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IMMIGRATION & ASYLUM

DENMARK

Turkish surveillance of Kurdish community

The case of a Kurdish citizen, Kemal Koc, shows that the Turkish embassy keeps Kurdish people in Denmark under surveillance - despite the embassy's denial.

Koc, 39, came to Denmark in 1972 and became a Danish citizen in 1992 after being deprived of his Turkish citizenship because he did not undertake military service. On 7 July he returned to Turkey for the first time to go to his brother's funeral. When he arrived he was taken aside at the passport control because his name was listed on the State Security Court computer (DMG).

He was taken to the closed prison in Ankara and interrogated for ten hours during which he was beaten, sprayed with cold water and hot air and thrown into rubber covered walls. He was repeatedly asked to confirm information about his activities in Denmark in support of the Kurdish peoples' struggle against the Turkish state. From the questions the interrogators asked it was obvious that they had an intimate knowledge about him and his activities and even about the local geography of the neighbourhood in which he has a small grocers shop. He was also asked to identify people from photographs taken in Denmark. During the interrogation it also became apparent that the police had detailed information about the political situation among the Kurdish community in Denmark. They even knew who participated in a meeting in which Kemal took part.

Eventually, this treatment - during which he was blindfolded most of the time - made him submissive. He was given a set of earphones in which a voice ordered him to repeat what he was told. Then something was put against his temple which he believed was a gun. At this point he signed the papers which he - still blindfolded - was directed to sign.

The Turkish authorities then prepared a written indictment. Koc's offence was support of the Kurdish struggle ("support of armed terrorists"). This support, according to the indictment, had taken the form of

financial contributions to a Kurdish information office in Copenhagen, visits to a Kurdish cultural centre, participation in a demonstration against Turkey's policy towards the Kurdish minority in Turkey and being a delegate at a meeting in Germany in the Kurdish parliament in exile. All these activities are legal in Denmark.

The case has been closely followed by representatives from the Danish Human Rights Centre, Danish journalists and politicians. One of them, Mr Soren Sondergaard (Enhedslisten/The Red-Green Alliance), who has studied the written indictment said:

"The accusations against the Danish citizen is clearly based on surveillance of the man's legal political work in Denmark. It is scary".

A close reading of the indictment shows that Kemal Koc has been under surveillance from as early as 1992 when his Turkish citizenship was annulled by the Turkish authorities. His lawyer, Yusuf Alatas, said according to Ekstra Bladet:

"Many things looks as if the Turkish police and intelligence service have been watching the man. A document for instance shows that the Turkish branch of Interpol in 1993 wanted further information about my client".

The surveillance may date back even further, according to the chairman of the Justice Committee in the Danish parliament (Folketinget) Mr Bjorn Elmqvist. After a meeting with the Turkish ambassador, Faruk Logoglu, Mr Elmqvist told the newspaper *Berlingske Tidende*:

"Without it being said directly it was my impression, that it [surveillance of Koc] had taken place since then [1991]".

The Turkish ambassador denies that any surveillance took place after 1992, but the charges in the indictment refer to episodes which took place after this.

That the Turkish authorities - including the embassies - are watching Kurdish immigrants in Europe is confirmed by the Turkish human rights

organization, IHD. The deputy general secretary, Nazmi Gur, told the Danish news agency *Ritzaus Bureau* that Turkey had stepped up the surveillance of Kurds living in Europe and added: "It is clearly one of the jobs of the embassies to gather information".

Kemal Koc was held in prison for 42 days before appearing in court on August 15. The Security Court in Ankara was headed by three judges, two civil and one military. The Danish embassy provided Koc with a lawyer, Yusuf Alatas. He argued that the trial was unlawful because the confessions were forced from his client under torture. The prosecutor said that Koc had violated Turkish law and had threatened the Turkish state. According to Turkish law this gave them the right to prosecute Koc even though he is not at Turkish citizen. He faces a sentence of between three years and nine months and seven and a half years.

The court eventually released Koc and postponed his trial until September 19 in order to give police time to investigate whether the Kurdish cultural organization, KOMAL, of which Koc is a member, is illegal in Denmark and if he participated in the meeting of the Kurdish exile-parliament in Germany.

After being released Koc was expelled to Denmark and with the help of the embassy did not show up at the second trial. The case was postponed until October 22. Before the second meeting Koc confirmed that he is a member of KOMAL, which is legal in Denmark and that he participated in the meeting in Germany, which is also legal.

Kemal Koc's troubles have not ended. Since returning home his flat has been broken into and searched. He has also had telephone threats. Although it has not been established who did this the "Grey Wolves" - a fascist Turkish organization supported by the police - is working in European countries where there are Kurdish immigrants. They are also known to be active in Denmark.

Koc is now considering taking his case to the European Court of Human Rights in Strasbourg, which the Danish government is also planning if he is convicted at the next court hearing.

Kemal Koc's case is not the only one. In a similar case in Switzerland a Kurd with Swiss citizenship, Mr Yusuf Yesligoz, was seized by police in Istanbul. According to the newspaper *Ozgur Politika* Mr Yesligoz was arrested during a visit to his family. In a statement Mr. Yesligoz's lawyer said that his client

was arrested because he published the book: "An introduction to Kurdish literature" by Mehmed Uzun.

The case of Kemal Koc is viewed by experts and politicians as illustrative of the Turkish authorities general policy towards Kurds in exile. Cases like this signal to Kurds that they are being watched and that if they stand up for Kurdish rights or criticise the Turkish state they know what could happen to them.

Footnote: *In an interview last month with a Danish newspaper Mr Kendall, head of Interpol, said of the potentially competing police intelligence systems in the EU - Interpol, Europol Drugs Unit, Schengen Information System, and national computer systems like the National Criminal Intelligence Service (NCIS) in the UK:*

"To be quiet honest, a few years ago there were disagreements and problems, but now things are falling into place. In most of the countries the terminals with access to the different systems are placed in the same office" (italics added).

This suggests that the formal or informal cross-linking of information or "intelligence" between the different systems is or may become the norm. It is already well-known that the informal, and often unrecorded, exchange of information between individual police officers in different EU states has become established practice since the 1980s when the first contacts were made through the working parties of the Trevi group.

Written indictment: (Investigation: 1996/625; Case: 1995/95. Indictment: 1996/70). Ekstra Bladet, 13.8.96, 15.8.96; *Politiken*, 18.8.96; *Information*, 14.8.96; *Ritzaus Bureau*, 18.8.96; *Berlingske Tidende*, 20.7.96; *Kurdistan-Manniskoratts bulletin*, no 10, July/August 1996.

NORWAY

Permission to stay refused

Sumbel Pervaiz, aged 23, from Pakistan, whose mother, father and sister are Norwegian citizens has been refused permission, together with her son (aged 2), to stay in Norway. Sumbel broke with her husband's family in Pakistan because of his violent

behaviour towards her. After her departure the disagreement between the two families has increased.

Now the Minister of Justice in Norway, Grete Faremo, wants to send Sumbel and her son back to her husband in Pakistan. They have been waiting for this decision for 22 months, and the Norwegian authorities have taken more than 15 months to deal with her residence application. This rule usually implies that if an applicant has to wait for more than 15 months, they will automatically get permission to stay in Norway.

The Norwegian authorities claim that Sumbal has stronger bonds with Pakistan than to Norway, where her father, mother, and sister are residents. Sumbel's lawyer, Trygve Tvetter, fears that there will be two classes of Norwegian citizens, those with a Norwegian background, and those with an immigrant background, and that this would never have happened to a family with a Norwegian origin. Sumbal's mother was hospitalized in a psychiatric institution because of a nervous breakdown when she learnt that her daughter had been refused permission to stay. Despite this, Justice Minister Faremo will not let Sumbal stay in Norway, even on humanitarian grounds.

Dagbladet 7.10.96.

AUSTRIA

Turkish immigrants

The administrative tribunal has ruled that Turkish citizens who have been living for at least five years in Austria enjoy the same freedom of movement as European Union nationals. The EU signed an Association Agreement with Turkey in 1963 which puts Turkish citizens by and large on an equal footing with EU nationals. The Austrian court ruled that Austria has to fulfil this obligation now that it has joined the EU. This is good news for the spouses and children of Turkish workers who have not been allowed to work. However, the largest migrant group from former Yugoslavia which makes up over 50% of migrant labour is not affected. Particularly the Serbs and Macedonians are disadvantaged. The Croats and Bosnians have the support of the Austrian government because of Austria's stance during the war. Interior Minister Einem has declared that this ruling could be an "orientation" for the future treatment of other immigrant groups in Austria. The

principle would be "improved integration, restrictive immigration policy". The right-wing FPÖ has called for the renunciation of the Association Agreement with Turkey.

Salzburger Nachrichten, 31.7.96; 1.8.96; 10.8.96; *Der Standard*, 7.8.96.

GERMANY

Deportation of Bosnian refugees

Germany took another step towards deporting Bosnian war refugees on 10 October when it signed a repatriation agreement with the rump Yugoslavia. German Interior Minister Kanther emphasized that the agreement "underscores the fact that Germany is not a land for immigrants". About 2,500 refugees from former Yugoslavia are arriving in Germany each month. Bavaria deported the first Bosnian refugee on 9 October. On 1 October an agreement from last August between the federal states and the Interior Ministry, on a 3-phase programme to deport the refugees came into effect. Single people and childless couples are to be expelled first. However, only four states said they would enforce it immediately.

Guardian, 20.9.96; *International Herald Tribune*, 10 & 11.10.96.

SPAIN

Regularisation of immigrants

24,389 immigrants, the majority of them Moroccan, applied for legal status under a one-off regularisation programme between April and August 1996. This is fewer than the 60,000 expected by the Ministry of Labour; this is an indication of the difficulties posed by the amount of documentation required. Estimates of the number of immigrants unable to use the procedure exceed 100,000. Only those who were already resident in Spain before 1 January 1996 and in possession of a limited work permit were eligible to apply for the residence permit. This scheme is the result of an agreement in February to modify Spain's restrictive Foreigners' Law of 1985, and is in sharp contrast to the tough French anti-immigration line. *Independent*, 23.8.96; *Guardian*, 24.8.96; *Times*, 20.8. & 3.9.96.

SPAIN

Boat people

The arrival of African immigrants on small boats,

"patera" (small, fragile boats used to cross the Strait) continued at an increasing rate through the summer. Almost every day several dozen people were reported to have landed, bringing the total to more than 1,500 by the end of September. Several women were among those recently detained, including one who was pregnant. On 23 August five Moroccans were arrested after crossing the Strait on a pedalo! The authorities frequently responded by returning the migrants to Morocco within 24 hours. The figures given do not include the many believed to have drowned in the Strait without reaching the Spanish coast, given the sea conditions and the unseaworthiness of the vessels generally used.

The number of illegal immigrants detained in Spain since the start of 1996 is around 8,000.

Immigration - in brief

Spain: Deportee shot by Guinea-Bissau police: The police in Guinea-Bissau have shot dead one of the 103 African immigrants expelled from Spain at the end of July. The death occurred during a demonstration in which 45 deportees took part to demand better conditions in detention and their return to Spain. The dead man was a Nigerian, as was another who was wounded in the episode.

Spain: Reinforcement of Melilla perimeter: Troops of the Spanish army have been engaged in laying ten kilometres of razor wire along the fence marking the border between the Melilla enclave and Morocco, replacing the wire installed in 1971.

Belgium: Kurds targeted in police raids: Over two hundred police were involved in raids on Kurdish households. The campaign was primarily targeted at people who are involved in the television company Med-TV, who used to broadcast Kurdish programmes by satellite until they were closed down. The Belgian Justice Ministry accuses the company of being a front for the PKK. Over BF350,000,000 has been confiscated. Other organisations targeted in the raids included the Belgian Parliament for Kurds in exile, as well as private individuals. *De Morgen*, 19.9.96.

Belgium: In August, the Belgian state police refused entry to three French children aged seven, 11 and 15, held them for six hours and deported them to Algeria.

Their Algerian parents, who were waiting at the airport in Belgium to pick the children up and drive them to Paris, were not allowed to explain to the border police that as French citizens, the children did not require residence permits. Nor did the police contact the French authorities to check the children's status. *IRR European Race Audit*, no 20, October 1996.

France: A Moroccan who had lived and worked legally in France for 25 years was expelled for keeping the bag of an illegal entrant. The man was charged with aiding and abetting a clandestine immigrant after holding his compatriot's bag for a few days. Convicted in September 1995, he was sentenced to six months imprisonment and banishment for five years, and his residence permit was withdrawn. He was selected for the 22nd collective expulsion by chartered aircraft on 7 August. Interior minister Debre announced his intention to increase the frequency of collective expulsions from two to three a month from September. *Migration NewsSheet*, September 1996

Immigration - new material

Another brick in the wall: the 1996 Asylum and Immigration Bill, Steve Cohen. *Greater Manchester Immigration Aid Unit* 1996, pp8. This pamphlet examines the 1996 Asylum & Immigration Bill "which is aimed at keeping out black people and refugees." Available from GMIAU, 400 Cheetham Hill Road, Manchester M8 9LE.

NCADC Newsletter. National Coalition of Anti-Deportation Campaigns No. 3 (July-September) 1996. The NCADC incorporates 56 separate anti-deportation campaigns and organisations. This issue of its bulletin contains articles on the cases of Albert Tong, Mumtaz Begum, Bayo Omoyiola and the Onibiyo Family campaign and updates on others. Available from: John O, NCADC, 22 Berners Street, Birmingham B19 2DR.

Recent developments in immigration law, Rick Scannell, Jawaid Luqmani and Chris Randall. *Legal Action* July 1996, pp 18-21. Latest update of developments in immigration law. This piece includes a summary of the "statement of changes in immigration rules, HC 329".

Europe: from refugee to terrorist, Frances Webber & Liz Fekete. *Race and Class* Vol 38, no 2, pp77-82. On the expansion of emergency and anti-terrorist laws across Europe and their use in the criminalisation of refugees.

The Asylum and Immigration Act 1996: what it means; related measures; timetable, Refugee Advisers Support Unit. *RASU Bulletin* September 1996. This bulletin examines the likely effects of the measures contained in the Asylum and Immigration Act 1996 and considers related measures in the Housing Act 1996 and the Asylum Appeals Procedure Rules 1996. Available from: 3 Bondway, London SW8 1SJ.

Greece. Le point sur la situation des droits de l'Homme. *La Lettre de la FIDH*, No. 655-656, 5-12.9.1996, pp.5-10. Report on the human rights situation in Greece, including the treatment of minorities, immigrants and refugees, religious freedom, freedom of expression, police violence and judicial independence.

CIVIL LIBERTIES

SPAIN

Official Secrets Law

Following the scandals around the involvement of the intelligence service, CESID, in the GAL affair, and illegal surveillance activities, including telephone tapping, against political figures including the king, the Partido Popular (PP) cabinet has approved the text of an Official Secrets Law to be presented to Parliament.

The theme running through the draft law is that of guaranteeing complete immunity for the actions of the government. Indeed, the list of activities which may be subject to official secrecy is so wide-ranging that it covers virtually all functions of the state. This has the effect of making secrecy the norm rather than the exception. Moreover the power to decree any matter secret is not reserved to the cabinet, but given to each and every minister, thus imposing a regime even more restrictive than the present law which

dates from the Franco era. Another striking characteristic of the proposed law is the complete absence of any means of challenging the government's exercise of its discretion, even in relation to acts which appear to be illegal. The relevant agency is even empowered to refuse to declassify documents which are subpoenaed by a court in a criminal case, with no provision for appeal. Given that the press has led the way in denouncing illegal activities of the state, the draft law specifically deals with the media by setting out fines of up to 100 million pesetas for publishing any document classified as an official secret. The icing on the cake is the fixing of a 50-year maximum period before the declassification of any document.

The opposition with which the draft law was predictably met led the government to halt its transmission to Parliament and to set it aside for the present. Several ministers have claimed that they were unaware of the content of the law, despite having approved it in cabinet, until they read the press reports on the following day. Defence minister Eduardo Serra, the sponsor of the bill, has once again been thwarted.

SPAIN

Misuse of computerised personal data

In 1995 The Data Protection Agency (APD) issued 508 notices of sanction upholding complaints from the public, including 190 relating to the improper use of personal data. In the first five months of 1996 the number of complaints giving rise to sanctions rose to 878.

