

# statewatch

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## UK Government's "clumsy, indiscriminate and disproportionate" approach to DNA retention

by Max Rowlands

**The UK government intends to keep innocent people on the national DNA database for six years despite the European Court of Human Rights having ruled the practice to be unlawful**

Innocent people who have been arrested, but never convicted of a crime, will have their DNA records stored on the national database for a period of six years under plans unveiled in the government's new *Crime and Security Bill*. The Bill, presented to parliament by Home Secretary Alan Johnson on 19 November 2009, also includes a number of new rules for the collection, retention and use of DNA and fingerprints in England and Wales. These new measures are belatedly being introduced in response to the December 2008 European Court of Human Rights (ECHR) landmark judgment in the case of *S and Marper v the United Kingdom*. The court ruled that the UK government's policy of indefinitely retaining the DNA of everyone arrested is unlawful.

The Bill's six-year time limit aims to address this finding, but civil liberties groups have called the response inadequate and criticised the overtly draconian nature of the policy. A *Liberty* report published in January 2010 described the new proposals as "wholly disproportionate" and "a thinly veiled attempt to continue to retain the DNA of innocent people for as long as the Government believes it can get away with." [1] The DNA database is also the subject of a highly critical report published in November 2009 by the UK government's advisory body, the Human Genetics Commission. The report found that police are routinely arresting people simply to obtain a DNA sample; that black men aged 18-35 are "highly over-represented" in the database; that unchecked "function creep" has severely altered the database's role; and that there is little concrete evidence to identify its "forensic utility."

### The UK National DNA Database

The UK national DNA database is the largest in the world containing the biometric samples of approximately 5.1 million people. It owes its record size to the fact that, since April 2004, anyone aged ten or over who is arrested in England and Wales for a "recordable offence" (which includes menial offences such as begging and being drunk in a public space) automatically has

a DNA sample taken, usually by mouth swab, which is then used to create a profile (a string of numbers based on parts of the genetic sequence of the individual) to be entered into the database. Both are retained indefinitely regardless of a person's age, the seriousness of the offence for which they were arrested, and whether or not they are eventually charged and convicted of a crime. Those who voluntarily provide a genetic sample to assist an investigation also find their data permanently stored. Home Office figures estimate that around one million people on the database have no criminal conviction. No legal right to be removed currently exists: an individual can ask the police force that arrested them to delete their DNA profile, but the decision is made at the discretion of the chief constable and there is no formal process of appeal.

### S and Marper v the United Kingdom

Michael Marper was arrested in March 2001 for harassing his partner, but they later reconciled and the case was dropped. "S" was arrested in January 2001 at the age of 11 for attempted robbery but was exonerated five months later. The pair instigated legal proceedings after South Yorkshire police refused to destroy their DNA samples or remove them from the national database. In December 2008 the ECHR overturned the judgments of the House of Lords, Court of Appeal and High Court when it ruled that the UK government's practice of DNA retention breached Article 8 of the European Convention on Human Rights which covers the right to respect for private and family life. In one of the clearest and most damning condemnations of UK law, the 17 judges said they were "struck by the blanket and indiscriminate nature of the power of retention in England and Wales" and warned that it poses a "risk of stigmatisation." [2]

Hopes that this judgment would serve to expedite the removal of innocent people from the database faded when the government insisted it would retain the current system while ministers considered the legal implications of the court's findings. Police

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**EU decision-making after the Treaty of Lisbon - a quick guide** see page 22

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forces have been encouraged to adopt a wait-and-see approach until new legislation is passed. The Association of Chief Police Officers (ACPO) sent a letter to chief constables telling them that “until this time, the current retention policy on fingerprints and DNA remains unchanged” and that “it is therefore vitally important that any applications for removals of records should be considered against current legislation.”[3] As a result, only 377 people were removed from the database in 2009.[4] By contrast, in the same time period the biometric profiles of roughly 487,000 people were added. Furthermore, in December 2009 freedom of information requests made by the shadow immigration spokesman, Damian Green, illustrated that anyone who attempts to have their record removed from the database faces a “postcode lottery” with huge variations in police policy. For example, South Yorkshire police granted 83% of the requests it received in 2008-09, but other forces such as Cambridgeshire and Nottingham refused to remove anyone from the database.[5]

### Crime and Security Bill 2009

The UK government responded to the ECHR judgment by adding clauses to the 2009 Policing and Crime Bill. In May 2009 it was announced that police would be allowed to keep individuals who have no criminal record on the database for a period of between six and 12 years, depending on the seriousness of the crime for which they were arrested. The move was met with widespread opposition from civil liberty campaigners who argued that reducing the length of time people spent on the database did not address the court’s concerns that the policy was indiscriminate and stigmatising in nature. In parliament there was extensive cross-party opposition to the fact that the government was using secondary legislation to address such an important issue. Only 90 minutes was allocated for parliament to debate the proposals, the absolute minimum required. In October 2009 the government eventually backed down and announced that the clauses relating to DNA retention would be removed from the Bill and reconsidered.

In November 2009, many of the proposals were reintroduced in clauses 2-20 of the *Crime and Security Bill*. [6] These clauses will amend the *Police and Criminal Evidence Act 1984* and alter the way in which DNA samples and fingerprints are collected and retained.

Clauses 2 to 13 relate to new powers afforded to the police to collect DNA and fingerprints. The two most significant provisions are that:

- Police will have the power to take the DNA and fingerprints of a person who has been arrested but is no longer in police custody. In theory this could mean that police will be able to take samples outside police stations, even on public streets.
- Police will have the power to take the DNA and fingerprints of UK nationals and residents who have been convicted of a serious criminal offence outside England, Wales or Northern Ireland. A list of “qualifying offences” is given in clause 7; most are crimes of a sexual or violent nature.

Clauses 14 to 20 address the ECHR judgment and relate to the way in which DNA and fingerprints are retained. Clause 14 has fifteen provisions, the most significant being:

- Individuals over 18 years of age who are arrested for a recordable offence but not convicted will have their DNA profiles held on the UK national database for six years.
- Under-18s who are arrested for a recordable offence but not convicted will remain on the database for three years, unless their offence is sexual or violent in nature and they are 16 or 17 years old in which case their profiles will also be retained for six years.
- Individuals over 18 years of age who have received a conviction, caution, or have been given a final warning or reprimand for any recordable offence will have their profile held on the database indefinitely.
- Under-18s convicted of a serious offence will also have

their records retained indefinitely. If they have committed a minor offence they will have their record deleted after five years. However, if they commit a second minor offence their records will be held indefinitely.

- Individuals subject to a control order will have their DNA profile and fingerprints retained for 2 years after the control order ceases to have effect.

- Biometric samples must be destroyed as soon as they have been used to create a DNA profile and uploaded to the national database, or within six months at the latest.

- The samples and profiles of people who have volunteered their biometric data to aid an investigation must be destroyed as soon as they have fulfilled their purpose.

- The chief officer of each police force can, at any time, decide to retain an individual’s DNA or fingerprint profiles “for reasons of national security” for a period of two years.

Under clause 19, these new rules will be applied to the estimated one million innocent people currently on the national DNA database: anyone without a criminal conviction over the age of 18 who has had their profile held for over six years should automatically be removed. The clause requires the Secretary of State to make a statutory instrument (secondary legislation used to exercise a power granted by primary legislation) that will prescribe the manner in which DNA samples and profiles will be destroyed. However, no timeframe is given for this process, and the explanatory notes accompanying the Bill admit that “this exercise may take some time to complete.” [7]

### Incompatibility with ECHR judgment

In January 2010, Liberty published a *Second Reading Briefing on the DNA provisions in the Crime and Security Bill in the House of Commons* to highlight fundamental flaws in the new legislation. The report argues that the government’s proposal to hold the DNA of arrested but unconvicted adults for six years:

*fails to acknowledge the presumption of innocence; takes no account of the stigmatisation of inclusion on the NDNAD [National DNA Database]; is based on dubious statistics with little reference to principle; will do little to address the discriminatory nature of the database; fails to properly address the issue of blanket retention of innocent’s DNA; and is likely to fall foul once again of the Government’s obligations under human rights law. In sum, the proposal continues the Government’s clumsy, indiscriminate and disproportionate approach to DNA retention.[8]*

The Liberty report argues that the UK government has demonstrated a persistent “unwillingness to engage fully with the particular issue of retaining the DNA of innocents’.”[9] As a result, the new Bill does not sufficiently comply with the ECHR’s judgment. The report highlights the findings of the Committee of Ministers of the Council of Europe which met in September 2009 and determined that:

*the proposed measures and in particular the proposal to retain profiles for 6 years following arrest for non-serious offences do not conform to the requirement of proportionality.[10]*

Further, nothing has been done to address the ECHR’s concern that innocent people are being stigmatised because the database is associated with criminality. This is particularly damning for children, a disproportionate number of whom come into contact with police. Stigmatising individuals who have never been convicted of a crime at an early age is incredibly damaging, and Liberty argues that they should be removed from the database as soon as possible except in the most exceptional of circumstances. If the Bill is introduced as it currently stands, Liberty believes legal challenges regarding its compatibility with Article 8 of the Human Rights Act are inevitable.

## No appeals process

Liberty considers the permanent retention of DNA profiles of children and adults who have been convicted of minor offences to be disproportionate. Permanent retention is particularly worrying because the Bill fails to establish an appeals process for individuals who believe their biometric data is being held erroneously. The ECHR states in its judgment that the minimal possibilities a person currently has of being removed from the list and the lack of an independent system of review contributed significantly to their finding that the UK's system of DNA retention was unlawful.

## National security clause

In addition, the discretionary power given to chief police officers allowing them to retain an individual's DNA profile for two years on the basis of national security will effectively give police the ability to bypass the new system. The primary concern here is that no guidance or framework for the application of the new power is included in the Bill, and this could lead to it being used arbitrarily. Liberty's report emphasises that "a general catch-all provision that applies to retain the DNA of anyone arrested of any offence is not a proportionate response and does not stand up to scrutiny." [11]

## Police National Computer

Alarming, the policy research and public interest group Genewatch argues that the Bill's provisions are actually worse than the existing mechanisms for removal because records of arrests will now be held indefinitely on the Police National Computer (PNC). Created in 1974, this computer system is accessible 24 hours a day and is extensively used by UK law enforcement agencies. *The Observer* reports that records of arrest used to be deleted if charges were dropped or an individual was acquitted, but since 2005 they have been permanently retained to help police locate an individual following a successful DNA match. [12] The office of the information commissioner emphasised that use of the PNC is widespread and frequent:

*Given this level of access, the commissioner is concerned that the very existence of a police identity record created as a result of a DNA sample being taken on arrest could prejudice the interests of the individual to whom it relates by creating inaccurate assumptions about his or her criminal past.[13]*

These people could be unfairly stigmatised when applying for jobs if their potential employer conducts an enhanced criminal records check.

## "Evidence based" approach

Liberty is highly critical of the "evidence-based" approach adopted by the UK government to formulate and justify the new proposals. The Bill's Explanatory Notes acknowledge that uniformly retaining the DNA profile of every adult arrested but not convicted for a period of six years "runs counter to the steer in Marper" but argued that "this approach is supported by the best available evidence." [14] Liberty disputes this claim, arguing that the new proposals are in fact based on "not much evidence at all". [15] The government originally cited research conducted by the Jill Dando Institute for Crime Science, but it was widely contested by the scientific community and the institute's director later admitted that the work was unfinished and should not have been used. The Home Office subsequently published an authorless internal report to substantiate the need for a six year retention period. However, the report uses data from the PNC that only dates back three years to April 2006 and admits that statistical analysis in this field is limited. Liberty argues that "the statistical data is therefore so incomplete and

misguided as to amount to guesswork and conjecture" and that the government is currently in no position to pursue an "evidence-based" approach. Further, the report warns that "over-reliance on statistics with little or no role for principle or ethic can lead to dangerously discriminatory outcomes." [16]

## Over-representation of ethnic minorities

This is evident in the significant over-representation of ethnic minorities on the database. Over 30% of the UK's black population over the age of 10 have their records held, in large part because black people are four times more likely to be arrested than white people. The fact that arrest alone, and not conviction, is reason enough to collect and retain a DNA sample highlights the discriminatory effect of the system. Liberty says that a race impact assessment should have been carried out before legislation was drafted and has asked the government to account for its failure to do so.

*The Home Office is required by law to have due regard to the need to eliminate race discrimination and the fact that the Government has completely ignored this issue gives rise to an argument that it may be in breach of its duties.[17]*

The Human Genetics Commission (HGC) voiced similar concerns in a November 2009 report, *Nothing to hide, nothing to fear?*, in which it claimed that the DNA profiles of over three-quarters of black men aged 18 to 35 have been collected and retained on the national database. The report warns of the disproportionate inclusion of ethnic minorities and people from vulnerable groups, such as individuals with mental health conditions and children, because they are more likely to come into contact with a police force increasingly eager to make arrests. The report cites evidence from a retired senior police officer who details the police's changing approach to arrest making. While in the past officers were encouraged to arrest individuals only as a last resort:

*It is now the norm to arrest offenders for everything if there is a power to do so - It is apparently understood by serving police officers that one of the reasons, if not the reason, for the change in practice is so that the DNA of the offender can be obtained.[18]*

## Function Creep

The database's role has drifted from that of confirming suspicions to identifying suspects. The HGC report argues that "function creep" (the expansion of the way in which information is collected and used for purposes that were not originally intended) has occurred unchecked because the role of the database has never been adequately debated in parliament or given a formal legal footing. It has developed piecemeal with no safeguards in place to limit who can be added and for how long. Submitting evidence to the HGC, Dr Ruth McNally, of the Economic and Social Research Council, argued that the database has now created a category of "pre-suspects":

*People whose profiles are on the database are the 'pre-suspects' ... the first to be suspected (and eliminated) whenever a new crime scene profile is entered onto the database. In this respect they occupy a different space within the criminal justice system from the rest of the population; they are under greater surveillance and, with the advent of familial searching, this differential status can be extended to their relatives too.[19]*

## The Prüm Treaty

This is particularly worrying because under the Prüm Treaty, signed in May 2005 and subsequently incorporated into EU law by the German EU presidency in June 2007, member states share reciprocal automated access to each other's national databases of

DNA profiles, fingerprints and vehicle registrations. The UK thus shares the largest DNA database in the world with countries that only retain profiles of serious offenders and inevitably associate everyone on the UK database with criminality. Further, there is evidence that police forces are conducting “fishing expeditions” by making repeated automated searches of other country’s fingerprint databases. Alarming, in October 2008 the European Council was forced to publish good practice guidelines because:

*The varying scale of national databases, partly linked to population size, has led experts to doubt whether the databases of the less-populated States are able to deal with other States’ searches. At times there are even concerns that databases may be damaged by overwhelming search volumes.*[20]

### Forensic utility

For the Human Genetics Commission, the database’s shortcomings are compounded by an absence of evidence demonstrating its “forensic utility.” The organisation’s chair, Professor Jonathan Montgomery, said that “it is not clear how far holding DNA profiles on a central database improves police investigations.” [21] Genewatch goes further, arguing that “expanding the number of individuals whose records are retained has increased the expected number of false matches, but has not increased the chances of detecting a crime using DNA.” [22] Similarly, the campaigning organisation NO2ID has criticised the government’s marketing of the database by incessantly drawing attention to a small number of high profile cases, while in reality the fact “that DNA is involved in the detection of less than 0.5% of all recorded crime suggests that it is far from cost-effective.” [23]

In October 2009 the National Policing Improvement Agency published an annual report covering 2007-09 which showed that while roughly 1.2 million records had been added to the DNA database in this period, the total number of crime scene matches fell from 41,148 to 31,915. Further, the cost of maintaining the database doubled from £2.1 million in 2007-08 to £4.2 million in 2008-09. [24] In January 2010, Chief Constable Chris Sims, an ACPO spokesman, told the House of Commons home affairs select committee that DNA matches contributed to solving only 33,000 of 2009’s 4.9 million recorded crimes. [25]

The UK DNA database of *offenders* has evolved unchecked into one of *suspects*. Its size and role have been greatly extended, without significant parliamentary debate, and this has disproportionately affected individuals belonging to social groups that are statistically more likely to be arrested, such as ethnic minorities and children. The government’s new proposals are based on flawed statistics and fail to strike a reasonable balance between the need to conduct criminal investigations, and the need to protect an innocent person’s right to privacy.

### Footnotes

- [1] *Liberty’s Second Reading Briefing on the DNA provisions in the Crime and Security Bill in the House of Commons, January 2010, pp. 11-12:* <http://www.liberty-human-rights.org.uk/pdfs/policy10/liberty-s-2nd-reading-briefing-on-crime-and-security-bill-dna.pdf>
- [2] *Case of S. and Marper v. The United Kingdom, European Court of Human Rights Grand Chamber Judgment, 4.12.08, p.21:* <http://www.statewatch.org/news/2008/dec/echr-marper-judgment.pdf>
- [3] *Guardian, 7.8.09:* <http://www.guardian.co.uk/politics/2009/aug/07/dna-database-police-advice>
- [4] *As revealed by Home Office minister Alan Campbell in January 2010:* <http://www.telegraph.co.uk/news/newstoppers/politics/lawandorder/6990617/Just-one-innocent-DNA-profile-removed-by-police-from-national-database-every-day.html> (Telegraph, 14.1.10).
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*deletion-tories: The Guardian, 31.12.09.*

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- [7] *Crime and Security Bill Explanatory Notes, #62:* <http://www.publications.parliament.uk/pa/cm200910/cmbills/003/en/10003-x-a.htm>
- [8] *Liberty’s Second Reading Briefing on the DNA provisions in the Crime and Security Bill in the House of Commons, January 2010, p. 11*
- [9] *ibid, p. 17*
- [10] [http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/United\\_Kingdom\\_en.pdf](http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/United_Kingdom_en.pdf)
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- [12] *The Observer, 20.12.09:* <http://www.guardian.co.uk/politics/2009/dec/20/dna-police-database-rights>
- [13] *The Information Commissioner’s response to the Home Office consultation paper on the retention, use and destruction of DNA data and fingerprints, p.10:* [http://www.ico.gov.uk/upload/documents/library/data\\_protection/notices/response\\_to\\_ho\\_consultation\\_may09.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/notices/response_to_ho_consultation_may09.pdf)
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- [15] *Liberty’s Second Reading Briefing on the DNA provisions in the Crime and Security Bill in the House of Commons, January 2010, p. 13*
- [16] *ibid, p.15*
- [17] *ibid, p. 17*
- [18] *Human Genetics Commission report, Nothing to Hide, Nothing to Fear? November 2009, p. 22:* <http://www.hgc.gov.uk/UploadDocs/DocPub/Document/Nothing%20to%20hide,%20nothing%20to%20fear%20-%20online%20version.pdf>
- [19] *ibid, p.48*
- [20] *See: http://www.statewatch.org/news/2009/aug/eu-prum-databases.pdf*
- [21] *Human Genetics Commission website, 24.11.09:* [http://www.hgc.gov.uk/Client/news\\_item.asp?Newsid=134](http://www.hgc.gov.uk/Client/news_item.asp?Newsid=134)
- [22] *GeneWatch UK response to the HGC consultation: The forensic use of DNA and the National DNA database, November 2008:* [http://www.genewatch.org/uploads/f03c6d66a9b35453738483c1c3d49e4/HGC\\_DNAconsul08\\_GW.doc](http://www.genewatch.org/uploads/f03c6d66a9b35453738483c1c3d49e4/HGC_DNAconsul08_GW.doc)
- [23] *Human Genetics Commission report, Nothing to Hide, Nothing to Fear? November 2009, p. 67*
- [24] *National DNA Database Annual Report 2007-09, p.35:* <http://www.npia.police.uk/en/docs/NDNAD07-09-LR.pdf>
- [25] *The Guardian 5.1.10:* <http://www.guardian.co.uk/politics/2010/jan/05/dna-database-crime-police-vaz>

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# Germany: The Federal Republic's security services from the Cold War to the "new security architecture"

by Norbet Pütter

**With the end of the Cold War, the (West) German security services lost their central surveillance target and thereby their legitimacy. The crisis was brief and new roles were swiftly found. More so than ever before, the intelligence agencies became interlinked with other security authorities.**

Every step on the route to sovereignty taken by the West German constituent state, the Federal Republic of Germany (FRG), after the fall of the Third Reich was also a step towards the creation and extension of the security services. In 1949 the Allied Forces set up "an authority to collect and disseminate intelligence regarding subversive [...] activities" (i.e. an internal intelligence service that was to become the Office for the Protection of the Constitution, *Verfassungsschutz*).

