

Statewatch bulletin

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EUROPE

EU

“Legally permitted surveillance”

The Police Cooperation Working Group, which comes under the K4 Committee, has been presented with a plan for the next generation of satellite-based telecommunications systems - planned to come into operation in 1998. It would:

“tag” each individual subscriber in view of a possibly necessary surveillance activity.

The report, drawn up for the Working Group by the UK delegation, says that the new mobile individual communications working through satellites are already underway and unlike the current earth-bound systems based on GSM-technology will “in many cases operate from outside the national territory”.

This is the latest in a number of initiatives concerning policing, immigration and the law to emanate from the K4 Committee structure which will not be subject to democratic debate or decision-making by the European or national parliaments.

The rationale for the plan is that these new systems:

“will provide unique possibilities for organised crime and will lead to new threats to national security”.

However, the report says all the new systems have to have the capability to place all individuals under surveillance. Moreover, the ability to “tag” individual phone lines could equally be used against political activists, “suspected” illegal migrants and others.

The fact that the new systems are being developed by large private international corporations, not as national state-run systems, creates “unusual problems for the legally permitted surveillance of telecommunications”. The first problem to surface, according to the report, is that:

“initial contacts with various consortia... has met with the most diverse reactions, ranging from great willingness to cooperate on the one hand, to an almost total refusal even to discuss the question.”

The report goes on to say:

“it is very urgent for governments and/or legislative institutions to

make the new consortia aware of their duties. The government will also have to create new regulations for international cooperation so that the necessary surveillance will be able to operate.”

Another “problem” for surveillance under the new systems is that satellites will communicate with earth-bound stations which will function as distribution points for a number of adjoining countries - there will not be a distribution point in every country. While the existing “methods of legally permitted surveillance of *immobile and mobile* telecommunications have hitherto depended on national infrastructures” (italics added) the:

“providers of these new systems do not come under the legal guidelines used hitherto for a legal surveillance of telecommunications.”

The report says it would be difficult to monitor the “upward and downward connections to the distribution point” so the “tag” would start the surveillance at “the first earthbound distribution point”.

Due to the number of different countries that might be involved in making a connection it has been agreed that the following “relevant data” should be provided: “the number of the subscriber calling, the number of the subscriber being called, the numbers of all subscribers called thereafter”. The report uses the example of a subscriber who is a national of country A, with a telephone subscription in country B (supplying the relevant data for the “tag”), who occasionally uses the system in country C which uses the distribution point in country D (which conducts the surveillance) and who is in contact with a person in country E concerning a suspected serious crime in country F.

The report with a series of recommendations including amendments to national laws to “ensure that surveillance will be possible within the new systems” and that “all those who are involved in planning the new systems” should be made aware of “the demands of legally permitted surveillance”.

Legally permitted surveillance of telecommunications systems provided from a point outside the national territory, Report from the British Delegation for the group “Police Cooperation” (Surveillance of telecommunications), ref: 4118/95, Restricted, ENFOPOL 1, Brussels, 9.1.95.

Europol Drugs Unit plans for new roles

The work programme for the first half of 1995 of the Europol Drugs Unit says it will: “study and evaluate the strategic and

practical implications of the possible extension of the EDU mandate". This comes after three additional roles - smuggling of nuclear material, organised illegal immigration and vehicle theft - were added to its original role of drug trafficking by the European Council meeting of Prime Ministers in Essen in December. The programme says that it needs to: "Upgrade the IT [computer] system to follow the increase in personnel and the possible extension of the mandate (eg: acquire a database application server)". This seems to indicate that it is anticipated that the next "extension" in the EDU's mandate will be to hold personal data - currently explicitly precluded by the Joint Action agreed by the Council of Justice and Home Affairs Ministers in Brussels on 9 March (see *Statewatch*, vol 4 no 6). However, UK Home Secretary Michael Howard hinted at this move in February when he said the EDU is not permitted to store personal information because "the rules have not yet been agreed".

The EDU's plans for 1995 also include: establishing encrypted electronic mail links with all National Criminal Intelligence Systems (NCISs) and the EU translation centre in Luxembourg; establishing direct secure access to Liaison Officers to their national criminal databases; finalising the EDU/NCIS handbooks.

The programme of meetings in the EDU HQ in the Hague for the first six months of 1995 includes: 16 March: Heads of NCISs; 3/4 April: Cocaine case officers meeting; 11/12 May: Money laundering conference; 19/20 June: Operational Heads of NCIS meeting; May: Heads of customs investigation services; May/June: Expert meeting on Africa project.

Report on 1994 activities

As its reputation has grown, so have the numbers of requests for information made to the EDU by police forces in the EU has risen from 146 in the first half of 1994 to 449 in the second - a total of 595 for the year. The number of requests made by Germany was up from 16 to 104, Belgium from 5 to 103, France from 49 to 66, the UK from 3 to 62, and Portugal from 3 to 22. The EDU also played an active role in the drafting of the Europol Convention responding to a request from the Working Group on Europol.

The EDU is having to tackle the legal status of the staff it employs directly as it is not a "legal entity" and will have no legal status until the Europol Convention is in place. To get round this the host country, the Netherlands, is to give EDU officers diplomatic status under the Vienna Convention on Diplomatic Relations. This will give EDU personnel "professional immunity from penal, civil and administrative jurisdiction". The Netherlands Ministry of Foreign Affairs has sent "notes" to its embassies in the other 14 EU countries to be "exchanged" with the governments.

New Statesman, 17.3.95; *EDU/EUROPOL - Working programme January-June 1995*, K.4 Committee report to COREPER/Council, ref: 4534/2/95 Rev 2 Restricted EUROPOL 9, 24.2.95; *Report on activities of the Europol Drugs Unit between 1 January and 31 December 1994 - First year progress report*, Working Party on Europol, ref: 4533/1/95, Rev 1 Restricted EUROPOL 8, 21.2.95; *Conclusion of the Group of budgetary experts*, 18 and 19 April 1994, Le Havre. Dossier no: 2210-12.

Europol: Home Secretary questioned

The UK Home Secretary Michael Howard was questioned on 16 March by the House of Lords Select Committee on the European Communities, chaired by Lord Slynn, conducting an inquiry into Europol. He told the Committee that the Europol Drugs Unit in the Hague had processed 300 requests from the National Criminal Intelligence Service (NCIS) in the UK. These included requests for

licence plate numbers, names and addresses and criminal records on named individuals.

Mr Howard was cautious in giving full support to Europol. Asked about the inclusion of terrorism in its planned objectives he said: "Europol must develop a track record before it can be trusted". On the issue of establishing an appeals procedure for individual complaints he was opposed to the European Court of Justice having a role. He said he "might" support an independent tribunal but there was "the difficulty of exporting British standards".

The Select Committee members spent some time questioning him on the incorporation of the Council of Europe recommendation on the use of police data (1987) in the draft Europol Convention. Mr Howard said this was not "necessary or desirable" because they would be "taking into account the principles" of the recommendation. One of the Select Committee members commented that this was "not a very strong commitment".

Lord Bethell, who had been an MEP, asked Mr Howard how he could find out if his name was on the Europol computer. Should he ask an MP or MEP or perhaps a lawyer? Mr Howard said he should probably consult his legal adviser - this caused some surprise as it seemed that Mr Howard had completely forgotten about the Data Protection Registrar. Lord Aldington reminded him that to contact the DPA might be the best course.

Mr Howard told the Select Committee that his "preferred" form of redress for the citizen against Europol would be through national courts, not the European Court of Justice. Lord Wilberforce asked him directly: "What is the objection to the European Court of Justice?" Mr Howard responded: "If there is no need for it to be involved then it is not desirable". The majority of EU governments are strongly in favour of the European Court of Justice being involved, so too are earlier reports from the Select Committee.

House of Lords Select Committee on the European Communities, 16.3.95.

Secrecy attacked

In an article in the leading Dutch legal journal "Nederlands Juristen Blad", Professors Curtin and Meijers have made a detailed analysis of the (lack of) openness of European administration. They conclude that the European Union is characterised by autocratic rulers and secretive committees, and that this threatens national democracies. Although only four of the EU's 15 member states (Austria, Germany, Ireland (where a Freedom of Information bill is expected soon) and the UK) lack any constitutional arrangements or specific legislation regulating access to government documents the EU practice may become the norm.

The two law professors argue that under the European Convention of Human Rights, the right of the public to be properly informed is explicitly recognized, and that EU practices are in flagrant violation of this. They also look at the "Schengen" arrangements and conclude that under its secret regime there is no equality in the legal process if only one side knows the secret rules under which a case is to be handled. The absence of any international court to interpret the very vague key terms and wordings of the Schengen documents is criticised as well.

Openbaarheid in Europa: Geheim bestuur door "Schengen" en "Maastricht"?, Deirdre Curtin and Herman Meijers. *NJB* 3.2.95, pp158-173.

The law and organised crime

A report on international organised crime (colloquially referred to as IOC) adopted by the Council of Justice and Home Affairs in December makes a number of proposals which while geared to

dealing with "organised crime" raise questions as to their legal propriety or controls.

The report, prepared for the K4 Committee by the Steering Group on Judicial Cooperation says the legal background for the initiatives being taken in this field are based on EU member states ratifying the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990. A survey by GAFI (Groupe d'Action Financière Internationale) last year showed that only three EU states had ratified the Convention (the UK, Netherlands and Italy). Two EU states have restricted the scope to drugs excluding other forms of "organised crime". The report opposes this limitation, "all the proceeds of international organised crime should be covered since only such a definition of the crime would facilitate effective judicial cooperation". There is however not only no agreed definition of what constitutes an "organised crime" but it is not an offence per se in most member states.

The intention to try and introduce "common charges throughout the EU with regard to international organised crime" has proved unworkable so the Steering Group is working to 1) "identify any gaps" in what constitutes "offences by criminal or similar organisations"; 2) "establishing rules on conspiracy, attempted crime and preparatory acts"; 3) "the possibility of adopting measures which allow proceeds derived from offences to be confiscated whether or not their perpetrators had been convicted"; 4) it is proposed that one EU state may request another EU state to carry out "telecommunications surveillance" if "similar measures could be taken" in the requesting country - this leaves it to police officers to make assumptions that permission would be given by a court or a government Minister if it had been requested.

Interim report on cooperation in the campaign against international organised crime, K4 Committee, Restricted, JUSTPEN 89, ref: 10829/94, dated 15.11.94.

The 1996 IGC

The Standing committee of experts on international immigration, refugee and criminal law, Utrecht, Netherlands have produced proposals for changes in the Treaty of European Union at the inter-governmental conference (IGC) in 1996. The proposals are intended to "reinforce within the Union the democratic traditions of the Member States" and cover access to information, judicial control, the roles of the European and national parliaments, and combatting racial discrimination.

The Standing committee proposes that the right of access to information should be written into the Treaty instead of allowing it to be decided by the Council and the Commission as at present. The Council (the body representing the 15 EU governments) would have to specify "categories of information to which the citizen shall not have access and the grounds upon which such access may be denied". For the "third pillar" (Article K: policing, immigration and legal cooperation) it is proposed that all draft conventions and joint actions should be published in the Official Journal of the European Communities three months before the Council makes its decision.

Decision-making under the "third pillar" is the most secretive in the EU and it is therefore arguable that all draft resolutions and reports from the K4 Committee considered by the Council of Justice and Home Affairs Ministers should be made public before they are adopted. Resolutions and reports are not binding but they do set the policy-making agenda for the member states. Similarly the proposal that the Council should be able to decide which of its documents should be withheld will, on past practice, be used to deny access to reports which properly belong in the public domain.

On the question of the jurisdiction of the European Court of Justice (ECJ) the Standing committee recommends that its

jurisdiction should be made mandatory. On the role of the ECJ in Conventions adopted under the "third pillar" the report argues that the objection of one Member state (which is often the UK) precludes other countries from giving proper protection for citizen's rights.

At present the Council of Ministers ignores Article K.6 of the Treaty of European Union (TEU) which says it must "consult" the European Parliament on major decisions. This report seeks to enforce this provision by ensuring that the European Parliament has three months to express an opinion on any decision. The Standing committee report also seeks to give national parliaments the same three month period to express an opinion on any decision which is binding on Member states.

Citing the European Convention on Human Rights and the International Covenant on Civil and Political Rights the report calls for the "prohibition of discrimination on grounds of race, colour, birth, religion, language, or national, social or ethnic origin". Finally, the Standing Committee calls for the granting of citizenship to all third country nationals "lawfully resident" in a Member state without which any "measures against racism, xenophobia, and racial discrimination will remain hollow rhetoric".

The IGC is scheduled to begin work in 1996 under the Italian Presidency of the EU and continue for up to a year. Changes to the "third pillar" will include discussion of giving Europol an operational role. Whether the Council of Ministers of Justice and Home Affairs becomes more "open" and the European Parliament is properly consulted on "third pillar" issues remains to be seen. Making the European Parliament a proper, democratic, legislative body and tackling racism - which cannot be tackled simply by constitutional amendments to the TEU - is not on the agenda.

Proposals for the amendment of the Treaty on European Union at the IGC in 1996, Standing committee of experts on international immigration, refugee and criminal law, p/a Secretariat, PO Box 638, 3500 AP Utrecht, the Netherlands.

SCHENGEN

Nordic Passport Union position

Meeting in Reykjavik on 27 February the Prime Ministers of the Nordic Union agreed a report prepared by the Danish Presidency which called for:

"a Nordic arrangement with the Schengen Cooperation so as not to create new borders within or between the Nordic area and the rest of Europe"

Under the Nordic Passport Control Agreement for 40 years there has been free movement between the members of the Nordic Council, founded in 1952 - Sweden, Norway, Finland, Denmark and Iceland together with the autonomous territories of the Faroes, Greenland (Denmark) and the Åland Islands. Through the Nordic Justice and Interior Ministers the statement says:

"the Nordic countries have for many years cooperated with a view to combatting crime, drugs and illegal immigration."

The Prime Ministers agreed that the countries wanting to apply for membership of the Schengen Agreement - Denmark (already with observer status), Sweden and Finland - would only do so if it is agreed that Norway and Iceland are also admitted.

They maintain that the checks already carried out at their external borders match those of the Schengen countries. The meeting concluded that the Prime Ministers were "ready to start negotiations with the Schengen countries with a view to finding a practical

solution that meets the interests of the Nordic countries as well as the Schengen countries".

To effect this solution the Schengen countries would have to agree to two non-EU countries - Norway and Iceland - becoming members, at the moment only members of the EU can join the Schengen Agreement. For these two countries it will involve not just a continuation of the existing free movement arrangements but also of providing to the Schengen Information System (SIS) with list of people wanted, deported, and to be excluded - which may raise civil liberties issues for them.

The Nordic Passport Union in a European Context, Statement by the Prime Ministers of the Nordic countries, Reykjavik, 27.2.95; *Information note from the Danish delegation concerning the discussions in the Nordic Passport Union on ways in which Denmark can meet its obligations under the Community Member States' Convention on the crossing of the external borders*, ref: SN 2245/91 WGI 798, Confidential, 15.5.91; *Information*, Copenhagen.

SPAIN

Conference on Peace for the Basque community

The first meeting of the Conference on Peace for Euskal Herria (Basque country) took place in Bilbao between March 8-12. The meeting, on "Autonomy, sovereignty and self-determination", was organised by the Social Movement for Dialogue and Agreement (ELKARRI). Among the participants were the Nationalist Basque Party (PNV), Basque Solidarity (EA), Unity of Alva (UA), United Left (IU-EB) and Herri Batasuna. It was chaired by Felix Marti, the president of UNESCO in Catalonia, and two well-known Basque journalists. Joe Austin, from Sinn Fein, also participated and gave a talk on the peace process in northern Ireland.

The Conference held parallel sessions attended by pacifist organisations, intellectuals and Basque journalists and hosted discussions between the political parties. These saw agreement on the political character of the conflict in the Basque-country as well as the necessity to open new avenues of dialogue in order to attain peace. The EA, UA and IU-EB said that an ETA truce would be sign of their good intention, while the PNV saw no restrictions to the development of a dialogue. Herri Batasuna (HB) called on the government to open contacts with ETA.

Neither the PSOE nor the PP participated in the conference. They claimed that an ETA truce was a precondition for a meeting and denied that the right of self-determination was central to the resolution of the conflict.

Kontrola Kontrolpean, Donostia, Euskadi (Spain)

Human rights roundup

Selected cases dealt with at Strasbourg October 1994-February 1995:

The Commission declared the following cases admissible:

* *Aksoy v Turkey* (19.10.94): Applicant complained of torture contrary to Art 3, and was allegedly killed as a result of his complaint. The Turkish government disputed the right of the Commission to continue its investigation since his heirs had not indicated that they wished the complaint pursued. The Commission decided that in view of the serious nature of the complaints and their connection with events in SE Turkey the application is of general public interest and should proceed.

* *Akduvar and others v Turkey* (19.10.94): Complaints of forced

evacuation and destruction of Applicants' village in SE Turkey contrary to Art 3 (inhuman or degrading treatment), Art 5 (security of person), Art 8 (respect for homes and family life) because of their Kurdish origin, contrary to Art 14 (non-discrimination). The government argued that they should have exhausted domestic remedies by way of civil or criminal proceedings in the Turkish courts. The Commission found no evidence that remedies in the Turkish courts would be effective and absolved the Applicants from the obligation to pursue them.