The greatest frequency of non-compliance with the standards was found in the bad debt registers of several banks and financial institutions. The APD has decided to set up a systematic oversight of those types of data which it has determined "deserving of particular vigilance and checking"; these include solvency and bad debt files in the banking and finance sector, hospital files and those of the state security agencies. The refusal of the Civil Guard to submit its drug trafficking and terrorism files to the APD's inspection led to the Agency launching a legal action against them in July. The APD informed the government that if it persisted with that exception in making its obligatory report to the relevant EU authorities, the result would be that the Spanish

police forces would be unable to participate in the Schengen Information System, which requires compliance with existing legislation on data protection. On 24 September the Civil Guard finally complied, permitting the APD to inspect its computer archives and thus avoiding a legal battle.

GERMANY

Internet shutdown

In September the German authorities closed down all Internet contacts the service provider XS4ALL because they allowed a customer to put online the home page of "Radikal", a political magazine supported by "Germans-in-exile" in Amsterdam. The German authorities consider this to be "supporting a terrorist association". XS4ALL became accessible again from Germany after they took the Radikal home page off the air for a few days, but then it came back again.

Civil Liberties - new material

Trial News. *McLibel Support Campaign* Issue 3 (August) 1996. Latest update on the legal battle between the McDonald's food corporation and two London Greenpeace supporters who had the temerity to question their environmental, nutritional and anti-trade union policies. Available from McLibel Support Campaign, 5 Caledonian Road, London N1 9DX.

Equal pay, sex discrimination and EC law, Andrew Bowen. *Legal Action* July 1996, pp10-12. Examines how European equal pay law has transformed the equivalent UK law, particularly in the fields of part-time work, pay differentials and pension entitlement.

Turkey: no security without human rights, Amnesty International. *AI Briefing* (October) 1996, pp12 £7.99. Report from Amnesty that documents the "crescendo of human rights violations in Turkey during the 1990s", and highlights the urgent need for legal reforms and government and international action. Available from AI, 99-119 Rosebury Avenue, London EC1R 4RE.

Identity cards. Home Affairs Committee, House of Commons, Vol 1 and 2. 26 June 1996, HMSO, Report from the Committee: HC 172-I (£9.70) and Minutes

of evidence: 172-II (£20.50).

EUROPE

DENMARK

Infringement of the Danish constitution?

In 1993 eleven Danish citizens took an action against the Danish state claiming that the transfer of sovereignty through the Act of Accession of 28 April 1993 was a violation of Article 20 of the Danish Constitution. The Treaty they said transferred sovereignty in contravention of this law.

The crucial question is whether the Accession implies handing over legal competence only to a "specific extent" and by implication of a limited nature. In the opinion of the eleven the Maastricht Treaty could only have been signed if the amendment procedure in Article 88 had been effected - this requires two positive votes in parliament with an election inbetween plus a referendum. In 1994 the High Court refused to admit the case claiming that none of the eleven citizens could document how they personally had an actual and direct interest which was being violated.

The issue then passed to the Supreme Court which pronounced, unanimously, on 12 August that the High Court had to hear the case. In making this decision the Supreme Court opened the way for any citizen to assert a violation of their rights on behalf of the population as a whole. The Supreme Court in coming to this decision underlined its role in controlling the Constitution. As no specific interests had been violated the court will, for the first time, conduct a judicial review - comparing an act of parliament with the basic law. The case will now go back to the High Court where any decision can be appealed by the eleven or the State to the Supreme Court. The case has also raised the question whether Denmark needs to have a Constitutional Court like those in Germany and France.

At the political level the case may well influence the ability of the Danish government to sign a new Maastricht Treaty which will come out of the current Intergovernmental Conference in 1997. The Justice Minister claims the case can be dealt with in a year to eighteen months but lawyers estimate it could take 4-

5 years given the complexity of the case.

Senior Lecturer in Constitutional Law at Copenhagen University, Henning Koch, calls attention to the fact that "a sliding cessation of sovereignty" has taken place since 1973 when Denmark joined the EU. Over this period there were 400 cases where Danish Ministers, after a mandate from the parliament, had taken part in unanimous decisions in the EU Council of Ministers to extend the use of Article 235 in the Treaty of Rome creating new law-making competencies. This is in contradiction to Article 20 of the Danish Constitution.

EU

Spain and the Convention on Extradition

The Justice and Home Affairs ministers of the EU signed in Dublin on 29 September the new European Convention on Extradition, which obliges any signatory state to accede to an extradition request from another member state concerning persons accused of terrorism or related offences, and which does away with the concept of a political offence. The Convention has had a somewhat difficult passage. It was unable to win approval at the European summit meeting in Florence in June because of the opposition of five EU countries (the UK, the Netherlands, Ireland, Portugal and Belgium). In July the Dutch again blocked the revised text put forward by Spain, on the grounds that it "stretched to the limits" their Penal Code. The UK also created difficulties by attempting to strengthen the provisions relating not just to trafficking, but to the possession of drugs. There had already arisen tensions between Belgium and Spain, when Belgium declined in February to extradite two alleged ETA members, and this recurred in June when the Basque political refugee Pagoaga Gallastegi was allowed to enter Belgium.

There is continuing "harmonisation" in relation to the granting of extradition requests against persons sought by Spain on charges of collaborating with armed groups. In June Germany finally conceded the extradition of an alleged ETA supporter. France, meanwhile, has systematically expelled people accused by Spain. Over the last ten years it has handed over to the Spanish police 212 persons accused of working with ETA. This measure was suspended between 1988-93, while the French Socialist Party was in power. In June the French

Magistrates' Union, the French Lawyers' Union and the League for Human Rights accused the French government of violating legal norms by not respecting either its own laws or the international conventions which it had ratified. They maintained that the only legal way whereby anyone could be delivered to foreign authorities was by formal extradition, and that by resorting to expulsions the French authorities were practising a disguised form of extradition.

Human rights round-up

This issue's round-up contains decisions from 1994 and 1995 (from recently published reports) as well as recent decisions from 1996.

Among cases declared inadmissible were:

* Taylor, Crompton, Gibson and King v UK: protection of right to life (Art 2): death and serious injury of children in public hospital at hands of mentally ill nurse: no failure of State to protect.

* AB v Switzerland (20872/92): compulsory urine-sampling of prisoners for drug testing is not inhuman or degrading treatment (Art 3).

* Patrick Martin v Switzerland (25099/94): while storing personal data on police files interferes with respect for private life, if files are to be archived for 50 years with no access, there is no interference. Despite the authorities' refusal to disclose the full file to its subject, Swiss law contains sufficient guarantees against abuse to make any interference proportionate to the legitimate aim of the collation of information (Art 8).

* Younes el Maziani v France (25439/94): deportation of Algerian citizen who has lived in France since age 11 and has all his family there, and is married to a French citizen, after conviction for rape and 12 years imprisonment, did not violate Art 8 as interference with family life proportionate.

* Hacısüleymanoglu v Italy (23241/94): refusal to transfer sentenced prisoner to serve sentence near family in home country: sentencing state under no obligation, so interference with family life not in

breach of Art 8.

* *Walendy v Germany* (21128/92): seizure of magazine denying holocaust: no violation of Art 10 (freedom of expression) since Art 17 prevents rights being used to deny those of others. The Commission's reasoning was the same in the cases of *David Irving v Germany* (26051/95) (conviction by Munich court for holocaust denial) and *Marais v France* (31159/95).

Cases declared admissible included:

* *Ursula Balmer-Schafroth v Switzerland* (22110/93): Licence granted to nuclear power plant despite 28,000 objections on safety and environment grounds. Complaint of lack of access to court (Art 6.1) and no effective remedy to establish right to life (Arts 13, 2).

* *Sakik and others v Turkey* (23883/94): Kurdish MPs had parliamentary immunity withdrawn, were arrested and detained under anti-terrorist laws for 12-14 days without court review, and charged with inciting terrorism, for speeches condemning the offensive against the Kurds. Complaints on the length of detention and lack of judicial supervision (Art 5) admissible.

Cases referred to the Court included:

* *Aydin v Turkey*: Allegations of detention of Applicant and family and torture by Turkish security forces. Turkey denied the allegations. Commission delegation went to Ankara to take oral evidence, and held that there were violations of Arts 3 (freedom from torture) and 6 (fair trial), and that intimidation and harassment of Applicant and family after petition submitted constituted interference with right to petition (Art 25).

* *HLR v France* (24573/94): Colombian drug trafficker who fears reprisals in Colombia for assisting French police. Commission held expulsion would violate Art 3 (exposure to inhuman or degrading treatment) despite French government claim that Art 3 did not cover exposure to private vengeance.

* *DB v France* (25404/94), *AEB v France*

(25613/94): cases of double jeopardy. Both applicants have lived in France for most of their life, have family there and a French partner or child. Commission held in each case that proposed expulsion after serious criminal offence did not violate Art 8 (family life).

* *Lukanov v Bulgaria*: six-month detention of former deputy prime minister on charges of misappropriation of funds: Commission found violation of Art 5 (liberty)

* *Tsirlis and Kouloumpas v Greece*: refusal to recognise Jehovah's Witness ministers as exempt from military service on religious grounds, and consequent four-year sentence for insubordination: Commission found violations of Arts 5 (liberty), 6 (fair trial), 14 and 9 (discrimination and freedom of conscience).

* *Van Mechelen v Netherlands*: limited questioning of anonymous police witnesses in criminal trial to protect identity and methods: Commission held no violation of Art 6 (fair trial).

* *Z v Finland*: Identity and medical details of HIV positive wife of a man convicted of rape and attempted manslaughter published: Commission held publication violated Art 8 (respect for private life)

* *de Haes and Gijssels v Belgium*: journalist and editor sued for articles accusing judges of far-right connections, and denied access to documents needed for trial: Commission held violations of Arts 6 (fair trial) and 10 (freedom of speech).

* *Van den Dungen v Netherlands* (22838/93): injunction against anti-abortion activist preventing distribution of leaflets outside abortion clinic: no violation of Art 9 (no expression of belief) or Art 10 (interference necessary in a democratic society).

* *Pettonen v Finland* (19583/92): refusal to issue passport to person who failed to report for military service: interference with Protocol 4 Art 2 (right to leave country of nationality) was justified, no violation.

Judgments of the Court included:

* *Botten v Norway*: failure to allow Applicant to address appeal court on adverse findings of fact: violation of Art 6.1 (fair trial)

* *Putz v Austria*: fines and imprisonment in default for contempt of court for disrupting court proceedings not covered by Art 6 or 13; no violation.

* *Remli v France*: court's refusal to record racist comment by juror trying applicant, thus preventing appeal on issue, violated Art 6.1 obligation on national courts to ensure trial by impartial tribunal.

* *Benham v UK*: Failure to provide legal aid for poll tax and fine defaulters violates Art 6.3 (provision of legal aid).

* *Buckley v UK* (23/1995/529/615) 26.9.96: refusal of planning permission to enable Gypsy to live in caravans on her own land held not to be unjustified interference with Art 8 respect for home. Art 8 did not allow individual preference to override general interest.

* *Boughanemi v France*: deportation of Tunisian after several convictions; father of French child, cohabited with French woman, lived in France since age 8 and had all family there: not disproportionate, did not violate Art 8 (family life). The court reached the same decision in *C v Belgium* (21794/93), regarding a Moroccan national.

* *Goodwin v UK*: fine and order for disclosure on journalist for refusing to disclose source of article was additional restriction on freedom of expression beyond what was necessary: violation of Art 10 (freedom of expression).

* *Gustaffson v Sweden*: refusal of government to intervene to stop pickets and boycott of employer refusing to sign collective agreement: no violation of Art 11 (freedom of assembly).

* *Gaygusuz v Austria*: refusal to grant Turkish national, legally resident in Austria, having worked and paid contributions, emergency assistance by way of advance on pension, purely on grounds of nationality, violated Art 14 (discrimination) and Protocol 1 Art 1 (right to enjoy possessions).

* *Murray v UK*: Drawing of adverse inferences from silence during police interrogation and at trial was not a violation of Arts 6.1 and 2 (fair trial, presumption of innocence), but lack of access to lawyer during first 48 hours of police detention violated Art 6.1.

The UK courts looked at provisions of the European Convention on Human Rights in:

Lippiatt v Electoral Registration Officer, Penwith District Council (Penzance County Court, 21 March 1996): A homeless man who slept rough in Penzance but used a day centre which he regularly attended as an address for benefits was prevented from registering for the vote on the grounds that, since he had no accommodation, he failed to satisfy the residence test under the Representation of the People Act. The County Court held that, as Protocol 1, Art 3 of the ECHR protected voting rights, Parliament could not have intended to disenfranchise people on the ground of homelessness. It upheld Mr Lippiatt's right to register to vote.

R v South Cheshire Justices ex parte Bold (1996) Times 15 July: an unemployed, mentally handicapped man with a speech defect, dependent on income support, won judicial review of magistrates' decision to commit him to prison for failure to pay his poll tax arrears. The following year, when he was again summonsed for failure to pay arrears, he applied for legal aid and was refused. The Court of Appeal dismissed his judicial review application, saying that the Legal Aid Act made no provision for legal aid for poll tax enforcement proceedings, and called on the government to fulfil its obligations following the *Benham* case (see above).

Important recent and recently reported decisions of the European Court of Justice include:

As Community law now stands, the Community has no competence to accede to the European Convention on Human Rights: Opinion 2/94, OJ C/80 22.6.96.

A member state must have the opportunity to comment before a final decision to reduce the European Social Fund assistance for vocational

training programme, whether on the principle of reduction or the amount. Non-observance renders the decision void: *Societe v Commission* T-432-4/93, 1995 II-503.

There is no requirement of formal, express, specific legislation to transpose Community directives, provided the general legal context guarantees the full application of the directive sufficiently clearly and precisely so that individuals can ascertain the full extent of their rights and rely on them in the national courts. Only when the Member State has failed to take implementation measures required will the court recognise the right of affected persons to rely on the directive against the defaulting Member State. *Commission v Germany*, C-433/93, 1995 I-2303.

Member States are obliged to make good the loss and damage to individuals caused by breaches of Community law for which they can be held responsible. The right to reparation is a necessary corollary of the direct effect of community provisions whose breach caused the damage. *R v Secretary of State for Transport ex parte Factortame*, C-48/93.

In civil cases, national courts are not required to set aside their own rules in favour of special rules for those involving Community law: *van Schijndel and van Keen v SPF*, C-430/93, 1995 I-4705. But national procedural rules safeguarding Community rights must not be less favourable than those governing domestic actions, or render excessively difficult the exercise of community rights, nor should the rules prevent the national court from considering whether domestic law was compatible with Community law: *Referbroeck v Belgium*, C-312/93, 1995 I-4599.

A Member State cannot expel on public policy, national security or public health grounds (except in urgent cases) before a competent authority (judicial or administrative) has given its opinion on the proposed expulsion, but the "competent authority" can be appointed by the expelling body, as long as in practice it or he is independent: *R v Secretary of State for Home Department ex parte Gallagher*, C-175/94, 1995 I-4253.

The retention of laws and regulations restricting the right to register vessels and fly the national flag to

vessels at least half-owned by nationals, violates the free movement provisions of the Treaty: *Commission v France*, C-334/94.

The Treaty's free movement provisions prevent sporting associations from laying down rules limiting the number of foreign professional football players in a team: *Union Royale Belge des Societes de Football Association v Bosman*, C-415/93.

An application by the Netherlands, supported by the European Parliament, for annulment of a Council decision of 1993 on public access to Council documents, was dismissed. *Kingdom of Netherlands v Council*, C-58/94, 30.4.96.

Europe - new material

Recent developments in European Convention law, Philip Leach. *Legal Action* July 1996, pp13-17. This piece summarises cases at the European Court - between September 1995 to March 1996, that have relevance to Britain and Northern Ireland.

No to "National Preference". *CARF* No. 34 (October/November) 1996, pp4-7. This article examines the European-wide popular protectionism that accompanies European restructuring and underlies racist campaigns such as the campaign for national preference, instigated by the French Front National.

Gagging orders?, Stuart McIntosh. *Police Review* 27.9.96. pp15-17. This piece discusses the removal of a defendants' right to silence under the Criminal Justice and Public Order Act 1994 and the effects of European human rights laws.

The European Insider no 3: articles on the 1996 IGC, Revising Maastricht, Norway: Surviving outside, UK Out of Court, Controversy at the College of Europe. 60BF from: *The European Insider*, c/o Agenor asbl, 22 rue Toulouse, B-1049, Brussels, Belgium.