In preparation for "rearmament", a military intelligence service was developed from 1951, which became the Military Defence Service (*Militärischer Abschirmdienst*, MAD) followed by the creation of the German Armed Forces in 1956. That same year the German government, equipped with renewed sovereign powers laid down in the Germany Treaty, gained control over "Organisation Gehlen" from the Allies. It has acted as the foreign intelligence service (*Bundesnachrichtendienst*, BND) ever since. In 1968, the intelligence services gained more powers through emergency decrees permitting the intercept of telecommunications with the aim of increasing the German authorities' autonomy. After 1990, the re-united Germany made efforts to shake off the last remnants of the war and become a "normal" state, whose intelligence potential would not lag behind that of other western states.

However, the West German starting position was far from normal and the Gestapo had clearly shown what the security services were capable of. But, the Allies - as well as German politicians - were convinced that the emerging democratic state had to be protected from its enemies. The contemporary Weimar doctrine (which maintained that the Republic had failed not because of a lack of democracy and political-economic problems but because of a lack of state instruments), articulated the concept of "defensive" democracy which became the ideological foundation of the security services [1].

The "separation of powers", which Allied military governors laid down as a precondition for authorising the constitution, was intended to mitigate the political danger of a German intelligence service. The creation of a central authority to collect intelligence was granted to the federal government on condition that it would not gain police powers. Article 3 of the Internal Secret Service Act (1950) transposed this provision to the German federal law by laying down that the Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*, BfV), had no "police or control powers" and could not be integrated into existing police authorities [2]. The separation was also enshrined in the naming of the German services. It is commonly accepted that Germany has "secret intelligence services" rather than "secret services", as the latter could imply police powers or covert actions beyond merely gathering intelligence [3]. That the German services are engaged solely in collecting and processing information is a long-standing myth that legitimises their existence.

## Three services – one enemy

While the first generation of the internal security service was concerned with the role of Nazis in the young Federal Republic, the intensification of the Cold War resulted in a new enemy:

politically left-wing and located east of the River Elbe. Directly after the end of the war, Reinhard Gehlen, chief of the Wehrmacht department *Fremde Heere Ost* (Foreign Armies East, a military intelligence agency focusing on the Soviet Union and eastern Europe during the Nazi era), successfully offered his services to the Americans. With his knowledge of, and informant network in Eastern Europe, Gehlen's organisation was an important asset for the USA. The organisation was financed by the US army, or rather the CIA, until 1955. The fact that it was awash with Nazis was not seen as a hindrance because anti-Communism formed the ideological basis for cooperation [4].

Internally, the regional *Verfassungsschutz* offices were in charge. The 1950 Federal Law instructed the federal states (*Länder*) to set up intelligence authorities targeting those who were suspected of forming Moscow's "fifth column". They included the early peace movement, campaigns against rearmament, the Communist party (KPD) and, after it was banned in 1956, all those suspected of continuing links to the party. [5] The belief that the "enemy resides on the left" determined the viewpoint of the German security services until the end of the Federal Republic in 1989. When federal state ministers introduced a standard request for information from the federal and regional intelligence services on all public service applicants, this was also directed at the Left with the intention of stopping their declared "march through the institutions". Until the 1980s, the security services were spying on collectives, citizens' initiatives, the Green party and even parts of the Social Democratic Party [6]. Only the large-scale and violent right-wing extremism of the early 1990s forced the authorities to abandon their one-sided obsession with the Cold War, although without dropping their favourite surveillance targets. These continued to include diverse communist splinter parties but also the "new" social movements. The infiltration of the Berlin Social Forum by undercover security service officers or the year-long surveillance of civil rights activist, Rolf Gössner, are two examples of many [7]. Islamic terrorism became a third focal point after 1972 and the surveillance of extremist foreign groups has gained pace ever since.

Compared to the other two services, the military service (MAD) led a shadowy existence until recently [8]. Notwithstanding a few scandals, this special service, which falls within the remit of the Federal Ministry of Defence, has rarely been in the spotlight. As a secret army intelligence department it enjoys double secrecy, so to speak. Considering the political state of affairs in the old Federal Republic, it might be assumed that its main function was to protect the army from infiltration by the Left.

## Necessity and successes

No doctrine has found more support in recent German security-political discourse than that which stipulates that every state, including Germany, has to have intelligence services. This is a startling position when considering the 50-year history of "our" services, and one that is certainly not justified by their achievements. Even if the numerous scandals are ignored, their success rate remains low.

Before the fall of the Berlin Wall, East Germany and Eastern Europe were at the centre of all surveillance operations by the foreign intelligence service (BND). Its aim was to inform the government, in a timely fashion, on developments in the east to enable it to act on an informed basis. The collapse of East Germany should have been a good moment to present the service's successes, but there is no evidence that the BND predicted the building of the Berlin Wall (1961) or its collapse (1989). The service was equally surprised by the Soviet invasion of Afghanistan (1979) as it was to hear of the imposition of Marshall law in Poland (1981) or the attempted coup against Mikhail Gorbachev (1991) [9]. They were even ignorant of the fact that several Red Army Faction members had gone into hiding in East Germany.

There may be examples from international secret service history that show how intelligence provided by secret agencies enables governments to take better decisions [10]. This evidence is lacking for the Federal Republic. It is therefore doubtful that Germany would have lost its sovereignty, or the ability to act in the international arena, if it had not had a foreign intelligence service.

The covert nature of the internal security service's actions means that there are no public successes. In applying the measure of "defensive" democracy, their successes fade with key decisions. The ban of the Communist Party of Germany (KPD) in 1956 was largely based on intelligence gathered by the internal services, but by then the party had become small and politically ineffectual (receiving 2.2 percent of the vote at the 1953 general election) posing no threat to the Federal Republic [11]. The ban led to increased foreign secret service surveillance and to the extension of police security powers and related criminal trials [12]. Twelve years later the German Communist Party was tolerated by the state to rid itself of the political problems created by the KPD-ban [13].

The right-wing National Democratic Party of Germany (NPD) was spared the fate of the KPD. The Federal Government's (Lower and Upper Houses of Parliament) motion to ban the party failed in 2003 after its interior ministers refused to disclose evidence on the extent of the party's infiltration by their internal security services to the Federal Constitutional court [14]. It perceived a threat to the service's ability to act, and its non-disclosure meant that the court could not establish whether evidence came from "authentic" NPD officers or from informants paid by the state. The instruments of "defensive" democracy left democracy defenceless. (From a democratic viewpoint, this is exacerbated by the fact that right-wing ideology, networks and activities would not have been contained by the ban, not to mention the social causes of right-wing extremism).

According to the official narrative, intelligence agencies represent an "early warning mechanism" to detect activities threatening the constitution. They should illuminate shady activities so that the instruments of a "defensive" democracy (party bans, withdrawing certain basic rights, etc.) can be applied and/or the relevant persons prosecuted. However, homeland security statistics (on acts that pose a threat to the democratic state, espionage and terrorist organisations) demonstrate that the intelligence services' role in initiating criminal procedures is insignificant. From 1974 to 1985, between 2.6 and 0.2 per cent of all German homeland security investigations were instigated on the basis of intelligence information [15].

### **Mere "information gathering?"**

German intelligence agencies claim that they are not security services because they merely collect, analyse and disseminate information. This depiction is inaccurate for two reasons. Firstly, because – as the NPD infiltration case shows – their intelligence gathering methods do not only collect information (such as

intercepting a conversation) but also co-produce it. This is clear in the example of the *agent provocateur*, the agent who initiates actions at the order of - and whilst being paid by - the state. There are numerous examples of this practice from the internal security service alone, and they are only the few that have become public [16]. The services are not mere observers and by behaving as informants, spies and undercover agents they become actors. To an extent this is unknown to the public. Furthermore, passive surveillance is more than mere information gathering, because suspicious behaviour is often triggered by the suspicion of being watched.

Secondly, German services have always done more than trade information. For decades, the Berlin federal internal intelligence services (LfV) prevented access to a murder weapon by keeping it classified. A Lower Saxony LfV agent bombed a prison wall to create an escape route (an incident that became known as the Celle hole [17]). The foreign intelligence service attempted to export arms to Israel under the cover of agricultural products, facilitated arms exports to Africa, supported intelligence services from Syria to South Africa and helped with the CIA-supported coup against the Congolese prime minister, Patrice Lumumba (1961). The examples are extensive [18].

The activity profile of the services as a whole gives the impression that they are predominantly focused on problems that they have created. Field espionage is an opaque adventure playground in which operations and counter-operations, double agents and defectors, informants and disinformation sometimes have deadly consequences for the participants. In interactions between states, the services are instruments of an undercover foreign policy in the grey zone between authorised and independent action. Resources are largely spent on countering or infiltrating foreign services, which worsens relations between states instead of improving them. The legitimacy of "internal" surveillance is built on the concept of the "enemy of the state" and it is no surprise, therefore, to find that this enemy is sought in all areas of life. In domestic politics, the services encourage the state-supported culture of suspicion, infiltration and misinformation that violates the basic principles of a liberal democracy.

### **New remits**

The traditional task of the services is the protection of the state. The German version of this homeland security is the protection of the German constitution. By gathering and analysing information, the BND should "learn intelligence about foreign [states]" which "from a foreign and security policy perspective is of importance for the Federal German Republic" [19]. According to the original wording, the federal internal secret service (BfV) should collect intelligence on activities geared towards the "annihilation, change or disruption of the constitutional order [...] or an unlawful interference with the administration of members of constitutional institutions" [20]. These remits were extended in 1972 with a constitutional amendment (Article 73(10)) and parallel amendment to the law regulating the internal security services. The prime task of homeland security was extended to include the protection of the "free legal democratic order" and of "the existence or the security of the State or a federal state". The extensions merely legitimised existing practices: the BfV had always engaged in espionage and since the late 1960s had been monitoring the "activities of foreigners that threatened security".

Alongside these three primary tasks, the internal services were instructed to take part in security checks of persons who had access to sensitive data or those who worked in "institutions important for life and defence matters". The services were also charged with the technological protection of sensitive information.

Only with the anti-terror legislation introduced after 11

September 2001, were the remits extended to include the observation of activities that violated “the spirit of international understanding [...] in particular against the peaceful co-existence of peoples”. The services were now empowered to demand personal information from credit and financial institutions, postal and telecommunication providers as well as airline companies [21].

By the 1990s, an additional extension of remits had been announced for the regional internal security services (LfV). During that decade, the (presumed) threat of “organised crime” (OC) entered the public discourse. Because the services had lost their external (Eastern Block) and internal (left-wing extremism) functions, it became clear that they would be allocated the task of creating an early warning system for OC. Initially in Bavaria, and then in four more federal states governed by the Christian Conservative Party (CDU), the regional security services were allocated the task of monitoring OC. This was justified by the argument that it had always engaged in covert intelligence gathering and therefore had the relevant know-how to uncover clandestine organised crime structures. As far as can be discerned from publicly available information, the work of the regional intelligence services has not contributed to exposing OC structures. Besides democratic concerns (see below), the broader remit of the Saxon LfV has led to a scandal that threw light on the working methods of the federal authority [22].

Whether the LfV’s monitoring of OC had any criminal or police relevance remains unknown. In 2003 and 2004, the Thuringia secret service was working on 38 cases and in early 2005 the LfV was still working on 19 of them. The authority had passed five cases to the regional crime police authority and another five were, according to the LfV, not OC but “common” criminal cases. In nine cases preliminary procedures were dropped because of a lack of evidence proving criminal acts [23]. Considering that 17 of the 38 cases were drug-related, the figures lead to the conclusion that the Thuringian secret service “investigates” in the broad field of general crime and follows vague rather than hard leads in the process.

In 1994, the BND was also instructed to fight OC. It gained increased powers in the so-called “strategic surveillance of telecommunication” which the service had engaged in since 1968. This entails the surveillance of all international telecommunications to or through Germany. This total surveillance was justified by the alleged danger posed by the Cold War as it was supposed to uncover leads on a possible attack against Germany. It would have been logical to end this comprehensive surveillance when the threat of war ended. Instead, legislators extended surveillance areas to include illegal trade with arms and proliferation-relevant goods, the international drugs trade as well as counterfeit money and money laundering abroad. The goal of this extended remit was the same as that for the internal services: uncovering leads on covert OC structures so as to instigate preliminary or criminal police investigations. However, there is no evidence that the “intelligence” gained from strategic surveillance has led to positive results concerning Germany’s safety. In 2007, 2,913,812 “communications” were registered in the BND’s surveillance computers that “qualified” as relevant to “international terrorism”, to use the wording of the report of the parliamentary secret service oversight committee (*Parlamentarisches Kontrollgremium für die Geheimdienste*). There were more than 2.3 million entries concerning proliferation. Even if we assume as the report does that 90 percent of these entries are Spam, there are more than half a million communications for the BND to follow up. Only four communications were thought to have “foreign intelligence relevance” in the area of terrorism, 370 were deemed relevant in the area of proliferation. Not one of them was forwarded to the law enforcement agencies [24]. It is unknown whether the intelligence gathered contained any leads on criminal activities,

whether it was relevant to the BND’s situation reports or other BND activities or whether it was passed on to the police in the framework of preventive crime fighting.

### Law of separation or cooperation?

Separating the secret intelligence agencies from the police force was a means by which the Allies prevented the creation of another German “secret state police”. Every single regional and national law on the secret services passed since 1950 includes the stipulation that the relevant service cannot be affiliated to a police authority. None of these laws grants the services police enforcement powers. Despite this, the development of the security services has reversed the spirit of the law of separation. Precisely because the services and police are separate authorities, goes the argument, they have to cooperate more closely [25].

In the old FRG, the law of separation was not interpreted as a ban on cooperation. Mutual assistance and exchange between police and intelligence services in homeland security issues have existed since the 1950s. For instance, police and intelligence officers worked together in the Klaus Traube [26] interception case and the Celle prison bombing (see above); the MAD helped police in the search for the kidnappers of industrialist, Hanns-Martin Schleyer, and the BND granted technical assistance for a large-scale surveillance operation in Baden [27]. Besides case-related mutual assistance, the different authorities cooperated from an early date. Since 1952, the Federal Border Guards (BGS) – the current Federal Police Force – supported the Federal Intelligence Service (BfV) in “radio technology”. This not only entails the surveillance and analysis of internal telephone and radio communications (which is protected by the privacy Article 10 of the German constitution) but also the surveillance of international telecommunication traffic involving foreign security services or other BfV “targets”. The fact that this task is carried out by a police unit is justified by the German government with practical arguments: because the Border Guards provide the same service for the customs office and the Federal Crime Police Authority, the allocation of the surveillance task amongst separate authorities would not allow for the “flexible, needs-based and effective deployment of personnel and equipment” [28].

In 1976, the “Special decree on the collection of specific intelligence during border controls” instructed the BGS to pass information on travellers to the BfV (internal) and the BND (external). The police officers could refer to a list of 239 organisations and 287 printed materials that were classified as “left-wing extremist of influence”. When the decree became public it was suspended and from 1981 onwards substituted by relevant departmental instructions [29]. All three services are able to make a “request for mutual assistance in border matters” to the BGS. The data gathered ranges from personal details and traveller’s destination to comments and details on co-travellers [30].

The sharing of secret service intelligence with the police was further standardised in the 1954 *Unkelner guidelines*, the *Cooperation Guidelines* (1970) and the secret service laws from 1990 onwards (Article 19(1) VfS-G, and 9(1) BND-G). This information sharing was initially conceived for concrete cases and in the discretionary powers of the services (which “could” pass on information).

With the Common Database Act (2006) a permanent information alliance between the police and secret service was created in the area of terrorism. The Act created the basis for the Anti-Terror Database to which police, secret services and customs all have access as well as for so-called common project databases, which combines the intelligence of all authorities on a project (that is issue-, person- or object-related) basis [31]. Indirectly, the Act belatedly made legal the Common Anti-Terrorism Centre, created in 2004. This is the most recent step in

the “networking” of security and police agencies, thereby weaving the strategy and practice of “preliminary investigation” into an opaque and uncontrollable network [32].

While security services increasingly focused on surveillance and the detection of regular crime from the 1970s onwards, police working methods came to resemble those of secret services: the unrelenting increase in telecommunications surveillance, the systematic deployment of covert investigators and informants, and better technical standards of covert surveillance have equipped police forces with a considerable repertoire of secret service instruments. The fact that the intelligence services and police forces systematically cooperate is therefore an almost inevitable result of prior developments, namely, the steady approximation of “targets” (crime), strategic approach (investigations before a crime has been committed) and instruments (covert methods).

### **The fiction of the rule of law**

The German secret services have been integrated into the legal democratic order of the Federal Republic. Officially, this is to guarantee their democratic and constitutional standards. However, the legal basis for the three services remains weak. Whilst the internal security service is mentioned in Article 73(10) and Article 87(1) of the constitution (*Grundgesetz*, GG), the remits of the BND and MAD derive from the federal state in the areas of foreign and defence policy (Article 73(1) GG) and until 1990 both services worked without a clear legal basis [33]. They were initially set up by a secret Federal Cabinet decree (BND) and a ministry of defence organisational decree (MAD). In 1990, seven years after the Population Census Judgement (*Volkszählungsurteil*, [34]) and 35 years after their foundation, both services were finally subjected to legal control.