* *Findlay v UK*: Allegation that court-martial system operated by the army and the RAF violates rights to fair trial, because the same officer directs where the trial is to be held, which charges should be put, who should prosecute and who should try the case. There is no independent appeal, no jury, the burden of proof is lower than in civilian trials and little discretion in sentencing. The applicant was jailed for two years after holding colleagues at gunpoint, despite medical evidence that following his duty in the Falklands he suffered a serious nervous breakdown.

The Commission reported on the following cases, which it referred to the Court:

* *Benham v UK* (29.11.94): imprisonment for non-payment of poll tax of an unemployed man with no means to pay, after an inadequate inquiry into his means and his reasons for non-payment violated rights to liberty and security of person under Art 5; failure to compensate him for wrongful detention violated Art 5(5); and absence of legal aid at the hearing where he risked imprisonment violated his right to a fair trial (Art 6(1)).

* *Abed Hussein and Prem Singh v UK* (21928/93; 23389/94): juveniles detained at "Her Majesty's Pleasure" and parole repeatedly denied: increase in their sentence by the Home Secretary breached Art 5 (liberty and security of person), which requires judicial, not executive control of release.

* *Remli v France* (26.1.95): Refusal by court to take formal notice of racist remarks of juror directed at French citizen of Algerian origin on trial for murder violated his right to be tried by an impartial tribunal (Art 6(1)).

The Court heard the following cases:

* *McCann, Savage and Farrell v UK* (20.2.95): Alleged violation of the right to life (Art 2) by the killing of three IRA members in Gibraltar 1988. The families allege that MI5 recklessly misinformed police who killed the three, and that the inquest was an inadequate inquiry into the deaths, in which the government constructed "an apparatus of deceit" to mislead the jury. Last year the Commission ruled by a majority that there had been no violation of Art 2.

* *Nasri v France* (21.2.95): proposed deportation of deaf, dumb and illiterate Algerian citizen from France, where he had lived since age five, for criminal offences: alleged violation of Arts 3 (freedom from inhuman or degrading treatment or punishment) and 8 (respect for family and private life).

* *Vogt v Germany* (22.2.95): dismissal from civil service because of political activities of member of German Communist Party: alleged violation of Arts 10 (freedom of expression) and 11 (freedom of association) and discrimination in the exercise of those rights contrary to Art 14.

* *Kergarvi v Finland* (23.2.95): failure of Finnish Supreme Court to communicate certain documents to party to proceedings before court: alleged violation of Art 6(1) (fair trial), in particular equality of arms.

The Court gave judgment in the following cases:

* *Kroon v The Netherlands* (27.10.94): refusal of registrar to register the biological father, rather than the mother's husband, as the father of the applicant's child violated rights to family life under Art 8.

* *Boner and Maxwell v UK* (28.10.94): Refusal of legal aid for criminal appeal violated the right to representation in criminal trial under Art 6(3).

* *Margaret Murray and others v UK* (28.10.94): arrest, detention, search of premises etc. under northern Ireland emergency provisions; no violations of right to liberty and security of person, or of the right to be informed promptly of reasons for arrest, no right to compensation as no wrongful arrest; no violation of rights to privacy, home and family life.

* *Vereniging Weekblad "Bluf!" v The Netherlands* (9.2.95): Seizure and withdrawal from circulation of an issue of the periodical "Bluf!" containing confidential internal security documents infringing right to freedom of expression: Art 10. See report in this issue.

* *Welch v UK* (9.2.95): Confiscation order made under Drug Trafficking Offences Act (not in force at the time of the offences) violated Art 7 as retrospective penal measure. UK ordered to repay £60,000 and costs.

* *Allenet de Ribemont v France* (10.2.95): Naming of applicant at press conference by interior minister and police chief as instigator of murder violated right to presumption of innocence: Art 6(2).

* *McMichael v UK* (24.2.95): failure to disclose to mother of child confidential social work reports on which decisions to remove child and deny access violated Art 6(1) right to fair trial and Art 8 (respect for family life).

Europe

ECJ roundup

Selected judgments from the European Court of Justice, Luxembourg

* *Commission v UK* (C-382/92 and 383/92): Collective redundancies and transfer of undertakings: the UK's national rules were in breach of Community law in not providing a proper system for designating workers' representatives; failing to impose an obligation on employers to seek agreement; limiting the scope of the duty to consult. In addition the sanctions on failure by employers to inform and consult were not effective deterrents. (Judgment 8.6.94)

* *Raymond Vander Elst v Office des Migrations Internationales* (C-43/93): A Belgian demolition firm sent Moroccan workers who had been working for them for some years, to do a job in France. The OMI, the body which recruits all foreign workers, claimed that the Moroccan workers were illegally employed in France, and fined

the employer. The court held that the fine was unlawful: where an undertaking or company established in one member State provides services in another, it is entitled to send its own workers, who are legally resident third-country nationals to do the work without getting work permits for them to work in the second country.

Europe - new material

Council

Joint action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the Treaty of European union concerning the Europol Drugs Unit, OJL 62, 20.3.95, pp1-3.

Directive laying down arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, OJL 368, 31.12.94, pp38-43.

Common position of the Council on the proposal for a Parliament and Council directive on the protection of individuals with regard to the processing of personal data and the free movement of such data, 15.3.95, ref: C4-0051/95. The final draft of the long-awaited directive on data protection covering the work of the Commission and Council. The exceptions where it will not apply, in Article 3, are Titles V and VI of the Treaty on European Union - foreign and security policy and justice and home affairs. In addition there is an overall rider excluding: "processing operations concerning public security, defence, State security (including the economic well-being of the State) and the activities of the State in areas of criminal law".

Recent developments in European Convention law, John Wadham & Philip Leach. *Legal Action* January 1995, pp16-20. Summarises cases at the European Court and Court of Human Rights which are relevant to Britain and Northern Ireland.

Belgian police raid Brussels Kurds, Sheri Laizer. *Kurdistan Report* 20:16 (January-February) 1995. Eye-witness account of the police raid on the Confederation of Kurdish associations in Europe last November.

Giving Europeans a legal identity, Gavin Barrett and Jennifer McHugh. *European Brief*, vol 2 no 5, February/March 1995, pp29-31. Argues that the meaning of being "a citizen of the Union" needs to be clarified for nationals and migrants.

An impassioned plea for free speech in Turkey: Gurbetelli Ersöz's defence. From: Friends of Özgür Gündem & Action for Kurdish Women, 44 Ainger Road, London NW3 3AT. Contains the defence statement by Gurbetelli Ersöz, the chief editor of Özgür Gündem, the radical pro-Kurdish daily newspaper closed down by the Turkish state in April 1994.

The Eastern Enlargement of the European Union, Nicholas Hopkinson. Wilton Park papers no 91, HMSO, 48 pages, £5.00.

Reforming the United Nations: The International and institutional contexts of reform, Richard Langhorne. Wilton Park papers no 95, HMSO, 32 pages, £5.00.

Report of a delegation to Turkey to observe the trials of former MPs and lawyers for alleged separatist activities. *Law Society & the Kurdistan Human Rights Society (KHRP)*, September 1994, 24

pages. For further information contact: Kurdistan Human Rights Project, Room 236 Linen Hall, 162-168 Regent Street, London W1R 5TB.

Wanted: A parliament to excite the electorate, Julie Smith. *European Brief*, vol 2 no 4, February 1995, pp7-8; **A Strong Union needs a strong parliament**, Elmar Brok MEP, p9.

No passports and no ID Cards, Alan Beith MP. *European Brief*, March/April 1995, Vol 2 no 6, pp32-33.

Parliamentary debates:

Europe and a referendum *Commons* 13.2.95. cols. 668-767

LAW

Debtors' jail

Among people ordered to prison for failure to pay poll tax were an incontinent, wheelchair-bound 80-year-old woman, an epileptic 74-year-old man, and a cancer patient suffering from severe physical and mental handicaps following childhood meningitis, according to a new survey of poll tax debtors. Although many decisions were quashed by the High Court before committal orders were executed, many people served time in prison before being granted bail by the High Court, including a 72-year-old with a heart condition who had been treated for malnutrition. He lived in a nursing home, receiving a residents' allowance of £12 per week. Magistrates found him (and all those in the survey) guilty of "wilful refusal or culpable neglect" to pay, and he served 15 days of a 28-day sentence before being released by the High Court.

Lawyers are expecting the European Court of Human Rights to uphold the Commission decision that Stephen Benham's imprisonment was unlawful (see Europe: human rights roundup, in this issue). Another 40 cases have been lodged at Strasbourg. If the Court upholds the decision, the government will have to compensate a large number of people: up to 1,200 people have been jailed in 1994 for non-payment of poll tax, and the High Court has quashed over 100 committals as illegal.

"Punished for being poor", *Legal Action*, March 1995, p9; *Independent, Guardian*, 28.1.95.

Miscarriage of justice body

The new "independent commission" to investigate miscarriages of justice is fatally flawed from the moment of conception, say campaigners against past miscarriages of justice. The proposed body has no in-house investigators but must rely on the police to carry out investigations which, in many if not most cases, involve allegations of police malpractice. This reproduces the faults which have made the Police Complaints Authority so ineffective and ensures, in the words of Chris Mullin, "risks discrediting the whole exercise".

The eleven people on the Commission will need ministerial approval. They will replace the Home Office C3 division, which last year received about 730 complaints of miscarriage of justice, and referred 12 to the Court of Appeal. *Independent, Guardian*, 24.2.95.

UK to incorporate ECHR?

A private member's bill was given its second reading in the House

of Lords on 25 January which, if allowed to go through parliament, will incorporate the European Convention on Human Rights (ECHR) into British law. At present anyone whose rights under the Convention are violated by UK authorities must complain to the European Commission on Human Rights in Strasbourg for redress, as the UK courts have repeatedly said that they cannot force the executive to comply with the Convention. But the Strasbourg ECHR authorities will not entertain a claim unless domestic remedies have been exhausted. This confusing requirement to exhaust futile remedies causes delay and expense to complainants and probably deters many from initiating or pursuing a complaint. For that reason alone it is unlikely that the government will allow the bill to become law; the last thing it wants to see is relatively easy and quick domestic remedies for state violations of human rights. The bill has the support of several senior judges, however, including the Lord Chief Justice and a number of Law Lords, who believe the present system is regressive and allows the executive to get away with too much. Recently, the Secretary-General of the Council of Europe urged foreign secretary Douglas Hurd to incorporate the Convention, pointing out that incorporation would result in fewer cases being brought against the UK in the Strasbourg court. In the past 20 years the UK has had 34 adverse decisions.

Rights of children violated

A UN committee monitoring observance of the Convention on the Rights of the Child, which the UK signed in 1991 and which is ratified by 170 countries, has condemned the UK government for systematic and continuing violations of children's rights. It points in particular to the continuation of corporal punishment and the continuing legality of physical chastisement by parents and child-minders; the detention of children under 14; the high numbers of children living in poverty, begging and sleeping on the streets, in part because of changes in social security benefits; the treatment of child refugees; the health of poor and black children, and the lack of access to basic services for Gypsy and traveller children. It also expressed concern at the lack of any effective coordinating and/or monitoring mechanism to check the impact of new and proposed legislation on children. The report commented that children's rights should form part of the training of police, judges, social and health workers and detention centre staff.

Guardian, Independent, 28.1.95.

CPS discontinued prosecutions

The Crown Prosecution Service (CPS) dropped prosecutions in 159,803 (11.7%) cases finalised in 1994, (this compares with 12.8% in 1993). An analysis of over 11,000 cases dropped during November shows that 43% were discontinued for insufficient evidence, 28% because prosecution was not in the public interest; another 19% were "unable to proceed" (mainly because witnesses were missing). The final 10% related to motoring cases.

CPS press release 2.3.95.

Age of legal responsibility

A recent judgement by the House of Lords raised the question of the age of criminal responsibility. The case in question concerned a 12 year old boy who had been arrested on 37 occasions. In their judgement the Law Lords confirmed that there was still a presumption that young people between the ages of 10 and 14 they were not capable of committing a crime unless the presumption could be rebutted by "clear positive evidence that he knew his act

was seriously wrong". Those between 14 and 18 are "minors" in law.

The age of criminal responsibility in other European countries is: Austria: 14; Belgium 18; Denmark: 15; France: 13; Germany: 14; Greece: 12; Ireland: 7; Italy: 14; Luxembourg: 18; Netherlands: 12; Norway: 15; Portugal: 16; Scotland: 8; Spain: 16; Switzerland: 7. *Police Review*, 24.4.95.

IRELAND

State of Emergency lifted

After 55 years the State of Emergency has finally been dropped. This came after a campaign by the Irish Council for Civil Liberties (ICCL) and a strong condemnation by the UN Human Rights Committee in July 1993. The Offences Against the State Acts and the no-jury Special Criminal Court remains in use, though they too were singled out the UN Committee. Every year a UN Special Rapporteur draws up a list of states which have declared states of emergency and are using emergency laws without formally declaring an emergency. The Irish government neglected to inform them of the package of laws in force. In January the ICCL reported the government to the Special Rapporteur.

NETHERLANDS

Bluf! gets damages

Finally, the European Court in Strasbourg ruled on 9 February that the confiscation of the activist magazine *Bluf!* by the public prosecutor in April 1987 was illegal. The magazine had published a 1981 BVD quarterly report dealing mainly with the anti-nuclear movement and the communist party, when the police raided the offices and confiscated the entire edition. The next day however, on Holland's annual celebration of the queen's birthday thousands of free copies were handed out in the crowded streets of Amsterdam and other cities.

The European court has ruled that given the fact that the report contained no sensitive state secrets and that it was not proven to have been stolen, the prosecutor had no right to withhold the edition, especially after the new edition was distributed the following day. Damages in the order of Dfl 60,000 (about \$40,000) are to be paid to the makers of *Bluf!*,

Law - new material

Beating the bombers, Martin Hill. *Police Review* 17.1.95. pp14-16. On sections 81, 82 and 83 of the Criminal Justice and Public Order Act which "provides a much needed extension to the preventative and reactive powers of the police and the courts in responding to the threat of terrorism."

Statistics on the operation of Prevention of Terrorism legislation - 1994. *Home Office Statistical Bulletin* 2/95, 17.2.95. 61 people were detained in Britain in 1994 under the Prevention of Terrorism Act (compared with 152 in 1993); 13 were charged with an offence. 344 persons were examined for more than one hour but not detained.

Reducing Delays in Criminal Proceedings involving young defendants and young offenders. NACRO, 1995, £3.50. From: NACRO, Youth Section, 169 Clapham Road, London SW9 0PU.

The case for mandatory pre-sentence reports. Penal Affairs Consortium, February 1995, free from: 169 Clapham Road, London SW9 0PU.

Parliamentary debates:

Criminal Justice (Scotland) Bill *Lords* 6.2.95. cols 11-74
Criminal Justice (Scotland) Bill *Lords* 6.2.95. cols 83-96
Criminal Justice (Scotland) Bill *Lords* 14.2.95. cols. 577-594
Police and Criminal Evidence Act 1984 (Codes of Practice) (No. 3) Order 1995 *Lords* 23.2.95. cols. 1274-1285
Criminal Justice (Scotland) Bill *Commons* 27.2.95. cols. 707-790
Criminal Appeal Bill *Commons* 6.3.95. cols. 23-117

NORTHERN IRELAND

Northern Ireland - in brief

Sinn Fein bugged: In January a bugging device was found in a Stormont room reserved for Sinn Fein delegates' use during talks with British officials. Its discovery led to the talks being briefly suspended while police investigated. It has been described as a sophisticated transmitter operating on a microwave frequency above 1000Mhz and using spread spectrum modulation to disguise the signal. The Northern Ireland Office has denied having anything to do with the device although Republican sources have been quoted as saying that "it had MI5's fingerprints all over it". *Intelligence Newsletter*, 2.3.95.

Northern Ireland - new material

Executed for car theft, Katherine Nutt. *Chartist* March-April 1995, p25. Piece on the campaign to free jailed British Army convicted murderer Lee Clegg, who shot dead a joyrider in Belfast.

Northern Ireland: human rights and the peace dividend, Conor Foley. *Liberty* (1995) pp56. This report examines human rights issues in Northern Ireland and includes a Declaration on Human Rights, Northern Ireland and the Peace Process. Available from Liberty, 21 Tabard Street, London SE1 4LA, price £4.

A rosier future? Marjorie Mowlam. *Fortnight* 336:10-12 (February) 1995. Marjorie Mowlam is the Shadow northern Ireland secretary; in this article she outlines Labour's plans for the future.

Rank disagreement, Mike Brogden. *Fortnight* 334:18-21 (December) 1995. Article on the reform of the RUC.

An audit of democracy in Northern Ireland, Stephen Livingstone & John Morrison. *Fortnight Educational Trust/Democratic Audit of the United Kingdom* pp26, 1995. The audit examines five broad areas: elections, government institutions, their territorial dimension, citizens' rights and the character of democratic society. It is available free with *Fortnight* magazine issue 337.

Legislating for change, Conor Gearty & John Kimbell. *Fortnight* 337:14-15 (March) 1995. On the prevention of Terrorism Act and the Emergency Provisions Act.

Donna Maguire has been in prison for six years. So far she has been convicted only of having a pretty face, Denis Staunton. *Life* 26.3.95. Donna Maguire was first arrested in 1989 for her alleged involvement in the IRA European campaign; since then she has been held in prisons in four countries (Ireland, Belgium, Holland and Germany). She has become the longest serving remand

prisoner in Germany and it will be another two years before she is released.

