

# statewatch

monitoring the state and civil liberties in Europe

vol 19 no 2 April-June 2009



European Parliament:

Abolish 1st (and 2nd) reading secret deals - let's have open democratic debate "warts and all"

by Tony Bunyan

**The European Parliament starts its new term with major questions hanging over the way it is doing its job. In the last parliament over 80% of new measures were agreed secret "trilogue" meetings with the Council of the European Union (the 27 governments) - raising fundamental issues about transparency and openness.**

Since 2005 the European Parliament (hereafter referred to as the "parliament") acquired powers of codecision (both have to agree on the final text) with the Council of the European Union (the 27 governments) on most immigration and asylum measures. A *Statewatch* analysis in 2006, "Secret trilogues and the democratic deficit" (*Statewatch* vol 16 no 5/6), looked at "1st reading" deals between the parliament and the Council (plus European Commission) on measures before the Civil Liberties Committee (LIBE).[1] Then all eight immigration and asylum measures had been negotiated and agreed in secret trilogue meetings.

With the end of the 2004-2009 parliamentary term it is now possible to assess what happened over the whole period and how the parliament reacted to criticisms of 1st reading "deals" reached in secret – and to see what changes are planned to open up these closed meetings.

Moreover, if the parliament gets the same co-decision powers over police and judicial measures under the Lisbon Treaty will the same process happen with decision-making removed from public scrutiny?

## Codecision and legitimacy

Prior to the Amsterdam Treaty (which came into effect in 1999) codecision measures could only be concluded at second reading or after the full conciliation procedure - under Amsterdam it became possible to conclude at first reading.

"Trilogues" are intended for an agreement to be reached before the Council adopts its "Common Position" or the parliament adopts its formal opinion. Fast-track trilogues were originally intended, or rather legitimated, as being for non-controversial or highly technical measures – a practice that was soon to extend to highly controversial measures and can now be used for any co-decision measure on the grounds of "efficient"

lawmaking. The aim of these secret informal trilogues is to bypass the formal machinery in place on codecision measures.

It is very difficult for the people of the EU to follow and understand what is being done in their name. The "power brokers" from the two big parties can exercise hidden and often decisive influences on the "compromise" text - and the smaller party groups are marginalised. As Rasmussen and Shackleton note the power of "a small number of influential negotiators" may lead to the parliament losing control of the process.[2]

The parliament committees and plenary sessions (where all party groups and MEPs are represented) are not allowed to change a "dot or comma" of the "compromise" position agreed in trilogue meetings. Thus the open parliamentary meetings do not have a meaningful debate. The parliament negotiators are tied in a "deal" to deliver the votes to push through the "deal" agreed in secret negotiations.

Measures are agreed by the parliament through a number of different codecision procedures. First, there are 1st reading agreements when a deal is reached on a text between the Council and the EP's rapporteur(s) through secret trilogue meetings which then have to be voted through by committee and the plenary session without amendment. These deals are concluded *before* the Council agrees its "Common position" – in effect, when formally presented to parliament the "Positions" of the Council and the parliament are the same.

A 1st reading vote requires a majority of MEPs present to vote in favour. The next stage is a 2nd reading vote in plenary session where an *absolute majority of the total number* of MEPs have to vote in favour (an unusual formula which puts pressure on getting measures through on first reading). As we shall see there are now an increasing number of occasions when what are called "early 2nd reading" deals are agreed between the Council

**Shock and anger at the policing tactics used at the G20 Summit** see page 5

**EU's transformation of Mali into a migration control laboratory** see page 10

Statewatch, PO Box 1516, London N16 0EW, UK

Tel: (00 44) 020 8802 1882 Fax: (00 44) 020 8880 1727 E-mail: [office@statewatch.org](mailto:office@statewatch.org) Website: <http://www.statewatch.org>

© Statewatch ISSN 0961-7280.

and the parliament. This can be followed by a 3rd reading and if this fails a Conciliation Committee is set up with a defined membership and timetable.

### **Codecision: immigration and asylum measures**

Between 1999-2004 the parliament was only “consulted” on immigration and asylum. This meant it adopted a position, then sent it over to the Council who simply ignored it. At the time many MEPs said that when the parliament had codecision powers it would do a proper job of defending the rights of refugees and asylum-seekers. In 2005 the parliament obtained codecision powers with the Council on nearly all new immigration and asylum measures.

A survey by Professor Steve Peers (University of Essex) shows the following over the 2005-2009 period:

- 27 codecision measures were considered by the parliament [3]
- 19 measures: adopted by 1st reading deals with the Council
- 2 measures: a deal had been reached with the Council but not formally adopted
- 5 measures: EP 1st reading vote taken. Not known if there is going to be an early second reading deal.
- 1 measure: only one measure was agreed at 2nd reading in the parliament.

Most of these measures concern issues with significant implications for peoples’ rights and freedoms. They include: short-term visas for researchers; Border Code for crossing of borders by persons; regime for local border traffic at external borders; Schengen Information System II (SIS II); Rapid Border Intervention Teams; the Visa Information System; Regulation on passport security measures (ie, biometric passports); Common rules for expulsion (the “Returns Directive”); Employer sanctions for “irregular” migrants; and a common Code on Schengen visas.

On one of these measures, the Border Code, Professor Steve Peers commented, that having examined the documents, it is true the parliament had some success in getting “a number of its modest amendments accepted” but:

*more radical changes were either rejected by the Council or not tabled at all by the EP.*

### **Report to parliament on co-decision**

In May 2009 an Activity Report, by three Vice-Presidents of the parliament, was prepared on co-decision.[4]

The Foreword of the report highlights the main issues. Over the five year period:

*around 80% of the files were concluded as 1st reading or early second reading with the trend being a constant increase of early agreements.*

While this indicates that the parliament’s decision-making is “efficient” and shows:

*the institution’s willingness to cooperate*

there had been “severe criticism” about the transparency of trilogues, their undemocratic nature, lack of resources for rapporteurs and the quality of legislation.

Do 1st reading agreements get the “best deal possible”, are they efficient as they increasingly take more time and only lead to a “very modest reduction in the average length of procedures” and what are:

*the effects on the “visibility of parliament if only “cooked deals” are presented to the public?*

In the last five year term covering all parliament business:

- 69.5% of files were concluded in 1st reading
- a further 11.8% were approved without amendment at “early second reading agreement”
- just 12.8% went to “classical” 2nd reading votes and [5]
- just 5.9% went to the Conciliation Committee

At the end of each five year term there is a tendency to complete the files on the table. In the last year of the previous term (1999-2004) 36% of files were completed at 1st reading whereas in the last two years of the 2004-2009 term the figures went up to 74% and 87% respectively.

The report notes that “committees seem to have developed different cultures and practices” on completing files. In the last term, 2004-2009, the Civil Liberties Committee (LIBE) 83% went through on 1st reading deals, 17% at 2nd reading (including some early ones without amendment), none went to 3rd reading or conciliation.

It seeks to explain this general trend to 1st reading deals: i) there is the need for only a simple majority in parliament; ii) the familiarity of the “players” (Council and parliament) means “they start talking to each other routinely very early in the procedure”; iii) a factor may be a higher number of “uncontroversial” proposals (certainly not true of the LIBE committee); iv) since enlargement in 2004 the Council Presidency finds it increasingly difficult to find a common position among the 27 governments and the early parliament input “facilitates consensus-building” (ie: it uses the parliament to put pressure on Member States) and, finally:

*Council Presidencies seem very eager to reach quick agreements during their Presidencies and they seem to favour 1st reading negotiations for which arrangements are much more flexible than in later stages of the procedure.*

Another development, which started in the first half of this parliamentary term, was the “formalisation” of “early-second reading agreements”. Like 1st reading deals they are sorted out in secret trilogues:

*increasingly the common position is approved by parliament because it has negotiated it with the Council in the phase between the 1st reading of parliament and the Council’s adoption of its common position.*

These negotiations are formalised by a letter from the chair of the responsible committee to the president of COREPER indicating a:

*recommendation to the plenary session to accept the Council common position without amendment.*

An earlier mid-term report (2007) states:

*While, formally speaking, procedures concluded in this way are concluded at second reading stage, in reality a political agreement has already been reached before Council completes its first reading.*

The Activity Report then, extraordinarily, admits:

*Unfortunately, it is not possible to identify systematically those common positions approved by parliament without amendments which were negotiated and regarding which a letter was sent to the Council.*

### **How has parliament reacted?**

The report recognises criticisms of these deals both inside the parliament and outside (House of Lords Committee on the EU and *Statewatch*) particularly concerning legitimacy, transparency and “visibility” (the media, it says, were uninterested in “plenary sessions without any remaining controversy”).

The Working Party on Parliamentary Reform’s report of

October 2007 made a number of recommendations including a “cooling off period” between the vote in committee on 1st reading deals and the vote in the plenary session. Even this modest proposal has “not been consistently applied”.

More substantially the Code of Conduct for Negotiating Co-decision Files (September 2008, incorporated in the Rules of Procedure, 6 May 2009) says that a committee *may* decide on the negotiating team and its mandate.[6] And, belatedly, documents used in the trilogues should be made available to the negotiating team.

The Activity report says that the Joint Declaration on co-decision between the three institutions needs to be revised (13 June 2007) as many of its provisions are not followed. In particular, its notes regarding transparency:

*On the documents used for 1st and 2nd reading negotiations*

*the declaration is silent.” (the Joint Declaration between the three institutions)[7]*

The Vice Presidents’ report recommends improving the transparency of co-decision procedures and facilitate the work of Members:

*Every document related to a specific codecision procedure which is available to parliament should be clearly marked with a COD number identifying the procedure.. (to allow) by means of an extended legislative observatory (including data from the other institutions), the identification of all documents related to a specific co-decision procedure like studies, briefing notes, contributions of experts at hearings, official letters, streamlined committee meetings, compromises negotiated with the Council, press release etc.*

This recommendation has yet to be agreed.

### Report on codecision by UK parliament

The UK House of Lords Select Committee on the European Union published a report on “Codecision and national parliamentary scrutiny” in July 2009. As usual it is a thorough and detailed report with evidence from the European parliament and the Danish, Finnish, Swedish, German, French and Irish parliaments.

Its concern is the lack of up-to-date documents given to national governments when 1st and 2nd fast-track trilogues take place. Too often in the past the parliament found itself looking at the proposal from the European Commission when the discussions in the Council and between the Council and the European Parliament had already made substantives changes.

The report says there had been a “tide of criticism” of the Council’s lack of transparency because “there was no public access to trilogues, nor to the discussions at which the mandates for informal trilogues are agreed.”

The Committee’s Conclusions say that informal trilogues may speed up legislation but they make effective scrutiny by national parliaments “difficult” for two reasons. First, trilogues are “informal and confidential” and therefore difficult to follow and comment on. Second, the Member State holding the Council Presidency tends not to share its position (worked out with the permanent General Secretariat of the Council) with other governments. The result is that:

*The increased use of informal trilogues to the point that they are now the primary form of negotiation between the European Parliament and the Council has magnified the difficulties we face.. Should the Lisbon Treaty come into force, these difficulties will be magnified [by new areas of codecsiion].*

Secret trilogues between the Council, the European Parliament and the Commission are usual preceded by meetings which are “not trilogues” but are equally informal and unrecorded “bilateral” meetings between the Council Presidency and the Chair of the relevant European Parliament Committee.

The discussion on “LIMITE” documents (which covers thousands and thousands of Council documents every year) is unreal. Evidence to the Committee from the Council’s Legal Service, presented by Mr Hubert Legal, who said though LIMITE is not a security classification it was a “distribution marking”. He emphasised that Council document 5847/06 states that LIMITE documents may only be given to national governments and the European Commission and “they may not be given to any other person, the media or the general public without specific authorisation.” Moreover: “LIMITE documents must not be published, for reading or downloading,

in the Internet on a website”. Authorisation to make them public may “only” be made by “competent Council officials” and national governments “may not themselves decide to make LIMITE documents public”. Even though in oral evidence Mr Legal said it was up to national governments to decide whether to release them to their parliaments.

The legend of King Canute trying to stop the tide coming in spring to mind. Over 70% of the documents on the Council’s own public register are online with the full-text – and they are all LIMITE documents. Across the EU hundreds of LIMITE documents which are in circulation and, in the interests of democratic debate, are widely re-circulated. And the Brussels press are regularly given LIMITE documents by the Council and the Commission. Basically the Council wants to control the release of information which Mr Legal spelt out as meaning: 1) Opinions of the Legal Service – despite the European Court of Justice ruling on the *Turco* case last year that Legal Opinions on legislation could be released in “the public interest” but not that on a pending legal case; 2) where documents contain the “views” of national governments in drafting new laws – we are not allowed to know what our governments are doing – a view which is likely to face a legal challenge soon; and 3) “drafting proposals”, including all the documents in the secret trilogue meetings.

In a classic statement to the Committee Mr Legal said:

*If the consequence of a document being given to a parliament is that it becomes immediately and automatically accessible to the general public then it is no longer LIMITE.*

The House of Lords Committee wants to be kept informed at every stage of secret trilogues and get access to all LIMITE documents as they are sent to UKREP (the UK permanent delegation in Brussels) and takes note of the French parliament which has its officials based in the French delegation in Brussels.

The House of Lords EU Committee is rightly concerned to ask for full access to the documents being discussed so that it can effectively carry out its job to scrutinise proposing legislation before it is adopted. However, all the arguments it makes for parliaments to be fully informed apply equally to the right of civil society and citizens to have the same information so that they can discuss, debate and, if necessary, make their views known.

It was perhaps logical that as the European Parliament was given equal powers of codecision with the Council - after the Amsterdam Treaty came into effect that the Council would seek to claw back the increased powers of the parliament’s committees and plenary sessions via secret, “informal”, unrecorded and cosy discussions.

## Judgment of the European Court of Justice in the Turco case

*The transparency of the legislative process and the strengthening of the democratic rights of European citizens are capable of constituting an overriding public interest which justifies the disclosure of legal advice.... The Court takes the view that disclosure of documents containing the advice of an institution's legal service on legal questions arising when legislative initiatives are being debated increases transparency and strengthens the democratic right of European citizens to scrutinise the information which has formed the basis of a legislative act." (Court press release) and:*

*"As regards, first, the fear expressed by the Council that disclosure of an opinion of its legal service relating to a legislative proposal could lead to doubts as to the lawfulness of the legislative act concerned, it is precisely openness in this regard that contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated. It is in fact rather a lack of information and debate which is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole." (Judgment)*

## Where do civil society and the public come into the picture?

The current position of the parliament – after a number of reports - seems to be mainly concerned with improving its internal functioning so that it is better able to negotiate in secret trilogues and pays little attention to the transparency of the proceedings and openness (access to the documents under discussion) so that civil society and the public can follow what is going on.

The report of the Vice-Presidents proposes the creation of an “extended legislative observatory” which would contain all the documents as well as other relevant background. This has yet to be discussed by the new parliament and until more detail is available it is not certain that these documents will be publicly available – the existing codecision rules only commit to making documents available *after* a measure has been adopted.

## Conclusions

The view of the Council (the 27 governments) on access to 1st and 2nd reading documents was summed up by Mr Hubert Legal, of the Council Legal Service when he appeared before the House of Lords Select Committee on the EU on 2 June 2009:

*During ongoing legislative procedures there is not a general right for the public to access documents if the fact of giving access would undermine the institutional decision-making process. [9]*

He goes on to say that when “the procedure is completed” (ie: the contents of a measure are agreed) public access is given. Thus the public and civil society have no right to know what is being discussed before it is adopted.

Just think of the uproar there would be if national parliaments behaved in this fashion. Imagine a national government publishing a Bill then negotiating in secret with *rapporteurs* from the other parties before presenting the full parliament with a *fait accompli* to be adopted without changing a “dot or comma”.

1st reading trilogue “deals” are held in secret where there is no record (Minutes) and no documents publicly available. The process removes meaningful debate, disagreements, options, votes from both the Committee meetings and the plenary session – both of which are open and the documents discussed are publicly accessible. The practice pre-empts a wider debate in parliament, the media and society at large.

The modest proposals agreed on 1st and 2nd reading deals may meet some of the needs of MEPs in the negotiations with the Council. However, they offer little or nothing to open up this procedure to civil society and the public.

The Council of the European Union (with the tacit support of the UK and other national governments) seems intent on trying to justify a process of decision-making reminiscent of colonial times when it was considered dangerous if the people knew what was being decided in their name.

If national parliaments were operated in the same way we

would have a “fig-leaf” of a democracy. Why is it acceptable at the EU level?

One solution is to: i) make all the documents discussed available to the public as they are circulated; ii) published Minutes from 1st reading meetings; iii) publish a full transcript of the meetings as they happen and iv) introduce a “cooling off” period between the end of negotiations and the vote in Committee of at least 12 weeks so that national parliaments, civil society and the public can read, discuss and, if they wish to, present their views to the parliament. Detailed suggestions for reforms of this nature has been put forward as part of a Statewatch agenda for openness, transparency and democracy in the EU.[10]

The second, and more obvious, solution is to abolish 1st (and 2nd) reading deals and have open, transparent debates in the Committee and plenary meetings of the parliament.

Respect for the European Parliament has never been more fragile with the lowest ever percentage of people voting in the June 2009 election since the parliament was created, just 43%.