Free on the EU: A guide to free information about and from the EU institutions, Mike Cooper. 54 pages, £16.00 to non-EIA members. **Guide to the European Commission**, Heather Worlledge. 34

pages, £7.00 to non-EIA members. **European Parliament**, Lydia Whitehead. 24 pages, £7.00 to non-EIA members. P&P included. From: European Information Association, Central Library, St Peter's Square, Manchester M2 5PD. Tel: (00 44) 0161 228 3691. Fax: (00 44) 0161 236 6547.

EU-Det tabte paradis, Bashy Quraishy. In Danish, DKroners 59.00. **Fort Europa**, Bashy Quraishy. In Danish and English, DKroners 20.00. From: Etnisk Debatforum, Nyelandsvej 53, st. tv., 2000 Frederiksberg, Danmark. Tel & fax: (00 45) 38 88 19 77.

Political stability and religion: fundamentalism in perspective. Wilton Park papers no 119. 42 pages, HMSO, 1996, £5.00.

Harmonisation of Justice within the European Union - national legal systems and discrimination against "foreign" EU citizens. Fair Trials Abroad, June 1996, 14 pages, £2.00. From: Fair Trials Abroad, Bench House, Ham Street, Richmond, Surrey TW10 7HR. Tel: (00 44) 0181 332 2800. Fax: (00 44) 0181 332 2810.

Consultation paper on the EC Data Protection Directive (95/46/EC). Briefing from the Campaign for Freedom of Information, September 1996, 10 pages. From: 88 Old Street, London EC1V 9AX.

LAW

Law - in brief

Bridgwater 4: Home Secretary Michael Howard is finally referring the Bridgwater 4 case to the Court of Appeal. The referral is prompted by the non-disclosure of fingerprint evidence to the defence and by the apparent breach of judges' rules (the precursor of the detention and questioning codes of practice under the Police and Criminal Evidence Act) in relation to Paul Molloy, whose confession implicated the others in the killing of 14-year-old newsboy Carl Bridgwater. But the referral follows years of campaigning by the men's families and support group and the presentation of bales of fresh evidence by their lawyers. In 1994, Howard was ordered by the

High Court to give reasons for his rejection of the fresh evidence amassed by the defence team. The case last went to appeal in 1989, when the Court of Appeal upheld the convictions. In 1993, Kenneth Clarke, then Home Secretary, refused to refer it back. The court is expected to hear the case this year. Paul Molloy died in prison. But there is a chance that the others, who have been in prison for 17 years, will be out by Christmas. *Independent*, 26.7.96

Winston Silcott: Winston Silcott has been barred from bringing a civil action for conspiracy to pervert the court of justice and misfeasance in public office against the police investigating the killing of PC Blakelock at Broadwater Farm in October 1985. The Court of Appeal ruled that the police are protected by a rule of absolute immunity against conspiracy and misfeasance actions arising out of the investigation of crime, even where there is fabrication of evidence, as a matter of public policy. This does not affect the well-established right to sue for malicious prosecution. *Silcott v Commissioner of Police for the Metropolis*, *Times*, 9.7.96.

Illegal bugging admissible: Evidence obtained by illegal bugging is admissible, ruled the House of Lords in July. Unlike telephone tapping, regulated by the Telecommunications Act 1985, there is no legal framework regulating the installation and use of bugs (electronic listening devices) attached by the police in a private house without the knowledge of the owner or occupier. The House of Lords acknowledged that it involved civil trespass and damage to property, and that under the European Convention of Human Rights it could breach Article 8 (right to respect for private life, home and correspondence). But since UK law recognised no rights to privacy, the evidence was, they said, admissible even though it was improperly obtained. *R v Khan*, *HL*, 2.7.96, reported in *Independent*, 11.7.96.

International Prosecutors: In late September, the International Association of Prosecutors (IAP) was formally launched at its first congress in Budapest, where 125 participants from 55 countries attended. This international alliance of public prosecutors is intended to improve technical cooperation and develop standards for communication of legal information across borders. The first Secretary-

General of the IAP will be Mr H A Marquart Scholtz from the Netherlands. The Dutch government is the main sponsor of the IAP and provides its headquarters in Groningen. The basis for the IAP was laid at a UN meeting in Cuba in 1990.

Law - new material

Conviction newsletter No. 16, 1996. The Conviction newsletter highlights miscarriages of justice. The latest issue looks at the cases of the M25 Three, Malcolm Kennedy, Beryl Summers, Susan May and Keith Mann. It also introduces the Action Against Injustice which will campaign against injustices. It is available from PO Box 522, Sheffield S1 3FF.

Evaluating joint performance management between the police and the Crown Prosecution Service, Andrew Hooke, Jim Knox & David Portas. *Research Findings* No. 40 (Home Office Research and Statistics Directorate) September 1996.

Race and criminal justice. *Penal Affairs Consortium* September 1996, pp8. This report covers police stop and searches, prosecution, bail and sentencing and concludes that black people are more likely to be imprisoned than comparable white offenders.

Criminal Appeal Act 1995, John Wadham & Clair Missen. *Legal Action* October 1995, pp21-22. This piece examines the Criminal Appeal Act 1995, which came into force in January, to investigate miscarriages of justice. It points out serious flaws that will leave many miscarriages unresolved and, therefore, fail to restore confidence in the criminal justice system.

The Law, issue 8. Featuring "Law and morality", anti-deportation campaigns, miscarriages of justice. £4.00 for four issues. From: The Law, PO Box 3878, London SW12 9ZE. Tel: 0181 673 0062.

MILITARY

SWITZERLAND

The Swiss government (Federal Council) and the Military Department are planning to rearm the Swiss

Army for action within the country in times of crisis. The *Ordnungsdienst*, a special military unit trained to support the police in times of social crisis, is to be equipped with 118 million Swiss Francs worth of "less-lethal" weapons. These include 12 tanks, armoured vehicles, teargas and rubber-shot and handcuffs. The decision will be made by decree, preventing any possible discussion or intervention through referendum.

The *Ordnungsdienst* has faced repeated demands for its abolition since the unit shot dead thirteen unarmed demonstrators in 1932. It is ironical that the reformed and newly equipped *Ordnungsdienst* should be given the role of supporting the police in large-scale demonstrations or "riots". It will also be used to police frontiers to prevent "streams of refugees threatening to come into Switzerland" and other similarly improbable situations.

Military - new material

Reaction Force reshapes NATO doctrine, *International Defence Review*, no 9, 1996. The Rapid Reaction Corps peacekeeping role in Bosnia is evolving a doctrine that could be applied in future interventions.

Turkey's new posture: change or continuity? *Jane's Intelligence Review*, September 1996. The Islamic element in the new coalition government will have to adapt its policies to complement prevailing political and strategic conditions.

Multinational Division Central (Airmobile), *NATO's Sixteen Nations*, no 1, 1996. Special issue on NATO's rapid deployment force.

European Union slams "secret budget" nations, *Jane's Defence Weekly*, 7.8.96. The EU, not always so transparent in its own affairs, has complained that the overwhelming majority of United Nations member states (165 of the 185), are refusing to reveal their military budgets to the UN. The reluctance is partly attributed to a recent outcry by Western donors that development assistance should be conditioned on military expenditures.

UK joint force operational, *Jane's Defence Weekly*, 7.8.96. The UK's new Joint Rapid Deployment Force

(JRDF), intended to improve the UK's crisis response ability, has officially become operational.

US Army Lion Brigade poised for action, *Jane's Defence Weekly*, 21.8.96. Report on the Southern European Task Force Infantry Brigade, the only US Army light infantry force that is forward deployed in Europe, based in Vicenza in northern Italy and suitable for low intensity operations.

Ten European nations to set up AMRAAM support, *Jane's Defence Weekly*, 28.8.96. Ten European NATO-members are to set up a collaborative logistic support programme for their US-made advanced medium-range air-to-air missiles (AMRAAM). It is almost certain that the missile maintenance test centre at Karup Air Base in Denmark will be used. Another option would be the Norwegian Air Force depot in Kjeller.

European team eyes \$2b satellite contract, *Jane's Defence Weekly*, 4.9.96. A consortium with Alcatel Espace, Thomson-CSF, Matra Marconi Space and a German team will be formed to bid for an Anglo-French-German military communications satellite programme.

Sweden favours leading edge in face of budget cuts, *Jane's Defence Weekly*, 18.9.96. Country report on the improvement of Sweden's high-readiness units.

Spain, Italy form joint amphibious brigade, *Jane's Defence Weekly*, 25.9.96. The brigade, expected to number between 2,000 and 3,000 personnel, could be operational in four months and used for combat operations, the curbing of illegal immigration, drug trafficking and for disaster relief.

French, German activity stymies Europe merger, *Defense News*, 29.7.96. Cross-border consolidation in Europe has been suspended temporarily as potential partners wait for the dust to settle from the ongoing restructuring of France's state-owned defence industry and a Franco-German review of cooperative projects.

Profit & politics to drive consolidation of industry in Europe, *Defense News*, 19.8.96. A string of mergers, privatizations and leadership changes in

European defence companies suggest the dawn of a third phase in the adjustment of the industry to a post Cold War reality.

Franco-Belgian Pact lays foundation for North Sea Navy, *Defense News*, 2.9.96. An accord will be signed by mid-September.

Multinational Satellite Plan stalls; countries move on own projects, *Defense News*, 16.9.96. Plans for a multinational spy satellite program in Europe have been put temporarily on ice, as some of the governments move forward on military telecommunications spacecraft and small satellites with military applications.

Debate over European preference snarls new arms agency, *Defense News*, 23.9.96. A spat over the direction of a fledgling European arms procurement agency has once again brought to the forefront the long-standing differences between France and Britain over the need for a European defence policy.

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NORTHERN IRELAND

Brian Nelson

It has emerged that Brian Nelson was released from prison in England last February. Nelson was serving a ten year sentence after pleading guilty to five specimen charges of conspiracy to murder and possession of information likely to be of use for acts of terrorism. Nelson was an intelligence officer for the now illegal Ulster Defence Association and acted as an agent for the Forward Reconnaissance Unit of the British army for ten years (see *Statewatch*, vol 2 no 2 & 4, vol 3 nos 2 & 4, vol 4 no 3, vol 5 no 3). Nelson and the Ministry of Defence are facing legal actions by solicitor Pat Finucane's widow and by Sinn Fein Councillor Alex Maskey. In both cases it is alleged that Nelson, with the assistance of British military intelligence, assisted loyalists in targeting the men. (In different attacks, Finucane was murdered but Maskey survived).

Censorship

Questions are being asked about the role of the media during the Drumcree stand-off in July. A screening of SAS - The Soldiers' story was due for broadcast on 11 July but was withdrawn at the last minute "because of increased tension in the Province" announced ITV. The programme depicts undercover operations including a reconstruction of an SAS ambush at Drumnakilly, Co. Tyrone in 1988.

Two recent memos circulating within the BBC Northern Ireland have been leaked to the press. During July, programmers were advised not to run trailers for Irish language programmes too close to news bulletins. Another memorandum advises that the word Taoiseach should not be used routinely when referring to Irish premier John Bruton, even though this is his official title. News writers have been told to speak of "Irish Prime Minister, John Bruton" instead, and told to use "Taoiseach" only when necessary to distinguish between British and Irish premiers.

Nemesis Nonsense

On 31 July, the RUC arrested Paul Bruce (a pen name) and took him to Belfast for questioning under the Prevention of Terrorism Act. Bruce is author of *The Nemesis File: The True Story of an Execution Squad* (Blake Publishing). When first published the book was dismissed by the authorities and republicans alike as a work of fantasy. Bruce claims to have been part of an SAS squad which murdered 30 IRA members and buried them in unmarked graves on the early 1970s. Bruce himself says he killed 13 men. In the last chapter of the book he admits to having serious drink and other problems but that writing the book had helped to bury the ghosts of the past. The book contains several photographs of alleged burial sites but its claims of authenticity are perhaps best revealed by a photograph which carries the caption "Troops try to halt a Civil Rights demonstration in Belfast, 1971". The picture is very obviously not of a civil rights march: the distinctive bowler hats of the Orange Order are clearly visible, as is the face of the Rev William McCrea, now a Westminster MP for Paisley's Democratic Unionist Party, and the scene is of a country lane, not Belfast.

McCrea recently shared a platform with Billy

Wright (see *Statewatch*, vol 6 no 4) at a rally in Portadown. The rally was called in support of Wright after the leadership of the Ulster Volunteer Force stood down the Portadown unit and ordered Wright to leave Northern Ireland ("or face the consequences"). One story coming from the UVF leadership (which appeared in the *New Statesman*) is that Wright is working for MI5. If this is the case, it has not provided immunity for the self-styled "rat-pack" who surround Wright, at least two of whom have recently been convicted for activities associated with protection rackets and drug dealing (*Spotlight*, BBC 1, 8.10.96).

The arrest of "Bruce" seems to have been prompted by the publisher's plans to re-issue the *Nemesis File* with a new chapter written by Fred Holroyd - a draft of which was seized by the RUC. Holroyd worked for MI6 in the early 1970s.

Phoenix Book

Dr Susan Phoenix, the widow of RUC Special Branch Superintendent Phoenix killed in the Chinook helicopter crash at the Mull of Kintyre on 2 June 1994 (see *Statewatch*, vol 4, no 4), has written a book based on her husband's diaries. It is called *Policing the Shadows* and will be published by Hodder and Stoughton in November. Phoenix was in charge of undercover surveillance and served with the parachute regiment before joining the RUC. According to a report in the *Sunday Times* (Irish edition 4.8.96) the book reveals that most senior Special Branch officers believe British disengagement from Northern Ireland is inevitable and it provides details of undercover burglary and bugging operations. Some of the book's contents have been removed under the D-notice committee system on grounds of national security.

14 Intelligence Company

Century Books has just published "The Operators" which purports to "lift the veil shrouding Britain's most secret military unit". 14 Intelligence Company is a specialist surveillance unit of the British Army thought to be about 200 strong. It was set up in 1974 specifically for operations in Northern Ireland. An ex-

member, James Rennie, is the author of this book but he reveals little that is not already known. Any potentially sensitive parts of the book appear to have been "cleaned" by the D Notice Committee. At one point, for example, Rennie is describing a training exercise in which he is "kidnapped" by the SAS, held for 24 hours and briefly interrogated. He was fairly relaxed about the episode, he writes, because "I knew that no British organisation went in for the physical torture of prisoners, even in wartime". Similarly, there are a few speeches denying the existing of a shoot-to-kill policy but, much like SAS training, "Operators" are trained to kill and, as is clear from the book, much of their activity feeds into setting up ambushes: "from time to time information received would relate to a terrorist attack on a specific target ... an off-duty policeman or UDR soldier, who would be substituted when possible with an SAS trooper. We would then jointly plan an SAS ambush..."

The first 160 pages deal with training and only the last 70 with actual operations in Northern Ireland. The most detailed description is of a "technical attack" in which members of 14 Intelligence Company break into a house with an MI5 technical team to install bugging equipment.

Parachute Regiment Expulsions

Two members of the parachute regiment have been discharged and a further three barred from service in Northern Ireland following an incident last year which occurred during the period of the IRA ceasefire. The soldiers were members of an undercover surveillance unit, the Close Observation Patrol of the second battalion of the regiment. They had been briefed by MI5 and RUC Special Branch to observe an unregistered loyalist drinking club which the RUC suspected was being used by the UDA as a base for trading in ecstasy. But they ended up drinking with members of the group they were supposedly observing. Senior officials are reported to be concerned that details of some of the army's most secret intelligence gathering operations may have been disclosed to leading loyalists.

Sunday Times, 4.8.96.

MOD Records

The Ministry of Defence has disclosed to the

Campaign for Freedom of Information its 1992 "Instructions for Record Reviewers" - a set of guidelines for the classification and release of official records. Annex E covers "Records relating to Northern Ireland dated August 1969 and later". The regulations state that such records should be labelled "Northern Ireland" which means that "this record contains reference to Northern Ireland and is therefore provisionally closed to the public for 100 years (or until its destruction, if earlier) in accordance with a Cabinet Office ruling in 1972 - vide MOD File D/OS8/40 - 5/8/75".

Appendix B defines a number of other labels involving Northern Ireland. "Perimeter" was used in Northern Ireland from November 1969 to March 1973 and at the time meant "restricted". It is currently classed as "confidential". "UK Eyes A" was introduced from 1 November 1972. It is a "restricted" classification with certain Northern Ireland exclusions: "information not to be released to any other country, and which, within UK Government Service, is confined to UK-based members of the UK Armed Forces (...), Home Civil Service (excluding Northern Ireland Civil Service), the Diplomatic Service, the Police Forces (excluding the Royal Ulster Constabulary) and employees of the UKAEA, CAA and Post Office." The "UK Eyes B" label means that on a discretionary basis information may be imparted to the RUC and Northern Ireland Civil Service.