Parliamentary debates:

Northern Ireland (Rules of engagement) *Commons* 1.2.95. cols. 992-1014

Northern Ireland (Framework document) *Commons* 1.2.95. cols. 1085-1100

Northern Ireland (Framework documents) *Commons* 22.2.95. cols. 355-370

Prevention and suppression of terrorism *Commons* 8.3.95. cols. 348-397

Prevention of Terrorism (Temporary Provisions) Act 1989 (Continuance) Order 1995 *Lords* 16.3.95. cols. 980-997

MILITARY

Arming the torturers

As the world waits for the Scott report, evidence was broadcast in January of collusion in illegal sales of torture equipment by government departments, including the Scottish office and the Department of Trade and Industry. A Channel 4 *Dispatches* programme used an actor posing as a middleman for a middle Eastern government to expose the manufacture and export of electric shock torture weapons by British, Irish and German companies. The "buyer" was given contacts and helped round export-licence regulations by a salesman for Royal Ordnance (now part of the privatised British Aerospace), who claimed he had DTI and Scottish Office support in selling torture equipment to countries violating human rights such as China.

The salesman promised access to the Royal Ordnance global procurement network to ensure that the order for 30,000 electro-shock batons and shields could be met. The "buyer" was taken to a secret torture trade fair, the Covert and Operational Procurement Exhibition (COPEX), held at Sandown racecourse, to which delegations from Algeria, China, Colombia, Iran, Saudi Arabia, Sri Lanka and Turkey had been invited. And he "bought" the illegal weapons from ICL Technical Plastics in Scotland.

The batons, capable of discharging shocks of 50-120,000 volts, are described as the "common denominator of torturing states" by Amnesty International, and although their manufacture, sale and use were banned in the UK until 1988 after criminals started using them in robberies.

The revelations provoked a demand by Amnesty International for a full investigation and for safeguards against the export of military, security and police equipment to repressive regimes. Amnesty's demands were taken up in an early day motion signed by 40 MPs on 17 January, and by the European Parliament, which passed a resolution on 19 January requesting statements from the governments concerned, urging support for Amnesty International's demands, and calling on the Commission to propose safeguards against the export from Europe of such equipment.

Far from responding positively, the UK government ignored the protests and, in early March, added insult to injury by announcing the sale of about 100 tanks and armoured vehicles to Indonesia. Board of Trade president Michael Heseltine said that it was "not likely" that the vehicles would be used for internal repression in Indonesia or East Timor.

Rebuffing the victims

No one can deny that the states most eagerly sought after as customers at trade fairs such as COPEX are precisely those with the worst human rights records: otherwise they would not be looking to buy such equipment. But, while turning a blind eye (at least) to the sale of illegal repressive technology, the UK is turning an increasingly deaf ear to the victims. The increasingly hard line on recognition of refugees revealed in the latest asylum statistics (see *Statewatch* Vol 4 no 6) means that the Home Office is telling Bosnian Croats to return to Croatia, Chinese to go back to China, Colombians to Colombia, Tamils to Sri Lanka, Kurds to Turkey, Zaireans to Zaire.

In September 1994 an immigration adjudicator, hearing the appeal of a young Tamil man against the refusal of political asylum, commented that:

"I am prepared to accept that he suffered some maltreatment during the period of his detention and, indeed, it would be unusual bearing in mind the circumstances in Sri Lanka if he were not maltreated to some degree."

The young Tamil concerned had his appeal against refusal of refugee status dismissed. The Immigration Appeal Tribunal upheld this refusal in February 1995. A similar attitude was displayed by the Court of Appeal, in giving the Home Office the green light to deport refugee Karamjit Singh Chahal to India, where he undoubtedly faced torture. And at the European level, the Ad Hoc group of ministers said in July 1992 of refugees that "individuals are not entitled to protection under the Geneva Convention merely because they come from countries in which levels of security, economic opportunity or individual liberty are below those of the Member States".

Thus Britain, in common with other European countries, denies protection to the victims of torture on the ground that "ill-treatment" is, after all, only to be expected in these "uncivilised countries". At the same time, it arms the torturers.

British police buy electric shields

It was also disclosed in January that several British police forces have electric-shock shields capable of giving a 40,000-volt shock. Home Office minister David Maclean said that the shields were not for use in demonstrations, but against "ferocious dogs in pre-planned operations". He explained an earlier denial that British police had or planned to obtain electric shock weapons by claiming that the shield was not a weapon but a "defensive instrument" - an explanation which lawyers said would not get past a judge trying an offensive weapon charge.

Amnesty International Press releases 10.1.1995; *Times* 10.1.95; additional material from the *Omega Foundation*.

Government Keeps "Gay Register"

The British Government has admitted that it keeps records on the sexuality of people serving in the armed forces and that it passes on those details to the police. The government made this admission in a written answer following the case of a former seaman who applied to work in a rape crisis centre.

After a routine check on his background the former seaman was turned down for the job. He later discovered that this was due to his dismissal from the Navy for homosexuality 17 years earlier.

The Armed Forces Minister, Nicholas Soames confirmed to David Clark, Labour's Shadow Defence Secretary, that information on current and former Armed Forces personnel was available to the civilian police. He is quoted as saying that police could receive and

ask for information from records kept by the military to assist their investigations. The revelations have been condemned by Lesbian and Gay groups and civil liberties organisations.

Paras freed after attack

Four paratroopers, serving with 1 Para at Normandy barracks, Aldershot, walked free from Winchester Crown Court in February after a ferocious drunken attack on a man that left him seriously injured. James McGuire was attacked outside a nightclub and spent 10 days in hospital as a result of his injuries, which included two fractured arms, broken ribs and head injuries. Mr McGuire has been unable to work since the attack.

Releasing the men - Lance Corporals Stuart Baillie and Justin Woodcock and Privates Craig Harris and James Collins - Judge David MacLaren Webster told the court that the public would not want to see them jailed for a "moment of madness". The soldiers were given community service and instructed to pay Mr McGuire compensation.

Following the court decision the paratroopers were subject to disciplinary action by their commanding officer. Although Lieutenant Colonel Godfrey McFall had the power to send them to a military prison or discharge them from the Army they were only given formal warnings and the two Lance Corporals were demoted.

One of the men, Lance Corporal Justin Woodcock, had a previous conviction for attacking a civilian. In 1992, after he returned from a tour of duty in northern Ireland, he attacked a youth and was fined £1,000 and ordered to pay compensation to the victim.

Times 9.2.95.

Military - new material

Something nasty in the Gulf? Melanie McFadyean. *Independent on Sunday* magazine 12.2.95. Thousands of soldiers have been reporting serious illnesses since they took part in the Gulf War; the British government refuses to accept that "Gulf War syndrome" exists.

European Security in the 1990s: challenges and perspectives.

Victor-Yves Chebali and Brigitte Sauerwein. UNIDIR (United Nations Institute for Disarmament Research), Geneva. 1995, 230 pages.

Russia, its neighbours and the future of European security.

Richard Latter. Wilton Park papers 94, December 1994, HMSO, 30 pages, £5.00.

Parliamentary debates

Sex discrimination regulations: armed forces *Lords* 16.2.95. cols. 852-869

Royal Navy *Commons* 16.2.95. cols. 1145-1230

Army *Commons* 23.2.95. cols. 497-582

IMMIGRATION

EU

"The sixteenth state"

The French presidency has put forward a proposal for a joint action under K.3 of the Treaty on European Union (TEU) to improve the position of long-resident settlers in TEU territory who are not EU or EFTA citizens. Observers estimate that the number of so-called

"third-country nationals" long settled in the host countries of the EU would form a substantial sixteenth state of around 16 million or so people. Up to now this population, largely from Europe's former colonies and its eastern and southern peripheries, has been ignored in the preparations for a single European space. Free movement rights are confined to three months visa-free travel under the draft External Frontiers Convention, not yet signed or in force. But it is this population which bears the brunt of policing measures such as identity checks and fishing raids for illegally employed workers.

The draft joint action proposes that member States should recognise 10-year residence permits as conferring settled status. Such permits should be issued after 3 years' lawful residence. Long-term residence permits should be renewed unless the holder is away from the member State concerned for over three years. People with settled status should enjoy equal treatment with nationals in employment and social assistance and should normally not be deported except after a sentence of imprisonment or on national security grounds. However, living in a state of polygamy could, according to the French draft, justify withdrawal of a long-term residence permit. After being settled in one member State for five years, the draft allows for relative freedom of establishment in other member States.

The draft appears to recognise the importance of granting security of residence to Europe's long-settled immigrant populations. But it says nothing about harmonisation of citizenship, or facilitating the grant of citizenship to second-generation "immigrants" born in the EU. In 1993 France, the proposer of the joint action, removed the automatic right of children of immigrants born in France to become citizens, replacing it with an "opting in" procedure dependent on good character and the renunciation of another citizenship at 18. The Council of Europe seems to be the only body at European level which has recently recognised the importance of citizenship rights. Introducing a Second Protocol amending the 1963 Convention on the Reduction of Cases of Multiple Nationality, issued in 1994, the Council says that the 1963 Convention is based on the principle that dual or multiple nationality is inherently undesirable and should be avoided. But the Second Protocol recognises that this is no longer the case. It is vitally important that second-generation "immigrants" in particular have access to the nationality of the state in which they are born and brought up, and that spouses and children of mixed marriages do not have to lose their own nationality by taking on that of the other partner or parent. The Second Protocol would make it easier for people in these categories to retain dual or multiple nationality. *Proposal for a joint action on the status of third-country nationals residing legally in the Union for a long period*, Note from the incoming French Presidency to the Migration Working Party (Admission), ref: 12338/94, Restricted ASIM 244, 22.12.94; *Second Protocol amending the 1963 Convention on the Reduction of Cases of Multiple Nationality*, Council of Europe, 1994.

NETHERLANDS

Interpreters criticised

Complaints by a solicitor from Nieuwegein, Mr P Bogaers, led to the National Ombudsman issuing a very critical report on the functioning of interpreters working for the Justice department in asylum cases. According to the Ombudsman's report, many of these interpreters are inept and unreliable. The Ombudsman demanded better selection procedures to avoid the present situation in which interpreters repeatedly intervene in the conversations they are supposed to translate and even misstate certain answers because they disagree with the asylum applicant's position. Mr Bogaers, supported by Vluchtelingenwerk Nederland (the official Refugee

Work organisation), claims that interpreters have been known to threaten asylum applicants and to pose as police officers or members of a secret service.

Some civil servants are quoted as saying "Well, another death warrant signed" while signing a negative advice on an asylum application. In a reaction, the Justice Department has announced measures such as the founding of a training centre for interpreters and the introduction of a professional code of conduct and a complaints procedure.

The lack of proper standards and adequate training for interpreters has been an issue pressed by lawyers and refugee workers for years. After the Ombudsman's report was published, other cases involving poor translation came to light. Sometimes, family members of defendants have corrected interpreters in court sessions from the public benches, and errors in translations of telephone taps have resulted in court cases being dismissed.

ROMANIA

Limit on emigration

The Romanian General Directorate for Passports is to limit applications for emigrating from the country. Applicants will have to provide documentary evidence that they have been granted a residence permit for the country they intend to go to. Over the period 1990-1994 a total of 263,000 applications were made to leave the country of which 209,367 were granted. Those leaving included ethnic Germans, Romanians and ethnic Hungarians.

Balkan News, 5 & 19.2.95.

GERMANY

Ban on deportation of Kurds rescinded

In Germany Kurdish people have until recently been protected from being deported by virtue of a ban on deportations in all Länder (regional governments). In order to prolong the ban on deportation beyond the initial period of 6 months the Länder needed the consent of the Minister of the Interior. Following recent events in Turkey - notably the trial of Kurdish MPs - a debate started on whether the ban on deportations should be prolonged and the German Bundestag held an expert hearing on the situation in Turkey. However, even before this hearing Mr Kanther, the Minister of the Interior, announced that he would not agree to extending the ban. In a vote in plenary session, following the hearing in the Bundestag on 14 March the German Parliament voted by 333 votes to 307 to withdraw the moratorium on the deportation of Kurdish people back to Turkey. The Social Democratic Party and the Alliance 90-Greens opposed the decision because people deported could face imprisonment and persecution. A number of Länder, notably the ones which are run by the Social Democrats, have announced that they would nevertheless not initiate deportations, regardless of the position taken by the Minister of the Interior.

The move followed a series of reported firebombings of Turkish businesses and mosques and an exchange of letters between German Interior Minister Manfred Kanther and the Turkish government. The attacks on Turkish targets has been attributed by the police to the Kurdistan Workers' Party - the police now claim they are responsible for some of the attacks thought to have been carried out by fascist groups. Bavarian Prime Minister Edmund Stoiber said: "Anyone who commits arson and violent acts forfeits his right to be Germany's guest". The Kurdish Community in Germany - a nationwide association of Kurdish groups - said: "Kurdish people are being held responsible without proof. The fact that attacks are also taking place against Kurdish businesses and

community centres is not being reported".

Prior to the vote in the parliament the Interior Minister, Mr Kanther, said there had been an exchange of letters between him and the Turkish Minister of the Interior, Mr Mentese, as they wanted to stop the "illegal" migration of people from Turkey to Germany. Mr Kanther said the Turkish government were offering guarantees for those deported on their return to Turkey. Human rights organisations and the opposition parties in the Bundestag responded that Turkey had ratified many international conventions but consistently ignored them in practice.

International Herald Tribune, 18 & 20.3.95; *Balkan News*, 19.3.95; *Berlin Antiracist Information Network*, March 1995.

Passengers prevent deportation

Algerian refugee Boualem Sadadou had been told at the end of February that he was to be deported. However, when border guards tried to put him on a plane at Dusseldorf airport on 5 March they found that Boualem's friends and supporters from the town of Soest had already distributed a leaflet to the other passengers on the flight. The passengers sent a message to the captain of the plane saying that they would "refuse to fly as long as the Algerian refugee is on board". The captain agreed "Boualem Sadadou represents a danger to flight security" and refused to take off leaving the border guards no choice but to take Boualem back to his cell.

Refugee and human rights organisations called on 8 February for German people to "refuse all assistance to the deportation practices in Germany" which "contravene basic human rights". The appeal is particularly directed at doctors, police officers, border guards, judges, lawyers, civil servants and social workers. Its signatories include "International Physicians for the Prevention of Nuclear War (IPPNW), the refugee organisation "Pro Asyl", the German "Association of Critical Police Officers" as well as individuals from airlines and ground staff. The inclusion of the latter is important because it is estimated that the German airline Lufthansa is earning around DM20 million from transporting deportees.

Berlin Anti-racist Information Network, February & March 1995.

Cuts in benefit for immigrants

The Federal Health Ministry reported to be planning a new law known as the "Auslaenderleistungsgesetz" or Foreigners' Benefits Law which is designed to cut the level of social security payments available to certain classes of immigrants. The new law would mark an extension of a ruling previously applied to some 90,000 asylum-seekers and which could now affect as many as 600,000 people. The main categories of people affected will be civil-war refugees (eg: from ex-Yugoslavia) and so-called "tolerated" asylum seekers who have been in the country for over a year. The proposals would mean these groups of immigrants would have their social security benefits cut by 25% and benefits would no longer be paid in cash but in the form of stamps exchangeable only for specific goods at specific stores (a measure already in practice for many asylum seekers). In future hospitals would be allowed to refuse to treat immigrants affected by the law except in the most urgent cases. The social policy spokesperson of the German Coalition Green Party, Andrea Fischer, said of the proposals: "This is state-planned racism".

Berlin Anti-racist Information Network, March 1995.

SPAIN

Doctors of foreign origin dismissed

Four doctors - from Haiti, Morocco, Latin America and Eastern Europe - have been dismissed from Granadan hospitals and six

more are awaiting the same fate. They came to Spain 20 years ago to study medicine and settled there - some became naturalised. However, a royal decree of 11 January 1984 forbids "foreign" doctors from practising in the country even though they have been trained in Spain and have exactly the same diplomas as their Spanish colleagues.

When the four doctors completed their training they were employed by the Andalusian Health Service. After many years working in the Baza hospital of Granada the four doctors were "fired" without no chance of being re-employed. The Health Service rejected charges of racism on the grounds that they had been accused of "illegal employment" and had received protests from trade unions.

Kontrola Kontrolpean, Donostia, Euskadi (Spain).

Three refugees found dead in Valencia

On 6 March three refugee stowaways were found dead on a ship in Valencia harbour - they had been hidden in a pile of wood and probably died from suffocation. It is feared there may be a fourth dead person as when the ship left the port of San Pedro in the Ivory Coast six people were seen going on board and only two survivors were found locked in a cabin. The captain would not allow the Red Cross or the immigrants' lawyer of "Comisiones Obreras" (a trade union) to go on board. Although the representative of the government ordered the public prosecutor to open an investigation the ship was allowed to leave.

On 25 January a ship with three Liberian stowaways on board docked at Pasaia harbour (Basque country). Both the Red Cross and SOS Arrazakeria-SOS Racismo were denied access to the people and they remained locked up until the ship left. This is becoming more and more usual, shipowners and captains will not allow access thus denying refugee stowaways their right to claim asylum. *Kontrola Kontrolpean*, Donostia, Euskadi (Spain).

Immigration - new material

The last resort: violations of the human rights of migrants, refugees and asylum seekers, Conor Foley and Sue Shutter for JCWI and Liberty. 1995, 72pp, £4.00. The authors examine various ways in which the UK's practices and procedures violate the rights of immigrants and asylum-seekers. After a brisk overview of relevant Articles of the International Covenant on Civil and Political Rights, it takes us on short guided tours of the history of UK immigration law from 1905 onwards, and the 1993 Asylum and Immigration Appeal Act. The rest of the pamphlet is devoted to descriptions of practice in deportations, detention, passport-checking, and rules on family reunion which keep families apart.