Since 1950, the legal basis for the BfV has consisted of six Articles. These concerned the delineation of remits and repeated the principles laid down in the Allied police letter [35]. The law was a *carte blanche* for executive action rather than its limitation. This became apparent in the services’ handling of privacy in telecommunications. Despite the fact that Article 10 of the constitution had declared in no uncertain terms (until 1968) that privacy in postal and telecommunication was “inviolable”, whilst no law existed that would qualify this right, the internal secret service used a provision in a treaty between the Federal Republic and western Allies on mutual assistance from 1955 to intercept communication domestically. A report initiated by the Federal Interior Ministry investigated at least 82 bugging cases that took place between 1955 and 1963 [36].

In 1972, the Federal Law on Security Services was amended. For the first time, the service was given the power to apply “intelligence methods” to carry out its tasks (Article 3(3) in version 1972 of the law). However, legislators failed to define more precisely what those measures entailed. This ambiguity was deliberate, to ensure flexibility in the services’ operations. It allowed for the interior minister of Saxony to justify the Celle prison bomb attack as an “intelligence method” with the court’s acceptance [37]. The far-reaching 1990 legal overhaul left this ambiguity intact; the expression “intelligence methods” was replaced by “methods...of covert intelligence gathering”, which were described by example but not comprehensively defined (Article 8(2) BVerfSchG [38]). In guidelines, however, one can detect a significant difference to police law - secret service law demonstrates a higher degree of legal ambiguity, creating space to manoeuvre with regard to surveillance, infiltration and operational powers.

Some regional governments held the principle of legal clarity more seriously and provided additional guidelines on what their regional services should understand as an “intelligence method”. This explains the legal challenge against online raids that were introduced in North-Rhine Westphalia’s secret service law. The

court ruled [39] that all other regional secret services had to end this form of surveillance until their respective laws had been amended.

The biggest democratic achievements in relation to secret service laws, can be attributed to the constitutional courts, (and this not only due to the court’s decision on online raids). With the Population Census Judgement of 1983 (see footnote 34), the same court ensured that the BND and MAD would be legally regulated in the first place. In 1998, the Court restricted the BND’s “strategic interception of telecommunications”. In 2005, the Lower Saxony regional constitutional court limited the regional services’ OC surveillance to cases that represented a threat to the constitution [40]. Of course, none of these judgements led to the halting of a service, method, or strategy. Moreover, legislators always used the courts’ opinions as a basis for the next legal reform – forever anxious to test the limits of the constitution.

Alongside fading constitutional standards, the services’ operations are characterised by the fact that, contrary to police forces, they are not obliged to act on knowledge of a criminal offence (*Legalitätsprinzip*, the principle of mandatory prosecution for an offence). Although the police service can suspend mandatory prosecution in certain areas of policing, the security services are generally free to decide on when, and in what form, they pass on information that they have gathered about criminal acts to the police. Because they are concerned with gaining and maintaining access to target groups (and in particular not losing informants), the relaying of intelligence is shaped by their interests – it either does not occur or is filtered. The fact that the police end up investigating the criminal behaviour of security service informants [41] is a consequence of this one-sided intelligence policy. At the same time, if filtered intelligence shared with the police leads to a prosecution, the defence is weakened by the opacity of the secret service’s source of information [42].

### **The illusion of control**

The constitutional legitimacy of the German security services emphasises the claim that they are subjected to exemplary control. The services portray themselves as a tight-knit control mechanism that functions at various levels: from parliament, data protection officers and courts to the media and public eye [43].

A special emphasis is placed on the parliamentary control that exists at federal level for all three services (internal, external and military) and at the regional level for the regional internal security services. Parliamentary control should compensate for the fact that due to the clandestine nature of the services, their actions are difficult to monitor by the courts and the general public. The system of parliamentary control has been implemented in various stages at the federal level. In 1956, the Parliamentary Committee of Ombudsmen was set up but it lacked a legal basis. It was succeeded by the Parliamentary Control Commission in 1979, which in turn became the Parliamentary Control Committee in 1999. In the most recent legislative period, the committee was not only enshrined in the constitution (Article 45d) but also given new powers. It can demand the disclosure of original files; its members can be supported in their work by parliamentary assistants and with a two-thirds majority it can decide that expert contributions sought by the Committee be presented to parliament. If the Committee decides – also with a two-thirds majority – to evaluate a procedure in public, any committee member can issue a dissenting opinion [44]. However, strict confidentiality requirements remain, which, together with the two-thirds majority clause, ensures that events detrimental to state and government are not disclosed to the public through this procedure.

The toughest measure the Committee can apply is the power



to institute parliamentary investigation committees. This power has been frequently used in Germany's history [45]. The BND Investigation Committee (BND-Untersuchungsausschuss) is an example from the last legislative period. It was instituted to investigate the BND's surveillance of journalists and its involvement in the Iraq war. Beyond the (limited) evidence gathering in the various areas under investigation [46], the committee has had two significant results. Firstly, BND actions led to the above-mentioned reforms of the Parliamentary Control Committee. The investigation committee was only instituted because the government's information policy towards the Committee was deemed inadequate even by parliamentarians who were loyal to the government. However, the extension of Control Committee powers was also because the Committee wanted to avoid public and uncomfortable investigation committees.

Secondly, the government's restrictive information policy led to a minority within the Committee lodging a complaint with the Federal Constitutional Court. The Court ruled that government had significantly exceeded its right to refuse to give evidence and to the non-disclosure of files. The government's arguments concerning the "core of executive responsibility", the interests of other states or "public weal" were too "sweeping", not "substantiated" or not sufficiently "specific", according to the court [47]. The fact that on the 60th anniversary of the German constitution, the Court had to remind the government that it, but also parliament, was indebted to "public weal" reveals the democratic self-image of the rulers. Although the Judgement strengthened parliament's control powers, the fact that the President of Germany (*Bundespräsident*) refused to grant a special hearing of the investigation committee and that a new committee was not instituted, show the limited practical relevance of these increased powers [48]. On the other hand, it does mean that future government refusals to provide evidence will necessitate more verbal efforts on their part.

### Power with potential

On reviewing the history of the secret services one could conclude that they have become autonomous. They redefine their political instructions in a bureaucratic and covert manner, act independently, exaggerate threats and enemies, etc. But this is only one side of the coin. The services are also assigned a very generous constitutional leeway. Despite the fact that they are normally aimed at protecting the constitution or serving the interests of the state, in practice they are instruments of the relevant government. In a mix of the current government's orders and their own self-serving interests, they conduct a parallel foreign policy based on reciprocity – with the methods of covert intelligence work and illegal methods. Domestically, they annul protection from arbitrary surveillance and interception, devalue regulations that should protect citizens from state intervention and surveillance and create a climate of intimidation.

The only comprehensive solution to the secret services' congenital defects is not improved control but their abolition. A first step in this direction would be to uncover their history – from before 1989 onwards – and disclose the surveillance files and data to those affected and to researchers and the media. Then the country would have a chance not only to learn to deal with the legacy of East German secret service history, but also that of the three West German secret services.

(from *Bürgerrechte & Polizei/CILIP* 93, 2/2009)

### Footnotes

[1] Buschfort, W.: *Geheime Hüter der Verfassung. Von der Düsseldorfer Informationsstelle zum Ersten Verfassungsschutz der Bundesrepublik (1947-1961)*, Paderborn 2004, pp 38 ff.

[2] See Roewer, H.: *Nachrichtendienstrecht der Bundesrepublik Deutschland*, Köln 1987, p 135 (Police letter) and p 7 (Law from 1950).

[3] Ritter, F.: *Die geheimen Nachrichtendienste*, Heidelberg 1989, p 14.

[4] See Reese, M.E.: *Organisation Gehlen*, Berlin 1992.

[5] Brüneck, A.v.: *Politische Justiz gegen Kommunisten in der Bundesrepublik Deutschland 1945-1968*, Frankfurt/M. 1978, pp 217-221.

[6] See *Beobachtungsobjekt Verfassungsfeind*, in: *Bürgerrechte & Polizei/CILIP* 28 (3/1987), pp 97-104.

[7] *Socialforum berlin: Dokumentation der Überwachung des Berliner Sozialforums durch den Verfassungsschutz*, Berlin 2007; *Frankfurter Rundschau*, 19.11.08.

[8] See Ritter *ibid.* (Fn. 3); pp 100-103; Gusy, Chr.: *Der Militärische Abschirmdienst*, in: *Die Öffentliche Verwaltung* 1983, issue 2, pp 60-66. For recent development see Gose, S.: *MAD: uniformierte Schnüffler ziehen ins Ausland*, in: *antimilitarismus-information* 2002, pp 5-11

[9] Schmidt-Eenboom, E.: *Der BND. Schnüffler ohne Nase*, Düsseldorf u.a. 1993, insbes. pp 74 ff and pp 290 ff.

[10] Krieger, W.; Weber, J.: *Nutzen und Probleme der zeitgeschichtlichen Forschung über Nachrichtendienste*, in: *Dies. (ed.): Spionage für den Frieden*, München, Landesberg am Lech 1997, pp 9-22 (p 17 ff).

[11] *Bundesverfassungsgericht: KPD-Verbot. Judgement from 17.8.1956, Entscheidungen des Bundesverfassungsgerichts Vol. 5*, pp 89 ff.

[12] See Wagner, P.: *Ehemalige SS-Männer am „Schilderhäuschen der Demokratie“? Die Affäre um das Bundesamt für Verfassungsschutz 1963/64*, in: Fürmetz, G.; Reinke, H.; Weinbauer, K. (eds.): *Nachkriegspolizei: Sicherheit und Ordnung in Ost- und Westdeutschland 1945-1969*, Hamburg 2001, pp 169-198 (p170 f).

[13] Mensing, W.: *Wie wollen unsere Kommunisten wiederhaben ...: demokratische Starthilfen für die Gründung der DKP*, Zürich, Osnabrück 1989

[14] *Bundesverfassungsgericht: Judgement from 18.3.03 (www.bverf.de/entscheidungen/bs20\_03318\_2bvb000101.html)*. The interior ministers merely informed the court that on three key dates between April 1997 and April 2002, the representation of informants in leading NPD positions was less than 15%. Because of fluctuations in personnel, at this time around 500 NPD functionaries were active in the party's management board, that implies more than 75 informants were active in the board as well (*ibid.*, note 32).

[15] Werkentin, F.: *Staatsschutz' statistisch gesehen*, in: *Bürgerrechte & Polizei/CILIP* 42 (2/1992), pp 47-51 (51).

[16] For examples in the area of right-wing extremism, see cases described in Gössner, R.: *Geheime Informanten. V-Leute des Verfassungsschutzes: Kriminelle im Dienst des Staates*, München 2003

[17] *The Celle Hole was an attempt by the regional secret service (LfV) to infiltrate the Red Army Faction. An informant claimed responsibility for the staged and unsuccessful breakout attempt to gain the trust of the group. The incident was revealed in 1986 to be a plot by the government.*

[18] See the contribution by O. Diederichs in *Bürgerrechte & Polizei/CILIP* 93 (2/2009); on the BND see Schmidt-Eenboom *ibid.* (Fn 9), pp 179-203 and Schmidt-Eenboom: *Der Bundesnachrichtendienst. Stichworte zur geheimen Außenpolitik der Bundesrepublik Deutschland*, in: *Archiv für Sicherheits- und Entwicklungspolitik* 1994, August, pp 7-18.

[19] This is the wording in the BND Law (Article 1(2)), since 1990, BGBl. I, p 2979

[20] Article 3(1) of the Internal Security Service Law from 1950, see Roewer *ibid.* (Fn. 2), p 7.

[21] *Anti-Terror Law (Terrorismbekämpfungsgesetz) from 9.1.02, BGBl. I, p 361 ff.* These powers, however, have not been applied often: in six years, only 56 information requests have been made by the federal services to banks and 137 to telecommunications providers, two were made to airline companies and none to the postal services, see Lower House publications BT-Drs. 16/2550 (7.9.2006), 16/5982 (5.7.2007) and 11560 (5.1.09).

[22] *Regional Lower House Sachsen publication 4/15777 (19.6.09)*. The events could not be clarified due to the government's refusal to provide information. The service's activities, however, were deemed by the majority of the committee to be based on rumours and vague leads, *ibid.* p 46.

[23] See L.: *Der Verfassungsschutz als neues Instrument im Kampf gegen die Organisierte Kriminalität*, in: *der kriminalist* 2005, issue 4, pp 172-174 (173)

[24] BT-Drs. 16/11559 (5.1.09); between 1998-2007 law enforcement authorities received 71 leads from the BND, of which only one led to the

initiation of a criminal procedure.

[25] E.g. Werthebach, E.: *Die Zusammenarbeit von Polizei und Nachrichtendiensten bei der Terrorismusbekämpfung*, in: *der kriminalist* 2003, Issue 9, pp 326-329; Rupprecht, R.: *Die Kunst, Aufgaben sinnvoll zu teilen. Zur Aufklärung von Strukturalen Organisierter Kriminalität durch Nachrichtendienste*, in: *Kriminalistik* 1993, Issue 2, pp 131-136.

[26] Klaus Traube, a German engineer and former manager in the German nuclear power industry, was the victim of an illegal eavesdropping operation by the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz, BfV) because he was falsely suspected of passing on secret information to the Red Army Faction. The BfV planted a number of wiretaps in Traube's apartment and informed his employer who, as a result, fired him. This illegal operation was uncovered in 1977 by the newspaper *Der Spiegel* and led to the dismissal of the then minister of the interior Werner Maihofer one year later. Traube was cleared of all charges.

[27] See Gössner, R.: *Polizei und Geheimdienste: Sicherheitspolitische „Wiedervereinigung“?*, in: *Bürgerrechte & Polizei/CILIP* 27 (2/1987), pp 38-62 (p 44 f).

[28] Busch, H.: *Horchposten Bundesgrenzschutz*, in: *Bürgerrechte & Polizei/CILIP* 47 (1/1994), pp 25-27; on the legal justification, see Droste, B.: *Handbuch des Verfassungsschutzrechts*, Stuttgart et al. 2007, pp 572-575.

[29] Gössner *ibid.* (Fn 27), p 50 f.; Droste *ibid.* (Fn 28), p 480.

[30] *ibid.*, p 482

[31] See Busch, H.: *Es wächst zusammen ... Zum Gemeinsame-Dateien-Gesetz*, in: *Bürgerrechte & Polizei/CILIP* 85 (3/2006), pp 52-59.

[32] See Wörlein, J.: *Unkontrollierbare Anziehungskraft*, in: *Bürgerrechte & Polizei/CILIP* 90 (2/2008), pp 50-61 (55-58).

[33] Not taking into account the powers also created for the BND and MAD by the G10 Law from 1968.

[34] In December 1983, the German Federal Constitutional Court declared unconstitutional (as an infringement of the Basic Law) some provisions of the act concerning the census adopted the same year, and with this decision produced a global effect on data protection policy and law. The court ruled that the "basic right warrants [...] the capacity of the individual to determine in principle the disclosure and use of his/her personal data". (The so-called right to informational self-determination, or privacy). The fact that the judgement also laid down that an infringement of the right to privacy by the

state would have to be justified by corresponding legal acts explains the passing of series of laws in following years to enable such infringements.

[35] The Allied military governors laid down principles for police and secret service activities of the federal government, which became constitutional.

[36] Wagner *ibid.* (Fn 12), pp 174 f. The police also practiced this unconstitutional method, see Foschepoth, J.: *Postzensur und Telefonüberwachung in der Bundesrepublik Deutschland (1949-1968)*, in: *Zeitschrift für Geschichtswissenschaft* 2009, Issue 5, pp 413-426.

[37] According to conservative (CDU) interior minister Wilfried Hasselmann, after the scandal became public in 1986, see *Frankfurter Rundschau*, 6.9.86.

[38] Droste *ibid.* (Fn 28), pp 264 f.

[39] Federal Constitutional court Judgement from 27.2.08, [www.bundesverfassungsgericht.de/entscheidungen/rs20080227\\_1bvr037007.html](http://www.bundesverfassungsgericht.de/entscheidungen/rs20080227_1bvr037007.html)

[40] Regional Constitutional Court of Sachsen: Judgement from 21.7.05, [www.justiz.sach.sen.de/esaver/internet/2004\\_067\\_II/2004\\_067\\_II.pdf](http://www.justiz.sach.sen.de/esaver/internet/2004_067_II/2004_067_II.pdf)

[41] Ranging from the Celle Hole, (because the Lower Saxony police had also not been informed of the staged breakout attempt) to the case involving a neo-Nazi from Brandenburg, see Pütter, N.: *Strafvereitelung im Amt*, in: Müller-Heidelberg, Till et al. (ed.): *Grundrechte-Report 2006*, Frankfurt am Main 2006, pp 158-162.

[42] See the interview with lawyers Elfferding and Weyers in *Bürgerrechte & Polizei/CILIP* 93 (2/2009); also exemplary: Beck, M.: *Das Dickicht der Dienste. Der Einfluss des Verfassungsschutzes in § 129a-Verfahren*, in: *Bürgerrechte & Polizei/CILIP* 2008, Issue 1 (89), pp 58-63.

[43] E.g. Bundesminister des Innern: *Bundesamt für Verfassungsschutz. Aufgaben. Befugnisse. Grenzen*, Bonn 1990, pp 83 ff.

[44] Law from 29.7.09, BGBl. I, p 2346.

[45] See Diederichs, O.: *Die 'Parlamentarischen Untersuchungsausschüsse' zu Polizei und Geheimdiensten in der Bundesrepublik Deutschland*, in: *Bürgerrechte & Polizei/CILIP* 1995, Issue 3 (52), pp 48-58.

[46] Parliamentary publication BT-Drs. 16/13400 (18.6.09).

