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“Network with errors”: Europe’s emerging web of DNA databases

by Eric Topfer

The networking of European national police databases is progressing. However, the implementation of the “principle of availability” is full of pitfalls, as the practice of DNA data exchange illustrates.

EU Member States have until 26 August 2011 to implement the so-called Prüm Decisions [1] adopted by the Council of the European Union (EU) three years ago. [2] National databases storing DNA profiles, fingerprints and vehicle registration data will be made available for automated cross-border searches by the police and criminal justice agencies of each Member State. The ultimate goal is to overcome lengthy mutual legal assistance bureaucratic procedures by establishing a single national contact point as an electronic interface for automated information exchange. Traditional channels of legal assistance would only be activated when search data matches a stored entry. Such a “hit” would lead to a request for further information. [3]

The rocky path from Prüm

Becoming a member of the Prüm network is a complex political and technical process. Regulatory frameworks have to be adjusted, national contact points need to be established, central searchable databases have to exist and must be connected to the secure European administration intranet S-TESTA, least common denominator data protection requirements have to be fulfilled, search capacities defined, technical specifications implemented, questionnaires answered, pilot runs successfully completed and a final evaluation visit has to be hosted before the Council of Justice and Home Affairs Ministers (JHA) must decide unanimously that a Member State can start operational data exchange.

Given this elaborate procedure it comes as no surprise that it is already evident that the August deadline for complete implementation cannot be met. In October 2010, a survey by the Belgian EU Presidency found that only ten Member States were exchanging DNA profiles, seven were exchanging vehicle register data and only five had made their dactyloscopic databases available for cross-border searches. Despite this, the Belgian study optimistically claimed that “most countries are convinced that they will make the deadline for all three data categories“. However, it had to admit that at least six countries would be incapable of connecting both their DNA databases and

their fingerprint databases, and that another five countries would miss the deadline for the connection of their vehicle registers. [4] Responding to these obvious problems in 20 November 2010, the JHA Council insisted that all “Member States concerned should intensify their efforts and that those Member States which are already operational should increase their efforts to provide technical assistance.” [5]

Holes in the web of DNA databases

In October 2010, the members of the Prüm network in the field of DNA data exchange were: Austria, Bulgaria, Finland, France, Germany, Luxemburg, the Netherlands, Romania, Slovenia, Spain and – then still in a test phase – Belgium. Slovakia joined the information network in November. [6] But even among these 12 states not all members have access to each other’s DNA database. Only Austria was connected to all of the databases and was thus the spider in the web. Germany, for instance, had a direct wire for DNA profile exchange to only five other countries, and a German-French “axis”, usually seen as the motor of European integration, did not exist in this context. [7] In August 2009, Joachim Hermann, the Bavarian Interior Minister, commented angrily that the French neighbour is hindering crime control in Europe “unnecessarily.” [8]

The causes of these problems are manifold: difficulties in mobilising causes of political majorities for adjusting national legal frameworks with the Prüm requirements, power struggles between agencies over the denomination of the national contact point, troubles caused by intra-organisational restructuring entailed by international cooperation, and scarcity in personal and financial resources. The major challenge is, however, posed by technical problems that were reported by at least ten countries: components of hardware or software were found to be incompatible, or the connection to the S-TESTA network did not work without friction. Sometimes existing systems had to be replaced completely. It is estimated that connecting to the Prüm network costs an average sum of two million Euros. [9] For countries that had no national DNA database in operation before

ITALY: Public order and demonstrations see page 7

Lubricating the flow of information in the EU see page 18

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2008 - such as Italy, Greece, Malta or Ireland [10] - the costs are likely to be much higher.

Some financial support is offered by the European Commission via the "Prevention and Fight against Crime" (ISEC) funding stream. A "helpdesk" was established at Europol and German Federal Criminal Police Office (BKA) experts travel around Europe to advise and support swamped partners as a "mobile competence team". The coming months will reveal the success of these measures. From March 2011 onwards a wave of final evaluations is expected which will likely reach a peak before the deadline in July and August. It is unlikely that the few experts in charge of these evaluations will be capable of shouldering the foreseeable workload. Moreover, it is not certain that their evaluations, a precondition for the Council of the EU to give a green light for the launch of automated data exchange, will be positive in each case.

Thus, the Belgian report warns:

The Prüm procedure is in itself a time-consuming process; should this procedure remain as it is, it appears highly unlikely that all M[ember] S[tates] will be up and running by August 26th 2011. Even if all other problems – be they technical, organisational or financial – are solved, this [the evaluation process] might still be one of the biggest problems in the implementation of 'Prüm Decisions'. [11]

It seems that – after the significant problems in setting up the Europol Computer Systems and in the face of the ongoing crisis around the implementation of the second generation of the Schengen Information System – another ambitious plan for European police cooperation will be thwarted by the complexities of large international IT projects.

Six loci, one hit? The rising risk of false positives

However, it is probably only a matter of time before the teething troubles of the Prüm network are resolved. A more serious problem for future operations will be Chapter 1 of the annex to the Council Decision 2008/616/JHA, which regulates the technical details of the implementation of the Prüm Decision. It defines the rules for the exchange of DNA data as follows: Transferred and compared are pairs of numbers which represent so-called alleles, variants of genes at a specified location of a chromosome. Transferred DNA profiles must consist of number pairs representing alleles for at least six of the seven gene locations (so-called "loci") which are defined as the "European Standard Set of Loci" (ESS). In addition, the profiles may include further loci – in total 24 loci are allowed – or empty fields. Although it is recommended that "all available alleles shall be stored in the indexed DNA profile database and be used for searching and comparison" in order "to raise the accuracy of matches", a match of six loci is defined as "hit". [12]

But the rising number of Prüm network members increases the risk of so-called "adventitious matches" (i.e. false positives). Shortly before the launch of the initial DNA database comparison between Germany and the Netherlands in summer 2008, a leading Dutch forensic expert estimated on the basis of a bio-statistical calculation that the comparison would produce 190 false matches. [13] The comparison resulted in around 1,600 "hits". [14] However, no figures have been presented concerning the number of false hits, and the German government claims that this statistical data is not collected. [15] Anticipating the forthcoming problems, the Ad hoc Group on Information Exchange, a preparatory body of the EU JHA Council which was transformed into the Working Party for Information Exchange and Data Protection, recommended in 2009:

that the national DNA experts of the requesting Member State carry out an additional verification on such possible matches before sending the result to the police and judicial authorities.

A balance should be found between providing law enforcement authorities with investigative indications, which was the aim of the Prüm data exchange, and avoiding unnecessary work and the follow-up of false matches. [16]

This risk has been known for years. In 2005 the European DNA Profiling Group's (EDNAP) forensic experts [17] and the European Network of Forensic Science Institutes (ENSFI) Working Group [18] discussed options to expand the "European Standard Set" by additional loci. After a proposal to expand the ESS by five loci was drafted at an ENSFI meeting in 2008, [19] the JHA Council finally adopted a corresponding resolution in November 2009. However, a resolution is non-binding "soft law" which can only encourage "Member States to implement as soon as practically possible the new ESS and no later than 24 months after the date of adoption of this Resolution". [20]

Through this Resolution the Council avoided an amendment to the Prüm Decisions which was probably seen as a political mission impossible because the Lisbon Treaty introduced the European Parliament as another potential legislative veto player in the field of justice and home affairs. Since the adoption of the resolution its scope has been contested. The Dutch delegation at the Working Party on Information Exchange and Data Protection noted in June 2010 that the Prüm Decisions explicitly call for the implementation of a new European Security Strategy. [21] The relevant text, however, reads: "Each Member State should implement as soon as practically possible any new ESS of loci adopted by the EU." [22] Member States are supposed but not obliged to implement the ESS, and only when practically feasible. This is the catch, as the adjustment of national infrastructure will entail significant technical and financial expense for some Member States.

Therefore it is no surprise that the previously mentioned Belgian report states: "One M[ember] S[tate] is reluctant to share all of its profiles, since this may result in an excessive number of profiles being sent abroad due to false positives, creating a data protection concern." [23] It is very likely that the reluctant state is the United Kingdom which stores six million entries in its National DNA Database. [24] In the wake of the economic crisis and suffering severe budget cuts it seems that the UK prefers to keep its impressive stock of DNA data separate from the continental European Prüm network instead of adapting its bio-surveillance-industrial complex for the inclusion of two more loci. Thus, at least for a transitional period the construction of the European surveillance network has reached its technical and organisational limits. Perhaps it is time to take a pause in the hunt for borderless biometric control.

Footnotes

1. *Namely, the two Council Decisions 2008/615/JHA (EU Official Journal 2008/L 210/1) and 2008/616/JHA (EU OJ 2008/L 210/12, 6.8.08.)*

2. *In addition to the 27 EU Member States also Norway and Iceland will join the Prüm information exchange network as soon as possible. See: Council Decision 2009/1023/JHA of 21 September 2009 published in the EU OJ 2009/L 353/1, 30.12.09.*

3. *For more information on the Prüm regime see: E. Töpfer: "Searching needles in an ever expanding haystack" In: Statewatch, Vol. 18, No. 3, pp. 14-16.*

4. *Council document 15567/10, 28.10.10*

5. *Council doc. 15848/10, 8.11.10*

6. *Council doc. 14606/10, 29.10.10 adopted at the JHA Council meeting on 8.11.10.*

7. *Council doc. 5904/5/10, 17.9.10*

8. *FOCUS, Issue 35/09, 24.8.09*

9. *Council doc. 14918/10, 19.10.10*

10. *B. Prainsack & V. Toom: The Prüm Regime. Situated Dis/Empowerment in Transnational DNA Profile Exchange. In: British Journal of Criminology, 50 (2010), pp. 1117-1135 (1121)*

11. Council doc. 14918/10, 19.10.10
12. EU Official Journal 2008/L 210/20-21, 6.8.08
13. Kees van der Beek: Exchange of DNA-profiles by the Treaty of Prüm. <http://www.dna-conference.eu/ppt/Van%20der%20Beek.pdf>
14. German Federal Ministry of Interior. BMI: Deutschland und die Niederlande schließen Testphase beim Abgleich von DNA-Analysedateien erfolgreich ab. Press release 1.7.08; German and Dutch DNA data, press release 1.7.08.
15. German Parliament doc. BT-Drucksache 16/14150, 22.10.09
16. Council doc. 8505/09, 15.4.09
17. EDNAP was launched in 1988 by initiative of the London Metropolitan Police Forensic Science Laboratory as an informal network of forensic genetic scientists aiming to harmonise DNA analysis for the purpose of criminal investigation. Since 1991 EDNAP is a formal working group of the International Society for Forensic Genetics, based in the German city of Mainz, which is representing the interests of 1,100 members from 60 countries. Though EDNAP is thus legally a private association it has – among others funded by the EU – a significant influence on the development of forensic DNA analysis. See: <http://www.isfg.org/EDNAP>.
18. ENFSI was founded in 1995 as network of public forensic institutes. The organisation has currently 58 institutional members in 33 countries. Meanwhile member organisations do not have necessarily to be public bodies. Instead it is sufficient if they have a “credible status” in their homeland and if the quality of their work is or will be certified according to

ISO standards. Therefore also private companies can be ENSFI members as illustrated by the privatised British Forensic Science Service. Nonetheless the European Commission recognised ENSFI as “monopolist” and “sole voice of the forensic community in Europe”. The importance of ENSFI is underlined by formal agreements with Europol and Eurojust and close contacts to Interpol and other international organisations. See: <http://www.enfsi.eu>.

19. Peter Gill et al. The Evolution of DNA Databases – Recommendations for new European STR loci. In: *Forensic Science*, 156 (2006), pp. 242-244
20. EU Official Journal 2009/C 296/01, 5.12.09
21. Council doc. 11084/10, 16.6.10
22. Section 1.1 of chapter 1 of the annex to Council Decision 2008/616/JI (EU OJ 2008/L 210/20)
23. Council doc. 14918/10, 19.10.10
24. National DNA Database Statistics
<http://www.npia.police.uk/en/13338.htm>

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UK: Review of counter-terrorism powers fails to deliver definitive change

by Max Rowlands

The recommendations of the counter-terrorism and security powers review undermine the coalition government’s commitment to restore “hard-won British liberties.”

On 26 January 2011, Home Secretary Theresa May announced the findings of the government’s six-month review of “key counter-terrorism and security powers.” Control orders and section 44 stop and search powers have effectively been watered down and renamed. The maximum period of pre-charge detention for terrorism suspects has been lowered to 14 days, but new legislation will be introduced to ensure that it can be restored to 28 days under “exceptional-circumstances.” The use of the *Regulation of Investigatory Powers Act 2000* (RIPA) by local authorities has been curbed, but the astronomical scale on which police currently access retained communications data under the Act has not been addressed at all. *The Protection of Freedoms Bill* was put before the House of Commons on 11 February and will provide the legislative basis for some of the review’s recommendations.[1]

Since its inception, the coalition has frequently spoken in grand terms about the need to roll back state intrusion and restore civil liberties. Recently, on 7 January 2011, Nick Clegg condemned the Labour Party for having “presided over the most aggressive period of state interference in this country in a generation” and pledged to restore “British liberties with the same systematic ruthlessness with which Labour took them away.” [2] The counter-terrorism review is the first real test and has been keenly anticipated as a means of gauging its worth.

The verdict: the review has diluted some draconian Labour policies by lessening the severity of restrictions imposed on terrorism suspects but fundamentally the infrastructure remains the same. This is far from bold reform. The review is distinctly modest in scope: it amends and rebrands, rather than repeals. There has not been a sea-change in approach; instead the coalition government has displayed unerring pragmatism in balancing the demands of its constituent political parties and the security services – allowing all to claim a victory of sorts.

Control Orders

Theresa May told parliament that control orders would be “repealed” and replaced with Terrorism Prevention and Investigation Measures (TPIMs). [3] The new system will be less restrictive and intrusive, and is complemented by the government’s commitment to furnish the police and security services with “significantly increased resources for surveillance and other investigative tools” with which to monitor terrorism suspects. [4] TPIMs have been left out of the *Protection of Freedoms Bill*: Theresa May indicated that they will be introduced by separate legislation in March 2011. In the meantime, the government has sought parliamentary approval for the renewal of control orders until December 2011.

