

## Statewatch bulletin

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### IMMIGRATION

#### SWEDEN

##### Algerian "suspect" held

The Swedish Minister of Justice, Laila Freivalds, has decided to keep an Algerian citizen in custody despite conclusive evidence that he was in Sweden at the time of the bombing of the Paris metro for which France is demanding his extradition.

Abdelkrim Deneche, who has lived in Sweden since 1991, has been held in custody by Swedish authorities because France says he is suspected of being involved in the bomb attack at the Paris Saint-Michel metro station on 25 July. He has been held in custody since 22 August. But now the results of an investigation by the Swedish National Laboratory of Forensic Science proved what he has always maintained - that he was in Sweden at the time of the bombing - and the forensic tests now show that a signature was indeed his and was made at the time of the bombing.

He was originally arrested by the Swedish Security Police on suspicion of murder as a French police officer claimed he had seen the man close to the Metro at the time of the bombing. This information was given to the Swedish police by a French *juge d'instruction*, Jean-Francois Ricard, who made a special trip to Stockholm on 18 August to arrange a quick extradition. On 24 August a French magistrate issued an international arrest warrant for him. Deneche told the police that three people could vouch for his presence in Sweden on the day of the bombing. This supported his statement that he had withdrawn money from a post office that day and had to produce documents and give his signature. It is this signature which was examined forensically and established his alibi conclusively.

Although the murder charge was dropped the Swedish Security Police then asked the government to expel him under the Swedish anti-terrorist law (Lag 1991: 572 om särskild utlänningskontroll). The Government decided to keep him in custody for one month, and then another month. This gave the French authorities the chance to apply for extradition which has to be granted by the Swedish Supreme Court. The French Interior Minister told *Le Monde* that "the Algerian military-security police give us false information, in order to make us chase people they don't like".

The Swedish anti-terrorist laws have, in different forms, been in force for more than 20 years and lack the legal safeguards of the law on extradition. Under this law 37 foreign citizens have been expelled or put under "municipal arrest" without trial (see *Statewatch*, vol 3

nos 2 & 3). The government can, under the law, expel without trial or refuse entry to any foreign citizen it is *suspected* will commit a crime including violence in order to attain a political purpose or if in the government's view it is necessary for "national security" reasons. There is only a hearing, not a trial, without the suspect or their lawyer being able to present evidence. Similarly, if the government is considering a case under the terrorist law the public prosecutor is not allowed to proceed with criminal proceedings. If a decision is taken to expel a "suspect" there is no opportunity for them to defend themselves against the charge in a Swedish court.

#### UK

##### Betrayal by consensus

The Tory government and Labour opposition united to dismiss out of hand Hong Kong governor Chris Patten's call for the colony's 3 million British Dependent Territories Citizens to be given the right of abode in the UK after Hong Kong is handed back to the Chinese government in 1997. Patten indicated on a radio programme that no one expected a mass exodus to the UK, but that the colony's British subjects needed an insurance policy against a Chinese crackdown. The only politician to endorse his remarks was Paddy Ashdown, the leader of the Liberal Democrats, who said that such a move was "the single act Britain could take that would best ensure the survival of democracy" in Hong Kong. While Michael Howard's knee-jerk response was entirely predictable, Labour's eager agreement marked a hardening of attitudes since 1990, when the future of Hong Kong's British citizens was last discussed.

The three million used to be citizens of the UK and colonies, which gave them the right to live in the UK until the 1971 Immigration Act restricted that right to citizens with a parental or grandparental connection with the UK (they were then called "patrials"). The 1981 British Nationality Act revised citizenship in line with rights of entry, turning the UK and colonies citizens into Dependent Territories citizens, with rights of entry to Hong Kong but not to Britain. Neil Kinnock vowed to repeal both Acts - 1971 and 1981 - when Labour won an election. The British Nationality (Hong Kong) Act 1990 made provision for 50,000 of the most "valuable" Hong Kong citizens to become full citizens and take up residence in the UK, with their families. Opposition to the Bill took the form of an unholy alliance between the right wing of the Tory party, led by Norman Tebbit, who denounced it as too generous, and Labour, who said it was a betrayal of Hong Kong's people. Even in 1990 Labour would not commit itself to returning full residence rights to all the three million, and the only unequivocal commitment given by the party's home affairs spokesman Roy Hattersley, was to give the right of abode to the colony's 12,000 Indians. Now, even that limited commitment seems to have been

forgotten. The *Independent* commented in an editorial that "few actions in the last 50 years have become this country so poorly as our treatment of the people of Hong Kong ... The country has washed its hands of three million colonial subjects for fear of what might happen to British politics if there were to be a new, large-scale immigration."

*Observer* 24.9.95; *Independent* 25.9.95.

### **No family rights**

The High Court confirmed in August that husbands and wives of British citizens are in a worse position than spouses of European Union citizens when it comes to deportation. European Union law, which gives EU workers, students and others free movement rights to come and live in Britain, also guarantees the right of family members to join them. Someone married to an EU citizen can only be deported on very serious grounds of public policy such as serious criminal offences. But marriage to a British citizen confers no such rights, and does not prevent deportation for overstaying. Kulwinder Phull, an Indian citizen married to a British man, had asked the High Court to stop the Home office deporting her for overstaying. Mrs Phull had an unhappy first marriage and when she left her violent husband she lost her right to stay in Britain. Since then she has married again and has a British child, but the Home Office insists on deporting her. Her lawyers argued that her British husband was a European citizen by virtue of the Maastricht treaty, and had the same rights to family unity with his wife as other EU citizens. The court disagreed, saying that Maastricht added nothing to pre-existing rights and that EU law did not apply in a purely domestic situation. Their ruling leaves several hundred couples and families in danger of forcible separation. Mrs Phull is expected to appeal against the ruling.

*R v Home Secretary ex p Phull, Independent* 18.8.95.

### **SPAIN**

#### **Ceuta: Kurds on hunger strike**

Twenty two Kurdish people went on hunger strike on 25 August in the Spanish enclave of Ceuta in northern Africa. They were protesting against refused permission to go to Madrid to make asylum applications on the grounds that they would be persecuted in Turkey if returned. On 28 August they accepted an offer by the Red Cross and the Franciscans to provide housing and sustenance but maintained their demand to make formal requests for asylum. see *Statewatch* vol 5 nos 3 & 4.

*Kontrola Kontrolpean*, Donostia, Euskadi (Spain)

### **FRANCE**

#### **New immigration measures**

New interior minister Jean-Louis Debre announced ten

measures to combat illegal immigration in August, including more detention places, more chartering of aircraft for expulsion, where possible in conjunction with other European countries, ID checks up to 20 km from internal frontiers and on motorways, pressure on sending countries to get better cooperation on readmission, including using economic aid as a lever. He set a target of 20,000 deportations a year. Meanwhile, an estimated half million north Africans have been subjected to identity checks on "public order" grounds after the bombing of the metro in July, and around 3,000 people have been charged with illegal stay in France.

*Observer* 30.7.95; *Independent* 26.8.95.

### **Romany child shot dead**

Border police opened fire on a convoy of four vehicles which they say failed to stop at passport control near Nice, shooting dead an 8-year-old child from the former Yugoslavia who was sleeping in the back of one of the cars. Close family members of the child were given a one-month residence permit, but 37 other Romanians in the convoy were escorted out of France six days later, after the French refugee agency OFPRA rejected their application for asylum. The reasoning was that the area of the former Yugoslavia from which the convoy came was not a war zone, and that as Gypsies the group were discriminated against not just there but in almost all countries of Europe. The justice ministry denied police misconduct, saying that what they did was "normal", but one police officer was later charged with "unintentional homicide" after an inspector admitted that "inopportune shots were fired".

*Migration Newssheet* September 1995.

### **Turkish Kurds in Germany and Austria**

Hundreds of Kurds chanting "Freedom for Kurdistan" marched to German embassies in several European countries in August, to protest German raids on the PKK, and many Kurds embarked on hunger strikes in solidarity with PKK members in Turkey who began a hunger strike on 14 July. Two people have died on hunger strike including a Kurdish mother of five living in Berlin. The hunger strikers are demanding that the Turkish government begins talks with the PKK to end the war in which 17,500 people have died since 1984. The row in Germany over Kurdish refugees rumbles on. The Federal Refugee Office has appealed to the Federal Administrative court to examine rulings of the High Administrative court of Schleswig-Holstein that Kurds are entitled to asylum as a persecuted ethnic group in Turkey. The rulings are directly contrary to the decision of Interior Minister Manfred Kanther, who told Lander earlier in the year to end their moratorium on deporting Kurds to Turkey. The Land of Hessen has refused and has now been followed by Schleswig-Holstein. On the

ground, Frankfurt police broke up a week-long vigil and arrested 80 Kurds for displaying PKK symbols, outlawed since the PKK was banned in Germany in 1994. Meanwhile, the Kurdish parliament in exile held its second session, in Vienna in August. This infuriated the Turkish government, which claimed that the Austrian authorities had promised to ban it. The parliament, which plans to hold sessions every three months in a different European Union member state to remind Europe of Turkish institutional violence towards the Kurdish people, held its first session in The Hague in May. Immediately afterwards Turkey suspended military purchases from the Netherlands.

*New Europe* 6.8.95, *IRR European Race Audit No 15* September 1995.

## EU

### Fortress Europe

Four measures in the pipeline for agreement by the Council of Justice and Home Affairs Ministers make for tighter entry controls and easier and better-coordinated expulsions of foreigners from EU territory.

#### Readmission protocol

The first document is on guiding principles to be followed by member states in signing bilateral readmission agreements. These are intended to make expulsion simple, quick and efficacious. People "detected in a border area" should be returned within 48 hours to the neighbouring state, and notification of their return can be by phone or fax or oral. There need not be any record kept of the person's detention and return. The normal procedure, for people found away from a border area, should be by written request and response by the destination country, which should take place within two weeks. The document sets out criteria for proof of nationality and of entry, and says when an escort should be provided for deportees.

#### Expulsion "concertation"

The second document sets out further ways for member states to cooperate on expelling foreigners, and how to deal with deportees with no travel documents. The latter should if possible be identified by consular employees as their own nationals, either by taking detainees to the consulate concerned or by inviting consular officials to visit the deportee in detention. If travel documents are not forthcoming that way, member states are told to use a standard travel document whose format was adopted in an earlier Joint Action. This proposal could be very dangerous for rejected asylum-seekers, by giving the authorities of the country of return advance notice of their expulsion. The document allows joint expulsion operations by more than one member state, and envisages shared airline space for deportees from

several countries for a wide range of reasons, including cost-saving and shortage of places on one state's national airline. For this purpose it proposes that each member state sets up a centralised structure which finds transport for deportation, liaises on seat availability and exchanges information on airlines. The proposal would legitimate actions like the joint deportation by France, Germany and the Netherlands of 44 Zaireans, which caused a furore in March 1995.

Finally, it proposes that those who refuse to embark on deportation should be prosecuted. The UK Home Office objects to this proposal on the ground that it defeats the object of the exercise, which is to get rid of the deportees, not to detain them. The Home Office also opposes systematic coordination of expulsions on a timetable arranged by other member states, although it expresses interest in liaison on a case-by-case basis.

#### Airline checks

The third and fourth documents concern pre-flight checks and training of airline staff on travel documents, visas and immigration regulations. They propose that CIREFI, the EU's research and information exchange centre on frontiers and immigration, be made responsible for a training programme and for coordinating the postings of member states' immigration officers abroad to check passengers' documentation before they embark. The Home Office objects in each case that CIREFI is not supposed to have an operational role and that these things should best be left to national governments. It points out that it has given extensive training on forged documentation to airline staff and has given on-the-ground assistance at the point of checking in. The British High Commission in New Delhi has an airline liaison officer for these purposes.

*Proposal for principles relating to the drafting of a protocol on the implementation of readmission agreements*, ASIM 73, Brussels, 11.4.95; *Proposal for a joint action on concertation and cooperation regarding the execution of expulsion measures*, ASIM 74, Brussels, 3.3.95; *Proposal for a draft joint action on the training of airline staff*, ASIM 21, Brussels, 1.2.95; *Proposal for a joint action on pre-frontier checks*, ASIM 22, 1.2.95; *Explanatory notes on documents produced under Title VI (Justice and Home Affairs) of the Treaty on European Union*, 5402/95, 5403/95, 4617/95, 4618/95.

## POLAND

### Following EU lead on entry

The Polish government has submitted a new draft law on foreigners entering the country to the Sejm (parliament). The law closely mirrors the policies on immigration agreed at EU-level by the Council of Justice and Home Affairs Ministers. People wanting to enter Poland will have to show that they have \$20-\$25

for each day of their stay and those found to be illegally employed will be transported to a frontier crossing point or held in special detention centres. Tomasz Kuba Kozłowski, Director of the Bureau for Immigration and Refugees at the Internal Affairs Ministry, said that the new law would reflect the standards in force in the European Union.

People deported from Poland will not be allowed to re-enter for at least two years, nor will those sentenced to prison for three years or more, nor those for whom:

"justified suspicions exist that they intend to overthrow the Polish system or to undermine national security."

The Internal Affairs Minister stressed that the new law would be very strictly applied to all Romanians, and citizens of Asian and African countries.

The law, in line with EU policy, will define "safe" countries of origin and "safe" third countries. Someone arriving from such a country would not be allowed to apply for refugee status. People wanting to come to Poland as a result of a personal invitation from a Polish citizen first have to get the invitation approved by the provincial governor, and the Polish citizen would be liable for the costs of the visit, medical care, and even deportation.

*Warsaw Voice*, 20.8.95.

## **GERMANY**

### **Restricting right to protest**

The spokesperson for home affairs of the CSU (Christian Social Union, the ruling party in Bavaria) Wolfgang Zeitlmann stated in a radio interview on 3 August that he was in favour of restricting the right to demonstrate for foreigners living in Germany. He also stated that the right of assembly should be suspended in "emergencies" and that the present situation with the Kurdish PKK was such an emergency. Such demonstrations were, he said, "too much for a German citizen to have to be faced with". Suspending the right to assembly for foreigners would, in Mr Zeitlmann's opinion, pose no constitutional problems, because "the constitutional right to assembly applies to the Germans, and not to all the people who live with us".

*Berlin Anti-racist information network*, August update.

### **Young refugees forcibly x-rayed**

Young refugees in Bielefeld and Bremen have been forcibly x-rayed by immigration authorities to determine whether they might be lying about their age. The practice, which involves X-raying the carpal bone (a bone in the hand) has been described as illegal by the "Association of Democratic Doctors" (ADD), and in legal terms must be considered as assault. Both the ADD and the Hamburg Chamber of Physicians called on hospitals and doctors "not to participate in the

establishment of the biological age of young refugees". Heiko Kauffmann, spokesperson for the organisation "Pro Asyl", called the practice "illegal and scandalous... unsuitable, scientifically indefensible as well as dangerous to health" and pointed to a resolution by the Congress of German Doctors from 19 June in Stuttgart which called for an immediate halt to the use of this method of determining peoples' ages.

Immigration authorities responded by claiming that all such examinations were undertaken on a "voluntary" basis. This claim however has no basis in German law, which requires that parents or legal guardians give permission for such treatment for minors. All the young people involved in the cases of forcible X-raying have been around the age of 16. Sixteen is the age at which young refugees due for deportation can be transferred from hostel accommodation to detention centres. Refugees who have been refused asylum can also be deported unaccompanied, ie: without parents or guardians, after the age of 16. Some of the young refugees actually face criminal charges on the basis of the X-ray results. On 11 July a young refugee was charged with lying and fraud. He faces a prison sentence of up to five years, or at the very least, deportation.

*TAZ* 12.8.95; *Berlin Anti-racist information network*, August update.

### **Sudanese refugees resist deportation**

Nine refugees from Sudan attempted to stop their deportation to Sudan by going on hunger strike on 4 August at Frankfurt airport. The refugee aid organisation "Pro Asyl" described the refugees' fear of inhumane treatment in Sudan as "not unfounded", given that the mere act of applying for asylum in another country is considered as "anti-government activity or high treason" in Sudan. The decision to deport the refugees had been taken immediately on their arrival at Frankfurt airport. Their application for political asylum had been rejected as "obviously unfounded" by immigration authorities in a specially shortened asylum application procedure.

It also became known on 9 August that the Bonn office of the UNHCR (United Nations High Commissioner for Refugees) had explicitly warned against the deportation of another Sudanese refugee the previous week and had confirmed that systematic torture does take place in Sudan.

An article published in the *Tageszeitung* on 18 August reported that the former freight terminal being used to house the Sudanese and 90 other refugees waiting for deportation was being heavily guarded by Federal Border Guards with armoured cars. Visiting Green members of Parliament Christa Nickels and Amke Dietert-Scheuer stated that they considered the German government to be acting against all accepted principles of state legal practice and to be in contravention of the

United Nations Convention on the Protection of Children.

Meanwhile two of the Sudanese hunger strikers had been allowed to legally enter the Federal Republic, after their immigration application had been reviewed and cleared. Seven of the hunger strikers were transferred to the same Frankfurt hospital only to be sent back to the airport the following day.

Pro Asyl accused the German immigration authorities of being "sloppy" in its investigations into the case. The Foreign Ministry documents on Sudan used to judge the situation were "out of date", with the present situation in Sudan being one of civil war and refugee movements made worse by the "omnipresent" security forces of the Sudanese dictatorship.