Northern Ireland - new material

Ronnie picks his targets, Brian Campbell. *An Phoblacht/Republican News* 5.9.96. p9. Article on the appointment of Ronnie Flanagan as Chief Constable of the Royal Ulster Constabulary and how he will promote the image of the RUC. AP/RN can be ordered from 58 Parnell Square, Dublin 1.

Lest we forget...plastic bullets kill, Paddy Kelly. *Just News* Vol. 11 No. 6 (June) 1996, pp4-5. Seventeen people, eight of them children, have been killed by police use of rubber and plastic bullets. This article looks at the "human face behind the cold statistics" and notes that the Mitchell Commission called for a review of their use. Available from CAJ, 45-47 Donegall Street, Belfast BT1 2FG.

RUC ran terror gangs, Peadar Wilson. *An Phoblacht/Republican News* 19.9.96., pp1 & 4-5. Report on claims, by Derry man Thomas Douglas, that he was part of a counter-insurgency squad set up by the RUC to carry out black propaganda operations against the Republican Movement.

Reconstructing the peace process, Gerry Adams. *An Phoblacht/Republican News* 19.9.96., pp9-11. Interview with Sinn Fein president Gerry Adams in which he reiterates his commitment to Sinn Fein's peace strategy.

Turning the page without closing the book: the right to truth in the Irish context, Bill Rolston. *Irish Reporter* 1996, pp58 £3.95.

POLICING

UK

The Expansion of CCTV

Over the summer the government announced the "crime busting winners" of a £17 million closed circuit television competition. Nearly 800 local authorities and other organisations submitted bids for part-funding of schemes. The government approved 258 bids, with 81, or nearly one third, going to London and the South East. Merseyside was the least successful region receiving approval for only 2 schemes. The Home Secretary estimated that there will now be around 3,300 new CCTV cameras around England and Wales as a result of the competition.

The government, however, wants to see at least 10,000 cameras on the streets of Britain. This is the second competition it has sponsored and is planning a third. In total it plans to spend £45 million and hopes that this will draw in a further £50 million bringing the total expenditure on CCTV schemes in a three year period to over £90 million.

The final decisions on the bids were made by Home Office Ministers, but they were "advised by a judging panel" which included technical experts, business and academic consultants.

Home Office press release, 21.6.96.

More corruption at Stoke Newington police station?

Seven police officers, six of them from the notorious Stoke Newington police station, in east London, have been charged with offences ranging from unlawful imprisonment, assault and conspiracy to pervert the course of justice on the advice of the Crown Prosecution Service. The allegations follow on from a three year police investigation - Operation Jackpot - into racism and corruption at the police station. The investigation was widely dismissed as a cover-up after only two, of the 46 policemen under investigation, were prosecuted.

The latest allegations concern two separate incidents that occurred May 1994 and February 1995. In the first incident twelve people were arrested outside a public house and charged with obstruction. All were later acquitted in court. Summonses have been issued against five officers, PCs Dustin Irribarren, Martin Pearl, David Hay, Colin MacLennon and Enfield PC Mark Astley alleging unlawful imprisonment and conspiracy to pervert the course of justice. Irribarren is additionally charged with assault. All five have been suspended from duty and will appear in court in November.

The second, unrelated, incident centres around claims of assault in the cells of Stoke Newington police station. Two officers, PC Jason Cook and Sgt Terence Norman have been served with summonses alleging actual bodily harm. Both men have been suspended and are currently on bail until they appear in court in October.

Hackney Gazette 19.9.96.

New chairman for PCA

Peter Moorhouse was appointed as the new chairman of the Police Complaints Authority (PCA) at the beginning of October. Moorhouse, who had a career in industry prior to joining the PCA in 1988, has been acting chairman since the retirement of Sir Leonard Peach in December. After taking-up his new position Moorhouse promised more openness and better consultation with the families' of those who die in police custody.

In the past few months inquests on Richard O'Brien and Shiji Lapite returned verdicts of "unlawful killing" and an inquest on Brian Douglas recorded a

"misadventure" verdict. In all three cases the PCA declined to take any action against the Metropolitan police officers involved. Needless to say, the new chairman's comments were regarded with considerable scepticism by relatives and friends of those who have recently died in police custody.

Police Complaints Authority press release 1.10.96, 3.10.96;

Extradition Unit

The Extradition Unit of London's Metropolitan Police is part of the Organised Crime Group. The Unit has four teams of four police officers, one of the teams deals with extradition between the UK and the Republic of Ireland and International Commissions Rogatoire (letters of request). Requests for extradition come through: diplomatic notes, by government order or from Interpol or other police forces.

It Unit also deals with deportations, "returning illegal immigrants to their country of origin". This work is normally carried out by private security firms, like Group 4 Security, but this Unit steps in when "individuals are particularly violent, pose a security threat or have been serving a [prison] sentence with a deportation order at the end of it."

Officers in the Unit undergo special training and are expected to have or learn a foreign language. Their duties are not limited to normal working hours:

"Dealing with international matters means ignoring one's own "time clock" - to the extent of answering calls at home in the middle of the night. Many officers have their own fax machines linked to a modem or by the Internet to other users. Two telephone lines at home are not unusual."

The Job, July 1996.

MI5: new powers in aid of police under the Security Service Act 1996

The Security Service Act 1996 came into effect on 14 October (see *Statewatch* vol 6 no 1). Under the Act the Home Secretary has designated the Director General of the National Criminal Intelligence Service (NCIS) as the Coordinator for the activities of MI5, the internal security agency, in "preventing and detecting" crime. A number of MI5 staff are seconded

to the NCIS. The Director General, Mr Albert Pacey, said: "I will be acting as the central contact point for UK law enforcement agencies which wish to use the Security Service to support particular operations." The Act allows, among other powers, MI5 to extend its powers of "bug and burgle" to cases involving "conduct by a large number of people in pursuit of a common purpose."

Home Office press release, 14.10.96.

New Police Bill

The government announced in the Queen's Speech on 24 October that their legislative programme up to the General Election will include a Police Bill but not the introduction of voluntary identity cards.

The Police Bill will a) create a new operational National Crime Squad (NCS) comprised of the six existing Regional Crime Squads (RCSs). It is expected to have about 1,000 police officers and an annual budget of £90 million. b) put the National Criminal Intelligence Service (NCIS) on a statutory basis for the first time since its creation in 1992. c) the police will be given similar powers to "bug and burgle" as MI5 (see above). This will give a legal basis to the long standing police practice of conducting surveillance on the authority of a Chief Constable. A new "independent" Commissioner to oversee these powers will be created. d) create a Criminal Records Agency which all employers will have access to in order to find out the criminal record of a job applicant. An offence for which a prison sentence of 2½ years or more is given is never removed from criminal records. Under these proposals there would be three kinds of checks: where the job applicant pays £20 to get a criminal conviction certificate, or whether the employer asks for a "full check", and an enhanced check for employers for certain categories of work like people working with children. Civil liberties and penal reform groups strongly oppose the plans as it would make it more difficult for ex-offenders to get jobs.

Mr Howard the Home Secretary told the annual meeting of the Association of Chief Police Officers (ACPO) that the new NCS and the NCIS will not develop into an "FBI". He told the conference that: "There will be no "federal crimes" over which the new organisations will have exclusive jurisdiction." The cost of running the two new national squads is to

be paid for by a "levy" on local police authorities.

Government plans to introduce "voluntary" identity cards have been postponed because of divisions among Conservative MPs over the issue. The Home Office said it would produce a draft Bill but it is not expected to go through before the General Election.

Policing Today, September 1996; *Times*, 24.10.96; *Guardian*, 14.10.96; see also *Statewatch* vol 6 no 2 & 3.

SWITZERLAND

State Protection Bill update

In October the Council of States (the lower Swiss parliamentary chamber) withdrew an Article from the State Protection Bill that would have allowed the police to tap telephones and use bugs, microphones and video cameras to surveil private apartments. The Federal Minister of Justice and Police, Arnold Koller, recommended that conservative members drop the clause because it would be unpopular (see *Statewatch*, vol 6 no 4). The Council supported Koller's argument by two votes. Despite this the Council went on to recommend a new field of police work around "organised crime" despite concerns about territorial issues that might lead to differences between different police departments.

The *Kommittee Schluss mit dem Schnuffelstaat* has decided to launch a referendum to oppose the State Protection Law, which would remove public access to police files (see *Statewatch* 6:4). The two chambers of parliament are expected to pass the Bill in December and the *Kommittee* will start collecting the 50,000 signatures needed for a referendum on December 24.

SPAIN

Plan to allow penal sanctions against minors

One of the major reforms of the Penal Code which came into effect in May 1996 was to raise the minimum age for imprisonment from 16 to 18. However the Code also allowed for the possibility of specific laws in respect of crimes and misdemeanours by minors. The new Partido Popular (conservative) government has drafted a law on minors which proposes sanctions of a penal nature from the age of 12. The draft has already given rise to controversy in that it has been seen as a way of reducing the

minimum age for imprisonment. The range of punishments include, for 12-16 year-olds, detention in special centres or therapeutic institutions, cautioning, supervision orders, community service orders and placement in the custody of named individuals or families. For 16-17 year-olds the proposals allow for imprisonment, weekend detentions and the withdrawal of various rights (such as driving licences, firearms licences or the right to hold public office).

SPAIN

Draft law on video surveillance

On 13 September the cabinet approved a draft law on video surveillance, regulating the use of police cameras in public places with the purported aims of dealing with street disturbances and providing evidence for use in trials. The government took the opportunity to introduce modifications to the Law on the Safety of Citizens and to the law regulating the right to assembly. The effect is to make the organisers of any demonstration responsible for damage caused during it. In the case of illegal demonstrations, the identity of the organiser may be inferred from slogans or printed matter.

The government maintains that this range of control measures will permit it to deal with the ever-increasing number of violent demonstrations in which confrontation with the police is becoming the norm.

Among those who have expressed concerns about restrictions on the right to privacy which the new law would impose, on the pretext of protecting public order, is the Director of the Data Protection Agency. In his opinion such procedures represent an infringement of the concept of privacy as enshrined in statute, by authorising police and security agencies to retain recordings of the images and conversations of citizens for an excessive length of time, depriving the citizen of any means of protecting the right to privacy, and ignoring the principle of proportionality.

SPAIN

The GAL scandal

Deputy Prime Minister Francisco Alvarez Cascos stated on 29 September that "the GAL [Anti-terrorist Liberation Groups] were a phenomenon orchestrated

by [former Socialist Prime Minister] Felipe Gonzalez and people in his immediate circle, because the GAL strategy was devised and carried out with resources drawn from secret reserve funds controlled exclusively by people in his confidence". This claim contrasted with the government's decision to refuse a request from the courts to declassify CESID documents which they had demanded. The documents, which were already in the investigating judges' possession having been seized from a former secret service officer, Colonel Perote, give details of many illegal activities, involving inter alia the creation, maintenance and activities of the GAL, in which the former PSOE government is implicated. The judges' formal request to the government is aimed at establishing the legal validity of the papers. Although the government refused the request, the papers may be subpoenaed by the Supreme Court itself, in which case the government would seem to have no option but to comply.

Defence minister Eduardo Serra, justifying the decision before Parliament, drew a parallel with the transition from the Franco dictatorship to the democratic system. He suggested that now, as then, it was necessary to draw a line under the events of the past in order to avoid catastrophic social divisions. Few were persuaded of the validity of his comparison between the recent change of government and the replacement of a totalitarian regime by a constitutional one.

Among the papers demanded by the judges are those referring to the use of beggars as guinea-pigs, to try out the effects of various drugs which were later to be used against alleged members of ETA.

Police and judicial co-operation

Four joint police offices along the French-Spanish border are to deal with matters connected with the anti-terrorist struggle, illegal migration, drug trafficking and crime in general. Three offices will be located on the French side of crossing points, at Le Perthus/La Jonquera, Melles Pont du Roy Les and Biriadou/Irun, and one in the Spanish state at Canfranc/Somport. Under the agreement either party will be able to deny the other any information considered prejudicial to public order or to their respective national interests.

Another Franco-Spanish agreement covers judicial

co-operation. The Justice Ministers of the two states, meeting in Paris on 29 June, agreed to exchange liaison magistrates to facilitate bilateral judicial procedures, not only in relation to the struggle against ETA but covering other criminal and civil matters. The magistrates will be based in the corresponding ministries and will not have powers of jurisdiction.

NETHERLANDS

Drugs policy...

Dutch Minister of Justice, Mrs Winnie Sorgdrager, has said that Holland should not draw attention to itself when it comes to drug policies, since this only causes resistance. "It is useless talking to people who do not listen", she said at a meeting of the Netherlands Society for International Affairs on 9 September. "I got insane over the French reproaches, and also in the United States much nonsense about the Dutch drug policy is being spread. The noise from abroad about our drug policy is unjust, it is a sign of impotence. This is an immense and insolvable problem everywhere. President Chirac of France said to us for example that we had to close the coffee shops. I told him "sir, now you are going to far. We will never adapt our drug policy under international pressure"."

Meanwhile, the Minister who only two years ago announced a considerable liberalization of Dutch drug laws is now implementing new regulations that are much harsher than anything her conservative predecessors have ever tried. At first, the cabinet's intention was to drive out imported hashish (and thus organized crime) by allowing small harvests of homegrown marijuana, the so-called "Nederwiet". Soon after the announcement of these policy intentions, the "Sorgdrager package" for the small-scale cultivation of cannabis appeared in the windows of the growth shops that have bloomed around the country. Opposition to this plan grew when it was discovered that the larger drug importers were already shifting to growing and selling "Nederwiet", which because of its high quality has become increasingly profitable and is much less risky than smuggling through foreign countries with stiff penalties. Under the new situation with the stiff regulations, even the home grower nurturing a few plants on a balcony will face confiscation. The intention is to actively pursue every "plantation" that

uses artificial lighting and watering, time clocks and similar high-tech equipment that according to the Minister indicates professional cultivation. The minister is also looking into a possible prohibition of hemp seeds, which will wipe out the growth shops catering to domestic growers and tourists.

NETHERLANDS

Protests attract security attention

Local groups campaigning against new offices being built in Nijmegen have attracted the attention of the Dutch security forces. Both the Regionale Inlichtingen Dienst (Regional Information Service, RID, the Dutch equivalent of the Special Branch) and the Binnenlandse Veiligheids Dienst (Internal Security Service, BVD) have been involved in attempts to infiltrate protest movements and to recruit informants.

There have been allegations made against security services operations in Nijmegen dating back five years, which culminated in thousands of people demonstrating against the security forces. The most recent allegations, however, focus on the squatters movement as well as the campaign organised by the "Assata" information centre against plans to build luxury apartments and office space in the centre of Nijmegen.

According to Assata a 19 year old student was approached by Rob Paulis of the RID in April of this year who asked him to infiltrate "squatters and stone thrower" circles. The student refused to cooperate and instead went to the OBIV ("Onderzoeksburo Inlichtingen- en Veiligheidsdiensten" or the "Research centre into the information and security services") who proceeded to make this information public.

Following this revelation Mayor D'Hondt of Nijmegen admitted that he had instigated an investigation into the new squatters movement a month before. Assata however claim that Paulis had been seen observing squatters activities in November 1995 as well as in January of this year.

Another case then came to light in May. Plans for the city centre, which involved among other things the construction of a six-lane highway as well as the building of luxury apartments together with new car parks, had aroused the opposition of local people. Together with Assata the people affected by the plans

organised a campaign against the proposals.

One of the local people who became active in the campaign was approached by an agent of the RID who was very interested in activists associated with Assata. Apart from attempting to find out who was involved with the protests from Assata and other activist groups the RID agent is also alleged to have attempted to spread disinformation about activists within the campaign claiming amongst other things that Assata were planning to sabotage construction sites.

When Assata learned of these latest infiltration attempts they asked Mayor D'Hondt, as the individual responsible for the RID in Nijmegen, for an explanation. D'Hondt claimed however that the initiative behind this latest investigation came from the national BVD. Enquiries as to the reasons behind these infiltration attempts are now being directed at the Dutch Interior Ministry. In the meantime Assata have denounced the attempt by the BVD to "exceed their authority by conducting an investigation into wholly legal joint activities between local residents and organisations supporting them."

Ravage, 9.8.96.

