former US Secretary of Defense, Donald Rumsfeld, and his work on Chechen cases. *Socialist Lawyer* is available from The Haldane Society, PO Box 57055, London EC1P 1AF.

**Any Evidence of the harmful Consequences of DU is to be silenced**, Doug Rokke. *Current Concerns* No 11/12, 2008, pp3-4. The piece is an interview with Doug Rokke the former director of the US Army's Depleted Uranium Project, in which he discusses the situation of US veterans from Operation Desert Storm in 1991.

**Bases of Empire: the global spread of US military and intelligence bases**, Cora Fabros. *Peace Researcher* no. 37 (November) 2008, pp. 9-19. This article looks at US military deployment overseas, "the most extensive foreign basing structure in the world." It has a particular focus on the Asia-Pacific region. Available from Anti-Bases Campaign, Christchurch, New Zealand: www.coverage.org.nz/abc

## Policing

**Demonstrating Calm**, Andrew Staniforth. *Police Review* 23.1.09, pp. 22-23. This is the first part in a series on "policing extremism" (i.e. large demonstrations) and discusses how officers can "keep order at future events". It drift is summarised in the first paragraph: "Police officers are responsible for managing the high number of public protests in the UK. While they may not seriously threaten national security, without intervention, protests could cause harm to communities and the economic wellbeing of the UK".

**EUROPOL: coordinating the fight against serious and organised crime. Report with evidence**. *House of Lords* (The Stationery Office, London, UK) November 2008, pp. 207. This report says that UK police forces do not work well with Europol. It also points to a serious lack of coordination with the Serious Organised Crime Agency that has led to a "truly regrettable state of affairs." Available as a free download at: http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/183/183.pdf

**Police Misconduct and the Law – Parts 1 and 2,** Stephen Cragg, Tony Murphy and Heather Williams. *Legal Action* October 2008, pp.13-17, November 2008, pp44-48. Part 1 of this review of developments in police misconduct law covers case-law in the following areas: failure to protect victims of crime, assault, false imprisonment, misfeasance, trespass, discrimination, privacy and defamation. Part 2 considers case-law and inquests involving deaths in, or shortly after, custody.

**Police Pistols: doing the rounds**, Mike McBride, and **On Target in Germany**, Albrecht Mueller, *Police Product Review*

October/November 2008, pp. 28-32. This article considers the wide variety of handguns used by police forces worldwide and "explores this lucrative market which is constantly evolving and encompasses a wide range of technologies." The second piece "reviews how evolving technology and tactics" have shaped police weapon use in Germany, "the largest net procurer of handguns for police in the European Union".

**Police Station Law and Practice Update**, Ed Cape. *Legal Action* October 2008, pp.18-23. The update covers developments in law and policy affecting police station practice in the areas of legal advice and Legal Aid, policy and legislation (simple cautions, stop and search and vulnerable suspects) and case law.

**New Defence**, Max Blain. *Police Review* 23.1.09, pp. 22-23. Discussion of the International Police Defensive Tactics Association which was founded by a former Swedish police officer, Slavo Gozdzik, in 1996. Its system, which is being taught to four UK police forces, "is not a martial art and does not involve set moves or styles. Instead, officers use repeated hand slaps and occasional knee kicks to drive the offender back and put them off balance. Once the assailant is momentarily dazed or on the ground, officers are taught to revert to more traditional methods of subduing offenders, such as CS spray, the baton, handcuffs, or to call for help".

**`The demands of a modern police service'** Ed Cape. *Legal Action* December 2008, pp.10-11. This article discusses the latest government proposals on the review of the Police and Criminal Evidence Act (PACE) 1984.

## Prisons

**Catalogue of Failure**, Deborah Coles. *Socialist Lawyer* no. 50 (September) 2008, pp. 22-23. This article examines the "incontrovertible evidence of serious human rights abuses of women prisoners and [the] abject failures in the criminal justice system" reflected in the 118 deaths in women's prisons since 1990, (89 of which were self-inflicted). It gives an insight into an important new book by Coles and Marissa Sandler, "Dying on the Inside" (ISBN 9 780 9468 5822 4) that was launched at the House of Commons on 2 April 2008 and which can be purchased from the INQUEST website: *www.inquest.org.uk*

**A Radical Vision for Scotland's Prisons, by Looking to the Past?**, Douglas Thompson. *SCOLAG Legal Journal* Issue 375, pp.9-11. This piece appraises recent proposals for major reform of the Scottish prison system made by Professor Alec Spencer, former Director of Rehabilitation and Care in the Scottish Prison Service. He "proposes that the Scottish prison service be split up, with local councils taking responsibility for inmates serving short sentences, and that the national prison service take over responsibility only for the 3,000 or so most dangerous offenders. He proposes that both remand prisoners, many of whom do not ultimately receive a custodial sentence, and short-term prisoners requiring lesser levels of supervision, should fall under the responsibilities of the newly formed Community Justice Authorities, established in April 2007"