To gain respect from the people of Europe it has to cast aside the often repeated mantra of the need for “inter-institutional loyalty”, that is “loyalty” is to the Council (the 27 governments) and the Commission. Its primary loyalty would then be to the people who elected it.

## Footnotes

1. See Analysis online:<http://www.statewatch.org/analyses/no-64-secret-trilogues.pdf>
2. *The scope for action of European Parliament negotiators in the legislative process: lessons of the past and for the future*, Anne Rasmussen and Michael Shackleton, 2005.
3. *In all there were 35 measures involving 1st reading agreements, eight were technical measures.*
4. *Activity Report: 1 May 2004 to 31 May 2009 (6th parliamentary term) presented by three Vice-Presidents of the parliament.*
5. “Classic” second reading agreements i.e. second readings in which the Parliament adopts amendments to the Council's common position which have been agreed in advance with the Council.
6. See:<http://www.statewatch.org/news/2009/may/ep-corbett-rev-rules-of-proced.pdf>
7. See: <http://www.statewatch.org/news/2009/jul/ep-jt-cecl-on-codecision-jun-07.pdf>
8. See: <http://www.statewatch.org/news/2009/jun/eu-com-stockholm-prog.pdf>
9. *House of Lords Paper 105, 21.7.09.*
10. See: <http://www.statewatch.org/analyses/proposals-for-greater-openness-peers-08.pdf>

**Statewatch European Monitoring and Documentation Centre (SEMDOC):**

<http://www.statewatch.org/semdoc>

# UK: Shock and anger at the violent policing tactics used at the G20 Summit

by Trevor Hemmings

**The policing of the G20 summit in London in April 2009 has been severely criticised following an allegation of manslaughter and 270 complaints of police assault. Part I of a report on what happened and its aftermath**

The London G20 summit of world leaders at the ExCel conference centre on 2 and 3 April 2009 was headlined as a platform for international cooperation in the face of global economic disaster. The “greatest gathering of leaders since 1946” [1] was estimated to have cost £19 million [2], less than a quarter of the cost of the 2005 Gleneagles summit, and a price apparently considered to be value for money by participants hoping to adopt a rescue plan for the global banking crisis. However some leaders, such as Brazil’s President Luis da Silva, pointed out that it was the behaviour of western financiers that had brought the economy down in the first place. The free-market profligacy that brought the world to its knees was typified by the bonuses and pensions with which the world’s elite rewarded themselves: in the United States in 2007 Wall Street paid itself with more than \$39 billion in bonuses and “light-touch” regulation was also the norm in the City of London. The divide between the “haves” and the “have-nots” was further accentuated at the summit by the leaking of a confidential Foreign Office memo on its preparations in mid-March, which argued that that the UK should focus on the 11 “priority” countries rather than the seven “tier two” ones, (Canada, Mexico, Russia, Turkey, Indonesia, Australia and Argentina).[3]

As has happened at summits elsewhere in Europe, notably at the G8 in Genoa in July 2001 [4], the presence of so many world leaders assembled in one capital encouraged activists from an array of different causes to take to the streets. Also like Genoa, the London summit was heralded by dire warnings of violence that was intended to bring the capital to a standstill. From mid-March onwards media reports, many based on police briefings, warned that veteran anarchists were coming out of retirement while others invoked international extremists who were converging on London to riot:

*Thousands of activists from across Europe were converging on London today. Anarchists from Italy, France and Germany are mobilising to disrupt the summit. Intelligence chiefs fear known agitators are arriving in London after a week of anarchist attacks in Italy.[5]*

The free *London Lite* newspaper reported that bankers had been forced to employ private bodyguards while other city workers were advised “to stay at home, reschedule meetings and dress down”. Evoking the confrontational “Stop the City” protests of the 1980s, shop fronts were boarded up and meetings cancelled. [6]

With the looming media-hyped confrontation the Metropolitan police had little option but to respond to the stories it had placed in the public domain. It cancelled all officers’ leave for Operation Glencoe, “the most comprehensive security operation in a decade” (ibid), posting up to 3,000 officers across the capital supported by a similar number of CCTV cameras. The total cost of the operation was around £7.2 million, of which about £2 million were additional costs, such as overtime [7]. Six forces from in and around London were directly involved in the operation with support from another 30. The right to protest may be upheld as the cornerstone of British democracy, but when Metropolitan police Commander Simon O’Brien told CNN that

his force was “up for it” he was making clear the security agenda had priority. His words were echoed by junior officers, who anticipated “going up against the scum of our society...” [8]

In the run-in to the Summit the brunt of the police operation had been felt by residents residing near the Excel Centre in Canning Town, who were advised to carry photo identification “to ensure they can pass through police roadblocks and access their homes” [9]. They “must carry two forms of ID, including one with a photo, to ensure only those who need to can get through roadblocks”. Shami Chakrabarti, director of Liberty [10], questioned the Met’s authority to enforce the measure pointing out that: “The police don’t have the legal authority to require people to carry ID papers. If they are asking them to, they had better come up with some proper reasons.” [11] Residents also believed the move to be “a step too far”, asking why the police had to resort to imposing something so draconian?” A Metropolitan police spokesman insisted that the measures were necessary to ensure safety:

*Naturally, we regret any inconvenience [but] ...this is not any ordinary conference – half of the world’s leaders are coming to London (ibid).*

Meanwhile groups such as Climate Camp were mobilising supporters using social networking sites and holding seminars to discuss how to defuse the predicted confrontational situations.

## Financial Fool’s Day

On 1 April two major demonstrations took place. The first involved a series of marches by the G20 Meltdown coalition of anti-capitalist protestors starting from four London underground stations and converging at the Bank of England. Angered at the government’s bailouts of bankers, several thousand protestors lay siege to “the old lady of Threadneedle Street” and sometime around 1.30 pm windows at the Royal Bank of Scotland [12] were smashed and a handful of activists in balaclavas scrambled inside, throwing computer monitors and other pieces of office equipment outside. People were then tightly “kettled” [13] by the police for an hour or more as the crowd grew restless. A large number of people alleged that they had been assaulted by police officers, including the Liberal Democrat councillor, Greg Foxsmith, who attended the demonstration as a civil liberties lawyer. He says that he was attacked by a balaclava-clad riot police officer after he witnessed him assaulting an elderly man [14]. One unnamed protestor echoed the widely-held belief that police forces are much more interested in protecting the interests of big business than the civil liberties of protestors: “A lot of fuss has been made about a few broken bank windows, but what about the police using truncheons on protestors.”

The second major action on Financial Fool’s Day was the Climate Camp. A coalition of environmental activists defied police barricades to set up their fourth [15] camp outside the European Carbon Exchange (ECX), off Bishopsgate, under the banner of “Stop carbon markets because nature doesn’t do bail outs”. The Camp pitched tents and set up stalls with bunting and banners around midday and it had an enjoyable festival atmosphere throughout the day, despite some arrests and harassment by police units. Just after 7pm, police streamed into

the camp wielding batons and shields. People held their hands in the air chanting "this is not a riot", but many were nonetheless assaulted. Around 2,000 people were kettled and remained so for between five and seven hours, only being released in the early hours of the morning when public transport had ended. Video footage shows 24-year old Alex Kinane being hit in the face by an officer wielding a shield while other footage shows a man being punched in the face by a policeman [16]. Some of the officers alleged to have used excessive force could not be identified because they had removed their identification numbers, a longstanding, but increasingly common occurrence, particularly among officers from the Territorial Support Group (TSG). Around 9.30 pm, Section 14 of the Public Order Act was imposed to shut the Climate Camp and people gathered at the North end of Bishopsgate were forcibly moved with baton charges and police dogs. Protestors, many of whom by now wished to leave, and those who had simply been caught up when the kettle was imposed, were eventually released around midnight, nearly five hours later; it was shortly before 1 am before the police cleared the road of the remaining protestors [17].

Demonstrators said that they were detained for hours in order "to be taught a lesson" or punished by being made to miss the last public transport. Journalists also remonstrated at being detained and refused permission to leave. The Independent Police Complaints Commission (IPCC) received 270 complaints against the police, 60 of which concerned allegations of assault. The Liberal Democrat justice spokesman, David Howarth MP, questioned the legality of the kettling tactic. [18] However, Metropolitan police Commander, Simon O'Brien blamed small pockets of "criminals" for outbreaks of violence. Speaking at New Scotland Yard he pledged to track the ringleaders down, claiming that some of them had been placed under helicopter surveillance as they left. An estimated 93 people were arrested over the course of the day [19].

### **Demonstrating respect for human rights?**

On 14 April the Climate Camp Legal Team, which is comprised of volunteers who provide information on legal rights, train people to act as legal observers and collect evidence during protests, published a report that focused on the policing of Climate Action's Camp in the City [20]. It did so in the context of the Joint Parliamentary Committee on Human Rights report on the policing of protest, entitled *Demonstrating Respect for rights? A human rights approach to policing protest*, [21] which was published a week before the G20 protests began. The Committee found that although there are not "systematic human rights abuses in the policing of protest" in the UK, the government should "protect and facilitate the opportunity for people to protest peacefully", emphasising that:

*To fail to do so would jeopardise a number of human rights including the right to freedom of peaceful assembly and the right to freedom of expression.*

Among its concerns, which should be addressed by legal and operational changes, was that police are too heavy-handed in dealing with protests, harassing and intimidating people.

The Committee's report had also criticised the misuse of legislation against demonstrators, calling for tighter restrictions to prevent the misuse of anti-terrorism laws. It also heard evidence that the use of officers in riot gear could "unnecessarily raise the temperature" of crowds, making conflict more likely and for similar reasons police should not be using Taser stun guns at peaceful protests. The Committee said police Forward Intelligence Teams (FIT) were too heavy-handed with journalists reporting on demonstrations and the National Union of Journalists presented evidence showing that officers took part in "intrusive" filming of its members, denying them access to

protests, refusing to recognise press cards and even assaulting them. The report highlighted the policing of protesters at an earlier Climate Camp in Kent, where 1,500 officers, including riot police, dealt with only 1,000 protesters. Committee chairman Andrew Dismore MP said:

*The right to protest is a fundamental democratic right and one that the state and police have a duty to protect and facilitate.*

Police witnesses responded to the committee by insisting that they were already acting lawfully and a Metropolitan Police statement placed: "Human rights and the right to protest... at the heart of our policing philosophy."

The Climate Camp Legal Team (CCLT) report compares the policing of the Climate Camp in the City with the recommendations of the Joint Parliamentary Committee. They observe that the Parliamentary Committee remark that human rights law meant that "police should be exceptionally slow to prevent or interfere with a peaceful demonstration simply because of the violent actions of a minority", is a statement that is "difficult to reconcile with what happened at the Climate Camp". The Legal Team also noted the Committee's concern that "protestors have the impression that the police are sometimes heavy-handed in their approach to protests", observing: "If the report had been written a couple of weeks later following the G20 protests, we think the Committee would have shared the impression of protestors." Finally, the CCLT takes issue with the Committee's failure to find any systematic human rights abuses as a result of the policing of protest in the UK:

*Our experience is that there are systemic problems with both the policing of protest and with the accountability of police for their actions.*

The team makes six main points based on its observations of policing at the G20 protests and the Joint Parliamentary Committee on Human Rights report. In summary they are:

**Police accountability:** There is no effective mechanism to hold police forces accountable for their actions and the means to challenge the actions of individual officers is rarely effective.

**Legal recourse for protesters:** As the Joint Parliamentary Committee also acknowledged, there are "significant practical limitations inherent in the legal process" for protestors.

**The police complaints system:** The IPCC is ineffective and is in need of reform. "How the IPCC addressees what may be increasing policing controversies associated with protest movements will be a critical test of whether it is worth preserving or is a failed model." The Legal Team also expresses significant concerns that in reality we have a national police force overseen not by parliament, but by an unaccountable private body – The Association of Chief Police Officers (ACPO).

**The criminalisation of protesters:** "Exercise your right to protest in this country and you will at best be treated as a potential criminal, and at worst as a potential terrorist, and policed as such. You will be photographed and filmed by Forward Intelligence Teams... You will be stopped and searched and pressured into giving your name and address. You will be corralled by police in riot gear, your freedom of movement restricted, and in physical danger from officers' 'losing it' and the use of disproportionate force to restrict protest."

**Police spin:** Police briefings before the protest "talked up" the potential for violence at press briefings. At the Climate Camp satellite television vans were moved on before the significant escalation in police violence occurred. An embedded television camera crew entered with riot police during police raids on squats where protesters had been sleeping. Police media spin is not compatible with any reasonable notion of institutional accountability in a democracy.

**Climate activists demonised as domestic extremists:** There are worrying signs the police are identifying Climate Camp

activists as the next generation of domestic extremists, a new enemy within for which the legal translation seems to be “terrorists”.

### **The police assault and death of Ian Tomlinson**

Newspaper vendor, Ian Tomlinson (47), collapsed and died after he was caught up in the policing of the protests as he walked home from work in the City of London around 7 pm on the evening of 1 April. The Metropolitan police promptly released an inaccurate statement saying that officers attempting to resuscitate him had been forced to move him when they were pelted with missiles by protestors. The effects of this statement led to reports that he had died “after bottles were thrown at him and he collapsed” [22]. The IPCC was informed of Mr Tomlinson’s death, but did not take over the investigation into the death for a further week, on 8 April. Ian Tomlinson was the first person to die at a heavily policed demonstration since the IPCC assumed responsibility for investigating deaths which involve police contact in April 2004.

Ian Tomlinson’s final movements that evening have been reconstructed by Inquest [23], which is working with Mr Tomlinson’s family. In summary, he left Monument underground station after finishing work at about 7pm to return home. On route he was blocked by lines of police officers at least twice, and probably on three occasions, before he made his way up Royal Exchange. Video footage on Channel 4 News showed him standing still as a line of policemen, including Metropolitan police officers, officers from the TSG and City of London dog handlers, swept down Royal Exchange from Threadneedle Street. Tomlinson is shown walking away from the police with his hands in his pockets [24]. Police dogs can be seen to go for him at least twice, before an officer in a riot helmet holding a raised baton approached and struck him before violently pushing him to the ground. No officers went to Tomlinson’s assistance but a bystander did help him to his feet. The video footage shows Tomlinson staggering away from Royal Exchange Passage along Cornhill clutching his side looking dazed. Photographs show that he did not walk far before collapsing.

It was later reported in *The Times* that the officer being questioned over Mr Tomlinson’s death had previously been accused of using unnecessary force against a motorist. Despite this, he was able to join Surrey constabulary and later transfer to the Metropolitan police “because the unresolved disciplinary issue was not flagged up during vetting.” [25]

In its report Inquest draws “evocative and disturbing parallels” between the death of Ian Tomlinson and that of the unsolved police killing of Blair Peach 30 years ago, (on 23 April 1979). [26] Blair Peach died of head injuries while demonstrating against a provocative National Front march in Southall, west London. No police officer was ever charged over his death despite witnesses who claimed to have seen him being hit over the head by members of the Metropolitan Police’s Special Patrol Group (SPG), the predecessor to the TSG. There is also well documented use of excessive force by officers from the same group while policing the Southall demonstration. The investigation into Blair Peach’s death was conducted by Commander John Cass but has yet to be made public [27]. Inquest points to the “supervision and tactics of the TSG” at the G20 demonstrations and the lack of accountability of the “investigation processes following deaths in police custody” as areas that parallel the cover-up that followed Blair Peach’s death. They therefore call for the IPCC investigation [28] into the death of Ian Tomlinson to be fully compliant with article 2 (right to life) of the European Convention on Human Rights.

### Footnotes

1. *The Independent* 28.3.09.

2. *Evening Standard* 10.3.09

3. *The Independent* 14.3.09

4. For Genoa see Yasha Maccanico in *Statewatch* Vol. 17 no 2, Vol. 18 nos 1 & 4, Vol 19 no. 1

5. *Evening Standard* 30.3.09

6. *London Lite*, 26.3.09

7. Metropolitan police “Operation Glencoe policing and security for the G20 London Summit”

[http://cms.met.police.uk/news/updates/operation\\_glencoe\\_policing\\_and\\_security\\_for\\_the\\_g20\\_london\\_summit](http://cms.met.police.uk/news/updates/operation_glencoe_policing_and_security_for_the_g20_london_summit)

8. See CNN website

<http://www.cnn.com/2009/WORLD/europe/03/26/g20.protests.police.london/index.html>. *The Times* newspaper (1.4.09) captured the gung-ho spirit in quoting one anonymous officer on a police internet forum: He talked of “going up against the scum of our society, the immature thrill seekers and anonymous cowards who hide in large crowds with scarves over their faces chanting meaningless slogans to hurl whatever is at hand at the lines of police deployed to maintain order.”

9 *The Independent* 31.3.09

10. Liberty website: <http://www.liberty-human-rights.org.uk/>

11. *Evening Standard* 30.3.09.

12. See: [http://news.bbc.co.uk/2/hi/uk\\_news/7977489.stm](http://news.bbc.co.uk/2/hi/uk_news/7977489.stm)

13. A controversial and widely criticised police tactic whereby officer’s coral and forcibly prevent people from leaving an area. Within the kettle there are frequent complaints of excessive police violence; when people are allowed to leave they are often photographed and have their identification details taken. Kettling is indiscriminate, often trapping passers-by, tourists and journalists alike. It is also used as a punitive measure, for instance when those corralled are refused access to toilets and other facilities, or when people are deliberately detained until after public transport has closed.