The key features of TPIMs, as set out in the review, are:

- A TPIM can be imposed if the Home Secretary “has reasonable grounds to believe that the individual is or has been involved in terrorism-related activity.” This is a higher threshold than the current test for control orders of “reasonable suspicion.”
- Prior permission must be sought from the High Court before a TPIM can be imposed, except in urgent cases. Once introduced, the High Court will then conduct a mandatory review of every TPIM with the power to quash or revoke the measure.
- A TPIM can be issued for a maximum period of two years and will only be renewed “if there is new evidence that they have re-engaged in terrorism-related activities.”
- Current 16 hour curfews will be replaced by a shorter “overnight residence requirement” - typically lasting between eight and ten hours - that will be enforced by electronic tagging. The government has said that TPIMs will be more flexible and better accommodate suspects’ work commitments.
- TPIMs will permit greater freedom of communication and

association than control orders. Suspects will be granted limited use of the internet provided they disclose all of their passwords.

- Exclusion from specific locations and the prevention of overseas travel will be “tightly defined.”

- Relocation orders, which forced control orders recipients to leave the community in which they live, will be scrapped. Lord MacDonald, who provided independent oversight of the review, described relocation orders in his report as “a form of internal exile, which is utterly inimical to traditional British norms.” [5]

- Breach of the conditions, without reasonable excuse, will be a criminal offence punishable by up to five years imprisonment (the same as for control orders).

- The government will have the power to introduce additional restrictive measures on suspects under “exceptional circumstances.” This would include “curfews and further restrictions on communications, association and movement.” Pauline Neville Jones, Minister of State for Security and Counter Terrorism, told the Joint Committee on Human Rights that legislation establishing these emergency powers will not be subject to parliamentary debate. [6]

- Unlike control orders, the system of TPIMs will not need to be reviewed and renewed each year by parliament.

Speaking to BBC News, Nick Clegg extolled the virtues of the new system:

It has changed in fundamental design. Firstly they cannot be kept in place, these measures, permanently, they are time limited. Secondly they are subject to complete oversight by a judge. Thirdly, house arrests, either by very, very draconian curfews or by simply relocating people to other parts of the country, go.

[Individuals] will be able to work, they will be able to study, they will be able to use mobile phones, they will be able to use the internet in a way that they weren't under the old system, whilst at all times ensuring that, of course, they can also not do anything that could do harm to the British people ...

I think people in the party will be very supportive of this package...We have always said in opposition that we need to rebalance this very important relationship between liberty and security, that is what we've done we have to show the British people we'll keep them safe. [7]

In reality the new system is seen as little more than a watered-down version of control orders - critics have been quick to label it “control orders lite.” Further, the Liberal Democrat’s 2010 general election manifesto did far more than call for a rebalancing of the relationship “between liberty and security.” It pledged specifically to:

Scrap control orders, which can use secret evidence to place people under house arrest.

And to:

Make it easier to prosecute and convict terrorists by allowing intercept evidence in court and by making greater use of postcharge questioning.[8]

Neither commitment has been enacted. Control orders have been abolished in name alone: amended, not replaced. Crucially, the TPIM will retain its predecessor’s most objectionable characteristic of operating outside the criminal justice system and bypassing judicial process. Under the new system individuals will continue to be punished without charge or trial on the basis of secret evidence heard in closed courts that they are not permitted to hear or contest. TPIMs will infringe suspects’ civil liberties less severely than control orders currently do, but the new system will continue to undermine the presumption of innocence and remains an inadequate substitute to a fair trial.

This process stems from the fact that Britain is the only country in the common law world to ban the use of intercept evidence in court, making it incredibly difficult to prosecute individuals suspected of terrorism offences. Theresa May told Parliament that she intends to publish a written statement regarding the steps that are being taken towards allowing the use of intercept evidence in court. However, the UK’s security services are intransigent in their belief that the practice would pose an unacceptable risk to national security by revealing some of their operational practices. Given the level of deference Theresa May has been accused of showing the security services over control orders and the difficulty previous governments have had in amending the practice, there is little cause for optimism. [9] Indeed, although Theresa May claims that the government is intent on finding a way to prosecute terrorism suspects, the fact that TPIMs will not be reviewed each year - as control orders were - indicates that these powers are no longer seen as exceptional but are here to stay.

The government’s attempt to extend the use of control orders until December 2011 has also been criticised. The Joint Committee on Human Rights argues that the continued imposition of sanctions - such as relocation orders and lengthy curfews - can no longer be justified, and that the government should review urgently all existing control orders to ensure that they are compatible with the principal findings of its review:

Otherwise, we are concerned that control orders will continue for another nine months to be used, unnecessarily, to “park” or “warehouse” individuals beyond the reach of the criminal justice system, and in a way which positively obstructs any realistic possibility of prosecution...[10]

Section 44 stop and search powers

Like control orders section 44 stop and search powers are to be redesigned and reintroduced with a new name and a more tightly defined legal basis.

Section 44 of the *Terrorism Act 2000* allowed police to search individuals indiscriminately without reasonable suspicion in pre-defined ‘authorisation zones.’ These zones were supposed to be limited to specific locations deemed sensitive to national security (such as an airport or a major tourist attraction) for specific periods of time. Instead police created ‘authorisation zones’ that covered vast geographical areas and renewed them on a rolling monthly basis. For example, the Metropolitan police ‘authorisation zone’ covered the whole of Greater London. This allowed police to use section 44 outside its remit of combating terrorism on a vast scale. On 4 July 2010, a Human Rights Watch report showed that none of the approximately 450,000 people subjected to section 44 stop and searches between April 2007 and April 2009 had been successfully prosecuted for a terrorism related offence. [11]

In January 2010, the European Court of Human Rights (ECtHR) found section 44 to breach Article 8 of the European Convention on Human Rights which provides the right to respect for private life. [12] The judgment also objected to the whole process by which section 44 powers were authorised: parliament and the courts were not providing sufficient checks and balances against misuse and police officers were afforded too much discretion when deciding whether to stop and search someone. The Labour government appealed against the ruling, but on 30 June 2010 the Court made its decision final.

On 8 July 2010, Theresa May responded by suspending the use of section 44 against members of the public (it could still be used against vehicles). Police were forced to rely on section 43 of the *Terrorism Act 2000* under which they can search individuals anywhere in the country but only if they can demonstrate reasonable suspicion. Perhaps inevitably, within six months the police were calling for section 44 powers to be made

available to them again. Senior officers are reported to have told the government that they believe the power to search individuals without reasonable suspicion to be essential to the effective policing of large public events, like the Olympics, and political summits, such as the G20. [13]

The government's review of counter-terrorism and security powers supports this stance. It concludes "...that the absence of any form of 'no suspicion' terrorism stop and search power would lead to an increase in the levels of risk." However, so as not to "fall foul of the ECtHR judgment" the creation of 'authorisation zones' will now require reasonable suspicion that an act of terrorism will take place:

"The review recommends significant changes to bring the power into compliance with ECHR [European Convention on Human Rights] rights:

i. The test for authorisation should be where a senior police officer reasonably suspects that an act of terrorism will take place. An authorisation should only be made where the powers are considered "necessary", (rather than the current requirement of merely "expedient") to prevent such an act.

ii. The maximum period of an authorisation should be reduced from the current maximum of 28 days to 14 days.

iii. It should be made clear in primary legislation that the authorisation may only last for as long as is necessary and may only cover a geographical area as wide as necessary to address the threat. The duration of the authorisation and the extent of the police force area that is covered by it must be justified by the need to prevent a suspected act of terrorism.

iv. The purposes for which the search may be conducted should be narrowed to looking for evidence that the individual is a terrorist or that the vehicle is being used for purposes of terrorism rather than for articles which may be used in connection with terrorism.

v. The Secretary of State should be able to narrow the geographical extent of the authorisation (as well being able to shorten the period or to cancel or refuse to confirm it as at present).

vi. Robust statutory guidance on the use of the powers should be developed to circumscribe further the discretion available to the police and to provide further safeguards on the use of the power." [14]

The *Protection of Freedoms Bill* implements these recommendations. Clause 48 of the Bill provides for the repeal of section 44, while clause 60 creates replacement stop and search powers under section 43B of the *Terrorism Act 2000*, as outlined in the security review.

The government is attempting to tread a fine line between retaining section 44 powers and abiding by the ECtHR's judgement. Certainly this new scheme is not what critics of section 44 had hoped for in July 2010 when the Home Secretary announced that it would be scrapped. Though it can legitimately be argued that under exceptional circumstances the use of stop and search without reasonable suspicion is justified and it is encouraging that the legal basis of section 43B will be more tightly defined, the new system is not fundamentally different from that which it will replace and could be similarly susceptible to misuse.

It is worth emphasising that it was never intended for section 44 to be used as broadly as it has been. It was seized upon by the police as a convenient 'catch-all' power that quickly became entrenched within common police practice. There is legitimate reason for concern that new powers of stop and search may suffer a similar fate. Encouragingly, section 61 of the *Protection*

of Freedoms Bill establishes a code of practice for their use, but there is no guarantee that it will be effective. Between 2008 and 2010, the National Policing Improvement Agency, the Home Office and even the Prime Minister's Office all published guidance for the police in an attempt to rectify the routine misuse of section 44 with negligible impact. [15]

Police chiefs will still be able to request the creation of authorisation zones for 14 days - down from 28 days - covering "a geographical area as wide as necessary." Whether they will follow the new rules and seek to do so only if they have "reasonable suspicion" that an act of terrorism will be committed - and perhaps more importantly whether the Home Secretary will refuse to grant the request if they do not - remains to be seen. JUSTICE argues that, although an improvement, section 43B's legal safeguards "are not in themselves enough to ensure its compatibility with article 8 ECHR" and called for 'authorisations' made under the new system to require the approval of a crown court judge. [16]

Pre-trial detention of terrorism suspects

The *Terrorism Act 2000* introduced a seven day maximum pre-charge detention period for terrorist suspects. This was subsequently raised to 14 days by section 306 of the *Criminal Justice Act 2003*, and raised again to 28 days by section 25 of the *Terrorism Act 2006*. Parliament is required to renew this 28 day limit periodically through an affirmative order that can last up to 12 months. The coalition government successfully proposed a six month extension on 25 July 2010 pending the outcome of the counter-terrorism and security powers review. On 24 January 2011, this order was allowed to lapse and the maximum period of pre-charge detention reverted automatically to 14 days. On 26 January 2011, Theresa May confirmed that this reduction would be made permanent through primary legislation. Accordingly, clause 57 of the *Protection of Freedoms Bill* will amend Schedule 8 of the *Terrorism Act 2000*, and scrap section 25 of the *Terrorism Act 2006*.

This is a welcome move, but as with the abolition of control orders and section 44 stop and search powers, the devil is in the detail. The UK's 14 day limit remains the longest anywhere in the western world, and "emergency legislation" will allow the government to revert to the 28 day limit under "exceptional circumstances." This power will be established by the *Detention of Terrorist Suspects (Temporary extension) Bill*, [17] which was published on 11 February, the same day as the *Protection of Freedoms Bill*. As with control orders and section 44, the coalition government appears unwilling or unable to abandon Labour's counter-terrorism legislation completely.

The Regulation of Investigatory Powers Act 2000 (RIPA)

The government's review of security and counter-terrorism powers also covered "the use of the *Regulation of Investigatory Powers Act 2000* (RIPA) by local authorities, and access to communications data more generally." RIPA provides a regulatory framework for the use of covert investigatory techniques. These powers are currently afforded to nearly 800 public bodies, up from nine public bodies in 2000. RIPA gives local authorities the power to use three types of covert technique:

a) Some forms of communications data (CD) such as telephone billing information but not the most intrusive forms of CD, which can be used to identify the location of communications devices;

b) Directed surveillance (covert surveillance on individuals in public places); and

c) Covert human intelligence sources that is, someone who establishes a relationship for covert purposes (CHISs).[18]

In recent years, local authorities have used these powers to monitor overtly non-criminal behaviour such as littering, breaches of planning regulations, dog fouling, and violations of the smoking ban. In May 2010, Big Brother Watch revealed that councils had conducted 8,575 RIPA operations in the previous two years at an average of 11 a day. [19] The reason for this inflated figure is that these powers are currently “self-authorising” which means that a council official can access communications data or authorise a surveillance operation without needing to obtain the approval of an outside authority such as a magistrate or the police. In its *Programme for Government*, the coalition pledged to put this right:

We will ban the use of powers in the Regulation of Investigatory Powers Act (RIPA) by councils, unless they are signed off by a magistrate and required for stopping serious crime.[21]

Accordingly, the review of counter-terrorism and security powers recommended:

i. Magistrate’s approval should be required for local authority use of all three techniques and should be in addition to the authorisation needed now from a local authority senior manager (at least Director level) and the more general oversight by elected councillors.

ii. Use of RIPA to authorise directed surveillance only should be confined to cases where the offence under investigation carries a maximum custodial sentence of 6 months or more. But because of the importance of directed surveillance in corroborating investigations into underage sales of alcohol and tobacco, the Government should not seek to apply the threshold in these cases. The threshold should not be applied to the two other techniques (CD and CHIS) because of their more limited use and importance in specific types of investigation which do not attract a custodial sentence.” [21]

Clauses 37 and 38 of the *Protection of Freedoms Bill* will put these changes into effect.

Greater regulation of the use of RIPA by local authorities was needed, but overall the Bill’s scope is very limited. Local authorities are responsible for a tiny percentage of total RIPA use and yet are the only public body to have their powers curbed by the Bill. Other public bodies, such as the police, will be unaffected despite utilising RIPA on a far greater scale and with similarly inadequate safeguards against misuse. *Hawktalk blog* analysed statistics published in the 2010 Annual Reports of the Surveillance Commissioner and the Interception of Communications Commissioner, and concluded that 99.95% of RIPA activity will not be influenced by the Bill’s provisions: “quite simply, there is no significant change to privacy protection.” [22]

Further, the review’s commitment to evaluate “access to communications data more generally” has not been met adequately. Access to communications data by the police will continue to require only an authorisation from a senior officer without judicial scrutiny. Between 2005 and 2009 this allowed police to use RIPA to view communications records a staggering 1.7 million times (1,164 times per day) in what inevitably included speculative ‘fishing’, data-mining and subject-based profiling exercises. [23] This figure will rise if the coalition follows through with its plan to revive Labour’s Interception Modernisation Programme because it would vastly increase the amount of data Communications Service Providers are obliged to retain. [24] Clearly, the police’s use of RIPA needs to be subject to greater external regulation.