[47] Federal Constitutional Court Judgement from 17.6.09 ([www.bverfg.de](http://www.bverfg.de))

[48] *Berliner Zeitung*, 30.7.09; *Frankfurter Rundschau*, 21.8.09

## Italy: Shocking death spotlights prisoners' plight

by Yasha Maccanico

**The case of Stefano Cucchi, who died in hospital after being beaten in police custody, highlights the routine abuses that occur in Italian prisons and police stations and the lack of accountability of those responsible.**

Since information surfaced about the death in custody of Stefano Lorenzo Cucchi in Rome (see *Statewatch News Online*, November 2009) pointing to him receiving one or more beatings following his arrest on the night of 15 October 2009, a number of other cases have come under the spotlight. Some involved new revelations, such as an intercept from Teramo prison in which a commander and two officers discussed where prisoners could be beaten and where it should not occur. Other cases concerned past instances of suspicious deaths in custody in which judicial authorities had made little headway and the families of the deceased were unsatisfied. Meanwhile, prisoners who had seen or spoken with Cucchi confirmed that he was beaten, as did evidence from prison officers and medical staff given to the *Dipartimento dell'amministrazione penitenziaria's* (DAP, prison administration department) administrative inquiry into the death. The new evidence shifted attention from his treatment in the court's security cell (originally identified as the place where he may have suffered injuries) to include the entire period spent in custody until he was taken to *Regina Coeli* prison. Nine people are under investigation - three prison officers and six medical staff - on suspicion of causing Cucchi's death and negligence.

In its annual report on conditions in prisons, *Associazione*

*Antigone*, which monitors the penal system in Italy, expressed concern at the record number of suicides in 2009 (71). It is also worried about overcrowding which has reached levels that it describes as "beyond what is tolerable". This refers to the twin concepts used for prison capacity, those of a "regulation capacity" (43,074) and a higher "tolerable capacity" (64,111) which has been reached by the prison population. Justice Minister Antonino Alfano has demanded that a "state of emergency" be called to enact a special plan involving construction work to ensure the availability of a further 20,000 places, a recruitment drive, and work on access to alternative sentencing. However, *Antigone* identifies the criminalisation of "irregular" migrants and the tougher treatment of drug offenders as important causes of the rising prison population that are not considered in the plan, alongside a decrease in access to alternatives to imprisonment. Critics of Alfano's approach have noted that at the rate at which the prison population is rising (1,000 per month), the plans to increase available places to 80,000 by 2012 is insufficient.

### The Cucchi case

Stefano Cucchi was a 31-year-old who died on 22 October 2009 in the detention ward of *Sandro Pertini* hospital six days after his

arrest by *carabinieri* (police force with a military status) for drug possession and dealing (he had 20g of cannabis and 2g of cocaine on him). His home was searched after he was arrested, with his mother present, and Cucchi seemed to be “in good health”. After a coroner reported his “natural death”, Cucchi’s family released photographs from his autopsy that showed a bruised and battered body, and complained about a series of irregularities, including the fact that following his admission to the hospital ward for prisoners, they were not allowed to see him.

The outcry over the case resulted in justice minister Alfano appearing in the Senate on 3 November 2009 to reconstruct the events leading to Cucchi’s death, after defence minister Ignazio La Russa had pre-emptively acquitted the *carabinieri* of any wrongdoing:

*I don't have the elements to verify anything, but I am certain of one thing: the absolute correctness of the carabinieri's behaviour on this occasion.*

Alfano said that “Stefano Cucchi should not have died and his death should have been prevented”, and that “the government is in the front line to ascertain the truth”. Nonetheless, his repeated references to a fall that Cucchi suffered weeks before his arrest, to his physical frailty, drug addiction and the possibility of his being anorexic or an HIV-sufferer (which his family denied) did not bode well for those who expected transparency (see *Statewatch News Online*, November 2009).

Alfano repeatedly alluded to Cucchi’s uncooperative attitude and refusal to accept food. Prison officers who had been in contact with Cucchi and a volunteer in *Sandro Pertini* hospital told the DAP inquiry that his refusal to eat was a protest at not being allowed to speak to his lawyer, members of a drug rehabilitation community (where he had undergone previous treatment) or his brother-in-law. He told two officers that: “Instead of guaranteeing the protection of citizens, the guardians of the state have done this to me”, adding that “I want to speak to my lawyer to clear this up”. Investigators are reportedly assessing whether his death was caused by physical injuries, dehydration and weakness resulting from his refusal to eat, or whether injuries sustained before his arrest may have played a part. The fact remains that he had been training in the gym on the afternoon before his arrest and appeared to be in reasonable condition apart from his slender build and drug addiction. He was six kilograms lighter and appeared to have been badly beaten by the end of his ordeal.

Arrested at 23.20, his home was searched and he was taken to Appia carabinieri station to be charged with the production and trafficking of illegal substances. He was subsequently placed in a security cell in Tor Sapienza carabinieri station at 03:55 and reportedly had no bruising or visible injuries. He called for assistance at around 05:00, recorded as being a result of epileptic fits, but then refused treatment and examination when medical staff arrived. During a later examination, he said he had not had an epileptic fit for months. The next morning, he was taken to court to have his arrest validated, and in a hearing at 12:30 the judge decreed that he be placed under arrest, after which he was placed in the custody of the prison police at 13:30. When the prison service assumed responsibility for Cucchi at 14.05, a medical examination noted several injuries including bruising under both eyes. In their evidence to the DAP, prison officers explained that a prisoner is not in their charge until they are formally handed over after the court hearing, if they are remanded in custody. Prior to this, prison officers are merely responsible for opening and closing cell doors, while “acting officers” are in charge of the detainee’s care. Cucchi was examined by a doctor on entering *Regina Coeli* prison at 15:45, and the report noted that he had serious injuries to his face, suspected concussion, abdominal trauma and vertebral damage. The doctor had him sent “urgently” to *Fatebenefratelli* hospital.

## Witnesses

Nine people are under investigation - three prison police officers (as it appeared that his condition had worsened in the court’s custody) and six members of the *Sandro Pertini* hospital medical staff, for negligence. However, it has emerged that he may have been beaten both before and after his transfer to the courthouse. Moreover, until after the hearing, the *carabinieri* who were with him had a duty of care over the prisoner. On 21 November 2009, S.Y., an African man arrested for a drug offence who shared a cell in the courthouse with Cucchi, was heard as a witness by prosecutors:

*I was alone in my cell, I was there and heard noise. The youth was there and somebody was kicking, made noise with his feet, I heard the youth fall, he was crying. Then I looked through that window and saw them putting him in the cell, before they beat him I heard them talking, but I didn't understand, ...but I understood that the police were telling him to go inside and he didn't want to go inside.*

S.Y. notes that three police officers were involved (only one of whom he could identify) and that after the beating Cucchi was dragged into the cell. He had not seen Cucchi’s face, but met him later when they were placed in the same cell after his court hearing. Cucchi told him the guard had beaten him up, “look at what the guard did to me”, and showed S.Y. the lower part of his right leg, which was “red and a bit cut up”. He has a limp and was unable to sit down, huddling up. He had trouble walking when they were taken to *Regina Coeli* prison, and one of his eyes was red. S.Y. last saw him when the doctor checked them on admission, and heard that he had died five days later.

On 20 December 2009, *il manifesto* newspaper reported that two Albanians who were arrested on the same evening as Cucchi shared a cell with him at the courthouse. They claimed that he had trouble standing. When they spoke to prosecutors, they said that he told them “the carabinieri beat me up, but not these ones”, in reference to those escorting him. He added that he did not report them because he would have been framed and imprisoned for ten years.

## Cucchi’s father

Cucchi’s father told the DAP that the hearing was the last time he saw his son. His face was swollen and he had “some rather clear black marks below his eyes” that had not been there when he left home the previous night. His son also told him that he had been framed.

He was unable to see his son in *Regina Coeli*, or leave clothes for him, because it was a weekend (Saturday). When he was informed that Stefano had been admitted to *Sandro Pertini* hospital on Sunday, he went there but, again, he was not allowed to see him: “This is a prison, you cannot see Stefano” he was told. He should return on Monday if he wanted news about his health. On Monday, the family was told that they needed permission from *Regina Coeli* to meet the doctors, and that this would arrive the next day. When they asked about Stefano’s condition, they were told: “he is calm”. After insisting, they were allowed to leave him some clothing (underwear and pyjamas) - although when he died he was wearing the same clothes he had left home in. The next day, they requested to meet the doctors but were told this required authorisation from *Regina Coeli*. When they repeated what they had been told on the previous day, the answer was “what you were told yesterday does not count, I’m here today, and this is how it must be done”. On Wednesday, they obtained permission from the court at 12.30, but it needed to be validated in *Regina Coeli*, where the office for these procedures closes at 12.45.

While Cucchi’s father was heading to the prison to have the authorisation validated on Thursday, his wife called to tell him that Stefano was dead. She found out through a notification from

the *carabinieri* that a coroner had been appointed, without any direct communication to inform the family of the death. When they asked what had happened, an officer said that “he switched off”; when they asked about his condition during his stay, the reply was that “he had a sheet over his face and did not eat”; when Stefano’s mother wanted to know why they were not informed about his worsening condition, the duty doctor asked them why they had not spoken to his doctors, drawing an angry response. Even when they went to the morgue, a police officer told them that they could not see the body. However, their insistence resulted in the coroner speaking to the prosecuting magistrate and they were finally allowed in. “I found my son in a frightful condition...beyond what the photographs taken during the autopsy showed”, although he was more than a metre away and his body was covered, “his cheeks were black, especially the left one”, his eyes were black, the left one had a ring of black around it and the eyeball seemed to have sunk into the socket. “He had a vertical groove along his left jaw, from below his eye to the chin...he also had a bump between his eyebrow and left eye”.

### Evidence from officers and staff

A.L.R., chief inspector of the prison police from the *Regina Coeli* transfers and monitoring unit, told investigators from the administrative inquiry:

*I remember that detainee because...I demanded a medical certificate because he was evidently bruised and also found it difficult to walk. In fact, he was bent towards one side when he walked and explained this difficulty to me, asking not to be handcuffed ... he had marks around his eyes and on the right side of his jaw.*

A.L.R. claims that when he asked Cucchi what had happened, he answered that he had fallen down the stairs running away from the *carabinieri*. Cucchi also asked if the prison had a gym to practice boxing. A.L.R. asked him what he needed it for considering his slim physique, Cucchi replied that he was an expert and had fought the previous night. Another prisoner who heard the exchange quipped: “Yes, and you were the punch bag”.

A.L.R. and his colleagues said that they accepted Cucchi because they had his medical certificates. A number of officers and medical staff noted that his face was marked, with descriptions ranging from “redness” and “black circles”, to “black eyes”, an “inability to walk” or sit properly, and a “beaten face”. Cucchi’s explanations for his injuries varied depending on who asked him, and ranged from receiving a beating to falling down stairs.

B.M., who searched him on admission into *Regina Coeli* prison, saw his naked body and noted a number of injuries. He asked him: “Did you have a head-on crash with a train?” Cucchi’s answer was that he was “badly beaten” during his arrest.

### The plot thickens

Cucchi’s sister Ilaria, who is campaigning vigorously, has highlighted a number of issues. There is a *carabinieri* arrest record that contains mistaken personal details, such as his being born in Albania, with a wrong date of birth and the acronym SFD, which means “without fixed residence” (*senza fissa dimora*, in Italian), whereas he lived at his parents’ home. Not having a fixed residence is a criterion used by judges when deciding whether to imprison someone, and rules out alternatives such as house arrest. The time of the arrest (15:20) is inaccurate. The description of the arrest: “caught furtively selling cellophane wraps and receiving a banknote in exchange” has reportedly been contradicted by the man arrested with him. This man also heard the name of Cucchi’s lawyer mentioned at least three

times, despite the arrest warrant stating that the defendant “did not want to appoint his lawyer”. Moreover, this name mistakenly appears in the report as his appointed duty lawyer. In the event, Cucchi never saw him and died waiting to speak to him.

A letter written by Cucchi to a member of the drug rehabilitation community in which he had received treatment, disappeared. It was only later handed to his family. The letter showed that he had been seeking outside help in the period leading up to his death. The hospital authorities explained that Cucchi’s parents were only allowed to see their son or his doctors with the permission of the prison authorities; Cucchi was also required to sign a form, something he refused to do. The family question the authenticity of a form that certifies this. Likewise, permission to see his lawyer depended on Cucchi filling in the relevant form and handing it to the acting officers, which, they explain, did not happen, despite him explicitly mentioning his wish to do so to a number of members of staff and a volunteer. Apart from those measures which were not implemented, including the failure to keep a detailed record of the entry of prisoners and the officers accompanying them in the courthouse security cells, the DAP investigation notes that the overall treatment of Cucchi and his family, “particularly in the setting of the protected section of Pertini hospital” was “reprehensible”. It stresses that no steps were taken for “receiving and interpreting the discomfort of the detainee drug addict”, especially the “re-establishing of personal ties that may have improved his psycho-physical situation”.

*On the contrary, the administrative inquiry has uncovered aspects that objectively run contrary to the mentioned purposes: bureaucratic and substantially obstructive attitudes as regards requests for contact from his family, the issuing of mistaken and incomplete information when medical staff were asked for information, no activity to simplify or facilitate procedures to enable individual interviews, no activity to simplify the meeting with his lawyer of choice, which was the condition for him to resume eating.*

The DAP report prompted Ilaria Cucchi to write an open letter in which she criticised the “normality” with which injuries sustained by arrested people are treated, the “normality” of not dealing with these injuries unless it comes to affect someone personally (in terms of responsibilities), and asks for this “normality” to no longer be tolerated. In particular, she highlights that one prison police officer stated that “I limited myself to asking for information...because it is not easy to work with the other police forces”, adding that “I did not seek to delve into the nature of the injuries that I observed as the detainee was under the direct responsibility of my colleagues”, and that “I only assumed a different attitude when I felt that with the handing over of a detainee I had to protect myself from possible issues that may arise”. When Cucchi told two officers that “the guardians of the state did this”, one of them reacted in this way: “from that moment on, I no longer spoke to Cucchi, I kept a distance, thinking that everyone should stay in their place”. Ilario Cucchi also expresses surprise at the fact that the name of the family lawyer was mistakenly recorded as being the duty lawyer because the authorities would not have known his name if her brother had not mentioned it.

A further development in the story was the discovery by Cucchi’s family of large amounts of drugs (925g of hashish and 133g of cocaine) in a flat in Morena (outside of Rome) that he sometimes used when he did not sleep at his parents’ home. They handed it over to investigating magistrates.

### The aftermath

The clamour arising from the release of the autopsy photographs and the Cucchi family’s complaints led to further disclosures concerning the abuse of prisoners in custody. A recording of a

conversation between a commander and two prison police officers from Teramo prison featured two of them reprimanding a third for “massacring” a detainee in “the section”. The problem was that he was seen doing it, “the negro saw everything”, because “we could have had a riot” and “you don’t massacre a prisoner in the section, you go downstairs”. This led to the commander being suspended and an investigation that will not hear from the mentioned witness. The man referred to as a “negro” in the conversation, 32-year-old Nigerian Uroma Emeka, died “of natural causes” (a brain tumour) in custody on 18 December 2009. Questions were raised by Radical party MP Rita Bernardini as to why he was still in that prison when he “had the great guilt of having eyes to see what he shouldn’t have seen”. Luigi Manconi, of the association *A buon diritto*, said that Emeka’s death, and the five hours that elapsed between his first feeling ill and being taken to hospital, shows the therapeutic abandonment in which the entire prison system lies.

The Genoa-based *il Secolo XXI* blog wrote about a case in the city that had received little press coverage. It involved Farid Aoufi, an Algerian who had lived in Genoa for over 20 years and was a repeat offender. He died at 22:35 on 8 November 2008 after he was arrested in the afternoon for theft. He fell out of a window on the third floor of the *carabinieri* station in Piazza Fossatello. Aoufi’s wife stated that:

*I think that he fell during a struggle,...I have paid for a legal report that certified that there was nothing in his blood [the newspapers had spoken of traces of cocaine]....I won’t give up, I want to find out what happened, the carabinieri gave contradictory versions, once [they said] that he was on his own, another time that they tried to catch him...they really treated us badly, because on the following day they did not explain what had happened to him to his mother, who had come by taxi from Marseille...it is not possible for an arrest for theft to end up like this...it is difficult to find a lawyer to assist me, they are conscious that they going up against the state...since he died, nobody has shown up, I am alone, without any explanation, ...they have treated me very badly, without any respect.*

The judge is assessing whether there are any criminal responsibilities, but a year on from the death, the culprits have still to be identified.

### Other deaths in custody cases

On 16 December 2009, the judge for preliminary inquiries requested that the case against unknown people in relation to the death of Aldo Bianzino be shelved. His request that the cause of the death be treated as an aneurism was granted. The carpenter died in Perugia (Umbria) prison in October 2007, a few days after his arrest for growing marijuana plants at his home. Italo Di Sabato of the *Osservatorio sulla Repressione* (linked to *Rifondazione Comunista*), criticised the shelving of the case:

*Although injuries on his body were found including...signs of concussion, damage to his liver and two broken ribs after the death, that are clearly compatible with murder, and although the coroner excluded a death from a heart attack, Gip [giudice per le indagini preliminari] Ricciarelli’s decision is astonishing and shows that by now, in Italy, there is absolute immunity for those who commit violent acts and unfortunately murders as well, in prisons and barracks.*

Another case that came under scrutiny was that of Marcello Lonzi, a 29-year-old who died in Sughere prison in Leghorn (Tuscany) on 11 July 2003. He was found dead by his cellmate with serious bruising, two dents in his head and broken ribs. His death was deemed to be “natural”, caused by a cardio-circulatory arrest. His mother filed a lawsuit, alleging that he was beaten when he was arrested. His body was exhumed and the

prosecuting magistrate heard evidence from Lonzi’s cellmate. “He was beaten, like Cucchi”, his mother said, noting that his medical report, dated on the day of his arrest on 3 March 2003 for theft (for which he received a nine-month sentence), reported that on his arrival at the prison he said that “he was beaten” and “his lower lip was injured”. Moreover, at the time of the medical examination he “reported blows, several grazes and bruising on his thighs and legs...pain in his mid-thorax requiring x-ray scans, he drags himself around on his right leg because he says his left one is injured”.

### Suicides and an ECtHR ruling condemns Italy

2009 ended with a record number of suicides in prison (71) and 175 deaths in custody (up from 42 and 121 respectively, in 2008). Overcrowding reaching a level that is 20,000 prisoners higher than regulation capacity and seven inmates had already committed suicide by 22 January 2010.

**Ivano Volpi** (29 years old) hanged himself four days after he was arrested for resisting a public officer and causing criminal damage on 16 January. He underwent a fast-track trial and was imprisoned in Spoleto (Umbria).

**Mohamed El Aboubj** was convicted and sentenced to serve six months’ imprisonment in *San Vittore* prison (Milan) in a first instance ruling for participating in a revolt in Milan’s *via Corelli* detention centre in July 2009. He was found dead in the toilet of his cell.

**Abellativ Sirage Eddine** (27) hanged himself using a sheet in the district penitentiary of Massa (Tuscany).

**Antonio Tammaro** (28) was detained in the “Workhouse” section of Sulmona prison (Abruzzo), not for a criminal offence, but because he was identified as a “socially dangerous” individual. He hanged himself from the window grating using a sheet on 7 January.