The hunger strikers ended their protest over the weekend of 26-27 August and their asylum applications were rejected and they were deported back to Sudan in the evening of 12 September. Around nine o'clock in the evening the refugees were taken by 15 border guards without prior warning to a specially chartered plane which flew them to Khartoum. The deportation to Sudan took place in spite of the fact that church organisations had agreed to buy tickets for the seven to Eritrea where they would have been safe. Both Eritrea and Egypt had declared their willingness to accept the refugees.

*Berlin Anti-racist information network*, August update.

### **Immigration - in brief**

**Poland/UK: Polish Roma returned:** On 12 September UK immigration officials introduced "fast track" processing of asylum applications for Roma people arriving from Poland. Polish people do not require a visa to come to the UK and the Roma, with Polish passports, are being held in detention centres while their asylum applications are processed. The Polish airline LOT say that UK authorities are demanding they pay £200 per person to cover the living expenses of those arriving on their planes. *Warsaw Voice*, 1.10.95.

**UK immigration controls at work:** Bonito Cobbola, an Algerian, jumped from a Eurotunnel high-speed train in Kent on 17 August after being sent back to France by immigration officials. The Home Office said that since November last year 590 people had been asked to leave via the Eurostar service after being refused entry at Waterloo station. He was put back on the train to Lille unescorted; the Home said only half a dozen such people had been escorted. On 26 September the Home Office announced that it had introduced a new computer system at all UK points of entry. Under the new system immigration officials will "swipe" machine readable passports through an automatic reader linked to the "Suspect Index System". The Suspect Index holds 400,000 entries of people of "interest" to officials - it cover migrants to be refused entry, police "suspects",

suspected terrorists, international criminals, as well as people whose movements are of "interest" to the Special Branch and MI5. *Guardian*, 18.9.95; *Home Office*, press release, 26.9.95.

**Death of immigration prisoner:** An unidentified Sri Lankan immigration detainee committed suicide in Norwich prison in August after being incarcerated for five months. It is believed he was seeking asylum in the UK. *Independent* 26.8.95

**Extradition protests:** Over 2,000 demonstrators picketed the Home Office in July after magistrates sitting in the high-security prison at Belmarsh ruled that Kani Yilmaz, European head of the PKK, was to be extradited to Germany on charges of fomenting criminal activities against Turkish property there. Supporters believe that, despite being a refugee from Turkey, Yilmaz will be deported from Germany back to Turkey, in line with the policy on the PKK adopted by the German interior minister. Trouble flared at the demonstration and Kurdish organisers said later that 27 demonstrators had been injured, one critically with head injuries, and a woman's leg had been broken. *Independent* 26.7.95.

**No to ID checks:** Police were ordered to pay £2,000 damages for detaining a Ugandan asylum-seeker for four hours while they ran an immigration check on him to see whether he was legally in the country. The jury at Central London trials centre heard that Fulham police detained Simon Okot because he could not produce any documents verifying his identity or his immigration status and he was looking around suspiciously. The judgement confirms that police have no right to call for documents and cannot find a reasonable suspicion of irregular status on a failure to produce ID documents. *Okot v Met Police Commissioner; Central London trial centre*, 29.8.95.

**Netherlands: New law against "illegal" people:** At the end of June the Minister of Justice sent a new law to parliament which proposes to exclude "illegal" people from obtaining provisions made by the state, such as social security and housing benefit. All foreigners will be registered in the Foreigner Registration System (VAS) and their legal status will be checked when they ask for benefits. This will also affect around 4,000 asylum-seekers. It will also effect legal immigrants who will have to prove they are not "illegal". *Jansen and Janssen*.

### **Immigration - new material**

**Defend the Kurds - defend human and civil rights in Britain and Europe.** *Kurdistan Report* 21 (May-June) 1995, pp26-33. Texts of speeches - by John Austin Walker MP, Tony Bunyan and others - on immigration,

security and community resistance from the Kurdistan Solidarity Committee conference at the University of London in February.

**The reform of Italian nationality law**, Andrea Biondi. *Immigration and Nationality Law and Practice* Vol. 9 No. 3 1995, pp89-91. On the 1992 reform of Italian nationality law.

**Appeals from the Immigration Appeal Tribunal to the Court of Appeal: a short guide for the practitioner**, Jim Gillespie. *Immigration and Nationality Law and Practice* Vol. 9 No. 3 1995, pp92-94. On Section 9 of the Asylum and Immigration Appeals Act 1993.

**Every day I ask myself, 'Why am I here'**, Jonathan Ford. *Independent* 20.9.95. Article on Karamjit Singh Chahal who has been detained in Bedford prison since August 1990 pending deportation to India for reasons of national security. He has not been charged with any offence nor accused of any crimes.

**Frontier law: Why Schengen isn't working for Europe's third country nationals**. *Immigration Law Practitioners' Association and the Joint Council for the Welfare of immigrants*, September 1995. 14 pages plus extensive appendices including the Schengen common visa inquiry forms.

**"Safe third countries": myths and realities**, European Council for Refugees and Exiles (ECRE), February 1995. Includes text of resolutions on "host third countries", "manifestly unfounded applications", and "specimen bilateral admission agreement", plus listings of readmission agreements (1994).

## CIVIL LIBERTIES

### NETHERLANDS

#### Privacy and data banks

The Registration Chamber, the official body for data protection in the Netherlands, has issued a warning saying that the privacy of citizens is seriously endangered by the explosive growth of data banks. Data on an average individual are stored in no less than four hundred government and commercial databases. Banks, companies and public bodies have attempted to increase the protection of data held on their computers but the Registration Chamber favours the introduction of a new "Privacy Enhancing Technology" (PET) developed by the Digicash corporation in Amsterdam. This allows for personal data to be stored in an encrypted, anonymous way. In a report issued together with the Dutch TNO research centre and the Information and Privacy Commissioner of Ontario, Canada, the Registration

Chamber sets out the possibilities of the new technology. Its chairman Peter Hustinx said: "It will cost about 200 million guilders a year to introduce this new technology throughout the country. But at the same time it will allow institutions to spend less on security measures." In his opinion, the current situation of widespread and detailed registrations is in violation of the European privacy guidelines issued in July 1995. "The Chamber will eventually take measures against companies that continue to work in the traditional way," he says. The report shows that it is feasible to develop a "digital mask" that protects for example the customer paying with a credit card against being registered in a number of commercial databases used for direct marketing purposes.

It remains to be seen whether the powerful consumer products industry will surrender its most useful marketing instrument without a fight. Over the last two years, a giant campaign around the "Air Miles" concept (collect air miles with each purchase by identifying yourself with a card) has allowed them to collect massive amounts of data on the purchasing behaviour of individual customers, thus creating an invaluable marketing tool.

## EUROPE

### Euro-Clipper Chip Scheme Proposed

Thirty-four European nations have agreed to outlaw some of the strongest encryption protocols used in communications networks and make "keys" similar to the controversial US "Clipper Chip" available to governments. Such keys would give governments access to information on any public network, including mobile and data networks. In modern public cryptographic systems, users have two keys: One is public and is used to encrypt messages sent to that user; the other is private and is used to decrypt the message.

The 34-member Council of Europe recommends banning certain forms of encryption unless the government has access to the users' private keys. The policy was approved by the Strasbourg-based Council on 8 September and coincides with a European Commission proposal for a pan-European encryption standard.

Unlike the European Union, the 34-member Council of Europe -which stretches from Iceland to Turkey and includes all EU members - has no statutory powers to enforce its recommendations. However, it is rare for countries to reject Council of Europe recommendation, said Peter Csonka, administrative officer of the Council's division of crime problems and chairman of the committee that drafted the document. But the policy will meet staunch opposition from users who say the proposal threatens corporate security and the development of the Internet in Europe.

The policy has parallels to the Clipper chip, developed by the US National Security Agency to provide

officials with a decipher key that serves as a network "peephole". Clipper has been held up because of disputes between legislative bodies, government agencies and industry.

The Council of Europe proposal would: ban the strongest encryption technologies in both public and private networks; provide governments with access to all public networks; telecoms operators responsible for decryption; change national laws to allow judicial authorities to chase hacker across borders.

Csonka said the proposal is an attempt to bridge the divide between modern networks and legal procedure. "The main feel of the piece is that modern information technology should not hinder the police," he said. The document pinpoints complex encryption codes, used in all kinds of networks, as a barrier to European law enforcement.

The recommendation says that the operators should be responsible for cracking encryption codes when requested to do so by the governments. Where operators are unable to crack the codes, governments themselves would be responsible. However, "it remains possible that cryptography is available to the public which cannot be deciphered," the document says. "This might lead to the conclusion to put restrictions on the possession, distribution or use of cryptography."

*Computer Weekly International*, 21.9.95.

### **Gay ban in the military to be reviewed**

The Ministry of Defence is to review the ban on lesbians and gay men serving in the armed forces. This decision was announced on 4 September and follows the court case in which four ex service men and women attempted to overturn the ban (see *Staterwatch*, vol 5, no 3).

The decision is being seen by many as an indication that the current position is becoming increasingly untenable. Although the MoD eventually won the right to maintain the ban the court strongly urged that the policy be looked at again. Most legal experts are coming to the conclusion that the ban breaches the European Convention on Human Rights, leaving the UK government in the position of eventually having to conform as well as having to pay compensation to any gay service personnel who have been dismissed as a result of their sexuality.

However the high level of opposition among military chiefs has led to doubts about whether the review will lead to the overturning of the ban. Among others the First Sea Lord has already declared his outright opposition to any change in current policy, stating: "The stand is no, we are talking declared homosexuals. Very definitely no." Others are suggesting a compromise in which lesbians and gay men would only be banned from "front line" regiments, such as the royal marines and from fighting ships.

The MoD doubt whether any such compromise would

be applicable in practise, and would probably be legally unsustainable as well. The lesbian and gay rights campaigning group Stonewall are already calling for a moratorium on dismissals and investigations into homosexuality in the armed forces. A spokeswoman said: "We have always maintained that the ban is based on prejudice and prejudice alone." The review is due to report to a Parliamentary select committee in the new year. The result of the judgement of the Court of Appeal is also awaited.

*Independent*, 5.9.95; *Pink Paper*, 8.9.95 & 15.9.95.

### **Civil liberties - new material**

**Child slaves of Bindoon**, Sarah Boseley. *Guardian* 30.8.95. On the thousands of children deported from childrens' homes between the mid 1940s to 1967 to "seed" the British empire.

**5th general report on the activities for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) for 1994**, CPT.Inf(95) 10. Council of Europe, Strasbourg, 24 pages.

**Summary of human rights concerns on the UK**, Amnesty International, August 1995, AI Index: EUR 45/06/95, 24 pages plus appendix. Details important cases concerning police treatment in England and Northern Ireland, asylum cases, and detention without trial in "national security" cases.

## **EUROPE**

### **EU**

#### **Limit placed on background deals**

The meeting of the General Affairs Council of the European Union on 2 October agreed to limit the number of "declarations" attached to EU legislation. This followed the unequivocal opinion of the Council's Legal Service that statements and declarations attached to the minutes of Council meetings which qualify or amend agreed legislation or recommendations:

"have developed in such a way that they now threaten to undermine legal certainty and that in any event they form an absolute impediment to making public Council minutes."

The reference to the publication of Council minutes refers to EU governments' reluctance to make public reservations, and their grounds, which are often attached as "declarations".

The Legal Service's report is scathing about the practice that has developed: "In a number of recent cases the number of statements in the minutes is out of

all proportion and their content undermines legal certainty". It says there were 31 statements attached in 1995 to the Common Position of the Council on the data protection directive (which has just been agreed) and 64 statements attached to the Structural Funds reform in 1993.

The report classifies statements into three groups. The first are "statements contradicting or adding to the enacting terms of the legislation in question". It cites decisions of the European Court of Justice, dating back to 1970 and 1986, which say that the Court has "consistently held" that legislative acts have to be made within the published rules and that their meaning cannot be affected by "statements". The Legal Service says such statements "must absolutely not be made", otherwise the Court might find the Council liable for breaching "the principle of legitimate expectations". The second category is "interpretative statements" which should be incorporated into the preamble or text of legislation. As these statements are not made public they cannot be "invoked by or against third parties" and if they did come to light the Court of Justice would not uphold them. Finally, there are "declarations of intent" which present no problems. These might refer to an intention to ask the Commission to carry out a study.

### **Data protection undermined**

The most glaring example of using "statements" to undermine EU legislation concerns the new EU-wide law on data protection which establishes rights for citizens whose personal details are held on computer (it does not cover "third pillar" issues of policing or immigration). The UK government opposed the introduction of this directive but could not block it because under the "first pillar" (economic and social issues) proposals are decided by majority votes. Instead the UK made a series of behind-the-scene deals which were listed in the unpublished minutes of the Council of Ministers.

On 20 February 1995 the Council and Commission adopted an unpublished Common position (an agreed policy statement) which completely undermined a commitment to include personal data held in manual filing systems within 12 years. The statement amended this to read taking all steps that: "do not prove impossible or involve disproportionate effort in terms of costs".

Article 8 of the data protection directive says that member states:

"shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and the processing of data concerning health or sex life."

Germany wanted to store information on religious beliefs (eg: fundamentalism) and the UK wanted to

store information on trade union membership so this was amended in an unpublished Common position. This says the "Council and Commission consider" that each member state could:

"determine more precisely the categories of sensitive data.. considering the legal and sociological context of the country concerned, for example with regard to data on genetics, political membership, physical conditions, personal beliefs or habits etc."

When the Directive on data processing finally passed through all its legislative stages it was finally adopted at a meeting of the Council of Ministers on 24 July. The account of this meeting read: "the Council unanimously (with the United Kingdom abstaining) adopted the Directive on the protection of individuals with regard to the processing of personal data..." These secret deals have affected EU laws - regulations and directives - which have been covertly watered down through statements in unpublished Council minutes. The European and national parliaments have not been consulted. The European Commission however has often been party to them as it has a seat, but no vote, in meetings of the Council of Ministers. A Danish diplomat summed up the process: "Where the legislation says "have to" the statements often say "ought to"".

The new internal rules adopted on 2 October says that the adding of "declarations" to the minutes must used "sparingly" with the caveat: "it being understood that this instrument must continue to contribute to the efficiency of the decision-making process". Therefore in future statements will be added to the minutes of meetings of the Council of Ministers except where a member state gets a majority to keep it secret (point 4).

More transparency?

The same report before the General Affairs Council on 2 October dealt with the publication of minutes - indeed to head-off the judgement of the European Court of Justice on the *Guardian* secrecy case (see *Statewatch* vol 3 no 6; vol 4 nos 1, 2, 3, 4 & 5; vol 5 nos 2 & 4). It agreed that the minutes concerning "legislative acts" should be published "save in exceptional cases" referred to in the Council decision of December 1993. However, these "exceptions" in the 1993 decision allow them to refuse make public any document whose disclosure could "undermine": "the protection of the public interest" including "public security" and "international relations" which could be used to cover most of the decisions taken on policing, immigration and legal cooperation.

The initiative to adopt new procedures for "declarations" and "minutes" came from the Danish government which wanted to go much further but could only rely on the support of six other governments of the



15 EU countries. A Danish diplomat said: "This code is half a victory, half a defeat for us. It is a political, not a legal document. It will not be formalised in the Council's rules. For us it is just a chapter in a process that is far from completed, and we will push on". Jens-Peter Bonde, Danish MEP, said on the issue of "declarations": "It is ridiculous that the Council can still keep parts of the law secret. How can we impose laws on our citizens if they are not published?"

*Study of Council minutes regarding statements for the minutes in connection with openness*, from the Legal Service to COREPER (Part 2), Restricted, JUR 99/INS 25, 6879/95, 3.5.95; *Avis du Service Juridique du Conseil concernant les "declarations au Procès-verbal*, report to the Conciliation Committee, European Parliament, 24.7.95; *Transparency - Presidency proposal*, SN 3604/95, 21.9.95; *Independent*, 23.6.95; *Guardian*, 2.10.95; *European*, 5.10.95.

### **Council of Justice and Home Affairs Ministers**

The main decisions taken at the meeting of Council of Justice and Home Affairs Ministers in Brussels on 25-26 September were: 1) adoption on the common visa list (*see feature*) and 2) a new resolution on refugees (below).

#### **Burden-sharing**

The Council agreed a resolution on burden-sharing in relation to the reception and temporary protection of displaced persons. The document reaffirms the policy developed in relation to the former Yugoslavia of granting temporary admission to a very restricted range of people, preferring the discredited idea of "safe areas" in the country concerned where possible. Those qualifying for "temporary protection" in the EU will be former prisoners of war, victims of sexual aggression, the very ill and seriously wounded and others who cannot get adequate protection or treatment at home, and those who have come directly from a war zone who are unable to resettle themselves inside the frontiers of their country because of the conflict or human rights violations.

The resolution, adopted after persistent lobbying by Germany for more than a year, says that there should be "an equal share of the costs relating to temporary admission and stay of displaced persons" which should take into account two factors. First, the military or "humanitarian" contribution of an EU state to the "prevention or resolution of the crisis". Second, the "capacity for admission" of displaced persons to a member state. *In short, a EU state which contributes significant military forces to a crisis will have to take less refugees.*

Another report on burden-sharing, from the German, Netherlands and Austrian delegations, made proposals for reporting projected a "crisis", for quarterly reports

from each member state, and for "emergency procedures". It was agreed that the report should be further considered by the K4 Committee.