Europe on trial: an indictment of the violation of the human rights of refugees and asylum seekers, Frances Webber. *European Race Audit Briefing Paper 1* (Institute of Race Relations) 1994, pp11, £1.50. This document was presented to the Basso Tribunal on the Rights of Asylum in Europe in December. At the end of the tribunal all of the charges were found to be proved.

European Race Audit. *Bulletin 12* (Institute of Race Relations) March 1995. Bi-monthly round up of racism and fascism in Europe.

Recent developments in Immigration law, Rick Scannell, Jawaid Luqmani & Chris Randell. *Legal Action* pp16-20, March 1995 Quarterly update on developments in immigration law.

Facing an uncertain future. *Exile* 84 (March) 1995, p.3. Article on Algerian asylum seekers fleeing a civil war that has cost 30,000 lives since 1992.

Refugees and safe third countries, Prakash Shah. *Immigration and Nationality Law & Practice* Vol 9 no 1, 1995, pp3-13.

The Immigration (European Economic Area) Order 1994, Sofia Gondal. *Immigration and Nationality Law & Practice* Vol 9 no 1, 1995, pp21-28.

PRISONS

Record prison population

The prison population reached 51,243 in March, exceeding the previous record of July 1987. The news created fears that the cramped and over-crowded conditions, particularly in the large urban Victorian jails, could lead to disturbances. Overcrowding has played a significant factor in previous disturbances.

The number of women in prison has risen by 40% in the last two years and is also at a record high of 2,012; the capacity for women's prisons is 1,500. Last year self-mutilation among women prisoners reached epidemic proportions with 990 incidents recorded. Many of them took place in the notorious Holloway Prison in north London. More than a third of women prisoners in 1993 were fine defaulters or other petty offenders who have no reason to be in prison. There were 907 incidents of self-mutilation among young offenders.

A Prison Service spokesman commented: "It is recognised by the medical profession that higher rates of self-harm is a feature of the female population as a whole - although not to the extent of women in prison. The fact that many women prisoners were drug users and the fact that women do respond more adversely to imprisonment makes the rates higher."

The government expects to provide an extra 2,000 prison places by next year and a total of 55,000 by the end of the decade. The government's policy of "retribution and incarceration" has been criticised by the penal reform group the Howard League. *Independent* 17.3.95.

Call for Wandsworth suicide inquiry

Wandsworth prison's board of visitors has called for a full enquiry to investigate the death of six prisoners in twelve months. Four of the deaths occurred in the health and hospital centre which was criticised by the board of visitor's last year for poor management, staff relations and lack of accountability.

Figures released by the Prison Service show that there were 60 prisoners who committed suicide last year, compared with 21 in 1986. The pressure group Inquest blamed the increase in prison overcrowding and lack of care for the increase in suicides. *The Big Issue* 20.2.95; *Independent* 8.3.95.

Prisons - new material

The reduction of home leave and temporary release opportunities. Penal Affairs Consortium (February) 1995. Concludes that the 40% reduction in home leave, announced by the Home Secretary, is a retrograde step.

Prison Watch press release No. 110, (29.1.95.). On Michelle Pearson who committed suicide in HMP Newhall in July 1994.

Explaining reconviction rates: a critical analysis, Charles Lloyd, George Mair & Mike Hough. *Research Findings No 12* (Home office Research & Statistics Department) September 1994. This report describes a comparative study of reconviction rates.

Housing benefit and prisoners. Penal Affairs Consortium, February 1995. pp3. Available from 169 Clapham Road, London SW9 0PU. On the announcement, at the 1994 Conservative Party conference, that the practice of using housing benefit to meet rent payments of convicted prisoners serving up to a year in custody would be ended.

Statistics of mentally disordered offenders: England and Wales 1993. *Home Office Statistical Bulletin 01/95* (22.1.95.).

Prisons and prisoners: special edition. Research Bulletin no 36, Home Office Research and Statistics Department. Ten articles including ones on: the National Prison Survey 1991, The Prison Disciplinary System, and Where do prisoners come from?

Prison overcrowding. *Penal Affairs Consortium*, March 1995, 6 pages, free. Argues that a legal limit should be set for the maximum number of prisoners to be held by each prison. In December 1992 there were 40,606 people in prison, on 10 March 1995 there were 51,072. From: Penal Affairs Consortium, c/o 169 Clapham Road, London SW9 0PU.

"Boot camps" do not reduce offending: *Penal Affairs Consortium*, 160 Clapham Road, London SW9 0PU. March, 1995, 4 pages.

POLICING

UK

Police quangoes

The complicated procedures under the Police and Magistrates Court Act 1994 for appointing "independent" members of the 41 newly constituted local police authorities has almost finished. Under the Act local police authorities are comprised of: 9 councillors, 3 magistrates, and 5 (or in 4 areas 6) "independent" members. These replace police authorities comprised two-thirds of local councillors, one third magistrates.

The first stage was the creation of selection panels to select the independent members. The selection panels were comprised of: one person appointed by the Home Secretary, one by the police authority, and one jointly agreed by the other two members.

The police authorities appointed 31 local councillors and 10 magistrates. Of those appointed by the Home Secretary 32 of the 41 were from businesses or quangoes. Business and quangoes accounted for 12 of the 41 people agreed to be the third appointment. Of the 123 people on selection panels there were 32 local councillors (1 was appointed as the third person), 10 magistrates and 44 people from business or quangoes.

The 41 selection panels received a total of 3,751 applications (an average of 91 per authority) for the 5 or 6 "independent" members to be appointed to each police authority.

By the end of 1994 the selection process had been completed for 38 police authorities, a total of 194 appointments. Of these there are

2 trade union officials compared to at least 80 business people or members of quangoes. The five appointed to the Wiltshire police authority comprise: a chartered accountant, a retired military adviser, a retired RAF officer, a civil servant and a retired army officer (they were appointed by a panel comprised of: a Managing Director, a magistrate and a farmer). In Hertfordshire there is: a company director, health authority chairman, a media consultant, a management consultant, and a naval security officer (appointed by a Personnel Director, a magistrate, and the Chair of the Probation Committee). In Kent: a company secretary, a retired chief fire officer, a solicitor, a retired solicitor, and a brigadier (appointed by a Company Executive, a magistrate and a retired local government officer). Perhaps the most egalitarian set of appointments is in South Wales where there is: a headteacher, a teacher, a TV news editor, the Canon of the Llandaff cathedral, and a trade union official (appointed by a retired Managing Director, a local councillor and a university professor).

The new police authorities which become free-standing quangoes under the 1994 Act (the link to local government having been severed) will have to cope with greater powers being given to the Chief Constables and key objectives laid down by the Home Secretary. Mr David Shattock, Chief Constable of Avon and Somerset, says of the new arrangement:

"We are in fact, with these centrally imposed key objectives, and with cash limits being set by the Home Secretary, moving towards a national police service; the concept of local direction and control is to a larger degree fictional."

Metropolitan Police Committee

Ever since it was formed in 1829 the Metropolitan Police in London has been solely accountable to the Home Secretary - the only police force in the country not to have a local police authority. The 1994 Act created the Metropolitan Police Committee with a solely consultative role to "advise" the Home Secretary. According to the Home Office press release it is "Technically.. a non-departmental public body". The Committee will have a full-time Secretariat comprised of Home Office officials. In December Mr Howard, the Home Secretary, appointed Sir John Quinton to chair the Committee. The appointment was immediately criticised by London local councillors. Sir John does not live in London but in Buckinghamshire and has no experience of policing matters although he has extensive knowledge of "the setting of budgets and monitoring performance". He is a former chairman of Barclays Bank and a non-executive chairman of Wimpey, the building giant.

Sir John's first job was to advise Mr Howard on who to appoint to the other 11 places on the Committee from a field of just over 100 applicants. The people appointed include 2 Conservative councillors, 4 business people, 3 people already involved in government quangoes and Major General Malcolm Hunt the Commander of the British Forces in the Falklands War.

The chair of the Association of Metropolitan Authorities (AMA) which represents police authorities outside London attacked the appointments which "deliberately and wilfully excluded all the names put forward by the London Boroughs Association and the Association of London Authorities".

Home Office press release, 9.2.95; Guardian, 3.12.94; AMA press release, 14.2.95; Commons Hansard, 12.12.94; Policing Today, vol 1 no 3, February 1995, pp4-6.

HCDA "dirty tricks" break in?

The Hackney Community Defence Campaign (HCDA), who have

carried out extensive investigations into corruption at Stoke Newington police station, were burgled over the Christmas period. They suspect that the Special Branch (or MI5) was responsible.

The break-in occurred in the early hours of December 23 and a computer and fax machine were stolen, a video machine was smashed and graffiti sprayed on the walls. It took place on the eve of HCDA participating in a picket of Stoke Newington police station in protest at the death of Shiji Lapite who died there a week previously (see *Statewatch* vol 5 no 1).

The HCDA suspect that Special Branch (or MI5) involvement centred around a new project, known as Defendants' Information Service (DIS), that holds a store of information on 900 police officers who have allegedly been involved in crime, violence and drug-dealing.

In a statement following the break-in the HCDA said: "The burglary indicates that the state is fearful of the information which HCDA... has collected, particularly on police violence and crime." They are appealing for financial support to replace the equipment that was damaged and to increase security on the building.

HCDA can be contacted at The Colin Roach Centre, 10a Bradbury Street, London N16. Tel. 0171 249 8086 or 0193; The DIS can be contacted on 0181 806 4952.

Photographers receive police damages

Two press photographers have received substantial damages from the Metropolitan police after they were assaulted and wrongfully arrested. Freelance photographer, David Hoffman, was outside Parliament during an anti-Rushdie demonstration in 1989 when he had his camera smashed into his face and was arrested by PC Terence Way of the Tactical Support Group. He was charged with disorderly conduct, but enlarged a photograph of Way dozens of times to read his wristwatch; this demonstrated that the officer's chronology of events was untrue. Mr Hoffman accepted £25,000 from the Metropolitan police in an out-of-court settlement.

A second photographer, Roy Hanney, accepted £30,000 from the Metropolitan police after he was beaten by policemen during the 1990 Trafalgar Square poll-tax demonstration. He was charged with affray - an offence which carries a 3 year prison sentence - but, the High Court was told, the evidence against him was concocted by two officers, PCs Tony Egan and Richard Ramsey, who were involved in his arrest.

Figures for the year ending in March 1994 show that the total amount of damages paid by the Metropolitan police was £1,761,000.

Independent 13.1.95; *Journalist* January/February 1995

NETHERLANDS

Anti-fascists arrested

In Utrecht, the police arrested around 170 nonviolent anti-fascist demonstrators on 4 March, after the city's Mayor Mr Opstelten declared all demonstrations illegal because he thought there would be violent confrontations between racist groups and protestors. Under a long-forgotten law introduced against fascist fighting squads in the 1930s, everyone whose clothing reflected a "political orientation" could be arrested on the spot. The anti-fascist demonstrators, who were preparing to lay flowers at a statue of Anne Frank, were transported to a football stadium and kept there in unheated concrete rooms for several hours. Afterwards, following public criticism of the one-sided police interventions, the Mayor declared he had not known about the historical background of article 435a of the Penal Law.

BELGIUM

Over 400,000 people on file

The Belgian government has admitted that the security and police forces have nearly 400,000 people on file as being "suspects", or nearly 5% of the total population. This was revealed in a written answer to the Belgian Parliament. The figures show that in April 1994 the Belgian police had a total of 443,653 people on file. This represents a 20% drop from the total in 1992, when 541,406 records were shown. The population of Belgium as of 1990 was 9.8 million people.

SPAIN

Former Guardia Civil director jailed

Luis Roldan Ibanez, the director of the Guardia Civil (paramilitary police) between 1986 and 1993, has surrendered to Spanish police after ten months as a fugitive in southeast Asia. Roldan fled Spain at the end of April after appearing before a parliamentary commission, headed by Judge Ana Ferrer, that was investigating serious financial irregularities during his term of office.

Roldan, who is a member of the Socialist Party (PSOE), began his career as a municipal councillor in Zaragoza. Following the PSOE election victory in 1982 he became a government delegate in Navarre. In October 1986 he was appointed director general of the Guardia Civil; Roldan was the first civilian to occupy this position which had been in the preserve of the military since its foundation in 1844. By the end of 1993 Roldan was the favourite candidate to become the Minister of Interior. However, following disclosures about his immense personal wealth, which greatly exceeded his income, in the newspaper *Diario 16*, Roldan was forced to resign as director general of the Guardia Civil.

Continuing questions about the source of Roldan's income led to the setting-up of a parliamentary commission in March 1994. It discovered that Roldan's personal fortune, much of it located in Swiss bank accounts, was even greater than *Diario 16* had suspected. Money had allegedly been siphoned off from building programmes designed to update and modernize the living conditions of the Guardia Civil. Billions of pesetas were said to have gone to Roldan, senior Guardia Civil officials, architects and builders.

When he appeared before the commission Roldan was unable to explain the source of his wealth but threatened to expose extensive and widespread corruption. The commission decided to withdraw his passport, but before they could do so he fled Spain. This led to the resignation of the Interior Minister, A. Ascuncion, who had given his guarantee that Roldan would remain in the country.

The following week, on 28 April 28, Roldan gave an interview to the Spanish newspaper *El Mundo* in Paris. In it he denounced senior Ministry of Interior officials alleging that they had earned substantial "bonuses" on top of their salaries that came from funds reserved for undercover operations. These claims were immediately dismissed by official sources but further investigations showed that Raphael Vera (a former Secretary of State for Security, currently jailed for his involvement in the GAL case) and Carlos Conde-Duque (former Director General of the police) both received payments in addition to their official salaries. Following the European parliamentary elections in June 1994 Roldan again contacted *El Mundo* forwarding an extensive report on the financial and personal activities of Mario Conde, chairman of the Spanish Credit Bank (BANESTO) until December 1993. This investigation into Conde had been made at the request of the Vice-President of the government, Narcis Serra, and paid by reserved funds coming from the CESID (secret service), according to Roldán.

Roldan's flight has raised serious questions about the efforts of the police to trace him. There are many people, senior Socialist Party figures and Guardia Civil officials, who would have preferred him not to have been caught. Evidence indicates that from June 1994 the Ministry of the Interior had made several attempts to negotiate with Roldan through members of his family and the journalist who had interviewed him. A key link in these negotiations was Francesco Paesa, who resides in Paris and has connections with CESID (he was prosecuted for involvement with the GAL). Paesa is said to have assisted Roldan in covering-up his wealth and played a significant role in his surrender to the authorities.

On 27 February the Minister of the Interior announced the capture of Roldan in Laos and his immediate extradition to Spain. Roldan was greeted in Madrid the next day by tight security and rushed to a special cell at Brieva (Avila) prison.

Further information came to light on 1 March when *El Mundo* published documents reported to have been issued by the Laos authorities. These outlined the conditions under which Roldan was handed over to the Spanish police and limited the charges that he would face to two infringements of the Laotian penal code. Belloch admitted the existence of the documents but claimed that their content was not binding. The situation was further confused when the Laotian government asserted that the documents were a clumsy falsification and that Roldan had not been arrested in their country; they claimed that they no record of Roldan entering Laos.

An acrimonious debate in Parliament failed to shed any further light on the arrest after Minister Belloch refused to present any additional details. His assurances that Roldan would face trial on all the charges levelled against him were undermined by the elaborate arrangements that led to his surrender.

Roldan has since claimed that he was tricked into giving himself up. It is still unclear what charges he will face. While he has confirmed the allegations, made to the press while on the run, about the appropriation of reserved funds by senior Ministry of Interior officials, he has also been declared as a witness in one of two indictments concerning the paramilitary activities of the GAL.

Kontrola Kontrolpean, Donostia, Euskadi (Spain); see *Stawatch* vol 5 no 1.

Police files attacked

The police in Valencia created files which identified people with a whole series of characteristics: "race", "drug addict", "alcoholic", "aids", "hepatitis", "madness" and "epilepsy". Under "other characteristics" were: "transvestite", "gay", "pederast", "exhibitionist" and "voyeur". The final report of the commission of investigation identified four police officers, four police officials in the information unit and a doctor, but tried to say their activities were unauthorised.

However, this was not an isolated case. In the village of Silla (Autonomous Community of Valencia) the police compiled over the last five years 158 files including characteristics such as "gay", "gipsy", "drug addict", "South African Race", "unattached" (referring to unmarried couples).

The Gay Committee and Anti-aids Committee, as well as the Colectivo Transexualia, have condemned the keeping of such files and the local ombudsman has made an official complaint.

Kontrola Kontrolpean, Donostia, Euskadi (Spain).

Six police sentenced for death of detainee

On 23 February the provincial high court of the Basque province of

Araba sentenced 6 of the 8 Ertzainas (Basque policemen) on trial for the death of a detainee, Juan Calvo. He had been detained in the police station of Arkaute and died on 20 August 1993.

Calvo had been arrested the day before for the alleged theft of a taxi. He needed medical attention for injuries caused by truncheons and during the night there was a fight between Calvo and some Ertzainas. In court it came out that the police had used an aerosol gas spray and kept him in the locked cell for maximum effect. In the morning he was dead. The police inspector in charge was sentenced to six years for criminal negligence and five other police officers got one year in prison for criminal negligence.