**Giacomo Attolini** (49) hanged himself from the cell toilet’s window bars using a ripped T-shirt in Verona on the night of 7 January.

**Celeste Frau** (62) hanged himself in the cell toilet in *Buoncammino* prison in Cagliari (Sardinia) after he received a 12-year sentence for robbery. His lawyer protested his innocence: “After the publishing of his sentence, I would have fought in the [Court of] Cassation (Italy’s highest appeal court) to have him acquitted”.

**Pierpaolo Ciullo** (39) who was in prison convicted of drug offences, committed suicide using a gas stove in Altamura (Bari) prison on 2 January.

A European Court of Human Rights ruling on 16 July 2009 in the case of *Sulejmanovic vs. Italy* which was filed in 2003 found that the Bosnian’s detention in conditions of overcrowding at Rome’s *Rebibbia* prison contravened article 3 of the European Convention on Human Rights. The detention conditions amounted to “torture and inhumane treatment”, and a payment of 1,000 Euros in damages was ordered. The grounds for the decision were the two and a half months (from mid-January to April 2003) in which the prisoner shared a 16.2 square metre cell with five other detainees. Each inmate had only 2.70 square metres at their disposal. Other complaints were rejected. It was noted that following the period in question *Sulejmanovic*’s living space increased, first to 3.20m then to 4.05m and finally to 5.40m, all of which are well below the 7 square metres deemed “desirable” by the Committee for the Prevention of Torture (CPT), but above the 3-metre benchmark that has been used in the past by the court to denote a violation of article 3.

### Report highlights the growing prison population

*Associazione Antigone* published its sixth report on prisons, entitled *Beyond what is Tolerable*, in reference to how the prison population has increased beyond the system’s regulation capacity

and reached its “tolerable” capacity with 63,460 prisoners on 15 June 2009. It highlights three key human rights violations:

- the unconstitutionality of the lack of legal safeguards with regards to actions by members of the prison administration that undermine the rights of people who are denied freedom;
- the absence of a criminal offence of torture, as required by the UN Convention Against Torture;
- the non-implementation of the Optional Protocol to the aforementioned Convention which requires that an independent authority be established to monitor the conditions in places where people are being denied their freedom.

The report notes an increase in the prison population at a rate of almost 1,000 prisoners per month. It says that this is due to laws on the repression of drug use, dealing and trafficking, the criminalisation of *sans papiers* and punishment of those who do not comply with orders to leave Italian territory, and tougher sentencing for repeat offenders. Moreover, the report details a decrease in expenditure on medical care in prisons, amounting to 34m euros between 2000-2008, and a reduction in use of alternative sentencing (with 9,406 people falling within this regime). 52.2% of the prison population is in remand custody (the figure was 36.5% in 2005) and thus have not yet been convicted. This is due to an increase in foreigners, a growing number of people serving short sentences and a standstill in the system for granting alternative sentences. A considerable proportion of people in prison are close to completing their sentences (32.4% have less than a year left and 64.9% have less than three years left to serve). They would, in theory, be able to request alternative sentencing (applicable when they have under three years left to serve). In 2008, over 21,000 people were imprisoned as a result of drug offences, and arrests under Art. 73 of the law on drugs amounted to 38.2% of detainees and 49.5% of foreign detainees. The amendment of presidential decree no. 309/1990 by the so-called Fini-Giovanardi law (no. 49/2006) did not explicitly criminalise drug use, but punishes the import, export, purchase, receipt and possession of proscribed substances, “conducts that may be enacted by dealers and users alike”, the report notes. It does not distinguish between “soft” and “hard” drugs, and leaves the judge to establish whether dealing is involved on the basis of quantity, packaging etc. Thus, mere drug use may lead to penal punishment, particularly when it is committed by people who do not have the economic means or relations to fully exercise their right to defence.

1,434 people (25 of them women) are serving life sentences, against which a campaign, *Mai dire mai* (Never say never), has been conducted involving hunger strikes and appeals filed before the European Court of Human Rights in November 2008. In June 2009 there were 23,530 foreign prisoners (4,714 Moroccans,

2,670 Romanians, 2,610 Albanians and 2,499 Tunisians are the largest groups among them). Over half (13,825) were on remand, which is used more often for foreigners due to difficulties in establishing their residence and placing them under house arrest, in receiving adequate legal counsel and as a judicial safeguard against them absconding. The large number of foreigners entering prison is not reflected in their impact in the prison population, presumably because many were arrested for short periods as a result of irregular documents. The report also documents a number of cases involving violence against prisoners that are under investigation, and examples of good and bad practices in prisons.

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## Unisys Corp: A spider in the web of high-tech security

by Eric Töpfer

**This article details the growth and operational practices of the Unisys Corporation, a key player in the global "Homeland Security" market**

Once the fourth largest Pentagon contractor, the Unisys Corporation has become a leading global supplier of “Homeland Security” technology. Its business operations and politics are a telling example of the power of the security-industrial complex.

The study of large European co-operative technical projects in the field of justice and home affairs can yield surprising results. Whether it is the programming of the Prüm-CODIS-interface for the comparison of national DNA databases and their exchange across the Atlantic [1], the upgrade of the Schengen Information System to SIS II and its “synergy” with the Visa Information System [2], the development of the Europol

Information System [3], the networking of national vehicle registers in the context of the EUCARIS initiative [4], the standardisation of data exchange between national criminal records [5] or a pre-study for the European Union’s Critical Infrastructure Warning Network [6], one name is always popping up: Unisys says:

*Our products and services touch almost every defense and civilian agency....We manage data centers, modernize critical applications, and support the end users of some of the largest public and private entities on earth, while keeping everything*

*safe and secure*

the company, based in Blue Bell, Pennsylvania, says on its website [7]. Indeed, worldwide more than 1,500 administrative bodies, including 22 of the 25 largest banks, eight of the 10 largest insurance companies and more than 200 airlines, are relying on Unisys' services and products [8]. With offices in 63 countries on all five continents and 26,000 employees who serve clients in more than 100 countries Unisys is a true multinational. With annual revenue of \$5.23 billion (2008) the corporation is not one of the top "global players", but Unisys is not selling cars or natural resources, rather it makes its profit through IT services and mainframe computers.

### **From rifle manufacturer to global IT corporation**

The history of the company can be traced back to the firm E. Remington & Sons which has manufactured rifles since 1816 and later typewriters and other office equipment. As Remington Rand the company introduced the legendary mainframe computer UNIVAC. In 1955 Remington was swallowed-up by the arms company Sperry which grew through the production of navigation systems and semi-automated weapon systems for the US Navy and Air Force. The company was renamed Sperry Rand Corporation and rapidly developed into one of IBM's key competitors - in particular by purchasing mainframe computers for the US military, the National Security Agency (NSA), the Atomic Energy Commission, the U.S. Census Bureau, the Internal Revenue Service, large industrial employers and financial institutions and for the booking systems of international airlines. In 1978 Sperry's top management decided to concentrate on the computer business and in 1986 was taken over by the Burroughs Corporation, a competitor producing calculating machines and computers [9]. The result of this hostile takeover, which was arranged by Burroughs CEO W. Michael Blumenthal (a former US Treasury Secretary), was the creation of "United Information Systems", the Unisys Corporation which was, at that time, the world's second largest IT company (after IBM) and the fourth largest arms company in the United States.

Despite this promising start there was crisis four years later when Blumenthal quit and left the corporation. Suffering from the end of the Cold War and cuts in the Pentagon budget, as well as from the overlooked looming triumph of the personal computer, the company suffered losses totalling \$2.5 billion between 1989 and 1991 [10]. In addition, the company's image had been badly damaged by "Operation Ill Wind", when the FBI and Naval Investigative Service uncovered Unisys' involvement in the largest corruption scandal in the history of the Pentagon. In the "Iron Triangle", a network of Pentagon officials, security consultants and arms companies provided retired top military figures with jobs in consulting companies, ("rent-a-general" firms), and over-inflated contracts worth billions of US-Dollars were awarded. In September 1991 Unisys was found guilty of having bribed high-ranking Navy and Air Force officials for contracts for the development of the Aegis anti-missile-system and other projects. They were also found to have made illegal campaign contributions to members of the House Armed Services and Appropriation Committee. The company was forced to pay a record \$190 million fine [11]. This verdict sealed the sell-out of Unisys' arms branch which had started in the late 1980s.

Blumenthal's successor, James Unruh, ordered cuts in jobs and a strategic reorientation. By 1997 the number of employees had been reduced from 47,000 to 33,000, and the launch of an IT service unit indicated a new business direction. Facing economic crisis in the United States, Unisys aggressively expanded its overseas markets in Europe and Asia from the early 1990s onwards and marketed high-end servers to compensate for its failure in the booming PC business. The company was not simply selling hardware but aimed to "bring together" - in its

own advertising words - "services and technologies into solutions" [12]. This means that Unisys develops, implements and manages IT-systems, data centres and administration and enterprise networks around the globe. It offers consulting services for the maintenance and security of IT and delivers hardware through the ClearPath and ES series servers and also develops software and middleware tailored for its clients. To summarise: Unisys offers all that you need for the operation and utilisation of large databases. Although its sales of hardware have reduced significantly - between the mid-1990s and 2009 its share in revenue decreased from 41 to 12 per cent - mainframe computers remain of strategic importance for the company. On the one hand net profit from hardware sales is up to 50 per cent, twice as much as the service segment. On the other, one third of Unisys' revenue comes from outsourcing services, which means that clients store and process their data "in the cloud" of Unisys data centres. In fact, Unisys "solutions" require problems which have to be processed at large scale.

### **Broken dreams and fresh air on the morning of 9/11**

Despite the changes which Unisys' executives ordered during the 1990s, success did not materialise. Although Unisys' stock price rose to almost \$500 between 1995 and 1999, revenue stagnated and the balance for the decade was a loss of \$672 million. Therefore it had a bumpy landing when the "New Economy" bubble burst at the dawn of the new millennium. By late summer 2001 its stock price had crashed to \$80 per share, and its revenue sunk by \$900 million compared with 2000. After three successful years the company again ran into deficit [13].

After 11 September 2001 Unisys reacted promptly. In 2002 it added 300 "security experts" to its management team and launched a handful of "Security Centers of Excellence" around the globe [14]. In addition, a "Security Advisory Board" was installed in July 2003. Later it became the "Security Leadership Institute", "a forum of nationally recognized security experts from business and government that provide insights into emerging security issues and best practices to organizations worldwide". [15] Among its founding members were former leading figures from the NSA, FBI, US Air Force, Royal Canadian Mounted Police and Interpol [16].

Their efforts proved rewarding: Unisys Corporation became the third largest contractor of the [17] Department of Homeland Security. From 2003 until 2010 the company received \$2.41 billion from the DHS [1], among others, for major contracts to develop IT systems for the newly created Transportation Security Agency (TSA) and the DHS itself, for "Operation Safe Commerce" (container security at US seaports), the "United States Visitor and Immigrant Status Indicator Technology" (US-VISIT), the "Registered Travellers" programme, the "Free and Secure Trade" (FAST) project, the "Western Hemisphere Travel Initiative" and the "Automated Targeting System" [19]. In partnership with other high-tech giants such as IBM, Boeing, Cisco, SAIC, AT&T, these projects were not only about the installation of wide-area computer networks and massive databases but smart cards, biometrics and RFID technology for the identification, risk assessment and tracking of persons and goods.

Unisys seemed to be predestined for all of these tasks. Indeed, in the field of RFID the company has been the main partner of the US Army since 1994. Using this technology at 1,700 sites in 31 countries worldwide the army is operating one of the largest RFID-based logistics networks on earth [20]. Unisys was not only exploiting its long-standing role in arming and computerising the US military, it could also refer to many international deals in the area of internal security. In 1988 it sold computers worth US \$8.7 million for the operation of a "peoples' database" by Iraq's Home Ministry [21]. In the 1990s Unisys pioneered the introduction of biometric smart cards and

modernised population registers in Costa Rica [22], Malaysia [23] and South Africa [24]. However, occasionally it seemed that, in the US Homeland Security business supply dictated demand. Three quarters of the overall volume of all DHS contracts were won by Unisys.

To create the right atmosphere for its “solutions” the company has been publishing its Unisys Security Index twice a year since 2006. The Index, allegedly based on the “robust” polling of 8,500 persons in nine countries, invariably reports an increase in the fear of identity theft or the rising acceptance of biometrics [25]. But seemingly more important for the company’s marketing strategy are its personal networks. For instance, on its website the company is presenting Patricia Titus as its “thought leader” for security. Titus, a former Chief Information Security Officer at TSA, Unisys’ largest client among the DHS authorities, is still active in several US government technical advisory boards and is currently in charge of information security at the corporation’s “Federal Systems” unit. As such she is the contact point for the US administration, “capitalizing on her extensive operational and leadership experience” [26]. Another example is Terry Hartmann, who is responsible for Unisys’ Homeland Security strategy, emphasising biometrics and identity management. Before joining Unisys he was an IT manager at the Australian Passport Office and is currently acting as an “expert” for the International Standards Organisation (ISO) and the International Civil Aviation Organisation (ICAO). He is therefore a key player in the global standardisation of biometric passport. [27]

### Brussels, biometrics and border control

Sixteen per cent of Unisys’ total revenue comes from contracts with the US federal government, making it the corporation’s largest client [28]. However, since 2001 top management has been keen to expand its internal security business to other industrial nations. In times of economic crisis the public sector represents a solid market segment. In Australia Unisys was contracted in 2006 to work for the Department of Immigration and Citizenship’s “Biometrics for Border Control Programme” [29]. In Canada the company secured contracts for the biometric identification systems of workers at airports and seaports [30].

In Europe Unisys is also promoting its “solutions”. While national governments have protected their home-grown IT-industries [31], EU-bureaucracy is more open to Unisys’ products. In the EU’s voluntary lobby register the corporation uses the name American Electronics Association in Europe [32]. Its Belgian branch is well connected and is located only three minutes walking distance from the central mail centre for the European Commission’s OIB procurement agency [33]. The Brussels office of Unisys has organised workshops on e-procurement, e-borders and e-passports for the Directorate General (DG) Enterprise and Industry [34]; it was invited by DG Justice, Freedom and Security to the first “EU Forum on the Prevention of Organised Crime” [35]; in cooperation with DG Internal Market it developed perspectives for strengthening the European arms industry [36]; and it is supporting all Commission services in developing, managing and maintaining their IT systems on behalf of DG Informatics [37].

Unisys’ central contact person in Brussels is Director Patrice-Emmanuel Schmitz, a lawyer and IT architect who was in charge of the launch of the European Biometric Portal in 2005. On behalf of the European Commission, this website aimed – together with the Trend Report, also written by Schmitz – to serve the European biometric industry as a knowledge platform for the development of the market. Its strategic partner for the project was the European Biometric Forum, the European biometrics industry lobby, of which Unisys is one the 150 member organisations [38]. In April 2006, Unisys eventually inaugurated the “European Biometrics Centre of Excellence” in

Brussels, a technology showroom aiming to promote the benefits of “modern identity management solutions” to target groups from private business and public administration [39]. Schmitz is supported by Roberto Tavano, an Italian consultant, who is travelling around the world giving key note speeches at security congresses and trade fairs as Unisys’ “Vice President European Security Programmes”. “In this role”, Tavano writes “I’m shaping the business concepts underpinning our go-to-market models in Border Control, Identity Management and Credentialing and Physical Security spaces. Innovative Registered Traveller scheme formats and Expedited Airline Passenger Clearance processes fall within the solutions portfolio that was developed for world-wide roll-out.” [40]

It became clear that Unisys’ objective was more than simply marketing technology and IT services when Tavano appealed for the outsourcing of collecting and storing biometric identifiers for large-scale systems such as the Visa Information System [41], and Schmitz and his team gave the European Commission a prompt on executive powers for border control teams [42]. Unisys, with its profit-oriented vision of security, aims to install new, semi-private regimes of border management and other forms of control far beyond democratic oversight.

### Footnotes

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17. Slogan on the DHS website. <http://www.dhs.gov/xopnbiz/>
18. In addition, Unisys received in the same period \$1.21 billion from the Pentagon, among others for a five-years-contract worth \$345 million for the development of IT for the Counterintelligence Field Activity (CIFA), founded in 2002 to integrate all military counterintelligence information. Plus, \$210 million from the Department of Justice for e-justice projects but also for jobs for the F.B.I., the D.E.A. and the US Marshals Service. Own calculations on the basis of figures from <http://www.usaspending.gov>. Moreover, uncounted contracts for the “law enforcement sector” need to be added, for example, the development of a wide-area CCTV network for the city of Philadelphia.
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31. For example, the German Land of Hesse awarded Siemens a contract for the development of police IT in 1989 despite Unisys making a better offer. *Der Spiegel*, 25.9.89
32. <https://webgate.ec.europa.eu/transparency/regrin/welcome.do>
33. The Office for Infrastructure and Logistics in Brussels (OIB) is, among others, responsible "to manage the purchase, rental and maintenance of the movable and immovable property of the Commission".  
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## UK: Yarl's Wood "No place for a child": New hunger strike over conditions at immigration detention centre

by Trevor Hemmings

**Each year an estimated 2,000 children are held in immigration detention centres for administrative purposes, an experience the Children's Commissioner describes as "like being in prison". Children have been separated from their parents, denied essential medical treatment, and suffered severe psychological distress**

Yarl's Wood Immigration Removal Centre was the government's "flagship" detention centre built near Clapham, in Bedfordshire. It opened in November 2001 and now holds up to 900 detainees, mainly women and children (some as young as three months old), making it the largest detention centre in Europe at the time. It cost approximately £100m to construct and no expense was spared on its security measures, including scores of fixed and moving cameras, microwave detection units to foil escapes, and chain-link fencing two and a half metres high topped by barbed wire. Since opening, the centre has been tainted by allegations of mistreatment of its detainees. In 2002 the site was gutted by fire because of the failure to install fire sprinklers on account of their cost. The centre reopened the following year after an estimated £40 million refit. Throughout its existence there have been a series of hunger strikes and protests by detainees alleging abuse and it has been the subject of many highly critical investigations. [1]

In December 2001, shortly after opening, the first hunger strike began with detainees complaining that they were being treated like prisoners although they had not committed a crime. In early February 2002, much of the centre was burnt down following protests triggered after an elderly Nigerian woman was physically restrained by staff after requesting permission to attend church. At the trial of 11 male detainees charged in connection with the fire (four of whom were convicted of affray or violent disorder in what is widely perceived by campaigners to have been a miscarriage of justice), the question was raised as to whether the decision to prevent police and fire-fighters gaining access to the centre put the lives of detainees at risk. Private security company, Group 4, had ordered staff to leave the building, locking the detainees inside. Five people were injured and it later emerged that the government had failed to install adequate fire safety equipment because of its expense. In the

aftermath of the fire, the Fire Brigades' Union criticised the decision to leave 250 asylum seekers incarcerated in the centre in "unsafe" conditions and it also condemned the Home Office's failure to fit sprinklers. Although there was an investigation, no members of Group 4 were ever prosecuted. [2]

In March 2004, the Prisons and Probations Ombudsman published a report into allegations of racism, abuse and violence by staff, based on claims made by an undercover reporter for the *Daily Mirror* newspaper. The article produced evidence of a number of racist incidents and staff were disciplined following publication of the journalist's findings. The report also found that an allegation of assault had not been adequately investigated. In October 2004, the prisons and probations ombudsman published an inquiry into the 2001 disturbance and fire. A main finding was that the provision of safety equipment (sprinklers) would have prevented the damage caused to the centre. In February 2005, a local fire chief said that the lessons of the fire had not been learnt when the government refused to introduce sprinklers. [3]

In September 2005, Manuel Bravo, an asylum seeker from Angola, was found hanging in a stairwell on the morning of his 35th birthday. He was in detention awaiting removal with his 13-year old son following a dawn raid at his home. A note left in his room said: "I kill myself because I don't have a life to live any more. I want my son Antonio to stay in the UK to continue his studies". Manuel had claimed that he had not received a decision on his asylum appeal and therefore did not understand why he had been served with a removal. [4]

In February 2006, the Chief Inspector of Prisons published an investigation into the quality of health care at the detention centre which found substantial gaps in provision and made 134 recommendations. [5] Ann Owers' "most important concern...remained the detention of children". In the same year a

Legal Action for Women (LAW) study found that 70% of women detained had reported being raped and that nearly half of them had been detained for over three months. It also found that 57% lacked any legal representation. The women also told the researchers of sexual and racial intimidation by private security guards. [6] In May 2007 another hunger strike began which involved over 100 women.

