

# statewatch

monitoring the state and civil liberties in the UK and Europe

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Tampere European Council

## An "Area of Freedom, Security & Justice" or "an obsession with Security"?

The Tampere EU Summit in Finland on 15-16 October will adopt far-reaching, long-term, plans on policing, immigration and asylum, the European "legal order". The Summit will be attended by EU Prime Ministers and EU Foreign Ministers (not Home and Interior Ministers). A whole raft of reports implementing the agreed Council and Commission position adopted in December 1998 will be adopted.

### The agenda so far

The EU Action Plan on Organised Crime (drawn up by the High-Level Group on Organised Crime and adopted in April 1997) is likely to be up-dated and given a renewed mandate. A "Strategy paper on migration" will be adopted, together with the report from the High Level Working Group on Asylum and Migration which will include "Action Plans" for four or five countries (Morocco, Somalia, Sri Lanka, Afghanistan/Pakistan, plus Iraq; Albania is likely to be held in "abeyance"). This High Level Group will also be given a renewed mandate with five or six new "targets countries" (see *Statewatch*, vol 9 no 1). Both the Strategy paper and the "Action Plans" are geared to excluding people from the EU and include re-admission and expulsion to the country or region of "origin" (states which do not agree will face the possibility of have economic and humanitarian aid withdrawn).

### Migration strategy - refining "Fortress Europe"

The current Finnish Presidency's draft report, "Guidelines for a European migration strategy" (ASIM 23, 1.6.99) in circulation is seen, by some, to represent a major improvement over the controversial Austrian Presidency paper, "Strategy paper on migration and asylum policy" (1.6.98). The Austrian paper was declared "dead and buried" at the end of its Presidency but in its place the German Presidency (January-June 1999) produced "Strategy on migration and migration policy" (ASIM 3, 19.1.99). The German Presidency report selected 48 of the 116

recommendations in the Austrian report for immediate action.

Alongside the Finnish Presidency's general report are detailed plans (set by the German Presidency) being drawn up by EU working parties such as: Asylum Working Party (Admission) and migration (Expulsion), the Visa Working Party and the Multidisciplinary Group on Organised Crime.

### Unseen issues

Other issues known to be on the Tampere agenda include increasing Europol's (operational) powers; the Schengen Information System (SIS) and the Customs Information System (CIS) sharing data; tackling legal differences either by "harmonisation" or more likely "mutual recognition" of national court judgements; and possibly "suspects' rights" when arrested and put on trial in an EU state other than their own. *Fair Trials Abroad* is taking up this latter issue which affects arrest, release on bail, interpretation and quick access to legal advice. The group's director Stephen Jakobi told the House of Lords Select Committee in June: "The political drive towards the creation of a European legal space is largely, if not entirely, fuelled by law and order concerns. The balance implied by *Freedom, Security and Justice* is becoming in practice an obsession with Security."

### No time for democratic debate

The timetable for Tampere is likely to be as follows:

- i) Working and "expert" groups complete proposals by end of July or the beginning of September;
- ii) Article 36 Committee (9-10 September), Strategic Committee on immigration and asylum, COREPER (8 and 15 September) discuss draft plans;
- iii) Informal Justice and Home Affairs Council meeting in Turku, Finland (16-17 September) where the ministers will try to sort out major differences;
- iv) Justice and Home Affairs Council, 4-5 October in Luxembourg where Tampere is top of the agenda and the High

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Level Group on Asylum and Migration present their final report;  
v) COREPER (6 October) and General Affairs Council (11-12 October) agree the final reports;

vi) Tampere European Council, Finland, 15-16 October.

The newly-elected European Parliament's renamed Committee on Citizens' Freedoms and Rights, Justice and Home Affairs will only have its first proper meeting at the end of September and its second meeting just days before the Tampere European Council. National parliaments are similarly excluded from taking part in the Tampere preparation because before their summer recess only the most general of briefings were available. The only time meaningful parliamentary scrutiny could take place is between the JHA Council on 4-5 October and the COREPER meeting on 6 October. Only then will the final detailed reports be on the tables of the EU governments. It is a timetable drawn up for the benefit of governments in which parliaments can have little role and civil society virtually none.

### “Charter of Fundamental Rights”

The European Council held at the end of the German Presidency, in Cologne in June, agreed that an “EU Charter of Fundamental Rights” should be adopted. It was agreed that the procedure for adopting the “Charter” should be agreed at the Tampere Council in October with a view to final adoption in Helsinki in December 1999 or Paris in June 2000.

The “Charter” will not include *any* new rights nor any commitment to amend the existing treaties. It simply summarises the rights that EU citizen have already. The draft says: “The Charter should.. include the fundamental rights that pertain only to the Union’s citizens” with the clear implication that no “rights” are to be included affecting migrants, refugees and asylum-seekers. The main outcome will be a Convention to enforce these rights. The process of what is to be included in the Charter and the Convention is to stay firmly in the hands of the Council. A consultative “body” will be set up comprised of representatives of member states, the European and national parliaments and the Commission. The European Court of Justice will have an “advisory” role while “representatives of social groups and experts should be invited to give their views.”

### The legacy of intergovernmental secrecy

The post-Amsterdam era of justice and home affairs has been bequeathed three *acquis* - from the Trevi period (1976-1993), the Maastricht era (1993-1999) and the Schengen era (1985-1999). A common feature of these inherited *acquis* is that they were subject to little, or no, effective parliamentary scrutiny, for Trevi and Schengen there was no right of public access to documents, and they were all “intergovernmental” where “officials” met in secret to draw up new policies and practices and EU Ministers met and decided in secret. Only then were citizens, civil society and often parliaments informed of what had been decided in their names. These *acquis* are the product of secret, unaccountable and undemocratic decision-making.

Post-Amsterdam all this is meant to change - especially in the wake of the resignation of the European Commission, and the demonstrable lack of interest in European elections. The European Parliament now has new powers of scrutiny and a new cross-institution public right of access to documents is promised (see *Statewatch*, vol 9 no 2). Whether these initiatives produce a more accountable, open and democratic EU remains to be seen. The “Tampere” decision-making process does no bode well for the re-assertion of democratic standards where citizens and civil society, as well as parliaments, can take part in an informed and open debate.

*Tampere Conference: Protecting the citizen against injustice, Fair Trials Abroad, press release (22.7.99) and evidence to the House of Lords Select Committee on the European Communities (June 1999); Guardian, 19.7.99; Memorandum on the position of the Netherlands at the meeting of the European Council in Tampere; Draft Charter of Rights, SN 2960/99.*

## EUROPE

### EU

## Justice and Home Affairs Council, 27/28 May 1999

The meeting of the Justice and Home Affairs Council in Brussels on 27-28 May, under the German Presidency, was a low-key affair. The draft Convention on Mutual Assistance in criminal matters had advanced but several major problems remained. The JHA Council proposal for creating a fingerprint database for asylum-seekers and suspected “illegal” immigrants was re-presented by the Commission with minor amendments, and the imminent operational start of Europol was, finally, given as 1 July.

**Eurodac:** Mrs Gradin, for the Commission, presented a proposal for a Regulation on Eurodac. The Commission proposed Regulation includes both the draft Convention and the draft Protocol (which extends fingerprinting to suspected “illegal” immigrants). The only change from the Council’s version is the inclusion of data protection clauses in line with Community law. The European Parliament’s rejection of the Protocol is ignored, although it will now have another chance when it is consulted over the new text.

**Re-admission agreements:** EU member states usually in favour of “harmonisation” could not agree on a policy on re-admission agreements. With immigration and asylum, under Title IV of the TEC, under the first pillar some member states believe the Community’s competence in this area is exclusive. Other member states believe the Community’s competence is “concurrent” with that of member states and that member states remain free to act as long as the Community has not concluded an agreement on the specific issue. The JHA Council was, however, unanimous in its belief that “Readmission agreements constitute a valuable instrument of an active expulsion policy.”

**High Level Group on Asylum and Migration:** A report from the High Level Group was presented on progress with a view to submitting country-by-country Action Plans for adoption at the Tampere European Council. The Group set up in December 1998 was given its brief by the General Affairs Council in January (see *Statewatch* vol 9 no 1). Five countries and their neighbouring regions were selected and assigned an EU state to take the lead in preparing the action plan. The countries are: Afghanistan/Pakistan (Netherlands), Albania (Italy and Austria), Morocco (Spain), Somalia (Sweden) and Sri Lanka (UK). Due to the war in Kosovo Albania and its neighbouring region the Group “might not be in a position to submit” this action plan. To the remaining four countries/regions is added the January 1998 Action Plan on Iraq and its neighbouring region.

**Common standards for asylum procedures:** The Council held its first discussion on the Commission proposal for “Common standard on asylum procedures”. Two issues are worth noting. First, the Commission put forward two - opposite - views of the way forward. The first is termed the “flexible approach” which would set certain common safeguards and guarantees but leave member states freedom to vary implementation. The second is termed “the stricter approach” which would require all EU member states to apply exactly the same procedures. The second issue was whether there could be a common list of “safe third countries”. Some member states said the use of this concept had not “brought about the expected success” - which is interesting in view of a UK court ruling that Germany and France are not “safe” countries for the UK to return people to in some cases.

**Europol start and budget:** With all EU member states expected to complete the ratification of the Protocol on Privileges

and Immunities and the rules for the Europol Joint Supervisory Body adopted on 29 April it was expected to be fully operational on 1 July. In 1999 Europol had a budget of 18,896,000 euros and a total of 189 posts. Mr Storbeck, Europol's Director, is asking for 30,657,500 euros and 203 posts in 2000. A majority of member states favour a budget of 28,344,000 euros and 193 posts.

**Applicant countries:** The Council agreed on 29 June 1998 to create an "evaluation mechanism" for the adoption and adherence to the "justice and home affairs *acquis*" by the six EU applicant countries - Poland, Hungary, the Czech Republic, Estonia, Slovenia and Cyprus. The first stage has been to gather "information material" contributed by EU member states (usually a report from a single state) and their embassies, the Commission and its permanent delegations and international organisations. The second stage, which the Evaluation Group has just started concerns "the actual evaluation". The report to the JHA Council stressed that the evaluation should "emphasise not only the "repressive" aspects of the *acquis* (such as border controls or the fight against crime) but also those parts of it that grant and secure positive rights (such as asylum or judicial cooperation in civil matters)."

**Integration of Schengen:** The main decisions incorporating the Schengen *acquis* into the first (largely Title IV of the TEC) or third pillars (Title VI of the TEU) was completed by 20 May. The Schengen Information System (SIS) was allocated to Title VI of the third pillar TEU (see feature in this issue). The UK application to join parts of the Schengen *acquis* was discussed with one delegation, unsurprisingly Spain, raising the issue of "the territorial scope of the UK's envisaged participation" (see *Statewatch*, vol 9 no 1). The Irish delegation said it would be tabling a formal application in the next few weeks.

**Tampere:** Among the issues to be discussed at the Tampere European Council in October would be a common strategy on migration, the "codification of asylum law", the "development of Europol", racism and xenophobia, youth crime, crime prevention, access to justice and the recognition of judgements (see front page story in this issue).

**Draft Convention on mutual assistance in criminal matters:** Three issues remain outstanding on this draft Convention, all concerning the interception of telecommunications. First, Italy, which hosts the Iridium "ground station" is not prepared to grant other EU states "carte blanche" general (instead of specific single) warrants to intercept. Second, the UK is alone in having the Security Service (MI5) assisting the police in criminal investigations and is not prepared to tell its partners when the former is conducting surveillance. Third, agreement was not reached on the use of "intercepted material" in criminal proceedings.

## GERMANY

### Greens summon police to remove refugees

On 4 June, refugees from Africa, Latin America and the Middle East, together with supporters from Europe and America, occupied the Green party office in Cologne in a protest against racism and deportation practices in Europe. The occupation deliberately coincided with the EU/G8 summits. At 9am on 15 June, after 11 days of peaceful protest, a police task force stormed the building at the request of the Green party and cleared the premises. One hunger striker was beaten when he verbally protested. During five hours in custody, the police refused the hunger strikers water, yet cynically offered them food. The Greens stated that the police operation had occurred peacefully. Several of the strikers, all of whom are members of the Caravan

for the Rights of Refugees and Migrants, which has been touring Germany for several months, are in danger of being deported. An earlier occupation of a Green party office by Kurds protesting against deportations to Turkey last year was welcomed by party members.

The hunger strikers issued a statement, condemning the death of Aamir Mohamed Ageeb, a Sudanese refugee who was killed during his forced deportation from Germany on 28 May. They wrote:

*Death during deportation is the sharp expression of the systematic violation of the basic human rights of refugees in Germany and Europe.. We are not only exposing the racist reality we face in Germany but also the reasons for our flight, the reality of the dictatorships and fascist regimes that exist in the countries where we come from and how Germany and other G7 countries prop up these regimes to maximise their profits.*

Since this statement, Azex Alayo Chavez, a political refugee from Peru and participant in the strike has been arrested and faces deportation. Further information from: International Human Rights Association Bremen, Kornstr. 51, 28201 Bremen, Tel: 0049 421 5577093, mail@humanrights.de

### Citizenship law passed

On 21 May, the Upper House of the German parliament accepted a Bill on the reform of Germany's 85-year old citizenship law. 365 MPs from all parties voted in favour of the reforms, 184 MP's, members of the *Christlich Demokratische Union* (CDU) and the *Partei des Demokratischen Sozialismus* (PDS) voted against. The law will come into force on 1 January 2000. The reforms will enable children born in Germany to obtain citizenship if at least one parent has been legally resident in Germany for eight years. Adults will now be able to apply for naturalisation after eight years of legal residency instead of the former fifteen years. The new law denies the possibility of dual nationality, a provision originally planned by the red-green coalition. Children born of foreigners will have to decide on their nationality by the age of 23 and revoke one passport. After the CDU collected five million signatures against dual nationality and consequently won the regional elections in Hesse, the power balance in the Upper House changed; the government gave in and accepted the so-called FDP (Free Democrat Party) option model, which in turn was accepted by the Upper House. The CDU/CSU proclaimed that they would try and change the citizenship law again at the first opportunity. They are still thinking of instigating legal proceedings against the reform on grounds of its being unconstitutional.

The new law discriminates against the poor and relatively new immigrants. Nobody dependent on social security benefits is eligible for citizenship. Foreigners however, are less likely to find employment due to discrimination. The government's criteria of "integration" is therefore selective and discriminates against those already socially and economically excluded. Also, foreigners with a "significant criminal record" are denied the privilege of becoming German. However, the new law allows the possibility to deny citizenship even if the applicant has had to pay minor fines, this includes minors convicted under juvenile law. Another precondition is adherence to the German constitution, this means that the Office Responsible for Protection of the Constitution (ORPC) will gain even more powers. This reform has reinforced *voelkisch* notions of the German approach to citizenship.

*Migration und Bevolkerung, Issue 4 (May) 1999.*

### Europe - in brief

■ **Basque Country: A year's truce in ETA's activities:** At

the end of June, a year passed since ETA declared an indefinite unilateral ceasefire. The decision, which transformed the Basque and Spanish political landscape, was preceded by the signing of the Lizarra Agreement between different Basque groups, in which proposals for a democratic solution to the conflict were proposed. The government has not responded to ETA's truce. Parliament has asked the government to change its prison policies, but no transfers of Basque political prisons in Euskadi have taken place.

■ **UK and Schengen:** On 20 July the European Commission adopted a "favourable opinion" on the UK's request to join parts of the Schengen *acquis* - police cooperation, judicial cooperation in criminal matters, drugs and (parts of) the Schengen Information System. Under the Amsterdam Treaty the Commission had to be consulted. The Schengen *acquis* is now incorporated into Title IV of the Treaty establishing the European Communities (TEC) and Title VI of the Treaty on European Union (TEU). The reaction of the 13 EU member states who are, or will soon be, participating in all aspects of the Schengen *acquis* - including free movement and external border controls - and who have to unanimously agree to the UK's "pick and mix" application is by no means as certain. *Commission press release, 20.7.99; see Statewatch, vol 9 no 2.*

## Europe - new material

**Free on the EU: a guide to free sources of information about and from the European Union**, Mike Cooper. 2nd edition. European Information Association, 1999, 72 pages, £20.00 (£15.00 to members of the EIA), from: European Information Association, Central Library, St Peter's Square, Manchester M2 5PD, UK, e-mail: [eia@manchestergb.demon.co.uk](mailto:eia@manchestergb.demon.co.uk) Excellent starting point for researching the EU. It covers publications, internet sites, and regular newsheets. With subject and alphabetical indexes and the contact details for parliament and commission offices and sites it is easy to use. Although "justice and home affairs" is not included in the subject index many of these sources do have information on these issues.

### Parliamentary debates

**European Parliamentary Elections Regulations 1999** *Lords* 22.4.99. cols. 1297-1307

**Council of Europe** *Lords* 5.5.99. cols. 683-721

**Schengen and the UK's Border Controls: ECC Report** *Lords* 7.5.99. cols. 913-944

**European Union Fraud** *Lords* 19.5.99. cols. 1079-1126

**European Union** *Commons* 25.5.99. cols. 178-260

**Kosovo and the Cologne Summit** *Lords* 8.6.99. cols 1323-1339

## IMMIGRATION

### SWITZERLAND

## New asylum law approved by referendum

The review of Swiss asylum law and a Federal Decree on urgent measures on asylum, passed by parliament in June last year, were approved in a referendum held on 13 June by 70% to 30%. For the coalition against the new legislation, led by the Committee Asyl.CH, the result was not a surprise. The Committee says that the collection of the 50,000 signatures required to hold the referendum at least encouraged a public debate around the

dismantling of refugee rights. The new legislation is the fifth change in asylum law since its introduction in 1979.