Footnotes

1. *Protection of Freedoms Bill*:

<http://www.statewatch.org/news/2011/feb/uk-protection-of-freedom-bill.pdf>

2. *Liberal Democrats website*, 7.1.11:

http://www.libdems.org.uk/latest_news_detail.aspx?title=Nick_Clegg:_Restoring_British_liberties&pPK=7781a555-f93b-4818-b08f-f6382841dc89

3. *Home Office website*, 26.1.11:

<http://www.homeoffice.gov.uk/publications/parliamentary-business/oral-statements/ct-review/>

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Public order and demonstrations in Italy: heavy-handed policing, militarisation and prohibition

by Yasha Maccanico

Since the traumatic events of the G8 summit in Genoa in July 2001 the right to protest has increasingly been limited. Government restrictions have been wide-ranging and indiscriminate and affected a diverse range of groups including students, migrants, shepherds and manual labourers

Events in 2010 resulted in mobilisations around a number of issues ranging from garbage collection in the region of Campania, to the earthquake in Abruzzo, Sardinian shepherds, football fans protesting against the introduction of the *tessera del tifoso* (fans' card, TdT), to migrants criticising their treatment and administrative obstacles in the way of their regularisation, to students protesting against the education system reform involving substantial cuts and to industrial struggles by workers suffering the effects of the economic crisis and new conditions introduced in factories that undermine their rights. Since the traumatic events at the G8 summit in Genoa in July 2001 heavy-handed policing has gone hand-in-hand with initiatives aimed at limiting the right to protest. The imperative of "maintaining" public order has been invoked to stifle activism through measures like special restrictions imposed on football supporters. This article will seek to present an overview of a few of these cases in order to identify some significant trends.

Emergencies and militarised sites

A warning of limits on the right to protest was contained in the "security package" approved on 23 May 2008. It sought to re-establish the state's authority through an expansion of mayors' powers to "adopt contingent and urgent provisions for the purpose of preventing and eliminating serious dangers that threaten public well-being and urban safety". Other measures in the same period included the declaration of "emergencies", the deployment of soldiers for patrol and surveillance purposes, special measures to protect "sensitive sites" through the designation of certain areas as a responsibility of the military and civil protection agency, especially in cases involving natural catastrophes (earthquakes or flooding) or dangers for public health or key public interests (rubbish disposal or infrastructure development sites). Declaring emergencies and designating "sensitive" sites allows the application of certain rules and regulations to be suspended and additional restrictions to be imposed, thus expanding the scope for arbitrary interventions by public authorities and increasing punishment for unlawful actions connected to protests.

In Campania, where there is an ongoing rubbish disposal crisis (see below), an "emergency" was declared on 21 May 2008 (lasting until 31 December 2009) with the appointment of Guido Bertolaso, head of the civil protection department, as commissioner to deal with the emergency. The decree equated waste disposal sites to "areas of strategic national interest", turning them into areas protected by armed forces personnel, where involvement in disturbances or sabotage would lead to immediate arrest. It established that unlawful entry or obstructing access to such an area would entail arrest for between three months and a year (art. 682 of the penal code). The armed forces would take part in preparing the building sites and disposal sites, collecting and transporting rubbish, and the surveillance and protection of the sites. Article 7 *bis* allows

armed forces personnel to "proceed to the identification and immediate search, on the spot, of people or vehicles...also for the purpose of preventing or stopping behaviour that may endanger the well-being of people and security of the places" that are under surveillance. Whoever "impedes, obstructs or makes the waste management activities more difficult" (art. 9) is deemed to interrupt a public service and faces arrest for up to a year, five years in the case of leaders, organisers or promoters of such an action (art. 340 of the penal code). The offence of destroying or damaging materials, machines or facilities connected to the waste disposal operations (art. 10), would incur a prison sentence of between six months and three years (art. 635.2 of the penal code).

Considering that the waste disposal sites have been targeted by protests because of their detrimental effects on adjacent areas including pollution of protected areas and high cancer rates, the developments were significant. Prime Minister Silvio Berlusconi welcomed the measures by noting that "the actions by organised minorities will not be tolerated" and that Bertolaso could now manage the emergency "as if there had been an earthquake or a volcanic eruption".

Administrative limits to demonstrations

Interior Minister Roberto Maroni issued a "directive on demonstrations in urban centres" on 26 January 2009, inviting *prefetti* (government representatives in charge of security in a city) to exclude certain areas from the reach of demonstrations, envisage guarantees for possible damage that may occur, and set further specifications for the staging of demonstrations, in accordance with the mayor and after consulting the province committee for public order and security. The reason for the measure was the number of demonstrations and marches that were taking place (particularly in the centre of Rome), and the need for the constitutional right "to gather and demonstrate freely in public space" to be safeguarded while respecting other "constitutionally guaranteed rights and the norms that discipline the orderly functioning of civil coexistence". Such an approach would be enacted through the identification of "suitable routes", the exclusion of "sensitive areas" (for social, cultural or religious reasons), "key areas for mobility", hospitals ("specially protected" from noise pollution), or those that experience a considerable influx of people (even in normal circumstances) or in which critical targets are found. Making promoters or organisers of a demonstration responsible for any damage to the urban estate was also raised as a possibility. On 10 March 2009 the prefecture of Rome produced a "Protocol to discipline demonstrations in squares" that sets six authorised routes for demonstrations and lists the six squares in which sit-in protests will be allowed.

Blacklisting, bans and student protests

Following a student demonstration in Rome on 14 December

2010 in the vicinity of the chamber of deputies [the lower house of parliament] a number of proposals were made by government officials to stop such events from happening again. An exclusion zone to prevent demonstrators from approaching it was set up, during which violence broke out including clashes between police and demonstrators, vandalism and the burning of a Guardia di Finanza (customs and excise, GdF) van that was left unattended in the midst of the demonstration. Amid alarmed calls for the government to act to stop violence of the kind that unfolded in the 1970s and 1980s [the so-called “years of lead”] from returning and for exemplary punishment to be meted out to “violent” demonstrators, interior ministry under-secretary Alfredo Mantovano proposed extending measures adopted to deal with violence in football (see below) to protestors. The parliamentary president of Berlusconi’s *Popolo della Libertà* party, Maurizio Gasparri, suggested that “pre-emptive arrests” were the solution, recalling the arrest of radical academics and leaders of the left-wing movement suspected of connivance with the Red Brigades on 7 April 1979. He claimed that the city’s social centres, one of the government’s pet hates due to their involvement in social struggles, were behind the violence.

Mantovano’s reasoning was that “the decisions by the judicial authority on the clashes of last Tuesday lead to reflection about the system”. Acknowledging that the absence of any precautionary measures imposed by judges against 23 of the 24 people arrested during the demonstration were a result of three considerations - the risk that they may tamper with evidence, flee or repeat their offences - he claimed that there was a “deficit” in relation to the third concern. The “problem must be posed as to how to prevent those released from using violence again on the next demonstration”. A “working hypothesis to fulfil this objective gap is that of extending” a measure that is proving successful in relation to sports events “to public demonstrations, with all the necessary adjustments. It is the so-called *Daspo* [*Divieto di accesso alle manifestazioni sportive*, Ban on access to sports events]”. Mantovano argued that this would prove useful in terms of prevention when judicial proceedings prove to be a “mockery” [as he suggested was the case in this instance], in terms of repression once it has been ascertained that a *Daspo* has been breached, and in making it possible to know in advance who “must be kept away from the streets, in the interest of peaceful demonstrators”. A press statement by *Legal Team Italia* (formed on the occasion of the G8 in Genoa to provide legal assistance to protestors) highlights that the lack of restrictive measures adopted upon the demonstrators’ release indicates that there is “scant evidence of their guilt”. A statement by the *Rete della Conoscenza* (a student network involved in the protests) complained about the militarisation of the city centre and “veritable manhunts” in metro stations after the demonstration.

There have been reports of innovative measures to dissuade high school students from engaging in protests and school occupations, which have been wide-ranging during the student mobilisation. The Milan prosecutors’ office opened an investigation against high school students reported by headmasters for offences of “unlawful occupation” and “personal violence” in connection with school occupations to protest against the Gelmini reform of the education system, named after the education minister, Maria Stella Gelmini. One example was that of the Caravaggio school, whose occupants were evicted by riot police on 18 November 2010 after the headmistress reported that “a group of students broke in with their faces covered”, 13 of whom were identified. Lawyer Mirko Mazzali noted that proceedings for unlawful occupation against students had not been instructed in the last 20 years and that this “raises the level of repression”, expressing his conviction that “the judiciary will shelve everything”. On 4 March 2011, the *Unione degli Studenti* (a student union) reported that 170 students from the Garibaldi high school in Naples were given a “5” for behaviour [a measure that may entail not advancing to the

next grade] as a form of “collective repression” for participating in protests and as a result of the school’s occupation.

The transformation of stadia and football

Efforts by successive governments to counter violence at football grounds have led to measures of dubious constitutionality being imposed on football fans, with consequences on Italian football that include falling attendances and restrictions for those wishing to go to matches. What the Interior Ministry periodically presents as a government “success” in tackling hooliganism has entailed far-reaching restrictions, from bans on away fans attending matches deemed to be “at risk” to the banning of paraphernalia such as drums, flares or banners that have not been “authorised” in advance and punishment in the absence of a criminal offence certified by a judge in a trial.

The *Daspo* was introduced in 1989 by article 6 of law no. 401, which bans persons deemed to be “dangerous” because they “carried weapons” into the venue, “have been found guilty or were reported for active involvement in violent events on occasion or as a result of sports events, or who, in these same circumstances, have called for violence through shouting or in writing” from attending these sports events. Breaching such a ban that may now last for up to five years after the 2007 Amato decree (named after the centre-left government’s interior minister Giuliano Amato) amended the measure, may entail imprisonment for between three months and a year. It is an administrative measure, not a result of a criminal trial, and may be issued by a *questore* (the police chief in a given city) as a result of a person being identified and reported by the police. Additional measures such as an obligation to “sign on” [*obbligo di firma*] at a police station whenever there is a sports event, which could have serious consequences on a person’s private and professional life, may be ordered. If a *Daspo* is accompanied by a conviction in a criminal court, it must be imposed for a minimum of two years.

Lawyer Lorenzo Contucci, who has specialised in defending fans against whom *Daspos* have been issued, argues that the “heightening of conflict between fans and law enforcement agencies has also been determined by the excessive discretion that *questori* have been allowed and by insufficient guarantees for those affected”. He highlights the introduction of measures such as “*flagranza differita*”, whereby a person may be deemed to have been “caught in the act” of committing an offence for up to 48 hours after it has occurred on the basis of video evidence or police reports. Likewise, he notes that involvement in violence may be inferred from video recordings of a person’s presence in a location where clashes are taking place even if they are not shown to be involved in the violence itself. Contucci also cites cases of collective criminalisation, including one in which a bus of ASD Caserta fans were stopped at a motorway restaurant and supermarket in Sicily in 2006. During their stop goods were stolen, resulting in all the passengers on the bus being issued *Daspos* for three years and made to report to a police station every time their team played a match. Most of the group were not involved in stealing the goods. They were later issued with a number of mistaken notices of criminal offences for not complying with the accessory measures (entailing fines of around 10,000 euros) because although they had duly reported to the police during the team’s matches, they had failed to do so when the youth team was playing.

The problem caused by clashes and violence by a limited number of football hooligans has led to the stadium, areas adjacent to stadia on matchdays and trains or stations when fans are travelling becoming contexts in which impunity for police officers who engage in undue violence against fans regardless of their behaviour is almost guaranteed. Allegations of police violence often result in the plaintiffs being charged with “resistance”. In one case which received considerable media

coverage on 5 May 2010, Stefano Gugliotta, a 25-year-old on a moped in a neighbourhood near the stadium in Rome on the day of the Italian cup final was stopped by police officers and beaten, receiving truncheon blows, being pushed to the ground and kicked repeatedly, emerging with head wounds that required stitching, a broken tooth and bruises to several parts of his body. He was suspected of involvement in clashes between fans that had happened nearby, but it emerged that he was not a fan of either of the teams in the final and had not even gone to the stadium. Nonetheless, he was held in custody for five days and charged with resistance and causing injuries to an officer, until a video shot using a mobile phone by a local resident showed that he was made to stop and beaten before he was able to speak. The incident led to Roma player Daniele De Rossi, when he was asked his view about the *tessera del tifoso* (see below), suggesting that there was a need for a “*tessera del poliziotto*” (policeman’s card), drawing strong criticism from police trade unions.

The policing of football matches through the routine use of excessive violence and conflicts between riot police and organised fan groups (*ultras*) has been widely identified as a precursor of the violent approach used against demonstrators in Genoa in 2001. Important events in recent years have included two killings in 2007: police officer Filippo Raciti in Catania (Sicily) during fighting at the derby between Catania and Palermo in February 2007, and the shooting of a Lazio fan, Gabriele Sandri, in a motorway restaurant on 11 November 2007 by motorway police officer Luigi Spaccarotella. On the evening of the Sandri killing, there were widespread disturbances during which *carabinieri* (police force with a military status) barracks in Rome were attacked by fans of the capital’s two teams, Roma and Lazio.

Apart from such tragic events, the development of controls around football games is resulting in growing disenchantment: turnstiles, the obligation to submit an original ID document when buying a ticket, repeated controls when attending a match, bans on people buying tickets unless they live in the home team’s city or region, or on attendance by non-season ticket holders, or bans on away fans or the exclusive sale of tickets for a sector of the stadium to women and the elderly (as happened in a recent Roma-Lazio derby) by the CASMS (*Comitato di Analisi Sulle Manifestazioni Sportive*, Committee for the analysis of sports events, a police and security body). Such measures are changing the atmosphere at football matches and impose discrimination on the basis of people’s place of residence or other criteria for what is essentially a public event. In fact, a decrease in violence at football matches when away fans are often not allowed to attend may be portrayed as a success, but only after an admission of the inability to control public order at an event in which there are rival sets of fans present.

The latest step in this control of stadia is the *tessera del tifoso* (TdT), a “fan card” that has been made a requirement for the 2010-2011 season to buy a season ticket by several teams on instructions from Interior Minister Maroni. The card cannot be issued to people who have been convicted of certain criminal offences (such as resisting a public officer) or have received *Daspos*. It appears to seek to establish a distinction between “fans who can be trusted” as opposed to those who do not possess the TdT, who are increasingly banned from attending their teams’ away matches (at least in the away fans’ end) and are deemed to be a security threat. There have been strong mobilisations by organised groups of football fans to oppose the TdT.