SWEDEN

Surveillance powers for the police

The Swedish Social Democratic government is planning to allow the police to use bugging and other unconventional methods. This move was earlier rejected because of its negative impact on the rights of the citizen, but after some serious crimes from the motorcycle-gangs like "Hells Angels" and "Bandidos" the moral panic has opened the way for the change. According to the Chief of the Swedish National Police, Sten Hecksher, it seems likely that the committee which has been set up to look into the proposals will allow bugging under the same circumstances as for telephone-tapping. This will mean it will normally be necessary for a judge to authorise each case: "Requests for telephone tapping are seldom or never denied", *SOU 1989:18*, s 64). See for more details on Swedish legislation and practice, Töllborg, *Undercover in Sweden*, in Fijnaut/Marx: *Undercover, Police surveillance in comparative perspective*, Kluwer 1995.

BELGIUM

Belgian police violence against demonstrators "commonplace"

Illegal use of violence by police against demonstrators has become "commonplace" according to a parliamentary report published in September. The "P" committee of the Belgian parliament, claims that police "regard violence as the most appropriate manner to maintain public order". The report states that even in the event of an officer breaking the law during the policing of a demonstration "nothing ever actually happens".

The "P" committee back up its claims with a series of case studies involving police abusing demonstrators. Most problems apparently arise from so-called "administrative arrests". This law allows police officers to hold anyone who they suspect might commit a crime in preventative custody for up to 12 hours. According to the "P" committee much of the abuse that takes place tends to happen during this time.

Charges that have been levelled by demonstrators against the police include the beating and wounding of people in custody, the denial of medical attention to a detainee with a heart condition, the removal of a mattress from a cell out of pure spite and putting one detainee in a cold cell without a blanket.

Another cause for concern is the general practice of manacling peoples' arms behind their backs. This new trend is dangerous because people are then transported in police vans which are not designed with immobilised detainees in mind.

The "P" committee does make a series of proposals to alleviate perceived problems. They claim that judicial arrests (which occur when a suspect is arrested by order of a prosecuting magistrate in a serious crime) have far less in the way of problems owing to the strict control that is placed over suspects in custody. They also propose to require police officers to explain their sources of information following one case where different police services investigating the same crime came to completely different conclusions.

Gazet van Antwerpen, 30.9.96

Policing - in brief

Belgium-Netherlands deal: Belgian and Dutch

police forces along the border will increasingly cooperate on a variety of cross-border crimes. A covenant between the Mid-Brabant police and the Antwerp province police was signed on 5 September. The intention of the agreement is that police investigators of both countries will be free to get in touch and exchange information as they see fit.

UK: police charge press for information: The NUJ has referred the emerging practice of local police forces charging journalists for local crime information to the Independent Committee for the Supervision of Telephone Information Services (ICSTIS). The NUJ was "outraged" at the plans by Warwickshire police to charge the media 49p a minute for listening to a telephone voicebank. General Secretary John Foster commented: "The union is concerned that this is public information, gathered at public expense, and that it is in the public interest that it should be made available". Warwickshire police have now backed down but other forces continue to charge premium rates. *The Journalist*, August/September 1996.

UK: New ACPO head calls for DNA samples to be taken from the prison population: The president-elect of the Association of Chief Police Officers (ACPO), Mr Ray White the Chief Constable of Dyfed-Powys, has called on the Home Secretary for DNA samples to be taken from the entire prison population. Mr White is unhappy with the present law which allows the police to take a DNA sample from those now convicted of offences. But "this does not include those charged before the commencement of the new provisions. I am particularly concerned with the 55,000 or so offenders currently serving terms of imprisonment" he said. *Policing Today*, September 1996.

UK: International drugs coordinator: the Foreign and Commonwealth Office (FCO) has appointed Mr Derek Plumbly as its first International Drugs Coordinator. He will be in charge of the newly created Drugs and International Crime Department at the FCO and coordinate the work of the Home Office, the Overseas Development Administration and the FCO with overseas governments and international and regional organisation. *FCO press release*, 1.7.96.

Italy: Held seven years later: "Fair Trials Abroad" are concerned about the case of Afolabi Osu, a black UK national, who is in prison in Italy. Osu was acquitted of drugs charges in 1988 and then moved to Germany with his wife and child in order to escape racist persecution by the Italian police. Unknown to him an appeal was lodged by the state against his acquittal and he was sentenced to 8 years in prison *in absentia*. The court never notified him of the appeal hearing. Last summer he passed through Italy on return from a holiday. He was held and jailed. An application to the European Court of Human Rights is being prepared.

Policing - new material

Crime and policing: an analysis of victimisation and the provision of police service, Barry Loveday. *University of Portsmouth Occasional Paper No. 3* (July) 1996. Available from Institute of Police and Criminological Studies, Ravelin Park, Museum Road, Portsmouth PO1 2QQ.

Grass roots, Sarah Gibbons. *Police Review* 21.6.96. pp28-29. Topical piece on the Merseyside police Force Intelligence Bureau (FIB) which was set up in 1994 to train and support police officers dealing with informers. Det Supt John Mawer, head of the FIB, which has a computerised index of 2000 informers, discusses training and "informant management".

Too much police force?, Paul Donovan. *Guardian* 18.9.96 p.21. This piece looks at the introduction of long handled batons and CS gas and asks if they have been sufficiently tested.

The 1996 British Crime Survey: England and Wales. Catriona Mirrlees-Black, Pat Mayhew and Andrew Percy. Home Office Statistical Bulletin, Research and Statistics Directorate, Issue 19/96, 24 September 1996.

Sweden : Zero tolerance wins the argument? Leif Lenke and Börje Olsson. Reprint series no 18. Department of Criminology, Stockholm University, S-106 91 Stockholm, Sweden. Looks at Swedish drugs policy.

Drug control as a national project: the case of

Sweden, Henrik Tham. Reprint no 7. Department of Criminology, Stockholm University, S-106 91 Stockholm, Sweden.

Some educational consequences of police reform in the UK, Alan Marlow and Pat Beagle. *Police Journal*, Vol LXIX no 4, Oct-Dec 1996, pp311-318.

Testing the open government code of practice. Open government briefing no 1, revised June 1995, 10 pages. Campaign for Freedom of Information, 88 Old Street, London EC1V 9AX.

Challenging the 2nd generation of new sub-lethal public order techniques, Steve Wright with additional research by Pete Abel. Paper given at the 24th Annual Conference of the European Group for the Study of Deviance and Social Control, Bangor, September 1996. Copies available from: The Omega Foundation, 6 Mount Street, Manchester M2 5NS.

The business of crime and the crimes of business, Michael Chossudovsky. *CovertAction Quarterly*, no 58, Fall, 1996, pp24-30.

Rethinking the war on drugs, Howard Parker. *Policing today*, September 1996, pp14-19.

On what authority? Martin Baker. *Policing Today*, September 1996, pp10-13. Article by a police Chief Inspector on the failings of the new local police authorities set up under the Police and Magistrates Court Act 1994. The new local police authorities have 17 members: 9 local councillors, 3 magistrates and 5 so-called "independent members" nominated by the Home Office. A survey of 16 authorities by Mr Baker showed the composition of "independent" members included: 42.6% from business or management, 25% retired people, and 10% educationalists. Whereas an analysis of the Home Secretary's rate of deletion from the lists put forward showed: educationalists (74%); voluntary sector (72%); women (62%); ethnic minorities (56%); lawyers (56%) and "businessmen" only 36%.

PRISONS

UK

Jails at bursting point

Secret emergency proposals have been discussed by the Home office and a private security firm - Reliance Custodial Services - to deal with the crisis in the prison population, which stands at a record 57,354, according to documents leaked to the *Independent* newspaper. The plans, which are expected to come into effect in November, involve locking-up as many as 1000 prisoners in cells at magistrates' courts overnight and at weekends. The Home Office has requested prisoner escort contractors to submit proposals on how the project might work.

The plans have been widely condemned, with Harry Fletcher, deputy general secretary of the National Association of Probation Officers, commenting: "The use of magistrates' courts cells has never been considered in the past because they have no toilets, no natural light and they are very smelly. They are meant to hold people for a couple of hours."

The Home Office is also preparing to convert the former US nuclear base, at Woodbridge, Suffolk, into a prison. The plan, described by a spokesman for the Prison Officers Association as "one of the most ill-conceived that I have heard of", would involve prisoners being guarded by Ministry of Defence police.

Independent 18 & 19.10.96.

Prison Service bugs cells

The Prison Service has admitted to bugging prisoners cells and "wiring up" inmates in order to overhear confessions to crimes or information implicating others. The bugging came to light after prison officers at Strangeways prison wrote to their union requesting legal guidance on their position regarding their surveillance activities. A Prison Service spokeswoman later acknowledged that electronic eavesdropping had taken place but claimed that it was only rarely used and always at the request of a senior police officer.

Guardian 15.10.96.

SPAIN

Hunger strikes for the rights of Basque political prisoners

Some 125 Basque political prisoners remain in prison having completed three-quarters of their sentences, the term specified by law for entitlement to release on parole. There have been several hunger strikes throughout 1996 in support of their demand for parole, and for the repatriation to the Basque Country--as demanded by the Parliament of the Basque Autonomous Community. The prisoners are at present dispersed around the entire Spanish State. One hunger strike, in the cathedral of Donostia (San Sebastian), has been ongoing since January, with groups of 15 persons undertaking successive seven-day fasts. During September 540 Basques, representing the same number of prisoners, undertook a one-week hunger strike in Switzerland, Italy, Portugal, Norway, Belgium and France.

Prisons - new material

Driving forces behind prison growth: the mass media, Thomas Mathieson. *Crime and Social Order in Europe Newsletter* No. 4 (July) 1996, pp3-5. This article discusses prison growth in the United States and parts of western Europe in relation to the mass media, and envisages the development of "an alternative public space in the area of penal policy" that would limit this growth.

Prison Privatisation Report International. No. 4 (October) 1996. Has a feature article on a critical study of US private prisons by the US Federal Government's General Accounting Office and shorter pieces on UK Detention Services Ltd and the suicide of Neil Kay at Buckley Hall prison in August.

Victimisation in prisons, Ian O'Donnell & Kimmet Edgar. *Research Findings* no. 37 (Home Office Research & Statistics directorate) August 1996, pp4. This report summarises the results of an Oxford University investigation into victimisation in prisons in light of the Prison Service's 1993 anti-bullying strategy. Predictably, it found that victimisation was pervasive and that few incidents were reported to staff.

Prison Watch press release No. 183. *Prison Watch* 29.9.96. Covers the death by hanging of Paul Taylor in September. It notes a 20% increase in prison suicides this year, and points out that Taylor's is the ninth suicide at HMP Leicester since January 1991. Taylor's death was the fiftieth self inflicted prison death in 1996.

"On the record": comments on the White Paper of June 1996. *Penal Affairs Consortium* October 1996, pp8. This report examines government proposals to give employers greater access to job applicants' criminal records. While the PAC supports plans to allow direct access to employers who work with children and other vulnerable groups - with the proviso that there is strict enforcement of a code of practice - they are highly critical of proposals that any employer could require a job applicant to produce a "criminal conviction certificate".

The normalisation of Swedish Prisons, Karen Leander. Reprint series no 12. Department of Criminology, Stockholm University, S-106 91 Stockholm, Sweden.

Crime, community and change. NACRO, 1996. The Kingsmead Mead estate in Hackney. £35.50. NACRO, 169 Clapham Road, London SW9 0PU.

NACRO Annual report - 10 key messages about crime. 1995/6, 32 pages. From: NACRO, 169 Clapham Road, London SW9 0PU.

RACISM & FASCISM

GERMANY

Lauck jailed

US nazi Gary Lauck was jailed for 4 years, after being found guilty of exporting racist propaganda, by a Hamburg court in August. Lauck was arrested in Denmark, at the request of the German government, in March 1995 and deported to Germany in September. The nazi publisher and distributor was responsible for smuggling vast quantities of racist and fascist material into Germany from his base in Nebraska, USA, over the past 15 years (see

Statewatch Volume 5, nos. 4 & 5).

AUSTRIA

Freedom Party gains in polls

The neo-nazi Freedom Party, led by Hitler "groupie" Jorge Haider, gained almost 28% of the vote in Austrian European elections in October. The far-right party improved on the 22% it gained in last years general election and was only just behind Austria's two dominant parties, the People's Party (29.6%) and the Social Democrats (29.1%). Haider has praised Adolf Hitler for his employment policies and last year commended the Waffen SS when he addressed a veterans' rally.

The Freedom Party will now have six seats in the European parliament (one more than before) and will align itself with the French Front National, headed by Jean Marie Le Pen, and the northern Irish DUP's Ian Paisley. Wolfgang Jung, a Freedom Party MEP, announced that they had already developed contacts with some Euro-sceptic British Conservatives with the objective of building an informal anti-Maastricht bloc. The party has also formed links with sir James Goldsmith's Referendum Party and Umberto Bossi's Northern League.

Independent 15.10.96.

UK: Nazi headquarters shut down

The British National Party (BNP) has been forced to close its headquarters, in Welling, southeast London, following a seven year campaign by anti-racists and local residents. The fascist organisation announced the closure after its owner, and senior party official, Richard Edmonds, was fined £700 (with £200 costs) at Bexley magistrates court for failing to comply with council instructions to remove fortifications from the premises.

The BNP opened the premises as a shop in 1989 amid widespread fears that it would use it to coordinate racist activities in southeast London. The years following their arrival saw an increasing militarisation of the building - which came to be known locally as "the bunker" - as fortifications and security cameras were added. The shop's transformation into a base and headquarters was paralleled by an horrendous escalation in racist violence that included the murders of three black

youths - Rolan Adams, Rohit Duggal and Stephen Lawrence. Their murders have been attributed to the BNP's high-profile "Rights for Whites" campaign that targeted white working class housing estates and public houses in the locality.

The escalating racist violence provoked increasingly angry demonstrations demanding the closure of the headquarters. These culminated in large demonstrations in 1993, which required a huge police presence to protect the fascists, and resulted in large scale arrests and the jailing of anti-fascists (see *Statewatch* Vol 3 no 6).

Following these protests Bexley council issued instructions to the BNP to reconvert the building to its original design in September 1994. This decision was upheld, in April 1995, by Secretary for the Environment, John Gummer. Nonetheless, by the beginning of 1996 the BNP had failed to make any alterations and in June the council served a summons against Edmonds for failing to comply with the order which led to his conviction.

Edmonds, a former teacher with a long criminal record for racist violence (see for instance *Statewatch* Vol 4, no 4), will continue to live on the premises from which he will run a mail order book service.

It is already clear that the loss of their headquarters will throw the BNPs desultory general election campaign into even greater chaos. They are committed to standing 50 candidates but it is evident that the electoral path opportunistically masterminded by party leader, John Tyndall, after the successes of fascist parties in France, Italy and Austria, is in disarray. It is highly likely that Tyndall's undisputed leadership of the BNP will be challenged following the abject failure of his electoral strategy.

Racism and Fascism - new material

Preventing racism in the workplace: summary. *European Foundation for the Improvement of Living and Working Conditions* Booklet 16, 1996, pp37. This booklet summarises the main findings from national reports of all EU member states and Norway on the prevention of racism in the workplace. It identifies eight areas where action needs to be taken. Available from EFILWC, Loughlinstown, Dublin 18, Ireland.

Ethnic minorities, victimisation and racial

harassment, Marian FitzGerald & Chris Hale. *Research Findings* No. 39 (Home Office Research and Statistics Directorate) August 1996, 4pp. This report summarises the results of the British Crime Survey; among its findings is that there is a very marked gap between the number of incidents reported to police (50,000 by Afro-Caribbeans and Asians alone) and the police figure (which covers all "ethnic groups") of 8,000.

CRIDA (Centre de Recherche, d'Information et de Documentation Antiraciste), November 1995: *Rapport 1996. Panorama des actes racistes et de l'extrémisme de droite en Europe* (Report 1996. Overview of racist acts and of the extreme right in Europe) Paris, pp255, FF75,- inc. p&p, ISBN 2-910887-01-4. Beside a country by country review, also including countries outside the EU like Russia and former Yugoslavia, this report contains articles on the anti-abortion/pro-life movement, the persecution of Romanies, hooliganism, the international relations of the Chrétienté-Solidarité and the extreme right on internet. Bibliography (various languages), index. 21 rue Voltaire, F-75011 Paris, fax:0033-1-43721577.