The Vice-Councillor of the Department of the Interior of the Basque government said the court decision was "absolutely crazy" and the police trade union said the sentence was out of all proportion. The lawyer for the Calvo family said the sentence was important because it referred to criminal negligence - there was only one precedent in which the accused was not sentenced to prison. The sentence is now being appealed.

Kontrola Kontrolpean, Donostia, Euskadi (Spain).

Policing - in brief

DNA criminal database starts in April: The world's first criminal DNA database is scheduled to come into operation in Britain on April 10. Ben Gunn, the chief constable of Cambridgeshire who is responsible for DNA matters for the Association of Chief Police Officers (ACPO), said that 135,000 people are expected to be logged on the database in its first year. The database has the capacity to store up to five million profiles and nearly four million people could be on it by the year 2000. The database has cost the Home Office £4 million to set-up and running costs for the first year are estimated at £5.4 million. *Guardian* 17.3.95.

Animal rights activists targeted: The Metropolitan police, following discussions with the Association of Police Chief Officers (ACPO), have set-up a national police unit to target animal rights activists. The unit will liaise with provincial police forces and will be headed by an officer of ACPO rank. The unit will take over its duties from the Special Branch.

Greece: Police chief suspended: Greek Public Order Minister Stelios Papathemelis suspended the heads of the Attica and Athens police after a demonstration of old age pensioners was broken up by riot police using tear gas. The Minister apologised and condemned the police violence. The pensioners had tried to break through a police cordon outside the Prime Minister's official residence. *Balkan News*, 19.3.95.

CS gas tests go ahead: The Association of Chief Police Officers (ACPO) sub-committee on self-defence, arrest and restraint has arranged for tests to be carried out on the suitability of the use of CS gas sprays by British police and the decision has been backed by the Home Secretary. The decision follows his rejection of pepper sprays because they may cause cancer or other health risks. Mr John Stevens, the Chief Constable for Northumbria told the local Police Federation: "I say to the Home Office give us CS gas and give us pepper sprays too. *We are the people that use them, we should be the people that decide what is best*". The Home Office says that CS gas cannisters will be carried for "self defence reasons, not for dealing with disorders", though the same press statement draws attention to the fact that around 5,500 assaults on police officers occur when dealing with disputes - including over 2,500 "when officers are attending public order incidents" *Police Review*, 17.3.95; 7.4.95, italics added; 14.4.95; *Home Office press release*,

Government agencies to use Police National Computer: The Home Secretary has agreed that information stored on the Police National Computer can be used by agencies to vet potential employees to see if they have a criminal record. Those to be granted access are: the Ministry of Defence, the Secret Intelligence Service (MI6), the Security Service (MI5), the UK Atomic Energy Authority, the Home Office and the Department of Trade and Industry. Home Office Minister David McLean said: "Where the preliminary search indicates that the subject has a criminal record the departments or agencies would ask the National Identification Service - formerly the National Identification Bureau - to supply the record itself". *Police Review*, 7.4.95.

Police - new material

Lines of enquiry, Don Dovaston. *Police Review* 20.1.95. pp16-18. Article on DNA profiling which argues that it will boost crime detection rates.

Every day I spend in prison is a day stolen from my life, Raphael Rowe. *South London Press* 28.10.94. Article by Rowe who was one of three black men convicted of the murder of hairdresser Peter Hurborough in March 1990, despite the fact that the police said that they were looking for two white men and a black man.

A break in the silence, Paul Foot. *Guardian Weekend* 25.2.95. James Hanratty was hanged for the A6 murder 23 years ago. This piece examines the ongoing campaign to establish his innocence.

Security check, Colin Fry. *Police Review* 17.3.95. pp27-28. This article advocates allowing security firms to vet their employees through the Police National Computer.

Internal Affairs, Malcolm Watson. *Police Review* 10.3.95. pp18-20. Argues against the need for an "independent element" in dealing with complaints against the police.

General assembly report: on the Interpol annual meeting in 1993. *International Criminal Police Review* November-December 1993, no 445. Includes articles on: International illicit drug traffic and Currency counterfeiting and economic and financial crime.

Who killed Patrick Quinn? The Framing of Malcolm Kennedy, Hackney Community Defence Association, Colin Roach Centre, 10a Bradbury Street, London N16 8JN. 86 pages, £3.00. The case of Malcolm Kennedy sent to prison for nine years on a manslaughter charge for the killing of Patrick Quinn in Hammersmith police station. Kennedy gave evidence in court of seeing police officers assaulting Quinn.

The private security industry, Chief Constable John Stevens. *Policing Today*, vol 1 no 3, pp7-10.

The "Interior Case", Manuel Cerdán and Antonio Rubio. Publishing House: Ediciones Temas de Hoy, Madrid, 1995, 436 pages, 2,400.= Pesetas. Journalistic account of the corrupt connections of the Spanish Ministry of the Interior, covering the sudden enrichment of Luis Roldán (former director of the Guardia Civil) and other top people who, according to the authors, were appropriating funds reserved for police undercover work for years.

Culture's consequences and the police: Cross-border cooperation between police forces in Germany, Belgium and the Netherlands, J Soeters, G Hofstede, M van Twuyer. *Policing & Society*, vol 5 no 1, 1995, pp1-14.

Parliamentary debates:

Police grant *Commons* 31.1.95. cols. 955-981

Wiltshire police force *Commons* 28.2.95. cols. 951-958

RACISM & FASCISM

Combat 18 behind Dublin violence

Charlie Sargent, a key member of the nazi paramilitary Combat 18 (C18), has boasted of co-ordinating the violence unleashed on Irish supporters at the friendly international football match between Ireland and England at Lansdowne Road on February 15. He claimed that the violence was C18s response to the peace talks currently underway in northern Ireland.

Since C18 was formed in 1992 it has made a concerted effort to form an alliance between the street-fighting groups of the far-right, the racist elements of Britain's most violent football firms and the equally racist anti-Irish Loyalist groups in northern Ireland. While amorphous, and often antagonistic, relationships have long existed between these groups, C18 appear to have made significant inroads in persuading them to put aside their differences and cooperate in joint actions.

A turning point in the relationship was signalled with the arrest of several key C18 activists on gun-running charges to northern Ireland Loyalists. In 1993 Frank Portinari was jailed and Eddie Whicker questioned by police for supplying weapons; in 1994 Terry Blackham was jailed for the same offence. The results of this cooperation were seen at the January 1993 Troops Out march when the fascists were bolstered by loyalists and football firms (see *Statewatch* vol 3 no 3).

The links between the Chelsea Headhunters football firm and the far-right is long standing. The Headhunters frequently supported the National Front during the 1980s but these activities were interrupted following a series of arrests in Operation Own Goal in 1986-87. Charlie Sargent, who is also a Chelsea headhunter, plays a key role linking the new generation of Headhunters and C18.

C18 are also understood to have made links with other football firms. In London Millwall have a long reputation of racist violence, although they are usually considered to be too "independent" to be reliable. Interestingly, one of those arrested at Lansdowne Road - Jerry Lindley - was a known nazi and Millwall supporter.

Contacts have also been made with the north of England particularly at Sunderland and Newcastle, where the British National Party have particularly violent branches. Several members of their football firms were arrested at Lansdowne Road including Sean Knighton, a Newcastle supporter who was photographed wearing a balaclava helmet throwing missiles and is a known racist who is believed to have C18 connections.

Among the other football firms represented at Lansdowne Road were the Seaburn Casuals and Border City Firm from the north and the Cheltenham Volunteer Force from the Midlands.

FRANCE

FN members murder black youth

A 17-year old migrant from the Comoros Islands was shot dead by

members of the fascist Front National (FN) in Marseille on February 21. Ibrahim Ali came across the fascists, who were fly-posting, and attempted to avoid them when he was shot twice in the back. The leader of the FN, Jean Marie Le Pen, defended the shooting claiming that his supporters were acting in "legitimate self-defence"; nonetheless at the beginning of March he expelled the killers from the party.

Le Pen is standing in the French Presidential election on April 23 and has claimed that the murder was part of a conspiracy to discredit him. Within a couple of days of the murder he appeared on one of the most important talk shows on French television - "7 Sur 7" on TF1 - and was treated as a respectable politician.

The killing has started a row over whether FN members have been instructed by their leaders to arm themselves when fly-posting. Le Pen has denied this, but his protestations have been treated with scepticism bearing in mind the FN's violent history.

The family of Ibrahim Ali have asked their lawyers to press for the prosecution of the FN leadership for complicity in his death.

Le Monde 24 & 28.2.95; *Guardian* 28.2.95; *International Herald Tribune* 1.3.95; *Politix* 2.3.95.

GERMANY

Nazi groups banned

Germany banned two more neo-nazi organisations during February after the constitutional court ruled that the Free German Workers' Party (FAP) and the Hamburg based National List were not legitimate political parties. Ten neo-nazi organisations have now been outlawed by federal or state authorities since 1989.

The FAP was one of Germany's largest fascist groups with an estimated 1500 members. It has a reputation for violence and has frequently held marches with members dressed in nazi-style uniforms. One of its most publicised activities was in Fulda, in August 1993, when members of the British National Party joined them on the sixth anniversary of the death of Rudolf Hess. At the Fulda rally their leader, Friedhelm Busse, declared that the aim of the party was to seize absolute power in Germany. Following the banning the Interior Minister, Manfred Kanther, ordered raids on homes and offices used by the FAP.

In March German police carried out further raids directed at the National List and its leader, Christian Worch. Worch plays a pivotal role in disseminating propaganda material from the American nazi Gary Lauk who runs the German National Socialist Workers' Party from Nebraska. Much of his material has been distributed from Denmark where Lauk was arrested in March. He now faces extradition to Germany where there is an outstanding international warrant for his arrest.

International Herald Tribune 25.2.95; *Observer* 5.3.95; *Guardian* 24.3.95.

Fined for "insulting the state"

A court in Frankfurt sentenced a 41-year old unemployed man to a fine of 2400 DM for "insulting the state", the newspaper "Junge Welt" reported (9.3.95). The man was found guilty of using the words "state fascism" and "state racism" in connection with the German state at a protest meeting in July 1994. The rally was protesting the death of a 16-year old Kurdish youth from Hannover, shot by a policeman while putting up posters.

NETHERLANDS

Extreme right to be prosecuted

The policy-making College of the five Prosecutors-General of the

Public Prosecutor's Office has announced its intention to prosecute all cases of discrimination by the extreme rightwing. Until now, public prosecutors on occasion could decide to drop a case when the suspect could be expected to use his trial as a platform for voicing racist opinions. From now on, the only criteria will be the chance of success in winning a case. As an additional measure, the number of public prosecutors dealing with discrimination cases will be increased.

DENMARK

The killing of an anti-racist

Henrik Christensen, 29, was killed by a letterbomb on 16 March 1992 in the offices of the anti-racist group, Internationale Socialister, in Nørrebro, Copenhagen. He was a leading member of the group. Nobody has been charged with his murder. Now, three years later, it has just come to light that the day after the murder the then head of the Police Department, Bent Hansen, received a personal letter containing a confession to the murder. However, the letter was not taken seriously and police claimed that they had no idea who the perpetrator was or nor the motive.

The letter, published in *Politiken*, from an extreme rightwing group: "Free Denmark K 12" admits responsibility for the murder of what they call: "a Danish traitor".

The police have been strongly criticised for not admitting the existence of the letter, not following it up, and for hiding the fact, known to them, that similar letters had been sent to five other people. Instead the police investigated members of the Internationale Socialister group itself - using the murder investigation to gather information about leftwing networks.

The Danish police claim they cannot find any members of the "Free Denmark K 12" group nor have they followed up information suggesting they may be connected with a Swedish skinhead group which celebrates the birthday of King Karl Gustav the 12th.

Racism & fascism - new material

The growing danger from racial violence, Glynn Ford MEP. *European Brief* vol 2 no 5, pages 31-32, 1995. On the Consultative Commission on Racism and Xenophobia and other European initiatives.

Fascist phoenix rises from Soviet ashes, James Meek. *Guardian* 14.3.95. Article that focuses on Alexander Barkashov's fascist Russian National Unity organisation; includes brief entries on the other main far-right players.

Invitation to Gianfranco Fini, Paul Coleman. *Runnymede Bulletin* 282 (February) 1995 pp6-7. Useful piece on the background to the February visit to London of Italian fascist Gianfranco Fini and the role of former British ambassador to Italy Derek Thomas in organising it.

In the shadow of Mussolini, John Hooper. *Guardian* 6.2.95. and **II Duce's disciple**, Peter Popham. *Independent magazine* 25.3.95. On Gianfranco Fini's sleight of hand transformation from fascist to "post-fascist" and its implications for Italy.

The Fuhrer!, James Weatherup. *News of the World* pp19-21, 19.2.95. Somewhat sensationalised piece on Gary Hitchcock, a leading figure in Combat 18.

Mortal Combat, Peter Brighton. *Time Out* 22.3.95. Piece on the links between Combat 18, the Chelsea Headhunters football firm

and Irish loyalists.

SECURITY & INTELLIGENCE

BELGIUM

New intelligence services Bill

The new bill on the Belgian intelligence services was presented by Prime Minister, Jean-Luc Dehaene, and Minister of Justice, Melchior Wathelet, on Friday 3 March. Once the bill is accepted by parliament, it will result in a legal framework which closely resembles the Dutch model, including a ministerial commission, the Conseil Ministeriel du Renseignement et de la Securite (CMRS) and its executive arm, the College du Renseignement et de la Securite (CRS). The bill has adopted most of the recommendations made by the intelligence oversight committee in its recent and first annual report. It will cover both the civilian Surete d'Etat, which recently moved into its new headquarters on 150 Boulevard Emile Jacquemain in Northern Brussels, and the military Intelligence Service, which was recently renamed the Service General du Renseignement et de Securite (SGRS).

A new provision in the bill will allow other government agencies to pass information to the Surete, although the providing service retains the right to refuse such cooperation. Special powers such as telephone tapping remain out of bounds for the intelligence services, although the interception of radiomagnetic transmissions is explicitly permitted. Also the bill explicitly states that the services will have to operate within the limits of the law under all circumstances. A rather unusual role for a west European intelligence service will be the provision of armed bodyguard services to selected VIPs.

Oversight Committee

The Permanent Committee for Oversight of the Intelligence Services or "Komitee-I" for short, recently brought out its first report on the state and activities of the civilian Surete d'Etat and the military Service. This report, which covers the period of May 1993 to June 1994, gives the impression of the Belgian services as being greatly restricted and reluctant to use any of the intrusive measures that usually characterize intelligence work. According to guidelines referred to in the report, "infiltrations of certain groups may not be carried out by members of the services themselves" (implying that informants have to do this kind of work) and that surveillance operations were restricted to public spaces and always respected the constitutional immunity of the home. Although the Surete, which comes under the Ministry of Justice, has no branches or sources of its own in other countries, it has been admitted that the service does seek and receive information from Belgian nationals residing or travelling abroad.

It should be noted that the Committee appears to be satisfied with repeating the services' own statements on these issues with no verification of its own. Intelligence oversight in Belgium is organized under the 1991 Intelligence and Police Services Oversight Law, which established a formally independent committee instead of a parliamentary body. The House of Representatives does have a commission to maintain contacts with the Oversight Committee.

NETHERLANDS

Access to security files

Following the *Vleugels et al* ruling of the European Court in 1993, in which the Dutch law on the Intelligence and Security services

was rejected on several points, the Dutch "Raad van State" (State Council, the highest court in administrative procedures) decided on June 16, 1994 in the *Van Baggem* ruling to allow a citizen limited access to his BVD security service dossier. Mr Van Baggem suspected he was obstructed in getting a job, because the BVD had a dossier on him based on his involvement in the anti-nuclear movement in the late 1970s. The ruling implied that the intelligence law, with its provisions banning all access to dossiers, was invalid pending a thorough revision. Until the adoption of new intelligence legislation, access to classified files and documents will be governed under the law on the Openness of Administration (the Dutch Freedom of Information Act), which gives greater priorities to privacy concerns and citizen's rights of access to government data held on them.

In 1991 about 400 citizens united in the "Vereniging Voorkom Vernietiging" (V.V.V., Association to Prevent Destruction) to initiate actions against the BVD and other intelligence agencies in 1991. The initiative was launched after the BVD announced its intention to destroy a large number of its several hundred of thousand dossiers, following the end of the Cold War.

The BVD has conceded it has to start giving people access to their files, and plans to implement an extensive programme allowing up to ten persons to come and read through their dossiers each week, starting with people over 55 years old. It has also given in to a V.V.V. request to explicitly define the terms under which access will be granted. Surprisingly, after years of dragging its heels, the security service has now agreed on including in the access procedures all materials (printed, digital, video, audio, microfiche, etc.) from all sources (including predecessor agencies and other government institutions) and categorized under any headings. A potential problem however is that the BVD has asked applicants to provide information on the "societal context" under which they expect information on them could be filed. This means people will have to supply the service with more or less detailed information on which groups they have been involved in, which demonstrations, etc. The Openness of Administration Act has explicitly excluded provisions requiring motivation for an information request, but the BVD simply says a general request will not be granted, and that it will not be able to find all relevant files without additional details.

In a local "access to dossiers" procedure against the Nijmegen Police Intelligence Service, a BVD branch within the police force, 20 requesters were also successful last week when the court ruled that the arguments used for refusing access were invalid. The Military Intelligence Service (MID) is preparing similar arrangements for access, the first "reading" sessions have begun.