### **Other decisions**

The Council also discussed the following: 1) *the draft Convention on matrimonial matters*: this extends the Brussels Convention and is expected to be ready for Ministerial signature in November. For the Presidency the Spanish Minister of Justice and Interior, Mr Juan Alberto Belloch, said that there was agreement in principle with outstanding questions concerning the custody of minors and agreeing that a decision in a court in one EU state would be binding on others; 2) *draft Convention on insolvency proceedings*: this too was agreed in principle and Ministerial signature is expected in November. The Convention harmonises legal proceedings between the EU states on the appointment of liquidators, rights for creditors and the courts who will deal with appeals in each state. In this Convention the European Court of Justice (ECJ) has jurisdiction (Article 43) - the UK's traditional objection to the ECJ's involvement in areas of inter-governmental cooperation under the "third pillar" does not extend to legal instruments relating to the "first pillar" (economic issues); 3) *Europol*: the Council had a preliminary discussion on a series of regulations which have to be agreed as a result of signing the Europol Convention on 26 July. These were the draft regulations for the Management Board; for the status of Europol staff; the privileges and immunities of staff directly employed by Europol; the position of liaison officers; rules on the data files to be held by Europol; regulations on the protection of confidentiality and on finance. The Council hopes to agree an accord at its next meeting in November on the deferred decision over the role of the European Court of Justice under the Europol Convention (*see Statewatch*, vol 5 no 4). 4) *Refugees*: the United Nations High Commissioner for Refugees (UNHCR) was forced to issue an urgent plea for help in finding places for tens of thousands of Bosnian Muslims and Croats. The letter to the Spanish Minister of Justice and the Interior, in his capacity as chair of the EU's Justice and Home Affairs Council, complained that quotas had been reduced and criteria made more restrictive in 1995 and that by the middle of the year an estimated 40,000 Bosnians needed urgent protection outside Bosnia Herzegovina. Events since then made it imperative to provide 10,000 places immediately and to get firm commitments for another 25,000. The Council referred the request to the next meeting of the K4 Committee; 5) *Racism and xenophobia*: Mr Belloch said that it was time to move to "move from a simple resolution to something of a more binding nature.. practically everyone agreed with the draft joint action". Although he added that two countries had "some doubts". The Spanish Presidency and the majority of

EU countries favour a binding Joint Action while other prefer a policy Recommendation to be interpreted at national level. The proposed Joint Action/Recommendation would cover: the alignment of national legislation; the harmonisation of judicial and administrative practices; and the improvement of international cooperation; 6) *Free movement*: the Council noted the objection of the UK to the Council's involvement in discussing the three proposed Directives from the Commission prepared by Commissioner Monti on free movement in the EU; 7) *Other meetings*: during the Council there were meetings with: a) Justice and Interior Ministers from the six central and eastern European countries and the three Baltic states to set up a "structured dialogue" on "third pillar" issues; b) a continuation of the "structured dialogue" with Cyprus and Malta on illegal immigration and organised crime; c) on 26 September a meeting of the "Troika" of the EU (Mr Belloch for the current Spanish Presidency, Mr Debré, for the previous French Presidency and for the next Presidency, Mr Rossi from Italy) and Ministers from the Andean Group of countries (Bolivia, Colombia, Ecuador and Venezuela) which discussed drug trafficking; 7) *Joint Action on implementing Article K.1*: the Council voted itself 5.2 million ECUs out of the budget of the European Community to gather and "exchange information and experience, seminars, studies and publications". The money has to be spent on projects proposed by member states or, in the case of projects on immigration, drugs, fraud and judicial cooperation in civil matters, by the Commission. It is interesting to note that the areas set out for the Commission to have the right of initiative under this Joint Action, areas covered by Article K.1 (1) to (6) of the Maastricht Treaty, are those which Ms Anita Gradin, the Commissioner for the "third pillar", is arguing should be brought under the "first pillar" (ie: Community competence involving the Commission and European Parliament) in the 1996 Intergovernmental Conference negotiations. This represents an about-turn by Ms Gradin who was criticised by the European Parliament earlier this year for appearing to support the intergovernmental approach for the "third pillar" (see *Statewatch*, vol 5 no 1).

*Repartition des charges en ce qui concerne l'accueil et le séjour a titre temporaire des personnes déplacées*, Resolution, 8133/95, dated 20/21.6.95; *Burden-sharing with regard to the admission of displaced persons on a temporary basis*, ASIM 206, Restricted, dated 28.6.95; *Letter from UNHCR to Juan Alberto Belloch Julbe*, 25.9.95; *Justice and Home Affairs Council press release*, 26.9.95; *Convention on insolvency proceedings*; *Joint Action based on Article K.3.. on measures implementing Article K.1*, 25.9.95; *Council decision*, 25.9.95 re: Joint Action; *Communication conjoint de la Troika des Ministres de la Justice et de l'Intérieur de l'Union européenne et des Ministres du Groupe andin responsables de la lutte contre le trafic de*

*stupéfiants*, 26.9.95.

### Recent cases at the ECJ

A trade union branch at a plant may not challenge a takeover or sale of the plant in the European Court of Justice, even though the takeover may lead to the closure of the plant or to job losses: *CCE Societe Generale des Grandes Sources v Commission*, T-96/92.

The equal pay provisions of the Treaty apply equally to piecework schemes as to hourly pay, and the national courts must compare units to see whether there is sex discrimination: *Specialarbejderforbundet i Danmark v Dansk Industri*, Times 23.6.95.

The EU-Algerian Cooperation Agreement of 1976 entitled the widow of an Algerian worker in receipt of a survivors' pension in France to a statutory supplementary pension: *Zoulika Krid v CNAVTS*, C-103/94. But the Court ruled that a Turkish worker who had become totally and permanently disabled had no right to stay in an EU country under the EU-Turkey Association Agreement. In an appalling decision, it upheld the refusal of the Dutch authorities to give Ahmed Bozkurt permanent residence, although Mr Bozkurt had worked for a Dutch firm as a long-distance lorry-driver since 1979 and had lived in the Netherlands since then. An accident in 1988 left him severely disabled and in 1991 his residence permit was not renewed. The reasoning of the court was that the purpose of the Ankara agreement was to allow Turks to work in member states, and to live there for the purpose of work. There were no clauses or regulations allowing residence to continue after work had permanently ceased. *Ahmed Bozkurt v Staatssecretaris van Justitie*, C-434/93, 6.6.95.

### ECHR roundup

Cases going to Strasbourg include:

\* A prisoner at the Mount in Hertfordshire, Jerry Wilson, is to take a case to Europe alleging a breach of Article 3 ECHR (inhuman or degrading treatment or punishment) after he was wrongly accused in June of swallowing a package of drugs and was forced to defecate in front of three prison officers and then to search his own excrement with his bare hands. He was also subjected to an internal bowel examination. *Observer* 23.7.95

Cases declared admissible April-September include:

\* *David Gregory v UK* (2229/93): alleging racial prejudice on jury trying Applicant for criminal offence (Article 6(1), right to fair trial). *Information Note* 126, 9.5.95.

\* Hendrik van Mechelen v Netherlands (21363/93): admission at trial of evidence given by anonymous police officers (Article 6(3)(d), right to examine witnesses). Information note 126, 13.6.95

\* Mobin Ahmed and others v UK: Unison is funding the case brought by a number of senior local government officers claiming that the clauses of the Local Government and Housing Act 1989 which bar them from political activities "infringes rights of freedom of expression and assembly" (Articles 10 and 11). The Commission has said that the UK has a case to answer and Unison intends to proceed to the European Court. Independent 14.9.95

Cases referred to the European Court by the Commission include:

\* Gul v Switzerland: A Turkish citizen who has lived in Switzerland since 1983, whose wife joined him in 1987 and who was granted a humanitarian residence permit in 1988, was denied the right to family reunion with his two sons on the basis that his flat was unsuitable and his means insufficient. The Commission decided that this violated Article 8 (right to respect for family life) and referred the case to the European court for hearing in April 1995. European Court of Human Rights press release 290)

\* Manoussakis v Greece: The Applicants were convicted in 1990 of establishing a place of worship for Jehovah's witnesses without permission. The Commission decided this violated Article 9 (freedom of thought and conscience) and referred it to the court for hearing. Press release 363

\* Mohamed Chorfi v Belgium (21794/93): expulsion of Moroccan national resident in Belgium with parents, brothers and sisters for 25 years. Commission held that this did not violate Art 8 (right to respect for family life) alone or in conjunction with Art 14 (discrimination). (Information note 125 9.5.95)

\* Sadik Ahmet v Greece (18877/91): conviction of Muslim political leader in western Thrace for "disruption of the peace" when he distributed election material referring to the Muslim community there as Turks. The Commission decided that there was a violation of Article 10 (freedom of expression). (Information note 126 13.6.95)

Cases heard by the court but not decided include:

\* John Murray v UK: The Applicant was arrested in northern Ireland in January 1990 and charged and convicted in a Diplock (judge-only) court of aiding and abetting the false imprisonment of a man who was held prisoner by the IRA on suspicion of being an informer.

He was not given access to a solicitor during his interviews with the RUC and the judge drew adverse inferences from his failure to offer an explanation for his presence in the house and his silence at trial, under the Criminal Evidence (Northern Ireland) Order 1988. The Commission decided that the encroachment on the right to silence did not violate Article 6(1) and 6(2) (the right to a fair trial and the presumption of innocence) but that the denial of access to a solicitor violated Article 6(3) (the right to defence against criminal charges). The European court heard the case on 20 June and judgment is expected in early 1996. Press release 304

\* Aquaviva v France: The Applicant's son, a member of the Corsican National Liberation Front, was killed in November 1987. His killer, a farmer, was never brought to justice. The police said they accepted it was self-defence. The family's repeated requests for a reconstruction of the incident was refused. The Commission decided that there was a violation of Article 6(1) (right to a fair trial) and the court heard the case on 19 June 1995. Press release 303

\* SW v UK, CR v UK: Two separate applications by men who raped their wives before the House of Lords clarified the common law in October 1991 by saying that there was no marital immunity from prosecution for rape. Both men claimed that Article 7 had been violated (criminal offences not to be retrospective). The Commission disagreed, and the court heard the cases on 20 June 1995. Press releases 305, 309

The Court gave judgement in the following cases:

\* Farrell, McCann and Savage v UK: see separate story.

\* Yagci and Sargin v Turkey: The Applicants were the general secretaries of the Turkish Workers Party (PKK) and Turkish Communist Party (TKP), both of which were banned under the criminal code. They returned from exile in November 1987 and were arrested and detained pending trial for 2½ years. The trial took a further 2½ years, although the court only sat on about 20 occasions, and they were finally acquitted and released in 1992. The European court held that the length of their pre-trial detention and the length of the criminal proceedings violated Articles 5(3) and 6(1) (right to liberty and security of person; right to a fair trial), and awarded damages. Press release 296, 8.6.95

\* Tolstoy Miloslavsky v UK: The Applicant wrote and distributed a pamphlet accusing Lord Aldington of handing over Cossack and Yugoslav POWs and refugees to the Soviet authorities at the end of the second world war. Libel damages of £1.5m were awarded against him, and he was restrained by injunction from repeating the statements. The European

court held that the size of the award, and the state of UK libel law, where the lack of judicial control meant there were no adequate safeguards, violated Article 10 (freedom of expression), although, given the decision of the jury, the injunction was legitimate. Press release 364, 13.7.95

\* *Nasri v France*: An Algerian national who had lived in France from the age of five, who was deaf and dumb and illiterate, was ordered to be deported after several criminal convictions including rape. The European court held that, given that all his close family was in France, the deportation would violate Article 8 (his right to family life). Press release 365, 13.7.95

\* *Kerojarvi v Finland*: The government refused the Applicant's application for compensation for war injuries on the basis of wartime medical files which they did not disclose to him. The European court held that the non-communication of the documents violated Article 6(1) (his right to a fair trial). Press release 379, 19.7.95.

#### Europe - in brief

**Sweden and the Schengen Agreement:** A report by the Swedish Department of Justice concludes that if Sweden joins the Schengen Agreement there will have to be 410 more police officers, 172 new police administrators, 10 new helicopters and more police boats. The total cost is estimated at £50 million. Sweden has applied for observer status with the Schengen countries and its membership is essential if the Nordic Passport Agreement is to be maintained. *Swedish Text-TV*, 27.8.95.

**Germany: Ban on communist:** The European Court of Human Rights ruled, by ten votes to nine, that a ban on the employment of Communist Party members violated their human rights. The Court decided that a ban on Dorothea Vogt, who was sacked from a teaching post in the 1980s, violated her rights of freedom of expression and association and that this outweighed the German government's ban on extremists. *European*, 28.9.95.

#### Europe - new material

**The intergovernmental conference: migration law reform?** *JCWI Bulletin* Vol. 5, no. 2, 1995 pp4-6.

**Turkey: campaign of lies,** Yashar Kemal. *Kurdistan Report* 21 (May-June) 1995 pp21-22. On Turkey's persecution of Kurds and disregard for human rights.

**Briefing: "Schengenland" - fortune or Fortress Europe?** *Runnymede Trust Bulletin* 287 (July/August) 1995 pp8-9.

**All the Prime Minister's men,** Alexander Stille. *Independent on Sunday* 24.9.95. pp4-9. Background piece on former Italian premier Giulio Andreotti who went on trial in September accused of collusion with the Sicilian mafia.

**A battle for the soul of Europe,** Pauline Green. *European Brief*, vol 2 no 8, July/August 1995, pp57-58. Leader of the Socialist Group in the European Parliament looks at the issues likely to be raised in the 1996 Intergovernmental Conference.

**The Secrecy Cult and civil liberty,** Tony Bunyan. *European Brief*, vol 2 no 8, July/August 1995, pp60-61. Looks at the workings of the "third pillar", secrecy of decision-making, and the lack of democratic accountability.

**Strengthening stability and security in Central Europe,** Richard Latter. *Wilton Park* papers no 101. HMSO, £5.00, 26 pages. Previews the extension of NATO into central and eastern Europe and possible reactions by Russia.

**Forskning om Europafrågor (Research on European questions),** produced by the Faculty of Social Science Gothenburg University. 1993 (Study no 1); 1994 (study no 2).

**Parliament and people,** Nicholas Hopkinson. *Wilton Park* paper no 100, HMSO, June 1995, £5.00. Looks at the lack of credibility of parliamentary politics in Western democracies.

**Interim report concerning Turkey: Background report.** European Commission, July 1995, 5 pages. Sets out the state of negotiation with Turkey over its possible membership of the EU and records the problems of democracy, human rights and the campaign against the Kurdish people.

#### LAW

#### UK

#### Travellers win right to humane consideration

Powers to evict travellers under the Criminal Justice and Public Order Act 1994 were dealt a blow in a high court ruling. The case was brought by the Public Law Project - a charitable body - on behalf of travellers in Sussex and Lincolnshire.

The two key points of the judgement by Justice Sedley were: first, any eviction order applies to named individuals only and not a travellers' site in general; second, consideration of the impact of eviction on the travellers' welfare must be made before the removal order is issued and not retrospectively - as it had been in

this case.

Despite their new eviction powers under the 1994 Act, described by Justice Sedley as "in some ways draconian", local authorities must still ensure proper care for more vulnerable travellers under the Children Act 1989 and Housing Act 1985.

Prompted by sections of the media, some local authorities claimed that the judgement made their new eviction powers "unworkable". The reality is that more social services resources will be required to assess the welfare needs of travellers. A dangerous response may be pressure for the police to use their separate and less restricted powers under section 61 of the 1994 Act. However some Chief Constables were opposed to this section of the act from its inception and have shown reluctance to exercise these new powers.

The case: *R v Wealden District Council ex p Wales* (1995) 1.9.95, *Independent* 2.9.94; *New Law Journal*, 15.9.95, pp1342.

### **Defendants' Information Service**

The Defendants' Information Service (DIS) emerged from a campaign by the Hackney Community Defence Campaign (HCDA) to support the victims of police crime that came to light following the exposure of extensive corruption at Stoke Newington police station. The campaign's work included building a dossier on policemen involved in dealing in drugs and the fabrication of evidence (see *Statewatch*, vol 2 no 2, vol 4 no 5). In 1989 the group started recording names of officers alleged to have planted drugs and fabricated evidence. When the cases were cross-referenced a core of 12-15 officers came up repeatedly, but over 120 officers were named. The information was circulated to solicitors representing people charged with drug offences in the area, and the result was that the Met launched Operation Jackpot in January 1992. At the Court of Appeal this information was used by lawyers to get the convictions of 13 people overturned who were wrongly arrested by Stoke Newington police officers. At Snaresbrook Crown Court, in London, another 25 defendants were acquitted and the Crown Prosecution Service offered no evidence in twenty other cases. In the resulting civil actions against the police over £300,000 has been paid out to nine people to date.

Following the success of the HCDA campaign the DIS was set up in September 1994 as an independent company, that is registered with the Data Protection Registrar. Access to the DIS database is restricted to the two people who set it up and reports are provided to solicitors who have made an enquiry. It provides them with details of cases where allegations of misconduct have been made against police officers which resulted in criminal acquittals, civil damages and/or complaints.