ID cards used for social control and intimidation in the Alps

The long-standing opposition of mountain communities in Val di Susa (Piedmontese Alps) to plans to build the Turin-Lyon high

speed railway line (TAV) in their valley through demonstrations and resistance to stop the works, such as roadblocks when machinery is coming through, has periodically resulted in violence by police officers to enable the operations to proceed. A demonstration in Venaus in 2005 when there were police charges and protestors complained about the militarisation of the valley was one of the first times an authority, the mayor of Venaus, complained about the use of identity cards as a form of social control:

We also wish to express our solidarity to the populations of the Valley who live in the areas affected by the surveys and have had their freedom of movement limited for weeks due to continuous [identity] controls by the law enforcement agencies.

On 17 February 2010, there were police charges in Coldimosso, where protestors were obstructing survey operations and reportedly threw sticks and rocks. One protestor appeared to have suffered brain damage requiring surgery, while a woman had several injuries to her face and nose. Two police officers were also reportedly injured. On 12 September, a 46-year old woman, Marinella Alotto, was beaten by Coldimosso officers during a protest by 300 people, and ended up in a Turin hospital with a broken nose, facial wounds (including micro-fractures) and injuries all over her body. The NO TAV protest is one of the cases in which support from entire communities including local authorities for the defence of the territory makes it hard for the government to dismiss the protests as “radical”, leading violent incidents to be blamed on “infiltrators” from left-wing social movements.

Clashes during protests in Campania

There have been clashes between police and demonstrators during mobilisations around the issue of waste disposal in several towns (Giugliano, Terzigno, Taverna del Re, Chiaiano) in the province of Naples. Protestors’ complaints concern the pollution of the areas and aquifers in the vicinity of the dumps, where high cancer rates have been recorded, and the stench that they release. On 20 October in Terzigno, 40 armoured vehicles and over 200 officers wielding batons and holding shields were used to forcefully clear thousands of protestors by charging them and firing teargas canisters to allow waste disposal operations to proceed. Locals, including mayors from the PM’s own *Popolo delle Libertà* (PdL) party, were angered by the decision to open a second waste disposal site in a natural reserve. On 26 October, there was a strong statement from interior minister Maroni: “They are looking for someone to die in Terzigno. Lay down your weapons or a harder intervention will be needed”. The claim followed a night-time attack on police officers and was all the more alarming considering that charges using truncheons and CS gas had been used only a few days earlier. Campania’s governor Stefano Caldoro suggested that there was external interference in the demonstrations: “There are good people, and people who join in to sow chaos through violence”. This has proved a recurring theme in government criticism of “outsiders”, generally from left-wing movements or criminal elements such as the Camorra, to discredit protests and justify violent intervention by the police.

Sardinian shepherds stopped from demonstrating in Rome

At dawn on 28 December 2010, between 200 and 300 Sardinian shepherds arrived in the port of Civitavecchia to the north of Rome on a ferry from Olbia to hold a demonstration called by the *Movimento pastori sardi* (Movement of Sardinian shepherds, MPS) in Rome, as part of a mobilisation that has included the blocking of roads, airports and ports in Sardinia. One of their complaints is that the price that they are paid for milk is insufficient to cover production costs. They organised five

coaches to take them to the capital, but were met by the police, *carabinieri* and GdF officers when they disembarked. The shepherds' delegation was blocked in the port and its coaches were confiscated. They were told that they could only leave the port after handing their documents to the officers for identity checks. This led to tension as the shepherds complained that "we have done nothing wrong, we are not criminals, you cannot force us to stay here", and scuffles broke out when demonstrators tried to breach the block. Three farmers were accused of resisting public officers and many of those identified risked being charged for attempting to partake in an unauthorised demonstration. Some shepherds tried to continue their journey by train, but a police cordon in the station stopped them boarding. Felice Floris, a spokesman for the MPS noted that: "They confiscated our coaches to reach the capital. Maybe they feared that we would have done something. We just wanted to call a press conference to turn the Sardinian shepherds' problem into a national issue...They treated us like criminals, subjecting us to a preventive kidnapping". Lawyer Nino Mazzarita argued that the events in Civitavecchia amounted to:

a violation of constitutional principles, of the right to demonstrate, by the law enforcement agencies, which led to a brutal form of pre-emptive repression.

On 29 December, the Civitavecchia prosecutors' office announced that two investigations had been opened, the first concerning farmers who were accused of resisting arrest and involvement in an unauthorised demonstration, and the second into the actions of law enforcement officers. On 24 February 2011, La Nuova Sardegna newspaper reported that three people, including Floris, faced proceedings for resisting public officers and refusing to be identified. Forty people were ordered to pay fines of between 2,500 and 10,000 euros for their involvement in the initiative, which they say they will not pay.

Another case in which police actions stopped a protest from taking place was on 20 May 2010, when there were clashes between the police and Roma people who staged a protest against the announced eviction of 700 people from a camp in via Triboniano in Milan. Early reports spoke of between four and fifteen officers and three protestors injured, including two Roma children, a seven year old girl whose arm was wounded by a truncheon blow and a boy who had an allergic reaction to the teargas that was fired. At an assembly organised on the following day, members of the Roma community answered claims that they were on an unauthorised demonstration by noting that a sit-in outside Milan city council had been allowed and that they were not on a march, but heading for the tram that is the camp's only link to the city centre. The police cordon stopped them from boarding the tram and staging the protest, while charges continued even after they had retreated into the camp.

Abruzzo protestors pay the price for taking their protest to Rome

Another delegation whose journey to the capital to express their grievances ended with them receiving blows from the police were citizens of the Abruzzo region demonstrating against the government and civil protection agency's management of the emergency and reconstruction in the aftermath of the earthquake on 6 April 2009, which destroyed the historic centre of L'Aquila as well as several smaller towns. Thousands travelled to Rome on the morning of 7 July 2010, in a demonstration supported by 53 town councils out of the 59 in the affected region which called for a suspension of their taxes, better employment prospects and support for the local economy.

Police cordons were set up to block them on the central *via del Corso*, close to the chamber of deputies where they wanted to voice their demands. An attempt to breach the barrier resulted in truncheon blows against the demonstration's front line by

police officers, and two demonstrators were injured. The organiser of the demonstration and a Roman activist were reported by the police DIGOS (general directorate for special operations) to the judicial authorities: the former for failing to comply with "measures adopted by the public security authority, because the initiative was carried out without taking the agreed modalities into account"; and the latter for "violence and resisting public officers, and a failure to comply with measures adopted by the public security authority", compounded by him being reported in relation to past unauthorised demonstrations, most recently for clashes during a demonstration against detention centres in October 2009.

The protestors, who included a number of mayors from the affected towns, highlighted that the video footage of the demonstration shows that it was peaceful and the use of truncheons and violence by the police against "people whose hands were raised" was unnecessary and "disproportionate". Statements by officials that "external elements" had enacted "provocations" were belied by claims by one of the two people who were most seriously injured. Vincenzo Benedetti explained: "It is incorrect to talk about clashes, there were elderly people and women with injuries and bruises. And the people who are not from L'Aquila that they are talking about are those who have been giving us solidarity since 6 April: it is false that they acted as *provocateurs*".

Migrants in Brescia demand residence permits

As part of a mobilisation that started at the end of September, after a demonstration on 30 October 2010, nine migrant workers climbed up a 35-metre-high crane in a building site in Brescia (Lombardy) to stage a protest demanding residence permits and complaining about a regularisation for migrant workers in 2009 in which they felt they had been "tricked". The occupation of the crane occurred after a march that had not been authorised because it coincided with a celebration in honour of the *Alpini* corps of the army, during which an ongoing picket was evicted amid clashes in the afternoon. The mayor of Brescia claimed that the demonstration was an act of arrogance that shows an "inability to understand the context in which...they would like to live and integrate", whereas Umberto Gobbi, representing the "*Diritti per tutti*" association, explained that the *Alpini* had been informed of the initiative in advance and that it would not disturb their feast. The protest lasted 17 days, when the last four (two Pakistanis, one Egyptian and a Moroccan) men came down from the crane. They had backing in the street below, where migrants and other organisations symbolically picketed.

The police tried to clear the protestors from the square on a number of occasions, resulting in charges on 8, 13 and 14 November. *PeaceReporter* published a video of events on 8 November on its website that showed the deputy *questore* ordering an unnecessary police charge to disperse protestors who were arguing with him in a composed manner, entitled "How a public order problem is born". Nine migrants who were held by the police during the eviction on 8 November were expelled, as was Mohammed El Haga, an Egyptian national who had taken part in the mobilisation and had lived and worked as an "illegal" in Italy since 2003, applying for regularisation in 2009. El Naga had gone to the prefecture in Milan with two MPs to try to prevent the expulsion of nine migrants arrested on 8 November. He was held, informed that his application to be regularised had been rejected and expelled the next day, after passing through via Corelli detention centre, although his lawyer had announced that he would file an appeal against the rejection of his application. On 16 March 2011, the regional administrative court in Milan accepted his appeal against the rejection, and he may ask to return to Italy. *Radio Onda d'Urto* radio station, which has been following the mobilisation closely, noted that El Haga was punished because he was "a symbol of the struggle".

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UK: The death of Jimmy Mubenga: "Securing your world" through "privatised manslaughter"

by Trevor Hemmings

Jimmy Mubenga's death during his removal by private security company civilian staff is indicative of the treatment forced removals are subjected to. Government bodies, campaigning organisations and medical charities have all condemned the "excessive force" applied during forced removals, and criticised private security companies for breaching their duty of care

Introduction

The death of Jimmy Mubenga (46) during his removal to Angola on a British Airways commercial flight from Heathrow to Luanda on Tuesday 12 October 2010 had a tragic inevitability given the numerous warnings issued by campaigners who monitor removals. Mr Mubenga, who was forcibly restrained while handcuffed at the rear of the plane, lost consciousness after what eye-witnesses described as "excessive force" had been used against him by three civilian staff employed by the Anglo-Danish G4S private security company, formerly known as Group 4 Securicor. [1] G4S, whose company slogan is "securing your world", is contracted by the Home Office to oversee its forced removal programme.

Jimmy Mubenga was taken from the plane to Hillingdon hospital, where he was pronounced dead. A post-mortem examination has proved inconclusive. Jimmy's family have written to the Home Affairs Select Committee requesting a parliamentary inquiry into the "systematic problems" with the removal system [2]. Deborah Coles, the co-director of Inquest, a charity that provides a free advice service to relatives of individuals who have died contentiously in custody, has condemned the "culture of secrecy that pervades the use of force on detainees" and supported the family's call for an inquiry. [3] Meanwhile, a Metropolitan police statement [4] said that the force was investigating the death of a man who was taken "unwell" on a British Airways flight.

Following the death, three G4S "escorts" were arrested and questioned by the police although none of them have been charged: they have all been released on bail. The Metropolitan police, after interviewing whistleblowers from G4S, is reported to be considering bringing a corporate manslaughter charge against the company. Under the *Corporate Manslaughter and Corporate Homicide Act 2007*, prosecutors would need to prove that the death was caused by a gross breach of duty of care and

that senior management played a significant role in that breach. [5]

Two weeks after the arrest of staff members G4S lost its multimillion-pound contract to forcibly deport foreign nationals on behalf of the Home Office. A new contract was awarded to the Reliance Security Group, a company which already provides the Home Office with prison and electronic tagging services. Reliance, which uses the slogan "Exceptional People, Exceptional Service," [6] has offered to employ all G4S staff involved in the controversial removals. G4S still has contracts with UK government departments: it manages four prisons and three immigration removal centres and escorts prisoners to and from court. These activities are estimated to be worth £600 million. Removals from the UK between 2005 and April 2010 cost the Home Office almost £110 million. [7]

A month after Jimmy's death, on 12 November 2010, around 200 people, led by Jimmy's family and supporters from the Angolan community, marched from the Angolan Embassy to the Home Office to hand in a letter that demanded an inquiry into the use of force in the removal process. The march was supported by a wide range of organisations from across the UK and two sisters of Sean Rigg, who died after being arrested by Brixton police officers in August 2008. [8] While passing Wellington military barracks, in Petty France, marchers were jeered by soldiers, one of whom threw a bottle that narrowly missed the Mubenga family and a child in a pushchair. At the Home Office a rally was addressed by speakers from the Union of Angolans in the UK, Medical Justice, INQUEST and Jeremy Corbyn MP. Adalberto Miranda, of the Union of Angolans in the UK, said of Jimmy Mubenga:

He asked permission to enter into the land of freedom, and you gave him the keys for the land of oppression and humiliation. He begged you to allow him to live with his family, and you sent him alone to the mortuary.[9]

Behind the scenes of removals for profit

In February 2011, in secret evidence submitted to the Home Affairs Select Committee and published by *The Guardian* newspaper [10], four G4S employees disclosed that their managers had been warned repeatedly that illegal restraint techniques were being used by escorts. Their evidence also alleged that staff were not properly trained, were criticised by management for showing compassion and ostracised if they voiced any concerns. A G4S executive, who was summoned to appear before the committee after Mr Mubenga's death, had said that he was unaware of any staff concerns about any aspect of the removal process.

The vulnerability of asylum seekers and undocumented migrants was recently detailed by the Institute of Race Relations (IRR) in a paper by Harmit Athwal, entitled *Driven to Desperate Measures: 2002–2010* [11] which reported 77 asylum seekers and migrants who have died, either in the UK, or attempting to reach the UK in the past five years.

The Introduction to Athwal's report observes:

No section of our society is more vulnerable than asylum seekers and undocumented migrants. Forced by circumstances beyond their control to seek a life outside of their home countries, prevented by our law from entering legally and from working, denied a fair hearing by the asylum system and excluded from health and safety protection at work, kept from social care and welfare, unhoused and destitute, vilified by the media and therefore dehumanised in the popular imagination, their hopes of another life are finally extinguished.