In February 2008 the Chief inspector of prisons, following an inspection of Yarl's Wood, wrote:

*The plight of detained children remained of great concern. While child welfare services had improved, an immigration removal centre can never be a suitable place for children and we were dismayed to find cases of disabled children being detained and some children spending large amounts of time incarcerated. We were concerned about ineffective and inaccurate monitoring of length of detention in this extremely important area. Any period of detention can be detrimental to children and their families, but the impact of lengthy detention is particularly extreme.[7]*

The previous Children's Commissioner, Sir Al Aynsley-Green, has a statutory duty to promote awareness of the views and interests of children, particularly regarding their physical and mental health and emotional wellbeing, their education, training and recreation and protecting them from harm and neglect. Two thousand children are detained annually for administrative purposes for immigration control, the majority of them in Yarl's Wood. The Children's Commissioner has visited the detention centre three times because of his "profound concern over the treatment and management of children in that location."

After his second visit in May 2008 he published a report, *The Arrest and Detention of Children Subject to Immigration Control*, [8] based on interviews with detained children and their families. He states unequivocally that "the administrative detention of children for immigration control must end" and that "the UK should not be detaining any child who has had an unsuccessful asylum claim." However, recognising that the process was unlikely to end immediately, he "called upon Government to ensure that detention genuinely occurs only as a last resort and for the shortest possible time following the application of a fair, transparent decision-making process." The average length of incarceration for children at Yarl's Wood has risen from eight to 15 days, although some children remain for more than a month and at least one child has been detained for more than 100 days.

Aynsley-Green also found that children had been denied urgent medical treatment, handled violently and left at risk of serious harm. For instance, the report details how children are transported in caged vans and watched by opposite sex staff as they dress. The report also contained detailed recommendations for the UK Border Agency (UKBA) - the authority responsible for enforcing the UK's immigration laws - relating to "many highly unsatisfactory aspects of the process of arrest, detention and enforced removal of children and their families."

The report made 42 recommendations, emphasising six "top-line" ones that underpinned Aynsley-Green's conclusions. Most importantly, and based on his finding that many of the children held at the centre found their experience "like being in prison", he recommended the end of the administrative detention of children for immigration purposes.

*1. Detaining children for administrative reasons 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 [9]. The administrative detention of children for immigration purposes should therefore end.*

*2. Exceptional circumstances for detention must be clearly defined and should only be used as a measure of last resort and for the shortest period of time in line with the requirements of*

*Article 37(b) of the United Nations Convention on the Rights of the Child (UNCRC).*

*3. The UK Border Agency (UKBA) should develop community-based alternatives to detention which ensure that children's needs are met, and their rights not breached, during the process of removal. We acknowledge that UKBA needs to take a risk-based approach to immigration. However, we do not believe that this needs to be incompatible with acting in the best interests of the child as required by Article 3 of the UNCRC.*

*4. Since the detention of children is unlikely to end immediately as we would wish, the recommendations made at the end of each chapter should be urgently implemented to ensure children are treated in compliance with Every Child Matters [10] principles and the UNCRC.*

*5. In line with international human rights standards, and the Government's removal of the reservation against Article 22 of the UNCRC, the Government should monitor compliance with these standards particularly in relation to the detention of children.*

*6. UKBA should set out the accountabilities of all agencies, from the Home Office through to the providers, clearly and unambiguously so that detainees, interested agencies and the public are aware of the respective agencies' responsibilities and accountabilities with regard to the detention and removal of failed asylum seekers."*

Following the publication of the report, Lisa Nandy, Policy Adviser at The Children's Society, said that the lack of healthcare provision for children at Yarl's Wood, puts lives at risk:

*This report reflects what we are seeing on the ground today with families who are currently detained in Yarl's Wood...As the report concludes, poor healthcare provision is literally putting children's lives at risk. Extremely ill children have been detained and denied access to essential medication, health records haven't been checked and children whose health has deteriorated rapidly in detention have not been released. Children who had to be hospitalised were surrounded by armed guards in hospital, causing them 'profound distress'. It is outrageous that children in the UK are subject to such inhumane treatment at the hands of the state.[10]*

Also commenting on the report, Amanda Shah, Assistant Director-Policy at Bail for Immigration Detainees (BID), added that the government paid no regard to the welfare of children and could not even be bothered to keep records on the numbers detained:

*The trauma experienced by children in detention comes across very strongly in this report. They describe being transported in caged, urine soaked vans, separated from parents and not being allowed to go to the toilet. There is no proper provision to deal with their psychological distress, directly caused by the Government's detention policies. As the report makes clear, these children are not being detained as a last resort or for the shortest period of time, as the Government often claims. All the available evidence shows children are detained for longer periods with little or no regard for their health or welfare, falling far short of the UK's international obligations. Some children are detained repeatedly, and others for very lengthy periods. The Government cannot refute these claims because it does not even bother to count how many children it detains." [11]*

In November 2009 the Home Affairs Committee released a report in which it also expressed concerns at the detention of children in what was "essentially a prison". However, it fell short of accepting that families and small children should not be locked

up in the first place. [12] At the same time a briefing by health practitioners, entitled *Significant Harm*, argued that the “detention [of children] is unacceptable and should cease without delay”. [13] It found that children were suffering significant harm because they had no access to basic medical care and were being left in pain or significantly traumatised.

The Children’s Commissioner revisited Yarl’s Wood in October 2009, to examine the impact of his earlier report in “generating change in resources and practice”. This follow-up report, published in February 2010, [14] documents his findings and conclusions, setting out “the childrens’ perspective of their experiences following any changes arising from my previous report”. In particular, he considered whether the arrangements now in place have addressed his concerns. Acknowledging that some of his previous recommendations had been upheld (such as stopping the use of caged vans to transport children to the centre) he nonetheless re-emphasised his earlier finding that Yarl’s Wood remains “no place for a child”:

*We stand by our contention that arrest and detention are inherently damaging to children and that Yarl’s Wood is no place for a child.*

In addition he raised new “significant concerns” about the physical and mental wellbeing of children, observing behavioural changes on and after their incarceration. In one incident at the detention centre a nurse failed to recognise that a young girl had a broken arm, and she had to wait 20 hours before being granted access to a hospital. These concerns echo those of leading medical practitioners, such as Dr Rosalyn Proops, officer for child protection at the Royal College of Paediatrics and Child Health, on the children’s psychiatric and developmental welfare. She supports his call for an end to child detention:

*We are very concerned about the health and welfare of children in immigration detention. These children are among the most vulnerable in our communities and detention causes unnecessary harm to their physical and mental health. The current situation is unacceptable and we urge the Government to develop alternatives to detention without delay.* [15]

Despite the Commissioner’s recommendations regarding the “distressing and harmful” effects of detention on young children and the weight of expert medical and psychiatric opinion, Home Office minister, Meg Hillier, argues that the experts have simply got it wrong, stating that the treatment of children with “care and compassion is an absolute priority for the UK Border Agency.” Her view was shared by UKBA’s strategic director of criminality and detention, David Wood, who made it clear that in his opinion any long term damage to a child’s physical and mental health had nothing to do with their detention but was: “the fault of parents making “vexatious” legal claims and using judicial review to delay deportation.”

A new hunger strike at Yarl’s Wood began on 4 February 2010. Over 70 women protested against poor conditions, being separated from their children, poor health and legal provisions and long periods of detainment. The women also say that they were subjected to racial and physical abuse when guards locked them in an airless corridor for eight hours to isolate them from other inmates. By late February 30 women continued to protest and concerns were growing for their health as they entered the third week of their hunger strike. Four of women have been identified as “ringleaders” and moved to prison (two to HMP Holloway and two to HMP Bronzefield). [16] On 19 March most of the women ended their hunger strike, vowing to resume if the authorities donot investigate their complaints. Serco, the privatised company now running Yarl’s Wood, and the UKBA refused to confirm the number, nationality and status of the hunger strikers to stifle publicity.

Despite the detention authorities’ attempts to prevent information from emerging, supporters are ensured that the

women’s voices are heard. In late February, Victoria Odeleye (32), who moved to the UK from Nigeria six years ago, said:

*We need our cases looking at. I have a little girl and am not a criminal but I have been locked up in here for 15 months and no one can tell me when that will change.*

Other women complained that they had been beaten and racially abused. Adeola Omotosho, who was involved in the protests before being released, said: “At times they call us black monkey, they call us different names. Any lady who refused to be deported, what they did is beat her.” [17]

Home Office minister, Meg Hillier, has written a letter to Labour MPs about the hunger strike, condemning “current misreporting, based on inaccurate and fabricated statements”. Her letter speaks of healthcare at the detention in glowing terms and describes supporters of the imprisoned women as “irresponsible”. Hillier says they caused “unnecessary distress to the women of Yarl’s Wood, their family and friends.”. On the other hand, at least a dozen women have managed to speak to the media to provide a detailed portrayal of events. [18]

Support for the hunger strike is growing. Labour MP, John McDonnell, tabled a Parliamentary Early Day Motion (No. 919) on the “Hunger strike at Yarl’s Wood immigration removal centre” on 23 February. It read:

*“this House notes that women detained in Yarl’s Wood Immigration Removal Centre have been on hunger strike since 5 February 2010 in protest against being detained for up to two years; condemns the detention of victims of rape and other torture, of mothers separated from their children and anyone who does not face imminent removal; believes that such detention flouts international conventions and UK immigration rules; requests that HM Inspector of Prisons urgently carries out an independent investigation into reports of violence, mistreatment and racist abuse from guards, being kettled for over five hours in a hallway, denied access to toilets and water and locked out in the freezing cold, which women have made to their lawyers, the media and supporters, including the All African Women’s Group and Black Women’s Rape Action Project; and calls for a moratorium on all removals and deportations of the women who took part in the hunger strike pending the results of that investigation.”* [19]

## Endnotes

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## UK: Misuse of section 44 stop and search powers continues despite European Court ruling

by Max Rowlands

**The police are using section 44 powers to stop and search people for reasons unrelated to terrorism. Both amateur and professional photographers are being increasingly impeded as part of a broader struggle over the control of public space**

On 12 January 2010, the European Court of Human Rights (ECHR) ruled that section 44 of the Terrorism Act 2000 breaches privacy rights afforded by Article 8 of the Convention on Human Rights. Section 44 gives police the power to indiscriminately stop and search people without reasonable suspicion. This is in part because the police have too much discretion over when to use this power, and insufficient legal safeguards are in place to guard against its misapplication.

Further, section 44 is being invoked to impede and harass amateur and professional photographers. A climate of suspicion is being cultivated in which anyone taking a photograph of a prominent building or landmark is potentially seen to be conducting reconnaissance ahead of a terrorist attack. The Home Office published guidance to officers urging them to respect photographers' rights on many occasions in 2009 with negligible impact. And pending a possible government appeal of the ECHR judgment, section 44 powers will continue to be used.

### Provisions of section 44

The Terrorism Act 2000 came into force on 19 February 2001. Section 44 gives senior police officers the power to create "authorisation" zones in designated geographical areas (subject to the Home Secretary's endorsement). These are sites deemed sensitive to national security that are believed to be potential targets of terrorist attack. It was anticipated that zones would predominantly be established around famous landmarks, government buildings and train stations, but police forces have used the power more widely. For instance, the Metropolitan Police authorisation zone encompasses all of its territory: the whole of greater London. An authorisation is only in place for a period of 28 days, but can be continually renewed as it has been in London since 2001.

Within these zones police have the power to stop and search individuals without reasonable suspicion that an offence is being committed and seize "articles that could be used for terrorism

whether or not there are grounds for suspecting that such articles are present." There is no obligation to explain to an individual why a search is being carried out. Police Community Support Officers (PCSOs) are granted these powers if accompanied by a uniformed police officer.

### Misuse of section 44

Police invoked powers afforded to them under section 44 to stop and search people on 256,026 occasions in England and Wales between April 2008 and March 2009. The Metropolitan Police and Transport Police were responsible for 95% of this total. Of this colossal figure only 1,452 stops resulted in arrest, less than 0.6% of the total number, and the vast majority of these were for offences unrelated to terrorism. In November 2009, the Home Office trumpeted a 37% decrease in the use of section 44 for the first quarter of 2009-10, but the figure of 36,189 is still massive and equates to an average of 398 people being stopped every day in April, May and June 2009.[1]

The power is clearly being overused, as Lord Carlile QC warned in the UK terror law watchdog's 2009 annual report:

*I have evidence of cases where the person stopped is so obviously far from any known terrorism profile that, realistically, there is not the slightest possibility of him/her being a terrorist, and no other feature to justify the stop.[2]*

Preconditions for invoking section 44 are so broad that it can be used against virtually anyone for anything. Increasingly police have used anti terrorism laws to impede the lawful activities of protesters and media workers (see *Stewatch* Volume 18 Nos. 3 and 4). Jeff Moore, chairman of the British Press Photographers' Association (BPPA), described section 44 as "an extremely poor piece of legislation that creates an enormous amount of confusion, both among the public and the police officers that use it." [3] In April 2008, the chairman of the Metropolitan Police Federation, Peter Smyth, said that "the Terrorism Act 2000 doesn't make police powers clear" and admitted that officers

receive no training as to how to apply recent legislation correctly when dealing with photographers.[4]

Further, *The Independent* reports that:

*Privately senior officers are "exasperated, depressed and embarrassed" by the actions of junior officers and, particularly, PCSOs who routinely misuse the legislation. One source said that an "internal urban myth" had built up around police officers who believe that photography in Section 44 areas is not allowed.*[5]

This is well illustrated by the case of photojournalist Jess Hurd who, in December 2008, was detained for more than 45 minutes by police while covering a wedding in London's Docklands. Her complaint to the Independent Police Complaints Commission alleges that her camera was forcibly removed by an officer who told her: "we can do anything under the Terrorism Act." She also says that she was "informed that she could not use any footage of the police car or police officers and that if she did there would be 'severe penalties'." [6]

A recent high profile example of section 44's misuse is the case of BBC photographer Jeff Overs who was stopped while taking photos of St Paul's Cathedral in November 2009. [7] Similarly, in December 2009, one of the country's leading architectural photographers, Grant Smith, was stopped and searched by seven officers, who arrived in three squad cars and a riot van, while he was photographing Wren's Christ Church in central London. Incredibly, when an ITN film crew arrived to cover the story they too were initially told that filming was not allowed.[8]

Police practice has thus resulted in a number of complaints from photographers, both amateur and professional, who claim to be routinely obstructed by a police force that increasingly treats photography as a suspicious, even criminal activity. In December 2009, *The Independent* launched a front-page campaign to highlight this trend after their journalist, Jerome Taylor, was stopped by police from taking a photograph of Parliament at night.[9]

### **The police's response**

The Association of Chief Police Officers (ACPO) responded promptly by sending a message to every chief constable in England and Wales telling them that "unnecessarily restricting photography, whether from the casual tourist or professional is unacceptable and worse still, it undermines public confidence in the police service." [10] Andy Trotter, chair of the ACPO's media advisory group, told *The Independent* that:

*Photographers should be left alone to get on with what they are doing. If an officer is suspicious of them for some reason they can just go up to them and have a chat with them – use old-fashioned policing skills to be frank – rather than using these powers, which we don't want to over-use at all.*[11]

After another high profile case, in which *The Guardian* journalist Paul Lewis was stopped by police for taking photographs of the Swiss Re Gherkin building in central London, the Metropolitan Police followed suit and issued guidance to all of its borough commanders emphasising that "unless there is a very good reason, people taking photographs should not be stopped." [12]

The BPPA, National Union of Journalists (NUJ) and Amateur Photographer welcomed these messages, but said it was uncertain whether they will have a significant impact. The BPPA listed six occasions in the past 18 months on which government departments, agencies and representatives (such as the National Policing Improvement Agency, the Home Office and even the Prime Minister) have reaffirmed the rights of photographers with negligible result. Indeed, giving evidence to the UK Joint Committee on Human Rights in December 2008, Vernon Coaker MP, then Minister for Policing, Crime and Security, read an

extract from a letter he had written to NUJ General Secretary, Jeremy Dear, in which he offered assurances that revised guidance had addressed the issue (see *Statewatch* Volume 18 No. 4). Amateur Photographer said: "We have been given similar assurances before but actions by police on the ground over recent months indicate that the message to curb restrictions on photographers is still not getting through." [13]

### **European Court of Human Rights judgment**

Publicity surrounding this issue intensified when, on 12 January 2010, the ECHR found section 44 to breach Article 8 of the European Convention on Human Rights which provides the right to respect for private life. The case was brought by Kevin Gillan and Pennie Quinton who were stopped and searched by police on their way to a demonstration in London's Docklands in September 2003. Quinton, a journalist, was ordered to stop filming despite showing her press card.[14]

The panel of seven judges ruled that a public search, without grounds for suspicion, "amounted to a clear interference with the right to respect for private life." Further, "the public nature of the search, with the discomfort of having personal information exposed to public view, might even in certain cases compound the seriousness of the interference because of an element of humiliation and embarrassment."