The Decree on urgent measures has been in force since last July, (urgent Decrees coming into force once they are agreed by parliament). Its main provision is a regulation compelling refugees who enter the country without passports, or other papers, to prove their identity. Refugees are now subjected to a fast-track procedure held in a reception centre near the border. At a summary hearing they are asked their reasons for not having papers; in most cases the Federal Office for Refugees decides that their case is not admissible. Appeals to the Asylum Recourse Commission must be made within 24 hours and must be written in an "official" language (German, French or Italian). As the reception centres are often inaccessible to human rights groups or lawyers the chance of a successful appeal is minimal and rejected applications are immediately enforceable.

For opponents of the Decree, this regulation presents a contradiction in Federal Office practice. In many instances the Federal Office has argued that asylum seekers who present passports are unbelievable, because "genuine" refugees have neither the time nor the opportunity to obtain a new passport at a police station in their country of origin. This means that the Decree would have excluded about 80% of the recognised refugees who entered the country without proper passports or other identification papers. The Decree will be included in the revised Asylum law.

Apart from procedural restrictions, the main concern of the Asylum law is the new status of temporary protection for refugees fleeing war or civil war. Those acquiring temporary protection will be automatically excluded from asylum procedure. Thus, for the first five years after their arrival there will be no possibility of claiming political, racial or other persecution, on the grounds that they could obtain recognition as a refugee under the Geneva Convention. Furthermore, it is the Swiss government who will decide when a war is over and when the refugees should return home.

*For further information see: [www.asyl.ch](http://www.asyl.ch) (in German); [www.asile.ch](http://www.asile.ch) (in French)*

### SPAIN

## Electronic control of Strait

The Spanish government is developing a so-called "Integrated System for External Vigilance" with a budget of Ptas 25 billion, aimed at preventing the arrival of immigrants along Spain's southern coast. It will be based on high-technology equipment including long-distance radar, thermal imaging cameras and night visors, infrared lighting, helicopters and patrol boats. A co-ordinating centre is to be set up in Algeciras. The plan is to be implemented over a 3-5 year period, with Ptas 2 billion already committed this year to open the pilot centre. The lead agency involved in the project is the *Guardia Civil*, as envisaged in its strategic plan for the southern region.

The government acknowledged last year that the huge wall built around the Ceuta enclave, at a cost of over Ptas 5.5 billion, was ineffective. Its response has been to reinforce the wall with another, this time over three metres high. Detentions of immigrants without residence papers have tripled under the Popular Party (conservative) government. According to figures presented by the Interior Ministry to the Senate in April, 1998 saw 40,710 such arrests, as compared with 15,416 in 1995. However expulsions have only increased by 13 per cent.

The municipal police in Ceuta has been routinely arresting Moroccan children and expelling them across the border. This is illegal and contravenes both the Law on Foreigners and that on the Legal Protection of Minors, under which the state authorities have a duty of care towards children. On 11 November 1998 a

ministerial order prohibited the expulsion of abandoned minors. The illegal practice continued, drawing condemnation from numerous organisations, and causing the Spanish attorney general to issue on 16 March a formal directive to the local police at Ceuta forbidding further expulsions of minors. Three police officers who publicised their concerns about the practice have been suspended without pay for several months and are the subject of five legal investigations.

## UK

### Campsfield update

On 8 June detainees at Campsfield detention centre near Oxford went on hunger strike, once again drawing attention to the situation in which they find themselves. The detainees at Campsfield are asylum seekers, whose right to seek asylum has been taken away by Home Office officials. The centre is run by Group 4 Security, who are alleged to have treated detainees in a violent and abusive manner. There have been several protests at Campsfield in recent years, one of which, in August 1997, resulted in nine west African detainees being charged with riot and violent disorder. The case against them collapsed in June 1998 when the prosecution counsel told the judge that the jury could not be invited to convict the defendants on the evidence of Group 4 staff, after internal security cameras revealed it to be unreliable (see *Statewatch* vol 8 nos 3 & 4).

This hunger strike was on a smaller scale but the issues, highlighted in a statement issued by those involved, remain the same:

*We've come to the UK seeking shelter from injustice...hoping to get back our right to live full lives...the right that has been taken away from us in our home countries. We are not criminals...why lock us up like animals...*

According to a spokesperson from *Asylum Welcome*, the hunger strike ended quickly, but one man continued with the protest, and as a result became very ill.

It has been suggested that there was some connection between the hunger strike and the attempted suicide of one of the detainees. Visitors of the detainees point out that attempted suicide is not uncommon at Campsfield. The detainees have suffered the double trauma of having had to escape from adverse situations in their countries of origin and then of being locked up like criminals on arrival in the UK. In addition, detainees in Campsfield are not usually allowed access to local psychiatric treatment. Whilst they may access medical treatment for physical ailments locally, if they require psychiatric help, they may be transferred to Rochester prison in Kent, where conditions are generally considered to be even worse than those at Campsfield.

Another member of *Asylum Welcome* described two recently attempted suicides. In the first case, the detainee appeared to have tried to hang himself. His obvious distress at his situation was compounded by the fact that his solicitor is unable to give him any indication of when the Home Office will reach a decision on his case. The Home Office refused an application to release this detainee on humanitarian grounds. In another case, a detainee who attempted suicide by taking an overdose was handcuffed whilst his stomach was pumped, despite the fact that at least two guards accompanied him to hospital. Visitors of the detainees have described other cases of detainees being handcuffed on the way to receive, and during the course of dental treatment.

On 25 June, two of the Campsfield detainees escaped from the centre, scaling an 18 foot high fence topped with three coils of barbed wire. A spokesperson for the Close Down Campsfield campaign (CDCC) commented that the men could not be blamed for regaining their freedom, as it was unjust that they were locked up in the first place. The CDCC can be contacted at 111 Magdelane Road, Oxford, OX4 1RQ

*Asylum Welcome; National Coalition of Anti-Deportation Campaigns; Big Issue 21.6.99.*

## NETHERLANDS

### Asylum seekers' age from x-ray

Young asylum seekers will be subjected to x-rays in order to decide their age, according to plans announced by the Immigration and Naturalisation Service (INS). The aim is to use x-ray photographs of the collar bone to determine whether an asylum seeker is over 20 years of age. Similar schemes, using teeth, were stopped two years ago following ethical and scientific objections.

The INS claims that many asylum seekers lie about their age in order to profit from the improved conditions that are on offer to those under the age of 18. As most asylum seekers enter the Netherlands without identity papers it is impossible to accurately determine their age. The proposed test will in principle be voluntary, however no one who rejects the test will be entitled to special youth privileges.

The proposals have been denounced by a broad spectrum of opinion within the Netherlands. Lawyers have described the plans as unlawful because "there is a large amount of pressure owing to the sanctions that would then be applied", according to Professor H Roscam Abbing, a specialist in healthcare law. "Furthermore radiating the body contravenes laws that protect the integrity of the body", he added.

Doctors and anatomical experts have also rejected the new proposals as scientifically unsound. A van Es, ex-chair of the Johannes Wier Foundation for Human Rights and Healthcare, described the diagnostic method as "dubious" pointing out that: "different ethnic groups have different rates of growth...on top of this disease, malnutrition or hormones can significantly affect the results". G Maat, of the University of Leiden Anatomy Department, points out that "dentists and radiologists working for the INS have consistently tended to overestimate the age of asylum seekers."

*Volkskrant 2.3.99.*

### Immigration - in brief

■ **Netherlands: More limits on asylum right of appeal:** The Ministry of Justice has announced plans to reduce the right of appeal for asylum seekers. The new proposals outlined by junior minister Cohen to the cabinet will remove any administrative right of appeal, forcing asylum seekers to seek a judicial review after their initial appeal has been turned down. Under the new measures the number of categories of asylum seeker will be reduced from three to one. Recognised asylum seekers will be granted a temporary residence permit which can be made permanent after three years. This permit will include the right to work, housing and family reunion. Rejected asylum seekers will be allowed to appeal to the courts. Deportation would then follow if the court rejected this appeal. Subsequent appeals to the Supreme Court would not, in principle, allow deportation to be suspended. This would considerably reduce the length of the asylum procedure.

■ **Germany: Death during deportation:** A Sudanese man, Aamir Mohamed Ageeb, died during deportation from Frankfurt Airport. The man's hands and feet had been tied and his head encased in a motorcycle helmet; after being dragged onto the plane, he died of heart failure. In Austria the Interior Ministry is considering using motorcycle helmets during deportations, to stifle the cries of deportees and to stop them biting. The German Federal Minister of the Interior, Otto Schily, ordered a temporary halt to deportations in which the asylum seeker in question is likely to offer significant resistance. The German states governed

by the *Christlich Demokratischen Union* or the *Christlich-Soziale Union* have condemned even this measure on the grounds that it would encourage violent resistance. The Bremen-based organisation *Internationaler Menschenrechtsverein* has condemned the death and has drawn attention to the fact that in spite of Schily's order, the Bavarian Minister of the Interior plans to deport another Sudanese asylum seeker, Mr Fathalrahman, on 19 July. Fathalrahman has already survived three deportation attempts, the last of which resulted in his being hospitalised because of near asphyxiation. *SchNEWS 18.6.99; Internationaler Menschenrechtsverein, Kornstrasse 51, 28201 Bremen, Germany.*

■ **Belgium: London woman freed from jail:** A black south London woman, Bridget Seisay, walked free from a Belgian prison in June, after being acquitted on human trafficking charges by an appeal court. By the time her sentence, described as one of the "worst miscarriages of justice I have seen," by Stephen Jakobi the director of Fair Trials Abroad, was overturned Bridget had endured eight months in prison. Speaking of her experience Bridget, a married mother with a three-year old son, said "It was a horrifying experience and nothing can undo the damage that has been done." Eight months ago, Mrs Seisay took a weekend break to Germany, and visited her husband's cousin, the Sierra Leonean ambassador. At his home, she met Martha Conteh and the two women decided to travel to Europe together. When they arrived in Brussels they were both arrested as they tried to board the Eurostar to London. Martha claimed, and was subsequently granted, asylum. She had travelled on false documents, (which should not prejudice an asylum claim), but is adamant that Mrs Seisay knew nothing about this. Yet the Belgian authorities detained Mrs Seisay and charged her with smuggling Martha into Belgium on false documents. Stephen Jakobi, of the Fair Trials Abroad group is in no doubt that this is an example of institutional racism in the Belgian justice system: "It is difficult to believe that a white woman supported by a white ambassador would not have been released very quickly" he observed. *Big Issue 7.6.99; South London Press 11.6.99; Guardian 23.6.99; Morning Star 24.6.99*

■ **UK: Prison for asylum seekers:** The government has recently approved plans for a new prison for asylum seekers. Aldington prison in Kent, currently administered by the Prison Service, is to be closed by the end of August and handed over to the Immigration Service. It is envisaged that asylum seekers presenting "acute control problems" will be detained at Aldington, rather than at "low-security" centres such as Campsfield. This move is designed to ease pressure on other jails, such as Rochester Prison in Kent, in which asylum seekers are currently detained under the 1971 Immigration Act. The Act allows for the detention of asylum seekers for unspecified periods of time, in an apparent contradiction to the UK's obligations under the 1951 Geneva Convention and the 1948 Universal Declaration on Human Rights, which state that everyone has the right to seek asylum from persecution. The creation of another detention centre, with a prison-style regime, has provoked criticisms from organisations such as the Medical Foundation for Care of the Victims of Torture and the British Refugee Council, who condemn the criminalisation of people who have committed no crime and who are often already severely traumatised by their experiences of persecution and flight. *Independent 28.6.99.*

■ **UK: Criminalising solidarity:** A man, Mr D, who had helped his friends get to the UK to enable them to claim asylum was locked up for five months before being acquitted of a criminal offence. The dual Libyan-Irish national bought airline tickets so that his friends, a Libyan dissident and his family, could come to the UK to claim asylum. The friends did not try to come in clandestinely or use deception, they presented themselves to immigration officials, explained their situation and claimed asylum. But Mr D, who had accompanied the family on their flight, found himself under arrest, by virtue of a section of the

1996 Immigration and Asylum Act which criminalises the "facilitation of the entry of asylum-seekers". The section stipulates that actions are not an offence if they are done by a refugee organisation or done "otherwise than for gain" but the police and immigration authorities said that, since Mr D admitted bringing the family to the UK, he had to prove that he did not do it for gain. And despite the friend's confirmation that Mr D had paid for the tickets, they not only charged him but kept him in custody awaiting trial. At the trial, at Harrow Crown Court in north-west London in April, Mr D won the legal argument, with the judge ruling that he did not have to prove that he did not gain, but it was for the Crown to prove that he did. Mr D was acquitted but he and his Dublin-based wife and children had suffered enforced separation for over five months owing to his detention.

■ **Ireland: Carriers Liability Act:** On 21 June, a new smuggling bill was published in the *Dail* (Irish parliament). Hauliers, who "willingly facilitate" the entry of illegal immigrants might have to forfeit their vehicle, and can expect an unlimited fine and up to ten years imprisonment. The provisions in the Irish bill do however require that hauliers knowingly seek to bring in a person whereas the UK's equivalent bill allows them to be fined £2000 per passenger and have their lorry confiscated, whether or not they knew that there were illegal immigrants/asylum seekers on board. The Irish Road Hauliers Association has described the measures as "absurd" and Rachael Webb, an international freight driver, has asked how these severe "punishments for carrying immigrants compare with a likely fine for being in possession of bulk copies of race hate material in the load?"

■ **Spain: Increase in the refusal of asylum requests.** Last year Spain rejected 96% of the asylum requests which were presented; only 4% of applicants were considered, that is, 253 persons. It is the second year in which the percentage of asylum claims was no more than 4% of the total requests. The reform of the *Ley de Asilo* (Asylum Law) carried out in 1994 has proved to be extremely restrictive, resulting in a drop in applications: in 1996 they decreased by 60%, compared to 1994. Furthermore, 60% of requests did not get past preliminary stages. The detention of undocumented immigrants has trebled under the *Partido Popular* (PP) government. According to figures presented in the Senate last April by the Ministry of the Interior, a total of 40,710 undocumented immigrants were arrested in 1998, almost three times more than in 1995, when 15,416 were arrested. However, expulsions only increased by 13%.

■ **Spain: Quotas for 1999:** The government has adopted a policy of immigration quotas since 1992. It sets the number of immigrants who can enter Spain each year, the professions in which they can work, the numbers that can enter a given profession from each country, how many from each gender group, and how they will be distributed in different provinces and autonomous regions. On 23 April the authorities offered 30,000 permits; they received 94,819 applications, almost twice as many as in 1998. The policy of quotas is based on two principles: the principle of national preference which gives preference to Spanish labour; and the principle of subsidiarity, which means immigrants will only have access to jobs for which no Spanish workers are available. The quota policy allows the regularisation of some of the immigrants who are already in the country in an "irregular" position. The policy is also used to control and limit the concession of work and residence permits which strengthens the idea of immigrants being a subsidiary workforce. By gathering information on "irregular" immigrants it can make them a target for expulsion or compulsory departure.

## Immigration - new material

**Licence to kill.** *CARF* No 50 (June/July) 1999, pp2-3. This article

investigates the death, by asphyxiation during his deportation from Austria, of Nigerian asylum-seeker, Marcus Omofuma. It also considers four other deportation deaths from Fortress Europe and warns of the "Belgian solution", where military or private planes are used in place of commercial flights.

*Roma Rights Newsletter*. European Roma Rights Centre, no 1, 1999. Covers legal defence cases, expulsions of Roma from the Czech and Slovak republics, racism in Italy and France as well as practical information on grants and scholarships. Includes "Roma and the Treaty of Amsterdam: safe European home?", a critique of the Maastricht and Amsterdam Treaties with a view of how Roma and other European non-territorial minorities will be adversely affected in such areas as border crossing, limited stay, asylum, immigration and long-term settlement. Available from: ERRC, H-1525 Budapest 114, PO Box 10/24, Hungary.

**Bundesdeutsche Fluechtlingspolitik und ihre toedlichen Folgen - Dokumentation 1993 bis 1998** [German refugee politics and their deadly consequences]. Compiled by *Antirassistische Initiative Berlin*, 1999. Examines deaths and injuries resulting from asylum seekers' attempts to cross borders into Germany, refugee suicides and suicide attempts and deaths and injuries (in countries of origin) resulting from forced deportations. The greatest number of cases consist of racist attacks on homes for asylum seekers and towards refugees on Germany's streets. Available from: Yorckstr. 59, 10965 Berlin, Tel:0049(0)30-7857281, Fax:0049(0)30-7869984, e-mail:ART-B@VLBerlin.comlink.de

**Menschenrechte fuer Kinderfluechtlinge** (Human rights for child refugees). *asylkoordination*, 2/99. A compilation of articles by the Campaign for Human Rights for Child Refugees criticising the treatment of child refugees in Austria, Germany and Italy. Includes country reports, an article on the psychological aspect of being an unaccompanied child refugee as well as a critique of inadequate representation and legal safeguards. Available from: Schottengasse 3a, 1010 Vienna, Austria

**Comments on Immigration and Asylum Bill** Refugee Women's Legal Group, c/o ILPA, Lindsay House, 40-42 Charterhouse Street, London EC 1, Fax: 0171 251 8384

**Recent developments in immigration law**, Jawaid Luqmani, Chris Randall and Rick Scannell. *Legal Action* July 1999, pp10-14. Latest update in immigration developments includes a detailed analysis of the judgement in Shah and Islam.

#### Parliamentary debates

**Kosovo Refugees** *Commons* 5.5.99. cols. 943-952

**British Child Migrants** *Commons* 19.5.99. cols. 979-998

**Health Bill [Lords] and Immigration and Asylum Bill (Allocation of Time)**, *Commons*, 15.6.99. cols. 174-222

**Immigration and Asylum Bill**, *Commons*, 15.6.99. cols. 267-297

**Immigration and Asylum Bill**, *Commons*, 16.6.99. cols. 396-531

**Immigration and Asylum Bill**, *Lords*, 29.6.99. cols. 176-257

**Immigration and Asylum Bill**, *Lords*, 8.7.99. cols. 1024-1925

## LAW

### NETHERLANDS

## Secret "administrative detention" proposals

The newspaper *Ravage* has revealed new plans to allow detention without any specific charge. In the aftermath of the week long disturbances around the 1997 Amsterdam summit together with the European championships looming in the year 2000, government ministers are examining new ways to allow

"administrative detention" of potential "troublemakers".