Given the current situation, where police and prosecution lawyers have access to a defendants criminal records but defence lawyers are all too often

unaware of the history of a particular police officer the DIS will go some way to levelling the playing field. For further information contact: DIS, PO Box 7459, London N16 6QQ. Tel. 0181 806 4952.

*Observer* 27.8.95; "Redressing the balance", in *Legal Action* September 1995, p10.

### **CPS failings exposed**

Two cases in September have shown up serious deficiencies in the prosecution criteria and practices of the Crown Prosecution Service (CPS). On 11 September, two men were committed to trial by Belmarsh magistrates for the murder of Stephen Lawrence. Stephen was a 17-year-old black schoolboy who was killed in a racist attack as he waited for a bus home on 22 April 1993. Two young white men were charged with his murder later in 1993, but the CPS decided, days before the committal, to drop the charges, saying there was insufficient evidence. A year of sustained campaigning by the family and their supporters failed to persuade the CPS to change its mind, despite new evidence being submitted. So the family decided to take out a private prosecution. There is no legal aid for prosecution, so they have had to rely on voluntary donations. Their efforts bore fruit when magistrates ruled that there was a case to answer against two men, Neil Acourt and Luke Knight, whose trial will take place in 1996.

A week after the historic committal, Christopher Davies, who raped one prostitute and indecently assaulted a second, was sent to prison for 14 years after his two victims prosecuted him privately. Police had arrested Davies after the incidents but the CPS had refused to proceed. Both crimes had been committed at knifepoint. The women would not have been able to prosecute without the support of Women Against Rape and the English Collective of Prostitutes. The CPS has been severely criticised for years by women's groups for its failure to take seriously sexual offences, and by anti-racist and police monitoring groups such as the Campaign Against Racism and Fascism and the Newham Monitoring Project for its reluctance to prosecute in cases involving racist attacks or allegations against police and prison officers. Now, the Lawrence family and the two women who took their attacker to court have proved the CPS wrong. Campaigners in the west Midlands have also had a victory in their fight with the CPS over its refusal to charge anyone with the murder of Norman Washington Manning, known as Bunson, in Long Lartin prison. The CPS said in March that there was insufficient evidence to bring charges, but months of protests and publicity, including pickets outside its Birmingham regional headquarters, have changed its mind, and someone has now been charged with Bunson's murder.

*Independent* 20.9.95; "The case against the CPS" and "The CPS: an obstacle to justice" in *CARF* no 17,

November 1993 and no 25, April 1995; see also *Statewatch*, vol 3 no 3.

### **Corrective "training"**

Michael Howard's latest proposals for young people involve privatising a military corrective training centre (a military prison or glasshouse) and holding persistent young offenders there with soldiers in a regime described by ex-inmate soldiers as humiliating and degrading. Ironically, his own officials have previously warned that harsh boot camps using humiliating and degrading tactics are an expensive failure, causing riots but not succeeding either in diverting young people from crime or reducing overcrowding in prisons. Despite such a discouraging lack of support, and a universally derisive response from penal experts, Howard is said to be adamant to push his plans through, particularly in the light of the modification of the original plans for a tough regime at the experimental "boot camp" proper in Warrington, Cheshire. Billed as the tough answer to juvenile crime, the planned punitive programme has been softened to include a large amount of education, vocational training and "life skills", with just an hour a day's physical education. Howard, though, is clearly resolutely committed to creating a regime which makes life hell for inmates, reducing them to tears of pain and humiliation, as an ex-inmate soldier said of the Colchester centre.

*Independent* 25, 28.8.95; 15.9.95.

### **SPAIN**

#### **Trial by jury comes of age**

During September 10,000 people will be selected to take part in the first jury trials in the post-Franco Spanish state. They will deal with over one thousand criminal trials during 1996. The jury, which will consist of nine people, will reach a decision on a majority basis; seven votes for a guilty decision and five for an acquittal. All jurors will be required to vote.

The jury is not unknown in the Spanish juridical tradition and has been used before during periods of democracy. The concept goes back to 1820 and was applied continuously for thirty five years during the period from 1888 to 1923. The current model took account of the 1978 Constitution in developing Constitutional Law 5/1995.

*Kontrola Kontrolpean*, Donostia, Euskadi (Spain).

### **NETHERLANDS**

#### **New drug policy spelt out**

In September, the Dutch Cabinet's long-awaited position paper on narcotics was published. It turned out to be a very moderate paper which will not lead to a further substantial liberalisation of the Dutch policy on drugs. The main target audience is clearly the governments of

France, Germany and other countries which strongly oppose what they perceive as the encouraging Dutch climate for drug users. For this reason, abbreviated versions of the paper have been translated into five languages and an intensive diplomatic "hearts & minds" campaign is under preparation to convince other European governments of the Dutch position.

Under the new narcotics policy, using cannabis will still be formally against the law, but it will be condoned under certain conditions. The number of "coffee shops" will be reduced from the current 1200 to about 600 with local councils able to decide how many soft drug selling points they will allow (including a "zero option"). Selling cannabis products to the under-aged will become a ground for closing a coffeeshop, as will be the selling of hard drugs on the premises. The maximum amount to be sold a single customer will be five grammes (the idea being to discourage drug tourists), while the coffee shop itself will only be allowed to have a limited but unspecified quantity of a few hundred grammes of cannabis products available at any one time. The "Nederwiet" market (a marihuana variety made out of home grown plants containing a high amount of THC) is thought to become a substitute for imported cannabis products, since its market share has already risen from 10% to over 50% over the last seven years. By allowing home growers (already numbering about 35,000) to cultivate a small number of plants for their own use or to sell to coffeeshops, the government aims to frustrate the hashish market now dominated by organized crime. Also, a limited experiment with the supply of heroin on a medical basis to those addicts considered to be 'hopeless cases' will be started in some of the larger cities. Harsher and more direct punishments combined with detox treatments will be given to addicts committing crimes. Buying soft drugs in several coffeeshops to obtain a larger quantity will still be possible and the possession of anything up to about 35 grammes will be a misdemeanour not actively pursued by the police.

#### **Law - in brief**

**Judge's nod illegal:** The High Court emphasised the importance of judicial independence and reasoning in cases involving the liberty of the subject, in overruling a search warrant granted to Customs & Excise officials "on the nod" by a judge at Southwark crown court. Judge Martineau was asked to issue a warrant under the Criminal Justice (International Cooperation) Act 1990 to allow Customs & Excise to seize documents from a firm of accountants suspected of money-laundering by US authorities. The request for the warrant was backed by the Home Secretary. The High Court held that in the fifteen minutes the application took, the judge could not possibly have read the papers, analysed the requirements for a legal warrant and satisfied himself that they were read. He should not have taken the

request at face value and should have given reasons for his decision. *R v Southwark Crown Court and HM Customs & Excise, ex parte Sorsky Defries, Independent*, 15.9.95.

**Attorney General above the law?:** In August, the High Court refused an application by Lisa and Michelle Taylor for judicial review of the Attorney General's decision not to prosecute anyone for contempt of court. The two were convicted of murder in 1992, after a trial which attracted extensive hostile media coverage, and in 1993 the Court of Appeal, quashing the convictions for non-disclosure by the prosecution of material evidence, said that the media coverage made a fair trial impossible and asked the Attorney General to consider contempt proceedings against the newspapers concerned. The Attorney General decided not to take any proceedings. But the High Court said that the remedy for a serious error of judgement by the Attorney General lay in the political field, not in the courts. *R v Attorney General, ex parte Taylor, Independent* 3.8.95.

**Magistrates punished for injustice:** Magistrates who committed a poll tax defaulter to prison after refusing an adjournment had acted with "a most serious disregard of the elementary principles of justice" and should have to pay costs, ruled Mr Justice Sedley in the High Court in July. He said it was incredible that the justices' clerk had advised that there was no power to adjourn when the liberty of the subject was in issue, and the magistrates having followed that advice must pay the price. Courts of law were constitutionally obliged to be competent in the principles of administration of justice, and never more so than when dealing with debtors who could be sent to prison, were ineligible for legal aid and were unable to afford private representation. *R v Lincoln justices ex p Count, Independent* 31.7.95.

**Amnesty International "political":** Amnesty International British Section lost its battle to be allowed to advertise on the radio when the High Court ruled in July that its objectives were mainly political. When Amnesty decided to run a campaign about Rwanda and Burundi, the Radio Authority refused its advertisement on the ground that demands such as freeing of prisoners of conscience, a fair trial for political prisoners and the abolition of the death penalty were political. The High Court ruled that the decision was not unreasonable and could not therefore be challenged. *R v Radio Authority ex p Amnesty International British Section, Independent*, 1.8.95

#### **Law - new material**

**Who's to detect a vulnerable suspect?** Sheila Rawsthorne. *Policing Today* August 1995, pp2-5. On the changes - under the Police and Criminal Evidence Act - in rules governing police questioning and the

removal of a suspect's right to silence.

**Them and us,** Neil Addison. *Police Review* 11.8.95 pp15-17. Piece on the Crown Prosecution Service by a barrister who worked for the CPS for eight years.

**Public order review,** Jo Cooper. *Legal Action* September 1995, pp 17-19. Review of trends and developments in public order and arrest cases.

**Kill or chill?: analysis of the opposition to the Criminal Justice Bill.** *Aufheben* Summer 1995 pp1-27. Overview of the various strands of opposition to the Criminal Justice and Public Order Act.

**The Criminal Justice system in England and Wales 1995,** Gordon C Barclay. *Home Office* (1995) pp48. This is a revised edition that covers the organisation and procedures used within the criminal justice system.

**"Could it be saved? Should it be saved?"** by June Tweedie. *Legal Action*, August 1995, p9. On the inquest system.

#### **NORTHERN IRELAND**

##### **Parole delay unlawful**

Home Secretary Michael Howard acted unlawfully in delaying the parole hearings of five long-serving IRA prisoners, the High Court ruled in September. The five men - Brendan Dowd, Paul Norney, Sean Kinsella, Stephen Nordone and Noel Gibson - completed their 20-year "tariffs" in July (the time recommended by the sentencing judge) and should have been referred to the Parole Board immediately for consideration of whether they still represented a danger to the public, which would be the only legal ground to keep them in prison. Instead, the Home Secretary simply delayed their referral, which he had no power to do. Mr Justice Dyson said that this was manifestly unjust, and flouted principles of common law and the European Convention on Human Rights. *Independent* 29.9.95.

##### **Northern Ireland - new material**

**One day in August; the report of the Pat Finucane Centre into the allegations of abuses of human rights arising out of the Apprentice Boys parade in Derry City on 12 August 1995.** *Pat Finucane Centre* 1995. Hundreds of RUC officers were mobilised to force through a provocative Apprentice Boys parade near a nationalist area of Derry leading to rioting during which the RUC fired 100 plastic bullets. Available from: Pat Finucane Centre, 1 West End Park, Derry BT48 9JF, Ireland.

**No going back?** Bernadette McAliskey. *Fortnight* September 1995, p22. Piece on the 'peace process' and the Adams-Hume document.

**The South African experience - lessons for Northern Ireland.** *Ad Hoc group on South Africa* (Belfast) 1995, pp37-41. The papers in this pamphlet look at the transition to democracy in South Africa and investigate aspects of this process in relation to Northern Ireland. Available from AHGSA, c/o INNATE, 16 Ravensdene Park, Belfast BT6 0DA.

**Prisoners and the peace process: Republican and Loyalist perspectives,** David Ervine & Raymond McCartney. *Common Ground* Vol. 1, No. 2 1995, pp10-11. Two views that stress the importance of the role of prisoners in the peace process.

**UN calls for closure of Castlereagh,** Mary O'Rawe. *Just News* Vol. 10, No. 7/8 1995, pp1 & 5. On the United Nations Human Rights Committee call for the immediate closure of Castlereagh detention centre, which is known locally as Castlereagh Torture Centre.

**Collusion 1990-1994: Loyalist paramilitary murders in the north of Ireland.** *Relatives for Justice* 1995, pp57. This document catalogues Loyalist murders - of nationalist civilians - that were aided by personal information provided by the RUC.

**Ireland,** Stephen Dorrill. *Lobster* No. 29 1995, pp9-12. Article on the build-up to the peace process and the role of British agent Brian Nelson in arms smuggling to Loyalist paramilitaries.

**Is Labour in a cul-de sac too?** Gareth Smyth. *New Statesman & Society* 29.9.95. On the shifts in Labour Party policy on Northern Ireland, which amount to little more than an endorsement of government policy.

## PRISONS

### Prisons - in brief

**Private prison firm investigated:** The US based private security company, Wackenhut Corrections Corporation (WCC), that runs Doncaster Prison is being investigated by police in Texas for alleged misuse of public funds. The investigation centres around the misuse of \$700,000 allocated for drug treatment programmes, but which - according to auditors - was used for 'unallowable petty cash expenses' such as holidays. The allegations have already led the Canadian prison authorities to suspend a contract for WCC to build and run a jail for young offenders. The British prison authorities have stated that they see no reason to reconsider WCC's contract to run Doncaster Prison. *Independent on Sunday* 17.9.95.

**Hard labour:** All women prisoners being escorted to medical or welfare appointments, including women due to go into labour, are now to be handcuffed, according to a new instruction from the Prison Service. Doctors and midwives treating pregnant women have the responsibility of deciding whether to remove the handcuffs for treatment, and are responsible if the woman absconds, rather than, as formerly, the prison service. The change has been justified by the allegedly rising number of women absconders: 24 in 1994 (of whom two-thirds were caught within minutes). The figure compares with 500 male prisoners who absconded. "This is a frightening example of the absurdity of ministers' obsession with security and punishment," commented Harry Fletcher of the National Association of Probation Officers. *Guardian* 15.7.95.

**Ombudsman ignored:** Prisons Ombudsman Sir Peter Woodhead has complained to Home Secretary Michael Howard that his recommendations, made as a result of prisoner's complaints, are too often ignored by prison staff. The post was created following Lord Woolf's inquiry into prisons following the Strangeways disturbances, and Sir Peter was reporting on his first six months' work. Publication of his report has been deferred indefinitely, but he complains that about one-fifth of the 73 recommendations he has made (which are not binding) are rejected. Prison Service managers have often simply handed his recommendation to the official who was the subject of the complaint, and not followed it up. Complaints received by Sir Peter involve assaults, prison food, racism, lack of work and educational opportunities. *Observer*, 30.7.95.

### Prisons - new material

**Whitemoor Watch,** Nicky Jameson (ed). *Larkin Publications* August 1995. Whitemoor Prison opened in 1991 as a 'state-of-the-art' prison - this update provides information on the 'dirty protest' by Republican prisoners.

**The case for a sentencing council.** *Penal Affairs Consortium* June 1995, pp7. Argues that "the establishment of a Sentencing Council would be an important step towards fairer and more consistent sentencing practice."

**Prison Watch press release no. 132.** *Prison Watch* 8.8.95. On the situation of Daniel Murphy who has been returned to Hull Prison following a recent suicide attempt. Hull Prison has a high suicide rate and Daniel's health has caused concern for his safety.

**"A quiet life": comments by the Penal Affairs Consortium on the Labour Party Consultation**



**paper**, September 1995, 8 pages. Criticises the lack of normal safeguards in the proposal to introduce community safety orders. From: 169, Clapham Road, London SW9 0PU.

## **MILITARY**

### **SWITZERLAND**

#### **Montgomery memorandum cast shadow over Swiss neutrality**

Officially Switzerland has always claimed to be a neutral country. A former member of the Federal Council, Max Petitpierre, wrote in 1963: "neutrality makes sense for a country like Switzerland not to get involved in any war activities nor to participate voluntarily in any armed conflicts. Only in the case of an attack against Swiss independence by military forces would the Swiss army defend its territory". Now a document discovered in the UK Public Records Office shows that a secret deal was agreed in 1956 for Switzerland to join NATO if Europe was attacked.

The document, classified as "top secret", is dated 10 February 1956 with the reference PREM 11/1224. It was declassified in 1987 but only found by two researchers - Mauro Montavoni and Peter H Hufschmid - this year. The memorandum was written by Field Marshal Bernard L Montgomery, then a vice-general with NATO, and addressed to the then UK Prime Minister, Anthony Eden. It summarises discussions between Montgomery ("Monty") and government representatives of Yugoslavia and Switzerland.

"Monty" who was popular in Switzerland held informal talks with Swiss government politicians and officials and in particular Swiss Minister of Military Defence, Paul Chaudet. Chaudet was convinced by Montgomery that if there was a conflict between East and West nuclear weapons would be used and Switzerland could not remain neutral. On 10 February 1956 Chaudet told Montgomery the Swiss government had decided that if there was a war in Europe they would side with the Western alliance. He insisted this agreement should be made secret and that in times of peace Switzerland would maintain its neutral stance.

"Secret army" set up

At the time of this agreement the Swiss government was secretly evaluating the possibility of building its own nuclear weapons and wanted to reassure NATO of its loyalty. But there was another more sinister reason why the Swiss would negotiate through a British army general. In the 1950s the UK helped the Swiss build up a secret resistance organisation, a "secret army", the "P 26". This fact was only discovered in 1990 when a parliamentary inquiry examined the activities of the Military department and especially those of the secret service. Around 500 "soldiers" were in the P 26, some

of them receiving special training at UK military bases. It was intended to sabotage foreign armies of occupation and to fight the "internal enemy".