“Carpet Karaoke”

The brutality of Jimmy Mubenga's death has been revealed in descriptions by at least three eye-witnesses, passengers who were on the fatal commercial flight to Angola. Kevin Wallis, who sat across the aisle from Mubenga, said that he had been heavily bound with handcuffs and that “excessive force” was used to further restrain him. Wallis said he thought the security guards were scared of Mubenga: “they put so much pressure on him because he looked a big lad. The three security guards were big blokes as well.” [12]

According to evidence from G4S whistleblowers to the Home Affairs Select Committee, the use of excessive force by private escorts is commonplace. They explained that refused asylum seekers who were uncooperative are subjected to what guards nickname “Carpet Karaoke”, which involves the handcuffed victim being forcibly bent over in their seat with their heads forced between their legs. [13] This posture is strictly prohibited because it can lead to positional asphyxia, a form of suffocation. Because of the frequency of its use on deportees it has become known colloquially as “privatised manslaughter.” As Inquest's Deborah Coles has pointed out: “The risks of positional asphyxia have been well-known since the April 2004 restraint death of 15-year old Gareth Myatt in the secure training centre at Rainsbrook.” [14]

Wallis stated that Jimmy Mubenga had complained of breathing difficulties, shouting “I can't breathe, I can't breathe” for at least 10 minutes before he lost consciousness. He had tried to stand up pleading, “I don't want to go.” Wallis added: “They must have been forcing him down, because I didn't realise until afterwards that he was handcuffed.” Wallis also heard one of the security guards say:

He'll be alright once we get him in the air – he just doesn't want to go...once we get him up in the air he'll be alright.

Once it was obvious that Mubenga had lost consciousness he was laid down in the aisle of the plane. The captain was alerted and police and paramedics were called.

The criminalisation of intervention

Organisations such as Inquest have repeatedly warned the government of the danger of using potentially fatal restraint techniques, information acquired over many years of ground-breaking work on restraint-related deaths in custody. Inquest has pointed out its concerns over the use of force applied during deportations to HM Inspector of Prisons, among others. Injuries caused through violent treatment have been comprehensively researched and widely publicised by organisations such as Medical Justice [15]. In October 2007, *The Independent* newspaper compiled a dossier of 200 assault allegations, which were dismissed out of hand by the Home Office as “unsubstantiated assertions.” [16]

In their 2008 report, *Outsourcing Torture*, [17] the legal firm Birnberg Peirce and Partners, and the campaigning groups Medical Justice and the National Coalition for Anti-Deportation Campaigns, described 300 instances of abuse involving “an alarming number of injuries sustained by asylum deportees at the hand of private “escorts” contracted by the Home Office.” It revealed well documented evidence for the:

widespread and seemingly systemic abuse of vulnerable people who have fled their own countries seeking safety and refuge.

It also found that the assault claims had been “brushed off” by the Home Office.

A recent example of the type of brutal handling that deportees can expect, and the criminalisation of citizens who protest at the violence used by private security escorts, was reported in *The Guardian* newspaper in October 2010 [18]. The allegations are all the more convincing because the incident shares many similarities to the treatment handed out to Jimmy Mubenga. It again involves an eye witness account, this time by student Matt Taylor.

Taylor described the screams of an unnamed African deportee as he was forcibly restrained by three G4S guards on a Virgin Atlantic flight. He was handcuffed to a seat with security guards posted at either side of him and in front. The student described how the detainee “was handcuffed, clearly in pain and being violently restrained.” Taylor said:

The passengers around me looked on in disbelief as they were confronted by the scene of this restrained man calling out for help...Clearly the man was in considerable distress and pain.

He was screaming because of pain and asking for his medication, but was told by his escort that he could not have it until he got to Nairobi. When the student attempted to alert a flight attendant to the escort's actions, one of the private security guards pushed him back in his seat and ordered him to shut up:

I was immediately pushed in my back by one of the men that had been violently restraining the African man; he told me to sit down, keep quiet and that the African was being deported, that these men were his minders.

Despite the intimidation, Taylor and a colleague persisted and demanded to see the plane's captain in the hope of bringing an end to the brutality. Once he had raised his concerns with the captain armed police were called and he was given the “option” of leaving the plane before being questioned under anti-terrorism powers for several hours. He was then put on a train and sent back to London.

Conclusion

For a decade, Inquest has warned the government of the dangers inherent in the restraint techniques practiced by private security firms removing people. Concerns at the use of excessive force in the removal process have been raised by government agencies, such as HM Inspector of Prisons, and the injuries inflicted have

been recorded by charitable organisations such as Medical Justice and the Medical Foundation for the Care of Victims of Torture. Respected legal firms, such as Birnberg Peirce and Partners, with the help of campaigning organisations, have compiled first hand evidence through interviews. The Institute of Race Relations has documented case studies through exhaustive research showing the vulnerability of asylum seekers and undocumented workers in its extensive studies of deaths across Europe.

According to a G4S senior executive's evidence to the Home Affairs Select Committee there have been no breaches in their duty of care. The evidence against this is deemed to be simply untrue, "unsubstantiated" accusations made by disgruntled employees or political propaganda. The fact is that G4S' own employees contradict their the firm's claims, stating that the abuse meted out to vulnerable people seeking protection is frequent. The testimony of eye-witnesses, if reported at all, is considered to be simply anecdotal, while the coercive state apparatus treats these same witnesses as potential terrorists.

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Berlin police officer sentenced: eight shots are not self-defence

It is not often that police officers face serious charges in court. The investigation into the police shooting that took the life of Dennis J. was repeatedly delayed, but did result in a trial that saw police officers sentenced for their actions. The judgement was right in principle, but disappointing in its sentence

By the Campaign for Victims of Racist Police Violence (Kampagne für Opfer rassistisch motivierter Polizeigewalt). This article first appeared in *Bürgerrechte & Polizei/CILIP* 96 (2/2010)

Dennis J. was buried on 16 January 2009. Around 300 people attended his funeral at the cemetery near Hermannplatz in Berlin-Neukölln, to bid farewell to the 26-year old. Around 150 family and friends then walked in procession, holding pictures of Dennis, to the head office of the Berlin chief of police, demanding justice.

"We demand equal treatment for everyone, irrespective of which side of the law they are on", Dennis's brother-in-law said

when he addressed the mourners. "Why did Dennis have to die? Why is the accused still free? Why do police officers refuse to make statements if they have nothing to hide?" Other speakers pledged not rest until these questions were answered. Then the rally ended. It was an unexpected action by people who would not previously have described themselves as politically active.

[1]

When the death of a 26-year-old can mobilise 300 people –

many of whom were black - to attend his funeral, people notice. This included the media, which had been covering the case since 1 January 2009. The day after the funeral, the headline of the daily newspaper *taz* read "Multiculturalism on the streets", *Tagesspiegel* read "Anger at the grave" and *Morgenpost* "Funeral march for Dennis J."

The fatal shooting of Dennis J.

Dennis J. was shot by a Berlin police officer on New Year's Eve 2008 in Schönfließ, Brandenburg, in unresolved circumstances. Officer R. fired eight rounds, the first of which was lethal. The shooter remains silent, while his colleagues B. and S., who were part of the operation, claim that they did not hear the shots because of the sound of fireworks. The family and grieving friends are not the only ones to find this claim implausible.

Berlin police had received a tip off that Dennis J., who had an outstanding arrest warrant, was at his girlfriend's home in Schönfließ. The officers found him in front of her house, where he was waiting in a parked car. Initially, police stated Dennis had tried to flee in the car, injuring a police officer in the process; only then were the deadly shots fired. [2] The well-rehearsed argument of "self-defence" which police officers usually claim with success, was difficult to maintain in this case, because, unlike the Tennessee Eisenberg case,[3] there were three independent witnesses at the crime scene.

Contradictions arose early on. Shots were aimed at the moving car on an open street with bystanders. This was extremely unprofessional behaviour because the situation was not an emergency. In the RBB-TV programme *Klartext* on 28 January 2009, Professor Oesten Baller of the police faculty of the Berlin Polytechnic for the Administration of Justice (*Fachhochschule für Verwaltung und Rechtspflege*) demonstrated that the three officers knowingly entered the situation and then made every possible mistake. The media speculated that the police might have had other motives, such as an unprofessional ardour for the chase.

Furthermore, the police knew that Dennis J. was unarmed, a fact that was confirmed by Berlin police chief, Dieter Glietsch, in the same RBB-TV programme: "[Dennis J.] was not known as an armed violent offender but a criminal. Although he had committed a lot of crimes, there were no indications that he had ever been armed."

An investigation begins and solidarity grows

Almost two weeks after the shots were fired, the public prosecutor's office in Neuruppin (Brandenburg) launched an investigation into officer R. on the grounds of manslaughter and his colleagues for the attempted obstruction of justice. The prosecution had considerable doubts about the police officer's statements. The shooter was arrested but soon released on bail. He received police protection, which may have been an attempt to portray the perpetrator as a potential victim. Dennis J. on the other hand was portrayed in the media as a "repeated criminal" (*Tagesspiegel*), a "small time criminal" (*B.Z.*) or a "wanted criminal" (*SpiegelOnline*). [4] However, the press coverage advocating the self-defence argument could not be maintained: alongside Dennis J's family and friends, political campaigners against police violence focused in on the case to ensure that the self-defence claim was scrutinised.

On 11 July 2009, a demonstration took place in Neukölln/Kreuzberg, Berlin. The same day, the media reported that according to an independent report there was no justification for the police officer opening fire. The public prosecutor, however, refrained from commenting about whether this fact would lead to charges being brought. The family and friends campaign therefore stepped up the pressure and publicised not only the death of Dennis J., but also remembered others who died as a result of police violence. They displayed their portraits

at demonstrations and recounted the circumstances in which they died (Oury Jalloh and Tennessee Eisenberg, and later Halim Dener and Carlo Giuliani).

On 15 August 2009, the campaign organised a street party and rally, with coffee and cake and leaflets and flyers about police violence. Police attempts to ban a small information stand failed when family and friends rapidly gathered to defend it, insisting on their right to disseminate information. The threatened closure of the stand failed and the police retreated.

The trial

The trial of Officer R, who faced manslaughter charges, and his two colleagues S. and B., who were charged with attempted obstruction of justice whilst on duty, opened at Neuruppin regional court on 4 May 2010. The Campaign for Victims of Racist Police Violence (KOP) was asked to monitor the trial, the results of which are documented on the campaign's website. [5] The proceedings began with a massive police presence and unusually strict security measures. The three accused were defended by five lawyers and the Berlin police force's legal adviser attended throughout the trial. The three joint plaintiffs were also present, together with their lawyers, and on the fifth trial day another joint plaintiff joined with her lawyer. Throughout the trial, family, friends and supporters followed events, which also received much attention from local as well as the national media.

The accused remained silent on the charges and instead instructed their lawyers to read submissions in which they claimed that they acted in self-defence in an emergency. Then the witnesses were heard. Two girls, aged only 13 and 15 years at the time of the incident, claimed that the car in which Dennis J. was seated only started after the first shot was fired. They also said that the streets were quiet with no fireworks at the time and other witnesses confirmed their testimony during the course of the trial. The claims by Officers B. and S., that they could not hear the shots fired by their colleague because of fireworks, were thereby contradicted as was Officer R's claim to have been acting in self-defence.

Negligence or cover up?

Several witnesses testified independently in court that passages of their police interrogation records did not correspond to their original statements. Furthermore, a significant number of interrogation records were unsigned, leading the presiding judge to become "a little suspicious about the creation of these police records." [6] Evidence gathering at the crime scene also appears to have been sub-standard. Two bullets were never found and a car parked nearby was not recorded – an important factor in the reconstruction of events. In addition, unidentified Berlin policemen secured the police officers' clothes because the Brandenburg investigation team had not thought it necessary. One police interrogator stated that directly after the event, the accused had the opportunity to discuss the situation for several hours with their chief of staff.

Biased consultant and collegial support

The crime scene expert Wanderer supported the submission of Officer R., by not ruling out the possibility of the self-defence scenario. According to his assessment, Dennis J. could have started the car before the first shot was fired. The joint plaintiffs rejected the expert's evidence, on the grounds that he had already produced a report on the case as a private consultant for the defence, before being consulted by the court. The motion to quash his expert opinion on grounds of bias was rejected. The interrogation of experts was drawn out without shedding light on the event. Finally the professional ambitions of Officer R. were examined. He had been depicted by numerous colleagues as a

highly motivated officer who specialised in arrests. Officers S. and B. were also characterised as ambitious in the execution of their professional duties.

Closing speeches

On 28 June 2010, the closing speeches were made. The prosecution argued that Officer R. was guilty of “manslaughter” and that Officers B. and S. were guilty of the “attempted obstruction of justice whilst on duty”. The joint plaintiffs agreed and demanded a prison term of several years for Officer R. and probationary sentences for Officers B. and S. Officers B. and S.’s loyalty to their colleague was defended by invoking the Berlin police’s infamous *corps d’esprit*. The prosecutor argued that a prison term was justified because it was proven that R.’s “wild shooting in a residential area constituted a severe violation of the law regulating the use of firearms”, because he “lost any sense of proportion due to his inflated motivation” and thereby “accepted the death of Dennis J. as a possibility”. The defence argued for Officer R.’s acquittal, claiming that he responded in self-defence in an emergency. He accepted that his colleagues did not hear the fatal shots. [7]

The judgement – right in principle but disappointing in sentence

Sentence was passed on 3 July 2010. Officer R. was found guilty of manslaughter of a lesser degree, [Article 213 of the German Criminal Code defines manslaughter to a lesser degree as a situation whereby the accused has been forced into a situation by factors outside his control or which s/he is not guilty of and foresees a reduced prison sentence of 1 to 10 years for such cases], and sentenced to a two-year suspended prison term, to be served on probation. His two colleagues were found guilty, also to a lesser degree, of the attempted obstruction of justice whilst on duty and were fined. The judgement led to a commotion in court. Before the judge could give his reasoning, family and friends walked out of court in protest and shouts such as “murderer” could be heard. According to the court’s oral reasoning, Officer R. was particularly sensitive to a prison sentence because he could expect considerable problems in prison due to his profession. This justified a suspended sentence and probation. Furthermore, Officer R.’s career was over. Other reasons for reducing his sentence included the exceptionally dangerous nature of the police profession, the confusing circumstances of the event, stress, and the lack of legal basis for an armed arrest.

Lawyer Beate Böhler, representing the plaintiffs in the murder trial, said that she has never come across a judge justifying a suspended prison sentence on grounds of the accused being “sensitive to prison”. She also criticised the other reasons for lessening the sentence. The accused had been described as ambitious and experienced, undermining the argument that he had been under stress. Further, his ignorance of the legal basis regulating firearms use and the fact that he emptied a full round of shots proved the arrest of Dennis J. lacked a legal basis. She argued that an arrest which takes into account killing the arrestee could only be explained by an unsound motivation. The discrepancy between, on the one hand, a human life, and on the other hand, fulfilling one’s professional duty by preventing escape, proves a particular contempt for the life of the victim.

The court’s reasoning for lessening the sentence of Officers B. and S., namely, that it was particularly difficult for police officers to make incriminating statements against each other, was met with disbelief by the plaintiffs. After all, Böhler said, they are the ones who are supposed to solve crimes. Their silence was therefore an abuse of office that should be met with a more, rather than, less severe sentence.