Under current legislation the mayor has the power to declare a state of emergency in the event of serious public disorder, disturbance or disaster. In practice this has mostly been used against football fans, although demonstrations have also been singled out for the use of emergency powers, most notably during the Amsterdam summit. Once a state of emergency has been declared anyone who disobeys an order can be arrested and charged and, if convicted, imprisoned for up to three months. The new proposals would allow the mayor to detain designated groups of people in a specified place for up to 12 hours, without any specific charge against individuals. The mayor would have to prove that the group had disobeyed instructions given by the relevant authorities and that further disobedience was likely, and that the disobedience involved the whole group, rather than any specific individuals.

Although these new proposals are being presented to the Dutch public as a preventative measure directed at football hooligans. Lawyers and civil rights activists have pointed out that the proposals imply that public order disturbances would have already taken place. Therefore, no riot or crime can possibly be prevented using these new proposals. However, the proposals will allow the innocent to be detained along with "suspects". Other proposed measures would allow large groups of people to be restrained within a designated area of a town or city. Anyone who chose to leave this area would leave themselves liable for administrative detention for up to 12 hours.

Activists believe, however, that the motivation behind the new legislation follows directly from the Amsterdam summit, when the attempted use of Article 140, which allowed detention of people involved in "criminal conspiracy", was thrown out by the courts. They have united with lawyers in condemning the proposals. Wil van der Schans of the civil rights group *Buro Jansen & Janssen*, described them as: "the definitive end of the right to demonstrate freely in the Netherlands...eventually this law will amount to a severe restriction of everyone's freedom of movement."

*Buro Jansen & Janssen May 1999*

## Law - new material

**Judging Labour on the judges**. *Labour Research* Vol 88, no 6 (June) 1999, pp13-14. This survey covers 692 judges and analyses the "composition of the judiciary to see whether Labour in office has made any difference to the "old boys" club." It found that "while women fare badly ethnic minority judges have even lower representation." A TUC spokesperson, commenting on the findings, said: "It is disappointing that there are still so few female and black judges. It is only right and fair that judicial appointments reflect society a whole..."

**Race equality and legal aid reform**, Veena Vasista. *Legal Action* June 1999, pp6-7. This article "illustrates some of the problems which the Access to Justice Bill poses for black communities in the UK." It includes sections on legal aid for inquests and tribunals and contracting and considers the creation of Regional Legal Services Committees.

**Advising on silence: new cases, new strategies**, Ed Cape. *Legal Action* June 1999, pp6-7. This feature "reviews cases on the right to silence and considers their implications for advising clients at the police station."

**Either way: the wrong way?** Vicki Chapman. *Legal Action* July 1999, pp6-7. Chapman presents her reasons for opposing Home Secretary, Jack Straw's, plans for abolishing a defendant's right to elect to be tried in the Crown Court. She discusses the arguments around disclosure, delay and sentencing and considers the impact on black defendants.

**Recent developments in European Convention law**, Philip Leach. *Legal Action* July 1999, pp15-19. Second of a bi-monthly series which summarises cases at the European Commission and Court of Human Rights which have relevance to the UK.

#### Parliamentary debates

**Access to Justice Bill [Lords]** *Commons* 14.4.99. cols. 230-332

**Youth Justice and Criminal Evidence Bill** *Commons* 15.4.99. cols. 385-459

**Football (Offences and Disorder) Bill** *Commons* 16.4.99. cols. 470-533

**Jury Trial** *Commons* 19.5.99. cols. 1065-1073

## CIVIL LIBERTIES

### UK

## "Close surveillance" - crime-fighting tool of the millennium?

Police in Brixton, south London, are using hand-held videocameras to film people "suspected" of street robberies. A senior Metropolitan police officer said: "CCTV was the new crime fighting weapon of the 1990s and close surveillance is the tool of the new millennium". Justifying deployment, police sources said that most muggings are carried out by repeat offenders, of which there are about 60 in Brixton. John Wadham, director of Liberty, pointed out there is also the "real danger that innocent people will be filmed and the footage used without their permission".

Close surveillance is not a new tactic - officers with video and still cameras have long been commonplace on demonstrations and at football matches. Under Section 25.7 of the Crime and Disorder Act, which entered into force in April 1999, police now have the power to force people to de-mask if they fear "serious violence or disorder". Saboteurs of a fox hunt in Dorset in March are believed to have been the first subjected to the new provision, with the entire county declared an area where police "fear serious violence". While at an anti-vivisection protest at Hillgrove cat farm, 41 people were forced to unmask by Thames Valley officers who arrested one man who refused to do so. Assistant chief constable Paul West said it had been a way of targeting "hard-core" demonstrators who could be looking for trouble. A spokesman for Save the Hillgrove Cats said "people wear masks because they are sick of being videoed all the time. They [the police] had about 40 evidence gatherers this time. They video everyone as a form of intimidation."

*Oxford Star*, 22.4.99; *SchNEWS*, 23.4.99; *The Big Issue*, 26.4.99; *Sunday Times*, 27.6.99.

## Civil liberties - new material

*Liberty*. Spring 1999, pp8. Latest edition contains articles on the M25 Three, the Macpherson report, Protection of Children Bill, equality legislation and the encryption of electronic messages.

**A word in defence of Lord Goddard.** *Police* Vol XXX1 no 6 (June) 1999, p5. Derek Bentley, a 19-year old with a mental age of between seven and nine, was hanged for the murder of a police officer 45 years ago. His conviction was overturned in July 1998 and judge Goddard who oversaw his conviction was described by one senior lawyer as "a Chief Justice who got away with murder." Now, the Police Federation have seen fit to launch a defence of Goddard, claiming "the saga has seen Bentley transformed from a street corner layabout into an innocent, uncomprehending victim of official vengeance, a process of rehabilitation that has stopped just this side of canonisation."

**Backtrack, Jack. You've got it wrong.** Maurice Frankel. *Guardian* 25.6.99. The director of the Campaign for Freedom of Information highlights the shortcomings of Jack Straw's draft Freedom of

Information Bill. He warns that: "If another arms-to-Iraq affair occurred, nothing in the draft bill would shed even a glimmer of light on it. Neither the public, not Labour MPs, can regard that as acceptable."

**Fair trials manual.** Amnesty International (December) 1998, pp188. The manual provides a guide to international and regional standards for fair trial which are incorporated in human rights treaties and non-treaty standards. It contains sections on i. Pre-trial rights, ii. Rights at trial and iii. Special cases (including children, death penalty cases, special courts and military courts, miscarriages of justice, states of emergency and fair trials in armed conflict).

### Parliamentary debates

**Civil Rights Commission Bill** [Lords] *Commons* 22.4.99. cols. 1060-1131

**Travellers** *Commons* 10.5.99. cols. 84-96

**Human Rights** *Lords* 12.5.99. cols. 1276-1290

**Freedom of Information Bill** *Commons* 24.5.99. cols. 21-34

**Freedom of Information** *Lords* 24.5.99. cols. 664-678

## NORTHERN IRELAND

## "Insufficient evidence" in O'Neill killing

The Crown Prosecution Service (CPS) has concluded that there is insufficient evidence to prosecute the Metropolitan police officer who shot dead Diarmuid O'Neill. During a 1996 raid by officers from the Metropolitan police's SO19 firearms branch in Hammersmith, west London, the 27-year old was shot six times (see *Statewatch* vol 7 no 2, vol 8 nos 3 & 4).

The O'Neill family and the Justice for Diarmuid O'Neill campaign have waited two and half years for the Police Complaints Authority (PCA) to complete their inquiry into the shooting and then a further six months while the CPS considered its findings. They responded to the CPS decision with the following statement:

*We are in disbelief that the PCA and the CPS, given the evidence of the tape of the raid in which officer Kilo is instructed by a fellow police officer to "shoot the fucker" [counsel for the police say he said "shut the fuck up"] and the evidence of the post-mortem that clearly shows that Diarmuid was shot when he was seen and known to be unarmed repeatedly, including three times when he was falling as a result of one of the first three bullets piercing his spine. This coupled with the evidence that Diarmuid's head was stood upon when he was lying on the floor bleeding to death, that he was dragged down the stairs of the house to the street and there denied medical treatment for 25 minutes, cannot honestly result in no further action. The campaign also questions the validity of the PCA investigation given that it was carried out by officers of the Metropolitan police, the same force that carried out the shooting.*

While welcoming the decision to release the PCA report to the family and their legal representatives (in line with new legislation), the campaign called for it to be made public. They also called for the date of the inquest to be set immediately, and for Home Secretary Jack Straw to set up an independent public enquiry. The campaign is supported by legal practitioners, MPs, MEPs, trade unions, NGOs and voluntary groups.

Contact: *BM BOX D. O'Neill, London WC1N 3XX; telephone: 0181 749 2588/0411 784 110; email: justice.doneill@btinternet.com.*

## Siege of the Garvaghy Road

Since July 1998 the 7,500 people who form the nationalist community of the Garvaghy Road, Portadown, Northern Ireland

have been living with a campaign of terror intended to bolster the Orange Order's "right" to hold a sectarian march along their streets. While the Order has adamantly refused to negotiate with residents' representatives over their route from Drumcree Church to Portadown, at least 17 families have been driven from their homes following attacks, and five people have been murdered. With the Good Friday peace process in danger of disintegrating through Unionist intransigence, a London support group (the Friends of the Garvaghy Road Support Group, FGRSG) was formed to liaise with the Garvaghy Road Residents Coalition (GRRC) and "mobilise support among human rights groups, churches, ethnic minority groups, political parties, trades unions, women's groups and student bodies in Britain."

Portadown town centre has become a "no-go" area for nationalists, who fear verbal and physical attack, leaving the Garvaghy Road a ghetto, with few amenities, no leisure facilities for children and increasingly difficult access to health and social services. The Orange Order's threat to march on July 4, ignoring the residents wishes and Parades Commission alike, has resulted in the community being encircled by miles of razor wire and hundreds of hostile British troops and RUC officers. The entrances to and from the area are barricaded and community representatives harassed and threatened; helicopters clatter noisily overhead and, beyond the razor wire, loyalists keep an insolent watch on peoples' movements.

In an intensifying strategy of confrontation, the Orange Order have held over 150 marches, demonstrations and rallies close to the Garvaghy Road in the past year. The vast majority violated rulings issued by the Parades Commission, which was established to rule on controversial marches, and many have resulted in violence against residents. Five people have been murdered including Robert Hamill, a young nationalist returning home from an evening out, who was kicked to death by a mob as RUC police officers watched, but did not intervene. Rosemary Nelson, the civil-rights lawyer who represented the GRRC, was murdered by loyalists, with campaigners allege security force collusion (see story below).

To help counter the "news blackout" surrounding the sectarian attacks in Portadown the FGRSG sent a delegation of observers in early July to witness the Drumcree march. It observed at first hand a state of siege, with Garvaghy Road residents virtually held hostage in their own homes. Following 1996 and 1997, when the Royal Ulster Constabulary and British troops used plastic bullets and batons to force the Orange marchers down the Garvaghy Road, tension was palpable this year when the Parades Commission banned the Order from entering the Garvaghy Road. Threats that it would proceed by force gave way to media "spin" on the "peaceful" protest at the Drumcree church, and community suspicions of a government "behind-the-scenes" deal. However, once darkness arrived the violence began.

Media references to "minor skirmishes" in the evening, hid concerted and repeated attempts by loyalists to attack the nationalist community. A small mob grew in size until hundreds threatened to break through into the Garvaghy Road through the nationalist cemetery. As a concerned community gathered to defend their homes, dozens of police vehicles arrived and four helicopters with British troops landed to contain the incursions. At least 15 plastic bullets were fired in the ensuing confrontations. In the early hours of the morning several hundred loyalists attempted to overrun the area leaving balaclavoured RUC officers and British Army soldiers in disarray before they rallied and cleared the streets. The attacks continued over the next few evenings.

The delegation's experiences highlighted the parallels between the sectarian violence aimed at the nationalist community of Portadown and the racist violence directed at black and Asian communities in Britain. Orange Order assertions that

they have a right to hold sectarian and triumphalist marches in spite of residents' opposition, should be compared with the British National Party's "rights for whites" campaign; Both seek to privilege a particular section of society at the expense of the rest of it. Comparisons between racism and sectarianism were all the more evident with the news that the fascist Combat 18 had organised concerts with loyalist bands in Belfast and Portadown to celebrate the marching season.

*Friends of Garvaghy Road, Bm Box 5519, London WC1N 3XX.*

## Northern Ireland - in brief

■ **International day of action for Rosemary Nelson:** 15 June was designated as an international day of action in memory of the internationally respected human rights lawyer, Rosemary Nelson. It marked the three-month anniversary of her death on 15 March, after a bomb exploded under her car. The murder was claimed by the loyalist Red Hand Defenders. Rosemary gained prominence for her defence of individuals detained under emergency legislation in Northern Ireland. A number of her clients, released from Gough Barracks, Armagh, shortly before her murder had been told the lawyer's details would be passed to loyalists by police officers. Rosemary is the second lawyer to have been killed in the past decade in Northern Ireland. In 1989 Patrick Finucane was shot dead by a loyalist death squad working in collusion with members of the security forces - an allegation that received support at the end of June when a former British soldier and RUC Special Branch informer was charged with the murder. A host of national bodies, including the United Nations, the European Parliament, the US Congress and the law societies of England and Wales, Scotland and the Republic of Ireland and Northern Ireland have supported calls for an independent investigation into the killings. They have been supported by international human rights organisations including Amnesty International, Human Rights Watch and the Committee on the Administration of Justice, among others. *The Campaign for truth and justice for Rosemary Nelson can be contacted by e-mail at: [campaign@RosemaryNelsonCampaign.com](mailto:campaign@RosemaryNelsonCampaign.com)*

## Northern Ireland - new material

**Death of a human rights defender,** Michael Farrell. *ICCL News* Vol 11 Issue 1 (April) 1999, pp1-2. On the murder of defence lawyer and human rights activist, Rosemary Nelson, killed by loyalist paramilitaries with "some level of RUC collusion". Farrell calls for "an independent judicial inquiry into all the circumstances surrounding her murder..."

*Just News.* Committee on the Administration of Justice, Vol 14 no 4 (April) 1999, pp8. Has articles on a CAJ conference on "the problem of policing" and the "establishment of a just and peaceful society" (Belfast 26-27 February), "Young people and the justice system in Northern Ireland", and the case of Patricia Coyle v Sergeant Reid and the Chief Constable of the RUC. It also has an update on the cases of murdered lawyers, Rosemary Nelson and Pat Finucane, in which UN Commission on Human Rights Special Rapporteur, Mr Cumaraswamy, expressed his hope that "the involvement of the RUC in the investigations would not affect and taint the impartiality and credibility of the investigation."

*Just News.* Committee on the Administration of Justice, Vol 14 no 5 (May 1999), pp8. This issue contains substantial articles on emergency laws and human rights, the Patten Commission on the RUC and a piece on the investigation into the murder of civil rights solicitor, Rosemary Nelson. The FBI withdrew from the Nelson investigation on 12 April and the "...actual investigation work will be carried out by the RUC."

**Visions of normality: peace and the reconstruction of policing in Northern Ireland,** Aogan Mulcahy. *Social & Legal Studies* Volume 8 no 2 (June) 1999, pp277-295. This article considers "the visions of normality articulated in Royal Ulster Constabulary (RUC) discourse within the broad context of the ongoing peace process..."

**Shaping the future**, Gerry Adams. *An Phoblacht/Republican News* 13.5.99, pp12-16. Edited version of a speech given by Sinn Fein president, Gerry Adams, at the 1999 *Ard Fheis* (annual meeting) which reiterates Sinn Fein's commitment to the peace process and criticises unionist "prevarication". His talk also calls for freedom from sectarian harassment and the establishment of a new non-sectarian police force to replace the RUC.

**An open secret, collusion and the RUC**, Laura Friel. *An Phoblacht/Republican News*, 18.3.99., pp10-11. This article examines the "open secret" of Royal Ulster Constabulary (RUC) collusion with loyalist paramilitaries. In the latest allegations, made in a television documentary by Peter Taylor, UDA gunman Bobby Philpott admitted that "I was getting so many documents that I didn't know where to put them." The claims have been dismissed as "nothing new" by RUC chief constable, Ronnie Flanagan.

**The Good Friday Agreement - a contract between opponents**, Gerry Kelly. *An Phoblacht/Republican News* 15.4.99, pp10-11. This article, by a member of the new assembly and Sinn Fein negotiation team, argues for the Good Friday Agreement to be implemented in full and that "any new provisions...be set firmly within the provisions of the Agreement."

#### Parliamentary debates

**Pat Finucane** *Commons* 5.5.99. cols. 904-914

**Northern Ireland (Location of Victims' Remains) Bill** *Commons* 10.5.99. cols. 38-83

**Northern Ireland (Location of Victims' Remains) Bill** *Commons* 12.5.99. cols 324-386

**Northern Ireland (Location of Victims' Remains) Bill** *Lords* 18.5.99. cols. 153-190

**Northern Ireland (Location of Victims' Remains) Bill** *Commons* 24.5.99. cols. 639-664

**Northern Ireland (Location of Victim's Remains) Bill** *Commons* 24.5.99. cols. 678-713

**Northern Ireland (Emergency and Prevention of Terrorism Provisions) (Continuance) Order 1999**, *Lords* 8.6.99. cols. 1401-1422

## POLICING

### SWITZERLAND

## New Federal police agencies

On 31 May the government established a new federal police organisation which will come into operation in September. The Federal police (Bupo) will be transferred from the Federal Prosecutor's Office to the Federal Office of Police Matters (BAP). The decision is another move in the reorganisation and modernisation process which began in 1989 following the report of a parliamentary commission into the activities of the political police (see files scandal, *Statewatch* vol 2 no 6 & vol 6 no 4).