Other documents also show that Swiss neutrality was a fiction. Earlier this year another document was released titled "The position of the United States with respect to Switzerland" (a "Presidential Directive on National Security prepared for Harry Truman in 1951). This says: "Switzerland becomes more and more important concerning the production of weapons for NATO countries... it also delivers precision instruments and other materials necessary for the armament of the USA and NATO countries.." A 1961 telegram from a former US Foreign Minister said Switzerland was integrated into the NATO Communication System.

Paul Rechsteiner, socialist member of the Swiss parliament, has now asked the Federal Council why the government still maintains there was never any cooperation with NATO or the CIA.

*Tages Anzeiger*, 4 & 7 & 9.10.95; *Kommittee Schluss mit dem Schnuffelstaat*, Bern, Switzerland.

#### **Military - new material**

**Forty years of German membership of NATO**, Karl Kaiser. *NATO Review* No. 4 1995, pp3-8.

**Structure and functions: European security and defence identity and combined joint task forces.** *North Atlantic Assembly Draft General Report* May 1995

**European armed forces.** *WEU Assembly* Document 1468 (June) 1995

**Industry urges EU to coordinate defence base.** *Defense News* 3.7.95. A policy paper from the pan-European defence lobby EDIG (European Defence Industries Group) circulating among national defence and foreign ministries across the EU that advocates a vigorous continent-wide restructuring of the defence sector.

**Launch fuels French plea for partners in satellites.** *Defense News* 10.7.95. The launch of the Helios 1A spy satellite strengthens France's hand in its bid to attract German participation in the follow-on system known as Helios 2 and Horus.

**Danish firm to set up missile support centre.** *Jane's Defence Weekly* 22.7.95. Danish Aerotech will, under a joint agreement with the Hughes Missile Systems Company, establish a support centre at Karup Air Base for European based US built tactical missiles, thereby competing with the NATO agency NAMSA and lessening European dependency on the USA

**Theatre missile defence.** *International Defense Review*

No. 8 1995. Cover feature about air defence against tactical ballistic missiles and description of US/German/Dutch 24,000 person 'Roving Sands' air defence exercise.

**Nordic briefing.** *Jane's Defence Weekly* 19.8.95. This article examines changes for the armed forces of Denmark, Norway, Finland and Sweden brought on by the end of the Cold War and European Union membership for Finland and Sweden.

**Special Forces exercises for counterproliferation.** *Jane's Defence Weekly* 26.8.95. In the last nine months US Special Operations Command (SOCOM) has conducted five major exercises featuring exercises behind enemy lines and in denied territory against weapons of mass destruction.

**First to the fray, the evolving RDF concept.** *International Defense Review* no. 9, 1995. Cover feature examines the main elements of US Rapid Deployment Force (RDF) and its evolving doctrine and the putting into place of a German RDF.

**Small arms and intra-state conflicts.** *UN Institute for Disarmament Research*, Research papers no 34, 1995, 54 pages. Lists names of small arms manufacturers and armed conflicts country by country 1989-1993.

**European Code of Conduct on the Arms Trade.** *Saferworld* and *BASIC (Brussels)* are working for the adoption of this code of conduct. Details: Saferworld, 3rd floor, 33/34 Alfred Place, London WC1E 7DP. Tel: 0171 580 8886.

## POLICING

### NETHERLANDS

#### Police: digital motorway surveillance

A secret plan called the "license plate recognition system" has been exposed which will allow for a round-the-clock monitoring of motorways and border crossings by electronic cameras hooked up to computers with pattern recognition software. The system, once in operation, would be able to identify the license plates of passing cars within seconds and check this information against central computer data banks holding data on stolen vehicles, tax avoiders and suspected criminals. The technology will be developed by a consortium of four companies headed by Technet BV in Eindhoven. The project is partially funded by a 400,000 guilders grant from the European Fund for Regional Development. The Registration Chamber does not expect them to violate any privacy laws. The police have admitted they are working on a digital car recognition system to be used on motorways, but refuse

to provide further details.

#### Van Traa Commission opens

The first sessions of the Dutch parliamentary inquiry commission into police investigation methods chaired by Mr Maarten van Traa have produced more details about the extent of organized crime in Holland and so-called "pro-active" investigative police methods (see *Statenwatch*, vol 5 no 4). The country's four most prominent criminologists have been given almost unlimited access to police intelligence files in order to provide a comprehensive situation report and assessment on the nature, extent, and seriousness of organized crime in the Netherlands. Professor Cyrille Fijnaut, the first to testify, described how his investigation found current estimates of organized crime to be grossly exaggerated. He criticized the national police intelligence service (CRI), which for years has been publishing unsubstantiated estimates of anywhere between 250 and 600 criminal organizations active in Holland. Fijnaut examined seven "criminal networks" and gauged the total number to be about 30 organizations of some sort, most of these involved in the hashish trade. Although organized crime has infiltrated certain sectors such as the transport business and the catering industry, and criminal money dominates for example Amsterdam's "red light" district, there are no serious indications of "infiltration" of what is referred to as the 'upper world' of business, finance and politics. In spite of their wealth, drug "barons" do not appear to be interested in political power or in building up a solid and legitimate economic position. Their investments are mainly in the continuation and expansion of operations, while some of the funds are funnelled to offshore or Swiss bank accounts. Professor Fijnaut also believes there is no such all-powerful syndicate in Holland as the "Octopus", a popular subject of journalistic accounts.

Fijnaut's colleague Professor Frank Bovenkerk caused considerable controversy when he told the Commission that police files indicated that about half of the Turkish males in Amsterdam are believed by the police to be involved in the heroin economy. The large Surinam population, most of them naturalized Dutch, are according to the files extensively involved in the cocaine trade. Bovenkerk, regarded as a progressive academic at Utrecht University with a track record of research into racism and discrimination, was severely criticized for basing his statements on sources that were too narrow and could not be verified. His estimates were contradicted by the findings of a research project done by other Utrecht scholars in cooperation with the Rotterdam police, who published their figures a week later which concluded that only a relatively small number of immigrants were involved in crime.

In the second week, the Van Traa Commission heard police and justice department officials, some of them

suffering from the familiar syndrome of "inquiry disease" - displaying acute lapses of memory. Others simply admitted that they should have known about certain questionable police methods such as the "controlled transit" of large shipments of narcotics (allowing the drugs to disappear on the market in order to establish an infiltrator's credibility). They simply had not asked since they trusted their colleagues to inform them about such serious matters. While the Wierenga Commission investigating the disbanding of the IRT police team in 1993-1994 still considered this method to be justified in the light of the seriousness and invulnerability of the criminal organization involved, members of this commission now admit they were not told the whole truth. They did not know that the infiltrator, a major criminal, against all rules was allowed to keep the profits amounting to tens of millions of guilders. "He laughed his head off," said one official, "and now he has become truly untouchable as any attempted prosecution would be thrown out of court immediately". Shortly before the Van Traa hearings started the Minister of Justice, Mrs Winnie Sorgdrager, was forced to admit that somewhere between 100 and 400 tons of drugs were allowed to disappear on the market under the "controlled transit" method between 1991 and 1994.

Undercover police officers, some of them in disguise, disclosed that about 60,000 citizens are registered as "CID subjects". This means that while they are not formal suspects they are the target of police attention because of earlier or anticipated serious criminal activities. Details of technical surveillance methods were freely discussed: a representative of the Technical Operational Support Group (DTCO), explained how his bureau, with a staff of 100, installed "several hundred" tracking devices of all sorts and other electronic surveillance equipment in Holland and abroad. He explained how technical surveillance has taken over much of the old-fashioned tactical observation work, which is much more costly. The deployment of a 24-hour surveillance team costs about Dfl10,000 the same result could be obtained for 300 guilders worth of sophisticated surveillance equipment.

During these first two weeks of testimony, several witnesses made startling statements that can be expected to be contradicted by later witnesses. The sessions are transmitted live on national television and provide an unusually frank and often startling picture of both police activity and administrative ineptness sometimes bordering on chaos.

## **UK**

### **Police ordered to protect veal exporters**

The High Court ruled in July that although under domestic law the livestock exporters running the gauntlet of animal rights protesters, on manpower and financial grounds, such limitations were illegal under

Community law as being a restriction on exports. Such a restriction was not justified on public policy grounds, as the Chief Constable had not attempted to get more financial resources to deal with the problem. In mid-January, the police cut the number of officers protecting veal exporters at Shoreham, Sussex from over 1100 to around 300, who were available only on weekdays. In April, cover was further restricted to two days a week, and the chief constable said that when cover could not be provided the police would turn back livestock-carrying vehicles if they feared a breach of the peace. The Chief Constable decided not to ask the Home Office for special funding, knowing what the likely answer would be. Although the court said that was a reasonable attitude, it was no defence under EU law.

*R v Chief Constable of Sussex ex p International Trader's Ferry Ltd, Independent 28.7.95.*

### **Police contempt**

Police who prevented an accused's solicitor from seeing potential alibi witnesses were in contempt of court, ruled the High Court in July. The accused was charged with murder and told his solicitor that he had spent the night in a doorway in central London with two travellers. In an attempt to trace the two alibi witnesses, the solicitor employed an inquiry agent to go round central London's travellers with a photograph of him to see if any remembered him. Police investigating the murder wanted to hold an identity parade and told the solicitor that she could be committing the offence of obstructing them in the execution of their duty if she went ahead. But the High Court ruled that the police had no right to prevent the solicitors from approaching potential witnesses and so were in contempt of court when they tried to do so by threatening her with criminal charges.

*Connolly v Dale, Independent 27.7.95.*

### **Met police intelligence**

The London Metropolitan Police have a new form - "Form 5020" - as part of its new SID system (SID stands for: Systems for Intelligence and Detection). Evaluation of intelligence put into by officers is graded into four categories according to its source. Category A describes a source where there is no doubt about its "trustworthiness and competence"; Category B: where the source is generally has proved reliable in the past; Category C: where a source has "generally proved unreliable previously"; and Category X: where there is serious doubt about the source's trustworthiness. Critics wonder why intelligence from "unreliable" sources or where there are "serious doubts" is put into the system?

Working on the theory that 67% of crime is committed by 7% of criminals suspects are put into three categories: "prom noms" for most active prominent

suspects who will be monitored if they go to prison with their visitors and cell mates recorded; "dev noms", developing nominals for suspects not previously known; and "ag-noms", for agency nominals for suspects operating across police divisional boundaries. *The Job*, 21.7.95 & 18.8.95.

## UK

### Public order revamp

Public order training and tactics are being revamped in the Metropolitan Police following a report by Commander Kendrick following confrontations between police and demonstrators last October. The October demonstration against the Criminal Justice Bill saw riot-trained police and mounted police used against protestors in an attempt to clear Hyde Park and Park Lane in London. Training is to be changed after Commander Kendrick found that there was a "cultural abhorrence" by riot-equipped police to withdraw when ordered. At one stage of the confrontation senior officers ordered the withdrawal of officers with shields, riot helmets and batons and for them to be replaced with "ordinary beat officers in the hope that this would reduce hostility to the police":

"Many kitted officers, however, seemed reluctant to withdraw. When withdrawal began the crowd became more vociferous and there was an increased missile attack. Some of the serials responded by advancing in an un-coordinated manner to the crowd while others were withdrawing."

Another problem to be addressed is Commander Kendrick's finding that during the confrontation there was a "seemingly sub-conscious cultural indifference to evidence gathering and successful prosecution during the event itself."

Two new-style command training courses have been introduced - the Pre-Planned Public Order course and the Spontaneous Disorder course (which takes account of all major disorders over the past 15 years).

Another change is the introduction of the Public Order Intelligence System to gather information on "potential troublemakers". Teams of 12 specially trained officers will form a Forward Intelligence Team (FIT) who, operating in uniform, will seek to build a "rapport" with "street activists" so that people "likely to provoke disorder can be identified early in an event". Prior to an "event" assessments are provided by the Special Branch together with reports on "areas of tension". Assistant Commissioner Tony Speed said in July that the 1994 Urban Trends report indicated that "the conditions which prevailed in the early 1980s, which were generally blamed for widespread urban disorder, remain". He singled out for mention the London Boroughs of Hackney, Haringey, Islington, Lambeth,

Newham and Tower Hamlets.

The Metropolitan Police have also developed a new method for filming demonstrators. In the past it has proved difficult to capture people on film from behind a riot shield. Now the "Virtual Vision" hi-tech video camera allows cameramen from SO3 Public Order Branch to film by use of a tiny screen which projects the image into the retina of the eye. Underneath the now familiar riot helmet the officer wears what looks like a pair of dark sunglasses while the camera can be pointed in any direction.

*The Job*, 7 & 21.7.95; *Police Review*, 25.8.95.

## SWEDEN

### Call to extend tapping

The Swedish Chief State Prosecutor, Klas Bergenstrand, wants to extend the use of telephone tapping by the police. At present - with the exception of the Security Police - it is only allowed if it concerns a suspected crime which could result in a 2 year prison sentence. Bergenstrand wants to change this limit so that tapping will be allowed where the suspected crime can only lead to 1 year in prison. This would allow the police to use tapping for almost all crimes.

*Swedish Text-TV*, 18.9.95.

### Policing - in brief

**Green light for racism:** Commissioner Condon's remarks alleging that 80% of street crime was carried out by black men, announcing the launch of Operation Eagle Eye (see *Statewatch* vol 5 no 4), seem to have given the green light to racist officers on the ground to drive young blacks off the streets by aggressive stops and searches. Police monitoring groups throughout London reported a tripling of complaints of police aggression and harassment in August. Scotland Yard said that the operation was not based on stop and search but was aimed to "make the streets unsafe for muggers" and had the warm support of "the public" - presumably the white public. *Observer* 27.8.95.

**BT "Cover" For Police?:** British Telecom are allowing police to pose as company employees, according to allegations made by a BT worker to "Socialist Worker". They are also making BT vans and equipment available to police in order to carry out surveillance work. The BT worker is quoted by Socialist Worker as saying: "they (BT) have been allowing police to use BT vans and tents in order to do surveillance work. That puts us at risk. We have already had a couple of engineers attacked. We wondered why at first, but then we found out that police had been in the area pretending to be BT workers a couple of weeks earlier." When contacted BT refused either to confirm or deny the allegation. A spokesman stated: "I couldn't comment on that.. it's not something we could comment on - what methods the

police may or may not use." *Socialist Worker* 9.9.95.

**Germany: Police stamp "gay" passports:** Two officers from the Bavarian police force in Munich stamped the passports of six young men from Poland, Hungary and Romania indicating their sexuality. The men had their passports confiscated during police raids on the city's gay night clubs. When the police returned the passports they were stamped either "Homo-Szene (involved in the gay scene) or "Homo-Strich" (implying involvement in gay prostitution). A police spokesman said the two police officers had "made a mistake" and the Munich government said the police should follow a series of recommendations from gay groups. Manfred Edinger of the Anti-Violence Project commented: "The police are not compelled to do anything. Only Bavaria's Interior Ministry can put these guidelines into law and they do not want to." The new have now been given new passports. *European*, 24.8.95.

#### **Policing - new material**

**Out of the Shadows**, Keith Potter. *Police Review* 7.7.95. pp16-17. Article on the National Criminal Intelligence Service and its Director, Albert Pacey.

**Echoes over the years...a continuing story and Street crime and "race"**. *Runnymede Trust Bulletin* 287 (July/August) 1995, p1 & 12 and pp5-7. On the history behind Metropolitan Police Commissioner Paul Condon's racist remarks about 'mugging'.

**Nods and Winks**, Paul Cooper & Jon Murphy. *Police Review* 8.8.95. pp22-23. On the 'hidden dangers' of the Audit Commission's recommendation that the police increase its use of informers.

**Police misconduct: prosecution disclosure of discipline records**, John Harrison and Stephen Cragg. *Legal Action* September 1995, pp19-20. On the Director of Public Prosecution's internal guidance to the police on the disclosure of discipline records in criminal prosecutions.

**Estimating the extent of domestic violence: findings from the 1992 BCS**, Catriona Mirrlees-Black. *Research Bulletin*, Home Office, no 37, 1995, pp1-9. Evidence from the British Crime Survey.

**Domestic violence on a London housing estate**, John Hood-Williams and Tracey Bush. *Research Bulletin*, Home Office, no 37, 1995, pp11-18.

**The criminal histories of those cautioned in 1985, 1988 and 1991**, Daljit Dulai and Mark Greenhorn. *Research Bulletin*, Home Office, no 37, 1995, pp71-76.

**UK: Death in Police custody of Joy Gardner.**

*Amnesty International*, August 1995, AI Index EUR 45/05/95, 16 pages. Looks at the coroner's inquest and the UK government's reaction to the death of Joy Gardner.

**Policing and the Vietnamese community**, *IRR European Race Audit*, Bulletin No 15, September 1995, pp11-12. On racist policing in Germany.

**Undercover: Police surveillance in comparative perspective**, eds Cyrille Fijnaut and Gary T Marx. Kluwer Law International, 1995, 340 pages, £75.00. Chapters on France, USA, Germany, Netherlands, Belgium, UK, Iceland and Sweden.

**Sense and sensitivity**, Elizabeth Burney. *Police Review*, 25.8.95, pp24-25. Comments on "Operation Eagle Eye".

**L'Europe des polices: Europol à la dérive**, Lode van Outrive (member of the permanent delegation of the Federation des Droits de l'Homme). FIDH Letter, 7-14 September 1995, pp8-11 (in French).