14. Foxsmith has written to the Metropolitan police commissioner, Sir Paul Stevenson.

15. Previous Climate Camps had been held at Drax, Heathrow airport and at Kingsnorth power station in Kent. For more on the Kingsnorth camp see Panorama “Whatever Happened to People Power” (BBC-1) 6.7.09. Here too police attempted to manipulate the media regarding protester violence, claiming that 68 officers were injured in violent confrontations; in reality only four cases involved contacts with protestors. Website: <http://climatecamp.org.uk/?q=node/468>

16. See Panorama: Whatever Happened to People Power (BBC-1) 6.7.09.

17. Climate Camp Legal Team Demonstrating Respect for Rights?: the policing of the Climate Camp in the City of 1 April 2009 18.4 09. <http://climatecamp.org.uk/themes/ccamptheme/files/report.pdf>

18. *Ibid*

19. *BBC News* 2.4.09

20. Climate Camp Legal Team Demonstrating Respect for Human Right: the policing of the Climate Camp in the City of 1 April 2009 18.4 09.

21. Joint Committee on Human Rights Demonstrating Respect for Rights? A human rights approach to policing protest. <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/47/47i.pdf>. The Joint Committee is made up of 12 members appointed from the House of Commons and the House of Lords who heard evidence from civil liberties groups, from members of the police force and the government. See Max Rowlands in *Statewatch* Vol. 18 no 4 for an overview of this report.

22. *BBC News* 2.4.09. *The Evening Standard* was even more graphic: “Police had come under a barrage of missiles yesterday as they tried to save the life of 47-year old Ian Tomlinson. Officers were hit by bottles thrown from the crowd and were forced to carry Mr Tomlinson to a safe location...” For eyewitness testimony rather than police spin or tabloid fiction, see Indymedia’s witness statements:

<http://london.indymedia.org.uk/articles/1019>

23. Inquest “Briefing on the death of Ian Tomlinson” (2009), Appendix 1. The briefing is available as a free download:

[http://inquest.gn.apc.org/pdf/INQUEST\\_ian\\_tomlinson\\_briefing\\_jun\\_2009.pdf](http://inquest.gn.apc.org/pdf/INQUEST_ian_tomlinson_briefing_jun_2009.pdf)

24. Channel 4 News,

<http://www.channel4.com/news/articles/uk/tomlinson+death+missing+moment/3076487>

25. *Times* 6.7.09

26. For more information on Blair Peach’s death see Jenny Bourne “The

political legacy of Blair Peach" IRR website, 23 April 2009. <http://www.irr.org.uk/2009/april/ha000025.html>

27. Inquest and the friends and family of Blair Peach have been campaigning for the release of the report for 30 years. In June 2009 at a meeting of the Metropolitan Police Authority the Commissioner agreed to the publication of the report into the death subject to any legally necessary redactions.

28. The IPCC investigation into the death of Ian Tomlinson is expected to be published in 2010.

Whats New: <http://www.statewatch.org/whatsnew.htm>

## The Fruits of Torture: Stammheim trial confirms criticism of German anti-terrorist law

by Christina Clemm and Ulrich von Klinggräff

*Since March 2008, five alleged members of the banned Turkish organisation the Revolutionary People's Liberation Party-Front (DHKP-C) have been awaiting trial at the regional high court in Stuttgart (Stammheim). It will be the first trial in Germany on the grounds of Article 129b of the Criminal code (§ 129b StGB), under which people can be prosecuted for having supported terrorist activities outside of Germany, in this case in Turkey, as members of a foreign terrorist association. The prosecution's indictment is based on statements made by witnesses and suspects to the Turkish police even though there is a high probability they were extracted through the use of torture. But the German state does not only flirt with the circumvention of the torture ban in this trial. It is evident – as the German police admitted in 2004 – that the alleged arms transport was guided by the MIT Turkish intelligence agency to criminalise the DHKP-C in Germany where the organisation is banned.*

The trial of five alleged members of the banned Turkish DHKP-C organisation started on 17 March 2008, although some of the accused have been remanded in custody since November 2006. The prosecution has accused them of having supported terrorist activities from within Germany as part of a so-called "rear frontline" (*Rückfront*). The case centres on a questionable arms shipment carried out by an alleged double agent.

The anti-terrorist provision Section 129b StGB, which came into force in 2002, has for the first time brought foreign terrorist organisations under the jurisdiction of the German Criminal Code. It had previously been applied predominantly against Islamic groups and this represents its first use against a left-wing group. The DHKP-C developed out of the *Dev-Sol* (Revolutionary Left) organisation which, until the military coup of 1980, was relatively influential in Turkey. Its successor organisation, DHKP-C, was banned in Germany in 1998.

The shortcomings of the Stammheim trial highlight criticism levelled against Section 129b StGB. As with Sections 129 and 129a StGB, they concern the almost unlimited special police powers during investigative proceedings, the application of the criminal law as a preventative measure (used before a crime has been committed) and its lack of legal definition. In addition, Section 129b StGB specifically leaves room for the proceedings to be heavily influenced by the secret services, uses evidence extracted with the aid of illegal interrogation techniques and violates the principle of the separation of powers, namely the separate and independent powers and areas of responsibility of the executive, legislature, and judiciary.

In a Section 129b procedure relating to organisations from non-EU countries the prosecution only acts on the order of the Federal Ministry of Justice. The criminal prosecution is thereby subordinate to a preliminary political testing by the executive which then rules on whether or not a prosecution is appropriate in each individual case. Its decision is dependent on current

affairs and strategic alliances: is a particular group a "terrorist" group or does it involve freedom fighters? What are the potential diplomatic ramifications of a criminal prosecution in Germany?

For example, the German government's treatment of the Afghani Taliban was inconsistent because it was based on fluctuating political considerations. This also illustrates how the judiciary has to subordinate itself to the executive in conflict with the democratic principle of the separation of powers.

### The prosecution's case legitimates torture in Turkey

The public prosecutor's indictment against the alleged DHKP-C members is based on files sent to Germany by Turkey under the framework of mutual cooperation in judicial proceedings. The files mainly comprise transcripts of the interrogations of witnesses and suspects by the Turkish police in relation to proceedings against alleged DHKP-C members in Turkey. These recycled documents are supposed to prove in the Stammheim trial that a series of attacks in Turkey were committed by the DHKP-C, as well as establishing facts on the structure and working methods of the organisation in Germany.

The files are included in the proceedings through the testimonies of Turkish police officers and German Federal Crime Police Authority (*Bundeskriminalamt*, BKA) officers who evaluate the documents. The defence has vehemently rejected this method of fact-finding and evaluation because there is evidence pointing to the statements having been extracted through the use of torture. Although the Turkish police files are incomplete and references to illegal interrogation methods removed, not all traces of torture could be hidden.

The defence supported its objection to the use of this evidence with two reports on the "democratic principles in political trials in Turkey". In them Turkish expert, Helmut Oberdiek, reached the conclusion that in political prosecutions Turkish police systematically apply - or use the threat of - torture. This finding was supported by graphic statements from some of the accused about how they were tortured.

The defence's position also finds support in Germany's jurisprudence on administrative procedures. Here it is standard procedure to accept that Turkish citizens who are suspected of membership or support for the DHKP-C were likely to face a significant risk of torture, therefore deportations to Turkey are prohibited in these cases.

The Stuttgart higher regional court has not yet ruled on this matter but there are indications it will reject the defence's objection and follow the prosecution's legal interpretation. In a Statement released on 9 July 2009, the Counsel for the Prosecution confirmed its opinion that a ban on the admission of evidence in court would only be considered if evidence could be produced for each individual interrogation proving that statements were extracted in violation of human dignity [1]. This amounts to a reversal of the burden of proof.

The cynicism of the prosecution's case is exposed in the same

Statement:

*Because [neither the fact that Turkey continues to torture], nor the facts and figures presented by the defence, prove the claim that statements made by witnesses and suspects are exclusively extracted with the use of torture in Turkey.*

So while the prosecution does not deny that torture frequently occurs in Turkey, it believes the practice to only be of importance for the Stammheim trial if it is proven in each individual case. The absurdity of this legal opinion is obvious: how exactly could such evidence be produced? Should we wait upon a frank admission by the Turkish state or a self-incriminating confession by the torturer?

It is notoriously difficult to produce concrete proof of the use of illegal interrogation methods in proceedings without foreign involvement, and the verification of statements made outside Germany is exceptionally difficult. As a rule, summoning witnesses fails because they cannot be found. In the Stammheim trial, Turkey's aspirations for EU membership are an added burden, as the country wants to give the appearance of adhering to human rights standards and democratic principles. To depend on Turkey's cooperation in cases of torture allegations would be a denial of justice.

The recurring problem of finding evidence of torture is to the disadvantage of the accused. Therefore it should be the police and prosecution who bear the burden of proving that evidence has been collected in adherence to the Anti-Torture Convention. This is also in accord with the case law of the European Court of Human Rights. Inadmissibility should be assumed when there are concrete indications that a violation of the torture ban has occurred [2]. As Ambos puts it:

*For a democracy with independent judges who place a fair criminal trial at the centre of democratic principles, the serious risk of a conviction on grounds of evidence produced by means of torture should be unbearable.[3]*

The prosecution's argument was aggressively defended at last year's bi-annual meeting of the Association of German Jurists. However, it results in a situation in which torture applied outside of Germany can undermine the German ban on using evidence extracted by means of torture - a legal norm enshrined in the German Criminal Procedural Act as well as the UN Anti-Torture Convention. This implies that the German criminal justice system indirectly legitimises torture in Turkey and elsewhere. The Stuttgart high regional court does not appear to have any serious concerns regarding the admissibility of the statements coerced in Turkey.

### **Torturing Turkish officers as witnesses in Stammheim?**

Two high-ranking police officers from the terrorism department of the Istanbul police headquarters were invited to the main trial dates of 6, 7, 13 and 14 October 2008. The defence objected vehemently on the basis of their likely involvement in torture during interrogations. The court, however, ignored the objections and heard evidence from Turkish officer B. The cross-examination of the Istanbul anti-terror department chief of police is planned for a later date.

The defence has learnt that B is facing two criminal proceedings in Turkey following accusations of torture. The defence's application to use the relevant Turkish investigation files in the current trial has not yet been dealt with. This is despite the fact that the BKA liaison officer in Istanbul, on inquiry by the Stuttgart court, has confirmed the preliminary investigations into the torture allegations.

It is noteworthy that in writing to the public prosecutor the BKA uncritically repeats, almost word for word, the Turkish police's perspective in relation to the allegations. The BKA

letter-headed paper says:

*However, it was pointed out that a charge brought against police officers, especially those in the secret service and terror departments, is a common practice by suspect's lawyers. [It is said] that there is hardly a police officer with the Istanbul [police headquarters] who has not been accused of using torture. According to the Turks, however, it is 10 years since there have been any assaults on suspects. Rather, [they reported] that special conflict management training has since been introduced, to educate officers to be even-handed.*

### **The main witness: a double agent with psychological problems**

Alongside the Turkish police files the prosecution's accusations are based on the statements of an alleged double agent. Hüseyin H. claimed at his trial to have worked for the German regional internal security service of Rhineland-Pfalz as well as for the Turkish intelligence agency MIT. In this context, he alleges in the current trial to have driven a car from Germany to Bulgaria on the order of the five suspects. In Bulgaria, he says, the car was loaded with weapons. On the order of the Turkish intelligence service he then drove the vehicle to the Turkish border and abandoned it.

On the basis of his testimony, H. was released from remand custody, placed under the witness protection programme and, after providing a confession, was given probation. Neither then nor now were the investigative authorities interested in the fact that H. provided different statements throughout his interrogation. In the Stammheim trial, H. is denying he had any contacts with the security services. Rather, he claims he only professed his secret service activities to appear more important and get out of prison. H. does not give an altogether stable impression. He describes himself as a warrior and a fighter against injustice, on some occasions as a CIA or Mossad agent, but also as a liar and someone who says whatever comes to mind "which ever is best for me at that moment!" During trial proceedings he was often abusive and extremely aggressive towards the accused. Time and again he has had what appear to be "controlled" anger attacks that can only be curtailed by interrupting the trial and the intake of heavy anti-psychotic drugs.

H.'s statements were already contradictory in the preliminary investigation. In any case, the prosecution should have had serious doubts as to the admissibility of statements made by a double agent who would benefit from premature release from remand imprisonment on their grounds. The charges should have been dropped because they rest on the statements of this witness. Instead, the court is trying to retain the witness by constructing a partial inability to testify. The fact that the court wants to keep H. as a witness speaks volumes.

In November 2003, the weekly news magazine *FOCUS* reported on the alleged arms shipment under the headline: "Hot trail to the consulate". The article says:

*Despite its ban, the DHKP-C still has 1,000 members in Germany - they therefore present a continuous provocation for Turkish security authorities. [BKA] investigating officers from Mainz therefore assume in the case of Hüseyin H. that Ankara wanted to put the DHKP-C in the spotlight with a meticulously planned [secret service] operation. With the help of the hired informant Hüseyin H., they wanted to prove that the insurgents were supplying their comrades in Turkey from Germany. Parts of the investigation files point to this conclusion.[4].*

It can be assumed that alongside the "investigating officers from Mainz", the Munich news journal also had access to more sources. But the investigation files in themselves, and not least the testimony of the witness H., contain unambiguous clues

about the MIT having steered the double agent, and they point to the fact that H. was acting as an agent provocateur. It will be the defence's task to investigate the facts and bring them to the attention of the court.

### Unsecured data as evidence?

The manner in which the court treats the exhibits that were allegedly secured in a series of police raids in the Netherlands is also worrying. These exhibits are supposed to form part of the digital archives of the DHKP-C and to show the structure of the organisation in Europe. However, neither the confiscation nor the decryption of this data has been documented or proven in a forensically adequate manner.

The court and prosecution are unphased by the fact that the confiscated hard drives have long been destroyed. Despite the fact that an explanation from the Dutch authorities cannot be expected because it has refused to permit its officers to testify, this material continues to be introduced by the prosecution and used in the trial.

The court is similarly unphased at the nature of the evidence provided by the prosecution that is supposed to prove the involvement of the DHKP-C in attacks in Turkey. Most of this evidence is made up of letters allegedly claiming responsibility, with the prosecution's observation that the DHKP-C has not repudiated them. The authenticity of these letters, however, has never been verified. As a rule, they have simply been downloaded from various websites.

It has been said that nothing is safe and everything is possible on the Internet. In a recent legal scandal, at the trial of alleged members of a German "militant group", evidence showed that the police had written and published its position papers. It is well documented that the police participate in debates and sometimes purport to represent militant organisations [5]. In the current proceedings, however, the Turkish state has admitted that its attributing of attacks to the DHKP-C were erroneous.

For example, in the so-called Ergenekon case brought by the

Istanbul high criminal court, it is claimed that at least some of the attacks assigned to the DHKP-C were actually committed by the Ergenekon terrorist organisation. It remains to be seen whether they were carried out by Ergenekon or the Turkish state itself, as part of a strategy of tension. What these accusations imply for the Stammheim trial is that the verification of each single attack assigned to the DHKP-C is essential. If constitutional principles are to apply the court will not be able to avoid consideration of evidence from the Ergenekon trial in the Stammheim proceedings; the indictment for the Ergenekon trial comprises several thousand pages. The defence has already made an application to this effect.

### Footnotes:

1. *The prosecution bases its opinion on a decision by the Hamburg high regional court on the use of statements made by high-level Al Qaeda members who were imprisoned at unknown locations from 2005, in the trial against Motassadeq; compare OLG Hamburg, Neue Juristische Wochenschrift (NJW) 2005, issue 32, pp. 2326-2329.*
2. *European Court of Human Rights (ECHR): Judgment (Merits and Just Satisfaction) in the CASE OF RIBITSCH v. AUSTRIA, 18896/91, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Ribitsch&sessionid=24652655&skin=hudoc-en>*
3. *Ambos, K.: Die transnationale Verwertung von Folterbeweisen [The transnational interpretation of torture evidence], in: Strafvverteidiger 2009, issue 3, pp 151-161 (159)*
4. *Focus 11/2004, 10.3.03*
5. *Compare 'BKA schrieb bei der Militanzdebatte mit' [The BKA contributes itself to the militancy debate], in: ak - analyse und kritik, issue 538, 17.4.09*

## Friends of Statewatch

Support our work by making a one-off or regular monthly donation. See:  
<http://www.statewatch.org/fosw.html>

## An employment office in Bamako: the European Union's transformation of Mali into a migration control laboratory

by Stephan Dünwald

*When talking about Mali, many confuse the country with Bali: "Nice island, I'd like to go there one time". The West-African state actually neighbours Senegal, Mauritania, Algeria and Libya and is perhaps even less well-known than Timbuktu (which is a town in northern Mali). According to statistics Mali is the fourth poorest country in the world; except for cotton nothing much is produced for export. The country has no coast, so tourism is restricted to small groups that arrive to observe the life of the Dogon or to experts in mud-brick architecture or open field burning. Development aid forms a significant part of the country's revenue. Although the Americans and Chinese are competing with France for good relations with the government, most of the money that enters the country comes from Malian migrants sending money back home, so-called remittances. Around 60 to 100,000 Malians live in France and a growing number work in Spain's construction or agricultural sector.*

Their journeys to Europe however, are becoming ever longer and expensive. Off the African coast the European border agency FRONTEX is forcing migrants back to the mainland with the aid of ships and helicopters. Morocco, Libya and other states receive benefits for helping the Europeans to keep the sub-Saharan

migrants at arms length. African coastal states deport refugees and migrants and Mali is increasingly becoming the hinterland at whose borders they are dumped. Mali is not only a country of origin but also one of transit for Africans on route to Europe. So it is not as surprising as it may seem at first sight, that Luis Michel, European Commissioner for development and humanitarian aid, opened the European Union's first Migration Centre with Mali's president Amadou Toumani Touré in the country's capital Bamako. The Migration Information and Management Centre (CIGEM) marks a new European strategy in dealing with migration.