The protest continues

During the course of the trial family and friends called for a demonstration - two weeks before the sentencing – under the slogan: “Not friend and helper but judge and hangman”. The demonstration marched through Neukölln and Kreuzberg districts, ending with a rally in front of the head office of the Berlin chief of police. Bystanders showed a great interest in the march, as almost all of them had heard about the death of Daniel J. and sympathised with the demonstrators.

The evening after sentencing, a spontaneous rally and demonstration took place. As in court, people shouted “Murderer”. On the one hand, the speakers positively assessed the fact that there was a trial at all and that the perpetrators has been found guilty. On the other hand, the sentence was criticised because Officer R. shot Dennis J. and should have gone to prison for his crime. The speakers also criticised the attempted cover-up by his two police officer colleagues, and demanded that they be suspended from duty.

Anger about Dennis’ death also led to property damage caused by people in the streets of Kreuzberg, for which a group that called itself a “hitherto unknown action network” took responsibility. [8] Further, the community began organising as a result of the death: two days after sentencing a meeting was organised in Kreuzberg, entitled “Deadly police violence: nobody will be forgotten”. The Campaign for Victims of Racist Police Violence also continues to expand, with more activities being planned.

What remains

The trial showed that it is essential that those affected by police violence and their relatives become joint plaintiffs and thereby gain access to court files. Thus an investigation can be assessed and if necessary more investigative measures can be demanded. Only then can those affected engage with the process. But the trial also showed that independent witnesses are crucial to test the perpetrator’s narrative of events. If the narrative lies solely with the perpetrators and investigating police officers, the possibility of questioning their version of events is almost non-existent. In the Dennis J. case it was also helpful that the public prosecutor was from a different federal state than the police force. The prosecutor was therefore not a quasi-colleague, a prerequisite for a reasonably independent investigation. The media also played an important part in defining the events and issues in the run-up to the trial.

Eye-witnesses, an independent public prosecutor, critical media questioning and the determination of the joint plaintiffs and their supporters are preconditions for an open trial. If the trial in Neuruppin was not concluded to the satisfaction of the family and their supporters, it was a success in that it took place at all. The final word, after all, has not been spoken.

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Policing popular mass protests: the transport of nuclear waste at Gorleben, Germany”

by Kees Hudig

In 1977 the village of Gorleben became a storage site for radioactive nuclear waste which is the target of regular protests - involving a large proportion of the village's population and a large police operation

Once a year the tiny rural village of Gorleben, located in the Wendland region of northern Germany, becomes the focus of the largest police operation in Europe. Demonstrators and activists attempt to stop the transportation of the plant's highly radioactive nuclear waste on route to a storage facility in the woods. The local population is vehemently opposed to the storage of nuclear waste for several reasons, but chief among their concerns is the potential for environmental pollution.

A large part of the village's population participates in the protests and blockades, which means that the authorities cannot argue that is led by "outside agitators". However, "surrendering" to the protesters would mean that the state's nuclear energy program would come to a standstill. The waste-transport, nicknamed "castor" after the containers used to package the waste, has to be pushed through at all costs. Heavy-handed policing and infringement of civic rights therefore form an almost customary part of the programme. Demonstrators have become experienced in monitoring and exposing the behavior of the police and informing activists of their rights.

The waste-transport operation in November 2010 was especially controversial because the federal government had recently permitted nuclear plants to operate for much longer than had initially been envisaged. The decision marked a shift in the position of the conservative ruling party, Christlich Demokratische Union Deutschlands (Christian Democratic Union of Germany, CDU), which had compromised on a phase out following the 2008 elections. In reaction to this decision more than 100,000 people demonstrated against nuclear energy in Berlin, and many protestors made clear their intention to join the protests in Gorleben soon after. Meanwhile another hotspot of protest developed in Stuttgart, where local inhabitants were opposing the demolition of their central train station and surrounding park. Despite using extreme force, police failed to disperse tens of thousands of demonstrators. [1]

The history of castor nuclear transport

In 1977 it was decided that Gorleben would become the site for what was called an "interim storage unit with possible permanent storage" for radioactive waste. Protests started immediately: the first demonstration on 12 March 1977 was attended by 20,000 people. The reason for selecting Gorleben was the existence of an underground 'stable salt dome' that could be used as a long-term storage space for all kinds of radioactive waste. This was what local inhabitants feared the most.

The overground interim storage unit has a limited capacity (the permit allows for 420 dry casks on site, which means that it is almost full, and the next shipment of waste might be the last). But once the underground salt layer comes into use, the capacity to dump highly radioactive waste will be almost endless. The waste will be active for more than 200,000 years. There is widespread concern that this is not a secure way to manage nuclear waste. Experiments with comparable storage facilities elsewhere demonstrated that groundwater is easily contaminated, and that 'stable' salt layers are seldom completely stable, certainly not for 200,000 years.

Local inhabitants, farmers and anti-nuclear organisations

tried to stop the scheme through legal means, but were unsuccessful. In 1980 the planned storage facilities were occupied by thousands of people who erected a village of huts and declared it to be a 'free republic'. After a month the occupation was evicted by a large number of police officers. It took until the mid 1990s to finish building the storage facility. Since then every waste transport has been met with massive protests and blockades. The waste comes by train from the French reprocessing plant in La Hague and is then moved onto trucks in the town of Dannenberg. From there it is driven the last 20 kilometers to the storage facility via a tiny road through the woods.

Demonstrators have used every imaginable strategy to try to stop these transports. Only by applying an army of police units, which use force and often illegal methods, has the German state been able to push the transports through. Scenes of high powered water canon aimed at peaceful elderly protesters sitting on the streets, or heavily armed riot police chasing children from the railway tracks, have become a common image of the Gorleben protests. Many people have been injured and one demonstrator in France died. Sebastian Briat lost his life while participating in a railway blockade near Avircourt in 2004. The train ignored warnings to stop in time, running him over.

"Schottern"

In 2010 demonstrators joined the call for a new form of protest, nicknamed 'Schottern' after the stones (*Schottersteine*) used to embed the rails. For its last 50 kilometers the nuclear waste train uses a single track rail line that is not being used by other trains. The call was to organize in affinity groups and execute an act of civil disobedience by removing the stones. The campaign was organised by 'post autonomous' organisations that had successfully arranged a mass blockade of the G8-summit in Heiligendamm in 2007 and a blockade of Germany's largest Nazi march in Dresden in 2009. Their strategy succeeded in involving large groups of people to participate in acts of civil disobedience. They explain the success of their mobilisations by the fact that they publically state that their actions:

are not about fighting with the police, but about achieving our stated objective (stopping a Nazi march, or blockading a G8-summit). This commitment to transparency and measurability in turn has made it easier for more 'moderate' groups to get involved in forms of action that they might otherwise have shied away from: collective rule-breaking, civil disobedience, direct action. With these tactics, the movements in Germany mounted not only the effective blockades of the G8 in Heiligendamm in 2007, but also shut down Europe's biggest Nazi march in Dresden in February of this year. Not by fighting with the cops, but by simply making it possible for thousands of people to sit down in the street in a way that they felt comfortable with, and the police obviously felt uncomfortable just blasting them off the street (the keyword here is 'legitimacy').

Some groups organised street blockades and local groups staged protests along the length of the train route. The train was delayed

by more than 24 hours and on arriving at Luneburg - where it usually pauses before starting the last part of the journey to Dannenberg – it was met by tens of thousands of demonstrators preparing actions and demonstrations. They had also built seven different action camps along the route.

Business as usual, but with differences

The police strategy was comparable to previous operations, but with some remarkable differences. As usual the area was flooded with a huge number of police - some 16,000 – who occupied almost every village in the area. One of the disadvantages for the police is that this requires the use of a large number of vehicles and high mobility. But the roads are narrow and easily blocked by local farmers with their tractors, who have become a symbol of the resistance. This caused the police constant problems. They could not mobilise their forces as required and often police officers could not be relieved on time. On some occasions police officers claimed to have been on active duty for 24 hours without relief. At one action camp individual policemen requested food from the activists' kitchen (which started a debate among activists over whether to comply or not).

The authorities' approach can be summed up by the expression "business as usual." They overturned regional regulations on the right to gather and demonstrate and handed power to another regional police authority: the Lüneburg *Polizeipräsidium*. Along the entire route (rail and road) a 50 meter area on both sides was declared a sterile zone where gathering and demonstrations were forbidden. Previously, the authorities had tried to expand this zone to 500 meters, but were defeated in court. Another annual legal battle is to obtain permits to organise protests or camps which, more often than not, are denied by local authorities.

The *Komitee für Grundrechte und Demokratie*, which regularly monitors civil rights infringements at demonstrations in Germany, had a team of observers in the area who reported a long list of 'unacceptable police actions.' [2] One of the complaints concerned the continual hindering of people trying to gain access to locations where they were permitted to gather. Transport was hampered throughout the area by police checking traffic, holding up cars or turning them back without legal reason. Local public transport, such as buses, was forced to take alternative routes and public transport between Luneburg and Danneberg was paralysed. Another tool commonly used by police was the issuing of so called *Platzverweise* (Red Cards) to demonstrators who are then forced to identify themselves and are issued with an official warning and ordered to leave the area. If they are caught again they can be arrested, held and given a fine, regardless of whether they have committed an offence.

The *Komitee für Grundrechte und Demokratie*, among others, observe that the authorities make a distinction between 'good' and 'bad' demonstrators and use this as justification to apply violent and often illegal tactics against the latter. The Schotterers were identified as 'bad' demonstrators, despite explicitly calling for the police not to be targeted. Weeks before the transport took place, the minister of interior for Lower Saxony, Uwe Schünemann, stated that the authorities would deploy heavy enforcement against the Schottern-campaign [3]. Individuals who had signed-up to participate in the Schotter-

actions received a message from the public prosecutor that an investigation was being initiated against them. This group originally consisted of 200 people, but after the news that they were being targeted for possible prosecution was made public, their number rapidly grew to more than 1,700.

During the transports thousands of "Schotterers," the majority of whom maintained a strictly non-violent approach towards the police, were generally met with aggressive tactics by police forces [4]. Pepper spray was frequently against demonstrators who tried to approach the railway track. They were also attacked by the police with batons, horses, dogs, tear gas, and water canon. The Schotter-campaigners claimed that more than 1,000 people were injured, mainly through the use of pepper spray and batons. The *Komitee für Grundrechte und Demokratie* recorded that the federal police used 2,190 containers of pepper spray. Police from other countries were also present during these operations, in uniform and armed. A French police officer was observed participating in attacks on demonstrators, as was a German police medic.

Other blockades

Elsewhere, a peaceful blockade of a railway track, involving at least 1,500 people, was held near the village of Hitzacker. During negotiations with the activists, police promised not to attack it and to carry out evictions using 'reasonable measures.' They said they would evict people by dragging them away, but that they would not have to identify themselves. In reality, the longer it took to remove the activists the more police mishandled them. They were then held in a gigantic 'kettle' of police vans on a meadow. People were held for hours in freezing weather. They were offered the opportunity to be moved to the "warm prisoners complex at Lüchow" if they identified themselves. One demonstrator was also severely injured when a police horse fell on her.

A similar story applies to the last blockade of the road near Gorleben organised by the explicitly nonviolent *X-Tausendmal Quer*. This group of a few thousand people, who had been occupying the road for more than two days, was initially approached by the police with relative courtesy. But after a short time (and especially when no media was present) coercion was used to make them leave; people's arms were twisted, others were beaten and thrown around. Elsewhere, at Laase, a protestor who had climbed a tree along the route was sprayed with pepper spray, causing him to fall and break one of his vertebrae. Police also launched raids on three farmhouses without search warrants and used drones to film demonstrators.

Footnotes

[1] *Germany Shocked by 'Disproportionate' Police Action in Stuttgart*
<http://www.spiegel.de/international/germany/0,1518,720735,00.html>

[2] *Komitee für Grundrechte und Demokratie, Informationen 5-6/2010*
December 2010

[3] *Castor-Transport: SPD kritisiert Innenminister*
<http://www.ndr.de/regional/niedersachsen/heide/gorleben535.html>

[4] *See a registration of repression on the Schotter-website:*
<http://www.castor-schottern.org/aktuelle-infos/43-webseite/123-repression-gegen-castor-schottern-ein-ueberblick>

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Lubricating the flow of information in the EU

by Eric Topfer

The EU Information Management Strategy (IMS), is meant to include a strong data protection regime. However, while the first practical steps have been taken, fundamental rights are falling behind.

The Conclusion of the Information Management Strategy (IMS) for EU Internal Security [1] was announced in the action plan for the implementation of the Hague Programme. Its conclusion was endorsed by the “Future Group”, and it was eventually accepted by the Council of Justice and Home Ministers on 30 November 2009 together with the Stockholm Programme. After the presentation of a first draft by the Swedish Presidency on 16 June 2009, [2] it was mainly the Ad hoc Group on Information Exchange that negotiated the details on behalf of the Council. Although the Ad hoc group members agreed that the secret service’s work should be excluded, [3] the scope of the IMS was contested. In particular, the German delegation wanted to limit its scope to the areas of law enforcement and judicial cooperation in criminal matters for reasons of effectiveness. However, the majority of delegations opted for a “holistic approach” that included customs cooperation and migration control. A compromise was found by the Committee of Permanent Representatives (COREPER), the ambassadors of the Member States to the EU, who proposed that Member States could apply the IMS by “adopting a step-by-step approach” and gradually expanding its application.

The IMS’s motto is “Streamline the management of information”. Given the panoply of central European databases and planned networked national information systems the aim of the strategy is to deliver a “method” to ensure “coherence and consolidation” and to ensure that existing instruments and arrangements are implemented before new initiatives are planned. The IMS in itself should:

not create links between different databases or provide for specific types of data exchange, but it ensures that, when the operational requirements and legal basis exist, the most simple, easily traceable and cost-effective solution is found.

Thus the IMS calls for inventories and analyses of needs, for the documentation of work flows and the coordination of interfaces as well as for the assessment and organisation of responsibilities for future development. The strategy values “data protection requirements”

But on the other hand it explicitly states that the daily practice of information exchange “must not be hampered by issues of competence”: interoperability, the availability and seamless flow of data, should be:

ensured whenever necessary and proportional, among and beyond the authorities directly responsible for EU internal security, but also that it is limited to these cases.