**National and international aspects of undercover policing**, Chantal Joubert. *Police Journal*, vol LXVIII, no 4, October-December 1995, pp305-318. Comparative study of undercover police and its legal basis in Germany, France, Luxembourg, the Netherlands and Belgium.

## **RACISM & FASCISM**

### **UK**

#### **Anti-BNP demonstrators jailed**

Nine men who took part in a demonstration demanding the closure of the fascist British National Party (BNP) headquarters in southeast London in October 1993 have been found guilty of riot charges (see *Statewatch*, vol 3 no 6). They were jailed for periods of between 16 months and three years at Maidstone Crown Court in September. A tenth man received community service.

The sentences were greeted with anger by anti-racists who recalled that violence only broke out after the police prevented the march from passing by the BNP premises by sealing off all entrance or exit routes. Having trapped the march provocative charges by riot police with batons and extensive filming of demonstrators led to confrontations which lasted for several hours. Over the following weeks a massive media campaign was launched to track down people accused of rioting.

The Anti-Nazi League, which was one of the organisers of the march, have called for messages of support for the prisoners. Three are being held at HMP Elmley, Church Road, Isle of Sheppey, Kent ME12

4AY: they are Karl Anacoura (RN 0599), Sanjiv Karla (RN 0598) and Stephen Kelly (RN 0318). Five are detained at HMP Canterbury, 46 Longport, Canterbury, Kent CT1 1PJ; they are Paul Gay (RN 0593), Mark Gay (RN 0594), Charles Ryder (RN 0595), Russel Wild (RN 0597) and John McFeely (RN 0596).

*Socialist Worker* 23.9.95.

## **AUSTRIA**

### **Nazis charged for letter bombs**

Two neo-nazis, believed to be part of the "Bavarian Liberation Army" (BAV), who claimed responsibility for a series of letter bombs over the last two years, went on trial in Vienna in September. Peter Binder and Franz Radl have denied being responsible for the letter bombs which were sent nearly two years ago.

The men were arrested in December 1993 after ten devices were sent out to Austrians prominent in anti-racist activities. The attacks coincided with the trial of Gottfried Kussel, the leader of the nazi Vapo group, of which both men are members. The letter bombs injured four people. One of these was the Mayor of Vienna who lost half of his left hand after receiving a letter bomb at his home address.

Two separate waves of letter bombs followed in October 1994 and June 1995. The BAV was also responsible for a bomb that killed four Roma in February.

*Independent* 13.9.95.

## **DENMARK**

### **Lauk to be extradited**

US nazi Gary Lauk is to be extradited from Denmark to Germany the Danish Supreme Court decided in August (see *Statewatch* Vol. 5 no. 4). Lauk had been arrested earlier this year, at the request of the German government, and accused of smuggling racist material into Germany over the last 20 years. He was jailed for 4 months in Germany in 1976 after being found guilty of similar charges. After the Supreme Court hearing Lauk was driven away by police and gave a nazi salute to waiting journalists.

## **BELGIUM**

### **Diksmuide: Police and feuding spoil nazi rally**

This years Diksmuide rally, which attracts neo-nazi organisations from across Europe and around the world, degenerated into a weekend of feuding which saw over two hundred arrests. Splits between the mainstream Flemish nationalists and the far-right lay at the heart of the trouble.

The annual "Iron Pilgrimage" to Diksmuide has its origins in the commemoration of victims of the First World War. It has long since become associated with Flemish nationalism. The emergence of the neo-nazi

"Vlaams Blok" as a major force within Flemish politics also saw the Diksmuide event become an increasingly important international gathering point for the Far-Right across Europe. This side of the Diksmuide gathering has become increasingly embarrassing, both to the mainstream Flemish nationalists and to the Belgian police.

The problems started on Saturday August 26 after Bert Eriksson, leader of the Vlaams Militanten Orde, was arrested for selling nazi material. This led to a group of fascists deciding to storm the police station in order to free Eriksson. The police called in the help of the Belgian Gendarmerie and the demonstration was broken up using water cannon. Some 220 people were arrested including 144 Germans, 45 French and 14 Dutch fascists.

The iron pilgrimage itself took place the next day, and saw more evidence of splits within the organisations present. As in past years there were two separate gatherings, one for the 'moderate' Flemish nationalists and one for the fascist Vlaams Blok and their European friends, who this year were joined by members of the "iron Pilgrimage Forum", a radical Flemish nationalist faction who had been demanding more access to decision-making. The mainstream event was then continuously heckled by the far-right demonstration, with police keeping the two sides apart.

Stalls run by fascist organisations over for the weekend included ones run by Blood and Honour (UK), CP'86/Nationale Volks Partij (Netherlands) and JN (Germany). Delegations from the British National Party, the German FAP, NDP and the Viking Jugend were also seen. However the number of nazi organisations attending was apparently down on last year, as was the number attending overall. The Iron Pilgrimage used to be able to count on up to 70,000 attenders. This year police estimated the total at no more than 10,000.

*NV*, 14.9.95.

## **BULGARIA**

### **Amnesty condemns ill-treatment of Roma**

Amnesty International have written to Zhan Videnov, the Bulgarian Prime Minister, to protest at alleged beatings and other ill-treatment of Roma which have apparently been motivated by the victims' ethnic background. "We are particularly concerned about the case of one victim of ill-treatment, Iliya Dimitrov Gherghinov, who died in detention in suspicious circumstances", the organization said.

On 9 February 1995, two witnesses found him lying on the street near their house in Gradets, in the Sliven region, with his hands in handcuffs. A police officer, who appeared to be under the influence of alcohol, was standing over him with a long piece of wood in his hand. The officer dragged Iliya along the street holding him by his handcuffs, after which he beat him repeatedly all over the body. The beating reportedly

continued in Gradets police station.

The following day Iliya Gherghinov was found lying dead on the street, with his hands still in handcuffs. The death certificate indicated hypothermia as the cause of death. However, his relatives claim that Iliya's leg was broken, that there was a large wound on the side of his face, that his genitals had been crushed and that his body was covered with bruises and his hands with cigarette burns.

Although according to Iliya's wife an investigation into her husband's death was immediately initiated, she was told by officials that no case would be filed in the next five years. Amnesty International is calling on the Bulgarian government to ensure that the investigation into the death of Iliya Gherghinov is prompt, thorough and impartial, to make the findings public and to bring to justice anyone responsible for human rights violations.

Dimitar Stankov Stankov, a 12-year-old pupil, was arrested on 5 May 1995 after the vice-principal of his primary school called the police, reporting him for theft. The police took Dimitar to the police station without notifying his parents, where he was reportedly slapped, kicked and beaten with a rubber truncheon during the interrogation. Dimitar did not tell his parents about the incident thinking that the police would not summon him again. However, three days later he was called to the police station once more. Hours later Dimitar's parents were called in and the investigation ended once they immediately requested an inquiry.

In March 1995 Amnesty International wrote to Prime Minister Zhan Videnov about the shooting of a Roma and ill-treatment of dozens of Roma in Nova Zagora on 20 March 1995. "We have still not received any reply concerning an investigation into these or other cases of apparently ethnically motivated ill-treatment by police officers in Bulgaria which have been brought to the attention of the Bulgarian authorities in the past three years," the Amnesty said.

*Amnesty International*, AI INDEX:EUR 15/05/95, 28.9.95.

### **Racism & fascism - in brief**

**Denmark: Hess Memorial in Roskilde Flops:** A memorial march organised by the fascist Daenemarkse Nationale Socialistiske Bevaegelseto commemorate the death of Rudolf Hess turned into an international flop as a mobilisation of nazi organisations across Europe could only muster 138 people. Organisations attending included the FAP from Germany and Combat 18 from the UK. The embarrassment of a low turnout was exacerbated as anti-fascists joined with the local community to disrupt the march. The Hess memorial march has become one of the most important international nazi meeting points after the Diksmuide gathering. The first marches called in Germany mobilised more than two thousand people but a

combination of local and national government action eventually forced the event to take place outside Germany. *NN*, 14.9.95.

### **Bradford youth vindicated**

Four Asian youths, whose arrests sparked rioting in the Manningham district of Bradford in June, have had charges of assault and threatening behaviour thrown out of court (see *Statewatch* vol 5 no 3). Magistrate Guy Hodgson said that there were "serious doubts" about the reliability of the prosecution evidence after independent eye-witness accounts of the arrests contradicted police statements. The outcome supports the widely accepted view that the arrests of the four youths - for playing football in a cul-de-sac - followed by assaults on members of their family, triggered the rioting that lasted for two days and caused over £1 million worth of damage. After the riot the Police Complaints Authority announced that they would be investigating 18 complaints about police behaviour. The four men are now expected to take legal action for compensation against West Yorkshire police.

*Police Complaints Authority press release* 8.9.95; *Guardian* 7.10.95.

**Latvia: far-right gains:** The far-right People's Movement for Latvia have won 16% of the votes in elections to the Latvian parliament. The party came third winning 16 seats behind the leftish Saimnieks party (18 seats) and the coalition Latvia's Way (17 seats). The People's Movement for Latvia is led by a German born ethnic Latvian, Joachim Siegerist, who is appealing against a German conviction for race hatred. *Guardian* 3.10.95.

**Portugal:** Police have arrested six more skinheads suspected of being part of the gang that attacked and killed Alcindo Monteiro, an African, on 10 June. The gang used steels bars and baseball bats to attack a group of Africans 12 others of whom were injured in the attack. The 6 join 9 others already being held in custody. *European*, 5.10.95; see *Statewatch* vol 5 nos 3 & 4.

### **Racism and fascism - new material**

**Anti-Nazi League: a critical examination 1977-81/2 and 1992-95,** Jim Kelly & Mark Metcalf. *Resistance* 1995, pp36. Brief look at the ANL; available from the Colin Roach Centre, 56 Clarence Road, London E5 8HB.

**Revival of the old beast and Pointing a finger at the fascists,** Umberto Eco. *Guardian* 12.8.95. and 19.8.95. Eco looks at the rise of fascism in Mussolini's Italy and its return in Europe in a different but equally dangerous form.

**Hit racism for six**, Mike Marqusee. *Labour Briefing* September 1995, p5. On the launch of the Hit racism for Six campaign against 'polite and middle class' racism in cricket. The Campaign can be contacted c/o Centre for Sport Development Research, Department of Sport Studies, Roehampton Institute, London SW15 3SN; Tel. 0171 561 1606.

**Facing up to the Front**, Natalia Nowakowska. *Chartist* September-October 1995, pp16-17. On the electoral inroads made by the French Front National and other European fascist groups.

**Look what's eating the Greens**, Nick Toczek. *Lobster* No. 29 1995, pp26-27. Investigation of the role of long-term fascist Anna Bramwell within the Green movement.

## SECURITY & INTELLIGENCE

### SPAIN

#### **CESID document on the 'Urigoitia' case**

A recently published CESID (Security Service) document, dating from 1987, states that members of the Civil Guard fabricated false evidence to avoid an investigation into the death of ETA member Lucia Urigoitia. Urigoitia was shot in the back of the head in controversial circumstances, leading to a public outcry. According to the document members of the Civil Guard broke into the judge's private residence and substituted the bullet used to kill Urigoitia for another one. They then substituted the barrel of the gun and tampered with a bulletproof vest in the ballistic laboratory. Following the planting of the false material the judge stopped the case.

*Kontrola Kontrolpean*, Donostia, Euskadi (Spain)

#### **CESID restructured**

Following recent scandals the Spanish government adopted, on July 28, a new statute on the personnel of the CESID (Security Service). The new regulations limit the term of office of the Director to 5 years, establish a new disciplinary system and impose an obligation of secrecy on members.

With the publication of the decree in the Official Gazette on August 21 the 2000 plus agents will have passed to an 'interim' status. Only those who are considered 'fit' will be allowed to remain with the Service; the remaining personnel will have to leave during a transitional period which will end in 1998. The final decision will be dependent on the approval of a list of jobs which are subject to appointment by the Director. Currently, 80% of the CESID staff consists of members of the military and Civil Guard.

The new decree also prohibits members from joining a trade union or political association or taking industrial action. Until now this measure applied only to members of the military forces or Civil Guard. Its legality has been debated by legal experts who have pointed out that it is questionable whether a royal decree can deprive civilian employees of these rights because the constitution expressly states that fundamental rights may only be regulated by constitutional law.

Recently the director of the CESID, Alonso Manglano, had to resign. The new director and general secretary are Felix Moanda and Jesus del Olmo.

*Kontrola Kontrolpean*, Donostia, Euskadi (Spain)

#### **Civil Guard: kidnapping, torture and assassinations**

Carlos Bueren, the foremost judge of the Audiencia Nacional (High Court), is to carry out an investigation into the 1983 murder of two Basque refugees, Lasa and Zabala. The new allegations are that the two refugees were kidnapped and assassinated by members of the AT-1 (Anti-terrorism 1) Civil Guard group. They were abducted and taken to a villa owned by the Ministry of the Interior and used by the civil governor of Gipuzkoa. There they were tortured over a period of two months. During their incarceration they were questioned by the Chief of the Intxaurreondo Civil Guard, Colonel Rodriguez Galindo, and by the civil governor, Julian San Christobel. Both men wore balaclavas to avoid being identified.

New evidence has also prompted Bueren to accuse the AT-1 Civil Guard of being responsible for torturing to death Mikel Zabelza in November 1985. It is claimed that he drowned after being subjected to the 'banera' (having his head forcibly held under water). According to the Civil Guard Zabelza drowned after falling into a river while trying to escape. The new witness evidence suggests that he had river water injected into his lungs to give credence to the official version.

Colonel Galindo has been head of the Intxaurreondo Civil Guard for the past 15 years. He has been accused of extensive corruption, ranging from police abuses to profiting from drug trafficking. He is also a close associate of those police officers named in the assassinations. Despite the accusations against him he was promoted to the rank of General in August. *Kontrola Kontrolpean*, Donostia, Euskadi (Spain).

#### **GAL investigation goes to Supreme Court**

Judge Garzon's report on the Anti-terrorist Liberation Group (GAL), who were responsible for over 20 murders, has been passed to the Supreme Court. They will continue the proceedings and decide whether to pass them to Parliament. Garzon's investigation considered accusations against the Spanish President Felipe Gonzales, former Defence Minister Narcis Serra and ex-Minister of Interior Jose Barrionuevo as well as



the Socialist leader Txiki Benegas. In all, there are fourteen people named in the judge's summary. (see *Statewatch* Vol. 5 no. 4)

*Kontrola Kontrolpean*, Donostia, Euskadi (Spain)

## NETHERLANDS

### CP infiltrated

On 5 September, the *Binnenlandse Veiligheidsdienst* (BVD, the Netherlands internal security agency), in-house historian Dick Engelen published his dissertation on the history of the Dutch security service between 1949 and 1968. In the book, the author discloses how the BVD broke into communist party (CPN) headquarters buildings hundreds of times in so-called "black bag" jobs and over the years managed to photocopy nearly the entire CPN archives. The BVD in the early 1960s ran well over a hundred agents in the various CPN councils. The homes of prominent communists were bugged for decades and the BVD even set up a fake "Socialist Workers Party" (SWP) of several hundred members to stir up factional conflicts and cause a split in communist ranks, which came about in 1958. The scenario was thought out by the CIA, which in the 1950s paid nearly ten percent of all BVD personnel and had a profound influence on the organization. In the mid-1960s, the BVD was increasingly interested in New Left circles and adapted its "arrest lists" of people to be detained in times of crisis accordingly.

## FRANCE

### DGSE attacks on Greenpeace

Ten years after French intelligence agents sank the Rainbow Warrior in Auckland harbour, New Zealand, they were ordered to prevent the movement's new vessel "Greenpeace" from interfering with new nuclear tests at Mururoa. The DGSE, *Direction Générale de la Sécurité Extérieure*, considered a "virus attack" on the Greenpeace crew before opting for sabotaging the ship's communications facilities. In September 1985 the ship was in Curaçao in the Dutch West Indies. The DGSE station chief in the Venezuelan capital Caracas was sent the order: "Detain the Greenpeace vessel at Curaçao by every possible means". The station chief went to Curaçao and worked out a plan to require the crew to be vaccinated under a "new regulation" which would inject a virus causing violent diarrhoea or yellow fever. DGSE HQ in Paris rejected the idea in favour of bribing a customs official who allowed the radio frequencies on communications equipment to be installed on the ship to be photocopied thus enabling them to jam all transmissions.

Government honours intelligence chief

The French government has awarded the commander of

the agents' responsible for the 1985 bombing of the Greenpeace ship, the Rainbow Warrior, with the Legion of Honour. Major General Jean Claude Lesquer was a colonel in French intelligence at the time of the limpet mine attack in New Zealand, which killed Greenpeace photographer Fernando Pereira. His decoration in July coincided with the French navy storming of the Rainbow Warrior II when it entered the French exclusion zone around the Mururoa nuclear testing site in advance of the recent French nuclear test.

The first test took place on 5 September when a nuclear device, equivalent to 20,000 tonnes of TNT, was exploded underground at the Mururoa atoll despite protests by the indigenous inhabitants and anti-nuclear demonstrators. It provoked furious riots at the French colonial capital, at Papeete in Tahiti, which were only quelled with the arrival of French Legionnaires and paramilitary police. Despite environmental concerns over the damage inflicted on the fragile Mururoa atoll by previous tests France plans to explode several larger nuclear devices in the near future.