### The history of an experiment

CIGEM is the result of European migration politics. Over the past years the EU's southern borders have been massively militarised, with Spain playing a leading role. The 14 km-wide Straits of Gibraltar was the departure point for many Africans trying to reach Europe in small boats. Many were looking for work, but many were also refugees from civil wars in western and central African states. Not all survived the passage and many drowned, their bodies washed-up on the Spanish coast. Spain then instituted an early warning system to shield its borders

forcing migrants to head for Ceuta and Melilla, Spanish enclaves on the African mainland, which were rapidly fortified. The Canary Islands became the next destination, with departure points in Mauritania and Senegal. The European border agency FRONTEX deployed ever more naval units in the Mediterranean Sea and off the west African coast and reported "successfully" diverting thousands of migrants and refugees back to their points of departure. From an African perspective, Europe increasingly resembles an armed fortress with the Mediterranean Sea and Atlantic Ocean serving as watery graves for many uncounted passengers.

Europe is pressing ahead with its diplomatic fight against migration. Readmission agreements are being negotiated in exchange for entry facilitation with economic support going to the authoritarian regimes of north African coastal states. Furthermore, these states are supported in their fight against unwanted migration on the mainland. Migrants in transit are first detected, then rounded up and transported to the southern borders, to a "No Man's Land" between countries with, if they are lucky, only the most basic provisions. Mauritania has set up an interim camp for refugees who are picked up but cannot be deported.[1]

This process was promoted in bi-lateral negotiations between Spain, Italy and France and at the Euro-African conferences at Rabat and Tripoli which reiterated the importance of migration. At the most recent conference since the ministerial conference in Rabat in 2006, migration is mentioned alongside development aid: apart from highlighting the importance of migration to the receiving states, it also referred to its new (old) role - that migration should be regulated and legal and contribute to the development of African states. Shortly after the Rabat conference, development and aid Commissioner Luis Michel and representatives from France, Spain and Mali announced the decision to set up the centre in Bamako.

### **First deterrence, then work?**

The EU's first announcement said that it wanted to free-up 40 million Euros to establish an employment agency that would open up legal avenues for work in Europe [2]. The amount rapidly diminished and a mere 10 million Euros was granted by the European Development Fund in its framework programme for 2007-2011; references to labour recruitment also vanished from the text. The Commission's plans were met with fierce opposition by some European Member States who had no interest whatsoever in recruiting African workers. Even Spain and France, under whose aegis this project was promoted, withdrew and limited themselves to bilateral recruitment agreements. By now, the recruiting of labour aspect was mentioned only cryptically in CIGEM's concept papers. Rather than strengthening legal migration channels, the centre's focus became the fight against "illegal", or rather irregular, migration. Roland Johansson, project coordinator and political advisor of the EU delegation in Bamako, however, does not see it that way, although he does concede that for the time being, labour recruitment is not on the centre's agenda". As soon as you put the idea out there expectations are created, even when you are talking of very low numbers." His comments are about potential migrants, but also reflect the attitude of EU Member States which automatically envisage new waves of immigration.

We are sitting in an EU delegation's air-conditioned office with a panoramic view over the Niger, lined with bountiful vegetable gardens. Johansson is cautious regarding his expectations. The centre, he explains during the course of the conversation, is still at an early stage. Evaluation is very important, he says, and it remains to be seen which aspects of the project will be maintained and which dropped. Johansson is a level-headed Scandinavian who stresses that the EU is entering new territory with this centre. "Luis Michel's idea was to set up

such a centre in every country. This is the pilot project. It is ahead of its time. There will surely be legal migration to the EU, even if very limited in the early stages. When relevant contracts have been signed with Mali and if the Member States want, the centre could take over the administration of the recruitment of such labour."

As neither one nor the other is imminent (only Spain appears to be negotiating with Mali over small numbers of migrant labourers), the centre is pushing ahead with its other tasks. The centre is supposed to carry out new research on migration in Mali and the region and arrange for the exchange of Malian experts working abroad; in short trips home they should convey their expertise to natives. Moreover, the centre should support the reception and provision of voluntary and deported returnees and inform Malians who want to go to Europe of the risks of irregular migration and offer alternatives. Finally, the centre should also ensure that remittances by Malians abroad are better used to support the country's development.

When considering these broad tasks one can observe that none of these projects is really new. Migration research is already being conducted intensively at numerous social science institutions in Mali and France. The International Organisation for Migration (IOM), co-financed by the European Union, is currently researching irregular migration in Mali and the wider region and developing political strategies to fight it [3]. The exchange of experts is already taking place through a programme entitled TOKTEN, financed by the UNDP (United National Development Programme). CIGEM is merely attaching itself to the existing (not very successful) programme.

Finally, the support of returnees and deportees is also not new in Mali. Voluntary returnees are supported by various national programmes, in France, for example, by the CODEV programme in the framework of the French government's co-development approach. At least on paper, Mali's Ministry for Malians Abroad and African Integration helps Malians deported from Europe to reintegrate in Africa by arranging collections from the airport and providing initial assistance. In practice this is rare - this work being carried out mostly by non-governmental organisations. This ministry has fostered relations with Malians abroad for some time with a special focus on the money they bring into the country. However, no clear approach has been developed as to how these remittances could be re-channelled into Malian development goals, which has been the concern of the associations set up in France, and to a lesser extent elsewhere, by Malians.

With regard to fighting irregular migration the centre has not developed a convincing strategy. Information campaigns on the dangers of irregular migration to Europe began in 2003 in Mali and other African states; one can assume that the population is more than aware of the risks. Johansson admits that information campaigns that do not offer alternatives are futile, but alternatives are difficult to create and the centre's sole initiative involves training courses. This ignores the fact that Mali has a surplus of trained professionals who have no chance of obtaining employment in the meagre labour market without "connections". Johansson cannot provide an answer to the question as to whether there are not too many applicants for such a small centre: "The target group is too big. With regard to return, the number is manageable." Almost nobody in Mali has a secure job and many dream of Europe. If the intention is to provide opportunities in the country for these youth a few training courses will not extend far.

### **Europe exports its contradictions to the African continent**

Without concrete proposals for labour opportunities, the CIGEM remains powerless, dabbling around with old and partially unsuccessful projects. The aim of the centre's current work plan

according to Johansson is "... to do something more positive on the migration question, not only FRONTEX and others things to stop or reduce the flood, but to take the initiative to find out what can be done with regards to the migration issue in countries of origin beyond general development aid...". It might do this on paper, but not in practice.

Instead, the contradictions of Europe's migration politics have become evident in Mali. Motivated by the Euro-African summits, the European Commission, led by Luis Michel, sped ahead but the Member States have not followed this initiative.

The job centre in Bamako has become a branch of migration prevention. Despite the EU needing around 1.5 million additional - and mainly unskilled - cheap workers in coming years, (as the European Commission information film 'Illegal immigrant workers' informs us), most Member States resist legal immigration from Africa. Not even a small door will be opened to these migrants even if it results in pressure being taken off irregular migration. This is only partially because African migrants are not wanted, also important is the Members States' interest in retaining immigration firmly in national hands and not devolving any competencies to the European Commission. So the Commission stands alone with CIGEM in Bamako and the new message from the European Union to Africa is the old one: don't expect any help from us.

Perhaps the most long-lasting effect of CIGEM will therefore be the imposition of Europe's own contradictions onto the Malians. The EU finances and therefore controls the centre, but

its management and the implementation of its projects are consigned to the Ministry of Malians Abroad, with the involvement of some other ministries. Johansson looks anguished when he explains why the project has not really progressed after more than a year. The project is not being neglected, he says, on the contrary, it has the highest priority. But cooperation with the Malian authorities is protracted because they have not carried out projects with international donors nor the European Union. Things take time, even if Johansson is trying to speed them up.

Malians meanwhile have to train themselves in European bureaucracy. They also have to deal with the accusation that they have been bought cheaply by the European Union to prevent migration in their own country in European interests. The European imbalance, which leaves national states to decide upon immigration requirements while organising a unified fight against migration, is reflected at CIGEM, where no one is talking of a job centre anymore.

This article first appeared in the journal "Hinterland" of the Bavarian Refugee Council.

[1] Zoé Lamazou "Un "Guantanamo" en Mauretanie" *Le Monde Diplomatique*, October 2008, p.21

[2] *Compare Berliner Zeitung*, 9.2.07 "EU Job-Center mitten in Afrika"

[3] *Délégation de la Commission Européenne au Mali: La Lettre de Bamako*. p.8

## New immigration system forces UK academics to act as "an extra arm of the police"

by Max Rowlands

**New rules place an obligation on academics to keep foreign students under surveillance. They will interfere in academic decision-making and the free exchange of ideas.**

New immigration controls being phased in as part of the government's Points Based System (PBS) will compel UK universities to surveil their international students. Under tier 4 of the new system any educational institution wishing to enrol students from outside the European Economic Area (EEA) and Switzerland must apply to join the UK Border Agency's (UKBA's) list of registered sponsors and agree to adopt immigration functions. This means that, among other things, they will have to maintain a record of non-EEA student passports, visas and contact details and report poor attendance to the UKBA. Some universities are already asking academics to take full registers at lectures even if attendance is not compulsory. This inordinate response stems from the fact that failure to meet these new responsibilities will result in the withdrawal of the institution's sponsorship license and with it the ability to admit non-EEA students (and the high tuition fees they pay).

Universities will also be removed from the list of registered sponsors if they fail to report to the UKBA on non-EEA employees sponsored under other tiers of the system. This and the new Civil Penalty System introduced in 2008, under which employers can be fined up to £10,000 for every irregular immigrant they are found to employ, has resulted in increased monitoring and checks on foreign members of staff. That these new practices have been introduced with little debate is indicative of Britain's growing surveillance culture. The PBS also represents the growth of "self-surveillance" schemes which encourage members of the public to monitor and police each other's behaviour.

### The new immigration Points Based System

The UK PBS is based on the Australian model and was first outlined in the 2006 Home Office document *A Points Based System: Making Migration Work for Britain*. [1] The old system, described in the report as inefficient, confusing and overly bureaucratic, has been replaced with a five tier framework:

*Tier 1 - Highly skilled individuals to contribute to growth and productivity*

*Tier 2 - Skilled workers with a job offer to fill gaps in UK labour force*

*Tier 3 - Limited numbers of low skilled workers needed to fill specific temporary labour shortages*

*Tier 4 - Students*

*Tier 5 - Youth mobility and temporary workers: people allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives*

Applications are appraised and awarded a point score on the basis of how well pre-defined criteria (such as language skills, finances and age) are met. These criteria are different for each tier, as is the number of points required to be granted entry. The system is designed to be highly transparent and easy to understand with the intention that people can assess themselves, thus cutting down on the number of erroneous applications. If an applicant fails to score enough points for the tier they will be refused entry.[2]

Significantly, there is no longer a formal right of appeal for a refusal. Instead failed applicants can request an “administrative review” of their decision which is conducted internally by entry clearance managers. This has led NGOs working in the field, such as the Immigration Law Practitioners’ Association (ILPA), to question the fairness and impartiality of the application process.[3]

Those applying under tiers 2-5 have to provide the UKBA with a certificate of sponsorship from a licensed employer or educational institution. To join the list of accredited sponsors, employers and education providers must:

*satisfy the requirements for the particular Tier in which they wish to sponsor migrants, and accept certain responsibilities to help with immigration control.*

These responsibilities are different for each tier, but in all cases failure to fulfil them will result in the sponsor being removed from the list. This would mean that they could no longer sponsor migrants under any tier. Thus, removal for failing to report to the UKBA on employees sponsored under tier 2 would also mean that they could no longer enrol students under tier 4, and vice versa.

Licensed sponsors are awarded either an A rating or a B rating and their details are made available on the UKBA website. A sponsor with a B rating must “improve its performance within a relatively short time” or face having its accreditation withdrawn. All sponsors are subject to unannounced visits by UKBA enforcement teams to check that the responsibilities of sponsorship are being met.

#### **Tier 4 – Students**

The concept of sponsorship underpins the new PBS and is of particular importance for the education sector whose institutions will undoubtedly be the biggest users of the new system. 309,000 non-EEA students entered the UK in 2006 [4] and British Council research estimated the average annual contribution of foreign students to the British economy at £8.5 billion. [5] The UKBA published a *Statement of Intent* for the implementation of tier 4 in which it emphasised that:

*Those that benefit from migration will be expected to take greater responsibility for the migrants they bring to this country... For the education sector, this means we will expect education providers to take more responsibility for their recruitment decisions and to keep track of their students once in the UK. [6]*

To be granted entry, tier 4 applicants must acquire forty points. Thirty are awarded for obtaining a certificate of sponsorship from an accredited institution to undertake a course “at a suitable level.” The remaining ten points are given to applicants able to show that they have enough money to cover course fees and monthly living costs. Once in the UK the onus is very much on the sponsor to help ensure that the student is complying with the terms of his/her visa. Most of the tier 4 reporting responsibilities are currently voluntary while “migrant reporting functionality in the sponsorship management system” is being rolled out. This will happen between autumn 2009 and March 2010 at which point it will become compulsory for a sponsor to:

*Keep a copy of all their non-EEA students’ passports showing evidence of their entitlement to study;*

*Keep each student’s contact details and update them as necessary;*

*Report to UKBA any students who fail to enrol on their course;*

*Report to UKBA any unauthorised student absences [missing 10 “expected contacts”]*

*Report to UKBA any students who discontinue their studies (including any deferrals of study);*

*Report to UKBA any significant changes in students’ circumstances, (e.g. if the duration of a course of study shortens);*

*Maintain any appropriate accreditation;*

*Offer courses to international students which comply with UKBA conditions;*

*Comply with applicable PBS rules and the law; and*

*Co-operate with UKBA*

Under the previous system the Home Office occasionally approached institutions to check whether foreign students had been attending their course. This was done on an ad hoc basis with no formal obligation on the institution to respond (although not doing so harmed the chances of the student being allowed to remain in the UK). Under the PBS there is still no legal obligation to adopt these functions of immigration control. However, should an education provider now fail to comply they risk losing their status as an accredited sponsor.

#### **Non-EEA employees**

Like all UK employers, universities also have sponsorship responsibilities for any non-EEA staff they employ under tiers 2, 3 and 5. If a non-EEA employee - be it an academic, administrator, caterer or cleaner - misses 10 working days the university is obliged to notify the UKBA. They must also report: when their contract of employment ends; if they stop sponsoring them for any other reason; if there are changes in job circumstances such as salary; and if they have any reason to suspect they are breaching the terms of their visa. [7]

Anyone who employs non-EEA nationals also has stringent legal obligations under Sections 15 to 26 of the Asylum and Nationality Act 2006 which came into force in February 2008. It introduced steeper penalties for the employment of irregular migrant workers. Section 15 of the Act introduced a civil penalty system under which employers face a fine of up to £10,000 for each irregular worker they employ. Under Section 21, in serious cases, the UKBA can prosecute those who *knowingly* employ (or have employed) irregular workers. This offence is punishable by an unlimited fine and/or a prison sentence of up to two years. However, sanction can be avoided if employers demonstrate a willingness to inspect the original documents of prospective non-EEA employees and perform annual checks on the eligibility of those already employed. UKBA guidelines confirm that by complying with these controls the employer has an “excuse against payment” that can help them avoid a fine if they later unknowingly find themselves at fault. [8]

Employers are thus incentivised to adopt UKBA functions and monitor their staff. To facilitate these immigration checks, in November 2008 biometric identity cards were issued to all foreign nationals who had been given permission to extend their stay in the United Kingdom. In March 2009 the scheme was extended to cover the dependants of successful applicants and students (who now also have to provide their biometric data in their original tier 4 application). The majority of successful applicants under other tiers of the PBS will continue to have a sticker put in their passport under the old system. [9]

#### **The reaction of UK universities**

The further and higher education sector’s reaction to the PBS has been uncertain and inconsistent. The scheme discriminates against non-EEA students and undermines academic freedoms, yet many institutions have swiftly implemented new procedures

to ensure it is adhered to with little or no debate. Non-EEA students are charged high tuition fees and effectively subsidise many institutions. The prospect of losing the ability to admit them or paying £10,000 fines for employing staff who lack proper documentation has elicited panicky knee-jerk reactions from some university management.