SECURITY & INTELLIGENCE

UK

"Dirty tricks" officer wins murder appeal

Colin Wallace, the former army intelligence officer who revealed a covert propaganda campaign in northern Ireland, had his conviction for murder overturned at the High Court in October. Wallace, who served a six year prison term between 1981-86, has consistently claimed that he was framed for the murder of a friend, Jonathan Lewis, after exposing a disinformation unit which attempted to undermine the Labour Party prime minister, Harold Wilson, during the 1970s.

Wallace served as a Public Relations officer at the British Army headquarters in Lisburn, Northern Ireland from 1968 until 1975. Despite his work title his unofficial role was as a propaganda officer whose work was to discredit the Republican movement through the use of disinformation or "black" propaganda. This project, known as "Clockwork Orange", broadened its scope to include undermining

British Labour Party politicians in the run-up to the 1974 general election.

Among the information that Wallace's passed to his superior officers, were reports concerning the Kincora Boys' Home in Belfast. This was run by loyalist paramilitary commander and informer, William McGrath, who systematically sexually abused the boys in his care. Some reports suggest that this paedophile network extended to senior figures in the British establishment and was covered-up by the security services and police. Wallace was dismissed in 1975 after protesting at the lack of action at the Boys Home and following the intervention of the security services.

Some five years later, in 1980 - the same year as the press was eventually to expose the Kincora scandal - Wallace found himself charged with the murder of his friend, Jonathan Lewis. Wallace was implicated because he had arranged to meet him on the evening of his death to discuss a friendship that had developed between him and Lewis' wife. At his trial in 1981 Wallace was found guilty of manslaughter and jailed for ten years.

Wallace had always maintained that the evidence against him was manipulated and the Appeal Court agreed with him. New evidence suggested that a pathologists report was untenable and that eye-witness evidence, relating to the time of Lewis' death, had been discounted. Additional evidence, suggesting incorrectly that Wallace had been trained by the SAS, was widely published in newspapers and could have convinced the jury that Wallace was capable of killing.

Despite being cleared at the end of the trial Wallace's ordeal was not over as the prosecution announced that they intended to pursue the matter and obtain a retrial. This was dismissed by the Court of Appeal on the 14 October. Meanwhile Colin Wallace has called for a full inquiry into the trial and the events that surrounded it.

Paul Foot *Who framed Colin Wallace* (MacMillan) 1989; Guardian 10.10.96, Times 10.10.96.

NORWAY

Ministers to be questioned

The Norwegian Prime Minister will be forced to meet the Norwegian parliament to answer questions because of the so called Lund-report. This showed

that the Norwegian security police, to some extent in co-operation with the Norwegian Social Democratic Party, secretly and often illegally surveilled Norwegian citizens because of their political views (see *Statewatch*, vol 6 no 3). Other Ministers, among them the Norwegian Minister of Justice, Grete Faremo, and the Norwegian Minister of Defence, Jürgen Kosmo, will be forced to answer questions from the Norwegian parliament, as well as a Minister from the former Conservative government. The parliamentary questioning is planned to take place on 9 and 12 December this year and 8, 10 and 13 January 1997.

Dagens Politik, 17.10.96.

BELGIUM

Prosecutors want 2 year sentence for CIA man

Brussels prosecutors have demanded that Elio Ciolini, a CIA agent who was active in Belgium between 1985 and 1991 and is now being tried in his absence after escaping from an Italian jail, should receive two years imprisonment for a series of crimes he allegedly committed during his time in the country. Ciolini operated in Belgium at the high point of the "Nijvel" gang murders. He was also linked to other organised crime gangs in Belgium, as well as operating within far-right circles.

Ciolini first appeared in Belgium during the latter part of 1985, which happened to be roughly the period when the "Nijvel" gang, since allegedly linked to the Gladio project, were robbing warehouses on Overijse, Eigenbrakel and Aalst. The robberies led to the deaths of more than 15 people in what has since become known as the Brabant massacres. He was then introduced to far-right circles in Brussels through the businessman Robert Wellens.

Using these contacts Ciolini founded a number of small companies dealing in everything from arms to personal security. He quickly developed contacts with the Belgian underworld, in particular with a Thierry Smars, a member of the Haemers gang. Smars who was later found dead in mysterious circumstances, was alleged by the magazine *Humo* to have been recruited by Ciolini to membership of the Spanish anti-Basque death squads.

After his name had started to appear frequently during the Haemers trial the Justice department decided to interrogate Ciolini whilst he was in prison

in Italy. During questioning Ciolini freely admitted that he was an agent for the CIA and that his companies were nothing more than a front for espionage.

Although most of his activities were known to the Belgian authorities since 1986, it took a remarkably long time for any decisive action to be taken against Ciolini. It appears that some pressure was exerted on the Justice department to drop the enquiry but they decided to proceed with the case just before the statute of limitations would have saved him from prosecution.

According to the *De Morgen* newspaper Ciolini was involved in far-right politics since the seventies. They claim that he was a member of the so-called "Black International" which was active in Spain, Italy, Bolivia and Belgium in the late seventies and early Eighties. He is supposed to have taken part in a meeting of far-right activists in Madrid in 1982 where they plotted to murder Alexander Haig, then Secretary-General of NATO, as well as Francois Mitterand. He was then involved in Bolivian death-squads. Later on he is alleged to have accused the "P2" lodge of being behind the Bologna bombing in which 80 people died. He was in jail in Italy waiting to be tried for providing false information following this accusation when he mysteriously vanished from his cell. He has not been seen since.

De Morgen 26.9.96.

Security & intelligence - new material

Es muss nicht immer Gladio sein. Attentate, Waffenlager, Erinnerungsluecken. *Zoom*, No.4+5 1996, pp.117. Special issue on Gladio/CIA activities in Austria, Swiss, Sweden, West Germany, Belgium, Italy, Greece and Turkey, including the connection between the neo-nazis movement and Gladio.

The uses of "Counter-terrorism": Bush takes charge, Christopher Simpson. *CovertAction Quarterly*, no 58, Fall, 1996, pp31-40.

BOOKS RECEIVED

The death penalty: a world-wide perspective, Roger Hood. *Oxford University Press* 1996, pp307, pb £13.99. Includes chapters on: "The present status

of the Abolitionist Movement"; "The scope of the death penalty"; "Capital punishment in practice"; "The observance of standards and safeguards"; "Problems of administering a restrictive policy of death sentencing"; "Questions of deterrence" and "Public opinion and knowledge".

Social democracy at the heart of Europe, Donald Sassoon. *Institute for Public Policy Research* (London) 1996, pp54, pb £7.50. Sassoon proposes a European Charter to establish; "the purpose of the [European] Union and what its values are"; "the rights of European citizens"; "how to defend and enhance the cultural and political rights of participating individuals and nations" and "the decision making structure within the Union". He advocates early expansion of the EU to include central and eastern European countries.

US Official propaganda during the Vietnam war, 1965-1973: the limits of persuasion, Caroline Page. *Leicester University Press* (London) 1996, pp325, pb £16.99. This book focuses on the effects of US propaganda on three of its western allies, Britain, France and Germany, from the escalation of the Vietnam war in early 1965.

European Union citizenship: options for reform, Sifra O'Leary. *Institute for Public Policy Research* (London) 1996, pp137, pb £9.95. Arguing that European citizenship "has not lived up to...the objectives that were assigned to it" that author argues for a "dramatic overhaul of the Union's decision-making processes" and "Ensuring that the Union protects fundamental rights in all fields of activity."

Reconstructing a woman's prison: the Holloway Redevelopment Project, 1968-88, Paul Rock. *Clarendon Press* (Oxford) 1996, pp360, hd. Beginning with a description of the original "grim Victorian fortress" this book goes on to discuss the blighted Redevelopment Project which was intended to turn Holloway into "a prison that would not look like a prison". Despite recent criticism of unsanitary conditions and overzealous security, Rock asserts that "Holloway has not yet returned to the conditions of the late 1970s and early 1980s."

Economics and European Union migration policy,

Dan Corry (ed). *Institute for Public Policy Research* 1996, pp136. This book is based on papers presented at an IPPR conference in March 1996. It includes chapters on the politics of migration (Stuart Bell MP); demand based migration (Fischer & Straubhaar); international aid (William Molle); economic developments (John Salt); labour migration to Germany from eastern Europe (Elmar Hönekopp) and European migration with respect to the Maghreb & Turkey (Donatella Giubilaro).

Children who kill, Paul Cavadino (ed). *Waterside Press* 1996, pp224. This volume, which brings together papers from a conference organised by the British Juvenile and Family Courts Society, is highly critical of the way the criminal justice system deals with children who kill. Contributors include Gitta Sereny, Allan Levy QC, Paul Cavadino, Dr Norman Tutt, Dr Susan Bailey and Peter Badge.

The Developing Immigration and Asylum Policies of the European Union, compilation and commentary: Elspeth Guild, Introduction: Jan Niessen. Adopted Conventions, Resolutions, Recommendations, Decisions and Conclusions. Kluwer Law International, 528 pages, £112.00.

FEATURE:

UK: Should asylum-seekers starve?

The government's Asylum and Immigration Act 1996 was finally passed in July 1996. On its way through parliament it was amended to include provisions to make asylum-seekers homeless and destitute. Several senior judges have indicated that these and other parts of the Act could be in breach of the Geneva Convention on Refugees. This article looks at the history of the social security provisions of the Act, and at the Act's "safe country of origin" and "safe third country" provisions.

In October 1995, social security secretary Peter Lilley told a rapturous Tory party conference that he was introducing new social security regulations which would deny basic benefits to asylum-seekers in two categories: those who did not claim asylum on arrival

(who formed 70% of all claimants), and those whose claims were rejected. Despite the universally negative response of the 250 organisations who made submissions to the Social Security Advisory Committee (a government quango which scrutinises proposed new regulations), and despite the Committee's own advice to the government to abandon the plans, Lilley's regulations came into force on 5 February 1996.

Immediately, legal challenges were launched, from two directions. Local authorities quickly realised that, while they still had duties to house homeless asylum-seekers under the homeless persons legislation, if asylum-seekers had no housing benefit, the authorities themselves would have to foot the bill. (Home secretary Michael Howard had promised to abolish this duty in the new Asylum Bill, but it was still in its early parliamentary stages.) Two authorities, Westminster and Hammersmith & Fulham, began judicial review proceedings. The other challenge came from asylum-seekers and those working with them. Ms B, a Zairean asylum-seeker, was denied benefits because she claimed asylum at Home Office headquarters on the day of her arrival rather than at Waterloo station. She took a judicial review of the regulations, together with the Joint Council for the Welfare of Immigrants (JCWI), on the grounds that the regulations deprived asylum-seekers of their rights to claim asylum and to pursue appeals, rights protected under the Geneva Convention and effected in Britain by the 1993 Asylum and Immigration Appeals Act. This was, the argument went, a use of the minister's power to make regulations which the Social Security Acts could not have intended.

The government bought off the first challenge by offering local councils a cash subsidy amounting to 80% of the costs incurred by them in housing asylum-seekers pending the abolition of their duty to house them a few months later. But the second challenge went ahead, and after failing in the High Court, succeeded in June in the Court of Appeal. Lord Justice Simon Brown (who in a former incarnation defended government decisions daily as Treasury Counsel) used strong language to condemn regulations which forced asylum-seekers to choose between destitution or return to the country of feared persecution, a choice abhorrent to any "civilised society". If Parliament really wanted to subject

asylum-seekers to such an intolerable dilemma, he said, they would have to pass primary legislation.

Faced with this potentially fatal blow to his plans, Lilley consulted his partner Michael Howard. Could he "hitch a lift" on the Asylum Bill still going through parliament? With Howard's agreement, a new clause and Schedule were added to the Bill as it went through the Lords, restoring the impugned regulations. A valiant attempt by opponents in the House of Lords to allow new arrivals three days' grace to claim asylum to avoid being denied basic benefits failed. The regulations were once more law, this time enshrined in the 1996 Asylum and Immigration Act.

By the end of July in-country asylum-seekers who had applied since February, and all those refused since then, were back on the streets. Local authorities' housing duties, including emergency housing for homeless asylum-seekers, had been abolished by the Housing Act; and neither income support, housing benefit nor urgent cases payments was available to them. Local authorities began evictions; the Refugee Council, churches and support groups began gearing up to feed and shelter the destitute.

Campaigners then found a little-used section of the National Assistance Act 1948, which obliged councils to care for certain mentally or physically ill residents and other vulnerable people. They argued that councils were obliged under this section to care for asylum-seekers who were vulnerable because they were destitute, and without relatives or other sources of assistance, relying on a previous High Court judgment that destitute asylum-seekers were vulnerable in the housing market.

In October, the challenge succeeded. The High Court ruled that local authorities did indeed have to provide the basics to asylum-seekers with nowhere else to turn to. Authorities were already prepared to house families under their Children Act duties; now they were told they had to house single homeless asylum-seekers too, and provide for them.

Authorities are fulfilling the court-imposed duty by putting asylum-seekers in old people's homes (Camden) or tents (Hammersmith and Fulham). Tent City, on derelict land by Wormwood Scrubs prison, provides cheap and very basic accommodation to student holiday-makers to Britain in the summer; it is planned to be reopened to house asylum-seekers in winter. Whether these conditions qualify as a "haven"

or a "honeypot" ("We must be a haven, not a honeypot," Michael Howard, 11 December 1995) is not immediately clear.

The court decisions are all under appeal by the Department of Social Security and the local authorities. Meanwhile, the authorities will almost certainly call on central government to provide some financial assistance towards the cost of caring for the asylum-seekers.

[The Act: other provisions]

One justification the government repeatedly uses for its starve-em-out policy is that only 4% of asylum-seekers win their appeals. We have discussed before in these pages some of the reasons for the low success rate, and in particular the "culture of disbelief" spread by the Home Office and adopted by immigration adjudicators. However, in one area, over 50% of asylum-seekers won their appeals. These were against Home Office decisions to deport them to a "safe" third country without considering their claim. Hard-bitten adjudicators repeatedly (and embarrassingly for the government) found that France, Belgium, Italy and other EU countries were not "safe"; in other words that asylum-seekers sent there were in danger of being returned home without having their claims entertained. Faced with this startling success rate, the government did the logical thing: it abolished the appeal. (Or rather, it abolished the in-country appeal; asylum-seekers can still appeal that the country they are being deported to is not safe, but only after they have been deported there, which comes to the same thing).

The courts have already seen a number of judicial review challenges to the new "safe transit country" provisions of the 1996 Act, and have granted leave in at least two. In one case, involving the safety of Italy, Mr Justice Turner, a judge not noted for his liberalism, was heard to describe the new provisions as "draconian" and possibly unlawful. It seems the new spirit of rebellion among the judges might be infectious!

In October, the first "safe country of origin" list under the Act was passed by Parliament. It contains India, repeatedly condemned by human rights groups for torture of Sikh separatist suspects and others, and Pakistan, where Shari'a law allows the stoning adulterers to death and where Christians have been

sentenced to death for blasphemy. Only those asylum-seekers with credible (to the Home Office) evidence of torture can escape the fast-track appeal, with its presumption that the asylum-seeker is bogus.

The Labour Party has committed itself to repealing the asylum-seekers' starvation regulations but not to making a similar commitment in relation to the Act, which does as much to criminalise and marginalise asylum-seekers.

The Act's other main provision, employer sanctions, does not come into force until 1997.

FEATURE:

EU: Immigration and asylum: In the pipeline

The **Convention on Extradition between Member States**, signed on 27 September, effectively ends the possibility of EU nationals applying for asylum in another Member State, by allowing extradition for political offences between the member states. Other disquieting features of the Convention are that extradition can be obtained for political offences even where the person concerned did not take part in the offence; and it can be obtained without the consent of the surrendering state, which may not refuse extradition on grounds of political motivation.

The Justice and Home Affairs Council, meeting under the "third pillar", continues to produce recommendations, joint actions, common positions to regulate immigration and asylum policies among the fifteen member states. There are concerns that the proposed **Joint Action on certain aspects of the status of refugees recognised by the Member States** might water down existing international obligations under the Geneva Convention. A number of organisations dealing with refugees expressed concern in particular over the document's restrictive family reunion provisions. The House of Lords' European Communities Committee has cleared the proposal, but seeks clarification from Home Secretary Michael Howard on whether it allows Member States to impose a more limited interpretation of the Geneva Convention than that currently agreed by the international community.