In 1989 the Federal Prosecutor's Office included two police agencies:

1. the Federal police was the most important police agency with 96 officers. As a cold war organisation it was, and remains, responsible for judicial police investigations into cases of federal competence (high treason, weapons and explosives etc) and for unauthorised "preventative" political police operations. As the parliamentary commission revealed, the Bupo held records on 900,000 people and organisations considered to be "subversive". These records contained political beliefs rather than evidence of any criminal wrongdoing or offences. In 1989 the Bupo had no legal basis for preventative activities, although they were made retrospectively legal by the State Security law (1997). This law also legitimised the State Security Information System (ISIS),

introduced in 1992, which permanently holds data on about 50,000 people.

2. the Central police services (ZSD), comprised a drugs service, a department to counter counterfeiting, and a unit investigating white slavery and pornography. The ZSD, which in 1989 had a total of 11 officers, was at that time of no great significance.

3. Also of relatively little importance was the Federal Office of Police Matters (BAP) which had an identification unit (fingerprints), coordinated the search for wanted persons and was responsible for questions of mutual assistance in criminal matters.

Until now the Bupo remained under the authority of the Federal Prosecutors office, whereas the ZSD was transferred to the BAP in 1992 and rapidly grew in size. In 1994 they acquired a new legal basis. A Central Service to combat organised crime was founded and special computer systems were set up. By the end of 1999, the ZSD will have a personnel of 107 officers and further expansion is expected to raise their numbers to 250 by the year 2003. The BAP comprises about 350 officers at the present time (including 107 from the Central Services). With the inclusion of the Bupo officers it will increase by 100 to about 450 - by Swiss standards - an enormous agency.

However, the problems which gave rise to the files scandal remain unresolved. The new office will have the powers of the judicial police and of a preemptive intelligence service - both for political and criminal police matters. Instead of a division of powers, information from cantonal police and from foreign police and intelligence services will now flow to a single service.

The transfer of Bupo will not mean a loss of power for the Federal Prosecutor's Office. The federal prosecutor, Mrs Carla del Ponte, will have access to all computer systems and may use the central services as well as the Bupo for operations. The federal prosecutor's powers will also be enlarged. According to a bill, which is now under parliamentary debate, she will gain competence for "important" and "complex" cases of "organised" and economic crime. A separation of investigative powers and functions of prosecution before the federal and cantonal courts, which was recommended by the parliamentary commission in 1989, seems to be off the agenda.

### NETHERLANDS

## Kalsbeek report on corrupt police

In 1994 the van Traa Dutch parliamentary commission investigated the methods used by Dutch police to combat organised crime. One of the revelations in the report was the "Delta-method" of police cooperation with criminal infiltrators in organised crime groups. Van Traa concluded that the police had lost control of their informants who used the police to assist them in smuggling 285 tons of soft drugs and 100 kilos of cocaine into Holland. As a result, parliament strengthened its control over police operational methods. In line with the van Traa commission, parliament prepared stricter laws on police infiltration, observation and registration of criminal organisations. It will also review police operational methods every four years.

In May a new Dutch parliamentary home affairs committee, chaired by Evelien van Kalsbeek, issued a report that is even more astonishing than the results of the van Traa investigation. The Committee discovered that the "Delta-method" was further out-of-control than van Traa had imagined with "parallel cocaine imports" running alongside soft drugs deliveries. Corrupt customs officers, civil servants and police assisted the smugglers, while the informants misled the police by only informing them of soft drugs deliveries. Possibly 15,000 kilos of cocaine was smuggled into the country in this way.

One criminal, reported to be heavily involved in organising the drugs shipments, is known as Mint K; he is a leader of one of the biggest Dutch criminal organisations. The Kalsbeek report

claims that corrupt customs officials and police officers are involved in his organisation. Mint K is also under investigation in Belgium in a case involving a corrupt Belgian police-officer, Koen Veeckman, who was working at the Belgian international police-desk (SIRENE, *Algemene Politieonderdienst*). He was arrested in late 1997 after secret police files were found at a railway station. Veeckman had access to international Schengen information and ongoing investigations in Belgium. According to the Belgium prosecutor, Van der Sijpe, Veeckman was stealing "ultra-secret" information for Mint K. Parliament is asking for a debate to discover how much Justice Minister Korthals knew about the police operations and why he did not inform parliament.

## GERMANY

### New stop and search powers

After Bavaria and Baden-Wuerttemberg introduced extended police powers years ago, Berlin and Brandenburg have become two of the last *Laender* to introduce an extension of police stop and search powers to include so-called "veiled" searches of non-suspects. As a "preventative measure against cross-border crime", the Berlin and Brandenburg police are now allowed to control (stop and search) all civilians without prior suspicion, particularly within 30 km of Germany's 250 km long border with Poland.

The regional parliament in Brandenburg passed the legislation on 6 May. The Interior Minister of Brandenburg, Alwin Ziel, said it was important to fall in line with Berlin's legislation and the new measures were necessary in order to fight serious cross-border crime such as drugs and the arms trade, "mafia like organised crime against private property" as well as human trafficking. The *Partei des Demokratische Sozialismus* (PDS) opposed the legislation as a violation of citizen's rights and argued its sole purpose was the extension of police powers. Alexander Dix, the deputy for data protection in Brandenburg, is also of the opinion that the extensive powers will make no visible improvements regarding the safety of civilians. The *Christlich Demokratische Union* (CDU) thinks the measures are not extensive enough to improve internal security and that the lack of police officers, cars, helicopters and computers would motivate criminals to commit more crimes.

In Berlin, the CDU and the *Sozialdemokratische Partei Deutschlands* (SPD) passed legislation to allow non-suspect police controls on 4 April. Despite the fact that extensive stop and search operations have to be agreed by the police chief, Green MP and spokesman for internal matters, Wolfgang Wieland, said that this provision is a "whitewash" because references to "cross border crime" have previously been used to justify stop and search operations at any time. Police will now be able to extend the existing one-off ban for people to enter a public space to a blanket prohibition order. Homeless initiatives and streetworkers argue the law will be used to ban whole sections of society from entering the city centre or other prominent public spaces.

Another controversial aspect of the new legislation is the transformation of the Berlin *Freiwillige Polizeireserve* (FPR, Free Police Reserve) into a "Free Police Force". In future, civilians between the age of 18 and 45 will be able to apply to become "hobby police officers". After a two week training course, they will be armed and allowed to accompany the police on patrol, control traffic and conduct "object securing" operations. Although CDU and SPD interior ministers argue that they are only allowed to accompany the police, Wieland has pointed out that legal provisions already allow patrols and traffic controls to be carried out by the FPR without any police presence. He has gathered accounts of these unaccompanied patrols taking place. The coalition, he argues, is trying to push

through an illegal provision.

The FPR in Berlin has a history of right-wing contacts and membership, and involvement in the arms trade. In 1993, five FPR members were arrested for membership of an international right-wing extremist arms trafficking organisation which led to an official inquiry. When the 2,400 FPR members were investigated, around 100 members resigned from the service before the investigation began and incriminating files vanished shortly afterwards. There were no convictions. In 1995, the inquiry resulted in the charging and conviction of 109 FPR members for other criminal offences.

## SPAIN

### Campaign against police brutality

In Barcelona a campaign has been launched to protest at the lack of police accountability following a recent increase in allegations of brutality. The *Basta de impunidad policial* (Stop police impunity) campaign has four main objectives: the resignation of Julia Garcia Valdecasas (the Interior ministry delegate in Catalunya) the suspension of the *Plan de la Policia 2000* (Police Plan 2000), new video surveillance legislation and the disbanding of the National Police Information Brigade and the shutting of immigrant detention centres. There was a 2,000 strong demonstration in Barcelona in June in support of these objectives.

The Interior Ministry delegate, Julia Garcia Valdecasas is said to be responsible for a number of controversial police actions. These include a police charge at Barcelona's *Universidad Autonoma*, the intimidatory use of guns during demonstrations and the drawing up of blacklists of members of social movements (see *Statewatch* vol 9 no 2). The campaign also opposes the *Plan de la Policia 2000*, which will introduce business principles to policing and levelled criticism at the setting up of immigrant detention centres, where immigrants are forced to endure inhuman conditions because they don't have access to the necessary documentation to reside "legally" in Spain.

The harshest criticism is directed against the National Police Information Brigade which is accused of continuing the work carried out by the *Brigada politico-social* under Franco's dictatorship. Commenting on a police report on 15 March, a Barcelona judge said it, "looks as though it was written by the *Brigada politico-social* of Franquismo which, luckily, is extinct, rather than by a police force operating under the rule of law." The Brigade is accused of arbitrarily arresting people and asking them for documents, carrying out surveillance of meeting places and *Okupa* social centres and squatted houses, of tapping telephones, following people and making threats, as well as drawing up blacklists of activists. They are alleged to be responsible for a number of violent incidents and the selective arrest of individuals belonging to social movements.

In Barcelona last April five people were arrested following a bicycle demonstration against evictions which was broken up by police (see *Statewatch* vol 9 no 2); they were freed after 36 hours, as judge Fernandez Oubina granted them *habeas corpus*. Recent incidents include the arrest and alleged assault on 29 April of four youths participating in a day of music and theatre organised by *Joves sense Espai* (Youth without Space) to demand sites to carry out cultural activities from the local authorities in Villareal. The assembly was peaceful and without incident until two police officers entered the building to check documents. The four youths say they asked for an explanation as no crime was being committed, when five plainclothes officers leapt from a police car and, without identifying themselves, attacked the youths.

They were taken to the Castellon National Police station, where it is alleged one of the youths was struck in the face with

a chain that police confiscated from theatrical paraphernalia; another youth was pulled with the chain around his neck while he was beaten, and a third, who emerged with a cut to his face, was forced to sign a document in which he admitted attacking the police. In the precinct, they were denied *habeas corpus*, use of the toilet and medical assistance, although one youth urgently needed medicines he takes daily. They were also reprimanded for speaking in Valencian dialect. On their release they said they were held in the cold and unhygienic conditions, there were microphones in their cells to listen in on conversations and complained of the abuse they had suffered.

*Contr@Infos, Boletín Semanal de Controinformación 12.5.99, 29.6.99*

## UK

### Policing disorder

HM Inspectorate of Constabulary (HMIC) has produced a report on public order policing. "Keeping the Peace: Policing Disorder" provides an interesting insight into the future practices of the policing of demonstrations, activists and protest groups. Intelligence led policing is seen as central part in "winning back the streets". Public order intelligence is currently gathered from a number of sources, including the National Criminal Intelligence Service (NCIS), Special Branches, the Northern and Southern Intelligence Units, Metropolitan Police Service Public Order Intelligence System and several data systems within police forces.

In November 1998 it was announced that a new National Public Order Intelligence Unit based at Scotland Yard and headed by commander Barry Moss, head of the Met's Special Branch, had been set up. When it takes up its activities it will collate this disparate intelligence, compile profiles of individuals and organisations, and analyse and disseminate it through a national system. The system will incorporate the Animal Rights National Index (a database of animal rights protesters), but intelligence relating to football supporters will remain the preserve of the NCIS, leaving little doubt as to the intended targets of the new unit. There is no discussion of how intelligence gathering is to be implemented on the ground, however the experiences of protest group Reclaim the Streets (RTS) may provide some indication:

*Vehicles carrying equipment have been broken into, followed and impounded en route to street parties; RTS's offices have been raided, telephones have been bugged and activists have been followed, harassed and threatened with conspiracy charges.*

The HMIC report also calls for new legislation to criminalise the "defensive building" of tunnels and bunkers, a tactic employed at environmental protest sites prior to the commencement of construction work. It also suggests that:

*An increasingly common practice used by certain activist groups, in their overall approach to protest, is to instigate civil actions against the police.*

*Keeping the Peace: Policing Disorder, HM Inspectorate of Constabulary, March 1999, HMSO; Intelligence Newsletter, 26.11.98.*

### M25 Three - breach of right to fair trial

The European Commission of Human Rights has found that the Public Interest Immunity (PII) procedure used at the trial of Michael Davis and Raphael Rowe, two of the M25 Three, breached Article 6 of the European Convention on Human Rights, which guarantees a "fair and public hearing". The M25 Three are three black men who were arrested after a series of violent robberies in December 1988 despite witnesses describing

the assailants as two white men and a black man (see *Statewatch* vol 2 no 6, vol 3 nos 2 & 4 and vol 7 no 2). They were prosecuted and found guilty of murder and robbery at a trial in which material was withheld from the defence. At appeal the applicants acknowledged that an application in respect of PII had been made but were not aware of the type of material it covered. The Commission found that the applicants were denied a fair trial confirming that existing procedures provide inadequate safeguards for defendants. The case has now been referred to the the European Court of Human Rights and the Criminal Cases Review Commission will give an opinion whether the case will be referred back to the Court of Appeal. In June all three men were refused bail pending a full hearing of their appeals.

*Liberty, Spring 1999*

### Policing - new material

**Thinning blue line**, David Lowe. *Police Review* 28.5.99. pp24-25. On centralised policing and the Crime and Disorder Act 1998 which, the author argues, will "lead to private security assuming a greater role in patrolling and local crime control."

**Police and the law**, Sadiq Khan & Matthew Ryder. *Legal Action* June 1999, pp16-22. Occasional series "reviewing recent trends and significant developments in actions against the police and other related areas."

**The politics of numbers: police racism and crime figures**. *CARF* No 50, pp6-9. Extensive look at the police manipulation of crime figures "supported by the media and academia" that concludes that these activities have become a "major weapon in their struggle to win black popular support."

**Entsichert - der Polizeistaat laedt nach** (Safety catch off - the police state reloads). *Antifaschistische Aktion/Bundesweite Organisation* (AA/AO) 1999. Highlights several aspects of "internal security" in Germany. Includes an analysis of its justification in criminalising the anti-fascist movement and foreigners. It also analyses the legal framework, Anti-Terrorist laws and the myth of "organised crime". It includes a European dimension with articles on Schengen, Europol, TREVI and the collection of genetic data (which is justified by a moral crusade against sex offenders). From: *Antifa Bonn/Rhein-Sieg*, c/o Buchladen *Le Sabot*, Breite Str. 76, 54111 Bonn.

**Eine kritische Wuerdigung von Europol** (A critical assessment of Europol), *Die Rote Hilfe*, April/June 1999. This issue has "Europe-wide repression" as its main topic. It exposes the unaccountability and secrecy of Europol and EU-FBI telecommunications surveillance system as well as the continuity of Germany's involvement, despite the change in government. *Rote Hilfe e.v.*, Postfach 6444, 24125 Kiel, Germany.

#### Parliamentary debate

**Mr Bill Sutherland** *Commons* 26.5.99. cols. 437-444

## PRISONS

## UK

### Severin complaint "fully justified"

On 8 March, a damning report by the Parliamentary Ombudsman into the death of Kenneth Severin in Belmarsh prison was finally published. It followed a complaint made on behalf of Kenneth's family by INQUEST, the organisation that since 1980 has campaigned in support of bereaved families following a death in custody.

Kenneth Severin died while being restrained by prison officers in November 1995. The inquest held into his death in

January 1997 recorded an open verdict with positional asphyxia following restraint as the cause of death. However, an inquest has a very narrow remit and it is manifestly not a public inquiry. It is concerned primarily with the medical cause of death and consequently the range of issues of concern to the family could not be properly explored. INQUEST's concern about the evidence that emerged at the inquest about the ill treatment and subsequent death of a mentally ill man in prison led the group to write to the Prisons Ombudsman as the independent body that can investigate complaints against the Prison Service.

INQUEST requested that they investigate this case because of the serious issues that needed to be explored. The Prisons Ombudsman replied, indicating that while he was very sympathetic to our request he could not investigate the complaint. Firstly, because part of the case concerned the clinical judgement of doctors, which is specifically excluded from his remit, and secondly and potentially more importantly he had no remit to investigate complaints about a prisoners' treatment from third parties which rules out the family of the deceased. INQUEST has raised with the Home Secretary whether the remit of the Prisons Ombudsman should be widened so that he can accept complaints about prisoners' treatment from third parties ie: the families of those who die in custody.

With no other mechanism available, INQUEST complained to the Parliamentary Ombudsman on the family's behalf through the Woolwich MP, John Austin. The Parliamentary Ombudsman looks into misfeasance and maladministration in public office.

The complaint highlighted issues about prison health care, the treatment of the mentally ill in prison, the use of strip cells, the lack of communication between discipline and medical staff. It also exposed failings at a national and local level to ensure that prison officers were properly trained in the dangers of control and restraint. It also raised concerns about the failure of the Prison service to disclose to the family the internal inquiry report.

In a highly critical report the Ombudsman expresses particular concerns about prison health care and the treatment of a mentally ill man. He found that Mr Severin's death had followed an incident that should have been treated as a problem requiring medical advice but was treated as a routine disciplinary issue.

*Mr Severin received no more care than would have been accorded to a prisoner in the main prison despite the fact that he was mentally ill and had accordingly been located in the health care centre. I conclude that a combination of inadequate health care staffing and inadequate communication between non-health care and health care staff denied Mr Severin medical consideration at the time when he most needed it, and allowed less well judged approaches to the situation to prevail. That merits my strongest criticism.*

The report also criticised failings at a local and national level within the Prison Service to ensure that prison officers were properly trained in the dangers of control and restraint:

*... the [Prison Service] were slow to alert prison Governors fully to the danger of positional asphyxia; they failed to translate such warnings as they gave into adequate instructions for their training staff, and the training arrangements at Belmarsh failed to keep officers up to date regarding such limited modifications as were made. The result was that in 1995 Mr Severin was dealt with in the same way as he would have been in 1990, despite the deaths, which had occurred in the meantime. That was a deeply unsatisfactory state of affairs.*

The report was highly critical of the continuing failure by the Prison Service to disclose to the family a copy of the internal investigation report. The Ombudsman found INQUEST's complaints about the treatment of Kenneth Severin in Belmarsh prison and the failure of the Prison Service to disclose the internal inquiry report "fully justified". The Parliamentary Ombudsman's findings are a vindication of what INQUEST has

been saying for years about the secrecy that surrounds the investigative process following a prison death and the failure of the Prison Service to learn the lessons. It is the first acknowledgement, by a public body, that responsibility for the death of Mr Severin rests with the Prison Service.