A growing campaign against this is being led by the University and College Union (UCU) which strongly condemned the PBS at its congress in May 2009. It warned that the new immigration rules will “turn our members into an extra arm of the police force.” The organisation’s general secretary, Sally Hunt, told *Labour Research* that:

*We do not believe it is appropriate or effective to task colleges and universities with the policing of immigration. UK higher education is rightly proud of the diversity of its staff and students. These measures would see reluctant lecturers acting as border guards and sending an unsettling message around the world of a fortress Britain culture. [10]*

UCU highlighted several examples of how universities have started to perform immigration checks on staff and students. Lampeter University sought to check the documentation of all members of staff to ascertain whether they were legally permitted to work in the UK. The College of North East London made a similar request for staff to produce their passports before being forced to back down. And Goldsmith College asked all staff to put their attendance registers online. [11] Writing in *Times Higher Education*, Ann Singleton, Steve Tombs and David Whyte argued that:

*What is common to these responses is that they are discriminatory and likely to result in at best prejudicial and at worst unlawful actions against individual colleagues and students. Across the sector, management responses are confused and overzealous. The atmosphere for non-EU students and colleagues is becoming increasingly hostile and surrounded with doubt and suspicion. [12]*

In some cases external examiners and visiting lecturers have been asked by universities to provide their passport details. And in a high profile case at the School of Oriental and African Studies (SOAS) in June 2009, nine members of the university’s cleaning staff were detained by immigration officials. They were called to a meeting by ISS, the company the university uses to contract cleaners, where they were met by around 40 UKBA officials. Two university senior administrators were present at the raid, but no advance warning was given to staff. SOAS cleaners had recently been campaigning for better working conditions, the London living wage and greater union representation. Six of those arrested were deported within two days, two held in detention and one went into hiding. Sixty SOAS students responded by occupying the principal’s office for three days until a number of concessions were met. The university eventually agreed to write to the Home Secretary asking for leave to remain for the cleaners not deported and the immediate return of those who had been. They also agreed to discuss the possibility of bringing cleaning in-house, to acknowledge UCU’s policy of non-compliance with immigration raids, and to not take action against those involved in the protest. [13]

### **The implications of compliance**

In his foreword to *A Points Based System: Making Migration Work for Britain*, the then Home Secretary Charles Clarke said:

*I believe that this new points-based system will allow employers and those in educational institutions to take ownership of migration to this country. They, rather than just the Home Office alone, will be able to vet who comes into the UK.*

But is this an appropriate role for universities? The principal of academic freedom holds that universities should be independent of government to ensure that teaching and research can be carried out without political interference. This means that academics can conduct research and publish findings without fear of state sanction and can act as independent experts in their field. Making them do the work of the UKBA undermines this tenet.

UK universities find themselves in a precarious position. If they refuse to implement the PBS and lose their accredited status the financial consequence would be disastrous. But assuming an active role in immigration control would unquestionably have a damaging effect on the education sector’s health. Surveilling students would fundamentally undermine the relationship of trust between them and members of staff. This, together with tier 4’s rigorous application process, which includes stringent financial checks and the mandatory submittal of biometric data, is likely to reduce the international appeal of UK universities. The financial repercussions of a decline in the number of non-EEA students would be severe for tertiary education in the UK. Widespread concern was voiced at a UCU conference on the PBS held in April 2009, that a decrease in foreign student numbers would damage university programmes, funding, international reputations and jobs. [14]

However, the ramifications of non-cooperation are unclear. The UKBA has emphasised that it holds sponsors directly responsible for the actions of staff they appoint to administer the new system. [15] Further, legal advice issued to employers by *Law at Work* recommended that they “amend employment contracts to take account of the PBS changes” to include “an obligation on employees to reveal changes in circumstances.” [16] This means that while university staff have no legal obligation to perform checks on foreign staff and students, they could face disciplinary action should they refuse to do so. Protest through non-compliance would be undertaken at considerable risk. The system is therefore likely to prove internally divisive. Academics who object to the scheme will be pitted against university administrators charged with ensuring that the institution’s responsibilities are met.

### **The wider context – the normalisation of surveillance**

The PBS’s imposition of stringent sponsorship responsibilities can be contextualised within a broadening debate on the nature of surveillance. The issue is increasingly not solely whether surveillance is a good or bad thing, or how much of it is permissible, but what form it should take and who should carry it out. The former Information Commissioner, Richard Thomas, confirmed Britain to be the “most surveilled” western state in 2006 and in February 2009 warned against “hardwiring surveillance” into everyday life. [17] In recent years there has been a proliferation of government schemes in which members of the public are actively encouraged to surveil one another.

For example, government anti-terrorism posters encourage people to studiously monitor neighbours and report any activity they deem to be suspicious. In March 2009 a campaign ran under the slogan “Don’t rely on others. If you suspect it, report it.” One poster encouraged citizens to report anything suspicious they saw in their neighbours’ garbage bins such as empty chemical bottles. Another poster urged people to report anyone they saw studying any of the UK’s 4.2 million CCTV cameras. [18] Similarly in March 2008, the Metropolitan police launched a counter-terrorism advertising campaign that encouraged the public to report anyone they thought to be taking suspicious photographs. The advertisements ran in national newspapers with the slogan: “Thousands of people take photos every day. What if one of them seems odd?” [19] And in July 2009 Cambridgeshire and Hampshire police forces launched radio campaigns encouraging people to check the background of

anyone they think behaves oddly around children. Members of the public can contact police and check whether an individual is on the sex offenders register. [20] In short, the public is being urged to surveil and police each other's actions.

The promotion of this form of 'self-surveillance' is also strongly evident in the raft of anti-social behaviour legislation introduced in the last ten years. Acceptable Behaviour Contracts and, in particular, Anti-Social Behaviour Orders (ASBOs) rely heavily on public pro-activeness to be effective. The latter are civil orders, made against any person over ten years of age, which ban them from committing certain acts, entering designated geographical locations or socialising with specific individuals. Breaching an order is a criminal offence punishable by up to five years in prison, but that has not prevented over half of all recipients violating the terms of their order. Members of the public are encouraged to gather evidence against objectionable neighbours to aid the application process. In a number of cases this has led to accusations of vindictiveness. Once an order is made, many of the things prohibited by an ASBO, and thus criminalised, are so petty that it is virtually impossible for the police to enforce. Thus if someone is banned, for example, from walking on a specific road, wearing a hooded top or swearing too loudly at their television set, it is often the responsibility of their neighbours to notify police of a breach to ensure that they are punished. To this end police actively encourage public participation by "naming and shaming" ASBO recipients. Their name, photograph and the terms of their order are distributed in leaflets, published in the local press and posted on the internet. Those with orders can then be monitored by their neighbours. Peterborough council went so far as to offer people CCTV cameras and Dictaphones to gather evidence against their neighbours. [21]

And while the surveillance of others is being normalised, perversely the right of the public to monitor the state is being increasingly curtailed. Since February 2009 an individual can be arrested for photographing a police officer. Section 76 of the Counter Terrorism Act 2008 permits the arrest of anyone taking photographs of members of the armed forces, the intelligence services or police officers "likely to be useful to a person committing or preparing an act of terrorism." *The Terrorism Act 2000* has also frequently been invoked to restrict photography when police claim a photographer's subject matter is sensitive to issues of national security (specifically under Section 44 which gives the police powers of stop and search). And media workers are increasingly being obstructed in their work by police, particularly at political demonstrations. Alarming, they are also being targeted and filmed by the Metropolitan Police's Forward Intelligence Team (FIT). FIT units attend large-scale gatherings to archive video footage of potential troublemakers. Despite police assurances that media workers are not their intended target, there is an abundance of video evidence indicating otherwise. At *Climate Camp* journalists were filmed in a café several miles away from the protest site. [22]

Thus there is an obvious contradiction in government policy. A sense of social responsibility for the surveillance of neighbours and colleagues is being fostered, but at the same time control over what can and can't be surveilled is being increasingly tightened. This disparity is illustrated by the aftermath of the July 2005 London tube bombings in which the police relied heavily on public photographs and video images taken on the day. [23] Ironically the recording of such footage could today result in arrest.

The PBS represents a dangerous extension of this trend because of the financial penalties non-compliance potentially incurs. Universities that refuse to administer the system cannot be punished by criminal law, but removal from the UKBA list of approved sponsors will have a devastating impact on their ability to function. The danger is that university management's need to administer this risk will lead to increasing interference in daily

academic decision-making. This could limit the free exchange of ideas and personnel with academics and universities outside the EEA.

The decision to charge educational institutions with the responsibility of policing immigration has been made with little or no debate. It reflects increasing state control over the right to surveil others and the swiftness with which it has been implemented by many universities is genuine cause for alarm.

## Footnotes

[1] Home Office website:

<http://www.homeoffice.gov.uk/documents/command-points-based-migration?view=Binary>

[2] UKBA website:

<http://www.ukba.homeoffice.gov.uk/managingborders/managingmigration/apointsbasedsystem/howitworks>

[3] ILPA Briefing on a Points-Based System: Making Migration Work for Britain March 2006

[4] Select Committee on Economic Affairs First Report: <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeconaf/82/8210.htm>

[5] British Council website: <http://www.britishcouncil.org/home-press-180907-global-value-study.pdf>

[6] UKBA website: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs/statementofintent/studentsundertheapointsbased.pdf?view=Binary>

[7] UKBA website:

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/sponsorshipduties/reporting/>

[8] UKBA website:

<http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/complyingwiththelaw/post280208/>

[9] UKBA website:

<http://www.ukba.homeoffice.gov.uk/managingborders/idcardsforforeignnationals/>

[10] Labour Research, June 2009: "We are not border guards"

[11] University and College Union website:

<http://www.ucu.org.uk/index.cfm?articleid=3705>

[12] Times Higher Education 15 June 2009:

<http://www.timeshighereducation.co.uk/story.asp?storycode=406422>

[13] <http://freesoascleaners.blogspot.com/>

[14] University and College Union website:

[http://www.ucu.org.uk/media/pdf/k/g/pbs\\_seminarreport\\_apr09.pdf](http://www.ucu.org.uk/media/pdf/k/g/pbs_seminarreport_apr09.pdf)

[15] UKBA website:

<http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/sponsorsandratings/awardaandbratings/>

[16] Law at Work, July 2008:

[http://www.taylorwessing.com/uploads/tx\\_siruplawyermanagement/Law\\_at\\_Work\\_-\\_July\\_2008.pdf](http://www.taylorwessing.com/uploads/tx_siruplawyermanagement/Law_at_Work_-_July_2008.pdf)

[17] The Times, 27 February 2009:

<http://www.timesonline.co.uk/tol/news/politics/article5812076.ece>

[18] Infowars website:

[http://www.infowars.net/articles/march2009/250309Stasi\\_UK.htm](http://www.infowars.net/articles/march2009/250309Stasi_UK.htm)

[19] Metropolitan Police website:

[http://www.met.police.uk/campaigns/campaign\\_ct\\_2008.htm](http://www.met.police.uk/campaigns/campaign_ct_2008.htm)

[20] BBC News website, 9 July 2009:

[http://news.bbc.co.uk/newsbeat/hi/the\\_p\\_word/newsid\\_8142000/8142148.stm](http://news.bbc.co.uk/newsbeat/hi/the_p_word/newsid_8142000/8142148.stm)

[21] Statewatch ASBOWatch website:

<http://www.statewatch.org/asbo/ASBOWatch.html>

[22] NUJ website: <http://www.nuj.org.uk/inner/Pagenuj.html?docid=910>

[23] BBC News website, 10 July 2005:

<http://news.bbc.co.uk/1/hi/uk/4668675.stm>

# The Spanish police transition: a paradigm of continuity

by Mikel Aramendi (member of *Hika's* editorial team)

**Examines the transition from Francoism to democracy which is characterised as a “reign of forgetfulness”. An Amnesty Law places a “full stop” on any action being taken against those responsible for crimes.**

On 27 January 1994, almost 20 years after the death of Franco, police superintendent Roberto Conesa Escudero died at the age of 76 and was buried in Madrid's cemetery. Brief death notices in the leading newspapers were the only public commemoration of the event. The interior ministry, to which Conesa had devoted his life, was silent. Even the journalist who had delved deepest into the sinuous biography of the deceased took a couple of months before dedicating an epitaph:

*Roberto Conesa has died. He died a couple of months ago of old age - only because nobody dies of badness. I may be the only person that owes him something that is not a sentence or a beating; I started out in legal journalism in 1977, with a series of articles in which I sought to reconstruct his life. The sinister biography of a former left-winger who informed on his friends from the Juventudes Socialistas Unificadas (Unified Socialist Youth) commencing a first-class career in the police, [one that was] laden with medals and distinctions, rewards for his betrayal. He became the perfect example of the political police officer under Franco. For decades naming him meant mentioning the most prominent of torturers, a guy who had no children, no passions nor inclinations other than the orgy of the executioner before his victim. He enjoyed the detainee's humiliation so much, that he sometimes reached an orgasm. There are witnesses. [1]*

Conesa was a crucial and emblematic figure in the history of Francoism and the first years of transition towards democracy. His repressive trajectory began after the war in which he served in Republican ranks doing repressive tasks. He developed in an elite police unit that was responsible for the persecution of the political and/or armed opposition, whether in Spain or in exile. In this task, his effectiveness and mastery earned him the nickname “the superagent”. Communists, anarchists, socialists and later Basque and left-wing activists, were the favourite targets of a police officer who combined, with unequalled skill, torture in the interrogations of detainees, infiltration into persecuted organisations and cooperation obtained through terror or corruption. The Julián Grimau case in 1962-1963 brought together the key elements of his *modus operandi*.

His presence at an interrogation came to indicate the importance of the detainee and served to announce the brutality they would receive. It was said that his head contained a database of the clandestine opposition to Francoism and his small *Brigada Central de Investigación Social* (Central Unit for Social Research) constituted the main school for the cadres of the *Brigadas Político-Sociales* (BPS, Social Political Units) of the *Cuerpo General de Policía* (CGP, the general police force) which, from the 1960s, were the spearhead of a dictatorship that faced increasing opposition in the University, the factories and on the streets. Many of the police officers who attained notoriety during the last years of Francoism (Ballesteros, Anechina, Creix, Escudero, González Pacheco, etc.) began their professional career under the guidance of Conesa.

## No dissolution of repressive bodies

From the beginning, Francoism's reformers ruled out demands for the “dissolution of repressive bodies” and “accountability for responsibilities” that the democratic opposition had initially advocated during the Transition. Conesa was sent into “golden

retirement” at the Jefatura Superior de Policía (Police Superior Headquarters) in Valencia in 1976, awaiting, one presumes, a routine retirement. However, this was not how his career was to end. One year later, the GRAPO kidnapping of the president of the Council of State, Antonio María de Oriol-Urquijo, and of lieutenant general Villaescusa catapulted him into the media spotlight. He was given even greater police responsibilities than those he held during Francoism. Adolfo Suárez and his interior minister Martín Villa, both of Francoist extraction, resorted to Conesa, who, with a speed that caused rivers of ink to flow and gave rise to unbounded reflection, freed Oriol and Villaescusa and dismantled a large part of GRAPO's operational structure.

With memorable historical sarcasm, after the first multi-party elections in June 1977, the man who had contributed so much to Francoism was named Commissioner-General of Information and rewarded with the nascent democracy's highest police distinction. Conesa spent two more years in this high office, periodically dismantling GRAPO, organising swoops against ETA, which was increasingly active, and overlooking the conspiracies and terrorism of the far-right. He suffered his first heart attack in 1979 that forced him into permanent retirement until his discrete death a decade and a half later.

Roberto Conesa's was certainly not an isolated case but rather an emblematic one. Almost all the superintendents and inspectors of the Francoist BPS maintained or improved their employment status in the new political system, largely due to promotions and awards attained “in action”. This was bolstered by systems to effect the functioning of the judiciary and police that made it (and continue to make it) practically impossible to effectively punish ill-treatment and torture, even when there is a political will to do so. To a large extent, this explains why the persistence of torture, which has been repeatedly criticised by international human rights bodies, continues in the Spanish police and judicial system 30 years after the Constitution of 1978 officially abrogated it.

## Amnesty Law creates “full stop”

Moreover, the Amnesty Law of 1977 legally settled any responsibilities that police officers involved in the repression of anti-Francoist activities may have incurred. It established a “full stop” that has never been questioned other than by some of those directly affected by it and by minority political groups. The Francoists controlled the most powerful of the newly created police trade unions and not even the connivance of some of them with far-right military coup plots during the years of government by the UCD [2] prevented them from holding important responsibilities. This contributed substantially in lending credibility to the failed *coup d'état* that nearly materialised on 23 February 1981.

However, it was the ascent to power of Felipe González's socialists (PSOE) after their overwhelming victory in 1982 that definitively confirmed the *Lasciate ogni speranza* [“Forget any hope...”, a reference from Dante's *Inferno*] for those who awaited in-depth reform of the police bodies. In opposition, the PSOE had depended upon the minority and semi-clandestine *Unión Sindical de Policía* [USP, trade union] to obtain sensitive information and one can assume that it would have been a source for trusted appointees once they went into government. It was,

therefore, a surprise when the new interior minister, Jose Barrionuevo, who had no experience in policing matters, pursued a continuist policy of appointments. He did not merely abandon the PSOE's USP cadres but promoted former Francoist torturers to key posts; for example the appointment of Jesús Martínez Torres as Commissioner-General for Information. The victims' public protests went unheeded.[3]

Later journalistic accounts told of a sequence of events in which the inability of the new officials, trade union dissent and the socialists' deep fear of being sabotaged by civil servants - who were as hostile as they were powerful, - intermingled.[4] Barrionuevo's interior ministry resorted to paramilitary police force terrorism against ETA under the acronym of GAL, as was verified in court a decade later. The interior ministry set in place a marriage of convenience between socialists and infamous Francoist police officers in a way that nobody would have imagined a few years earlier. ETA's activity provided a simple argument: in the pressing anti-terrorist struggle *all* police officers who were experts in this field were indispensable, regardless of what they believed or what they had done. In fact, "those" police officers were the most interesting ones.