**Pressure to Deport Foreign National Prisoners**, Frances Webber. *IRR website* 4.9.08. This piece looks at the automatic deportation provisions of the 2007 UK Borders Act which came into force on 1 August 2008 as part of the government's drive to deport any non-British and non-EEA citizen who has been sentenced to a prison term of 12 months or more, no matter how long settled in the UK and no matter how valuable their work is to their local community. Available as a free download: *http://www.irr.org.uk/2008/september/ha000007.html*

**Too Little Too Late: an independent review of unmet mental health need in prison**, Kimmett Edgar and Dora Rickford. *Prison Reform Trust* February 2009, pp. 70. This report reveals that many people who should have been diverted into mental health or social care from police stations or courts are entering prisons, which are ill-equipped to meet their needs and then discharged back into the community without any support. It draws on evidence provided by the Independent Monitoring Boards of 57 prisons. Available as a free download: http://www.prisonreformtrust.org.uk/temp/TOOspLITTLEspFINALspVERSIONlo.pdf

**Will a death in custody always be subject to independent investigation?** *Forum for Preventing Deaths in Custody*, 19.1.09, pp. 23. This report publishes research examining whether the systems for investigating deaths in custody comply with the UK's human rights obligations. It finds that the regime may not fully comply with Article 2 of the European Convention on Human Rights and expresses concerns that some deaths involving psychiatric patients and children who die in custody may not always be subject to independent scrutiny. Available: *http://www.preventingcustodydeaths.org.uk/article_2-compliant_investigations_paper_final.pdf*

**What Price Imprisonment?** Lord Ramsbotham. *Legal Action* February 2009, pp. 7-10. This is an abridged version of a talk given by Ramsbotham, who was HM Inspector of Prisons between 1995-2001, at the 2008 LAG annual lecture in November. It considers the failure of the prison system to cut rates of re-offending pointing out that while security has "its proper place" it "should not be considered the number one priority as opposed to doing things with and for prisoners".

## Racism and Fascism

**Struggles for Black Community**, Colin Prescod. *Institute of Race Relations* 2008. This DVD is made up of four seminal films set in different locations of the UK – Cardiff, Southall, Ladbroke Grove and Leicester – each of which portrays a particular black community in historical struggle. "Tiger Bay is my Home" shows that in nineteenth century Cardiff, as in other ports, black communities began with colonial seamen. The film documents the official and everyday physical harassment faced by the black community which culminated in the race riots in 1919 through to the Butetown community in the 1930s. The second film "A Town under Siege" documents how Southall mobilised to resist organised racist attacks between 1976 and 1981, starting with the community organisations of the 1950s created to combat workplace racism. Extracts from "You Were Black You Were Out" describe the grassroots resistance to white racist mob attacks in 1958 in Ladbroke Grove, and the emergence of a number of Black Power organisations. The final film focuses on the Imperial Typewrites industrial dispute in Leicester, where black workers faced opposition not only from the bosses but also from some trades unions also. The DVD is available from the Institute of Race Relations, 2-6 Leeke Street, London for £13.

**Growing Terror**, Det. Sgt Andrew Stainforth. *Police Review* 13.1.09, pp. 28-29. This is a rare article that deals with right-wing terrorism in the UK, based on January's arrest of Nazi activist and bomb-maker, Nathan Luke Worrell.

**Putin's worst Nightmare**, Luke Harding. *Observer Magazine* 8.2.09, pp. 32-40. Overview of Russia's far-right which examines some of the 350 murders for which it is responsible since 2004.

**The BNP Insecurity Team**, Simon Cressy. *Searchlight* No. 400 (October) 2008, pp. 10-11. This article takes a look at Nick Griffin's "private army", the BNP's security team.

**Discrimination claims against the police: procedure and remedies,** Heather Williams**.** *Legal Action* December 2008, pp. 46-49. This is the second part of two articles on discrimination claims against the police (see *Statewatch* Vol. 18 no. 3) and it focuses on the remedies available and the procedural issues that arise.

**Women and the Spanish Civil War**. *Searchlight Extra*, October 2008, pp12. This supplement pays tribute to the women who defended the Republic, fighting against Franco's Spanish fascism, tyranny and war. It has an extended essay on this, a piece on the role of women in the British anti-fascist movement today and extracts from a forthcoming book of eyewitness accounts and poems from the front line of the Spanish civil war. It also has a piece on fascist women and Franco's "medieval attitude" towards them.

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