*Times* 3.8.95; *Le Monde*, 12.9.95.

### Security and intelligence - new material

**Diplomatic eavesdropping, 1922-1944: a new source discovered**, Robin Denniston. *Intelligence and National Security* Vol. 10, no. 3 (July) 1995, pp423-448.

**The puppet masters**, Stephen Dorril. *Guardian* 18.8.95. Piece on the Foreign Office's anti-communist propaganda unit the Information Research Department based on papers released at the Public Record Office.

**Game, set and match**, Robin Ramsey. *Tribune* 28.7.95. On the Labour Party which has "been much closer to the United States and its foreign policy aims than it wants the electorate - or party members - to know,"

**French intelligence culture: a historical and political perspective**, Douglas Porch. *Intelligence and National Security* Vol. 10, no. 3 (July) 1995, pp486-511.

**Spanish inquisition**. *New Statesman* 15.9.95. Piece on the Spanish government's involvement with the Anti-Terrorist Liberation Group (GAL) who killed over twenty people between 1983-1987.

**A conspiracy so immense...Murrell, Sgt Speed and 'Gladio'**, Stephen Dorril. *Lobster* 29 1995, pp20-25. This article investigates stories linking the killing of Hilda Murrell, the shooting of Sergeant John Speed, the miners' strike and Gladio.

**Feature:  
Gibraltar and Beyond**

Seven years and six months after the SAS shot dead three IRA volunteers as they strolled through the streets of Gibraltar, the European Court of Human Rights has ruled once again that the United Kingdom has violated the European Convention on Human Rights. The ruling, delivered on 27 September, was in regard to Article 2 of the Convention concerning the "right to life". It is the first occasion that the Court has sought to draw a line on the circumstances in which it is permissible for a state to take actions which may result in loss of life, in the wider interests of defending people from unlawful violence. The ruling, which was by a narrow majority of 10-9, overturned a previous judgement by the Commission. The Court further ruled that the

allegation that the killings were premeditated, in the sense that there was a plot to execute the three at the highest levels within the Ministry of Defence and government, was unsubstantiated.

The Court pointed out that it was not assessing the criminal responsibility of those directly or indirectly concerned. It accepted that the soldiers honestly believed that it was necessary to shoot the suspects to prevent them from detonating a nonexistent bomb and causing serious loss of life. But it argued that, by training, the SAS's use of firearms "automatically involved shooting to kill" and that such reflex actions "lacked the degree of caution in the use of firearms to be expected from law enforcement personnel in a democratic society, even when dealing with terrorist subjects". In deploying soldiers "trained to continue shooting until suspects are dead", there was a special onus on the authorities to control arrest operations carefully. This they had failed to do.

The Gibraltar killings were part of an extraordinary chain of events which began at least three months before the killings themselves and ended with eight people dead, two badly wounded, a further sixty-six hurt and more than forty people arrested and tried, including five people given double life sentences, convictions which have been the subject of serious controversy ever since (see *Statewatch* vol 2 no 4 & vol 3 no 1). The three IRA members, Mairead Farrell, Danny McCann and Sean Savage, were killed on Sunday 6 March 1988. They were flown to Dublin nine days later on Tuesday 15 March. The next day, the three were buried in the Republican plot at Milltown cemetery on the Falls Road in Belfast. As mourners gathered round to see the first coffin being lowered into the grave, loyalist Michael Stone

approached from the adjoining motorway, where a police van had also been spotted, and began to hurl grenades at the crowd. Stone's weaponry, which included a pistol, was part of the consignment of fragmentation grenades, AK47 rifles, pistols and a

dozen rocket launchers brought from South Africa in January 1988 in order to re-equip the three loyalist groups, the Ulster Defence Association, the Ulster Volunteer Force and Ulster Resistance. The shipment of these weapons was organised by Brian Nelson and Charlie Simpson who both worked for British intelligence (see *Statewatch* vol 2 no 2 & vol 3 no 2). Although Stone was clearly heavily armed, some of the mourners turned on him and began to chase him towards the motorway. As they caught up with him, the police intervened and took him into custody. Stone had killed three of the mourners, including republican activist Kevin Brady. Brady's funeral took place the following Saturday (19 March). As the funeral cortege proceeded down Falls Road, a car containing two British soldiers from the Royal Corps of Signals, Corporals Derek Wood and David Howes, drove towards the mourners, reversed in panic and then was stopped by the mourners. Once again, mourners believed they were under attack and indeed the soldiers had drawn their guns, one firing a shot in a desperate attempt to escape. They did not. As the international news cameras recorded, the two soldiers were dragged from the car, stripped and finally shot by the IRA.

Another aspect of the Gibraltar affair was the intense effort to control journalists and broadcasters who dared to question the Ministry of Defence and British government's account of the killings, and the vicious defamatory labelling of key eye-witnesses such as Carmen Proetta. The latter, described as "the tart of Gib" by the Sun, ended up issuing writs against seven British newspapers all of which resulted in her winning apologies and substantial damages. This control operated both at a petty level - eg Gibraltar's Attorney General refusing permission for the sale of an Ordnance Survey map to a journalist - and at a serious level. Seven weeks after the shootings, Thames TV broadcast "Death on the Rock", a programme which challenged much of the initial news coverage of the killings and contradicted the government's version of events using eye-witness accounts and written affidavits. This was followed by an equally challenging "Spotlight" programme made by BBC N. Ireland's current affairs unit and broadcast only in N. Ireland. The "Death on the Rock" controversy led to the Windelsham and Rampton inquiry which largely cleared the programme and rejected the criticisms of Foreign Secretary Geoffrey Howe that the broadcast might prejudice the Inquest proceedings in Gibraltar. Howe had personally phoned the IBA twice (the Chair Lord Thomson and Director of TV David Glencross) to get the programme dropped, but had not succeeded. Similarly he phoned the Chair of the BBC Governors Marmaduke Hussey to get the Spotlight programme withdrawn. The programme was broadcast on 5 May, the main repercussion of which was that Head of Programmes Arwel Ellis Owen was quietly sacked after a sabbatical at Oxford University.

"Why the Dogs had to Die" (Sun headline)

There was much at stake in the British government's portrayal of the Gibraltar operation. The concern over "shoot-to-kill" incidents in N. Ireland from 1982 had been sufficient to push the government into appointing Manchester Deputy Chief Constable John Stalker to conduct an inquiry in May 1984. Stalker was removed from this two years later and suspended from duties in Manchester just three days before he was due to complete the last part of his investigation in N. Ireland. His removal generated yet more allegations of government interference and cover-up (see *Statewatch*, vol 5 no 3).

First accounts of the Gibraltar killings were wrong in at least four respects. It was claimed that the IRA members were armed and a gun battle had taken place. Neither was true. It was claimed that they were shot after planting a massive car bomb: this was their intention but no bomb had been planted. It was stated that the Gibraltar police had carried out the killings when in fact it was the SAS. The Ministry of Defence acknowledged that military personnel were involved later that night but the rest of the story ran intact. The BBC reported confidently at 9.00pm that 500lbs of explosives had been found packed in a car, a Renault 5 which Sean Savage had driven into Gibraltar at about 12.30 earlier that day. As established at the inquest, however, the military knew by 7.00pm that the car was empty and had been designed as a "blocking car", reserving a space for the real car bomb to be moved into place possible on Monday evening. At 9.45pm ITN reported that a "fierce gun battle" had taken place and that the authorities had come close to disaster "with a bomb being left in a crowded street and a shoot-out when innocent civilians were in the area".

Monday's newspapers followed with similar stories but varied the bomb size from 400lbs to 1,000lbs. The Minister of State for the Armed Forces, Ian Stewart, spoke on the BBC's main early morning radio news programme of the bomb which had been designed to explode on Tuesday at the weekly changing of the guard to be conducted by the Anglian regiment.

By 3.30pm on Monday, the official version had changed considerably. Speaking in the House of Commons exactly 24hrs after the shootings, Geoffrey Howe acknowledged that the IRA members were not armed and that the white Renault 5 had not contained a bomb. From this point on, it became vital for the government to sustain the idea of massive threat in order to provide legal and moral legitimacy for the killings. This was achieved in two ways. Firstly, even if there wasn't a bomb, it was important for everyone concerned, including Opposition speakers, to talk as if there was a bomb and to encourage the view that it was entirely reasonable for the operatives on the ground to believe that the bomb had been positioned. Secondly, although the three IRA volunteers were unarmed, it was

important to cultivate the idea that the three had been challenged in the course of making an arrest but had made movements as if reaching for weapons and/or radio-controllers in a last ditch attempt to explode the bomb.

Evidence heard at the inquest, although circumscribed by public interest immunity certificates, as well as that reviewed by the European Court of Human Rights contradicted the new official version on almost every point of detail. The authorities had known about the IRA's Gibraltar operation for months. They knew the target, the day (Tuesday 8 March) and the personnel involved, including their false names and identities. The personnel were under MI5 surveillance in Spain (and Gibraltar) and a comprehensive plan was put together ostensibly designed to arrest the three once they set foot in Gibraltar. Detailed plans had been made enabling the execution of the plan to be handed over to the military by the Gibraltar police, thus maintaining the idea of "police primacy". Furthermore, written guidelines had been drawn up regarding the conduct of the "arrest" and secure police cells had been identified in which to detain the suspects. There were also guidelines for the use of force. The latter stated, "You and your men may fire without warning if the giving of a warning or any delay in firing could lead to death or injury to you or them or any other person, or if the giving of a warning is impracticable."

The ECHR could not understand why the three suspects had not been arrested at the border - McCann and Farrell, after all, had simply walked through the border control. Against this the government lamely argued that they did not have sufficient evidence to detain the three and might have to release them. If, however, there was any credibility in the shootings themselves, then the authorities clearly believed that Savage was driving the bomb into position. In which case he could have been caught in possession of the bomb at the border.

The ECHR also questioned the judgement of the pre-operational briefing that the bomb was likely to be radio-controlled or could be detonated as "a button job". The Court argued that this description "over-simplifies the true nature of these devices". (Five packages of semtex explosive, 64 kg in all, were later found by Spanish police in a car parked in a basement in Marbella. There were two timing devices and four detonators with the explosives but the bomb was not primed or connected.)

Evidence that warnings had been given and an arrest properly attempted was contradictory. Some of the military, MI5 and police witnesses claimed to have heard shouts, while one of the killers himself admitted that he intended to shout a warning as he shot McCann but was uncertain if the words actually came out. The gun men all testified that the suspects made various movements which constituted a threat, and all testified that they shot to kill because of the threat. Civilian eye-

witnesses suggested that McCann and Farrell had their hands up as they were shot and that they had heard additional shots after the bodies were on the ground.

The pathologists' evidence to the Inquest shed some light on the actual shootings but was hampered in a number of respects. There were clear defects in the post mortem procedure in that the bodies were stripped before the official pathologist, Professor Watson, saw them. This hampered work on establishing entry and exit wounds. There had been no X-ray facilities and the pathologist received no forensic or ballistic reports, nor a full set of photographs. According to the evidence of two pathologists at the Inquest, Farrell had been shot three times in the back, from a distance of three feet. She had five wounds to the head and neck. McCann had been shot twice in the back and three times in the head. Savage was "riddled with bullets" - "it was like a frenzied attack" Watson said. He had been hit by sixteen bullets and had seven wounds in the head and neck, five on the front chest, five on the back, one on each shoulder, three in the abdomen, two in the left leg, two in the right arm and two on the left hand. In evidence, Professor Watson agreed that it would be reasonable to suppose... that the bullets were fired into Savage's head as he lay on the ground. The other pathologist, Professor Pounder (appearing for the families of the victims), agreed that "Savage was struck by bullets when lying on his back on the ground by a person shooting standing towards his feet".

The ECHR ruling drew attention to one particular aspect of the killings which was not open to investigation at the Inquest because of Public Interest Immunity. This was the training received by the SAS. As the judgement put it, "it is not clear whether they (the SAS gun men) had been trained or instructed to assess whether the use of firearms to wound their targets may have been warranted by the specific circumstances that confronted them at the moment of arrest. Their reflex action in this vital respect lacks the degree of caution in the use of firearms to be expected from law enforcement personnel in a democratic society, even when dealing with terrorist suspects, and stands in marked contrast to the standard of care reflected in the instructions in the use of firearms by the police which had been drawn to their attention and which emphasised the legal responsibilities of the individual officer in the light of conditions prevailing at the moment of engagement."

The British government's response to the ruling was very much in keeping with the current of Euro-phobia sweeping the Conservative Party. Deputy Prime Minister Michael Heseltine suggested the ruling would encourage a "terrorist mentality", that the decision was "incredible" and that the government intended to ignore the ruling and do nothing about it. Later on, there were suggestions that the British government would withdraw from the ECHR jurisdiction, an improbable decision unless it is seriously contemplating withdrawal

from the EU itself (membership of the EU is conditional on member states subscribing to the Council of Europe's Convention on Human Rights). Another possibility is to withdraw the right of individuals to take cases to the Commission. Already, relatives of the dead in other shoot-to-kill operations are contemplating going to the Commission after the Court's historic ruling and the Committee on the Administration of Justice has already filed the case of the Loughall killings with the Commission. There are 357 cases of disputed killings involving either the British army or the RUC.

Sources: Amnesty International (1989) *United Kingdom: Investigating Lethal Shootings: The Gibraltar Inquest*; An Phoblacht/Republican News; Bolton, R. (1990) *Death on the Rock and Other Stories*, Optomen/Allen; *European Court of Human Rights, Case of McCann and Others v. the United Kingdom*, judgement of 27th September 1995; The Guardian; The Independent; Irish News; Irish Times; Jack, I. (1988) *Gibraltar*, Granta 25; Miller, D. (1991) *The media on the Rock: The Media and the Gibraltar Killings* in Rolston, B. (ed.) *The Media and Northern Ireland: Covering the Troubles*, Macmillan; Miller, D. (1994) *Don't Mention the War: Northern Ireland, Propaganda and the Media*, Pluto Press; Statewatch bulletin and database; Windelsham, Lord and Rampton, R. (1989) *The Windelsham/Rampton Report on Death on the Rock*, Faber.

## **TURF WAR: Phase Two MI5 and police carve out new roles**

The Prime Minister, John Major, announced on 13 October at the Conservative Party conference that a new national agency was to be created to tackle organised crime and that MI5, the Security Service, was to play an important supporting role. This would require, he said, new legislation to extend the powers of MI5, and it appears those of MI6 (the external Secret Service) and GCHQ (Government Communications Headquarters, the world-wide eavesdropping centre). The exact details have not been worked out yet - they are expected to be covered by a new Bill this autumn - however the changes are likely to include the following aspects.

### **NCIS**

The current National Criminal Intelligence Service (NCIS) with 500 staff has no statutory basis (see *Statewatch* vol 2 no 2). Its Director, Albert Pacey, reports to two Committees. The Resources Committee, which includes representatives from police authorities, covers finance and staffing, and the Standing Committee, of police chiefs and Home Office officials. All policy and operational matters are dealt by the Standing Committee - the Resources Committee is

precluded from considering the policies or activities of the NCIS. The involvement of representatives from police authorities - which then came under local government - was essential because most of the staff were seconded from local forces and paid for out of the common police services budget.

The new proposal will set NCIS up on a statutory basis and extend its powers. Due to the ad hoc nature of NCIS's creation its powers were limited to collecting and assessing information and intelligence. Currently NCIS pass on requests for action to the six Regional Crime Squads (RCS) - which are also comprised of seconded officers paid for out of local police force budgets - or a local Chief Constable. Its role will now be extended to cover operations, including surveillance operations, and making arrests. The appointment of a Commissioner or Chief Constable to head the NCIS may also follow as may the incorporation of the officers currently in the six RSCs.

## MI5

The involvement of MI5 to "support" the NCIS appears to mean they will work alongside NCIS officers carrying out surveillance and analysis tasks concerning organised crime. David Bickford, who was an MI5 director and legal adviser to both MI5 and MI6 until his retirement this year said:

"MI5 is expert in the art of gathering and analysis of covert information over the long term. MI5 officers delve into organisations, learning the command structures, understanding the people, and the pattern of illegal activities".

Some police chiefs argue that MI5 officers are not used to gathering evidence which can stand up in court, and defence lawyers are concerned about the practice of allowing MI5 officers to appear in court behind scenes to preserve their anonymity and the inability to question their methods.

The new Bill will also have to amend the Security Service Act 1989 which set out the current roles of MI5 - to counter espionage, sabotage, terrorism and subversion. It does have a further role to: "to safeguard the economic well-being of the United Kingdom against threats posed by the actions or intentions of persons outside the British Islands."(S.3.1. of the 1989 Act). However, the government intend to explicitly extend its role to cover organised crime. The government also intends to amend the Intelligence Services Act 1993 which covers MI6, the external intelligence service, and GCHQ. While MI6's (S.1) and GCHQ's (S.3) objectives include the "prevention and detection of serious crime" and they both have the "bug and burgle" powers of entry under warrant (S.5) which MI5 has, the use of warrants for serious crime is defined as a police power - a minor amendment is required. Under the 1993 Act

MI5 is empowered to execute a warrant in the UK on behalf on MI6 and GCHQ (see *Statewatch* vol 3 no 6).