In this sense, the case of superintendent Manuel Ballesteros García is exemplary. One of Conesa's collaborators and well-known for his activities in the repression that characterised the final years of Francoism, he was promoted by UCD governments until he became the chief of the Unified Command of the Anti-Terrorist Struggle. He was not replaced even after his conduct during the 23-F coup attempt was disclosed. The cover he provided for two paramilitary police gunmen in 1980, after they had murdered two people in Hendaye, France, eventually brought him before the Spanish courts. He was ostracised during the first years of the socialist mandate, but from 1987 onwards he was "unearthed" as a special advisor to the powerful Secretary of State for Security, Rafael Vera, (who was to be found guilty a decade later for his involvement in the GAL). As an advisor, Ballesteros was part of the team that accompanied Vera during conversations with ETA in Algiers in 1989. Retired and without any further mishaps, he died like Conesa in January 2008.

### **Guardia Civil relaunched**

The ideological and political turn by the PSOE in security matters found a correlation in its "discovery" of the *Guardia Civil* (GC). It is a militarised body responsible for policing tasks in rural areas and for the operational defence of the territory, as well as carrying out traffic police functions. Under Francoism the GC had been badly equipped and paid, lodged in scattered barrack-houses that reproduced the relations of the military hierarchy in the officers' private lives. It had a secondary role in the repression, except for two very different periods and locations: the repression of guerrillas in the post-war period and in the Basque Country during the final years of Francoism. On both occasions, the GC conducted itself with unforgivable brutality. Nonetheless, its information service was primitive and it lacked modern technological means and working practices.

The socialists, who attained power in 1982 with a programme that promised the de-militarisation and democratisation of the GC, quickly changed their mind because they were racked by problems from the unionisation of the *Cuerpo General de Policía* (general police force) and the *Policía Armada* (armed police). They came to value the strict hierarchy and discipline of the GC, which went on to gain tasks and resources in the anti-terrorist struggle. To a large extent they followed the working methods of the British FRU in Northern Ireland. This occurred to such an extent that a decade later the GC had become "the best-informed police body on ETA", one capable of capturing its entire leadership in 1992.

The flip-side of this effectiveness lay in the methods that they employed at the barracks at Intxaurren, in San Sebastián.

Headed by Enrique Rodríguez Galindo, an officer who had started his professional career in the colony of Equatorial Guinea, the centre acquired a sinister reputation, one confirmed by allegations from bodies that were not in connivance with ETA's terrorism. It intermingled the systematic torture of hundreds of detainees (some of them resulting in death, as in the Zabalza case), para-police force terrorist activities and drug trafficking. In return, Galindo enjoyed unequalled political protection that allowed him to evade extremely serious allegations that were mounting against him, until some of the scandals that ended González's mandate broke out. They included the resignation and escape of the *Guardia Civil's* director-general, Luis Roldán (the first civilian and socialist who held this post, which he used to enrich himself enormously), and the discovery in Alicante of the bodies of two ETA members who had disappeared in Bayonne in 1983. Promoted to general, Rodríguez Galindo would finally be sentenced for the kidnapping and murder of the two youths, although not without being publicly defended by a number of socialist officials.

Among the "pros" of a track record that has such devastating "cons", one would have to point out the reforms that, slowly and laboriously, the PSOE government embarked upon (the UCD limited itself to managing what it had inherited). These were in the field of police organisation and in the development of newly created autonomous region police forces, particularly in the Basque Country and Catalonia. Organic Law 2/1986, on the State Security Forces and Bodies, unified the *Cuerpo de Policía Nacional* (national police force - the former armed police, civilian and in uniform, primarily tasked with maintaining public order in cities and the custody of administrative buildings) and the *Cuerpo Superior de Policía* (superior police force, formerly the CGP, responsible for political-social repression) into a sole "armed institution of a civilian nature under the authority of the interior ministry".

### **Ignorance of history in "reign of forgetfulness"**

However, broadly speaking, a "reign of forgetfulness" was established that, in 2001, led a Spanish judge to write in the introduction of his book about the Francoist *Tribunal de Orden Público* (TOP, Public Order Court):

*If at present a live survey was carried out through any means of communication to ask citizens what they associate the term TOP with and what they know about it, the answers would be, after an initial moment of surprise, that they would either not know about it or they would associate the term with many meanings that, in no case, would have any relation to the acronym of this Court.[5]*

This observation can be extended with regards to the police force that provided TOP with the vast majority of its victims. But to date, nobody has felt the duty to even put together a similar monograph on the history of the Francoist political police and the biographies of its most prominent members, most of whom are now retired from office.

Among those who are ignorant of this recent history are new police recruits who, as part of their training, study sanitised texts on the activities of their predecessors a few decades ago:

*After the Civil War (1936-1939) the Spanish Police underwent a re-modelling under the dictatorship of General Franco, and its functions were thus divided in 1952 between the *Cuerpo General de Policía* (formerly Surveillance and Investigation) and the *Cuerpo de Policía Armada y de Tráfico* (formerly Assault Guards and Road Surveillance). The *Guardia Civil* did not experience important innovations in this period, nonetheless taking on a role of great protagonism throughout the time that Franco's dictatorship lasted. The Spanish Police's long uninterrupted history of public service continued while several historical events followed each other in Spain*

that were to have a considerable effect on the development of the police institution.[6]

It would be difficult to conceal more in fewer lines.

#### Footnotes

1. Gregorio Morán. "En los escondrijos de la memoria". *La Vanguardia*, 09.4.94.
2. Declaration by the APF of the CGP, "Dolorosamente hartos", 29 August

1978.

3. Javier García. "Altos mandos policiales proceden de la desaparecida Brigada Político-Social. El director de la Policía afirma que el equipo goza de la confianza del Ministerio". *El País* 07.2.83.
4. Miguel González. "Del cambio a la guerra sucia. El PSOE renunció en 1982 a renovar los aparatos de seguridad del Estado por temor al desorden público". *El País*, 1.2.95.
5. Juan José del Águila. *El TOP. La represión de la libertad (1963-1977)*. Barcelona, 2001.
6. <http://club.telepolis.com/satorre/hp/historia.htm #p6>.

## National Socialist continuities in the German police

by Stephan Inck

Until the late 1960s the personnel and ideology of West Germany's CID (Criminal Investigation Department) was dominated by a network of former police officers who graduated from the "Führerschule der Sicherheitspolizei" (Police Academy for the CID and secret service) in Berlin-Charlottenburg during the late 1930s. These officers then had a career in Nazi Germany with the Reichskriminalpolizei (RKPA), the Reich's central CID office. After 1945 they managed, initially under British rule in Schleswig-Holstein and then after 1949 within the BKA and in regional states, to again climb the career ladder to attain leading positions from which they continued to apply National Socialist concepts to crime policy.

In September 1971, Fritz Kempe sent out the "Old Charlottenburger" regulars' Circular Letter no. 6/71. This clique, at the time comprising 92 people (all between the ages of 59 and 69), was presumably initiated in the 1950s and it met once a month in a Düsseldorf pub. Its members, however, were not only united by drink-related recreational activities. The name "Alte Charlottenburger" referred to their former police academy in Berlin-Charlottenburg from which most of the group's members had graduated as chief inspectors in the late 1930s. It was renamed the *Führerschule* of security police in 1937. Although they chose to distance themselves from the *esprit de corps* of their Gestapo colleagues who graduated at the same school, as a rule they were nonetheless equally staunch National Socialists (NS). Most of them, if they were not already members, joined the SS during the course of their training [1].

A comparatively large number of the Charlottenburg graduates joined the Reichskriminalpolizei (RKPA) in 1938-1939. In September 1939, the RKPA became Department V of the Reichssicherheitshauptamt (RSHA, central security office), in which the Secret State Police Office (*Staatsgeheimpolizei*) and the security agency's central office (*SD-Hauptamt*) was located. The security agency was the private secret service of the Nazi Party and part of the SS [2]. One of the German CID's new tasks was "preventative crime fighting", taking active measures - including preventative detention (*Sicherungsverwahrung*) - against all groups that might violate the norms of the "Volksgemeinschaft" (national community) or act in a "deviant" manner. The German CID itself became the sanction-imposing authority and legal remedy could only be sought through it. This resulted in the CID sending people to concentration camps and murdering many of those branded as "gypsies", "professional criminals" or "anti-social" (asozial). Important elements of the NS terror therefore lay within the remit of the German CID. With the ensuing war of conquest, the "external deployment" of security police officers became an additional field of action, especially for young and career-minded RKPA officers who were regularly involved in the atrocities committed by the *Einsatzgruppen* (Special murder squads), especially in Eastern

Europe. The *Einsatzgruppen* murdered one million Jews.

### The period of occupation

In April 1945, most RKPA officers withdrew to the Flensburg area and took up quarters in regional CID offices. When the Nazi regime capitulated they immediately offered the British occupying power their cooperation. In the post-war era their careers were inextricably interlinked with the contradictions of Britain's occupation policies. The conservative Foreign Office staff that devised occupation rule from 1944 onwards followed the colonial tradition of the British Empire in Germany and sought to achieve maximum effect with minimal effort by way of "indirect rule". To contain the foreseeable chaos at the end of the war they planned to incorporate large parts of the German executive - including the police force - into the new administration. Although the planners were acutely aware of the close relationship between the German CID and the apparatus of the National Socialists' machinery of terror - an internal paper described the CID and the Gestapo as "special foster children of Himmler", whose personnel consisted almost exclusively of members of the SS - their analyses were nevertheless infused with unreserved admiration for the centralised command of Germany's CID, located in Department V of the Reichssicherheitshauptamt. A Foreign office paper from April 1945 says:

*The German genius for organisation is well known and the present Kripo structure is probably sound and extremely efficient. To exploit this product of German genius to our own advantage, and at the same time avoid the risk of a complete breakdown in police operations, is surely good business.[3].*

These contradictions in British occupation policy became apparent from May 1945 onwards in the conflict between the pragmatic approach of the British Public Safety Branch (PSB), which was in charge of the reconstruction of the police force, and the Army's intelligence services (Field Security Sections, FSS), which were responsible for tracking down war criminals as well as the overhaul and denazification of the police.

As a purely military organisation, which among its staff had a number of Jews who had fled Germany, the British FSS was immune to the danger of detachment from or even admiration of the German police. However, due to their high workload during the early post-war years many of the FSS's initial interrogations were not very thorough. This can be seen from the minutes of the interrogation of the leader of the RKPA group for economic crime, Karl Schulz, who in the autumn of 1941 had been "Adjutant Arthur Nebes" in the *Einsatzgruppe* B responsible for killing over 45,000 people [4]. Schulz did not require an interpreter due to his command of English. The notes made during his interrogation clearly show that the NS CID officers' line of defence and later interpretation of their role as apolitical,

professional crime investigators had already been established. Schulz said that he had left Berlin with his colleagues on 22 April without permission. He claimed that he was a CID officer whose SS rank *Sturmabführer* ("Storm Unit Leader") was only an honorary title. For much of his interrogation he impressed his listeners with accounts of his English travels as part of the entourage of the German foreign minister. Shortly after, the Public Security Branch (PSB) appointed Schulz liaison officer to the British occupation forces in Flensburg.

In early July 1945, the PSB summarised the information it had gathered on the whereabouts of RKPA employees in their "Report on the Reichssicherheitshauptamt". Apart from three officers who had absconded, all of those named in the report were former serving police officers, most of them located in the northern part of Schleswig Holstein. The first Flensburg CID "Meldeblatt" (newsletter on offences and wanted persons) appeared in July and that of the Schleswig Holstein province on 7 August. But at a great price. The German CID continued where it had left off when capitulation came. Alongside break-ins, theft, murder and manslaughter, this regional newsletter had a special section for "all crimes committed by gypsies, male and female". In its first newsletter, the Flensburg CID also published a wanted notice for a "gypsy" who had testified to two soldiers having been concentration-camp prisoners. The Sinto's distinguishing mark was: "On the left upper arm is tattooed the number 3468". Did the police want to check the identification numbers of freed concentration camp prisoners? Thus the police contributed, in the first post-war years, to an unbridled hatred being unleashed upon them by the former slave labourers, a hatred which led to many officers being murdered.

In autumn 1945, the FSS carried out a more thorough check on serving police officers. Its January 1946 report to the PSB confirms that nine leading police officers of the *Land* Schleswig Holstein were on the Allies' "Wanted" list with an order for immediate arrest; this included police chief Oberst Kühn and all officers on the staff under his command. But they were only removed from office in April 1946 when an FSS member – in circumvention of the official channels – turned directly to John Hynd, minister for the civil administration of the British zone in Germany. The RKPA members only ran into difficulties when the PSB had to change its personnel policy after German police officers had committed a series of crimes. In July and August 1946 all former SS members, and therefore all senior RKPA officers, were sacked. This decision was partly undermined by the regional Public Safety Branch offices. Thus, although Schulz lost his position within the police he was immediately re-employed as an instructor with the Royal Air Force (RAF) police at an air base near Schleswig.

The summer 1946 dismissals by no means marked an end to RKPA personnel working in the police force. At the beginning of the year, in direct opposition to the new British Labour government's orders to decentralise, a German CID office for the British occupied zone was opened in Hamburg with the intention of maintaining the old RKPA structures [5]. This venture employed 48, usually lower-ranking officers, as the time was not yet opportune to appoint members from the old leadership. This became possible when the British devolved police powers to the regional state of Schleswig Holstein at the beginning of 1947. Until 1949, all CID positions were filled with former high ranking RKPA officers. Karl Schulz also returned from his RAF police post: he was entrusted with setting up a regional CID authority (*Landeskriminalamt*, LKA).

### **The arrival of the Federal Republic**

In 1949, with the creation of the Federal Republic of Germany (FRG), police powers were irrevocably transferred to the German *Länder*. Staff could now move to other regions of Germany. Simultaneously, all barriers to re-employment fell

with the definitive conclusion of Denazification and the passing of the German constitutional addendum Article 131, which allowed for the reinstatement of former National Socialists. The years of occupation rule had not been used to train a new generation for leading positions in investigative police work. This meant there was no alternative but to fall back on leading officers of the NS CID. At the same time the network of "Charlottenburgers" was ideal for the recruitment of people for vacant executive positions [6]. This became clear with the construction of the Federal Criminal Investigation Authority (BKA), which developed out of the German CID for the British occupied zone in 1951. After the appointment of "Charlottenburger" Paul Dickopf as BKA deputy director in 1952, the allocation of executive positions to "Old Charlottenburgers" became systematic. Dieter Schenk's research found a total of 24 in such functions, among them seven who had trained under Dickopf. Of the 47 officers in the BKA's 1959 executive office only two were "clean"; the rest were tarnished by their NS careers and numerous crimes [7].

North-Rhine Westphalia would become another centre of reinstatement for the NS CID officers. By the autumn of 1945, Willy Gay was appointed chief of the Cologne Criminal Investigation Department. Gay, born in 1890, had been active as a detective since the 1920s and had made a career for himself in the Weimar Republic's police force. Even though he had joined the National Socialist Democratic Workers' Party (NSDAP) in May 1933, and his ideas on "preventative crime fighting" closely corresponded to Nazi conceptions, the NS era represented a slump in Gay's career. In 1934 he was appointed deputy chief of the Cologne CID. This recommended him to the British occupational power in 1945. After serving several years as Cologne chief of police, he was promoted in 1952 to police consultant to the interior ministry of the *Land* North-Rhine Westphalia. Gay became an important figure in the development of the post-war German CID from 1952 when he was also co-editor of the police journal *Kriminalistik*. Despite not having graduated at the Charlottenburg academy, if only because of his age, there was a mutual appreciation between him and the old-boy network. Kurt Zillmann, instructor at the Charlottenburg academy, and later chief of the *Landeskriminalamt* in Schleswig Holstein, called him his "master" and in 1971 Gay was still included on the address list of the Düsseldorf regulars' table; in many respects he was as an "honorary Charlottenburger". As someone who was not "tainted" his support was of great importance.

In the 1950s, North-Rhine Westphalia CID probably had the most intricate network of ex-"Charlottenburgers". Important positions vacated, up to the rank of LKA chief, were filled by them. From 1954 to 1970, Bernd Wehner was chief of the Düsseldorf CID. Born in 1909, he had undergone training for superintendent in Charlottenburg in 1936-37 and subsequently became SS-*Hauptsturmführer* (SS Head Storm Leader) in Department V [8]. After the end of the war, he played a prominent role for former NS detectives as a police reporter for the news magazine *Spiegel*. In a 30-part series that appeared in 1949-50, entitled "The game is over, Arthur Nebe. Glory and affliction in the German CID" (*Das Spiel ist aus, Arthur Nebe. Glanz und Elend der deutschen Kriminalpolizei*), he portrayed the Third Reich's detective force as an apolitical organisation of experts which should be seen as having been opposed to National Socialism. Before Wehner became chief of the Düsseldorf CID in 1954 Gay had brought him into the Cologne Criminal Investigation Department. After his transfer to Düsseldorf, both were united by a long-standing work relationship; Wehner joined Gay as editor-in-chief of the journal *Kriminalistik*.