Significantly, the judgment objected not only to the manner in which anti-terrorism powers are being used, but the whole process by which they are authorised. Parliament and the courts are not providing sufficient checks and balances against misuse: "...the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 Act are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse." The Court cited the fact that the Metropolitan Police has been allowed to establish an authorisation zone covering the whole of greater London since 2001 as an example of this shortcoming.

The Court also expressed concern over the level of individual autonomy police officers enjoy when deciding whether to stop and search someone. The absence of clear criteria for the use of section 44 means that many officers predicate their actions on instinct and "professional intuition." As a result "there is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer." The result of this is that it becomes impossible to assess their performance:

*in the absence of any obligation on the part of the officer to show a reasonable suspicion, it is likely to be difficult if not impossible to prove that the power was improperly exercised.*

The government expressed disappointment with the judgment and said it intends to appeal. A request to refer the decision to the ECHR's grand chamber must be made within three months, giving the government until 12 April 2010 to do so. If the court's ruling stands the government will have an obligation to amend the law so that it conforms to the Convention. However, there is no timeframe for legal amendments to be made and the UK government has been known to be reluctant when it comes to complying with ECHR judgments. For the time being section 44 powers are still in place; the Metropolitan Police affirmed that their use "remains an important tactic in our counter terrorism strategy." [15]

### **The control of public space**

Writing in *The Guardian*, Henry Porter observed that the persecution of photographers is part of a broader struggle over the control of public space. He argues that police are using anti-terrorism legislation to re-designate public space as state space, "over which the police and CCTV systems have exclusive photographic rights." [16]

Those wishing to hold public protests have been similarly

impeded and intimidated by the use of section 44 powers. Further, far from fulfilling their obligation to facilitate protest, the police have imposed “bureaucratic obstacles” on those wishing to organise demonstrations. The most discernable example of this is the Serious Organised Crime and Police Act 2005. Sections 132-138 of the Act allow police to restrict access to “designated sites” deemed sensitive to national security. They also oblige organisers to provide the Metropolitan Police Commissioner with six days advance notice of a demonstration. Those who do not comply with these restrictions can be arrested and jailed. These sections will finally be repealed by the Constitutional Reform and Governance Bill, published in July 2009, and replaced by new undefined conditions that will be introduced by statutory instrument (secondary legislation used to exercise a power granted by primary legislation) as part of the new Public Order Act.

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# EU decision-making after the Treaty of Lisbon: a quick guide

by Steve Peers

## Legislative procedures

The concept of a ‘legislative procedure’ is now officially defined in the Treaties, following the entry into force of the Treaty of Lisbon. Article 289 of the Treaty on the Functioning of the European Union (TFEU) specifies that there are two types of legislative procedure: the ordinary legislative procedure and special legislative procedures. Most EU legislation must be proposed by the Commission, but as noted in Article 289(4) TFEU, there are a few cases where legislation can be proposed by the European Parliament, Member States, or other bodies. The most important of these for JHA matters is the field of policing and criminal law, where a quarter of Member States can make proposals (see Article 76 TFEU) – and already have done since the new Treaty entered into force.

The **ordinary legislative procedure** is governed by standard rules (set out in Article 294 TFEU). These are essentially the same rules that governed the ‘co-decision’ process (previously set out in Article 251 EC), ie the possibility of first-reading deals, a second reading deal after the Council adopts its first-reading position (no longer called a ‘common position’), the possibility of conciliation if a second-reading deal is not reached. The Treaty of Lisbon has simply amended the wording to emphasise the equality between the European Parliament (EP) and the Council throughout this procedure. Effectively as far as the adoption of EU legislation is concerned, the EP and Council constitute a two-chamber legislature.

The main change resulting from the Treaty of Lisbon is the application of this procedure to a number of additional ‘legal

bases’, not only to a lot of the JHA area (legal migration, visa lists, and most criminal law and policing measures) but also to important other parts of EU law such as agriculture, fisheries and external trade. There are now about 70 legal bases providing for the ordinary legislative procedure. Obviously a bigger percentage of legislation than before will be subject to this procedure.

The cases where the ordinary legislative procedure applies are defined in each of the relevant legal bases. It should be noted that there are no longer any cases in which this procedure is combined with unanimity in the Council – qualified majority voting (QMV) always applies. There are, however, a few cases (criminal law and social security for migrants) where an individual Member State can pull an ‘emergency brake’ to stop decision-making on specified grounds, followed by an attempt at dispute settlement in the European Council (ie, EU leaders’ summits). In the case of criminal law (but not social security), a continued deadlock concerning each proposal can lead to fast-track authorisation of ‘enhanced cooperation’.

The **special legislative procedures** are not governed by standard rules, but by different rules in each of the legal bases which provide for such procedures. There are about 30 cases of special legislative procedures set out in the Treaty. The idea of a special legislative procedure is that the Council and EP are still each involved in the adoption of legislation, but subject to different rules than those which govern the ordinary legislative procedure.

In most cases, the special legislative procedure involves unanimity in Council and consultation of the EP (for instance,

Article 89 TFEU, concerning cross-border police operations). In a few cases, it involves unanimity and consent of the EP (for instance, Article 86, concerning the European Public Prosecutor). There are also a few cases where the Council votes by QMV and the EP is only consulted, or where the EP takes the lead role and the Council approves the EP's measure. There is a *sui generis* special legislative procedure concerning the adoption of the annual EU budget; this entails a version of the ordinary procedure which is specially adapted to the particular features of the budget process (QMV in Council applies).

Any EU measure adopted by means of a legislative procedure is a '**legislative act**' (Article 289(3) TFEU). The obvious implication is that any EU measure *not* adopted by a legislative procedure is *not* a legislative act. The distinction between legislative and non-legislative acts has some practical implications: for instance the Council must always meet in public when adopting or discussing legislative acts, but is not under an obligation to do so when discussing non-legislative acts (see Article 15(2) TFEU).

### Non-legislative acts

There are several different types of non-legislative acts. First of all, there are non-legislative acts **based on the Treaties**, ie for which the legal base is provided for in the Treaty on European Union (TEU) or TFEU. For instance, Article 81(3) TFEU (second sub-paragraph) states that the Council may adopt a decision changing the decision-making procedure relating to family law legislation. Since the Treaty does not specify that this decision would be adopted by a legislative procedure, it would therefore be a non-legislative act.

There are no standard rules for the procedure for adoption of non-legislative acts based on the Treaty. For instance, the family law decision just referred to requires the Council to act unanimously on a proposal from the Commission, after consulting the EP. Other legal bases for non-legislative acts provide for the Council to act by QMV (see Article 74 TFEU, on administrative cooperation within the sphere of JHA). Some non-legislative acts are adopted by the European Council (see the possible extension of role of the European Public Prosecutor, in Article 86(4) TFEU). As for the EP, it is not consulted in some cases (see Article 215 TFEU, concerning foreign policy sanctions), consulted in others (see Article 74 TFEU), and has the power of consent in others (see Article 86(4) TFEU). There is no standard requirement that the Commission has to propose non-legislative acts; its role depends on each legal base (for instance, Article 86(4) only requires consultation of the Commission).

In several cases (anti-terrorist sanctions, agriculture and fisheries) the Treaty specifies that general rules on an issue will be adopted in a legislative act adopted by means of the ordinary legislative procedure, and then provides for the general rules to be supplemented by non-legislative acts to be adopted by a specific procedure (proposal from the Commission, QMV in Council, no EP role).

As for the **negotiation and approval of treaties by the EU**, the Council authorises the Commission to negotiate and then decides on whether to sign the treaty. The conclusion of each treaty, after the entry into force of the Treaty of Lisbon, requires not only the approval of the Council but also the consent of the EP if the subject-matter of the treaty concerned falls within the scope of the ordinary legislative procedure or an area in which the EP has the power of consent. Since most treaties will meet these criteria, almost all treaties are subject to the EP's consent power.

It should be noted that the Treaty rules out the use of legislation in the field of foreign policy – so all foreign policy measures are non-legislative acts.

### Non-legislative acts based on secondary legislation

There are also two forms of non-legislative acts based on secondary legislation. There are the **implementing powers procedure** ('**comitology**') and the possibility of adopting **delegated acts**.

First of all, the concept of **comitology** was first established in the early years of the EC. It was formalized in the EC Treaty in the 1980s and was subject from 1987 to a Council Decision establishing general rules for comitology procedures, which were replaced by a new set of general rules in 1999. The 1999 general rules were amended in 2006. The Treaty base for the principle of comitology and the adoption of these general rules was Article 202 EC (now Article 291 TFEU).

The basic idea of the comitology process is that the power to adopt implementing measures at EU level is normally to be conferred on the Commission – but in exceptional cases that power can be conferred on the Council instead (note that there are no general rules governing the rare cases where implementing powers are conferred upon the Council). The Court of Justice has ruled that other than this framework, there is no possibility to confer some sort of additional secondary legislative power on the Council, allowing it to adopt measures other than by the procedures listed in the Treaties (Case C-133/06, *EP v Council*, judgment of May 2008, concerning the 'common lists' in the asylum procedures Directive).

The comitology process can be used to implement either legislative or non-legislative acts, but it does not apply to foreign policy measures (they must be implemented by the Council).

The Decision establishing general rules specifies four types of comitology procedure: the **advisory** procedure (very rarely used); the **management** procedure (not often used); the **regulatory** procedure (used most often); and the **regulatory procedure with scrutiny (RPS)** (introduced by the 2006 amendments to the general rules).

The regulatory procedure with scrutiny *must* be used in cases where the basic legislation was adopted by means of the co-decision procedure, and 'provides for the adoption of measures of general scope designed to amend non-essential elements of that instrument, *inter alia* by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements'. Otherwise, there is a choice which of the other types of procedure to use, provided that if the EU legislators wish to depart from the guidance given in the general procedure as to which procedure to use, they have to explain why they did not follow the guidance.

The basic feature of all comitology procedures is that the Commission chairs committees of Member State representatives, and submits to them draft implementing measures for discussion and vote. In the advisory procedure, the vote of the representatives is not binding in any way. In the management procedure, a QMV of the representatives *against* the measure is necessary to block it. In the regulatory procedure and the RPS, a QMV of the representatives *in favour* of the measure is necessary for it to be adopted.

In the event that a draft implementing measure is blocked by the representatives (which is rare), the Commission must make a proposal on the issue to the Council. Where the management procedure applies, the Commission may defer the adoption of its draft decision, but the Council may take a different decision by QMV within a specified time limit (no more than three months). Where the regulatory procedure applies, the Council can either adopt the act (or presumably an amended version of it) by QMV, or block it by QMV against the proposal, in which case the Commission must re-examine the proposal; the Commission may submit an amended proposal, the same proposal or a legislative proposal on this issue. If the Council does not act, then the Commission can approve the proposal. The EP is informed of the draft proposal, and can express non-binding objections on

certain grounds if the measure would implement legislation adopted by means of the co-decision procedure.

Where the regulatory procedure with scrutiny applies, if the draft act is approved by national representatives, the Commission must then send it to the EP and the Council for scrutiny. Either institution can block the draft act (by QMV against it in the Council, or by the vote of a majority of all MEPs) on broad specified grounds, within a specified time period. If the EP and the Council do not object, the Commission can adopt the measure. If either of them does object, the Commission may either submit a new proposal or a proposal for legislation. If the draft act is not approved by national representatives, then the Commission must submit a draft to the Council and the EP, which have a chance to block it or to adopt the text (or presumably a different text), which is in the latter case still subject to the power of the EP to block it.

Other than in the RPS procedure, the EP has a limited role, being informed only of draft implementing measures and also being sent draft agendas of committee meetings and records of committee proceedings.

There is also special provision for a **safeguard procedure** concerning safeguard measures (ie in the case of international trade). In these cases, the basic legal act may require the Commission to consult with Member States; in any case, the Commission must inform the Member States and the Council of draft measures. A Member State may then refer the draft decision to the Council, which can control the decision-making of the Commission in some form (by blocking or approving it, or taking a different decision) by QMV.

The Treaty of Lisbon provides that general rules on comitology must now be adopted by means of the ordinary legislative procedure (they were previously adopted by means of unanimity in Council with consultation of the EP). The Commission intends to present a proposal for entirely new rules on comitology procedures once the new Commission is appointed, early in 2010. The Council has committed itself to agree these rules with the EP by June 2010.

Next, the Treaty of Lisbon has introduced a new procedure for **delegated acts** (Article 290 TFEU). This Article specifies that EU legislation 'may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act'.

It should be noted that the scope of this power is the same as the scope of the RPS procedure (except that the delegated acts procedure can apply regardless of the procedure used to adopt legislation), and indeed the EU institutions recognise that no legislation adopted after the entry into force of the Treaty of Lisbon can establish any new RPS procedures. It is not yet

known if there will be proposals to amend any legislation adopted before the entry into force of the Treaty of Lisbon in order to provide for the delegated acts procedure to apply.

It should also be noted that delegated powers can only be delegated to the Commission, not the Council.

There will not be any general rules governing the delegated acts procedure, except a Commission communication in December 2009 which set out model Articles for legislation which could be adapted on a case-by-case basis.

The Treaty provides that to control the delegation to the Commission, either:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

So far the EP and the Council are considering clauses concerning delegated acts in draft legislation, but have not yet agreed on any such clauses. The draft clauses provide for: a review (in the Council's view) or the expiry (in the EP's view) of the delegation of power after a fixed period; the application of both methods of control of the Commission; and time periods of two or three months for the EP or the Council to block the adoption of each draft delegated act.

It should be noted that unlike the comitology procedure, there is no requirement of consulting Member States' representatives before the adoption of delegated acts; although the Commission has indicated that it will consult national experts informally on draft delegated acts, there is no power for those experts to block the draft.

### Form of acts

The Treaty of Lisbon has consolidated the types of legal acts which the EU may adopt: regulations, directives and decisions (see Article 288 TFEU). However, unlike some national legal systems, the types of legal act do not indicate whether the act in question is a legislative or non-legislative act, or by which means each act was adopted. So, while most Directives are legislative acts, they might have been adopted by either the ordinary legislative procedure or a special legislative procedure, and some Directives are non-legislative acts. Equally while many Regulations and Decisions are non-legislative acts, they might be legislative acts adopted by any type of legislative procedure.

The Treaty of Lisbon does require that implementing acts and delegated acts indicate in their title that they are implementing or delegated acts respectively. While the Council has observed this obligation since the new Treaty entered into force, the Commission has breached it.

## New material - reviews and sources

### Civil liberties

**Blacklisted workers fight back.** *Labour Research* November 2009, pp. 12-14. This article examines the illegal blacklisting of construction workers by The Consulting Association, run by former Special Branch officer, Ian Kerr. In February, following the seizure of the 3,000-strong blacklist by the Information Commissioner's Office, the West Midlands based outfit was forced to close down after 30 years after an eight month investigation. The service, an offshoot of the right wing Economic League, had been used by around 40 of the construction industry's biggest companies, including Taylor Woodrow, Costain, Balfour Beatty, Laing O'Rourke, Robert McAlpine, Amey, Wimpey and Skanska. This piece examines the workers' fightback and outstanding doubts that much of the affair "remains to be uncovered."

**Read my lips,** Gary Mason. *Police Product Review* April / May 2009, p. 45. This article discusses a £1.5 pseudo-scientific research project to develop a CCTV facial recognition system that uses lip reading and

speech recognition systems to enable law enforcement agencies to identify suspects. The project is being carried out by OmniPerception and BAE Systems.

**Marred by Black Pens,** Liz Davies. *Morning Star* 19.1.10. This article discusses Tony Blair's "joke" that "his biggest mistake was the Freedom of Information Act", which came into force five years ago. Davies argues that the "final Freedom of Information Bill, published in 1991, represented a triumph of the secrecy lobbyists", after the test for withholding information was changed from "substantial harm" to a "prejudice test". This meant that government could veto any ruling by the Information Commissioner that information should be disclosed.": <http://www.morningstaronline.co.uk/index.php/news/content/view/full/85711>

**L'Atlas. Un monde à l'envers,** *Le Monde Diplomatique*, Hors-séries, 2009, pp. 194, €14. A fascinating work of cartography in which a number of the world's challenges, conflicts and phenomena are



translated into maps. These include the varying degrees of recognition of Kosovo's independence by countries worldwide, Germany's work to strengthen its role and escape its position as a "political midget", self-governed Palestinian regions portrayed as an archipelago, Russia's efforts to set its stall out as a key pole between Europe and Asia, or the worldwide proliferation of weapons, detailing who the key exporters and producers are, among many others. It is divided into five sub-sections: New international relations of strength; The world seen from the perspective of...; The challenges of energy; These conflicts that continue; Africa at a turning point.

## Immigration and asylum

**Significant Harm – the effects of administrative detention on the health of children, young people and their families.** *Intercollegiate Briefing Paper* (Royal College of Paediatrics and Child Health care, Royal College of Central Practitioners, Royal College of Psychiatrists, Faculty of Public Health), pp. 10. This briefing paper "describes the considerable harms to the physical and mental health of children and young people in the UK who are subjected to administrative immigration detention. It argues that such detention is unacceptable and should cease without delay." Dr. Iona Heath, President of the Royal College of general Practitioners, said: "Any detention of children for administrative rather than criminal purposes causes unnecessary harm and further blights disturbed young lives. Such practices reflect badly on all of us." Available as a free download at: <http://www.rcpsych.ac.uk/pdf/Significant%20Harm%20intercollegiate%20statement%20Dec09.pdf>

**Centres et locaux de rétention administrative. Rapport 2008, Cimade**, pp. 415, ISBN: 978-2-900595-08-4. This extensive report by Cimade provides a wealth of material, statistics and analysis on the conditions of detention in French centres and facilities for the administrative detention of foreigners. It is an exceptional work in that it ranges from objective data, applicable regulations and legislative measures and orders approved over the year, as well as including the eye-witness and professional testimonies of Cimade members who are active in the assistance of migrants within the centres and facilities, and providing accounts of incidents such as revolts, hunger strikes and the problems and complaints that migrants in the centres experience. Thus, it is an unparalleled source of material and documentation: official, from staff working in the centres, volunteers supporting the migrants from legal, human and psychological perspectives, and the detainees themselves. Available from: *La Cimade, Service œcuménique d'entraide, 64 rue Clisson, 75013 Paris, France.*

**Conditions at G4s Immigration Prison 'Worse and Worse'.** *Watching the Corporations* (Corporate Watch) 2.12.09, pp. 3. This article, on the UK's newest and biggest immigration prison, Brook House near Gatwick airport, reports on deteriorating conditions due to increased security conditions for the detainees and their visitors. The report highlights the harassment and banning of visitors by Group 4 Securicor (G4S) which is described by one visitor as "just an excuse for the management to limit visits as some sort of punishment." Visitors are now prevented from taking "any toiletries or tobacco in for detainees" to prevent, the management claims, the smuggling of drugs, although some detainees said that it is aimed at "forcing them to buy" these items from the centre's privatised shop: "So if you don't have money and don't have visitors who can give you cash", one detainee complained, "you are basically deprived of these essentials." It is also pointed out that, besides making a profit, "prison canteens are used by prison managements for punishment and disciplinary purposes." Available as a free download: <http://www.corporatewatch.org/?lid=3471>

**'Afghanistan is not in a state of war': ruling by immigration judges paves way for asylum seekers to be returned,** Robert Verkaik. *The Independent* 23.10.09. pp. 14-15. This article discusses the decision by three Immigration and Asylum Tribunal judges who ruled that the level of "indiscriminate violence" in war-torn Afghanistan was not enough to permit Afghans to claim general humanitarian protection in the United Kingdom. Afghan's living in Britain now face being removed having been prevented from arguing that the country is a dangerous place. "The judgement also made it clear that an asylum seeker had to show why it was not possible to be relocated to another part of Afghanistan

if they had succeeded in proving that they faced persecution in their own region."