## "Bug and burgle" powers

The net result of these changes will mean that MI5, MI6 and GCHQ will be empowered to tackle organised crime with extensive powers, under warrants - which can last up to six months - to enter, place "bugs" or audiovisual equipment in homes, offices or public places (like restaurants), or to "bug" vehicles. The power to "legally" enter property carries the danger that "items" might also be "left behind".

Now the police too want to have "bug and burgle" powers. Police organisations giving evidence to the Home Affairs Select Committee on Organised crime argued that the interception of telephone conversation or of mail is regulated by the Interception of Communications Act 1985 under which a warrant has to be obtained by a Secretary of State. Other forms of surveillance such as the placing of a "bug" (listening device) are used by police simply on the authority of a Chief Constable. Police witnesses giving evidence to the Committee called for "some form of legal authority to be established to underpin such activity". The Committee concluded that as they saw no "distinction" between telephone tapping and other forms of surveillance and that as the "police laid great emphasis on the value of such evidence" legislation should be introduced to meet their demands. The "distinction" the Committee did not see is the difference between monitoring phone calls and "bugging" all conversations held in a room or office - a major increase in the invasion of privacy. The police said that if they were given this new power it would have to be admissible in court and "then provision would have to be made to protect them from having to disclose the details of how it was acquired".

The evidence to the Committee from the Regional Crime Squads (RCS's) says that police use "technical equipment for covertly listening to conversations and tracking the movement of targeted criminals." Their evidence goes on:

"The authority for the use of such equipment is that of the Chief Constable, compared to S.3 of the Security Service Act 1989 that addresses the provision of a warrant for the use of such equipment. There is a need for legislation to be introduced to empower police officers to legally enter property. It is suggested that a warrant granting authority to enter premises or vehicles as necessary for the purpose of covertly installing technical surveillance equipment or discreetly verifying information, should be obtained on ex-parte application to a Circuit judge.... Ideally such authorities would relate to a specific overall investigation, rather than individual applications each time such entry is required throughout the term of the investigation." (*HC 18-II*,

p136).

The police organisations also argued the use of informants was essential but they needed to be protected from disclosure in courts case.

If the police are to be given these new intrusive powers to “bug and burgle” what limits will be placed on them? Will they be limited to very serious, exceptional, crimes? Or will they like the increasing use of informants become part of everyday police practice?

What is “organised crime”?

The Home Office evidence to the Select Committee said:

“there is no offence of committing an act of organised criminal activity and it is not possible to identify amongst recorded offences those which result from organised crime. As in other European countries, our knowledge of the nature and scale of organised crime is... at present largely descriptive.” (HC 18-II, p79).

The NCIS does have a working definition:

“Organised crime constitutes any enterprise, or group of persons, engaged in continuing illegal activities which has as its primary purpose the generation of profits, irrespective of national boundaries.” (HC 18-II, p87).

In December 1994 the Association of Chief Police Officers set up a 13-strong working party under Assistant Chief Constable Colin Phillips of the Greater Manchester Police to look into the relationship between international, national and inter-force crime. Its interim report was issued in the summer after consultation with police officers in the UK, Interpol, and those seconded to the Europol Drugs Unit in the Hague.

At the centre of the report is an attempt to define “the nature and extent of international and organised crime” and its found that “there is a wealth of opinion but little hard evidence”. It goes on to say that:

“the debate between academics closely mirrors that within the police service, and is dogged by the same lack of evidence which would support one or other view.”

Overall the report finds two opposing points of view. All agree that crime is on the increase and that a further increase can be expected due to political and economic changes in the world (though no mention is made of increases in “recorded” crime accounting for part of the increase):

“Some characterise this increase in apocalyptic terms, talking of the undermining of democratic states by organised crime and the destabilisation of the world

economy by drugs money. Others take a less pessimistic view and hold that a certain amount of crime will inevitably accompany the expansion of the world economy.. [and] that provided sensible precautions are taken the apocalyptic view is overstating the threat.”

MI5's shifting roles

MI5 was founded in 1909 to counter German espionage in the runup to the First World War. During that war MI5's counter-espionage role was extended to cover the defence of the British Empire. In 1931 it was formally given the job of counter-subversion, combatting “the internal enemy”, involving monitoring the trade unions, the Communist Party and leftwing groups. After the second World War the onset of the Cold War and the threat presented to the British Empire ensured MI5's expansion. In the early 1980s its roles were easily defined: counter-espionage, counter-subversion, counter-sabotage. In addition MI5 had taken over as the lead agency in Northern Ireland from MI6 in 1973 and for 25 years Irish-based terrorism provided another key role.

The fall of the Berlin Wall in 1989 threatened MI5 existence. They had already seen their role in the British Empire diminish as it became the Commonwealth - though the two-yearly meeting of the Commonwealth Security Conference of internal security chiefs are still held. The end of the Cold War removed the threat of Soviet espionage and Communist “fellow-travellers”. This coincided with the outlawing of collective trade union action so the threat of “subversion” virtually disappeared too.

As MI5 cast around for new roles the two most obvious ones were terrorism and organised crime, traditionally the preserve of the police. In 1992 MI5 took over the lead role in combatting IRA terrorism in Britain which had been the preserve of the police Special Branch since its formation in 1883. Now, in 1995, it looks set to gain a toe-hold on organised crime.

Almost unseen MI5 has developed another role in Europe. Since the formation of the Trevi Group in 1976 they have been involved in the EU. This was initially through the issue of terrorism but this developed to include drug trafficking as well - a way into “organised crime”. The Director-General of MI5, Stella Rimmington, described MI5's new European role in a recent speech:

“Working within the framework of a wider government policy, and in close cooperation with our colleagues in MI6, we made contact with our former adversaries in the Eastern bloc. Our main aim was to assist the process of transforming the newly reconstructed security and intelligence agencies into effective, democratically controlled services. One of the most important contributions we could make was to provide advice on how to counter terrorism, in the face of their natural

anxiety that opening up their borders might bring terrorism flooding in."

Where in the 1950s MI5's remit was "internal", its geographical sphere of operations being the UK and the Empire, now it is the UK and Europe (West and East). Where once its concerns were almost exclusively espionage and subversion, now it works with its European counter-parts on terrorism and "the proliferation of weapons of mass destruction" (the trafficking of nuclear material) with Russia.

## Conclusion

The planned changes in the roles in the UK of the police, MI5, MI6 and GCHQ are line with similar ones in other EU countries. The end of the Cold War has led to "turf wars" between police and internal security agencies seeking new post-Cold War roles. The effect seems to be that police forces start to adopt techniques of surveillance historically associated with tracking down "spies" and "subversives" - greater use of paid or "controlled" informants and infiltrated agents, sophisticated "bugging" of telephones and conversations, mail-opening, interception of telecommunications (faxes and e-mail), changes in the rules of legal evidence to protect their sources and methods, and less accountability (as "organised crime" is ideological equated to "terrorism").

*National security and international understanding*, speech by Stella Rimington, Director-General of the Security Service (MI5) to the English Speaking Union on 4 October 1995; *Interim report on International, national and inter-force crime*, Assistant Chief Constable C Phillips; *National Criminal Intelligence Service*, Annual Report for 1994/5; *Organised crime*, Home Affairs Select Committee reports, HC 18-I (17.7.95) & HC 18-II (16.11.94), HMSO.

## Feature:

### Common visa list

A new common visa list has been drawn up for all EU member states, defining which countries' nationals require visas for admission to any EU state. The list contains 98 countries and three entities not recognised as countries by all member states (Taiwan, Macedonia and the Federal Republic of Yugoslavia (Serbia and Montenegro). Bosnia is not on the list, but Rwanda, Burundi, Nigeria, China, Sri Lanka, Turkey and other countries where there are severe conflicts, civil wars or grave human rights violations are. The effect is to make it virtually impossible for refugees from those countries to seek refuge in the EU, for without visas they cannot board flights or ships taking them to the EU.

The new list agreed at the meeting of the Council of Justice and Home Affairs Ministers on 25 September creates two separate lists in the EU, plus national visa

lists. The Schengen visa list of 129 countries and the EU list of 101 countries. Officials say this is going to create utter confusion if a visitor with a visa chooses to visit Schengen countries not on the EU list. Border officials and police will not know whether to allow entry or not, particularly if a visitor is passing from an EU country through a Schengen country on the way to another EU country. For example, a visitor could land in Denmark and want to travel through Germany and France on the way to the UK or Ireland or to Italy or Greece (neither of which have ratified the Schengen Agreement yet).

A Schengen official said:

"The EU now has three categories - three lists of countries. The first for people from places such as Switzerland who do not require a visa in any EU country, the second is the main list of places such as Iraq and Libya from which everyone requires a visa, and the third includes countries such as Canada whose citizens need a visa to visit Spain, but can travel freely in the rest of the EU". *European*, 28.9.95.

Two of the six countries in central and eastern Europe, Romania and Bulgaria, are on the EU list. The Bulgarian Justice Minister, Mladen Chervenjakov, said the decision was "unjust". At the formal session of the EU Council of Justice and Home Affairs Ministers and their counterparts from the six countries on 25 September Mr Chervenjakov insisted that his full statement of objection was read out to the whole meeting. The Romanian government expressed similar views as this leaves their citizens in the position that Germany, which does not require Romanians to hold visas to enter, will have to conform to EU policy.

The UK Foreign Secretary told the House of Commons Foreign Affairs Committee in July that: "a Common Visa list is *not* the same thing as a common visa policy... We will be free to impose visa regimes on states not on the common visa list" (emphasis in original).

*Council Regulation (EC) no 2317/95 of 25 September 1995*, determining the third countries whose national must be in possession of visas when crossing the external borders of the Member States, *Official Journal*, no L 234, 3.10.95, pages 1-3.

## CHART 1:

EU visa list agreed on 25 September 1995

101 countries, compared with 129 on the list proposed by the Commission (which was based on the list used by the Schengen countries). 28 countries have been removed from the Commission list, but one country, Peru, has been added.

Afghanistan  
Albania  
Algeria  
Angola  
Armenia  
Azerbaijan  
Bahrain  
Bangladesh  
Belarus  
Benin  
Bhutan  
Bulgaria  
Burkina Faso  
Burundi  
Cambodia  
Cameroon  
Cape Verde  
Central African Republic  
Chad  
China  
Comoros  
Congo  
Cote d'Ivoire  
Cuba  
Djibouti  
Dominican Republic  
Egypt  
Equatorial Guinea  
Eritrea  
Ethiopia  
Fiji  
Gabon  
The Gambia  
Georgia  
Ghana  
Guinea  
Guinea Bissau  
Guyana  
Haiti  
India  
Indonesia  
Iran  
Iraq  
Jordan  
Kazakhstan  
Kyrgyzstan  
Kuwait  
Laos  
Lebanon  
Liberia  
Libya  
Madagascar  
Maldives  
Mali  
Mauritania  
Mauritius  
Moldavia

Mongolia  
Morocco  
Mozambique  
Myanmar  
Nepal  
Niger  
Nigeria  
North Korea  
Oman  
Pakistan  
Papua New Guinea  
Peru  
Philippines  
Qatar  
Romania  
Russia  
Rwanda  
Sao Tomé and Príncipe  
Saudi Arabia  
Senegal  
Sierra Leone  
Somalia  
Sri Lanka  
Sudan  
Suriname  
Syria  
Tajikistan  
Tanzania  
Thailand  
Togo  
Tunisia  
Turkey  
Turkmenistan  
Uganda  
Ukraine  
United Arab Emirates  
Uzbekistan  
Vietnam  
Yemen  
Zaire  
Zambia

plus three "entities not recognised as states by all Member States" (of the EU):

Taiwan  
Former Yugoslav Republic of Macedonia  
Federal Republic of Yugoslavia (defined as: "Serbia and Montenegro")

CHART 2: On SCHENGEN LIST but not on EU LIST:

28 countries have been left off the original list proposed by the Commission which was the same as the Schengen visa list:

Antigua and Barbuda



Bahamas  
Barbados  
Belize  
Botswana  
Dominica  
Grenada  
Kiribati  
Lesotho  
Marshall Islands  
Micronesia  
Namibia  
Nauru  
Northern Mariana Islands  
St Christopher and Nevis  
St Vincent and Grenadines  
Santa Lucia  
Samoa (Western)  
Seychelles  
Solomon Islands  
South Africa  
Swaziland  
Tonga  
Trinidad and Tobago  
Trust territory of the Pacific Islands (Palau)  
Tuvalu  
Vanuatu  
Zimbabwe

Source: comparison of agreed list with original proposal

CHART 3: The so-called "White list" of 17 countries exempt from having to obtain visa under the Schengen list, the Commission proposal and the EU list:

Andorra  
Canada  
Czech Republic  
Hungary  
Iceland  
Japan  
Liechtenstein  
Malta  
Monaco  
New Zealand  
Norway  
San Marino  
Slovakia  
South Korea  
Switzerland  
USA  
Vatican

(Austria, Finland and Sweden were on the list but are now EU member states)

Source: Schengen list and Commission's unpublished "white list"

CHART 4: there are in addition 28 countries which are not on the EU list, the Schengen list, or the "white list" which *may* need visa to enter some EU states.

Argentina  
Australia  
Bolivia  
Bosnia  
Brazil  
Brunei  
Cyprus  
Colombia  
Costa Rica  
Croatia  
Ecuador  
El Salvador  
Guatemala  
Honduras  
Israel  
Jamaica  
Kenya  
Malayasia  
Malawi  
Mexico  
Nicaragua  
Panama  
Poland  
Singapore  
Slovenia  
Uruguay  
Venezuela

Source: Schengen list

CHART 5: How the EU breaks down:

Countries operating the Schengen Agreement and the computerised Schengen Information System (SIS):

Netherlands  
Belgium  
Luxembourg  
Germany  
Portugal  
Spain  
France (has opted out at least until the end of 1995)

Countries which have signed the Agreement but have not ratified it and who, in addition, need to introduce data protection legislation:

Greece  
Italy

Countries which have applied to join:

Austria (has observer status)  
Denmark (has observer status)

Sweden  
Finland

Countries outside the Schengen Agreement:

UK  
Ireland

EU

### **Complaints by football fans rejected**

A series of complaints lodged by Liberty with the *Comité Permanent de Contrôle des Services de Police* (the Belgian Police Complaints Authority) on behalf of two Welsh football fans has been rejected (see *Statewatch*, vol 3 no 2 & vol 4 no 5). The report from the *Comité* to Liberty's legal officer dismissing the complaints by the Boore brothers, Gwilim and Rhys, hinges on the allegations that Rhys Boore and another football fan were arrested because: "Due to the police report, they disturbed public order during the identification procedures" (at Gare centrale railway station in Brussels on 17 November 1992). The report goes on to say that:

"It is particularly difficult to examine and control the facts, not only because they occurred several years ago, but also because massive actions in the field of public order generally do not lead to a profusion of official documents."

The saga began back in November 1990 when the brothers went to support the Welsh football team in Luxembourg. They and 30 other fans were taken off a train at Arlon on the Belgian-Luxembourg border by armed Belgian police. Their baggage was searched and their names, addresses and dates of birth listed. The *Comité* report confirms that: "The list was sent to the UK by the Luxembourg authorities". The list had been sent to the National Criminal Intelligence Service (NCIS) in the UK. In response to a data subject request, under the Data Protection Act, the NCIS records had recorded that they and others had: "Caused disorder en route." (see *Statewatch*, vol 3 no 2) which was quite erroneous.

The *Comité* report confirms that it was the NCIS who provided a list of 151 names on 6 November 1992 when the Welsh football team was again playing away. On 16 November 1992 the Boore brothers and 62 other fans were "controlled" (checked) by the police at Kortrijk station. As their names were on the list sent over by the NCIS this fact was forwarded to the Gendarmerie in Brussels and when the train arrived at Central station they were again "controlled" having to "prove their identity". The report then says: "Two persons were arrested, Rhys Boore and another football supporter. Due to the police report, they disturbed public order during the identification process". This is totally denied

by Rhys Boore. The NCIS record of this event - which ended up back on their records - said that he was "under the influence of drink and disturbing the public order during an identity check. He did not appear to have an identity papers with him when arrested". Rhys Boore and others on the trip totally deny they were drunk and Rhys had a credit card as identity which others who were released present to the police. Rhys Boore was held for 16 hours, strip-searched and told that he was being held because his name was on the NCIS list. He was deported, handcuffed, on the ferry to the UK.

The *Comité* report concluded that the "Belgian police services cannot be accused of a law infringement" and that now no records on the brothers was being held in Belgium. The report ends with the comment: "Today, the use of the means of coercion is submitted to a more stringent legislation, that is in accordance to European conventions concerning civil rights protection. Hence, one could expect such incidents belong from now on to the past."

The NCIS says it no longer holds any records on the brothers and the legal department of the European Commission which took up the case want to close the case. However, Liberty's legal officer Philip Leach, has asked them to refrain from doing this as it has not been confirmed which lists there were on or to which other states or organisations this information had been sent. Nor has any reply been received, after a year, from the Belgian government who were requested by the Commission to remove the brothers from all official records. Although their names have been removed from Belgian police records it transpired that the UK Foreign Office Consular Department has its own "database" and it is not known to whom they have passed their names.

*Comité Permanent de Contrôle des Services de Police*, letter 3.10.95; *European Commission*, DG XV, letter 6.10.95.