IMS in action: information mapping

For the IMS follow-up the Ad hoc Group (which in July 2010 became the permanent Working Party on Information Exchange and Data Protection (DAPIX), now responsible for technical and administrative aspects of the implementation of the “principle of availability”) outlined an action list. This list, which had grown to 17 projects, [4] was narrowed down to 11 “priority actions” by March 2010 (see Table 1). [5]

Since then small project teams have been making progress on each of the actions. The first milestone in processing the action list was taken by the European Commission taking charge of

priority action number one, the “information mapping project”. On 20 July 2010 Home Affairs Commissioner, Cecilia Malmström, presented the Communication entitled “Overview of information management in the area of freedom, security and justice”, [6] the first comprehensive update of a report on third pillar information systems that was published in 2003.

From “Advance Passenger Information” to “Visa Information System (VIS)” the overview lists 19 existing “instruments”, (i.e. regulations for the implementation and operation of IT systems and cross-border information networks, for mandatory collection of data at the national level and for data transfer to third countries), (see Table 2). While some of these regulations and systems are in place and have been operating for many years, such as the Schengen Information System (SIS) or EURODAC, others have still not been fully implemented, such as the Prüm Decisions and the Data Retention Directive. In addition, the overview lists six projects which are currently under discussion: a European Passenger Name Record (PNR) System, an Entry-Exit-System for non-EU-citizens, a Registered Travellers System for fast biometric border controls for frequent flyers, an Electronic System of Travel Authorisation (ESTA) for accelerated immigration control of third-country nationals not subject to visa requirements, a European Terrorist Finance Tracking Programme (TFTP) and a European Police Record System (EPRIS).

The overview concludes by confirming the commitment to data protection, valuing in particular “privacy by design”, (i.e. technical data protection solutions and the need to justify new instruments adequately). The consideration of “sunset” clauses and mandatory evaluation for future instruments is also proposed. In addition, the Conclusion seeks “to draw on the input of all relevant stakeholders”, including “economic actors and civil society” when developing new initiatives and suggests that the nascent EU Agency for the Operational Management of Large-scale IT Systems, namely SIS, EURODAC and VIS, could facilitate such dialogues.

Justice Commissioner Viviane Reding’s Communication for “A comprehensive approach on personal data protection in the European Union”, published on 4 November 2010, points in a similar direction. [7] Noting that Council Framework Decision 2008/977/JHA on data protection in police and judicial cooperation in criminal matters only applies to cross-border exchange of data and not to data processing in the Member States themselves, and that many loopholes exist from the principle of binding purpose and that Europol’s and Eurojust’s computer systems and the SIS and CIS do not fall under the scope of the Framework Decision, the Communication emphasises “the need to consider a revision of the current rules” and invites all “concerned stakeholders” for consultation.

European Data Protection Supervisor (EDPS) Peter Hustinx was pleased and expressed his support for both Malmström’s and Reding’s Communications. [8] He complained, however, that Malmström’s overview on information management refers to alleged successes and is silent on problems and deficiencies. Indeed, the Communication surprisingly emphasises that most systems and networks for information exchange in the “area of freedom, security and justice” have a “limited purpose”. Thus, it bluntly ignores the function creep inherent in most

“instruments”. Moreover, it suggests that proportionality is the system’s rule while claiming, for instance, that the Prüm Decision’s aim is to combat terrorism and serious crime, despite the fact that almost 90 per cent of Prüm “hits” occur during investigations of theft or fraud. [9] Therefore, concern is justified - even more so when given how the JHA Council’s working parties, in particular the shadowy Multidisciplinary Group on Organised Crime (MDG), successfully torpedoed the Commission’s weak proposal for the Framework Decision on third pillar data protection after its publication in 2005. [10]

Towards a comprehensive approach on data protection?

Indicators of the direction that the revision of the data protection framework might take in the field of justice and home affairs can be found in the reactions of the Council to the Commission’s Communication and the progress of other “priority actions” implementing the IMS. After an initial brief policy debate by Justice and Home Ministers at their Council meeting on 2-3 December 2010, [11] it was the DAPIX Working Party that discussed the issue shortly before Christmas 2010. The Commission presented the Communication on data protection and, when asked whether their legislative proposals would “take into account the specific requirements of law enforcement bodies and how the impact on operational policies would be assessed”, replied that the “limits of transparency for the police sector would be respected”. [12]

On 10 January 2011, the Hungarian Presidency presented a first classified draft for a Council Conclusion [13] responding to the Commission’s Communication which was – additionally informed by an Opinion of the European Data Protection Supervisor (EDPS) [14] – discussed twice in depth by the separate DAPIX subgroup on data protection in the course of the month. A revised draft version [15] – still secret – was discussed in the first weeks of February by JHA Counsellors, the attachés of the Permanent Representations of the Member States in Brussels. As only the fourth revision of this second draft was published in the Council’s Register the detailed arguments behind closed doors remain unknown. But it is clear that far reaching revisions of the current data protection framework for police and judicial cooperation are contested by strong interests. Three days before JHA Counsellors met for the second time in Brussels to discuss the draft Conclusion, the German *Länder* adopted a Decision on the Commission’s Communication arguing that the EU lacks the competence to expand the scope of the data protection regulation to domestic data processing by police and judicial authorities: “The regulations have to be limited to cross-border issues.” [16]

The Conclusion adopted by the JHA Council at its meeting on 24-25 February “welcomes” the Commission’s Communication and “strongly supports the aim outlined in the Communication according to which appropriate protection must be ensured for individuals in all circumstances.” However, the document strongly emphasises the “specificities” of police and judicial cooperation in criminal matters and highlights the fact that a comprehensive approach “does not necessarily exclude specific rules” for this field, namely that “certain limitations have to be set regarding the rights of individuals” or “that the powers of the data protection authorities should not interfere” with rules for criminal proceedings. [17]

The EDPS takes account of the specificities of the fields of policing and justice and does not rule out “special rules and derogations” in his Opinion, but he hopes that the data protection revision could mean that the future rules will also apply to domestic processing and that “D[ata] P[rotection] A[uthorities] will have the same extensive and harmonised powers vis-à-vis police and judicial authorities as they have vis-à-vis other data controllers.” Moreover, the EDPS recalls that “limitations to the

rights of data subjects...have not to alter the essential elements of the right itself.” Therefore, he demanded special safeguards as compensation for data subjects, (e.g. to distinguish between “data based on facts” and “data based on opinions or personal assessment,” to distinguish between the data of suspects and non-suspects such as witnesses, victims or suspects’ contacts). [18] The Council’s Conclusion does not contain a single word on such safeguards.

Europol’s vision

Meanwhile work on “priority actions” to implement the Information Management Strategy is progressing slowly but steadily (see Table 2 for the IMS’s action list). The European Police Office (Europol) has become a key player in this process, leading four of the 11 actions: firstly, Europol has become the senior partner with Spain in the project for an “Information Exchange Platform for Law Enforcement Agencies” (IXP); secondly, it is collaborating closely with Germany in an initiative which aims to refine the “Universal Message Format” (UMF) for standardised data exchange; thirdly, the agency is coordinating efforts to develop standards and guidelines for the management of information exchange in the field of law enforcement and, fourthly, it is drafting a definition of the “target information management architecture” for 2015. [19]

Plans for the IXP were first unveiled in January 2010 by the Spanish EU Presidency. Europol’s draft “business concept” presented at a meeting of the DAPIX Working Party in June 2010 explains that the goal of the project is to target end-users including “local, regional and national police forces, customs, coast guard and border control authorities”, “international law enforcement bodies, like FRONTEX, OLAF, Interpol, EMCDDA, CEPOL, EuroJust and Europol” and possibly “other institutions, such as DG JLS, the Council Secretariat General, but also judicial, prosecution and penitentiary services” and even third countries like “Norway, Iceland, Liechtenstein and Switzerland”.

Envisaged as a “single website that serves as the starting point for any products or service related to international law enforcement cooperation”, the platform should “facilitate smooth access” to relevant legislation, policy documents, forms, tutorials, details on national and EU law enforcement structures etc., and it should make available “tools” for data mining, monitoring of the internet or open source consultation. The IXP should also provide a meta-search engine that “processes queries across the relevant databases managed in the framework of justice, liberty and security, and potentially also national databases.” Reference is made to related plans for a European Police Records Index System (EPRIS) which suggests that the search function works on the basis of an index. This indicates that searched information is held by other agencies without making them fully available. The IXP should also link to “the communication channels used for cross-border information exchange, such as Interpol I24/7, SIRENE and the Europol communication tool SIENA”. [20]

The objective of the “Universal Message Format” is to develop and upgrade communication channels. The project started some years ago at the initiative of Sweden, Germany, the Netherlands and Europol and it is aiming to develop a prototype of a standardised format for electronic information exchange under the “Swedish Initiative”, Council Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities. [21] Its first results were presented in 2009. [22] The objective of the IMS is now to refine the prototype by defining an information model “suitable for all cases of police information exchange within Europe” from which the technical specifications of a UMF II can be derived. Following this, the new message format will be promoted and institutionalised and eventually made universal by making its use

binding. [23] Though it remains to be seen whether the manifold “languages” of policing across Europe can be translated into a standardised message format, countries like Belgium, Bulgaria, Greece, Hungary, and the United Kingdom have already expressed their interest in such harmonisation. [24] In addition, Norway, Switzerland, Iceland, Liechtenstein, the EU border agency Frontex, the EU anti-fraud office Olaf, Eurojust and even Interpol have been invited to join the process. [25]

The technical and semantic convergence sought by the promotion of UMF II will be bolstered by organisational harmonisation. The objective of the third IMS action led by Europol is to develop and test standards and guidelines for the management of information exchange instruments. The theoretical part of this exercise was reported to have been concluded in autumn 2010 and should be followed by a practical demonstration using Europol’s “Secure Information Exchange Network Application” (SIENA) as a test bed. [26] SIENA replaced the older Europol communication system InfoEx in 2009. What is new is that SIENA not only connects Europol and the National Liaison Officers at The Hague, but also aims to integrate Europol National Units (ENU) within the Member States and eventually establish direct interfaces with national information systems. [27] Given the emerging expansion of Europol’s electronic communication channels, it is crucial for the agency to establish at least minimal common standards for SIENA across Europe. Moreover, information exchange via SIENA is a litmus test for Europol’s capability to manage and exploit future initiatives in information exchange.

Europol has announced that it will publish its vision of Europe’s future information exchange architecture in July 2011. Informed by the European Commission’s mapping exercise, the agency, supported by Finland, will then outline the “desired state of the information landscape by 2015”. [28] It is already clear that Europol is anxious to establish itself as the “EU criminal information hub” and “one stop shop for data exchange and matching”. [29] But what role will the protection of privacy and personal data play?

A victim of the crisis

Flanked by the promises made in the Stockholm Programme, the Lisbon Treaty and the Charter of Fundamental Rights, and by a rising awareness of the digital vulnerability of individuals in the information age, data protection has made some inroads in the areas of police and justice. Europol and Spain’s ambitious plans for the IXP, for instance, have been criticised by the DAPIX data protection subgroup and also questioned by other members of the Working Party. The team in charge of defining “interoperability” raised the question of whether the term could simply be treated as a technical issue without any relevance to issues of data protection. [30] Each proposal made in the context of the IMS action list makes at least rhetorical reference to data protection: a definition of access rights, roles and logfiles are demanded for information exchange instruments. The Council’s response to the Commission’s Communication on the comprehensive approach to data protection recognises compliance with the principles of necessity and proportionality as preconditions for the exchange of personal data in police and judicial cooperation.

However, when it comes to implementation the reality is less promising. Priority action number 2 of the IMS action list is the development of a so-called “Data Protection Impact Assessment toolkit,” the objective of which is to “ensure that information exchange is fully compliant with fundamental rights.” Chaired by the United Kingdom, the project group set out in summer 2010 to collect examples of “good practice” and produce “robust arguments” for the use of Data Protection Impact Assessments (DPIAs) in order to engage other Member States and produce guidance. A lack of interest by the DAPIX Working Party was seen as the highest risk to the success of this activity. [31] To foster the process, and reduce the burden on other Member States, the UK Ministry of Justice devoted two part-time staff to the project who collected examples for DPIAs from the Anglophone world. [32] The DAPIX meeting was informed on 20 December 2010 that Estonia had joined the project group. The bad news was: “On the substance, however, little progress had made in particular against the backdrop of considerable national

budget cuts.” [33] Obviously other priorities overshadowed the IMS “priority action” devoted to the protection of fundamental rights.