UK

The new "System X"

The new UK telephone network supports ISDN (Integrated Services Digital Network) which allows digital devices (eg: fax machines) to share the same system with existing phones. The ISDN sub-set that British Telecom (BT) uses is defined in their document, BTNR 191, "Signalling CCITT I-series interface for ISDN access". Built into the international CCITT protocol is the ability to take a phone "off hook" and listen to conversations near the phone without the user being aware of this happening. It has the same ability to eavesdrop on PABX phones - multiple lines in offices. BT states that this is not implemented in the UK.

In the late 1980s "System X" was introduced in the telephone network this allowed all the calls made from and to a phone number

to be logged. It allowed the standard surveillance of selected phones and all calls made - it now forms the itemised bills available to everyone. The "bugging" of conversations in a room with a phone required placing a "bug", or "infinity bug" in the phone itself. Due to the nature of the electronic connection in the new phone system there is no need for property to be entered to place the "bug", the system can do it automatically.

SGR Newsletter, Issue 4, September 1993; *Stranger on the Line*, Patrick Fitzgerald and Mark Leopold, Bodley Head, 1987.

Security - new material

Covert in glory, Paul Lashmar. *New Statesman and Society* 3.3.95. pp14-15, 1995. Piece on the MI6's Information Research Department which was set up in 1948 as a secret anti-communist propaganda department until its demise in 1978.

MI5, Special Branch and the criminalisation of the Kurds in Britain, Stephen Long. *Kurdistan Report* 20:4-5 (January-February) 1995. Useful article on MI5/Special Branch harassment of the Kurdish community in Britain.

They shoot pigs, don't they?, Danny Penman & Tom Wilkie. *Independent* 26.1.95. Article on the Porton Down chemical defence establishment in Wiltshire which describes experiments carried out on live animals.

How we bombed London, Phillip van Niekerk. *Observer* 19.2.95. Describes the bombing, organised by the South African apartheid government and carried out by their special branch, of the African National Congress's London offices in 1982.

Truth and big guns, Richard Norton-Taylor. *Guardian Weekend* 18.2.95. pp22-27. Piece on the Matrix-Churchill arms to Iraq scandal that coincides with the conclusion of the Scott Inquiry and asks how much impact his report will have on the Whitehall machine.

Parliamentary debates:

Lockerbie *Commons* 1.2.95. cols. 1056-1064

CIVIL LIBERTIES

US

New FBI Charter

On 10 February the Omnibus Counterterrorism Bill was introduced as S.390 into the Senate and as H.R. 896 in the House of Representatives. It was initiated by the FBI, and passed on by the Justice Department and the White House. It has bipartisan support, has received little publicity and could get passed quickly.

This is a general charter for the FBI and other agencies, including the military, to investigate political groups and causes at will. The bill is a wide-ranging federalization of different kinds of actions applying to both citizens and non-citizens. The range includes acts of violence (attempts, threats and conspiracies) as well as giving funds for humanitarian, legal activity.

It would allow up to 10 year sentences for citizens and deportation for permanent resident non-citizens for the "crime" of supporting the lawful activities of an organization the President declares to be "terrorist", as the African National Congress, FMLN in El Salvador, IRA in Northern Ireland, and PLO have been labelled. It broadens the definition of terrorism. The President's determination of who is

a terrorist is unappealable, and specifically can include groups regardless of any legitimate activity they might pursue.

It authorizes secret trials for immigrants who are not charged with a crime but rather who are accused of supporting lawful activity by organizations which have also been accused of committing illegal acts. Immigrants could be deported: 1) using evidence they or their lawyers would never see; 2) in secret proceedings; 3) with one sided appeals; 4) using illegally obtained evidence.

It suspends *posse comitatus* - allowing the use of the military to aid the police regardless of other laws. It reverses the presumption of innocence - the accused is presumed ineligible for bail and can be detained until trial. It also loosens the rules for wiretaps. It would prohibit probation as a punishment under the act - even for minor nonviolent offenses.

Implications

The breadth of its coverage would make it impossible for the government to prosecute all assistance to groups around the world that have made or threatened to commit violent acts of any sort. Organizations the government found currently offensive could be targeted and people to be deported could be chosen specifically because of their political associations and beliefs.

The new federal crime - international terrorism - does not cover anything that is not already a crime. As the Centre for National Security Studies notes: "Since the new offence does not cover anything that is not already a crime, the main purpose of the proposal seems to be to avoid certain constitutional and statutory protections that would otherwise apply."

An article in the *Washington Post* commented:

"The real effect of the Bill is apparent in its procedural aspects. The accused is arrested, detained without a right to bail and brought for a hearing before one of five U.S. District Court judges. At that hearing, if the government shows that by introducing certain classified information it would pose a threat to the national security - by revealing the name of an informant - the evidence can be used but kept secret from the alien and his lawyer. Not even a summary of the evidence need be provided. A ruling in the government's favour cannot be appealed, but a ruling against the government can, and that appeal can be heard outside the presence of the alien or his attorney.

Thus, a person who is not a citizen can be accused by a neighbour of having supported the political activities of the PLO, brought before a special court, denied the right to know the evidence against him and deported without even learning the identity of his accuser".

Omnibus Counterterrorism Bill - S. 390 and H.R. 896; for more information: Kit Gage, Washington Liaison, National Lawyers Guild, 3321-12th St., NE, Washington DC, 20017 USA. Tel: 202-529-4225. Fax: 202-526-4611. E-mail: kgage@igc.apc.org; *Washington Post*, 3.4.95.

Civil liberties - new material

The Law: Freedom of Expression and human rights advocacy in Turkey: report of a delegation on behalf of the Bar Human Rights Committee, the Kurdistan Human Rights Project and the Law Society. March 1995, 66 pages. The report deals with the trial of seven people, including six lawyers, who are all members of the Management Committee of the Diyarbakir Branch of the Turkish Human Rights Association ("IHD"). After the initial hearing on 13 February they were remanded in custody until 17 April. The prosecution is demanding a sentence of 15 years on two charges:

publishing a human rights report on south east Turkey in 1992 and membership of the PKK - based on the allegation that one of them attended a meeting in January 1994. On 13 February the only two prosecution witnesses to appear withdrew their evidence and said they had been tortured. After this hearing their defence lawyer was arrested. For further information on the report contact Louise Christian on 0171 831 1750.

Censored: freedom of expression and human rights, Conor Foley, Cathy Bryan & Jonathan Hardy. *Liberty* (1994) pp76. This report, which focuses on the government's failure to uphold fundamental rights, will be submitted to the United Nations. Available from Liberty, 21 Tabard Street, London SE1 4LA, price £3.

Pot luck, Michael George & Andrew Fraser. *New Statesman & Society*

17.3.95. pp18-21. Article on cannabis-related offences and the results of a survey that indicate that one in five police officers no longer enforce the law for possession of small quantities.

Labour Human Rights Campaign Newsletter. The Campaign is seeking to promote human rights issues within the Labour Party. Its agenda includes maintaining pressure for the incorporation of the European Convention on Human Rights and a UK Bill of Rights. From: Cathy Bryan, LRC, Room 506, 7 Millbank, London SW1P 3JA.

Taking Liberties: democracy and data protection. *Data Protection News*, no 19, Autumn 1994, pp2-9.

Report to the Icelandic Government on the visit to Iceland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 12 July 1993, Council of Europe, June 1994. CPT/Inf (94) 8.

Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 January 1992 and Response of the Portuguese Government, Council of Europe, July 1994. CPT/Inf (94) 9.

Response of the Netherlands Government to the report of the European Committee for the Prevention of Torture and Inhuman and Regarding Treatment or Punishment (CPT) on its visit to the Netherlands from 30 August to 8 September 1992, Council of Europe, September 1994, 66 pages.

Report to the Norwegian government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 June to 6 July 1993, Council of Europe, September 1994, 63 pages, CPT/Inf (94) 11. **Response of the Norwegian government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Norway from 27 June to 6 July 1993**, Council of Europe, September 1994, 29 pages, CPT/Inf (94) 12.

Parliamentary debates

Human Rights Bill *Lords* 15.2.95. cols. 762-784

The following are recent publications added to the library of Liberty, 21 Tabard Street, London SE1 4LA. Tel: 0171 403 3888. They are available for reference. Please make an appointment if you want to visit - a small charge is made to non-members.

Democracy, Anthony Arblaster, Open University. 1994.

Policy on Gypsies in the Criminal Justice and Public Order Bill (Bill of 1993/4), Christopher Barclay. House of Commons Library 1994, 14pp.

Human rights and pre-trial detention: a handbook of international standards relating to pre-trial detention, Centre for human rights crime prevention and criminal justice branch. Professional training series no.3, United Nations publication, 1994, 54pp.

European Commission, Freedom of movement: Europe on the move, EC 1994, 10pp.

The gypsy and the state: the ethnic cleansing of British society, Derek Hawes & Barbara Perez. SAUS, 1995.

Protocol no. 11 to the convention for the protection of human rights and fundamental freedoms, restructuring the control machinery established thereby. CM 2634, HMSO, 1994, 13pp.

Criminal justice and public order act 1994: introductory guide, Home Office, HMSO, 1994, 50pp.

Fourth periodic report by the UK of Great Britain and Northern Ireland to the human rights committee under article 40 of the International Covenant on Civil and Political Rights (ICCPR). Home Office, October 1994.

Police and criminal evidence act 1984 codes of practice draft revisions for consultation. Home office, HMSO, 1994, 105pp.

Defending your freedom: a guide to the Criminal Justice and Public Order Act 1994, Len Lucas & Alan Murdie. Legal research and campaign services, 1994, 80pp.

Privacy and human rights: an international and comparative study, with special reference to developments in information technology, James Michael. UNESCO, 1994.

The Criminal Justice and Public Order Act 1994, James Morton. Butterworths, 1994, 282pp.

DNA: a human rights profile, Peter Thornton QC. 8pp

Implementing European Community Law: free movement rights in the United Kingdom, C Vincenzi. Institute of Advanced Legal Studies research working papers. Institute of advanced legal studies, 1994, 41pp.

Blackstone's guide to the criminal justice and public order act 1994, Martin Wasik & Richard Taylor. Blackstone, 1995.

Policy on squatting in the Criminal Justice and Public Order Bill (Bill 9 of 1993/94), Wendy Wilson. Research paper 94/2, House of Commons Library, 1994, 13pp.

Wired Whitehall 1999. Kable, Nov 1994, pp50 (ID cards).

BOOKS RECEIVED

Individual rights and the law in Britain, Christopher McCrudden & Gerald Chambers (eds). *Oxford University Press* (1995). Comprehensive guide to civil liberties law in Britain that examines the changes since 1950 and their place within the context of European and international human rights law.

Asylum in Europe; Vol 1 An Introduction, Vol 2 Review of refugee and asylum laws and procedures in selected European countries, European council on refugees and exiles. *ECRE* (1994). These volumes are primarily designed for practitioners of refugee law. Vol. 1 is divided into two sections "The International level" and "The European level", while **Vol 2** contains entries on Denmark, Finland, Germany, Hungary and Switzerland.

International Security Review 1995, Royal United Services Institute for Defence Studies. *RUSI* (1995). Contains chapters on NATO, the European defence industry, Germany, Northern Ireland and western military intervention in the developing world.

The Secret State: British internal security in the twentieth century. Richard Thurlow. Blackwell, 1994, 458 pages. £19.99. This book looks at the state response to internal threats - from anarchists, the IRA, trade unionists, spies - making extensive use of material from the Public Records Office (Home Office and Cabinet Office).

Policing across national boundaries, edited by Malcolm Anderson and Monica den Boer. Pinter, 1993, 204 pages, £35.00 hd. One of the first book to tackle European police cooperation.

Policing Europe: cooperation, conflict and control, Bill Heberton and Terry Thomas. MacMillan, 1995, 231 pages, £11.99, pk. This book goes through the arguments and gives a lot of detail on European police cooperation. By setting this cooperation in the context of wider developments - the K4 Committee, data protection, and Interpol - it gives the reader a very good overview.

Obituary: Hilary Arnott 1944-1994

After leaving Oxford University Hilary worked as an editor at Collins, the book publisher. It was the skills she learnt there which she brought so productively to the Institute of Race Relations (IRR) and all the other publications she worked on.

Hilary went on to work for Child Poverty Action Group, Latin America Newsletters and the Legal Action Group - but she never "left" the IRR. Hilary continued to work voluntarily on "Race & Class", on the numerous publications of the IRR, and was a founder member of the collective that started *CARF* (Campaign Against Racism & Fascism) magazine in 1991.

I first met Hilary at the IRR in 1969 where she was working as an information officer. We were to be friends for the next 25 years. When, in the early seventies, I was writing a book, the Political Police in Britain, she helped to develop many of the ideas in it.

On top of her full-time job at the Legal Action Group and her voluntary work at the IRR and CARF Hilary somehow found time to help Statewatch too. The Statewatch handbook presented a major editing job and Hilary's red pen worked over several chapters - cutting, re-writing, with big exclamation marks beside sloppy

arguments. She also helped to redesign of the Statewatch bulletin last year to make it more accessible. And when we had meetings of the Statewatch contributors group twice a year she always welcomed visitors from Europe to stay in her home.

Hilary will be remembered for the "unseen" help she gave to so many groups, for her telling criticism, and for her life-long commitment to anti-racism, anti-fascism and radical politics.

(Tony Bunyan)

FEATURE

Northern Ireland: Prisoners and the Peace Process

Seven months into the ceasefires, debate around the future of the counter terrorist industry and the legal powers on which it rests, appears to have had little impact on the British government or key personnel such as RUC Chief Constable, Sir Hugh Annesley. The main political play has revolved around the basis on which Sinn Fein is included in political talks with British ministers of state who have sought assurances firstly that the IRA ceasefire is permanent and secondly that semtex and weapons will be surrendered. In February, the British and Irish governments, after two years' work, published their long awaited "frameworks document" setting out the basis on which future political talks might proceed, political guarantees to the unionist majority and the possibilities for satisfying Irish nationalist aspirations in terms of cross-border bodies. The documents make it clear that whatever else happens, Britain will continue to control law and order and will retain control over taxation. But there is scant recognition of human rights issues beyond vague references to a "charter" of rights.

Nor has the ceasefire period seen any short-term political recognition of the longstanding human rights agenda. While the application of special powers and security forces has clearly changed in a number of respects - the dropping of some exclusion orders, the abolition of all British army foot patrols in urban areas from 25 March and the withdrawal of some troops (800), for example - the Prevention of Terrorism Act has been renewed for another year. The extensive discussion of policing which has been going on in loyalist and nationalist communities and within the human rights lobby since the ceasefires has not been matched in either governmental or policing circles. Although the Police Authority for Northern Ireland has issued 600,000 leaflets asking for "the community's view" on policing (which it is required to do under the PACE Order 1989) and there has been an extensive billboard and TV advertising campaign to encourage people to "help the police to build the peace", the Secretary of State and the Chief Constable have both continued to claim that there is nothing wrong with the RUC. Similarly, calls by the campaign group *Saoirse* (freedom) for the release of political prisoners has been met by all too familiar government pronouncements that "there are no political prisoners".

The most immediately pressing issue in relation to prisoners concerns the republican prisoners held in British prisons. The significance of prisoners in the peace process has long been acknowledged by the Irish government which released nine IRA prisoners at Christmas, a further five at the beginning of February, including Pamela Kane the only woman IRA prisoner held in the South. and seven at Easter. This approach is in stark contrast to the treatment of republican prisoners in Britain who, since the early 1970s, have sought to be transferred back to Ireland.

The stated reasons for blocking transfers have changed over the years. The reluctance of the authorities to address this issue in anything other than an obstructive manner is illustrated by the fact that it took until 1992 for a formal policy review to be conducted

(Ferrers Report, 1992), notwithstanding two deaths on hunger strike over transfer and a period of forcible-feeding of two women prisoners in the 1970s.

Until 1985, governments consistently refused to provide information on prison transfers. Then information was made available for the 1979-83 period and subsequently for the period since 1973. Since 1989, more parliamentary questions have concerned transfer policy than any other issue to do with the North's prisons. Most of these questions have been posed with a view to testing the fairness or otherwise of transfer policy regarding loyalists, republicans and members of the British Army. Many of the answers have been evasive, particularly regarding the type of prisoners (political or otherwise) and their affiliation, and some answers have been contradictory (for instance, compare the data given in *Hansard* 26.11.91, written answer col 434 with 16.11.89, written answer col 451). So the published data make it difficult to judge if, as is suspected by campaign groups, republican prisoners in Britain have their requests for transfer treated less favourably than others. Certainly, very few of these prisoners were transferred until 1994. From 1973 to 1987 only 5 category A prisoners succeeded in a permanent transfer back to the North (*Hansard* 9.11.87 written answer col 62). A further six prisoners convicted of scheduled offences were transferred from 1988 to 1992 (*Hansard* 27.7.93 written answer col 62). Five prisoners (undifferentiated) were transferred between September 1992 and 1993 out of 50 who applied (*Hansard* 21.10.93 written answer col 270). Only four out of 33 scheduled offenders serving life sentences in Britain at May 1993 had been transferred to the North - and they had been convicted as long ago as 1973 and 1976 (*House of Lords*, 26.5.93, written answer col 28). Between 1985 and 1990 only 14 per cent of all applications for transfer from Britain to the North succeeded.