Kenneth Severin was one of three young black men to die while being restrained in prison between October and December 1995. Dennis Stevens died in HMP Dartmoor on 18 October 1995 and Alton Manning died in HMP Blakenhurst on 8 December 1995.

*INQUEST, Ground Floor, Alexandra National House, 330 Seven Sisters Road, London N4 2PJ.*

## 22 prison officers charged

Twenty-two prison officers from Wormwood Scrubs prison, west London, were charged with assaulting inmates at the end of June, and more charges are expected. The new director-general of the Prison Service, Martin Narey, announced on 16 June that there, "is sufficient evidence to charge 25 prison officers from Wormwood Scrubs with offences relating to assaults on prisoners." An investigation into the ill-treatment of inmates at the prison was launched after solicitors Hickman and Rose compiled a dossier of abuse and beatings and a police investigation, which has taken two years, followed. Thirteen other cases of brutality, involving prison officers and a prison doctor, are under investigation (see *Statewatch* vol 8, nos 2, 3 & 4 & 5, vol 9 no 1).

Narey recently told a Prison Officers Association conference that he believed that only a small number of prison officers were responsible for the abuses:

*They do not treat prisoners and visitors with dignity. Sometimes they abuse prisoners. However small their number they are doing irreparable damage to your profession.*

The director general, as well as Prisons Minister, Lord Williams, said that they will resign if the prison cannot be "turned around" within a year.

Their statements preceded the publication, in June, of a damning report by the Inspector of Prisons, David Ramsbotham, who criticised flawed management practices, involving senior staff at the prison, including a former director-general, turning a "blind-eye" to the systematic abuse, frequent racial abuse and intimidation of inmates who are being denied their statutory rights. Recommendations made in previous inspections had either been ignored or flouted at this "evil" and "rotten" prison.

The publication of allegations contained in the Hickman-Rose dossier led to a series of walkouts by prison officers who complained that the inmates were "the scum of the earth". At one point more than 100 prison officers called in sick and stayed off work, protesting that members of staff had been breaking down in tears at the allegations made against them.

*HM Prison Wormwood Scrubs: report of an unannounced inspection 8-12 March 1999 (Home Office) 1999, pp182; Prison Service press release 16.6.99; The Prison Service of England and Wales website: <http://www.hmprisonservice.gov.uk>; Independent 1 & 16.6.99; Guardian 16 & 26.6.99; Times 26.6.99.*

## ITALY/US

### Activist repatriated

Silvia Baraldini, a 50-year old Italian woman who has served 16 years of a 43-year sentence in Lexington and Marianna high security US prisons, is being transferred to an Italian jail to serve the rest of her sentence. Baraldini's case attracted international attention as a result of the US government's treatment of the Black Panther Party supporter. In Lexington prison she was part

of an experimental "small group isolation" unit which was later closed after a court decision that it violated constitutional rights. Subsequently, Baraldini contracted uterine cancer in prison where she was given late and inadequate medical treatment.

Baraldini was convicted in 1984 of attempted robbery and received a 40-year prison sentence. She was also found guilty for her alleged participation in aiding Black Panther leader Assata Shakur's escape from jail and a further three years were added to her sentence as a result of her refusal to testify before a grand jury investigating the Puerto Rican independence movement. Under the terms of the Strasbourg Convention, signed by both Italy and the US, there are provisions for prisoners to be transferred to their home countries to complete their sentences. Baraldini was denied this right, despite the one million letters calling for her release which were sent by Italian citizens in 1990, and two visits by US religious leaders to the Justice Department, in 1992 and 1994, petitioning for her transfer. A unanimous vote in favour of her repatriation by the European Parliament led to a resolution, passed on 17 November 1994.

*European Parliament, "Resolution on the detention of Ms Silvia Baraldini" 17.11.94; PARC and the Prison Issues Desk "Fact sheet on the case of Silvia Baraldini" (website: <http://www.rio.com/~ross/MikeP.html>); Guardian 12.6.99.*

## Prisons - New material

**The new Prison Rules 1999**, Hamish Scott & Simon Creighton. *Legal Action* May 1999, pp29-30. This feature discusses the changes in the new Prison Rules which were introduced on 1 April, replacing the previous rules that had been in existence since 1964.

**Deaths in prison custody: a protocol containing guidance to the prison service on pre-inquest disclosure (PID)**. Prison Service April 1999, pp3 + annex. Prison Service protocol containing guidance on the disclosure of information.

**Annual Report 1998**. HM Inspectorate of Probation (1999) pp42.

**Suicide is everyone's concern: a thematic review by HM Chief Inspector of Prisons for England and Wales**. HM Inspectorate of Prisons (HMSO), May 1999, pp136.

**Civil and political rights, including questions of torture and detention**. National Coalition of Anti-Deportation Campaigns *Newsletter* Issue 15 (July-September) 1999. Extracts of the report of the "Working Group on Arbitrary detention" on its 1998 visit to the UK, examining prisons and detention centres, including Wormwood Scrubs, Campsfield and Harmondsworth. Among their demands are the release of large numbers of asylum seekers on grounds of lack of space, shorter detention periods and the separation of detained refugees from convicted criminals. Info: [ncadc@ncadc.demon.co.uk](mailto:ncadc@ncadc.demon.co.uk)

**Parliamentary debates**

**Prison Service** *Commons* 12.5.99. cols. 233-255

**Feltham Young Offenders Institution** *Commons* 26.5.99. cols. 313-320

During their getaway Axelsson was seriously injured in a gunfight with the two police officers who died. His two companions forced a passing driver to take him to a hospital and made their escape. After a major police operation, Arklof was found in a Stockholm suburb and was shot during his arrest. Olsson managed to leave Sweden but was traced to Costa Rica and extradited back to Sweden on 19 June.

The leader of the NSF, Anders Hogstrom, has confirmed that Axelsson was a member of his party, but has declined to confirm questions about his position in the organisation. According to the Swedish newspapers *Aftonbladet* and *Sydsvenska Dagbladet* he was the editor of the fascist newspaper *Stormpress*.

Arklof is professional soldier and has for some years been active as a mercenary in the former-Yugoslavia. He was convicted of war crimes carried out in the Cepljina prison camp in Croatia, and was sentenced to 13 years in prison for torture and the degrading treatment of human beings. He appealed against the verdict and his sentence was reduced to nine years. In 1997 he returned to Sweden on a prisoner exchange programme and was later released. While in prison he met Axelsson and became involved in nazi activities.

Olsson was involved in a nazi gang in his small hometown and, according to newspaper reports, developed a habit of attacking foreigners, leftists and other "deranged" people. He too got in contact with Axelsson and planned to rob a security van. During the robbery he fired his shotgun at the driver. He was convicted for this robbery and served a five year and six months prison sentence. Olsson was on prison leave as part of a rehabilitation program.

The NSF was founded in 1994 and is based in the city of Karlskrona. Its founders were inspired by *Vitt Arisk Motsand* (White Arian Resistance). Politically they are linked to Swedish nazi traditions of the 1930s, and a strong anti-semitism is a characteristic feature of their politics. The NSF, with two other nazi organisations, held an anti-Jewish demonstration in Stockholm on 9 November 1998 - the date commemorates *Kristallnacht* 1938 when German nazis attacked Jewish property initiating the systematic persecution of Jews.

*Aftonbladet* May 1999; *Ekstra Bladet* May 1999; *BT* June 1999; *Monitor*, no 3, 1998.

## EU

### BNP face fraud investigation

The fascist British National Party (BNP) fielded "fictitious" candidates in last June's European elections according to an investigation by Labour MP, Frank Cook (Stockton North). His report questions the identity of three BNP candidates, John Bowles, Alan Gould and Colin Smith who stood in the North East region and says they gave "false addresses on their nomination papers". It is believed only one of the three men, all of whom have stood as BNP candidates in previous elections, resides in the north east. The anti-fascist magazine *Searchlight* has suggested that as many as 15 BNP candidates may have given false information and that one, Paul Henderson (aka Jonnson), stood using a false name.

Frank Cook also launched a scathing attack on the BNPs exploitation of election law:

*The BNP seems determined to engage in this ploy to secure the considerable benefits of the Representation of the People Act in the form of guaranteed broadcasting time on radio and television and free postal deliveries.*

The BNP's election broadcast, screened on 21 May, led to angry pickets outside the BBC and the offices of the Independent Television Commission. Postal workers in several parts of the country refused to handle their election material, despite threats

## RACISM & FASCISM

### SWEDEN

#### Police killed in bank robbery

Three Swedish men were arrested and charged with killing two police officers during their getaway from a bank robbery in the mid-Swedish town, Malexander by Lillsjon. The three are Andreas Axelsson (28), Jackie Arklof (25) and Tony Olsson (23). All are linked to the nazi *Nationalsocialist Front* (NSF).

of disciplinary action from management. In Huddersfield, west Yorkshire, Royal Mail managers are proceeding with disciplinary cases against workers alleged to have played a prominent role in refusing to deliver BNP European election material.

The investigation into the BNP, which revealed that under the Representation of the People Act there is no provision to prevent candidates from supplying false addresses, led to cross-party calls for tough measures to be taken. Instead of reaping the benefits of a state-funded recruitment campaign, the organisation now faces a fierce leadership battle between the "old guard" fascists under current leader John Tyndall, and the "post-fascist" reformers under Nick Griffin. A seasoned revisionist, Griffin envisages a repackaging of the organisation, sidelining Tyndall's violent street tactics to promote a more acceptable nationalism, with the BNP cast in the role of the defender of disaffected "Middle England".

Elsewhere in Europe the far-right had generally poor results in the European elections. In Belgium the *Vlaams Blok* increased their vote throughout Flanders but gained no extra seats; they retained two elected members (Karl Dillen and Frank Vanhecke). In Austria Georg Haidar's *Freiheitliche Partei Osterreichs* (FPÖ, National Party) saw a reduction in their vote; they now have five MEPs (Gerhard Hager, Wolfgang Ilgenfritz, Hans-Johann Kronberger, Daniela Raschhofer and Peter Sichrovsky).

Italy saw Berlusconi's *Forza Italia* head the results with 25% of the vote and 22 seats. The fascist *Alleanza Nazionale* (National Party) came third with nine seats (Oberto Angelilli, Gianfranco Gini, Adriana Poli Bortone, Mariotto Giovanni Luigi Segni and five others) while the *Lega Nord* (Northern League) had four candidates elected (Umberto Bossi, Marco Formentini, Francesco Speroni and one other). The *Movimento Sociale-Fiamma Tricolore* won one seat (Roberto Felice Bigliardo). In France, frozen funds and an acrimonious split in the *Front National* resulted in their representation in the European parliament being halved from 11 seats to five. Megret's *FN Movement National* received just over 3% of the vote and failed to secure a seat, while Le Pen's *Front National* won five seats with 5.5% of the vote, (Charles de Gaulle, Bruno Gollnisch, Carl Lang, Jean-Marie Le Pen and Jean-Claude Martinez.)

*"EP election - June 1999: Results and Elected Members" Directorate General for Information and Public Relations, PE 278.238/EN; Searchlight 289 (July) 1996; Morning Star 22.5.99; Times 7.6.99.*

## ITALY

### Roma camps attacked in Naples

Roma camps in Scampia, a poor Neapolitan suburb, were subjected to arson attacks on 19 June. Reports in the media said the *Camorra* (Neapolitan mafia) had burned the caravans, after two girls were run over by a Serbian Roma from Verona; one of the girls is reportedly linked to a *Camorra* family. Angry local people sought revenge after the incident in which the driver failed to stop, leaving one of the victims in a coma. On Friday night, with feelings running high, gypsies caught the alleged culprit and prepared to hand him over to the angry crowd but he escaped.

On the following morning, gas canisters were heard exploding, the first sign that the camps, home to hundreds of Roma, were under attack. Over a thousand gypsies evacuated the area when a second fire started around midday. They headed south to Salerno and Giugliano, and north to Rome and the Lazio region. As fires and arson attacks continued throughout the day, six gypsy camps were completely emptied. Police failed to stop the mobs despite calls asking the emergency services to intervene. Amedeo Curatoli of *Opera Nomadi* complained:

*How come the police didn't intervene? How is it possible that in*

*Naples squads like those in South America roam freely, forcing people out of their homes and setting property on fire".*

Gypsies in Italy are in a particularly vulnerable position as a result of what the Committee on the Elimination of Racial Discrimination (CERD) describes as "a housing policy for Roma premised on the racist and incorrect characterisation of them as nomads", contravening Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, banning racial segregation. It blames Italian governments for fostering "the segregation of Roma into inhuman and degrading "camps" to which no other segment of the population is confined.

Discrimination against Roma is not confined to housing, it affects employment, education and the justice system. Veronika Leila Szente stressed that the CERD document shows "that Roma in Italy are the victims of police violence and pervasive racial discrimination in virtually all fields of public life."

*Roma Rights, no.1, 1999, La Repubblica 20-21.6.99, Independent 22.6.99.*

## Racism and fascism - in brief

■ **UK: "Lone bomber" was involved with BNP:** David Copeland, who police have named as the "lone-bomber" responsible for last April's nail bomb campaign in London, "was briefly involved with the [British National] party in East London in 1997", according to the organisation's leader-in-waiting, Nick Griffin. Griffin's admission, in the BNP magazine *Spearhead*, came after strenuous denials by party officials in the immediate aftermath of the atrocities. It was made after a photograph of Copeland, standing next to party leader John Tyndall at a BNP rally in September 1997, was published in the *Daily Mirror* newspaper on 25 May. Griffin also says that after leaving the BNP, "...Copeland became a member of the so-called National Socialist Movement (NSM).. It was the political front group for the wing of Combat 18 "loyal" to the acknowledged police informer Charlie Sargent." The BNP, and possible NSM, connections throw the police "lone-bomber" theory into considerable doubt. It also begs the question of why, when the police have so deeply infiltrated the main fascist organisations, they had so little knowledge about the bombing campaign. Del O'Conner the leader of the White Wolves, which claimed responsibility for the bombs, was detained, questioned and released on his return to the UK from America in June.

■ **Spain: Revisionist gets suspended sentence:** A Barcelona court has raised the issue of whether the crime of "justifying genocide" is unconstitutional before the Constitutional Tribunal, in the case of Pedro Varela. Varela is a well known right-wing leader, owner of the Europa bookshop and director of the CEDADE (Spanish Circle of Friends of Europe). He was sentenced to five years in prison after thousands of racist books, publications and videos, including holocaust denial literature were found in his library. The court argued that insofar as there is no aggression, the crime of justifying genocide does not exist, as it is covered by the provisions set out in "freedom of expression" guidelines. Varela received a suspended sentence. *Contr@infos 50, Barcelona, 16-22.6.99.*

■ **Spain: Right-winger on trial for murder:** On 28 June, the judge at a preliminary hearing in the Madrid tribunal, ruled that Ricardo Guerra will be tried for murdering Aitor Zabaleta, a Real Sociedad fan. He was killed during clashes before the football match between Atletico Madrid and Real Sociedad outside the Vicente Calderon stadium in Madrid on 9 December. Prosecutors argued that eight other youths, friends of Guerra, most of whom belong to the Atletico Madrid neo-Nazi "Bastion" gang, should also be charged for the murder. It was alleged that the youths belong to an organised group which had planned the crime after an earlier match at Real Sociedad's ground in San Sebastian. The court ruled that the evidence did not suggest that there was a

preconceived plan to murder Zabaleta, charged the eight youths with public order offences, and released a further six who had been detained in connection with the killing. *El Pais* 29.6.99

## Racism & fascism - new material

*Police* Vol XXXI no 3 (March) 1999. This is a special issue on the lessons to be learned from the investigation into the racist murder of Stephen Lawrence. It has articles on the MacPherson Report, the work of Scotland Yard's race and violent crime unit, race relations training, institutional racism and interviews with black and Asian police officers and Home Office Minister, Paul Boateng.

**Gesundheit als Privileg - rassistische Gesundheitspolitik** (Health as a privilege - racist public health policies). *ZAG/Antirassistische Initiative* no 31 (July) 1999. Analyses how health policies are used against refugees to discourage immigration. Includes reports on the Netherlands, Italy, Belgium, the US and Germany. Available from: ZAG, Yorckstr. 59, 10965 Berlin, Germany; zag@mail.nadir.org.

**Challenging Macpherson**, DCC Robert Ayling. *Police Review* 12.3.99., pp16-18. Article by the police officer responsible for the 1997 investigation into the initial police handling of the Stephen Lawrence racist murder. Rather than dealing with the substantial questions raised by the murder the article takes a fictitious question and answer format (involving questions police officers "may ask") and concludes that the Macpherson report "unfairly brands frontline officers as institutionally racist."

**The Roma and the Kosovo Conflict**. Shani Rifati. *CovertAction Quarterly* No 67 (Spring-Summer) 1999, p19. Short article on the 250,000 forgotten people of the Kosovo war. Whilst the western media continues to distinguish between "good" and "bad" refugees, the Romany people of Kosovo face intimidation, racist attacks and killings by ethnic Albanians, Yugoslav security forces and Serb paramilitaries alike. They are ignored by relief agencies while "the US has announced it will take 20,000 Kosovo refugees, but only ethnic Albanians..." - the Roma were sent back.