The **Presidency proposal for a draft Convention on the establishment of the EURODAC system for the identification of asylum applicants** (6545/96;

see *Statewatch*, vol 6, no 4) has been welcomed by the Home Office as a measure to facilitate the implementation of the Dublin Convention and deal with serial asylum-seekers (by identifying them and sending them back to the country where they first claimed asylum). In its Explanatory Note, however, the Home Office rejects the need for the European Court of Justice to be involved in the interpretation of the Convention (as it rejects a role for the ECJ in any intergovernmental agreement). It also objects to the suggestion that EU funds should pay for states to implement EURODAC, maintaining that states should pay for themselves. An item note, **Means of proof in the framework of the Dublin Convention** (7469/94) sets out what documents can be accepted as probative evidence, and what as indicative evidence, for the assertions of asylum-seekers as to their entry and residence in EU territory.

Other reports which have recently emerged discuss **Guidelines for joint reports on third countries** (7471/94) and **Procedures for drawing up reports in connection with joint assessments of the situation in third countries** (7472/94), and separately, **Circulation and confidentiality** of such reports (7473/94). These minutes, dated June 1994, refer back to the setting up of CIREA (the Centre for Information and Reflection on Asylum) in 1992. According to the procedural minutes, confidentiality is clearly at a premium, and a cumbersome bureaucratic process is involved in the request and distribution procedures for reports. The guidelines on what should be covered in joint assessment reports are extremely detailed. Reports should deal with political developments in the country, including the existence of free elections, a multi-party system, a free press and an independent judiciary, activities of the security services and the situation of minorities; the security situation; the general human rights situation including policy and practice; the extent of torture or inhuman or degrading treatment or punishment including legislation enshrining racial discrimination and frequent use of the death penalty; conditions in prisons, arbitrary arrests, recourse to the courts; state persecution of particular groups, including extreme conditions involved in military service; unwillingness to protect members of a particular group seriously threatened by fellow citizens; and the existence of a real "internal flight alternative" in the country. It should cover whether

the asylum claim itself carries a risk of punishment on return. Because the CIREA reports will be used to send people back to "host third countries" as well as "safe countries of origin", the guidelines also seek information about the country's attitude to asylum-seekers from elsewhere. Finally, it needs to cover the economic and social situation, including the level of unemployment and the existence of welfare benefits.

The information collected in these reports is designed to found decisions on asylum throughout the 15 EU member states, although they "may be made available to the parties when there is an appeal against a decision of the authorities". It is only at this stage that the information contained in the CIREA report can become public and thus capable of challenge. The lack of input from NGOs such as Amnesty International or Human Rights Watch, and the fact that the reports are not available for comment or correction at any earlier stage or to anyone other than the parties in a particular appeal, seriously undermines standards of fairness and openness in the Community's member states' asylum process.

The Irish presidency has returned to the question of freedom of movement for the millions of legally resident foreigners in the EU, with its **proposal for a joint action regarding travel facilitation for third country nationals residing in a Member State for the purpose of entry into another Member State for a short stay or transit** (8609/96). The proposal follows the Schengen Convention in exempting these travellers from visa requirements for visits of up to three months, providing they have a valid travel document and residence permit from the member state they live in, can demonstrate sufficient means, are not on the list of persons to be refused entry, and present no threat to public order in the destination state. The proposal provides for the deportation of visitors who decide not to leave. The Home Office grumbles that the proposal will need changes to the immigration rules, and wants to exclude asylum-seekers from the benefit of the scheme. Another presidency proposal, **for a Recommendation on the need for quantitative limitation, uniformity and centralised issue of travel, identity and residence documents** (6491/2/96) gets short shrift from the Home Office. The document wants to limit "to the absolute minimum" the number of different documents issued by national authorities for border crossing, and asks member states to "reflect on means

for aligning national documents" on common criteria such as colour, format etc, as well as implementing a system for the centralised production and distribution of documents and limiting the circulation of blank documents, to prevent theft and forgery. The Home Office describes the proposal as "over-prescriptive", and does not accept that the diversity of documents itself contributes to forgery. It complains that, with its officers issuing documents in the four corners of the old empire, it is just not practical to centralise.

There is similar resistance to the Swedish **proposal for a uniform format for residence and work permits** (8608/96). The idea is to produce a document with a similar format to the EU visa, but in a different colour, in the language of the issuing state and either English or French, for insertion in the passport. The Home Office objects that the need to print a slip of paper, rather than simply stamp a passport, would cause delays at the airport, and that not all people allowed to work in Britain have work permits. It wants to think about it.

There is a note of quiet satisfaction, however, in the Home Office explanatory note with the **Draft joint position on pre-frontier assistance and training assignments** (7857/96). This is a merger of two previous texts, on pre-frontier checks (4618/95) and training of airline staff (4618/95). When they were issued, the Home Office took objection to the use of CIREFI (the Centre for Information and Reflection on Frontiers and Immigration) as the body coordinating training. The Home Office never likes British immigration officers being instructed by anyone else, or being in anything other than a superior position, and believes that training of airline staff is for national authorities. The new version, the Home Office says, now contains no express reference to CIREFI as the coordinating body for implementing the training. Other changes remove the objective of exercising direct controls at airports of departure (something airlines were not happy with), and limit the training to member states' documentary and visa requirements and means of checking their validity. The new text also emphasises the need for agreement between the competent authorities and the airlines.

The Council adopted a **Recommendation on the illegal employment of third country nationals** (10209/96), Press release 27.9.96, which emphasises

the need for "effective, dissuasive, appropriate and proportionate" penalties for employers of undocumented workers, which permit the elimination of added profits or other advantages. The recommendation also calls for coordination and collaboration between enforcement agencies to combat illegal employment and the exploitation of third country nationals, suggesting pre-emptive inspection visits of suspected exploiting employers, as well as exchange of information both bilaterally and within the Council.

EU

Informal meeting of the Council of Justice and Home Affairs Ministers, Dublin, 26-27 September 1996

The members of the EU Council of Justice and Home Affairs Ministers (JHA Council) held an "Informal" meeting in Dublin on 26-27 September. This meeting replaced the usual decision-making Council meeting usually held in late September. Under the Irish Presidency of the EU there will be only one formal meeting on this Council at the end of November in Brussels.

Despite its "informality" the meeting got through quite a bit of business. Two measures were signed by the ministers on behalf of their government in Dublin while other ministers attending the Telecommunications Council in Brussels formally adopted them. These are 1) the "Protocol to the Convention on the Convention on the protection of the European Communities' Financial Interests": this adds to the Convention signed on 26 July 1995 by introducing measures to tackle "passive corruption (where an official allows himself [sic] to be corrupted" and "active corruption (where somebody corrupts an official" and 2) the "Signing of the Convention relating to extradition between the member states of the European Union" (see *Statewatch*, vol 6 no 1, 3 & 4). The same Telecommunications Council in Brussels on 27 September also adopted a Recommendation on "Combatting the illegal employment of third-country nationals" which had been agreed "in principle" at the meeting of the JHA Council in Luxembourg on 4 June (see feature in this issue).

The JHA Ministers in Dublin agreed on three Joint

Actions to be agreed at the November meeting of the Council: a) yet another extension in the mandate of the Europol Drugs Unit (EDU) in the Hague to cover "trafficking in people" including sexual violence against children. As the EDU cannot hold information on individuals this will be based on the exchange of information between member states; b) a long-term training programme deals with the trafficking of people; c) "Establishment of a Union-wide list of special abilities and expert knowledge in the area of international organised crime". This list will cover the areas currently assigned to the EDU who will draw up and manage it. It will be similar to the "centre of excellence" Directory to combat terrorism (see G8 feature in this issue).

The informal JHA Council discussed a draft Resolutions on maximum penalties for drug offences, and another one on increased police and forensic cooperation to combat drugs both of which the Irish Presidency hope to present to the November Council. The "temporary protection of refugees" was discussed concerning draft proposals for the harmonisation of the conditions of reception (social benefits etc). The German delegation maintained the "temporary protection" had to be considered together with "burden-sharing". However, they did not agree on a Belgian proposal for a Joint Action to improve judicial cooperation in the area of the trafficking of people and the sexual exploitation of children.

Signing of the Protocol to the Convention on the Convention on the protection of the European Communities' Financial Interests, press release, Dublin 2.10.96; *Signing of the Convention relating to extradition between the member states of the European Union*, Dublin, 2.10.96; *Telecommunications Council*, press release, 27.9.96; *Report on the Informal meeting of the Justice and Home Affairs Council on 25/26 September 1996*, German Federal Interior Ministry, 1.10.96.

FEATURE:

G7/8 terrorism summit

At Lyons, France on 27 June the Prime Ministers of the G7/8 countries agreed a Declaration on terrorism which was followed by a ministerial meeting of its Foreign and Interior Ministers in Paris on 30 July. The 30 July meeting agreed a 25-point programme to

tackle terrorism on a global scale.

The G7/8 group is comprised of "the seven most industrialised nations": Canada, France, Germany, Italy, Japan, the UK and the USA plus Russia. Originally set up to deal with economic issues its role was extended following a ministerial meeting in Ottawa on 12 December 1995 which issued a Joint Declaration on terrorism (see *Statewatch*, vol 6 no 1). This was followed by the Sharm-el-Sheikh Summit in March. These meetings of ministers and officials are also, confusingly, referred to as the "P8 group" indicating the political rather than economic nature of the meeting. A representative of the EU Presidency (currently Ireland) also attends.

The Lyons meeting set the broad perspective calling on "all States to deny support to terrorists... to thwart the activities of terrorists and their supporters, including fund-raising...". The Declaration seeks to extent the "fight against terrorism" by redefining political refugee status by denying suspected "terrorists" sanctuary anywhere; by placing "organisations, groups or associations, including those with charitable, social or cultural goals" under surveillance where it is suspected they are being used for "terrorist" ends (point 5); to allow "lawful government access to data and communications" (e-mail, fax, and Internet) (point 11); to "develop" extradition procedures (point 16); to cut off "terrorist funding" by preventing the "movement of funds *suspected* to be intended for terrorist organisations" (point 21, italics added).

Surveillance is to be intensified as regards:

"the actions and movements of persons or groups *suspected* of belonging to or *being connected with* terrorist networks." (point 24, italics added)

Point 13 deals with the status of refugees:

"while recognising that political asylum and the admission of refugees are legitimate rights enshrined in international law, make sure that such a right should not be taken advantage of for terrorist purposes, and seek additional international means to address the subject of refugees and asylum seekers who plan, fund or commit terrorist acts."

The Declaration moves easily between questioning

the rights of refugees, to terrorism, then organised crime, and any group or persons *suspected* of being connected with them. If such measures had been in place during the long struggle against apartheid in South Africa Nelson Mandela and other ANC activists would have been denied sanctuary in the UK and in Europe. Groups raising money to support medical and educational projects during apartheid would have been subject to surveillance and criminal prosecution. The same would have held true during the Vietnam War and many other liberation struggles in the Third World. Groups in Europe supporting Kurdish people have already become targets. The dictum that one country's "terrorists" is another's freedom fighters is not recognised.

The failure of the UK government to deport Muhammad al-Mas'ari, a Saudi Arabian, to Dominica following scarcely veiled threats by that government led UK Prime Minister to say in March on his return from the Sharm-al-Sheikh Summit:

"It may be that the time has come to look at the activities not only of those who actively conspire to commit terrorist acts but also those who from safe havens abroad foster dissent elsewhere in a way which creates a climate in which terrorism can flourish.

If people.. use the UK as a base from which to conduct their own particular activities against another government, particularly a friendly government, then that is a matter we have to look at very carefully."

[EU: "Centres of excellence"]

In November 1995 the UK Home Secretary put forward, at the meeting of the Council of Justice and Home Affairs Ministers (JHA) in Brussels, the idea of creating "centres of excellence" in the EU which could share their expertise on anti-terrorist measures. Although the draft Joint Action was ready by early June this year it will not be formally adopted until the next meeting on the Council at the end of November. However, the services of this initiative have been offered to, and incorporated into, the 30 July Declaration (Home Office press release, 30.7.96).

The draft Joint Action, "concerning the creation and maintenance of a Directory of specialised counter-terrorist competencies..", provides for "the UK to

compile, distribute and maintain the Directory for the first year after it comes into force; thereafter, responsibility for the Directory would rotate with the Presidency of the EU." (Article 1). The designated Member State will nominate an agency to carry out this work known as "the Directory Manager" (Article 1.2) charged with maintaining "statistics on the use of the Directory" and making a twice-yearly report to the JHA Council. There will be no central control over the use of the "Directory" with contacts being made bilaterally between two or more EU states (Article 4).

Joint Actions are simply agreed at meetings of the JHA Council and do not require ratification by national parliaments.

[Refugees and dissidents defined as "terrorists"]

The ideology underpinning the G8 30 July Declaration has been evident for a number of years in the practices of EU Member States in their treatment of refugees and of dissidents. In the UK people from Palestine, Lebanon, the Gulf States, and Sikhs from the Punjab have been the subject of emergency legislation, detention and deportation. To this list has been added the Kurdish community. In France one of the main targets are Algerians who are detained without charge, deported, and stopped and searched on the streets as a matter of course. Algerian exiles accuse the French state of collusion with the junta that run Algeria. Writing in *Race & Class* Frances Webber and Liz Fekete write: "this collusion between governments makes a terrorist out of every dissident." They highlight the cases of Kani Yilmaz, the European Kurdish leader, held in prison in the UK. Germany, under pressure from Turkey, want to extradite him, not because of terrorist charges but under s129 of the Law of Assembly which does not require specific criminal charges to be proved. "Commercial, diplomatic and arms links with refugee-producing countries take precedence over refugees' rights to life and freedom", they say. Moreover, the targeting of the migrant communities using emergency measures presents the "threat" of mass immigration on a par with terrorism:

"We have become used to the imprisonment without trial of immigrants and asylum-seekers, to their routine fingerprinting, to the illegal immigration

intelligence units exchanging information: in short, to measures germane to serious and urgent criminal investigations being used on immigrants and asylum-seekers."

[New "enemies", new "threats"]

In the UK the G8 ideology is informing changes to emergency legislation. Lord Lloyd's report on "Legislation against terrorism" published on 1 November proposes a new, much wider, definition of "terrorism":

"The use of serious violence against persons or property, or the threat to sue such violence, to intimidate or coerce a government, the public or any sections of the public in order to promote political, social or ideological objectives."

In March a seminar was organised by the Ditchley Foundation, "New faces of terrorism". It was attended by Tom King MP, former Northern Ireland Secretary and now chair of the Parliamentary Intelligence and Security Committee; Commander John Grieve, National Coordinator for Terrorist Investigations, Sir Peter Imbert, former Commissioner for London's police force; Kate Adie, BBC TV; and Lord Lloyd. The seminar discussed new forms of terrorism like religious groups and "the defence of animal rights in Britain". Amongst its conclusions was:

"we wondered whether counter-strategies were yet exploiting the full additional capability that could be contributed by knowledge available in the academic world or that held by other government agencies (such as tax authorities) not normally involved in combating terrorism.. coordination built upon trust and sense of common purpose would give a valuable dividend."

The G8 30 July Declaration unashamedly links refugees and asylum-seekers to organised crime and to terrorism, its ideology is racist and centred exclusively on the needs of the "white" highly industrialised states. The creation of a global G8 anti-terrorist capability and the extension of the remit of the US FBI as a global police force form key parts of its overall strategy. The role of these very same countries supporting authoritarian regimes in the

Third World or their export of arms (to maintain profits in the post-Cold War era) and police weaponry (often unacceptable in the exporting countries) does not figure at all.

*Ministerial Conference on terrorism, Paris, 30 July 1996, Final Declaration; Declaration on Terrorism, G7 Lyon Summit, 27.6.96; International Herald Tribune, 21.8.96; Guardian, 15.3.96 & 29.7.96; Times, 1.11.96; "G7 countries and Russia unite against terrorists", Home Office press release, 30.7.96; "US & UK working together to fight terrorism and crime", Home Office press release, 31.7.96; "G8 Foreign and Security Ministers' Conference on Terrorism: Paris, 30 July 1996", Foreign and Commonwealth Office press release, 30.7.96; Draft Joint Action concerning the creation and maintenance of a Directory of specialised counter-terrorist competencies, skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union, 11.6.96, LIMITE, ENFOPOL 98; "New faces of terrorism", note, Ditchley Foundation seminar, 29-31 March 1996; "Europe: from refugee to terrorist", Frances Webber and Liz Fekete, *Race & Class*, October-December 1996, vol 38 no 2, pp75-81; see *Statewatch*, vol 6 no 1, "EU reaches for global role?"*

FBI [BOX]

The FBI is to expand its overseas Offices from 23 to 46 by the year 2000 at an additional cost of \$80 million. The number of overseas special agents will rise from 70 to 129. Special agents are based in US embassies abroad and liaise with national law enforcement agencies on terrorism, drugs, and organised crime. Critics in the USA say they may stumble across the CIA, charged with intelligence-gathering and disruptive operations (it is not unheard of for the CIA to set up drug-running operations) or the Drug Enforcement Agency (DEA).