Those applying for transfer from Scotland to the North, mostly loyalist prisoners, seem to have had more success. Between 1985 and 1992, ten were transferred out of 21 requests (*Hansard* 19/1/93, WA col. 224). Transfers from the North to Britain have also been more fluid. Out of 23 applications for permanent transfer between 1982 and 1992, 10 were successful and of the 20 applications for temporary transfer, 14 succeeded (*Hansard*, 19/1/93, WA col. 171-2).

It was widely anticipated that the Ferrers Report "administered in a humane way", as the Standing Advisory Commission on Human Rights put it, would begin to ease the conflict over transfer. The report was very cautious and did little to reduce British Home Office discretion over transfers, other than to remove from the transfer criteria a clause stating that transfers could be refused in cases of "crimes undeserving of public sympathy". Its main recommendation was that persons convicted of "terrorist type offences" and held in English prisons should be given a "temporary extended transfer" providing they had family connections in Northern Ireland. Although the government formally adopted the recommendations immediately, the anticipated movement of prisoners did not materialize. Meanwhile, the European Court of Human Rights ruled in favour of the British government that, amongst other things, it was legitimate not to move prisoners on grounds of national security - they might escape during transfer.

The flaw in the Ferrers Report was that it stuck to the legalism of the principle written into the 1961 Criminal Justice Act (which governs transfers), namely that the "integrity of the original sentence" must be upheld in any transfer. By recommending temporary transfer and supporting the refusal of permanent transfers if there is a possibility that prisoners will serve shorter sentences, Ferrers ensured that the British Home Secretary would continue to have control over any life sentence prisoners transferred to the North. This is important because in 1983 Leon Brittan (as

Home Secretary) decided that whole categories of offenders serving life sentences should not be released for at least twenty years, including "murderers of police or prison officers, terrorist murderers, sexual or sadistic murderers of children and murderers by firearm in the course of a robbery" (*Hansard* 30.11.83, col 506). Lifers in Northern Ireland do not come under this policy. One implication of this difference is that it is based on the racist notion that "terrorist activity" in the rest of the United Kingdom is somehow more heinous than actions carried out in Northern Ireland.

Another problem with the Ferrers recommendations is that they exclude those prisoners whose family connections are in the South of Ireland. The British government argues that these prisoners could only be transferred to the South with the agreement of both Irish and British governments under the European convention on the transfer of sentenced prisoners. Both governments have signed the convention but the Irish government has still not ratified it by way of legislation through the Dail (although Dick Spring has promised that this will be done by the end of May). A transfer to the North, of course, would still make visiting considerably easier for Southern based families than the trip to Britain.

For nearly two years following the government's acceptance of the Ferrers Report there was no movement on transfers. Then in June 1994 four prisoners, including two women, were transferred and it was widely publicised in the Irish media that another seven transfers were in the pipeline. Two factors intervened, however, which affected further transfers. The first was the announcement of the IRA ceasefire (from 1 September 1994) and the second was the escape of six prisoners (including five IRA prisoners) from Whitemoor special security unit on 9 September. Four men were transferred on the day the IRA ceasefire commenced and this led the Prime Minister to order an investigation into the transfers. Instead of defending the albeit delayed implementation of the Ferrers Report, Major argued an essentially unionist position that the transfers would be seen as a gesture to the IRA and should therefore have been prevented. The Whitemoor men, some of whom were due for transfer, may have had their transfers blocked because of such sensitivities. In any event, their escape and recapture not only stalled the transfers but led to ill-treatment and punishment. Further embarrassment to the Home Secretary, Michael Howard, resulting from another escape (this time from Parkhurst on the Isle of Wight) only added to the clampdown.

Since the Whitemoor escape, regimes for maximum security prisoners have been significantly tightened. IRA prisoners at Full Sutton and Whitemoor have spent long periods in solitary confinement and access to education and exercise has been cut. Feilim O Adhmaill, serving 25 years and currently held in the special security unit in Full Sutton, was, after much negotiation and the intervention of the Irish embassy, allowed to speak on the telephone to his children in Irish (with the authorities taping and translating these calls for security reasons), but this facility was withdrawn before Christmas. The Whitemoor escapees, now in Belmarsh, were visited by relatives for the first time in February, six months after the escape. On the 2nd of February, they were cleared for a visit for 25 February. Two days before the visit they were told not to travel because the visiting area had not been equipped with cameras. By 28 February, they were assured that the cameras were installed so they set off from Belfast to London. The relatives were refused a visit the next day. After the intervention of a solicitor, the visit finally took place on 3 March. They found the prisoners grey looking, suffering from skin and stomach complaints and much thinner than six months ago. Visits are now "closed", that is the prisoners are separated from visitors by a glass screen.

In December 1994 the Woodcock Enquiry into the Whitemoor

escape was published. The report heralds a return to regimes whose sole rationale is security and the recommendations are intended to be relevant not just to the special security units at Whitemoor, Full Sutton and elsewhere, but "to the main prison and indeed to other establishments within the wider Prison Estate". Most of the proposals concern surveillance, observation and searching, including frequent and irregular strip searching. The report recommends that CCTV be extended to all areas including visiting rooms and that visits are recorded. Visitors of category A prisoners are to receive "rub down" and x-ray searches, and to be randomly searched on leaving the prison. Visitors will not be allowed to take anything to a visit except a few coins for vending machines if these exist in the visiting area. Special security unit staff will likewise be searched every time they enter the prison and additionally when entering the units. The measure likely to have the biggest impact on prisoners is recommendation 6. This reads:

"...volumetric control of all prisoners' possessions should be introduced forthwith to reduce dramatically the amount of property in possession/storage and facilitate effective searching. The volume allowed should be standard to all inmates, whatever their category. Prisoners should only be allowed that which fits into the authorised cupboard, wardrobe and shelf space of a cell plus a maximum of two transit boxes, to be stored under the bed. Over time it may be possible to issue inmates with a large trunk, which would represent the total volume of property permitted".

Up until February 1995, only eight prisoners had been granted temporary transfer since the publication of the Ferrers Report. At the end of February, two prisoners (Damien McComb and James Canning) were given permanent transfers because, it is believed, they were sentenced after 1989 when new rules on remission were introduced in the North, bringing them back in line with British rules (50% remission was withdrawn and replaced by one-third). McComb had taken a judicial review case after the authorities had reneged on undertakings to transfer himself, Canning and Paul Norney on two occasions last year. The case was due for hearing on 2nd March. Norney is now in his 20th year, having been imprisoned at the age of 17. He is one of eleven republican prisoners in their 20th year of imprisonment. The others are Eddie Butler, Hugh Doherty, Vince Donnelly, Brendan Dowd, Henry Duggan, Sean Kinsella, Joe O'Connell, Peter Sherry, Liam Quinn and Thomas Quigley.

By the end of March this year, there were strong indications that the British government had abandoned the Ferrers Report policy and was trying to make political capital out of a hardline attitude towards the Irish prisoners. Shadow Northern Ireland Secretary, Marjorie Mowlam who had visited five prisoners seeking transfer, wrote to Home Secretary Michael Howard stating Labour's policy in favour of transfer. Howard then wrote to Jack Straw, shadow Home Secretary, quoting the Mowlam letter and accusing Labour of running its prisons policy "to curry favour with Irish republicans".

Similarly Prime Minister John Major dismissed Mowlam's initiative when he answered questions in parliament put by Sir Ivan Lawrence, chair of the Home Affairs Select Committee. Lawrence asked Major if he would allow "any member of his front bench team to visit convicted IRA terrorists in English prisons and campaign to have them returned to Northern Ireland?" Major's reply was a simple "No".

Meanwhile in Belfast, the subject of prisoners was part of the agenda between British Minister Michael Ancram (who has responsibility for "political development") and representatives of the Popular Unionist Party and the Ulster Democratic Party, the

parties usually referred to in mass media as "having insight into the thinking of loyalist paramilitaries" (the Ulster Volunteer Force and the Ulster Defence Association respectively). The British government's press release ran as follows:

"There was a detailed consideration of prisons issues. The PUP and UDP urged the importance of an imaginative and compassionate approach. The Minister explained that there was no possibility of an amnesty but recognised that no issue existed in a vacuum and in assessing the scope for parallel progress in different areas, that the Government would have full regard to real objective changes in the security situation; but that the behaviour of prisoners would be a relevant factor".

Just over a week later (on 2 April), *Saoirse* organised a rally in Crossmaglen in support of prisoner transfer and release which attracted over 5,000 people.

What the post-ceasefire situation amounts to for the prisoners held in England and their relatives is a return to the conditions and petty confrontational regimes of the early 1970s. For some time there has been a growing concern that this will lead to an escalation of conflict and protest.

FEATURE: Policing immigration: Britain and Europe

There is an irony in the recent seizure by British politicians of the right of the proposed abolition of internal border controls as a pretext for raising the racist spectre of hordes of illegals and scroungers swarming in to Britain. For the priorities of the French presidency of the EU for the first six months of 1995, and its proposals for joint actions, reveal the continuing obsession of the EU states with defining, identifying and excluding more and more people as "illegal". In the process, the lineaments of a Euro-police state have become more clearly drawn.

The French presidency proposals describe as their main priority combating unauthorised immigration and illegal employment of foreign nationals not authorised to work in the EU. They aim at approximating national policies on controlling and combating clandestine immigration. To that end, a proposal for a joint action by the EU member states has been circulated among ministers for their agreement. This would commit member states to imposing requirements on foreign nationals to carry and produce on demand residence and identity documents.

Under the joint action proposal, systematic checks would be carried out:

- * when an offence was investigated or prosecuted (whether or not suspects only, or only victims and witnesses as well, the document does not say);
- * to "ward off threats to public order on specific occasions (demonstrations, sporting events, open air concerts) or in specific places (sensitive neighbourhoods, the Underground)".
- * in frontier zones, ports, airports and railway stations handling international traffic;
- * when the competent authorities "have questioned a foreign national for any reason whatsoever".

Foreign nationals must carry ID and residence documents with them at all times.

Benefits in the area of health, retirement, family benefit, work-related or housing benefit are all to be contingent on verification of legal residence. Employers must verify the immigration status of workers before employing them, and will be punished for

employing undocumented workers.

Each member State is to set up a central file with details of the immigration status of all foreign nationals in the country. They are to take measures to guard against forgery of residence documents and documents providing proof of nationality, and "shall take every measure to reinforce means of identifying foreign nationals not in a lawful position" and with no travel or ID documents.

Detention for expulsion is to be mandatory for irregular workers, in "non-prison" accommodation, to enable them to be identified and returned. Those who refuse to supply travel documents or otherwise "bring about their illegal position" may be sent to prison. The requirement to carry identity and residence documents would make it necessary in practice for anyone likely to be stopped to carry proof of their right to be in the territory. In practice, it is black people who are most likely to be stopped. The draft says that immigration status checks must be carried out in a "non-discriminatory manner", and assessment of who constitutes a foreign national "shall be based solely on objective criteria which comply with non-racist and non-xenophobic principles". This means, presumably, that the police can stop a black man on any ground other than his colour. It is meaningless.

The Pasqua-isation of Europe

Similar provisions were introduced in France two years ago, when the right won power, by the hard-line, strongly anti-Islam interior minister Charles Pasqua (see *Statewatch* vol 3 no 3). There have been constant and widespread allegations of police racism and brutality in carrying out the ID checks on the metro and elsewhere, and several immigrant youth have been killed by police since the increased powers were introduced. They also appear to be used as a means of punishment or revenge on whole communities; for example, 10,000 north Africans were subjected to ID checks by police in the immediate aftermath of the killing of two French people in Algeria in the summer of 1994.

Systematic ID and status checks and computerised files on all immigrants will provide the means of effective police control of Europe's immigrant and black communities. Their combination with employer sanctions and the barring of those unable to produce the right documents from all welfare benefits, will drive desperate migrant workers and de facto (but unrecognised) refugees deeper into illegality and modern slavery.

UK response

At present, the Home Office response to the proposal is cautious. Its publicly expressed view is that the provisions should not be legally binding: "The provisions of this joint action relating to identity checks, checks on immigration status linked to the delivery of certain public services and employer sanctions have considerable policy implications, which the government could not accept as binding obligations."

However, it adds that it is currently preparing a green paper examining possible options for the introduction of an ID card system in the UK. It also says that it is examining issues of linking benefit availability to entitlement in a "scrutiny of inter-agency co-operation in the enforcement of the immigration laws". At present there is no central record of all foreign nationals present in the UK and their status. The government is not convinced on the desirability of employer sanctions, being concerned at the "additional burden" on employers. It is content for the provisions to remain in the draft, so long as they are "permissive" and not mandatory.

Howard's proposals

However, in a separate announcement in March, Home Secretary Michael Howard disclosed his intention to tighten up even more on "bogus" asylum-seekers. The proposals include forcing employers to run immigration checks on new workers and punishing those who hire illegal workers. In addition, benefits to asylum-seekers are to be cut from their current rate of 90% of Income Support (about £40 per week). Further measures include abolishing oral appeal hearings for those asylum-seekers whose claims are deemed "manifestly unfounded", denying asylum to people from a list of "safe" countries, and imposing visa requirements on citizens of more countries.

The announcement came a month after ex-immigration minister Charles Wardle resigned from his new post in the Department of Trade because of his unhappiness at the Single European Act of 1987. The resignation bemused observers, but did its job, setting off wild speculation about millions of illegal immigrants, terrorists, drug-smugglers and so on strolling through a passport-free Europe to come to Britain. Equally importantly, it came three months after a firm of accountants, KPMG Peat Marwick, commissioned to study the operation of the immigration appeals system, reported that the "practical and effective" options to speed up the flow of appeals were the introduction of more visa restrictions, the publication of a "white list" of countries deemed not to put asylum-seekers at risk, and the removal of multiple appeal rights. The report recognised that "such options are not easy politically". They clearly become a lot easier when preceded by a month of media scare stories.

Which leaves the question: who is influencing the Home Secretary on immigration and asylum policy: his EU partners, or a firm of accountants?

Proposal for a joint action on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control, Note from the future French Presidency to: Migration Working Party (Expulsion), ref: 12336.94, Restricted ASIM 242, 22.12.94; *Review of Asylum Appeals Procedure*: Final Report, Home Office/Lord Chancellor's Department. Prepared by KPMG Peat Marwick, December 1994.

EU

Report on the Council of Justice & Home Affairs Ministers

(Brussels, 9-10 March 1995) Under the French Presidency this additional meeting of the Council of Justice and Home Affairs Ministers "changed gear" and "stepped up the tempo to show that the third pillar is really working". French Interior Minister Charles Pasqua presided over the meeting which signed a "Joint Action" (under Article K.3.2.b of the Treaty on European Union) on the Europol Drugs Unit (EDU) replacing the Ministerial Agreement signed in Copenhagen in June 1993. This Joint Action takes into account the addition of the three new EU states and extends the role of the EDU from drug trafficking to include trafficking in nuclear materials, illegal immigration networks, and trafficking in vehicles. There is no provision for parliamentary accountability - national or European - and only the most basic data protection clauses with no mention of any appeal against incorrect information beyond national courts (ie: to the European Court of Justice). The "Joint Action" leaves open the distinct possibility that the EDU will be given additional roles prior to the implementation of the full Europol Convention (see *Statewatch* vol 4 no 6, and story in this bulletin).

"Simplified extradition"

The Ministers also signed a new Convention on "Simplified Extradition Procedure between Member states of the European Union", so-called "voluntary extradition". This Convention was not available to national parliaments to comment on and seems to have been produced to show that the "third pillar" was working. It concerns extradition where the individual concerned agrees to be extradited and foregoes rights under the Council of Europe Convention on Extradition - by renouncing entitlement to the speciality rule. By removing detailed case papers and court appearances it is intended to speed extradition within the EU. Ministers were vague as to how many cases this would affect talking of "around 30%", no figures or background reports were presented.

The Convention includes a significant change in the method of ratification. Unlike the Europol Convention which does not come into effect until it has been ratified by all 15 EU states - a process in most countries which involves parliamentary debate and approval - this Convention comes into effect 90 days after a state has ratified it. In effect when any two EU states have ratified it then it can come into effect between these two states while others may still be taking it through parliamentary procedures.

This Convention comes out of the informal meeting of Ministers of Justice in Limlette on 27-28 September 1993 where the primary objective set out was to get round the restrictions of the Council of Europe Convention on Extradition. The intention is to allow for the extradition of nationals of member states and to exclude:

"political offences as defined in Art 1 and 2 of the European Convention on the Suppression of Terrorism of the 27th January 1977 as a ground for the refusal of extradition"

A further Convention on "involuntary extradition" is currently being drafted.

The draft Europol Convention

The Council meeting returned yet again to the draft Europol Convention which it failed to agree on at its last meeting on 30 November under the German Presidency (see *Statewatch* vol 4 no 6). The version of the draft Europol Convention dated 10 October 1994 was revised again on 22 November 1994. This Council meeting considered a report from the French Presidency concerning two of several areas still to be resolved.

The areas of the Convention in dispute at the beginning of this year were: 1) the inclusion of terrorism in Europol's objectives, raised by Spain. This was resolved at the "informal" meeting of the Council in Paris on 26 January. It was agreed that terrorism should be included two years *after* the Convention has been ratified by all 15 EU states (probably in three to four years time); 2) a series of objections by France entered during the German Presidency, most of which have now been withdrawn 3) informing the European Parliament - this remains unresolved; 4) the role of the European Court of Justice - this remains unresolved.

The two areas tackled by the French Presidency, at both the January informal meeting in Paris and at this Council meeting were: a) access to the Europol databases and b) standards of data protection.