Footnotes

1. Council doc. 16637/09, 25.11.09
2. Council doc. 11312/09, 26.6.09
3. Council doc. 13972/09, 19.10.09
4. Council doc. 16951/1/09, 18.1.10
5. Council doc. 6660/10, 2.3.10
6. COM (2010) 385 final
7. COM (2010) 606 final, 4.11.10
8. EDPS press releases, 30.9.10 and 15.11.10
9. Less than five per cent of the Prüm “hits” (249 of 5160 cases) between Germany and Austria, Spain, Luxemburg, the Netherlands and Slovenia occurred during investigations of serious crimes until October 2009. German Parliament doc. BT 16/14150, 22.10.09.
10. De Hert, P. / Vagelis P.: The data protection framework decision of 27 November 2008 regarding police and judicial cooperation in criminal matters. A modest achievement however not the improvement some have hoped for. In: *Computer Law & Security Review* 25: pp. 403–414.
11. Council doc. 16918/10, 2-3.12.10
12. Council doc. 18190/10, 22.12.10
13. Council doc. 17923/10, 10.1.11
14. Council doc. 5366/11; presented by the EDPS at the DAPIX subgroup meeting on 17.1.11.
15. Council doc. 5980/11, 1.2.11
16. Council of German States doc. Bundesrat Drucksache 707/10 (Beschluss), 11.2.11
17. Council doc. 5980/4/11, 15.2.11
18. Council doc. 5366/11, 17.1.11, pp. 45-47
19. Council doc. 11125/10, 15.6.10
20. Council doc. 11117/10, 15.6.10
21. <http://www.semic.eu/semic/view/snay/network/Communities/UMF.xhtml>
22. D. Borchers: *Europäischer Polizeikongress. You Parlez UMF?* 12.2.09. <http://www.heise.de/security/meldung/Europaeischer-Polizeikongress-You-Parlez-UMF-Update-194851.html>
23. <http://www.semic.eu/semic/view/documents/semic-community-umf-roadmap.pdf>
24. Council doc. 11125/10, 15.6.10
25. Council doc. 11087/10, 15.10.10
26. Council doc. 11125/10, 15.6.10
27. Baden-Württemberg Ministry of Interior: *Bericht des deutschen Ländervertreeters im Ausschuss nach Artikel 36 EUV über die Beteiligung der Angelegenheiten der Europäischen Union. [Report of the Representative of the German States at CATS].* Stuttgart. 30.3.10, p. 16
28. Council doc. 15198/10, 20.10.10
29. Council doc. 6517/10, 22.2.10
30. Council doc. 11353/10, 21.6.10
31. Council doc. 11817/1/10, 19.10.10
32. Council doc. 14458/10, 18.10.10
33. Council doc. 18190/10, 22.10.10

Civil liberties

BLACKLISTED: Targeted sanctions, pre-emptive security and fundamental rights, Gavin Sullivan and Ben Hayes. *European Center for Constitutional and Human Rights*, December 2010, pp. 128. This report condemns the Kafkaesque world of UN and EU terrorist lists. As Martin Scheinin, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, writes in the foreword: "This report...is important because of its comprehensive coverage of the origins and development of the UN and European Union terrorist lists, their impacts, their political significance and the way in which they have been challenged in national and regional courts. Most importantly, it provides a European perspective to an international human rights problem that originates at the UN Headquarters in New York. Its conclusions concerning a reform of the European lists deserve attention by every policy maker. There is a fundamental need for a broader public debate concerning the future of terrorist listings.": http://www.ecchr.eu/news_details.402/items/new-report-blacklisted-targeted-sanctions-preemptive-security-and-fundamental-rights.html

The price is wrong: the cost of CCTV surveillance in the United Kingdom, Alex Deane and Daniel Hamilton. *Big Brother Watch* 30.11.10, pp. 23. This report analyses data from 336 UK local authorities who responded to Big Brother Watch's Freedom of Information request on the cost of installing and operating CCTV cameras. These authorities spent £314 million in the 2007 to 2010 period with Birmingham Council topping the spending list due to "Project Champion", the then Labour government's plan to use more than 200 CCTV Cameras to surveil two Muslim areas in Birmingham:

<http://www.bigbrotherwatch.org.uk/files/big-brother-watch-report---price-is-wrong-29-11-10-final.pdf>

The UK ban on the PKK: persecuting the Kurds, Campaign against Criminalising Communities. Briefing 4, November 2010, pp. 4. This briefing paper describes the UK government's attempts to deter protests by migrant communities that have fled oppressive regimes, such as Kurds. It also describes the UK's complicity in Turkish terror against its Kurdish communities in their struggle for self-determination. Available as a free download at: <http://campacc.org.uk/uploads/kurds.pdf>

Freedom of speech on campus: rights and responsibilities in UK universities. *Universities UK* February 2011, pp. 67 (ISBN 978-1-84036-251-0). This report considers universities and academic freedom and freedom of speech, "and the constraints surrounding these freedoms", after comments by the director of MI5 and Prime Minister, David Cameron. The Working Group behind this report came into existence in 2009, and "Islamic radicalisation" is its focus, although it also includes animal rights protests and the far right. As a sign of the times, it is strong on the wide-ranging responsibilities of universities, which need "to ensure that potentially aberrant behaviour is challenged and communicated to the police where appropriate." The National Union of Students, which was part of the working group, has criticised the report's "unhelpful and unrealistic" case studies and defends its support for a grassroots "No Platform" policy for racists and fascists "as both morally desirable and legally possible". Available as a free download at: <http://www.statewatch.org/news/2011/feb/uk-freedom-of-speech-on-campus.pdf>

No Fixed Abode: the housing struggle for young people leaving custody in England, Jane Glover and Naomi Clewett. *Barnardo's 2011*, pp. 58. Report finds: "Children as young as 13 are being released from custody into unsuitable and unsafe housing, leaving them vulnerable to reoffending at huge cost to themselves, society and the Exchequer." It calls for a cross-government action plan and dedicated senior officials from the Justice Ministry, Departments for Education and Communities and Local Government to ensure that suitable accommodation for young people leaving custody is an issue of urgent priority: http://www.barnardos.org.uk/news_and_events/media_centre/press_releases.htm?ref=66936

Immigration and asylum

The Wages of Fear: risk, safety and undocumented work, Jon Burnett and David Whyte. *PAFRAS and the University of Liverpool* 2010, pp 42. In this report Burnett and Whyte expose the institutional exploitation involved in undocumented work, based on interviews with 14 migrant workers and "failed" asylum seekers in one northern city. It describes the reality behind so-called "flexible" working and how: "...employers exploit undocumented workers in some of the dirtiest, most dangerous jobs as a matter of routine, and how they pay poverty wages for backbreaking work. They force long hours when needed, and summary dismissals when not. They coerce injured workers to carry on working and they fire those whose injuries are so bad that they cannot continue to work. With their very presence in the country criminalised, workers are much less able to formally organise themselves or join a trade union; they are less able to seek redress if and when they are abused; and are hesitant to seek medical assistance, sometimes after serious injuries." It is a system in which "economic flexibility is exchanged for increasing the physical risks experienced by undocumented workers" and in which the "contradiction of law enforcement...ensures legal health and safety protections for workers are directly undermined by the enforcement of immigration law.": http://www.pafaras.org.uk/wpcontent/uploads/2011/01/The_Wages_of-Fear.pdf

Unsustainable: the quality of initial decision-making in women's asylum claims, Helen Muggeridge and Chen Maman. *Asylum Aid* January 2001, pp. 90. This research was conducted to examine the quality of the initial decisions made by the UK Border Agency (UKBA) when women claim asylum and is the first in-depth study of decision-making for women seeking asylum since the introduction of the New Asylum Model in 2007. It found that "women were too often refused asylum on grounds that were arbitrary, subjective, and demonstrated limited awareness of the UK's legal obligations under the Refugee Convention. Many of the UKBA's decisions proved to be, in the words of an immigration judge examining one of the cases included in this research, "simply unsustainable", and 50% were overturned when subjected to independent scrutiny in the immigration tribunal." <http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf>

The work of the UK Border Agency. Volume I: Report, together with formal minutes, oral and written evidence Home Affairs Select Committee 21.12.10, pp. 30. Since 2006, the HAC has received regular updates from the UK Border Agency (UKBA) on the deportation of foreign national prisoners, the backlog in asylum cases and other issues such as child prisoners and detainees with special needs. This report includes evidence from Lin Homer, Chief Executive of the UK Border Agency.

Coping with Destitution: survival and livelihood strategies of refused asylum seekers living in the UK, Heaven Crawley, Joanne Hemmings and Neil Price. *Oxfam GB Research Report* February 2011, Pp. 69. This research uncovers how the hundreds of thousands of people currently living in the UK, with no access to legitimate means of securing a livelihood, survive on a day-to-day and longer-term basis. "UK asylum policy has increasingly restricted asylum seekers access to welfare support, both while their application is being processed and if they are refused. Over recent years, there have been growing concerns about the scale and impact of destitution among refused asylum seekers...Existing evidence suggests that many asylum seekers have been destitute for more than six months and a significant proportion for more than two years." The report makes key findings in the areas of institutional resources, social resources, economic resources and access to resources. It concludes that: "Destitute asylum seekers...are forced to lead little more than a hand-to-mouth existence, with no hope that their situation will ever come to an end." http://www.oxfam.org.uk/resources/policy/right_heard/downloads/rr-coping-with-destitution-survival-strategies-uk-040211-en.pdf

Los controles de identidad, Grupo Inmigración y Sistema Penal.

Mugak no. 53 (December 2010) pp.32-34. This article looks at identity checks in Spain that target migrants, highlighting that large-scale operations in which foreigners are systematically subjected to police controls on the basis of racial profiling are becoming commonplace, with certain neighbourhoods periodically swarmed by police officers. Certain aspects that are noted include the issuing of quotas to the police for the number of migrants who live in Spain irregularly who must be arrested, the damaging effects of these controls on migrant communities and their integration, and instructions by the interior ministry to arrest migrants whose documents are not in order and to try to expel them using a fast-track procedure, instructions against which lawyers have protested, labelling them “xenophobic”. A leading police officers’ trade union has also filed a complaint because they are instructed to treat irregular status in a way that should be reserved for the investigation of criminal offences.

“**Una storia sbagliata. Rapporto sul centro di identificazione ed espulsione di Ponte Galeria**”. *Medici per i Diritti Umani* (MEDU), November 2010, pp. 13. A report on Rome’s detention centre that starts by looking at the legal framework for detention centres and their switch to “identification and expulsion centres” (CIEs) on 8 August 2009, when a longer limit was introduced (from 60 to 180 days). It is based on a visit on 14 October 2010 by MEDU to the *Ponte Galeria* centre, the largest in Italy, which has been the setting for revolts, protests and hunger strikes by detainees complaining about inadequate care and inhumane living conditions, the latest one in March 2010. It has a capacity of 366 people (176 men and 190 women), and the most represented nationalities are Romanian, Nigerian, Moroccan, Algerian, Ukrainian and Serbian. The facility is described as “entirely inadequate to ensure dignified living conditions to people who stay there for 24 hours per day, facing periods of detention that may last for up to six months”. Self-inflicted injuries reportedly decreased in late 2010, although they were very frequent between March and July 2010, particularly multiple cuts with razor blades and mock hangings in a centre where three of the four deaths in Italian CIEs in 2009 occurred, one of them a suicide. It notes the routine practice of prescribing excessive amounts of sedatives to detainees, there are no written regulations. 747 out of 1,727 detainees from the start of 2010 to 27 September were expelled (43%), and MEDU has calculated the average length of detention in the first three quarters of 2010 at 42 days. The prefect of Rome [the government envoy in charge for security] has argued that it is a structure in which human dignity is not fully respected. MEDU concludes that CIEs seem to be the “bad story of an institution that... [it] is inhumane, unjust, inefficient and useless”. <http://www.mediciperidirittiumani.org/una%20storia%20sbagliata.pdf>

Europe

Euskal Herria: the struggle for independence in the Basque Country and the impact of ‘terrorist bans’, Campaign against Criminalising Communities. *Briefing* 3, November 2010, pp. 4. This briefing looks at the background to the Basque Country’s struggle for independence and social, political and economic rights. It explains how generations of southern Basques suffered under Franco’s fascist dictatorship and the impact of Spain’s “war on terror” on the right to Basque self-determination. The Spanish government’s use of torture on activists and the banning of successive Basque political and cultural organisations have not diminished the desire for “a settlement...based on the respect for self-determination as well as the diversity of cultures, political ambitions and national projects that coexist in the Basque country.” <http://campacc.org.uk/uploads/basque.pdf>

Are undocumented migrants and asylum seekers entitled to access health care in the EU? A comparative overview in 16 countries. *HUMA Network* (November) 2010, pp. 24. This study analyses access to health care for undocumented migrants and asylum seekers in 16 European countries: Belgium, Cyprus, Czech Republic, France, Germany, Greece, Italy, Malta, The Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the UK. The “research provides evidence that the access to health care by undocumented migrants, and to a lesser extent by asylum seekers, is not guaranteed in the EU. The standards set by the main international treaties are far from being

respected and member states instead of working on the “progressive realisation” of this right are increasingly using it as a tool to discourage the entry of new migrants.”

Law

101,000 Stop and Searches. No terror arrests, Robert Verkaik. *The Independent* 29.10.11. This article observes that not a single person, out of 101,248 people stopped and searched under Section 44 of the Terrorism Act, was arrested for terrorism-related offences in 2009. Of the 506 arrests that resulted from these random searches, none were terrorist-related. Since July 2010, police are not allowed to stop and search people unless they have reasonable suspicion of them being a terrorist.

Sixth report of the independent reviewer pursuant to section 14(3) of the Prevention of Terrorism Act 2005, Lord Carlile. *The Stationery Office* (ISBN: 978 0 10 851010 6) 2011, pp. 96. This report includes the Independent Reviewer of Terrorism Legislation’s annual review of the operation in 2010 of the control orders system. He concludes, 1. “The control orders system, or an alternative system providing equivalent and proportionate public protection, remains necessary, but only for a small number of cases where robust information is available to the effect that the individual in question presents a considerable risk to national security, and conventional prosecution is not realistic”, and 2. “The control orders system continued to function reasonably well in 2010, despite some challenging Court decisions and unremitting political controversy.” <http://www.official-documents.gov.uk/document/other/9780108510106/9780108510106.pdf>

Proposals for the Reform of Legal Aid in England and Wales. *Ministry of Justice*, Consultation Paper CP12/10, November 2010, pp. 218. This “consultation Paper” presents the government’s widely criticised plans to slash Legal Aid in England and Wales by £350 m, removing funding from whole areas of law, including social welfare, debt and housing. Available as a free download at: <http://www.justice.gov.uk/consultations/docs/legal-aid-reform-consultation.pdf>

Response of a sub-committee of the judges’ council to the government’s consultation paper cp12/10, proposals for the reform of legal aid in England and Wales. *Judges Council for England and Wales*, 11.2.11, pp. 36. This paper expresses senior judges “numerous concerns” about the proposed cuts put forward in the Ministry of Justice’s consultation paper on Legal Aid. Its major concern “is that the proposals would lead to a huge increase in the incidence of unrepresented litigants, with serious implications for the quality of justice and for the administration of the justice system in terms of additional costs and delays – at a time when courts are having to cope in any event with closures, budgetary cut-backs and reductions in staff numbers.” The judges predict that the reforms will “give rise to a huge increase in the number of cases involving unrepresented parties”. <http://www.judiciary.gov.uk/Resources/JCO/Documents/Consultations/response-judges-council-legal-aid-reform-consultation.pdf>

Military

Human Rights Groups Announce Bush Indictment for Convention Against Torture Signatory States. *European Centre for Constitutional and Human Rights*, 7.2.11. Torture victims were to have filed criminal complaints, with 2,500-pages of supporting material, in Geneva against former US President George Bush, who was scheduled to speak at an event there on 12 February. When Bush cancelled his trip to avoid prosecution, the complaints were made public and it was announced that the Bush Torture Indictment would be waiting wherever he travels next. According to international law experts at the New York-based Centre for Constitutional Rights (CCR) and the Berlin-based European Centre for Constitutional and Human Rights (ECCHR), “former presidents do not enjoy special immunity under the Convention against Torture (CAT)”. Human Rights Watch has called for Bush to be prosecuted in the USA. This website article includes links to key documents. http://www.ecchr.eu/news_details.402/items/bush-indictment.html

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