The FBI currently has offices in: Tokyo, Hong Kong, Canberra, Bangkok, Manila, Ottawa, Mexico City, Panama City, Bridgetown (Barbados), Caracas, Bogota, Santiago, Montevideo, London, Brussels, Bonn, Madrid, Rome, Athens, Moscow, Paris, Bern and Vienna.

The 23 new offices will be in: Copenhagen, Tallinn (Estonia), Kiev, Warsaw, Prague, Bucharest, Lima,

Brasilia, Buenos Aires, Seoul, Beijing, Singapore, Lagos, Pretoria, Islamabad, Riyadh, Tashkent (Uzbekistan), Almaty (Kazakhstan), Tbilisi (Georgia), Tel Aviv, Ankara, Cairo and New Delhi.

SCHENGEN

Governments forced to publish the Schengen "acquis", Schengen Executive Committee meeting, and German government "perspectives"

The Danish and Norwegian governments have published the contents of the Schengen "acquis" after sustained pressure from MPs and the media. On 1 May the five Nordic countries - Denmark, Sweden, Finland became "observers" in Schengen and the two non-EU states - Norway and Iceland became non-membership "observers". This first step to join the Schengen agreement meant that it has to be ratified by each of the five national parliaments before it can come into effect. MPs in the national parliaments were given copies of the 1990 Schengen agreement but at a meeting in the Danish parliament in April it emerged they had not been given the Schengen "acquis" - namely all the policies and measures agreed by the existing members of Schengen prior to their "observer" status being agreed. The existing nine members are: the original five members: Germany, France, Belgium, the Netherlands and Luxembourg, plus Spain and Portugal who joined later and Greece and Italy who have joined but have not yet ratified the agreement.

The Danish government finally released the full list of documents in the Schengen "acquis" early in September and the Norwegian government followed suite a couple of weeks later. The list is 18 pages long and contains 172 documents covering all aspects of the agreement which itself has 142 Articles.

Five of the documents are classified a "Confidential" in whole or part and are not being released except to MPs. They include the key documents on the Schengen Information System and the "SIRENE Manual" which detailed the exchange of data on individuals. Copies of the "acquis" are available from Statewatch (see below).

[Schengen Executive Committee meeting, 17 October]

The Schengen Executive Committee met in Luxembourg on 17 October under the Luxembourg Presidency. A timetable was set for the formal signing of the Schengen Agreement by the governments of the five Nordic countries at the next meeting of the Executive Committee on 19 December. As soon as the signature is dry these countries will have to pay their share of the setup and running costs of the Schengen Information System (SIS) even though the parliamentary ratification process - which will certainly take months and maybe years - has hardly started (see *Statewatch*, vol 6 no 3).

The meeting reviewed the progress of three other states who have signed the agreement but their parliaments have yet to ratify it - Italy, Greece and Austria. The meeting "welcomed" the declarations by the three governments that they reaffirmed their political will to fulfil the pre-conditions laid down for all Schengen countries. As Greece and Italy have to get data protection laws through before their parliaments can consider the Schengen agreement itself their participation is quite some way off. Austria, whose government signed up in April 1995, is being put on the spot by the German Bavarian Lande (regional government) over its ability to maintain border controls up to Schengen standards. Interior Minister Gunther Beckstein questioned whether Austria was capable of securing its frontiers against "illegal" immigrants from its six bordering countries - Czech Republic, Slovakia, Hungary, Slovenia, Italy and Switzerland. Last year, said the Interior Ministry, 11,500 people were held by the German police on the Austrian border. Although the Schengen agreement is based on the removal of controls at the border Bavaria, like other Schengen states, is now planning a 30-kilometre "security zone" inside the Bavarian-Austrian border where police will have powers to stop cars and carry out random searches. The Austrian authorities say they already have 2,000 police ready for this work and plan to add another 1,000.

Despite the lack of progress in getting parliamentary ratification of the Schengen agreement in these three countries the current work programme, prepared by the Schengen Central Group, includes linking them up to the SIS. It says that for Italy and Greece this will enter the "operational integration" phase - the computer links are already installed - and for Austria the first stage of "technical integration" will begin

(computers and links will be installed).

The Executive Committee meeting also noted the progress being made on upgrading the SIS - the "realisation of Phase II of the SIRENE network". The SIRENE network provides for the bilateral exchange of detailed information on "suspects" thrown up by the initial search on the SIS which is based in Strasbourg.

The current Schengen "Work programme" includes: planning for police cooperation in border areas of "large controls and events", ie: public order; the "question of the incorporation of the decisions of the Schengen Executive Committee into the national legislation of the member states"; and the Sub-group on borders will give special attention to "the problem of third country nationals in possession of a residence permit and who are also on the "wanted list" of the SIS".

German government report says Schengen cooperation is the "motor for the development of the EU" with "Germany as pacemaker"

A report from the German government on the progress made under the Schengen agreement and their perspectives for its future development spells out the overall strategy of the leading Schengen state. The report says that in the medium term:

"The German government will continue its policy to maintain the Schengen cooperation as a motor for the development of the EU. An incorporation into the EU at the present time would involve the danger that the Schengen dynamic breaks down without the EU making further progress. This reflects the opinion of the majority of the Schengen states."

Moreover, the German government does not agree with the "majority opinion" within Schengen that the "association agreements" with Norway and Iceland - who are not in the EU - should be seen as exceptions (the agreement says members of Schengen have to be member countries of the EU). It argues that whether non-EU states remain "associates" or "join the EU as full members after the Schengen cooperation has been incorporated into the EU" makes no difference as the EU ultimately benefits. Third countries "which are prepared to accept the Schengen acquis" should have the chance to join Schengen and this "would

include an extension of the capacity of the Schengen Information System". Furthermore:

"Schengen should establish a new institutionalised "participator status" (*Mitwirkungsstatus*) for third countries which aim to join the EU or Schengen in the mid or long-term. These states would need to be introduced to the high Schengen standard in the area of the "fight against migration and crime". The advantages of this model are, on the one hand, that the third countries have the opportunity to participate in the Schengen development, eg improvement of their security systems, access to information (but not to the SIS). On the other hand, the Schengen states would benefit from additional protection at their external borders through more efficient control measures by the third countries."

These arguments are presented in the context of the German government's "special concern" with the "control of the eastern border". At the moment cooperation with the "neighbouring" countries is not considered to be a necessary compensatory measure - like external border controls, the SIS, the Schengen visa, asylum regulations, and police cooperation. The report calls for cooperation with the "east" to be "upgraded": "The aim is further approximation of the eastern systems to the Schengen niveau, if necessary also within the framework of a new East-West Security Council" dealing with policing, information exchange, and visa policy.

The report sees Schengen "with Germany as pacemaker" as the "motor" of the EU on justice and home affairs issues.

[Review of first year: German government report]

The first part of the report review the workings of the Schengen agreement in practice. At the internal Schengen borders between its member states the German police the *Bundesgrenzschutz* (BGS) (a special border police under federal control) operates with 11 permanent offices (240 police officers) and a mobile force of 500 officers. The BGS is responsible for the security of the borders and for the area of up to 30 km behind the border. 300 Dutch police officers patrol the Dutch-German border; 16,000 French border police, police, gendarmerie and customs officers work in the French-German border area.

On repatriation the report says:

"The Benelux states and France insist on deporting third country nationals back to Germany on the basis of an agreement of the 1960s. Direct deportation to the countries of origin is too complicated and the responsibility is shifted to Germany. Therefore, a unified policy is necessary according to which third country nationals are deported directly to the countries of origin (cf. Art.23 para 4 Schengen Agreement). Repatriation through joint charter flight by Germany, France and the Netherlands has been successful and should be expanded."

At the external borders of the Schengen area: "The focus of the first nine months of the application of the Schengen Agreement has been the border to Poland and to the Czech Republic. 80% of all arrested illegal immigrants have come via this route." Germany deploys 16,900 officers at its external borders (BGS, customs, Bavarian border police, water police). The main contingent is at the borders to Poland and the Czech Republic (5,800 BGS officers, 4,100 other border authorities). These are backed by:

- 105 infra-red devices of the BGS, 24 of customs
- 6 'tele-images' transmit photos of wanted persons
- 9 new boats on the Oder (Polish-German border)
- 6 helicopters
- 306 dogs, in the future 650 dogs
- 10 carbon dioxide detection devices (with 88 planned) to discover people hidden in trucks etc.
- plus 7 additional check points at the German-Polish border and 17 at the German-Czech border.

The Schengen-visa regulation based on a harmonized visa-list, has experienced some problems with the so-called 'grey-list' - a list of states whose citizens are only in some member states required to apply for a visa - consisting of 26 states. The application of asylum regulations has thrown up:

"considerable differences between France and Germany regarding the onus of proof in applications for the "taking over" of asylum seekers. Germany claims that many applications from France are vague and the documents are incomplete. France claims that the German standards are too high. As a result, by 31.12.1995 Germany refused 1378 out of 1784

French applications for the taking over of asylum seekers; France accepted 195 out of 701 German applications, refused 79 and did not decide on 427 cases."

Meeting of the Executive Committee of Schengen in Luxembourg on 17 October 1996, 17.10.96; *Working Programme of the Luxembourg Presidency 1.7.96-31.12.96*, Central Group, 20.6.96, SCH/C (96) 52; *Report of the German government on the Schengen Agreement - "Experiences and Perspectives"*, 1996.

Copies of the Schengen "acquis" (18 pages) are available from Statewatch for £2.50 including postage in the following languages: Danish, German and English (please state which language you want). Please remember this is only a LIST of the documents comprising the "acquis".

EU

Secrecy report "secret", then released

A report prepared by the Secretary General of the European Council on the working of the Code of access to document was suppressed for three months because some governments did think it should be kept secret. Under the Code of access, adopted in December 1993, Council officials were asked to prepare a report on the operation of the Code in 1994 and 1995. This was completed in July but the document was not released until the end of October.

The Report, prepared by the Council's General Secretariat, broadly considers the Council's policy of openness is working well - except for the challenges in the European Court of Justice by John Carvel (the Guardian), the Netherlands government, and the Swedish Journalists Union and:

"a single applicant [who] submitted 14 requests involving more than 150 documents, i.e: more than one third of all the documents requested by all applicants." (emphasis in original)

The General Secretariat's report proposes strong counter-measures to combat this unnamed applicant - who is in fact Tony Bunyan, *Statewatch's* Editor. The Council's report says:

"applicants are not required to give reasons for the interest they take in the Council's proceedings. Yet the very nature of certain applications sometimes elicits the thought that steps are being taken to test the system rather than exercise a legitimate option.

It might therefore be worth considering whether a provision should be made for access to documents which are manifestly excessive or involve disproportionate costs to be refused, where appropriate, after examination of the reasons for the applicant's interest."

When the *European Voice* published the Council's views on *Statewatch's* applications for documents Steve Peers, Director of the Centre for European Commercial Law at Essex University wrote to the paper as follows:

"All of the information Mr Bunyan has obtained from the Council has been excerpted and discussed in *Statewatch* bulletin and in other publications, providing an in-depth account of Council plans to curtail Union citizens' rights and liberties under the third pillar of the Union. *Statewatch* is virtually the only source of detailed information on these discussions.

Why should citizens only hear about these decisions after they have been taken?

Your article appears to imply that the Council considers Mr Bunyan an illegitimate applicant, but it is hard to imagine a more legitimate one."

It appears that the European Commission also disagrees with the Council General Secretariat on this issue. The Commission, which also introduced a policy of providing documents at the same time as the Council was also obliged to produce a review of its operation in 1994 and 1995. The Commission is unequivocal on the question of access:

"Any person, regardless of status and *without having to prove a particular interest*, can make a request to have access to a Commission document."(italics added)

[The Council's report]

Over the two year period covered by the report a total

of 142 applicants applied for access to a total of 443 documents. The report, in patronising terms, says the Code of access is "little used or unused in some Member States, nor is it widely used in sectors other than journalism, the law and higher education".

Access was granted to 222 (58.7%) of the 378 which related to the Council's work (65 were excluded because they did not). 185 documents were sent in response to the first request by an applicant and a further 37 on appeal. There were 16 "confirmatory applications" (appeals) and in 6 cases access was granted to more or all documents. The main grounds for refusing access to 156 documents was "protection of the confidentiality of the Council's proceedings" (44%) - a euphemism for refusing to reveal any report which contains the dissenting view of any member government. The "protection of public interest (public security, international relations).." accounted for 18%.

The report - setting the tone for the IGC (see below) - draws attention to the fact that the present Code of access refers to "all documents.. such as preparatory documents not leading to a decision being taken", a situation it clearly dislikes. It also dislikes the "cost" of the present appeals procedure involving "numerous and extended meetings of the experts, Ambassadors and Ministers" which is "excessive".

However, the Secretariat General's report seeks to introduce new, excessive, time limits for responding to requests. They propose that the present limit of one month to reply to an initial request and to a confirmatory application (appeal) should both be extended to *two* months. An applicant, especially in the field of Justice and Home Affairs, would have to wait for a minimum of four months to get access to a document. The idea that a policy of openness requires adequate staffing in order to give applicants a response within a reasonable period of time does not appear on their agenda.

The Commission's report on the same issue is altogether more honest. It recognises the problem that the lack of use of the Code of access to documents may be because citizens are unaware of how to apply and what to apply for. Further it notes that "too many documents are.. now classified as "secret" or "confidential" by the services without sufficient justification". It argues for changes in the "mentalities and habits" of officials applying the Code of access. The difficulties of applying the Code in the Commission is:

"due to the fact that a "culture of openness" is still lacking amongst civil servants."

1996 IGC draft proposals

Indications have already been alluded to in the press that the 1996 Intergovernmental Conference will include a new commitment to openness and transparency. However, the drafts being considered while including this commitment suggest that access to documents will, in practice, be much more restrictive.

The "Presidency introductory note" on "Transparency" say this concept should be incorporated into the Treaty of the European Union (TEU) by added a clause to Article A: "and in compliance with the principle of [openness] and transparency" (brackets in original showing that this is an option).

One of two draft options would be attached to the TEU as a declaration. Option A includes the phrase: "acting in its legislative capacity". If this was applied to the work of the Council of Justice and Home Affairs Ministers (JHA) it would excluded a whole range of documents from access. Under the intergovernmental third pillar the JHA is both the executive and legislature and but it also oversees an administrative role in coordinating the EU's work in this field. It is thus responsible for putting the policies (legislation) agreed into effect - this proposal mean there would be no accountability or access to information on the *practice* followed on policing, immigration and asylum, and legal cooperation. The analogy would be for a national Interior Ministry to pursue policies agreed by national parliaments but to be unaccountable for its actions in pursuit of them.

Option B is little better. Firstly, this suggests a "definition of official documents". At present the definition is "*any* document" whatever its "medium" (document, note, tape etc). Secondly, official documents would be listed on "public registers". On the face of it this would be an advance on the present situation. But it would not be if Council officials were empowered to draw up these registers based on "an exhaustive catalogue of specific exceptions" when it appears on the evidence they have not been drawn from administrative "cultures of openness". Thirdly, this Option suggests that the only right of appeal

against access documents being excluded from the "public registers" would be "the right of appeal" to the European] Court of Justice (ECJ). At present the right of appeal, through a confirmatory application, means that the restrictive decisions of Council officials can be overruled by a majority of governments - only then does the right of appeal to the ECJ become operative. A commitment to openness and transparency in the TEU could, on this evidence, be completely undermined in practice.

The IGC proposals will not be adopted by the 15 EU governments until June 1996 at the earliest and will not come into effect until the new Treaty has been approved by all 15 national parliaments which may well be into the next century. There is a danger that the Council will seek to implement changes prior to this.

Report by the Secretary General on the implementation of the Council Decision on public access to Council documents, July 1996; Assessment of the policy of public access to Commission documents: Communication to the Commission from the President and Mr Oreja, Commission; Presidency introductory note: Subject: Transparency, Conference of the Representatives of the governments of the Member States, Secretariat, CONF/3875/96, LIMITE, Brussels 16 July 1996; European Voice, 3, 10 & 24.10.96.