### **Preventative crime fighting – new edition**

The Hiltrup police academy near Münster was another avenue

for communication. The seminars for LKA chiefs that took place there assumed the character of "Charlottenburger" conventions. These were not only comrades' reunions, but more a deliberate attempt by the participants to influence the crime policy of the new Federal Republic. This is well demonstrated by the positions they adopted on the "Preventative Fight against Crime" (*Vorbeugende Verbrechensbekämpfung*). By 1947, the Lower Saxony *Landeskriminalpolizeiamt* - with the support of the British zone's police office - had made the first draft of a "Law on fighting professional and habitual criminals" (*Gesetz zur Bekämpfung der Berufs- und Gewohnheitsverbrecher*). However, it failed to get on the statute books [9]. This initiative was picked up by the LKA heads at their first seminar in August 1949. In their Resolution, which aimed at creating a Federal CID Authority, they demanded, amongst other things, a "Control centre for the fight against international and mobile professional and habitual criminals" (*Zentrale zur Bekämpfung internationaler und reisender Berufs- und Gewohnheitsverbrecher*) as well as a "Control centre for the fight against the vagrancy plague" (*Zentrale zur Bekämpfung des Landfahrerunwesens*) [10].

The "fight against professional and habitual criminals" was the main focus of their third seminar in November 1951 [11]. Although detectives by now accepted the introduction of a judge's order to authorise any desired preventative detention, Gay demanded in his presentation to the conference the immediate enforcibility of such an order through summary courts - ignoring consideration of any appeals already lodged [12]. A product of this seminar was an article published in 1952 in the police journal *Polizei* by Fritz Weber, a "Charlottenburger" and former SS Storm Unit Leader (*SS-Sturmabteilungsführer*) in the *Reichssicherheitshauptamt*. According to his interpretation, the "Law on habitual criminals" (*Gewohnheitsverbrechergesetz*) of November 1933 was still formally in force. He nevertheless argued for a new law which would reintroduce preventative detention under judicial authorisation (a concession to the separation of powers).

This positive reference to the Nazi practice of "preventative crime fighting" was taken up by the BKA in 1955 with a new initiative, for which the author of the relevant decrees that had been passed by Department V during the Nazi regime, Eduard Richrath, was personally consulted. This resulted in another in a series of BKA publications, an anthology on "Problems of Police Supervision" (*Probleme der Polizeiaufsicht*), which described the Nazi practice of committing people to concentration camps as a success story. Alongside pieces by the "Charlottenburger", Rudolf Leitweiß, articles were also authored by the leader of the BKA criminological institute, Eberhard Eschenbach, who in 1945 had been directly transferred to the Schleswig Holstein CID. In addition, there were further publications by "Charlottenburgers" from the Hiltrup police academy and in the journal *Polizei*. The BKA guidelines succeeded insofar as they got to be discussed by the Federal Ministry of Justice's criminal law committee. Even though this initiative failed it revealed the surprisingly harmonised approach to crime policy of this insider party.

### On the defensive

Until then, the "Charlottenburgers'" circle had aggressively promoted its members to high ranks in the West German CID and sought to influence the direction of Germany's crime policies. In the following years it was to come under increasing pressure. This was triggered by Bernhard Fischer-Schweder, who had also undergone superintendent's training at the Charlottenburg police academy. However, Fischer-Schweder was not a detective. He had had a party political and SA (*Sturmabteilung*) career, before joining the Gestapo and becoming police chief of Memel. In the latter position in 1941,

he had taken part in the mass shooting of Jews in Lithuania. After the war, he initially lived under a false name and concealed his past. In the mid-1950s he misinterpreted the social climate and applied for a position in the CID, and included references to his former career. Details of his crimes consequently entered the public domain and his application triggered investigations that led to a major trial against members of the police special-task murder forces in Ulm (*Ulmer Einsatzgruppen-Prozess*). It ended in 1958 with his being sentenced to 10 years imprisonment [13].

More telling than the sentence itself was the creation of the Central Coordinating body for the Administration of Justice for the *Länder* (*Zentrale Stelle der Landesjustizverwaltungen*) in Ludwigsburg after the trial, and the resulting start of the systematic investigation of Nazi crimes. Even if the murderous consequences of the "preventative fight against crime" and the persecution and deportation of the Roma and Sinti led to punitive proceedings, the investigations posed a definitive threat to the "Old Charlottenburgers" because many of them had also taken part in special-squad killings. Of the 92 persons still included on the "Old Charlottenburgers" mailing list for 1971 (ie. those that were still alive), only eight were not the target of comprehensive investigations into Nazi crimes.

Those suspended on the basis of the investigations often bridged this gap with employment in the economic sector, only to return to the police service at a later stage. Despite their involvement in Nazi crimes, on the whole they felt safe from prosecution. The self-confidence of the "Old Charlottenburgers" is highlighted by an episode described to this author by the former chief of the special commission for Nazi crimes of violence in Schleswig Holstein, Karl-Georg Schulz. When he took Waldemar Krause, an erstwhile member of Department V, into pre-trial custody in the context of investigations against him as chief of the Nazi *Sonderkommando* (special commando) 4b of the *Einsatzgruppe* (Special task force C), he simply asked Schulz why the latter bothered to do this knowing full well that Schulz would be free again within 24 hours [14].

The depths of preferential treatment and mutual support given to one-time "Charlottenburgers" in these investigations still urgently needs to be sounded out. The "Old Charlottenburgers" succeeded in determining not only the staffing policies and crime-policy discourses of the West German CID for decades but also the interpretation of the activities of the latter during the Nazi era [15]. Thus as late as 1986, a police training manual repeated Walter Zirpins's explanation for high crime rates shortly after the war: they were due to the release of the majority of the "professional criminals, anti-social elements and vagrants" who had been imprisoned in jail or concentration camps [16].

*This article first appeared in the German magazine Bürgerrechte & Polizei/CILIP 92 (1/2009)*

### Footnotes

1. Banach, J.: *Heydrichs Elite. Die Führerkorps der Sicherheitspolizei und des SD 1936-1945* [Heydrich's elite. The leadership corps of the security police and the SD 1936-1945], Paderborn, 1998, pp. 106 ff., 264-276
2. Wagner, P.: *Volksgemeinschaft ohne Verbrecher* [A national community without criminals], Hamburg 1996, pp. 235-243
3. Compare Ernst Klee, *Personenlexikon zum Dritten Reich. Wer war was vor und nach 1945*, Frankfurt 2005, S. 430.
4. For more information, see Linck, S.: *Der Ordnung verpflichtet. Deutsche Polizei 1933-1949. Der Fall Flensburg* [To order bound. German police 1933-1949. The case of Flensburg], Paderborn 2000, pp. 186-193; *ibid.*: *Zur Personalpolitik der britischen Besatzungsmacht gegenüber der deutschen Kriminalpolizei nach 1945* [On the personnel politics of the British occupying powers with regard to the German CID after 1945], in: Fürmetz, G.; Reinke, H.; Weinbauer, K. (eds.): *Nachkriegspolizei. Sicherheit und Ordnung in Ost- und Westdeutschland 1945-1969* [Post-war police.

*Security and order in East and West Germany 1945-1969*, Hamburg 2001

5. Schenk, D.: *Auf dem rechten Auge blind. Die braunen Wurzeln des BKA [Blind in the right eye. The brown roots of the BKA]*, Köln 2001, pp. 133ff.

6. Linck: *Der Ordnung verpflichtet [In the name of order]* *ibid.* fn. 3, pp. 340f.

7. Schenk *ibid.* (fn. 4), pp. 67f. and 282f.

8. *ibid.*, p. 177

9. Wagner, P.: *Kriminalpolizei und „innere Sicherheit“ in Bremen und Nordwestdeutschland zwischen 1942 und 1949 [Crime police and 'internal security' in Bremen and North-Rhine Westphalia between 1942 and 1949]*, in: Frank Bajohr (ed.): *Norddeutschland im Nationalsozialismus [Northern Germany during National Socialism]*, Hamburg 1993, p. 259

10. Translator's note: *'Vagabond mischief' (Landfahrerunwesen)* is the post-war term for a discriminatory policy against the Sinti and Roma that followed on from their criminalisation and persecution during the Nazi era.

11. In: *Die Polizei 1949 [The police 1949]*, issue.2, p. 282

12. Linck: *Personalpolitik [Personnel politics]* *ibid.* fn. 3), pp. 125f.

13. Bericht über die 3. Arbeitstagung der Leiter der LKPA v. 13.-15.11.1951 [Report on the 3rd seminar of LKPA chiefs, 13-15.11.1951] in: *Mitteilungen aus dem Polizei Institut Hilstrup 1952 [Newsletter of the*

*police institute Hilstrup 1952]*, issue. 1, pp. 12ff.; contribution by Gay on pp. 16ff.

14. Compare Klemp, S.: „Nicht ermittelt“. *Polizeibataillone und die Nachkriegsjustiz – Ein Handbuch [“Not investigated”. Police corps and the post-war era - a handbook]*, Essen 2005, p. 355

15. Compare Peters, O.H.: *Schleswig-Holstein hat sich als Versteck für NS-Verbrecher bewährt: Für Erich Waldemar Krause wurde sogar gelogen [Schleswig Holstein has proven a safe haven for Nazi criminals: They even lied for Erich Waldemar Krause]*, in: *ISHZ* 23, November 1992, pp. 61f.; and Krauses: Klemp *ibid.* (fn. 11), p. 397.

16. Compare the apologetic presentation by Wehner, B.: *Dem Täter auf der Spur. Die Geschichte der deutschen Kriminalpolizei [On the trail of the perpetrator: The history of Germany's Crime Police]*, Bergisch Gladbach 1983

17. Zirpins, W.: *Die Entwicklung der polizeilichen Verbrechensbekämpfung in Deutschland [The development of the police fight against crime in Germany]*, in: *Taschenbuch für Kriminalisten [Pocket book for criminalists]*, vol. 5, Hamburg 1955, p. 292; the same description can be found in Harnischmacher, R.; Semerak, A.: *Deutsche Polizeigeschichte. Eine allgemeine Einführung in die Grundlagen [German police history. A general introduction to the basics]*, Stuttgart 1986.

## New material - reviews and sources

### Civil liberties – new material

**Make sure you say that you were treated properly**, Gareth Peirce. *London Review of Books* 14.5.09. Civil liberties lawyer, Gareth Peirce, writes about torture, secrecy and the British state, pointing out that while the Bush/Cheney/Rumsfeld neoconservative redefinition of torture has prompted “storm clouds of retribution” in the USA, in the UK “we remain almost completely in the dark about the part played by our intelligence services, and in turn by our Foreign Office and Home Office and our ministers.” She argues that “Britain... appears to have the greatest difficulty in admitting that what was done routinely in Afghanistan and Guantanamo Bay was torture, and even greater difficulty in admitting that we knew all along that it was happening”, observing that: “We of all nations must have immediately recognised these techniques for what they are and must have known that they were prohibited, since we were disgraced for employing them by the European Court less than 30 years ago. In August 1971 British soldiers arrested 342 men in Northern Ireland claiming that they were IRA suspects. To force their confessions, 12 of them were taken to a secret site and subjected to five techniques (forced standing, hooding, sleep deprivation, starvation and thirst, and white noise). Most of the men later reported experiencing auditory hallucinations; the interrogators referred to the room used for noise as the ‘music box’, and were aware that the detainees were exhibiting distorted thought processes.”: [http://www.lrb.co.uk/v31/n09/peir01\\_.html](http://www.lrb.co.uk/v31/n09/peir01_.html)

**Why Guantanamo detainees deserve asylum in Europe**, Moazzam Begg, *The Independent* 6.1.09. Moazzam Begg was illegally held at Guantanamo Bay by the USA between 2003 and 2005. In this article one of Guantanamo’s “evil” men pleads for the right of the remaining detainees, such as the cleared “Chinese” Uighurs, to be granted asylum in Europe as they can no longer be returned to their own country because of the stigma imposed upon them by the USA and its “allies”.

**Royal Dutch Shell Forced to Settle Human Rights case out of court**, Ben Amunwa. *Remember Saro-Wiwa* website 8.6.09. After 14 years of attempting to get claims thrown of court, Royal Dutch Shell has been forced to settle a lawsuit that accused the company of colluding with Nigeria’s former military dictatorship in atrocities against the Ogoni people, and the execution of writer and activist, Ken Saro-Wiwa. The legal action was brought under the US Alien Tort Statute and the settlement includes a \$5 million trust to compensate the families of Mr Saro-Wiwa and other families maimed or hanged by the regime. Han Shan, coordinator of the Shell Guilty campaign, said: “Shell is guilty. Despite this victory, justice will not be served in Ogoni and throughout the Delta until the gas flares are put out, the spills cleared up and the military stops protecting oil companies and starts serving the people ... This case should be a wake up call to multinational corporations that

they will be held accountable for violations of international law”. Remember Saro-Wiwa website: <http://remembersarowiwa.com/royal-dutch-shell-forced-to-settle-human-rights-case-out-of-court/>

### Immigration and asylum – new material

**“We won’t collude with efforts to use the academy to police immigration”** Ann Singleton, Steve Tombs, David Whyte and others. *Times Higher Education Supplement* 7.5.09. In this piece academics from around the UK voice their concern “about being drawn into playing a key role in an ever-tightening system of immigration control” through major changes to UK immigration policies and laws. “The main plank of these changes was the introduction of a points-based system (PBS) under which potential employers of migrant workers from outside the European Union must be approved and licensed by the Government before workers are granted permits to take up employment. Thus, universities and colleges must now be licensed as “approved education providers” to bring non-EU students into the UK to study.” The authors “refuse to collude” with the government on these discriminatory measures that would use academics to police and monitor immigration controls. Available as a free download: <http://www.timeshighereducation.co.uk/story.asp?sectioncode=26&storycode=406422>

**“We are not border guards”**. *Labour Research* Vol 98 no. 6 (June) 2009, pp. 10-12. This is another article on the government’s legislation obliging staff at further education colleges and universities to act as state informants by policing the movements of international students and staff. It includes interviews with representatives from UNISON, the public services union, and the UCU union for academic and academic-related staff, in which General Secretary, Sally Hunt, says: “We do not believe it is appropriate or effective to task colleges and universities with the policing of immigration... These measures would see reluctant lecturers acting as border guards and sending an unsettling message around the world of a Fortress Britain culture” *Labour Research*: [info@lrd.org.uk](mailto:info@lrd.org.uk)

**Otra frontera sin derechos: Malí – Mauritania / Une autre frontière de non-droit: Malí – Mauritanie**, *Asociación pro Derechos Humanos de Andalucía / Association Malienne des Expulsés*, (bilingual French/Spanish edition), pp.80. An in-depth research resulting from fieldwork and the cooperation between two organisations (APDHA from Spain and AME from Mali) following an increase in Spanish and EU activities in west Africa after 33,000 sub-Saharan had reached the Canary islands archipelago in *cayucos* (large wooden fishing boats) in 2006. Spanish and EU intervention has included Frontex patrol missions along this route, a repatriation agreement with Mauritania in exchange for an increase in development aid and job offers in countries of origin, joint patrols off the Mauritanian coast by the Guardia Civil

and Mauritanian officers, and the presence of a helicopter, an aeroplane and a detention centre in Nouahdibou (the country's second largest city, on the western coast) financed by Spain on the west African country's territory. The report, entitled "Another border without rights", looks at the situation on the Mali-Mauritania border, highlights how Spanish policy (including serial expulsions, sometimes using charter flights) makes it jointly responsible for the human rights violations to which repatriated people are being subjected. These take place during detention, deportations to and refusals of entry at the border, and involve abuses by police officers, a lack of reception facilities, a hardening of policies to fight "illegal" emigration, and the report also looks at the reasons for emigration and the suffering of people whose attempts to reach Europe are unsuccessful (who are shunned as failures after their "journey of shame"). Available from: APDHA, c/Blanco White, 5, 41018, Seville, Spain and [www.apdha.org](http://www.apdha.org).

**Derechos Humanos en la frontera sur 2008**, *Asociación pro Derechos Humanos de Andalucía*, pp. 126, February 2009. This year's annual report on human rights includes a table featuring a breakdown of the 581 deaths at the southern Spanish border (including shipwrecks off the Algerian and Moroccan coasts), and essays including one on the government's "Africa Plan", mooted as an expression of "Spanish society's solidarity" while, looked at more closely, it turns out to be "ambiguous, if not running completely against this sensibility". Other essays look at the EU's immigration and asylum policy, "orderly and legal immigration from a legislative perspective", with an emphasis on failed policies such as quotas and contracts in countries of origin, Morocco's role as Europe's guardian deployed to implement the EU's externalisation of border controls, fieldwork documenting the human rights violations on the Moroccan/Mauritanian border, the effects of Italian-Libyan cooperation for migrants and an analysis of 20 years of policies to stem the flow of migrants into Spain. Available from: APDHA, c/Blanco White, 5, 41018, Seville, Spain and [www.apdha.org](http://www.apdha.org).