The "architecture" of the Europol database as set out in the draft Europol Convention has not been changed. The Council meeting discussed a report from the French Presidency on access to the three sets of information/intelligence to be held: 1) the *information system*, a kind of EU-wide criminal records system on people suspected of serious crimes, will be accessible to all national units (the National Criminal Intelligence Service, NCIS, in the UK),

liaison officers and analysts at Europol HQ; 2) the analytical level of the database is to have two components, with a distinction drawn between *strategic analysis* and *operational analysis*. *Strategic analysis* would look at "large criminal phenomenon" with no personal data. It aims to "orientate the Member States's strategy in their fight against the major criminal organisations, thus improving the coherence and efficiency of the competent national services". All Europol staff and liaison officers seconded to Europol will have access to this level. *Operational analysis* would contain "hot" intelligence on specific, current investigations. Only Europol analysts and liaison officers from the EU states *directly* involved in a case or investigation would have access to this level. These case files would include details of witnesses, possible victims and informers. Other national liaison officers would only have access to current investigations via the *index* (the third element in the Europol database) and could request involvement if their country's interests are affected (an appeals mechanism is suggested if there is any disagreement). The *index* and all the analytical data would not be directly accessible to national units (NCIS's).

Europol and data protection

French Interior Minister Charles Pasqua presented a "compromise" on the right of individuals' access to the data held on them by Europol which would allow two different systems to co-exist in the EU instead of creating a new, common regime for data protection for Europol. This will mean, for example, that German citizens will have far more rights than those in the UK.

Most EU governments favour the "direct access" system under which the individual applies directly to the body (in this case Europol) holding the data. The request is then treated on the principle of providing information "except in cases concerning public safety or national security". In the event of a dispute the individual can appeal to the European Court of Justice. Under this system the individual is told whether or not data is held on them, and what it is. In the "grey area" of "public safety and national security" the individual request will be refused.

The position proposed for EU countries, like the UK, who favour "indirect access" is not all at clear. However, Pasqua's "compromise" distinguishes between "Europol data" and "national data" and states explicitly that if:

"the petitioner applies to the competent authority of a Member State, this authority may only reply with reference to the data transmitted to Europol by this Member state, and excluding all data originating within Europol."

Thus if in the UK the individual is only allowed to apply to a national authority they can only be told what information has been supplied by the UK's National Criminal Intelligence Service (NCIS) and not information added within Europol from other EU states or "third countries" (non-EU states or international organisations). Citizens in EU countries using the "direct access" system may be told not only the information supplied by their own country but also that supplied by other countries including the UK.

If differential rights between the countries of the EU over this issue is agreed it will mark the first step whereby countries with higher standards of protection of individual rights are not prepared to be held back by governments like the UK.

Other decisions taken

Uniform format for visas: the Council agreed the resolution on creating a uniform visa for entry into the EU, subject to - it is

thought for the first time under the "third pillar" - a parliamentary scrutiny reserve by the UK government. The standard visa format proposal had been set out in the Maastricht Treaty (now the Treaty of European Union, TEU), drafted by the Commission, discussed by the European Parliament, and passed through the K4 Committee and COREPER (the top civil servant committee of the Council) only to be held up on the morning of the Ministers' meeting because the "whiplash" UK Conservative MPs demanded a debate on the issue. Their objection to the uniform visa - which is intended only to be valid for the issuing EU country in the first phase - was based on the provision for the "mutual recognition" of the visa proposed in the yet to be agreed External Borders Convention. This would mean that a visa issued by one EU country would be valid for visitors to go to all 15 EU countries. Home Office Minister Michael Forsyth, the UK representative at the Council meeting commented: "The UK retains the right to determine its refugee policy". The allied Commission proposal on the list of countries requiring visas is to be discussed in June (see *Statewatch* vol 5 no 1).

Resolution on: Minimum guarantees for asylum procedures: the Council agreed but did not adopt the Resolution as the Spanish delegation objected there was no translation available in their language. It was to be formally adopted by the General Affairs Council in April. Member states are to bring their national legislation in line with the Resolution by 1 January 1996.

The UK made a unilateral declaration stating that it will only apply the procedures set out to the extent permitted by domestic law (see *Statewatch* vol 5 no 1).

Combatting terrorism: a report is being drawn up on the "external and internal threat posed by terrorism to the countries of the European Union" for the next Council meeting in June. This follows a discussion at the informal meeting of the Council in Paris on 26 January and a seminar on 17 February on "Islam-inspired terrorism".

Draft resolution on "burden-sharing": the Council did not agree the draft resolution on "burden-sharing" of refugees put forward by the previous German Presidency. Although there appears little chance of this being agreed it is probably intended to set down a marker for a future situation occurring similar to that in the former Yugoslavia.

Racism and xenophobia: the Council adopted a report, which together with another report being prepared by the Consultative Commission, will go to the Cannes Summit in June. The report "surveys situations which could generate racism and xenophobia, eg: lack of control of migratory flows" which suggests that racism is created by refugees and asylum-seekers.

Judicial protection of the financial interests of the Communities: the first of two Conventions on combatting fraud is expected to be ready for Ministerial signature at the June meeting of the Council.

EURODAC: the contract on EURODAC (European Fingerprinting System) has been extended to cover the three new members of the EU (Sweden, Finland and Austria).

CILIP, Berlin; ENFOPOL 3, Restricted, 14.1.94; EUROPOL 112, Restricted, REV 2, 22.11.94; EUROPOL 18, Rev 3, Restricted, 23.2.1995; Convention drawn up on the basis of Article K.3 of the Treaty of European Union on simplified extradition procedure between member states of the European Union, dated 28.2.95 and agreed on 9.3.95; Note from the French Presidency on "simplified extradition", 9.3.95; Europol: Protection of personal data in the case of data processing and the right of access of individuals to data concerning them, Note from the French Presidency, doc 4928/95, EUROPOL 16, 9.3.95; Joint action of 10 March 1995 adopted by the Council on the basis of Article K.3 of the TEU concerning the Europol Drugs Unit.

EU

Guardian secrecy case: the arguments for and against

This article looks at the arguments presented to the European Court of Justice including the Council's refusal to hand over secret tape-recordings of its proceedings.

Lawyers for the *Guardian* newspaper and for the Council of the European Union (the Council) have now presented their cases to the European Court of Justice (ECJ). After time to consider the arguments the ECJ will hear verbal presentations from both sides and then give their judgement - possibly by the end of the year. The case arose when the Council (the permanent body representing the 15 EU governments) refused to supply background documents on meetings of the Council. These concerned the Council of Justice and Home Affairs Ministers and a set of background reports on a meeting of the Council of Social Affairs sent to the *Guardian* journalist John Carvel who was later told that the material: "should not have been sent to you... this information was sent to you because of an administrative error". The *Guardian* lodged its case with the Europe Court of Justice in Luxembourg in May 1994 and the Council first responded at the end of July 1994. The Council's refusal of access stemmed from the Code of Conduct adopted on 20 December 1993 governing access to its information (see *Statewatch* vol 3 no 6; vol 4 nos 1, 2, 3, 4 & 5).

The outcome of the case will be directly relevant to one of the key issues being considered by the planned Intergovernmental Conference of the EU in 1996, namely whether the Council will be allowed to continue to operate in secret in reaching decision which affect the rights of European citizens. In previous issues of *Statewatch* the opening arguments for both sides were covered. Here the responses from the Council and the *Guardian* are reviewed.

The Council's defence

The Council argue that in presenting their case the *Guardian* is seeking to question "the basic rule of the confidentiality of the Council's proceedings". It says that the applicant is posing "essentially a *political* question" (emphasis in original) by suggesting that:

"The crucial question is whether there is any valid reason in a community of democracies (other than self-interest by the Ministers in question) why their process of decision-making should not be subject to the scrutiny of the people whom they are representing and on whose account they are actually taking decisions?"

On the specific decision to refuse access to the requested information the Council argues that this was not:

"the result of a blanket ban on access to certain documents, but a decision lawfully taken by the Council, according to the rules under which it operates"

The answer to the argument that after the well-publicised decision by the European Council to ensure greater "transparency" (openness) there could be a "legitimate expectation" that access would be granted to reports considered by the different Councils of Ministers has, the Council suggests:

"the confidentiality clause still stands as the basic principle in spite of the new provisions on access to Council documents".

The Council argues that no backing for the *Guardian's* case can be

found in Community law or the Treaty of European Union (Article F.2) which refers to the European Convention for the Protection of Human Rights. Nor in the UN Universal Declaration of Human Rights - which does include a reference to the right to seek information - because, according to the Council, the later International Covenant on Civil and Political Rights make no such reference. To the Council this was "highly indicative of a positive decision by the authors *not* to include a right of access to public information.." (emphasis in original).

The Council's contention that legislative decision-making at the EU level cannot be compared to that of national parliaments' makes curious reading. The *Guardian's* case rests on idea that the openness of the legislative procedure is a fundamental principle in Member states at least to the extent that proposed legislation is published and is open for public and parliamentary debate prior to its adoption. They go on to argue that Ministers have a legislative function "when they meet collectively in the Council". The Council's responds to this:

"It is the Council which adopts Community legislation but, in doing so, it does not function in a way comparable to that of a national legislative assembly... they fail to understand the true nature of Council proceedings and thus of Council documents which cannot simply be compared to Parliamentary papers. The Council operates through a process of international negotiation and compromise..."

It argues further that: "Council documents are thus much more akin to executive or administrative documents in Member States, relating for example to inter-ministerial meetings, than they are to Parliamentary papers". The Council seems to confuse "inter-ministerial meetings" which are held around a specific topic for discussion and the reports agreed by meetings of the Council of Ministers which are clearly legislation or policy-making.

The Council case concludes by saying there is no fundamental principle of access to information:

"flowing either from the Convention of Human Rights or the constitutional traditions of Member States, that a right to seek information exists [and].. the Court could not properly deduce existence of such a fundamental principle".

The *Guardian* case

The *Guardian's* response is that the Council effectively operates a system of "automatic refusal of access to Council documents containing confidential information" and that the Council failed to properly balance the conflicting interests when refusing access to the documents. The case they say is supported by Article 10 of the European Convention on Human Rights, Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

All 16 member states of the EU operate on the basis of openness of the legislative process. Moreover, the *Guardian* argues, only three of the 16 member states have "neither a constitutional provision on the general principle of access to administrative documents nor specific legislation, nor are they planning to introduce such legislation (Austria, Germany and the UK; Ireland is planning to introduce it).

"Loigate tapes"

The *Guardian* argues that for the ECJ to come to a proper judgement in their case the Council should submit to the Court:

"the minutes and tape recordings or transcripts of all meetings during which the Applicant's original request and confirmatory application were discussed"

Lawyers for the Council, which is based at rue de la Loi in Brussels, responded by saying that it was prepared to "produce, if the Court so orders, the relevant parts of the minutes of the meetings" but:

"the Council must underline that tape recordings, which only represent a technical tool to help in the drafting of Council minutes, are *never let outside the institution*; under guidelines fixed by the Council in 1952 and always applied since then, access to the tapes is reserved to the General Secretariat officials and, for the purposes of verifying the minutes, to the Presidency.." (italics added).

The Council, relying on "guidelines" drawn up and adopted by itself in 1952, is refusing access to the tapes of the meetings where the *Guardian's* request for information was discussed. The *Guardian* is arguing that the decision to refuse access to the information was taken without a "proper balancing of the interests". The decision to reject the requested information was taken on 16 May 1994 with Denmark and the Netherlands voting against.

The Council's refusal to give access to minutes of meetings and "preparatory" documents (reports or "legislation") is centred on their perceived need to keep secret the positions taken by governments - to expose this to public view would, they argue, hamper decision-making. The *Guardian* argue that minutes do not report all the interventions by governments in a meeting they merely summarise the conclusions and cite the minutes of a meeting of the Social Affairs Council - which the *Guardian* had been sent by the Council, was an "administrative error". They say that even if governments' positions were made public this might be embarrassing but "can hardly be described as leading to a breakdown of the decision-making process". The *Guardian* goes on to say of the Council's own description of its decision-making process:

"Substituting diplomacy for democracy can be considered a net reduction in the democratic legitimacy in all Member States".

And that the openness of the legislative process:

"is a universal principle recognised by all non-totalitarian regimes and may be considered a *sine qua non* of a democratic system of governance.. The adjective "democratic" can hardly be applied where legislative proceedings are secret".

The *Guardian's* case has been backed by over 30 organisations, the Dutch and Danish governments, and the European Parliament.

Reactions from Denmark and Sweden

At the General Affairs Council meeting on 6 March the Danish Foreign Minister, Niels Helveg Petersen, presented a Note critical of the secrecy of Council of Ministers meetings. The decisions of the European Councils (Summit meetings of Prime Ministers held twice a year) at Edinburgh in December 1992 and in Copenhagen in June 1993 on greater public access to information had not been followed through he argued.

Up to 1 January 1995 only 18 "open" debates of Council Ministers had been held - 9 under the Danish Presidency, 4 under the Belgian, 3 the Greek, and only 2 under the German.

The Danish government's note says that the "confidentiality" rule

under the Code of Conduct is "particularly problematic when it is applied to the final phase of the legislative work of the Council" and had been "used systematically" to refuse access to minutes of meetings. They proposed that there should be "automatic publication of the minutes of the Council relating to legislative work". However, this proposal would not, as framed, affect the majority of decisions taken under the "third pillar" which are usually Recommendations or Conclusions to be adopted at national level.

No decision was made at the meeting but the number of countries favouring greater "openness" now includes Denmark, the Netherlands, Sweden, Finland, Austria, Greece and Ireland - seven out of 15.

Statement of Reply of John Carvel and the Guardian Newspapers Ltd in Case T-194/94, 29.9.94; Rejoinder of the Council of the European Union in Case T-194/94, 16.11.94; Openness in the Legislative Work of the Council, Note from the Danish government (draft), February 1995.

CONFERENCES

Confronting control: theories and practice of resistance: the 23rd Conference of the European Group for the Study of Deviance and Social Control will be held in Crossmaglen, Armagh, Northern Ireland. Conference organiser: Mike Tomlinson, Department of Sociology and Social Policy, Queens University, Belfast BT7 1NN. Tel: ++ 1232 245133 ext 3714. Fax: ++ 1232 320668. e-mail: m.tomlinson@v2.qub.ac.uk.

Challenges to Law at the end of the 20th century: Conference, Bologna, Italy. 16-21 June 1995. Details: André-Jean Arnaud, REDS, Droit et Sociétié, Domaine Saint-Louis, F-11160 Rieux-Minervois, France.

Demonstration Against deportations, called by the Okolo Family Defence Campaign. Saturday 29 April 1995. Assemble: All Saints Park, Oxford Road, Manchester, 12.00 noon. **Sexuality and Immigration controls:** public meeting. 27 April 1995, 7.30 pm at: Follies, 6 Whitworth Street, Manchester M1. Speakers: Stonewall Immigration Group. **Children, the family and immigration controls:** conference 22 June 10-5pm. Manchester Metropolitan University, Aytoun Street Site. Details from: Greater Manchester Immigration Aid Unit, 400 Cheetham Hill Road, Manchester M8 9LE.

Stonewall Immigration Group, provides briefing and support for lesbians and gay couples with immigration problems they would not face if they were heterosexual. Details from: Stonewall, 2 Greycoat Place, London SW1P 1SB.

A new Civic Europe? Conference organised by the Volunteer Centre on the extent and role of volunteering in Europe. 2-3 June 1995, London. Details from: Eileen Mullins, The Volunteer Centre UK, Carriage Row, 183 Eversholt Street, London NW1 1BU.

Towards 2000: mass anti-war event: international conference in London organised by Campaign Against Militarism. 50th anniversary of the bombing of Hiroshima and Nagasaki. 28 July-3 August 1995. Details: CAM, BMCAM, GB-London WC1N 3XX.

Woodpeckers on the Fortress Europe. Conference 8-15 October 1995 in Budapest. Racism, nationalism and fascism. Organised by UNITED, PB 413, NL-1000 AK, Amsterdam, Netherlands.

Howard League for Penal Reform. Annual Conference, Oxford, 12-13 September 1995. Details from: Howard League, 708 Holloway Road, London N19 3NL.

Haldane Society of Socialist Lawyers: meetings: 24 May: Fortress Europe, speakers: Frances Webber (barrister) and Wolfgang Diehm (German barrister); 7 June: Human Rights and Labour Party Foreign Policy: Bill Bowring (Chair Haldane Society); 12 July: The criminal justice system in the next century: Mike Mansfield QC; 19 July: Can the law overcome discrimination? Angela Mason (Director Stonewall) and Hanana Sidiqi (Southall Black Sisters). All meetings at 7.30pm at: Took's Court Annex, Sun Alliance House, 40 Chancery Lane, London EC4A.

The future of legal aid: Legal Action Group Conference 23 May 1995 at the Methodist Central Hall, Westminster, London SW1. 9.30am-4.45pm. Cost £60 (£30 for those working for registered charities). LAG: Conference Administrator, 242 Pentonville Road, London N1 9UN. Tel: 0171 833 2931.

"1995 slavery still alive": exposing the plight of overseas domestic workers in the UK: Conference, London 3 May 1995. For details contact: St Francis Centre, Pottery Lane, London W11 4NQ.

Fortress Europe: No more deaths! Open Borders - Open Minds! UNITED are organising on 16 June 1995 the "bombardment of embassies (of course only with faxes)" protesting against restrictive refugee policies and human rights violations based on the demands of the Basso Tribunal in Berlin last December. Contact: tel: 00 31 20 6834778 fax: 00 31 20 6834582.

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