### Parliamentary debate

**London bombings** *Lords* 26.4.99. cols. 44-53

## SECURITY & INTELLIGENCE

### UK

## UK spies on Ireland

For at least ten years, until 1998, the UK government authorised all telecommunications from the Irish Republic to be monitored. The key interception site was at Capenhurst in Cheshire where the UK's surveillance agency GCHQ (Government Communications Headquarters) spent £20 million creating a highly sophisticated interception operation. The official title was the Ministry of Defence's (MOD) Electronic Test Facility (EFT). The Cheshire site, leased from British Nuclear Fuels Limited, was put up for sale when a new Irish communications system replaced the radio links that it was built to intercept. According to the *Independent* newspaper the eavesdropping operation has now been superseded by an "even more powerful network of Ministry of Defence-owned optical fibres cables running in a ring around England". The operation was revealed by *Channel 4 News*.

From the specially-built eight-floor tower faxes, e-mails, telexes and data communications were intercepted. The advanced electronic equipment and programmes were used to extract and sort the thousands of communications passing through every hour of the day. Communications were scanned

for their content using key words and subjects of interest and phone calls could be targeted according to the numbers dialled or by identifying the voice of the speaker. GCHQ, and its US counterpart NSA (National Security Agency), have developed sophisticated libraries of voice profiles to use in scanning international messages. Within the MOD the project was classified "Top Secret Umbra", with the codeword "Umbra" indicating a sensitive signals intelligence operation.

Local people were urged not to talk about the site and in return were given free fencing and double glazing. Service vans were repainted with the logos of British Telecom and other public utilities to disguise the operation.

The reason for mounting the operation was to combat terrorism. But in practice the product of the "trawling" operation produced vast quantities of political and economic intelligence for the UK quite unconnected with terrorism. Another GCHQ surveillance operation, not specifically directed at Ireland, is said to intercept most Internet data and e-mails as they pass through a "key Internet site in Docklands, east London".

*Independent*, 16.7.99.

### NETHERLANDS

## New intelligence agency

The *Binnenlands Veiligheids Dienst* (internal security service, BVD) looks set to be transformed under new proposals introduced by the Dutch government. However, the agencies that will replace it will have massively increased powers, combining the internal security aspects of the BVD with the intelligence gathering powers of the old *Inlichtingen Dienst Buitenland* (Foreign Intelligence Service, IDB).

The motivation behind the creation of this new agency, which will be called the *Algemene Inlichtingen en Veiligheidsdienst* (General Intelligence and Security Service, AIV), comes from the need to create a new legislative framework for the intelligence services. A series of scandals led to the winding up of the IDB in 1994. Furthermore, revelations following a break-in by the anti-militarist group *Onkruid* in 1984 led to the Netherlands being condemned by the European Court of Human Rights, which decided that current legislation did not guarantee the individual's right to privacy. The Home Affairs ministry has decided to give the agency enhanced powers whilst further reducing access to information.

\* The new services and their aims: The first major increase in the powers of the new AIV is suggested by the name change. The old BVD was a security service empowered to act when there was a question of a "subversive threat" either to the government or to strategic industries. The new service will continue to have that role, but the new name suggests that the gathering of information on political activists will become an aim in itself rather than an aid to prevent subversion. The AIV will also have a foreign intelligence role, which will allow it to sit at the same table as other intelligence services such as the CIA and MI6. This is in contrast to the old BVD that had no statutory basis for its foreign intelligence work. Finally the new agency will be able to "conduct research" that can be "exploited regarding discoveries indicating threats that have been established following research." "Exploitation" has long been used by the intelligence services to describe covert action.

The old military intelligence counterpart of the BVD, the *Militaire Inlichtingen Dienst* will be re-named as the *Militaire Inlichtingen en Veiligheidsdienst* (Military Intelligence and Security Service, MIV). The MIV will also get an increased research role, as well as being allowed to conduct foreign intelligence gathering activities.

\* New powers, methods and techniques: In a proposal that is intended to limit the activities of the new services, a check list has been created to limit who they are allowed to place under surveillance. It includes people who arouse suspicion that they "form a threat to the democratic rule of law, for state security or for other important interests of the state". This definition is so vague that it could include anyone who currently attracts the interest of the intelligence services. The right-of-centre *Volkspartij voor Vrijheid en Democratie*, which is part of the governing coalition, put it succinctly: "as things stand everything is allowed, even when it isn't allowed". Other procedures that will be legitimised by the proposal are telephone tapping, break-ins, the opening of personal mail and reading e-mail. The opposition *Groen links* (Green Left) fraction has described the new powers as an "intelligence services wishlist".

\* Transparency: The new rights of access to personal files are as restrictive as the new powers are expansive. For instance, the right to see a personal file under the Freedom of Information Act has become a partly discretionary affair for the relevant minister, whilst the right to get a copy of files has been removed completely. Access to general files is completely at the discretion of the minister. Even when security service files are covered by the Freedom of Information Act the length of time that can be allowed to provide a file is considerably longer than for any other government department.

Supervision of the security and intelligence services will be provided by an oversight committee. This committee will meet in secret, its reports will be classified, and it will be appointed by the government. Any publication of the findings of the committee will be at the discretion of the government and the oversight committee's findings will not be binding on the government.

*VD AMOK, vol 7 no 4*

## EU-FBI plan adopted in Holland

The Dutch parliament, overruling objections from lawyers, employers and the telecommunications industry, has agreed that the Ministry of Justice should be authorised to tap into any form of communication, including internal company networks. Any new service offered must also be "tappable". KPN, the major provider of telecommunications in the Netherlands, has estimated that the potential cost could be astronomical.

There is one exception to this measure. The internet will remain tap-free. However the service provider Xs4all is not impressed by the concession: "...it makes no practical difference whether we are included in this or not", a spokesman pointed out. Nobody, not even the government knows how to tap the internet."

*Volkskrant 8.4.99*

## GERMANY

### Intelligence services: new rules

In March the *Bundestag* passed new regulations concerning parliamentary control of the intelligence services, which will come into force in June. The task will be concentrated in three special committees. A parliamentary control group (PKG) will control the *Bundesamt für Verfassungsschutz* (internal), the (external) *Bundesnachrichtendienst* (BND) and the *Militärischer Abschirmdienst* (military) and also their surveillance of letters and telecommunications. There will also be a special control commission for the latter purpose.

The government has to keep the PKG informed about the "general activities of the services and about all cases of special

importance" and account for how the services spend their budgets. Each individual PKG member can demand this information. The PKG can also look at a service's files and database, visit the service's site, and receive information from civil-servants, who can contact members directly.

The government can only withdraw these rights when there is no other way to safeguard a source, or to protect the individual rights of third persons. Then the responsible minister has to inform PKG of the exact reasons. The PKG can also instruct external experts to lead special investigations. It can decide (with a two-thirds majority of its present members) to make a public comment on service affairs and, every two years, the PKG will give a report to parliament.

Besides the PKG, another committee will control the Customs Service's surveillance of companies which are suspected of delivering weapons or dual-use goods to third countries. Although the Customs Service cooperates quite closely with the BND on this issue, the control committees will stay separate. Proposals for making the services more accountable by the Green group - who would like to abolish them - were blocked by the Social Democrats.

## UK

### Samar and Jawad given leave to appeal

Samar Alami and Jawad Botmeh were given leave to appeal against their 1996 convictions for conspiring to cause explosions at the Israeli embassy and Balfour House at the Court of Appeal on May 10. Samar and Jawad, who have always protested their innocence, were jailed for 20 years after a trial at which crucial evidence was "buried" and withheld from the defence, leading to claims that they had been the victims of a miscarriage of justice. Their case has received widespread support from MPs, lawyers and community groups in the UK, and human rights organisations worldwide; over 2,500 letters of support were sent from the West Bank and Gaza to the Home Secretary, Director of Public Prosecutions and the Attorney general in March (see *Statewatch* vol 9 no 1).

Supporters of the Freedom and Justice for Samar and Jawad campaign picketed a "closed" Public Interest Immunity (PII) hearing on March 15 and Samar and Jawad's application for leave to appeal their convictions at the Court of Appeal on March 29 and 30. The appeal hearing allowed solicitors to voice their concerns about the non-disclosure of material and the use of PII certificates which had been used before and during the trial. Their solicitor's arguments turned around Article 6 of the European Convention on Human Rights (which guarantees a "fair and public hearing"), and depended on the Appeal Court taking on board the opinion of the European Commission of Human Rights in the Rowe and Johnson (the M25 case, see article in policing section) case on the non-disclosure of PII material. The European Commission's opinion is not (yet) binding on British courts, but the Appeal Court found that evidence held by the intelligence services had been withheld by the prosecution in a way that could amount to a breach of Article 6.

Much of the suppressed evidence relates to information disclosed by former MI5 agent David Shayler a year after the trial, which contradicts evidence presented to the jury. Shayler alleges that MI5 received a report giving prior knowledge of the bombings, and which indicated that they were not carried out by the defendants, but failed to act on it. He also referred to an MI6 report which expressed the view that: "...the Israeli's had carried out the attack on their own embassy to embarrass the British government into providing them with more security" and as part of an ongoing feud between Israeli and British intelligence

services.

The Scott inquiry, which was set up by the government in 1992, made the following recommendation on the use of PII in its report:

*The balance must always come down in favour of disclosure if there is any real possibility that the withholding of the document may cause or contribute to a miscarriage of justice. The public interest factors underlying the PII claim cannot ever have a weight sufficient to outweigh that possibility..."*

The Shaylor material, which contradicts the evidence on which Samar and Jawad were convicted by pointing to the involvement of parties other than the defendants, has been with the government, prosecution service and the police since 1994. The fact that this information was withheld from the defence points to a clear miscarriage of justice. Shaylor's evidence, and other information that has come to light since the trial, should be tested by the courts, as the Appeal Court has indicated. A date has yet to be fixed for Samar and Jawad's appeal, but it is expected to take place later this year.

*The Freedom and Justice for Samar and Jawad campaign have published a book, Justice Denied: Unanswered Questions in the bombing of the Israeli Embassy and Balfour House by Daniel Guedalla, it can be obtained from the campaign at BOX BM FOSA, London WC1N 3XX. The campaign can be contacted by e-mail: postmaster@freesaj.org.uk.*

## Security & Intelligence - in brief

■ **Switzerland/UK: Former MI6 agent expelled:** Former MI6 agent Richard Tomlinson, who the British government accused of putting a list of his former colleagues on the site of a US Internet server, left Switzerland on 8 June after receiving an order to leave from the Federal police. Tomlinson, who denies being responsible for the publication of the list of 116 names, was interrogated by the Swiss Federal Prosecutor, Mrs Carla del Ponte, and the Geneva Cantonal Prosecutor, Bernard Bertossa, last May. They accused him of a breach of secrecy and of endangering the life of a third party. His Swiss internet site was closed down after pressure from the Federal police at the end of April. Although he has left Switzerland, the investigation against him continues, according to a spokesperson for the Federal Prosecutor. The Swiss authorities claim not to have acted under British pressure. Tomlinson, who had been in Switzerland since last autumn, has already been expelled from France and Australia. New Zealand, his country of origin, denied him a visa. *Le temps* 21.5.99, 9.6.99

■ **Italy: Scalfaro and SISDE under investigation:** The former Italian President, Oscar Luigi Scalfaro, is under investigation, accused of malfeasance in public office in connection with secret funds channelled into the *Servizio per le Informazioni e la Sicurezza Democratica* (Democratic Information and Security Service, Sisde) during his term as Interior Minister, from 1983 to 1987. Former agents Maurizio Broccoletti, Michele Finocchi and Gerardo Di Pasquale, have exposed practices whereby the Interior Minister would receive 100 million Lire payments, and false payments were made to real and fictitious members of the services. The case arose in 1993, when Scalfaro was President and an unprecedented institutional crisis beckoned. It was reopened in response to a formal inquiry, by Filippo Mancuso (*Forza Italia*) head of the commission investigating the scandal at the time, to Justice Minister Oliviero Diliberto. Diliberto repeated the reasons for the shutting of the case in 1994, when sources from the state attorney's office explained that the prosecution service considered the "availability of reserved funds for Sisde from interior ministers for institutional ends as legitimate", and that there was no evidence against Scalfaro to show that the funds were used in a non-institutional manner. *La Repubblica* 4.6.99.

## Security - new material

**MI5 target North Belfast man.** *Republican News/An Phoblacht* 13.5.99, p4. Article on a seven month British undercover operation to recruit North Belfast man, Gerald Martin. The approach included threats to kill him, prompting Martin to call a press conference to highlight his problem.

**The shambles at MI6,** Stephen Dorril. *Observer* 16.5.99, p18. Story on former MI6 agent, Richard Tomlinson, which sees "old school resistance to reform" at the heart of his harassment by his old colleagues.

**Dublin/Monaghan bombs: sensational new evidence,** and **Dublin/Monaghan bombings cover-up,** Sean Brady. *An Phoblacht/Republican News* 1.4.99, p7 and 29.4.99, p9. More evidence of British involvement in the loyalist bombing campaign in Monaghan and Dublin in 1974 which killed 33 people. New evidence, by a former RUC officer, suggests "that his colleagues in British Military intelligence and the Ulster Defence Regiment were...behind the worst single act of violence in the past 30 years of conflict."

**Spurensuche im Datennetz** [Searching for evidence in the data network] *Sueddeutsche Zeitung* 8.6.99. The G8 working group on "high-tech crime" has formed a 24-hour contact group for greater international collaboration on "cross-border crime". Plans for legal harmonisation to facilitate access to data as well as prosecution and the securing of evidence are being put forward in Germany with a new White Paper on "Telecommunications and Surveillance". It foresees a surveillance body at every internet provider, or, if that proves too difficult due to data protection laws, the legal possibility to "freeze and store" digital data which is thought to be valuable "evidence".

## MILITARY

EU

## Autonomous foreign and security policy

European Union (EU) leaders agreed in June to develop an autonomous foreign and security policy, nominating NATO secretary-general Solana to head this initiative. The decision, made at the EU summit in Cologne, will lessen Europe's reliance on US power but is not meant as a break with NATO which remains the key European security mechanism. It was also agreed that the Western European Union is to be merged into the EU machinery over the next 18 months. A permanent political-military committee will be formed under the authority of European foreign and defence ministers. The EU will also set up a European general staff, an intelligence unit and a strategic planning body. The 60,000 strong Eurocorps will be transformed into a rapid reaction force.

According to French president Chirac, the Eurocorps should be the centre of the new "European Defence Identity" (EDI). The UK has not given its position on membership yet. French and German leaders met at the biannual Franco-German summit in Toulouse on 29 May where Chirac, the French Prime Minister and the German Chancellor called on Europe to forge an autonomous military force that would be able to "decide and act on its own in the face of crisis". Chirac added that the EU would "not fully exist until it possessed an autonomous capacity for action".

The three leaders issued a "Toulouse Declaration" in favour of European defence, closely resembling the French-British statement in St Malo last December, which was a turning point as

the Labour government broke with previous Conservative policy. However, some defence analysts doubt that Germany really wants Eurocorps to become a rapid intervention force. Bonn has neither the political inclination nor the military resources required to participate. Schroeder said that the decision to strengthen European defence reflected the EU's experience in the Bosnia and Kosovo crises. In Kosovo 90% of the command, control, communication and intelligence, 80% of the aircraft, and 33 of 35 satellites were supplied by the USA. However while the USA supplied one third of the 60,000 ground troops sent to Bosnia four years ago, it will be providing only 14% of KFOR.

*Jane's Defence Weekly 9.6.99; JAC Lewis 23.6.99.*

## US/ITALY

### Marine convicted on minor charges

Richard Ashby, US pilot of the Prowler plane which severed the cable of a ski slope cable car on the Cermis mountain in the Italian Alps, killing 20 people on 3 February 1998, was sentenced to six months in prison and was dismissed from the Marines, on 10 May. He was found guilty of conspiracy and obstruction of justice, after removing the videotape of the flight which navigator, Joseph Schweitzer, had recorded from the aircraft on a camcorder (see *Statewatch* vol 9 no 2). He was acquitted on manslaughter charges at a previous trial on the grounds that the flight had been authorised by the responsible Italian and US military authorities, that the radar-altitude gauge on the plane was faulty, and that there was no indication of the cable in his flight map. This map was supplied by NIMA (National Imagery and Mapping Agency), the agency which was responsible for providing the outdated map which led to NATO's bombing of the Chinese embassy in Belgrade during the Kosovo war in May.

Ashby was found guilty for the part he played in destroying evidence, but was cleared of the more serious charges. The US court martial did not implicate senior US and Italian military officials who, Francantonio Granera and Bruno Giardina, the Italian investigating magistrates, found to be responsible for the repeated breaches of safety regulations which led to the disaster. In April, US Defence Secretary William Cohen and the Italian defence minister, Carlo Scognamiglio, agreed to enhance Italian authority over US military training flights, and to limit low-level training flights in Aviano to 25% of the total training flights from the airbase.

*Times 13.5.99; International Herald Tribune 17-18.5.99, 8-11.5.99.*

## Military - in brief

■ **UK: Soldiers dismissed from army:** Two soldiers linked to the fascist Combat 18 have been discharged from the army, following a series of police raids last March. The two men, Darren Theron (Parachute regiment) and Carl Wilson (King's regiment) were among 12 soldiers identified by *Searchlight* magazine, one of whom is reputed to be the loyalist UDA leader in London. The magazine believes that the army was forced to act after media publicity and after one of the men, Wilson, was sentenced to community service at Liverpool Crown Court after being found guilty of actual bodily harm. There is no indication as to whether the army will act against the other soldiers named by the magazine (see *Statewatch* vol 9 no 2). *Searchlight* 289 (July) 1999.