**The Arrest and Detention of Children subject to Immigration Control: a report following the Children Commissioner for England's visit to Yarl's Wood Immigration Removal Centre**. *11 Million* (April) 2009, pp. 32. This report, by the Children's Commissioner for England and Wales, Sir Al Aynsley Green, exposes "substantial evidence that detention is harmful and damaging to children and young people" following an inspection of the privately-run Yarl's Wood Immigration Removal Centre. It focuses on medical treatment (or more accurately the lack of adequate medical care) and the aggressive, rude and even violent behaviour by the centre's officers. The report says that: "The UK should not be detaining any child who has had an unsuccessful asylum claim" and concludes that "depriving children of their liberty and detaining them for administrative convenience is never likely to be in their best interests or to contribute to meeting the Government's outcomes for children under the Every Child Matters framework. 11 MILLION can be contacted at: 1 London Bridge, London, SE1 9BG; Email: [info.request@11MILLION.org.uk](mailto:info.request@11MILLION.org.uk)

**Amnesty International's Comments on the Commission Proposals for a Directive laying down Minimum Standards for the reception of asylum seekers (Recast) (COM 2008) 815 final) and on the Commission Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast)**. Amnesty International (COM 2008) April 2009.

**Color y segregación residencial**. *Mugak* no. 46, March 2009 (6 euros). This issue focuses on the right to housing, noting that "if the right to have a roof [over one's head] turns out to be meaningless for a sizeable part of the citizenry, in the case of immigrants it is something that becomes even more dramatic". Their lack of family networks or the option to stay at their parents' home, their worse jobs, lower wages and greater instability in employment, as well as discriminatory attitudes and an alarmist discourse that makes conduct such as refusal to rent accommodation to them become more widespread while public policies often exclude them from council or subsidised housing opportunities, are some elements that are highlighted. The featured articles look at colour-based segregation in housing, the case of homeless immigrants, discrimination in access to housing, the work of three organisations in

this field (the *Red Acoge* network, *Goiztiri Elkartea* in the Basque Country, and *ProHabitatge* in Catalonia) and housing policy in relation to the gypsy community's experience. Other issues include immigration and asylum policy, large-scale round-ups of migrants and an article assessing the control of migration flows as "20 years of death at the borders". Available from: Centro de Estudios y Documentación sobre racismo y xenofobia, Peña y Goñi, 13-1º - 20002 San Sebastián, Basque Country, Spain.

## Law – new material

**The United Kingdom, Torture and anti-terrorism: where the problems lie**. *Redress* (December) 2008, pp. 80. This excellent report from REDRESS examines the UK government's stance on torture, a practice ministers have consistently and unreservedly condemned. It examines two questions: a. is the government's stance at odds with its policies and practices and b. is the government doing enough to meet its international obligations against torture and, if not, what more must be done? Acknowledging that there "have been important developments of which the UK should be justifiably proud", the report examines three major areas which REDRESS sees as "most alarming". These are 1. The use of UK territory to facilitate the US extraordinary rendition programme; 2. "the UK's policies towards UK nationals as well as non-national UK residents who have been caught up in the extraordinary rendition programme", and 3. diplomatic assurances for the process of deporting terrorist suspects from the UK to countries which practice torture. The report finds that the UK needs to "put its house in order" in relation to the "contradiction, if not hypocrisy, resulting from the UK's professed anti-torture position on the one hand and the reality when it comes to terrorist suspects on the other." REDRESS, 87 Vauxhall Walk, London SE11 5HJ, [www.redress.org](http://www.redress.org)

**The Age of Criminal Responsibility in Scots Law**, Claire McDairmond. *SCOLAG Legal Journal* Issue 379 (May) 2009, pp. 116-119. In Scotland the legal age of criminal responsibility is eight years (as opposed to England and Wales where it is 10), one of the lowest ages in the world. McDairmond discusses proposals by the Scottish government to legislate to raise the age to 12.

**Information Law Update**, Dr David McArdle. *SCOLAG Legal Journal* Issue 380 (June) 2009, pp. 152-153. Review of law relating to data protection, freedom of information and the media.

**Human Rights Law Update**, Ken Dale-Risk. *SCOLAG Legal Journal* Issue 380 (June) 2009, pp. 154-155. This piece is a quarterly review of cases relating to human rights.

**Criminal Justice Update**, Kenneth B. Scott. *SCOLAG Legal Journal* Issue 379 (May) 2009, pp. 132-133. This quarterly update discusses human trafficking in Scotland, anti-social behaviour, fiscal fines and murder/culpable homicide.

## Military – New material

**Rumsfeld's renegade unit blamed for Afghanistan deaths**, Jerome Starkey and **These killings will only strengthen the Taleban**, Patrick Cockburn. *The Independent* 16.5.09. These articles examine the role of troops from the US Marine Corps' Special Operations Command (MarSOC) and their involvement in atrocities carried out in the name of the war on terror in Afghanistan. Created three years ago by Donald Rumsfeld, the most recent MarSOC intervention was their calling in an air strike on Bala Boluk, in Farah province, during May in which as many as 140 men, women and children died (the precise number is unknown because the Americans do not do body counts; the US is in a position to identify evidence from survivors as "propaganda", though). In August 2008 the MarSOC was responsible for directing drones and gunships to attack a village in Azizabad, Herat, leaving 90 civilians dead and in March 2007 it opened fire on pedestrians near Jalalabad, killing at least 19 and leaving the US army commander, Colonel John Nicholson, "deeply ashamed" at "a stain on our honour." In relation to the Bala Boluk action Cockburn observes in his accompanying article: "The US military commanders in Afghanistan have known about MarSOC's reputation for disregarding the loss of life among Afghan

civilians, yet for ten days, they have flatly denied claims by villagers ... Everything the US military has said about the air strikes on the three villages in Bala Boluk district on the evening of 4 May should be treated with suspicion – most probably hastily-concocted lies aimed at providing a cover story to conceal what really happened.”

**Alliance of Barbarities: Afghanistan 2001-2008. 10 Reasons to Question (and rethink) Foreign Involvement**, Alejandro Pozo Marin. *Report* no. 4 (JM Delas Centre for Peace Studies) December 2008, pp. 42. This pamphlet examines the “Western obsession” with Afghanistan, observing that its current phase has not seen “any improvement in living conditions for the local population, and trends suggest consequences as disastrous as those experienced in the two decades prior to the military intervention that began on October 7, 2001”. Believing that “the intentions behind the intervention are neither honourable nor sincere” the report lists ten reasons for questioning foreign involvement in Afghanistan with particular reference to Spain’s actions in the country. The report can be ordered at: [delas@justiciaipau.org](mailto:delas@justiciaipau.org)

**Torture? It probably killed more Americans than 9/11**. Patrick Cockburn *The Independent* 26.4.09. Interview with Major Matthew Alexander, the leader of a US interrogation team in Iraq, who personally conducted 300 interrogations of US prisoners. Echoing the observations made by anti-war commentators, Alexander says that in his experience: “The reason why foreign fighters joined al-Qa’ida in Iraq was overwhelmingly because of abuses at Guantanamo and Abu-Ghraib and not Islamic ideology.” He also disagrees with Rumsfeld’s views on the efficacy of torture arguing that it is ineffective and counter-productive: “It plays into the hands of al-Qa’ida in Iraq because it shows us up as hypocrites when we talk about human rights.”

**‘Bribes and bombs’ scandal returns to haunt Sarkozy**, John Lichfield. *The Independent* 26.6.09, p. 25. This article investigates allegations that 11 French submarine engineers, killed in a bomb attack in Karachi in May 2002, were victims of a plot by figures in the Pakistani establishment, rather than al-Qaeda. Lichfield says that French magistrates have ruled out the possibility of an Islamist attack on western interests concluding that “unknown figures in the Pakistani establishment may have fomented the attack in revenge for the non-payment of part of the Euro 80m (£68m) in sweeteners promised to senior officials when Lahore bought three Agosta 90B submarines from France in 1994.”

**Report on Operation Cast Lead**. *Breaking the Silence* 15.7.09. *Breaking the Silence*, the human rights group founded by Israeli military veterans, has collected damning testimonies from 26 soldiers who took part in the Operation Cast Lead invasion of Gaza in January. The men’s descriptions confirm that the military allowed them to use reckless force and describe the Israeli army’s use of human shields and the deliberate targeting of civilian structures. The soldiers’ allege that soldiers were given orders to shoot first and ask questions later: [http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/14\\_07\\_09\\_breaking\\_the\\_silence.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/14_07_09_breaking_the_silence.pdf)

## **Policing – new material**

**Demonstrating Respect for Rights: the policing of the climate camp in the city on 1 April 2009**. *Climate Camp Legal Team* 18.4.09, pp. 40. The Climate Camp set up its fourth camp outside the European Carbon Exchange in Bishopsgate, east London, to highlight the failings of that carbon trading market in the lead up to the G20 meeting in London at the beginning of April. At the camp it was calm throughout the day until just after 7pm when the police streamed in by force with their batons and shields in full offensive use. People were “kettled”, with many reporting unprovoked assaults and injuries by police officers, only to finally be released at midnight nearly five hours later. The report raises six main points about events on the day: 1. The policing of protest as a whole is not accountable; 2. Legal recourse for protesters is limited; 3. The police complaints system and the Independent Police Complaints Commission are ineffective; 4. Protesters are being treated as criminals; 5. Police media “spin” is overstepping the mark, and 6. Climate activists are being demonised. Available as a free download at: <http://climatecamp.org.uk/themes/ccamptheme/files/report.pdf>

**Unite to stop police violence!** Louise Whittle. *Labour Briefing* June 2009, p. 14. Article on the launch of the United Campaign against Police Violence in London in April. The campaign was set up in response to the violent police tactics at the G20 protests, the death of Ian Tomlinson and the ensuing police cover-up. The campaign has made a series of demands including the disbanding of the Territorial Support Group, the sacking of Metropolitan police commissioner Sir Paul Stevenson, the establishment of a truly independent police monitoring body to replace the IPCC, the banning of the police “kettling” tactic and justice for Ian Tomlinson and all those who have died in police custody. The UCAPV website: <http://againstpoliceviolence.blogspot.com/>

**Scanning the Horizon**, Gary Mason. *Police Product Review* June/July 2009, pp. 46-47. Article on the use of APD Communications mobile document readers, used by counter-terrorism officers at UK ports and airports. “The new devices, which have been used as part of a pilot since October last year, scan passports and are able to check identity details against data held on the Police National Computer”.

**Police Complaints: European Commissioner’s Opinion published**, Graham Smith. *Legal Action* April 2009, pp 38-39. Smith is a consultant on police complaints to the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, and in this piece he looks at the commissioner’s *Opinion concerning independent and effective determination of complaints against the police*.

**Addressing Ethnic Profiling by Police: a report on the strategies for Effective Police Stop and Search Project**. *Open Society Justice Initiative* 2009, pp. 100. This report describes “how selected police forces in Bulgaria, Hungary and Spain worked with the Open Society Justice Initiative to monitor the use of stops, determine if they disproportionately affect minority groups and assess their efficacy in detecting and solving crime.” Contact: [www.justiceinitiative.org](http://www.justiceinitiative.org)

**Police Misconduct and the Law**, Stephen Cragg, Tony Murphy and Heather Williams QC. *Legal Action* April 2009, pp 32-37. Bi-annual review of developments in police misconduct law.

## **Prisons – new material**

**Interview with the Prisoner Ombudsman for Northern Ireland**. *Just News* (Committee on the Administration of Justice) April 2009, pp. 1-2. This article is an interview with Pauline McCabe, who was appointed Prisoner Ombudsman for Northern Ireland on 1 September 2008. CAJ, 45/47 Donegall Street, Belfast BT1 2BR, Phone: (028) 9096 1122.

## **Security and intelligence – new material**

**Exposed: MI5’s Secret deals in Camp X-Ray**, Robert Verkaik, *The Independent* 6.5.09, p. 1-2. Verkaik reports that MI5 “secretly tried to hire British men held in Guantanamo Bay and other US prison camps by promising to protect them from their American captors and help secure their return home to the United Kingdom.” The torture strategy is “traced back to Tony Blair’s decision to hitch his wagon to George Bush’s war on terror” in 2001.

**Hackers recruited to help fight against cybercrime**, Nigel Morris and Jerome Taylor. *The Independent* 26.6.09, p. 10-11. Lord West, the Security minister, has announced that “reformed computer hackers are being recruited by the Government” to join a new “cyber security operations centre at GCHQ in Cheltenham”. The announcement follows US president, Barak Obama’s, setting up of a cyber security office in the White House. According to the article West intimated that Britain had its own online attack capability, but he refused to say whether it had been used: “It would be silly to say that we don’t have any capability to do offensive work from Cheltenham, and I don’t think I should say more than that.”

**Statewatch database**  
<http://database.statewatch.org/search.asp>  
**Statewatch News Online**  
<http://www.statewatch.org/news/>

# CONTENTS

- 1 **European Parliament: Abolish 1st [and 2nd] reading secret deals - bring back democracy “warts and all”** by Tony Bunyan. As the new European Parliament starts its new term major questions hang over the way it is doing its job. In the last parliament over 80% of new measures were agreed in closed “trilogue” meeting with the Council of the European Union (the 27 governments). This practice raises fundamental issues of transparency and openness.
- 5 **UK: Shock and anger at the violent policing tactics used at the G20 Summit** by Trevor Hemmings. The policing of the G20 Summit in London in April 2009 has been severely criticised following an allegation of manslaughter and 270 complaints of police assault. Part I of s report on what happened and its aftermath.
- 8 **The Fruits of Torture: Stammheim trial confirms criticism of German anti-terrorist laws** by Christina Clemm and Ulrich von Klinggräff. Since March 2008, five alleged members of the banned Turkish organisation the Revolutionary People's Liberation Party-Front (DHKP-C) have been awaiting trial at the regional high court in Stuttgart (Stammheim). It will be the first trial in Germany on the grounds of Article 129b of the Criminal code (§ 129b StGB), under which people can be prosecuted for having supported terrorist activities outside of Germany, in this case in Turkey, as members of a foreign terrorist association.
- 10 **An employment office in Bamako: the European Union's transformation of Mali into a migration control laboratory** by Stephen Dünnwald. The West-African state Senegal, Mauritius, Algeria and Libya. According to statistics Mali is the fourth poorest country in the world; except for cotton nothing much is produced for export. Development aid forms a significant part of the country's revenue. Although the Americans and Chinese are competing with France for good relations with the government, most of the money that enters the country comes from Malian migrants sending money back home, so-called remittances.
- 12 **New immigration system forces UK academics to act as “an extra arm of the police”** by Max Rowlands. New immigration controls are being phased in to compel UK universities to surveil their instructional students.
- 16 **The Spanish police transition: a paradigm of continuity** by Mikel Aramendi [member of *Hik's* editorial team]. Examines the transition from Francoism to democracy characterised as a “reign of forgetfulness”
- 18 **National Socialists continuities in the German police** by Stephan Linck. Until the late 1960s West Germany's CID was dominated by a network of former police officers which came together in the 1930s.
- 21 **New material - reviews and sources**

## Statewatch website

<http://www.statewatch.org>

## Contributors

**Statewatch**, was founded in 1991, and is an independent group of journalists, researchers, lawyers, lecturers and community activists. Statewatch's European network of contributors is drawn from 17 countries.

Editor: Tony Bunyan. Deputy Editor: Trevor Hemmings. Reviews Editor: Nadine Finch. Lee Bridges, Paddy Hillyard, Ben Hayes, Steve Peak, Phil Scraton, Joe Sim, Mike Tomlinson, Frances Webber, Ida Koch, Catherine Weber, Dennis Töllborg, Francine Mestrum, Kees Kalkman, Christian Busold, Heiner Busch, Peio Aierbe, Mads Bruun Pedersen, Vassilis Karydis, Steve Peers, Katrin McGauran, Yasha Maccanico, Frank Duvell (PICUM, Brussels), Nick Moss, Max Rowlands, Eleanor Rees, Nicos Trimikliniotis, Arturo Quirantes, Thomas Bugge, Staffan Dahllöf, Eric Toepfer, Ann Singleton. Liberty, the Northern European Nuclear Information Group (NENIG), CILIP (Berlin), Demos (Copenhagen), AMOK (Utrecht, Netherlands), Komitee Schluss mit dem Schnuffelstaat (Bern, Switzerland), Journalists Committee (Malta),

## Statewatch journal

Subscription rates: 4 issues a year: UK and Europe: Individuals and voluntary groups £16.00 pa; Institutions and libraries: £40.00 pa (outside Europe add £4 to the rate)

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

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

Statewatch,  
PO Box 1516,  
London N16 0EW, UK.  
Tel: (00 44) 020 8802 1882  
Fax: (00 44) 020 8880 1727  
e-mail: [office@statewatch.org](mailto:office@statewatch.org)

© Statewatch ISSN 0961-7280

**Statewatch** bulletin is a quarterly Journal carrying features, analyses and viewpoints plus New material - reviews and sources.

Statewatch's work is supported by the Joseph Rowntree Charitable Trust, Garden Court Chambers, Friends of Statewatch and through an operating grant for 2009 from the Education, Audiovisual and Culture Executive Agency.