## Law

**Detention Immorality: the impact of UK domestic counter-terrorism policies on those detained in the War on Terror.** *CagePrisoners* 2009, pp. 70. Highlights the cases of 71 victims of the UK's war on terror who have been subjected to various forms of detention without charge. The report focusses on extradition, deportations and detention without charge, counter-terrorism weapons that have been used to circumvent the rule of law to create a ghost system stripped of the safeguards of due process. The importance of this report is that it based on evidence from the detainees themselves, a factor that should not be understated given the absence information available – even to those whom they incarcerate – from official sources: <http://cageprisoners.com/downloads/Detention%20Immorality.pdf>

## Military

**Secret Army Squad 'abused Iraqis',** Robert Verkaik. *The Independent* 1.1.10, pp. 1-2. This piece discusses a "secret army interrogation unit accused of being responsible for the widespread abuse of Iraqi prisoners" that "is being investigated by the Ministry of Defence." The investigation into the Joint Forward Intelligence Unit, which was based at the Shaibah Logistics Base outside Basra between 2004 and 2007, has raised the total number of cases of abuse by British soldiers being investigated by the government to 47.

**The Truth of the UK's Guilt over Iraq,** Scott Ritter. *The Guardian* 27.11.09. Ritter, the chief United Nations weapons inspector in Iraq from 1991 to 1998, who in 2003 publicly argued that there were no weapons of mass destruction in the country, conducts a postmortem of the position of the British government in the cause of illegal US regime change. He writes: "Having played the WMD card so forcefully in an effort to justify war with Iraq, the US (and by extension, Britain) were compelled once again to revisit the issue of disarmament... The decision to use military force to overthrow Saddam was made by these two leaders independent of any proof that Iraq was in possession of weapons of mass destruction. Having found Iraq guilty, the last thing those who were positioning themselves for war wanted was to re-engage a process that not only failed to uncover any evidence [of] Iraq's retention of WMD in the past, but was actually positioned to produce fact-based evidence that would either contradict or significantly weaken the case for war already endorsed by Bush and Blair."

**Intoxicated by power, Blair tricked us into war,** Ken Macdonald. *The Times* 14.12.09. This feature article by Ken Macdonald, the Director of Public Prosecutions between 2003-2008, describes "a foreign policy disgrace of epic proportions" or the decision to go to war against Iraq. He says of this decision: "It is now very difficult to avoid the conclusion that [prime minister] Tony Blair engaged in an alarming subterfuge with his partner George Bush and went on to mislead and cajole the British people into a deadly war they had made perfectly clear they didn't want, and on a basis that it's increasingly hard to believe even he found truly credible." The former DPP warns that if the ongoing Chilcott inquiry into the war fails to deliver the truth "the inquiry will be held in deserved and withering contempt."

**Blair should answer to Britain, not Britton,** Alex Carlile. *Independent on Sunday* 13.12.09. Carlile, the government's independent reviewer of terrorism laws, comments on Tony Blair's decision to air a public BBC warm-up interview with Fern Britton as a prelude to giving evidence before the supine Chilcott Inquiry into the war in Iraq. Blair told Britton that: "he would have regarded regime change in Iraq as justifiable anyway, even if there had been no intelligence of weapons of mass destruction at the time when he told Parliament that they could be deployed in 45 minutes."

## Policing

**Small Print,** Gary Mason. *Police Review* 16.10.09, pp. 28-29. This piece examines the increasing use of biometric identification technology in the criminal justice system and the impact of the Prüm Treaty, signed by 11 EU countries in 2005. ACPO says that the UK will

be implementing the Treaty in 2010 and Mason considers the potential for British police to exchange data, such as fingerprints and DNA, with foreign countries, noting that: "While the exchange of DNA data remains a sensitive area because of concerns about privacy, the exchange of fingerprint information between police agencies in different countries has developed at a much faster pace."

**Police misconduct and the law**, Stephen Cragg, Tony Murphy and Heather Williams QC. *Legal Action* October 2009, pp. 15-19. This is the latest edition in the authors six monthly review of important case-law relating to developments in police misconduct law.

**FBI identify the need for next-generation biometric platform**, Gary Mason. *Police Product Review* December 2009 / January 2010, p. 14. This article looks at the US FBI's Identification Division which operates "the world's largest biometric databases. It has 390 million 10-print cards on file and 82 million fingerprint records in its automated fingerprint identification system (AFIS)...In addition to fingerprints, the FBI's DNA database has more than seven million offender profiles on file." The Bureau is now "concentrating on building what it calls 'person-centric' records which combine biometric records with other data to build up a more complete picture of an individual."

**Stand and Deliver**, Max Blain. *Police Review* 16.10.09, pp. 26-27. This article looks at police stop and search powers under section 44 of the Terrorism Act 2000, following comments by Lord Carlisle, the government's reviewer of terrorism legislation, that the number of searches could be halved "without any deterioration in national security whatsoever".

**Flash-bang to rights**, Gary Mason. *Police Product Review* October / November 2009, pp. 32-34. This article looks at the controversial use of so-called "less lethal" stun projectiles in the USA and UK. It discusses the UK-based Civil Defence Supply's development of the S10 Multiburst device "which is designed to remain more static during deployment by firearms teams, making its effects more predictable." The S10 is described: "The all-steel device delivers 175 decibels of sound and over three million candelas of blinding light while subjecting the receiver to over 2psi of blast pressure, making it suitable for use in both confined spaces or larger indoor areas."

**Biometrics**. *Police Product Review* December 2009 / January 2010, pp. 19-20. Update on biometric technology programmes in the USA.

## Prisons

**Crowded prisons at highest strain in a decade, Anne Owers warns**, Aida Edemariam. *The Guardian* 12.12.09. In an interview with the newspaper, Ann Owers, chief inspector of prisons, warns that the prison service is "under greater strain than at any time in the past decade as it struggles to cope with record numbers of inmates and dwindling resources." Owers said: "I haven't seen prison governors so worried about the future in all the time I've been doing this job. There is now a real risk that gains that have been made, sometimes slowly and painfully, could be lost."

**Resumo da compar encia da delega o espanhola perante o Comit  contra a Tortura das Na oes Unidas**, *Esculca*, no. 27, December 2009, pp.9-13. A useful summary of the Spanish delegation's appearance before the UN's Committee against Torture (CAT) in Geneva on 12-13 November 2009 in which a number of longstanding concerns were dealt with, and information was sought concerning progress as regards recommendations made by successive rapporteurs on matters including incommunicado detention, the appointment of a detainee's doctor or legal counsel of choice, the investigation and prosecution of cases in which torture was alleged by prisoners, dispersal, the situation of unaccompanied foreign minors, detention centres and harassment in prisons, among others. The Spanish delegation's spokesman defended incommunicado detention and dispersal as a result of the serious problem of terrorism, arguing that the latter is "respectful of everyone's rights". Suicides and sexual abuse in prisons decreased, abuse against female detainees were "isolated cases", repatriations complied with human rights, reports of round-ups and abuses suffered by expelled Senegalese people were untrue, video-surveillance systems had been installed in 50% of police stations, and it was not proven that Spanish bases were used for CIA "rendition"

flights. Committee members replied by reiterating concerns, particularly about pardons enjoyed by officers convicted of torture, incommunicado detention and access to lawyers of choice. Available at: <http://www.esulca.net/pdf/bole0027.pdf>

**Give Prisoners the Right to Vote, and Everybody Benefits**. Robert Chesshyre. *The Independent* 12.2.10. The Committee of Ministers at the Council of Europe has complained at "British foot-dragging" over its promise (made "reluctantly and under extreme pressure from the European Court of Human Rights") to introduce votes for (some) prisoners. The Committee has warned that the "substantial delay in implementing the judgement has given rise to a significant risk that the next UK general election will be performed in a way that failed to comply with the Convention of Human Rights."

**Locked Up Far Away: the transfer of immigrants to remote detention centers in the United States**. *Human Rights Watch* pp. 88. (ISBN-1-56432-570-9). This report presents data (analysed by the Transactional Records Access Clearinghouse at Syracuse University) which shows that 53% of the 1.4 million "non-citizen" transfers (the transfer of immigrants facing deportation to detention centres far from their homes) have taken place in the USA since 2006. Most occur between state and local jails that contract with the ICE agency to provide detention bed space. The report's findings, based on the new data and interviews with officials, immigration lawyers and detainees and their family members, concludes that the practice "often erects insurmountable obstacles to detainees' access to counsel", "impede their ability rights to challenge their detention, lead to unfair midstream changes in the interpretation of laws applied to their cases, and can ultimately lead to wrongful convictions." The alternative, to give detainees a fair hearing, does not appear to be on the agenda. Available at: <http://www.hrw.org/en/reports/2009/12/02/locked-far-away-0>

**Turnkeys or professionals? A vision for the 21st century prison officer**. *The Howard League for Penal Reform* 2009. This report calls for a radical and fundamental review of the role of the prison officer that questions their role, purpose, professional status and points to a new future that serves the public. The report says that: "In order to achieve this, prison officers need to be educated rather than simply trained, and the role of prison officer should move to become a profession. The prison officer should be seen in the same terms as a social worker, nurse or a teacher. We suggest that it should be a graduate profession." Importantly, this "vision relies on a radically reduced prison population whereby only those people who have committed serious and violent offences and are a continuing danger are incarcerated".

**ACLU Obtains List Of Bagram Detainees**. *American Civil Liberties Union*, 15.1.10. The ACLU argue that the US government did not hand over this information voluntarily but after a freedom of information lawsuit filed by the ever-vigilant American Civil Liberties Union. The list contains the names of 645 prisoners who were detained at Bagram on September 2009, but other vital information including their citizenship, how long they have been held, in what country they were captured and the circumstances of their capture has been redacted. The list is available on the ACLU website: [www.aclu.org/national-security/redacted-list-detainees-held-bagram-air-base](http://www.aclu.org/national-security/redacted-list-detainees-held-bagram-air-base)

## Racism and Fascism

**Deporte e integraci n**, *Mugak/SOS Arrazakeria, Centro de Estudios y Documentaci n sobre racismo y xenofobia*, no. 48, September 2009, pp. 75. This issue of *Mugak* magazine includes a selection of articles about sports and integration, analysis of the media's role and use of language to portray racial diversity in sport and guidelines for neutral reporting, sports' role in promoting social integration and campaigns to oppose racism within and around sports events. Other issues covered include the Basque ombudsman's (Ararteko) ruling on a complaint filed by *SOS Racismo* concerning the minors' centre in Oilur (Deba), critical observations on the new immigration law, the criminalisation of street sellers and racism, including a complaint by the Uni n Romani gypsy association that details the various steps that turned an article about a conflict within the gypsy community in Seville into a racist and prejudiced piece, and the UN Human Rights Committee's ruling in the case of Rosalind Williams that deemed that her being stopped and identified by the police in Valladolid train station in 1992 on the basis

of her appearance [colour] amounted to discrimination. Available from: *Mugak, Peña i Goñi, 13-1° - 20002 San Sebastian/Donosti.*

**People Together and Businessman Bankrolls ‘street army’**, Nick Lowles. *Searchlight* No 412 (October) 2009, pp. 4-7. The first article examines the threat from the English Defence League (EDL), and its Welsh counterpart, considering a number of their provocative outings in Luton, Harrow, Birmingham, Manchester, Leeds and Swansea in which shops and citizens were attacked. The second article looks at key figures in the EDL including businessman, Alan Lake, and fourteen other leaders including football hooligans and BNP activists.

**Foreign nationals, enemy penology and the criminal justice system**, Liz Fekete and Frances Webber. *European Race Bulletin* No. 69 (Autumn) 2009, pp. 32. This issue of the Bulletin contains an extended essay looking at sensationalist media headlines about foreign “criminals” that are used to justify government deportation policies. Behind the headlines, Fekete and Webber find that those targeted for deportation: “are less likely to be the serious crooks and dangerous sexual predators of modern folklore and more likely to be poor migrants and asylum seekers arrested for immigration crimes such as travelling on false documents, working illegally or other administrative offences relating to immigration laws.” This bulletin also contains a round-up of extreme-Right and anti-immigrant movements in general, provincial and municipal election campaigns from August to mid-October 2009. Email [liz@irr.org.uk](mailto:liz@irr.org.uk) for more information.

**BNP Humiliation in court retreat**, David Williams. *Searchlight* No. 413 (November) 2009, p. 15. Short article on the BNP’s capitulation, in the face of a court case brought against it by the Equalities and Human Rights Commission that obliges it to alter its constitution so that it does not discriminate directly or indirectly on the grounds race, ethnic or religious status.

**First they came for the Gypsies...**, Robbie McVeigh. *Runnymede Quarterly Bulletin* September 2009, pp. 10-12. This article reports on the “anti-Roma pogroms in Belfast” following a week of sustained racist violence during which Roma were removed from their houses in south Belfast, first to a community centre and then removed to Romania. McVeigh observes that for all of the expressions of surprise there has been a rising tide of racist violence over the last ten years with systematic attacks on migrant worker communities across the north, particularly in loyalist working class areas.

**Battlefield Barking & Dagenham**, Nick Lowles. *Searchlight* No. 414 (December) 2009, pp. 6-9. In November, Nick Griffin, leader of the BNP and its European MEP for the North West of England, announced his intention to stand in Barking at next year’s general election. The BNP London Assembly member, Richard Barnbrook, will spearhead the party’s attempt to win control of Barking and Dagenham council. The Hope not Hate campaign is looking for volunteers to oppose Griffin: Hope not Hate, PO Box 1576, Ilford IG5 0NG.

## Security and intelligence

**Cruel Britannia: British Complicity in the Torture and Ill-treatment of Terror Suspects in Pakistan**. *Human Rights Watch* 2009, (ISBN 1-56432-571-7) pp. 46. While the British government continues to fly in the face of multiple lines of evidence in its denials of collaboration with the USA in the torture and ill-treatment of terrorist suspects, this Human Rights Watch report found that “UK complicity is clear.” This report provides accounts from five UK citizens of Pakistani origin - Salahuddin Amin, Zeeshan Siddiqui, Rangzieb Ahmed, Rashid Rauf and a fifth individual - who were tortured in Pakistan by Pakistani security agencies between 2004 and 2007. The government’s “legally, morally and politically invidious position” has not prevented it from doing everything in its power to prevent evidence of its complicity in torture emerging (see for instance the case of Binyam Mohamed) and this report adds fuel to the campaign for an independent inquiry into Britain’s involvement in torture and the government’s cover-up. See: <http://www.hrw.org/en/reports/2009/11/24/cruel-britannia-0>

**The truth about two men rendered by the UK to Bagram**. *Reprieve* 7.12.09, pp. 9. This Reprieve investigation into Britain’s complicity in the USA’s illegal rendition programme reveals the identity of one man, Amantullah Ali, and some details of another, Salahuddin, who were

handed over by the British to US forces to be rendered to Bagram Airbase. The British government has refused to identify the men and “has apparently taken no step over the last five years to ensure that they receive legal assistance”, with Defence Secretary John Hutton telling Parliament that the Shia men were members of the Sunni *Lashkar e Tayyiba*. The transfer of the two men also violated a Memorandum of Understanding between the UK and USA, by requesting that they are transferred back to this country and away from the illegal US torture centre at Bagram Airforce Base. Available at: [http://reprieve.org.uk/2009\\_12\\_07\\_iraq\\_renditions](http://reprieve.org.uk/2009_12_07_iraq_renditions)

**Tackling terrorism**, Lord West. *Police Product Review* October / November 2009, p. 37. West, the under-secretary for security and counter-terrorism, opens with: “International terrorism remains the most significant risk to security of our country” and keeping up with the changing technological landscape. To this end we have yet another initiative, this time the launch of a three year science and technology counter-terrorism strategy. West thinks that calling on experts to come forward with “state-of-the-art” ideas will “help us reduce the threat from terrorism”, but a more accurate agenda is revealed when he writes: “Science and technology are important drivers of the UK economy and making the UK a world leader in counter-terrorist technology will help promote the development in other spheres.”

## Europe

**EU: Climate Change Conference in Copenhagen: Schengen Border controls** (EU doc no: 6927/10, pdf). Concerns temporary reintroduction of border checks by Denmark at internal Schengen borders from 1 to 18 December 2009 and shows that at the borders with Germany and Sweden: 343 police officers took part and the “Results” were: - Number of persons checked: 7,450 - Number of consultations of national and SIS databases: 807 - Number of refusals of entry: 22 “the measure achieved the desired objective”. These figures do not include the many stopped and arrested at the Climate Conference itself: <http://www.statewatch.org/news/2010/mar/denmark-eu-border-controls-6927-10.pdf>

**EU: Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union** (OJ, 400 pages, link) and Charter of Fundamental Rights of the EU: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML>

**Proposal for a Regulation amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)**: <http://www.statewatch.org/news/2010/mar/eu-council-frontex-powers-amendment-7497-10.pdf>

**FRONTEX: Council Presidency regarding above document: Proposal for a Regulation amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)**: <http://www.statewatch.org/news/2010/mar/eu-council-frontex-powers-amendment-pres-8121-10.pdf>

**THE INTERNET OF THINGS: European Commission proposal: Internet of Things — An action plan for Europe** (COM 278/2009, pdf), European Parliament: Draft report from Industry, Research and Energy Committee: <http://www.statewatch.org/news/2009/jun/eu-com-278-internet-of-things.pdf>

**European Commission: the Commission has proposed a new version of the Regulation establishing the IT agency for JHA matters, merging the two prior proposals: Amended Proposal for on establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice**: <http://www.statewatch.org/news/2010/mar/eu-com-large-scale-it-com-93-10.pdf>

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

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## Statewatch website

<http://www.statewatch.org>

## Contributors

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