■ **NATO: Exercise to test European naval force:** European NATO countries are planning a large scale naval operation without significant US involvement during Exercise Northern Light in September. The exercise will include a brigade strength

multinational amphibious operation. A naval force comprising a UK-led carrier battle group, a Dutch led amphibious strike group and a German led escort group will conduct operations in the eastern Atlantic. Initially, it was planned that Northern Light was to be an operational test for a European Multinational Maritime Force (EMMF), designed to strengthen the European pillar of NATO and to enable European-only operations, possibly under the WEU-flag. However the EMMF concept is not approved by NATO because some European countries have reservations. Now the exercise will include an operation off the French Atlantic coast in which a European amphibious strike group (UK/Dutch reinforced with some German and French units) would perform a landing in southern Brittany. *International Defense Review* no 5, 1999

■ **UK: Campaign for accurate war reporting:** A Campaign for Media Accuracy and Free Speech on War has been launched by the National Union of Journalists (NUJ) and the Campaign for Press and Broadcasting Freedom. The campaign is a response to NATO "spin" and the almost uniform support of the bombing of Kosovo in Britain's national press. Substantial public opposition to the war was rarely reported and anti-regime voices in Belgrade were largely ignored. The campaign can be contacted at the NUJ's head office in London on 0171-843 3704; email:campaign@nuj.org.uk.

## Military - new material

**Europe's missing shield**, Nick Cook, *Jane's Defence Weekly* 28.4.99, pp 24-27. Briefing on Europe's missile defence programs like the Patriot Advanced Capability-3 (PAC-3: US, Germany, Netherlands) and Medium Extended Air Defence System (MEADS: US, Germany, Italy).

**Typhoon draws near**, Nick Cook, *Jane's Defence Weekly* 9.6.99, pp 70-77. Special report on the Eurofighter, two years from the date when the first aircraft will be handed over to the Royal Air Force.

**Building a European force**, JAC Lewis. *Jane's Defence Weekly* 23.6.99, pp 22-23. The EU is keen to organize a European military capability based around the existing Eurocorps.

**Das Eurokorps**, Helmut Neubauer, *Wehrtechnik* 1/99, pp6-10.

**Das 1 (GE/NIL) Korps**, Karsten Oftmanns, *Wehrtechnik* 1/99, pp11-16

**Multinationales Korps NORDOST** [Danish-German-Polish Army-corps], Hans-Joachim Sachau, *Wehrtechnik* 1/99, pp18-21

**Parliamentary debates**

**Satellite Communications Lords** 4.5.99. cols. 617-633

**Kosovo Lords** 6.5.99. cols. 795-910; 10.5.99. cols. 989-1003; 10.5.99. cols. 21-37; 18.5.99. cols. 882-970; 26.5.99. cols. 355-372; 26.5.99. cols. 966-980; 10.6.99. cols. 1550-1561

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# Immigration and Asylum Bill: no real changes

**Opposed by a wide range of refugee groups and lawyers, the Bill has passed through the House of Commons with its core provisions intact and only a few minor concessions**

Despite the enormous efforts of immigrant and refugee groups and campaigners, very few concessions were wrung from the government in the House of Commons, and the Bill completed its Commons stages virtually unchanged.

Campaigns focused largely on the support provisions. The *Big Issue* ran a strong campaign against the provision of vouchers, citing examples of stigmatisation and degrading treatment of those using them. These included a supermarket telling an asylum-seeker she could not spend her vouchers on "luxury" items such as yoghurt and ready-made sandwiches, and the arrest of a man who bought "too much rice" on suspicion that he was selling it on. The only concession made as a result was the promise to increase the cash "pocket-money" element of provision (which covers clothing, shoes, phone calls, stationery, travel and recreation) to a likely sum of £1 per day for children and £1.17 per day for adults.

Below is set out the changes made in the Commons, under the headings used in the last issue (*Statewatch* Vol 9 no 2, pp16-18):

## Preventing asylum-seekers' arrival

The proposals to give overseas staff the right to refuse entry to the UK will be subject to a positive resolution procedure so as to allow a full debate in Parliament before they are passed.

Refugees and those granted exceptional leave to remain as torture victims will not be made to suffer for their leave to be renewed.

## "Safe" third countries

All EU member states are to be regarded as "safe" for the purposes of removing asylum-seekers to "safe" countries of transit. This new clause has angered refugee groups and their lawyers who argue that it violates the Geneva Convention. There is still considerable disparity between EU member states over their interpretations of the Convention and their treatment of particular groups. Germany returns many Turkish Kurds to Turkey, despite documented evidence that returnees have been detained and tortured; Italy and Germany do not accept refugees fleeing from non-state persecution.

## Apartheid "support"

People will not be excluded from support unless they have substantial assets enabling them to live for a substantial period (a reference to the possibility canvassed by commentators that asylum-seekers would have to sell their wedding rings to obtain support). They will not be excluded from support automatically because they have relatives here; the relatives or a charity must be willing and able to support them in order to disqualify them from support.

Sponsors who are unable to continue support or have a reasonable excuse for stopping support will not be criminalised. (This reflects the clause in the Bill providing that sponsors who stop support are guilty of a criminal offence.)

The support provided to children will reflect the provision of the Children Act.

The government has promised an increase in the cash element of subsistence provision (see above). Separate payment of fares to travel to asylum interviews may be made.

Funds may be made available to voluntary organisations to

support rejected asylum-seekers who are irremovable because of conditions in their countries of origin, or who are applying for judicial review. As the Bill stands such people will be in limbo, unremovable but with no official existence and ineligible for any support.

Accommodation offered will take account of asylum-seekers' circumstances including religious needs, community support, safety and special needs, although not their preferences. There will be a review system to allow complaints about inappropriate allocation of accommodation.

The government will consult relevant organisations about the provision of good quality legal advice in 'dispersal centres' around the country.

Asylum-seekers who are harassed in their accommodation will not be penalised for leaving by withdrawal of support and will be rehoused.

## Detention

The government will "consider" a statutory presumption in favour of bail for detained asylum-seekers, and statutory criteria for the granting of bail. This would give asylum-seekers the same rights as criminal suspects, something the government says would cause difficulties, but ones which could be overcome.

Magistrates will have the power to grant bail with or without conditions.

The government will consider inserting additional safeguards on the detention of children.

Immigration officers arresting asylum-seekers for breach or anticipated breach of conditions will be allowed to use only "reasonable" force.

The government will consider a provision that someone arrested in these circumstances must be brought before a court within 24 hours rather than "as soon as is practicable" (the current wording).

Funding will be made available to reputable organisations (eg, the Refugee Legal Centre or JCWI) to represent asylum seekers on bail hearings (there is no legal aid available).

## Appeal rights curtailed

Overstayers who present themselves within a specified time, the "regularisation period" of three months or more, will retain a right of appeal against deportation. This is a one-off provision for those who are already overstayers when the law comes into force, and will not benefit future overstayers.

The scope of appeals under the Human Rights Act will be broadened and will include appeals against decisions refusing entry by officials abroad (previously excluded)

## New powers for immigration officers

Immigration officers are to act with "sensitivity and restraint" in exercising their new powers.

Searches of headgear and footwear will not take place if they offend religious or cultural sensibilities.

Immigration officers will be bound by PACE (Police and Criminal Evidence Act) safeguards.

## Family visitors

The government will consider whether the role of the independent monitor might be extended to look at the operation

of the bonds scheme.

### Information exchange

Passenger lists and other information which airlines will have to supply to the Home Office will be subject to requirements of data protection legislation and to the Human Rights Act (the right to privacy).

### Commentary

These amendments leave intact the core of the Bill. Refugee and

legal groups alike have been dismayed and disheartened by ministers' comments as the Bill was going through Committee, and the government's obdurate stance on key elements such as dispersal, no-choice accommodation, vouchers, penalising those carrying clandestine entrants wittingly or unwittingly, extending carrier sanctions to lorries and getting rid of appeal rights. The Bill institutionalises such systemic abuse of one of the most vulnerable groups in society, and represents a tragic betrayal of the opportunity to fight xenophobia by a positive and inclusive response to asylum-seekers.

*Immigration and Asylum Bill (HL Bill 71)*

## FRANCE

# Anti-terror laws pave way for arbitrary justice

## A study of French anti-terrorist legislation finds persistent violations of the letter and the spirit of the European Convention on Human Rights

A report, by lawyers Michael McColgan and Alessandro Attanasio for the International Federation of Human Rights (FIDH), into French anti-terrorist laws has concluded that "France is in violation of a substantial number of its obligations under the European Convention of Human Rights." Their report cautions that these violations are "paving the way for arbitrary justice", and calls for the repeal of existing anti-terrorist legislation. The investigation cites the mass trial of 138 Algerian defendants accused of participation in terrorism (the "Chalabi network" trial), as exemplifying many of the concerns in the report.

The report looks at (chapter IV) French anti-terrorism laws and their practical application by reference to the European Convention for the protection of Human Rights and Fundamental Freedoms (1950). It found that the:

*system that prevails in the fight against terrorism is a short sighted system, more designed to impress public opinion than to bring those who have committed acts of terrorism to justice.*

They found violations both in the substance of the legislation and the ways it is used which the authors consider "to be a matter of serious concern...with grave, often irreparable damage on their victims.

In addition the report contains a summary of the situation in Corsica and the Basque territories where the French authorities impose draconian anti-terrorist measures rather than contemplate a political solution to the problem, (chapter V). It examines in detail the case of Ramazan Alpaslan, a 28-year old Kurdish political refugee who hanged himself after having four applications for bail refused "on the hope that the continued and lengthy detention...would...exert pressure...to obtain further "evidence"." (chapter VI). Another case examined is that of Medhi Ghomri, a young Algerian sentenced to seven years imprisonment under the *association de malfaiteurs* (conspiracy) law, criticised elsewhere in the report (chapter VII). Chapter VIII covers the *rafle preventive* (preventative round-up) of 80 people suspected of belonging to the "Islamast Movement" in May 1998, which is condemned as a "blatant demonstration of the dangers inherent in the [French] anti-terrorist laws..." Chapter X covers the role of defence lawyers and legal aid.

The report highlights the "Chalabi network" mass trial (named after one of the defendants, Mohammed Chalabi) that followed a series of police raids in 1994-95 which resulted in the arrest of over 170 Algerians. They were accused of conspiracy and participation in the Islamic Salvation Front (FIS) and the Armed Islamic Group (GIA). Preliminary charges were dropped against 34 people (who spent an average of two months in prison). The mass trial of the remaining 138, beginning in late

1998, took place in a special terrorist court (an inaccessible converted gymnasium protected by 300 gendarmes outside of Paris). The defendants spent an average of 14 months in custody, while 14 of them were detained for almost four years. In many cases the sentences that they faced would have been served while awaiting trial.

The mass trial artificially established connections between defendants by linking them in a single action, and was broadly denounced. It was dismissed by the French Judges Union as "totally foreign to the idea of trying cases before a court in a manner both democratic and suited to the individual." Defence appeals for the trial to be broken up into separate procedures were dismissed. Other defence lawyers complained about the lack of disclosure of 50,000 pages of evidence (lawyers were told that they would have to pay 150,000 francs for a copy) and the bias shown by examining judges in their interrogations which the FIDH report describes as: "inquisition in the narrow and medieval sense of the term". One defence lawyer condemned the whole affair as a show trial to show support for Algeria's military backed regime.

On 22 January the special court found 51 of the defendants not guilty of conspiracy with, or participation in, a terrorist group in a decision described by one defence lawyer as "a rate of acquittal...never before seen in French judicial history". While 83 of the accused were convicted on relatively minor charges - 39 receiving sentences of less than two years. The four principal defendants received between 6-8 years. None of the accused was convicted of attacks on French soil but having contributed to the preparation of unspecified acts in Algeria prompting defence lawyer Dominic Tricaud to remark: "The term "terrorism" should only be used when dealing with illegal activities against a legitimate state, but the Algerian regime has nothing to do with a legitimate state."

The violations of the European Convention are highlighted in the FIDH report's conclusions which the authors offer as proposals to remedy the situation. They make a general demand to "repeal the existing anti-terrorist legislation" noting that the seriousness of the charge "does not in itself justify the suspension of the standard legal procedures guaranteeing basic rights." They then make nine specific recommendations:

\* The abolition of "the offence of participation in an association of malefactors (*association de malfaiteurs*) in relation to a terrorist enterprise".

\* An "end to the specialisation of the *juges d'instruction* (examining magistrates)..."

\* The enactment of "legislation to make it incumbent on court and judges to provide legal and evidential reasons...for all judgements, orders or other decisions which affect the liberty

and the rights of the suspect/defendant."

\* "Ensure proper facilities for the exercise of defence rights..."

\* "Repeal the systematic extension of the *garde a vue* (initial detention) to 96 hours, simply on the basis that a matter is adjudged initially to concern "terrorism"."

\* "Remove the power of the *juge d'instruction* to order the detention of a suspect (*mise en examen*)"

\* "Reduce the duration of provisional detention."

\* "Enact legislation to ensure the presumption of innocence and the *Secret de l'instruction* (confidentiality of the investigation)".

The author's conclude by applauding the "historical record of France in the struggle to defend and extend human rights", but warn that persistent violations of the letter and the spirit of the European Convention on Human Rights:

*have...drained much of the meaning from a number of basic rights guaranteed in the French constitution and enshrined in international agreements to which France is a signatory.*

*M. McColgan & A. Attanasio "Paving the way for arbitrary justice" (FIDH) 1999; "Mass trial of 138 accused of participation in terrorist organisation ends in a fiasco" Fortress Europe 57 (March) 1999; "France's anti-terrorism laws condemned, European Race Audit No 29 (March) 1999.*

## SCHENGEN

# Joint Supervisory Authority denied resources

**The Joint Supervisory Authority is the only body with a formal mandate to provide a level of scrutiny of the Schengen Information System (SIS) but its efforts are being undermined by governments and officials**

The Schengen Joint Supervisory Authority's (JSA) annual report published in March contains a catalogue of issues on which the JSA feels its views have been ignored.

### JSA demands and decisions ignored

During 1998 the JSA put forward a series of proposals: i) to include its decisions under the process of incorporating the Schengen *acquis*; ii) providing technical and administrative support; iii) providing for a small increase in its already small annual budget. All of these proposals were rejected by the Schengen Executive Committee:

*Despite all the initiatives and proposals put forward by the JSA, we did not see the Executive Committee adopt any of the measures to increase its human, technical and financial resources as promised. For there to be true democratic checks, it is not sufficient for there to be an independent authority, it is essential that that authority be given the necessary means and instruments to function. This is particularly important in view of developments in police information systems (Europol, Eurodac and the Customs Information System) and improvements in the means of cooperation available to combat large-scale organised crime.*

*It is therefore important that the means of cooperation between the Joint Supervisory Authorities, which are responsible for safeguarding the fundamental values of freedom and citizenship in relation to each system, be strengthened. It is vital that within the European Union, the correct formula be found to ensure the SIS remains secure and that there is effective and independent supervision of the system.*

Of particular concern to the JSA was that when their role was transferred with the incorporation of the Schengen *acquis* in the *acquis communautaire* of the EC and EU it should have a proper staff and budget. Both requests were rejected, even though out of 70 Schengen Secretariat staff transferred to the Secretariat General of the Council only one-fifth of one person's time was available to them. The report says this was due to a "blatant lack of support from Schengen's decision-making bodies".

On 29 March the chair of the JSA, Mr Labescat, presented their views to the Schengen Acquis Working Party - SIS Integration. He told the meeting that staff had to be "at the disposal of the JSA and be supervised and directed by the Chairman of the JSA." Little support was forthcoming from the member states and the Council's Legal Service said that: "the General Secretariat staff was accustomed to serve delegations in an independent way to the general satisfaction of all concerned."

Nor have the JSA's formal opinions been received much better. In 1998 the response of the Central Group of Schengen (the equivalent of the old K4 Committee) said that many of their

findings could not be followed-up because of "technical problems" and wthey were only sent to the JSA nine months after it had been discussed by the SIS Steering Committee. The JSA report comments: "The JSA did not wish to embark upon a pointless controversy and therefore simply acknowledged the report". This reaction is not surprising as the SIS Steering Committee told the JSA that the Schengen Convention did not lay down any obligation to implement the JSA's recommendations.

### Schengen figures

The official figures for "alerts" (record entries) entered into the SIS since its launch in March 1995 are as follows:

1995: 3,868,529

1996: 4,592,949

1997: 5,592,240

1998: 8,826,856 (5 March 1998)

These figures are simply based on the total number of "alerts" held in the SIS on a *single* day, they do not reflect the numbers deleted or added during the course of a year (see analysis below). "Alerts" held on the SIS include "persons" (for example, those wanted for arrest, extradition, to be refused entry, for discrete surveillance) and "objects" (vehicles, arms, documents including passports and identity cards, bank notes).

As the JSA annual report observes the SIS can be consulted from thousands of computer terminals (48,775 in just nine Schengen states in 1997), by thousands of police officers, judicial authorities, and by embassies and consulates.

The SIRENE system is due to be upgraded to the SIRENE Phase II Network and work is underway on SIS I+ (which will enable Denmark, Sweden and Finland to be linked in) and SIS II (to allow the new applicant countries to join). The JSA report noted critically:

*by the time the JSA had asked to be involved in the work, it was too late for them to amend the technical specifications to meet their requests. It was announced that they would however be borne in mind when the system was put into operation.*

### Schengen states

The Schengen member states with data currently on the SIS are: Austria, Belgium, Germany, France, Greece, Italy, Luxembourg, the Netherlands, Portugal and Spain (10). Denmark, Sweden and Finland have yet to go online. The UK and Ireland have formally applied to join the SIS, but the UK only wants to join parts of it

(see *Statewatch*, vol 9 no 2). Currently Denmark, Finland, Iceland, Norway and Sweden attend meetings of the JSA as observers.

The Schengen Information System (SIS) consists of one national section (N.SIS) for each of the Contracting Parties, and a technical support function (C.SIS), set and maintained jointly. Responsibility for the system based in Strasbourg rests with France.

Under the Schengen Protocol in the Amsterdam Treaty the Schengen *acquis* was incorporated into either Title IV of the Treaty establishing the European Communities (TEC) or Title VI of the Treaty on European Union (TEU). The Schengen member states were unable to agree on whether to split the provisions governing the SIS between the TEC and TEU or leave it in the TEU (thus retaining intergovernmental agreement). Eight states were in favour of the first option but five were not, so under the Amsterdam Treaty provisions it had to be allocated to Title VI of the TEU.

### JSA opinions

During the course of the year the JSA issued a number of opinions. One concerned the major leak of information from the Belgium SIRENE bureaux. Another concerned a request that vehicle registration authorities be given access to certain SIS data.

The criteria for access to the SIS is laid down in Article 101(1), (2), (4) of the Schengen Convention and the JSA found that giving access to vehicle registration authorities would be a breach of these provisions. The JSA found that access to chassis numbers "could lead to the identification of the owner of a vehicle or its driver" and that vehicle registration authorities were administrative bodies. Article 102(4) of the Convention says that data may not be used for administrative purposes. Moreover, vehicle registration authorities did not fall within Article 101(1) which says that access to SIS data is reserved exclusively to authorities responsible for border checks, other police and customs checks carried out within the country, and the coordination of such checks - these authorities had no legal powers to conduct such checks. The JSA concluded that if the purposes fell under Article 100 and could be applied with the security measures listed in Article 118 then such checks could be admissible.

One issue that appears to have been sorted out during the year is the right of the JSA to carry out visits to the SIS in Strasbourg (C.SIS) and inspections of national systems. This resolves the dispute that arose when the JSA visiting team was refused access to the SIS.

## Data statistics: Schengen Information System (SIS)

In 1998, the SIS has put on weight and reached a total data input of more than 8.8 million entries. 7.4 million of these refer to objects, 1.2 million are wanted person's records. More recent statistics now allow a more specific analysis of the distribution of the data into single data categories and which Schengen states enter them and the reasons for a rise in the data quantity as well as the methods of control connected to the SIS.

### Categories of data

Articles 95 to 100 set out the purposes for which "alerts" may be entered on the SIS.

*Article 95: arrest for the purpose of extradition*

*Article 96: refusal of entry to the Schengen area because of a danger to national security or public order: or concerning aliens who have*

*contravened national provisions governing entry and residence*

*Article 97: missing people, minors or people whose detention has been ordered*

*Article 98: arrest for appearing in court as a witness or suspect; persons suspected of offences; or to serve a custodial sentence*

*Article 99: discrete surveillance and specific checks (including passengers) for: criminal investigation; or averting a threat to public safety or national security*

*Article 100: "objects": vehicles, firearms, documents or banknotes which have been stolen or lost*

### Data stock in the SIS (5 March 1999)

Banknotes	823,336	(Article 100)
Blank documents	82,204	(Article 100)
Firearms	213,425	(Article 100)
ID papers*	5,293,806	(Article 100)
Vehicles	1,175,030	(Article 100)
Wanted persons	1,239,055	(Articles 95-99)

Total 8,826,856

\* stolen or lost

### Search for person's:

#### primarily an instrument of deportation

As a result of the high number in so-called Alias Groups (around 430,000), that is, people that have a second false identity, "only" around 795,000 of the 1,2 million personal data entries that have been stored in the SIS up to 31 December 1998, match actual people. This relation of 2:1 between the people on the wanted person's list and the Alias Groups has, since the implementation of the SIS in March 1995, stayed static.

Also consistent is the make up of the reasons for issuing a warrant and the relevant data categories. "Third country nationals" to be rejected at borders or deported (Article 96 Schengen Implementation Agreement (SIA)) make up 80% of SIS person related data (April 97: 86.7%, March 96: 89.1%). The SIS therefore first and foremost continues to be a means of enforcing "Fortress Europe". With around 8,600 (just over 1%) entries, the reason of "arrest for the purpose of extradition" (Article 95) is negligible. The role of criminal data is low in the SIS and the "criminal level" of the SIS is negligible, too. The location of (unaccused) witnesses and of persons that have to appear in court on grounds of minor offences (Article 98: 37,000 persons) as well as the entries on police surveillance (Article 99: 12,000) by far exceed those of people to be extradited.

### Italy in second place

One main reason for the increase of the data input was that Italy, Austria and Greece joined the SIS on 1 December 1997. Italy's accession had a big impact with around 220,000 persons entered onto the SIS by the end of 1998 - making Italy the second largest SIS participant. 88% of the entries refer to Article 96 SIA. With 350,000 entries on persons in the SIS (about 44% of the whole SIS data on persons) Germany is, as usual, top of the Schengen list (98% of those referring to Article 96). Third is France with 113,000 personal data entries (60%, Article 96).

### Turnover of data

The statistics published so far show the SIS data stock, or rather, the number of people on the SIS up to a deadline, usually the end of the year. From this, it is not possible to work out if the number of entries has decreased or increased from one year to the other, nor how many people have been entered in a specific period or how many were deleted. The reasons for a deletion are not given

either, despite the fact that deletions are partly due to successful search operations - so-called "hits". Although searches for objects make up the majority of SIS data the percentage of "hits" is only around 25% of all "hits". The majority of successful searches refer to Article 96, that is, to migrants, refugees and asylum-seekers.

Apart from deletions on grounds of a "hit", Article 112 SIA provides deadlines after which the need for a search warrant is checked and, if necessary, deleted. The deadline is usually three years for a wanted person. Only police surveillance and specific controls have a one year deadline. As the SIS was set up March 1995, a wide-ranging deletion of data on grounds of a time limit was to be expected by March 1998.

Ironically, the monthly statistics show an abrupt decline of data relating to Article 98 (location of persons), from 76,000 in March to 43,000 in April 1998. The number of people under police surveillance dropped by 13,000 in the period from August to September 1998, the number of specific controls decreased by 10,000 from July to August, both refer to Article 99.

The largest "deletion operation" took place in the first half of 1997. A report by the German SIRENE bureaux, connected to the German Federal Crime Police Office (BKA), assesses the last four years of the SIS and now gives details. According to the study, the German SIRENE deleted 207,000 entries referring to Article 96 during this six-month period alone - almost half of the German Article 96 data entries at the time. This data had been put in at the launch of the SIS in 1995. It had been taken over from the German search system INPOL and had been on INPOL before 1994 - more than three years SIS requirement. Thus this "deletion" operation resulted in a decline of German Article 96 related entries dropped by 185,000 - from 444,000 to 259,000 - within the first half of 1997. Looked at another way: in the same time span, around 24,000 new entries relating to Article 96 were made. (These numbers derive from the difference between the proposed deletions - 207,000 - and the general decline of the data body during the same time span - 185,000 - where the number of the so-called "hits" - an estimated 2,000 - have to be added.) In the first half of 1997, Germany alone had therefore put in 4,000 deportation or "rejection at border" notices a month. Since then, the monthly rate will probably have increased considerably.

Further large-scale deletions of Article 96 data have obviously not occurred after that. The year 1998 shows a continuous increase in the volume of this particular data category, around 102,000 entries by all ten SIS states. To this

number can be added the "hits" (altogether 7,500) and the standard deletions on grounds of exceeding the time limit (which is unknown), in order to retain the number of new entries. The latter therefore lies around 10,000 a month.

### Control Practice

A large-scale deletion of redundant data as in 1997, shows, despite the rising number of "hits", a very low success-rate for the (almost) EU-wide electronic search and prosecution engine. The SIS was only efficient in as far as enforcing, on a European level, the control practice linked to the electronic search system. In practice, this means that control is not initiated on grounds of a particular suspicion but on grounds of the presence of a "terminal" combined with relevant appearance related "clues". This kind of non-suspect control has traditionally only been allowed at borders. The introduction of national search systems in individual western European states since the 1970's, brought about major changes. With the introduction of the SIS, however, the so-called "random" search (the shifting of border controls into the interior) became an integrated police concept, which, especially in Germany, is enshrined in the law.

This becomes particularly evident when confronted with Germany's SIS requests in 1998. Of the total of 65 million SIS requests, only 52.05% were made by the border police and not only includes the Federal Border Police (BGS) at the external borders and the mobile patrols near the borders (all borders, including those next to Schengen states) but also the Federal Border Guard units assigned as railway police in the whole of Germany. The number of requests made by BGS subdivisions in the mainland cannot be extracted from the statistics. The BKA and the Custom's Crime Office are only responsible for a small number of requests, together less than 2%. Amongst the different *Laender*, Bavaria, which was the first to give its regional police force the powers of non-suspect stop and search, leads with 18.46%. North-Rhine Westphalia follows with 10.96% (so far it has not got a legal regulation for "random" searches), then Baden-Wuerttemberg with 7.35% and Lower Saxony with 4.12%. The number of requests is evidently unrelated to the political control of the provincial government and to its position in relation to external borders. Out of the four leading *Laender*, only Bavaria (bordering on the Czech Republic and Switzerland) and Baden-Wuerttemberg (Switzerland) have external borders.

## UK

# Highest ever phone-tapping figures

**In 1998 the UK recorded a record number of interception warrants, now the Home Office is proposing to increase both the scope and deployment of intrusive surveillance**

The number of warrants issued in England and Wales for telephone-tapping and mail-opening in 1998 was 1,763 - the highest figure since records began. Indeed it is a higher yearly figure than any during the Second World War (1939-45) including the previous top figure for 1940 - 1,682.

The number of warrants for tapping in Scotland in 1998, 268 is the highest since they were first published in 1967. This is a rise from 256 in 1997 and 228 in 1996. Only one warrant in Scotland was issued for mail-opening.

The number of warrants, signed by the Home Secretary, in England and Wales issued in 1996 for intercepting "telecommunications" was 1,646 - beating the previous record in 1996 and the highest since records began in 1937.

In his annual report for 1996 the Commissioner, Lord

Nolan, acknowledged that "telecommunications" warrants cover: "all forms of telecommunications including telephone, facsimile, telex and other data transmissions whereby the information is communicated via a public telecommunications system". In his report for 1998 the Commissioner obliquely refers to "a substantial increase in interception" being due to "an increase in the interception facilities available". The over fifty percent rise in "tapping" warrants from 1,073 in England and Wales in 1996 to 1,646 in 1998 suggests that this may be due to the interception of e-mail traffic or it could reflect a larger number of individuals or organisations under surveillance - each of the warrants issued can cover more than one phoneline if they are issued to cover an organisation or group.

The figures only give - as usual - part of the picture. Under

Section 2 of the Interception of Communications Act 1985 warrants to intercept communications are meant to be applied for by the Metropolitan Police Special Branch, the National Criminal Intelligence Service (NCIS), Customs and Excise, Government Communications Headquarters (GCHQ), the Security Service (MI5), the Secret Intelligence Service (MI6), the Royal Ulster Constabulary (RUC) and Scottish police forces. However, the number of warrants issued by the Secretary of State for Northern Ireland (RUC and MI5) and the Foreign Secretary (MI6 and GCHQ) are not published, nor are the numbers issued in response to a request from another state. Nor, of course, will "bug and burgle" figures resulting from new powers under the Police Act 1997 (see *Statewatch* vol 6 no 6).

Total figures for warrants issued, England and Wales 1989-1998:

1989	458
1990	515
1991	732
1992	874
1993	998
1994	947
1995	997
1996	1,142
1997	1,456
1998	1,763

Total figures for Scotland 1989-1996:

1989	64
1990	66
1991	82
1992	92
1993	122
1994	100
1995	138
1996	228
1997	256
1998	268

In 1995 Lord Nolan's report said that "the number of warrants issued under the counter-subversion head remains very small", for 1996 it said: "there are no warrants in force under the counter-subversion head". In the 1997 report it says: "no warrants [were] in force.. during 1997 for counter-subversion." The 1998 report, for the first time in three years, by its silence on this issue gives no such assurance.

One issue the Commissioner had to confront during 1998 was the unlawful interception of "pager" messages: "The police and HM Customs and Excise have always made extensive operational use of their capacity to intercept radio pagers.. Between 1985 and 1992 this method of surveillance was subject to warrants issued by the Home Secretary. Then this practice was stopped on the "legal advice" that pagers were not subject to the 1985 Act and instead Customs and Excise relied on section 5 of the Wireless Telegraphy Act 1949 and the police on section 9 of the 1984 Police and Criminal Evidence Act (which allows them to ask for and generally obtain "production orders" in the Crown Court).

On 22 January 1998 a judge at Worcester Crown Court refused a police application for a production order on the grounds that i) he could not grant such an order for material (namely, a pager message) which did not yet exist and ii) the police could not lawfully intercept messages under the Wireless Telegraphy Act 1949 because they were not "servants of the Crown" as required by the Act. Consequently the judge ruled that the police could not lawfully intercept pager messages without the authorisation of the Home Secretary or someone

acting on his behalf. The new warranting procedure introduced by the Home Office in reaction to this case allows the police to apply for a "pager interception warrant" via the National Criminal Intelligence Service (NCIS) or the Metropolitan Police Special Branch (similar arrangements have been put in place in Scotland and Northern Ireland). The issue remains contentious because the authorisation of warrants to intercept pagers is to be delegated to officials nominated by the Secretaries of State. Lord Nolan, usually uncritical in his reports, clearly does not agree. In his view such interception should only be allowed on "the personal authority of a Secretary of State".

The Commissioner is also investigating "a serious breach" of the 1985 Act which bears on the discussion of EU telecommunications surveillance. While conducting "operational liaison" in 1996 with a police officer from another European country a "senior officer" of an English force handed over written material of a "target's communications [which] were being intercepted under warrant." This senior officer then "supplied the Liaison officer with several pages containing summaries of intercepted communications as part of the ongoing cooperation". No complaints from the public were upheld by the Tribunal - in fact, no complaint has ever been upheld since the Act of 1985 was introduced.

*Report of the Commissioner for 1998, Interception of Communications Act 1985. Cm 4364, HMSO, £4.00; for previous years reports on telephone tapping see Statewatch, vol 1 no 4, vol 2 no 5, vol 3 no 5 & vol 4 no 3, vol 5 no 3, vol 6 no 3, vol 7 no 3; the yearly figures for interception since 1937 are on the Statewatch database on the internet (<http://www.statewatch.org>)*

## Consultation paper on interception

In June the Home Office published a Consultation paper on the planned revision of the 1985 Interception of Communications Act. The paper says this is necessary to cover new means of communication (like "pagers" and satellite mobile phones) and to "provide a clear, statutory framework for authorising disclosure of data held by communications service providers". It says the government is also considering whether new legislation should "cover also intrusive surveillance other than interception of communications".

EU governments have reacted to criticism of the planned EU-FBI telecommunications surveillance system, and the new interception powers in the EU's draft Convention on Mutual Assistance in Criminal Matters, by saying that this surveillance (and people's rights) will be governed by national laws. What the governments do not say is that the national laws in EU member states are (or will be) undergoing amendments to allow the surveillance being planned at the EU level. Thus the (commercial) rationale in the Home Office paper is that:

*Communications Service Providers will be required to take reasonable steps to ensure that their system is capable of being intercepted. This will be an ongoing requirement which CSPs will have to consider each time they develop their network or introduce new services. CSPs will also be required to provide reasonable assistance to effect warranted intercepts...*

*Maintenance of an interception capability forms a basic requirement for providers of communications services in countries where these services providers are in commercial competition with the UK, both in Europe and globally, including such countries as France, Germany, the Netherlands, Sweden, Canada, the USA and Australia. We therefore feel that, viewed in the international context, the proposed requirements are not unreasonable nor will they place the UK's communications services at a commercial disadvantage (paras 5.3 & 5.4)*

The UK Home Office's argument goes on to say that this development is also necessary to "take full account of

internationally recognised standards such as the International User Requirements for the Lawful Interception of Telecommunications". No mention is made of the fact that these very same, so-called, "internationally recognised standards" were the direct product of EU-FBI collaboration (IUR, International User Requirements, was adopted in secret by the EU "written procedure" on 17 January 1995, see *Statewatch* vol 7 no 1 & 4 & 5; vol 8 nos 5 & 6; vol 9 no 2).

Reference is also made to the draft Convention on Mutual Assistance in criminal matters. It suggests there will be a "double-lock of safeguards" as the "requirements of national law would apply to both the requesting and requested Member State". This may sound fine but as all EU member states are changing their laws on interception to allow exactly the same forms and degree of surveillance it is quite meaningless. In another sleight of hand the paper then says no request for interception by another EU member states would be allowed unless: "the Secretary of State were able to issue a warrant in accordance with the criteria and safeguards in UK national law". This is perhaps a reference to the fact that the planned "realtime" interception (as it is actual happening or about to happen) envisaged will have to be instantaneously authorised by the police officer or official.

No reference is made to which crimes or suspected criminal acts would be covered in the draft Convention - although the public rationale is that these new surveillance powers are needed to combat "serious" and/or "organised crime" - no such limits are set out in it.

### What changes are proposed to the 1985 Act?

The current UK Interception of Communications Act 1985 (IOCA) allows for warrants to be issued by a Secretary of State (Home Secretary, Foreign Secretary, Secretaries of State for Northern Ireland and Scotland) in the following areas: i) "in the interests of national security"; ii) "for the purpose of preventing or detecting serious crime"; iii) "for the purpose of safeguarding the economic well-being of the UK". It covers both telephone-tapping and mail-opening.

Recent developments like "pagers", satellite phones, private telecommunications providers, "call metering" (logs of numbers called) are not covered. Nor is the placing of "bugs" in homes or offices to record conversations or micro-video cameras.

The Home Office paper lists a series of powers in the current legislation (A) and gives "proposed changes" (B). These include:

1.A: The IOCA only covers the interception of communications sent by post or by means of the public telecommunications system; 1.B: to cover *all* communications transmitted "by telecommunications operators or mail delivery systems".

2.A: Currently a warrant is issued for a postal or

telecommunications "address"; 2.B: warrants to cover "a person" plus all the addresses "the Agency wish to intercept in relation to that person" - this is potentially a major extension of powers as a person may have lots of "addresses" they go to and this could involve other people's communications (eg: the "person" sometimes goes to a group they are involved in and uses a phone shared by one or more other people);

3.A: Warrants have to be personally authorised by the Home Secretary and may be modified with the Home Secretary's express authority or by a "Crown servant" where they have been expressly authorised by a warrant; 3.B: More delegated powers especially to police officers in "urgent" cases;

4.A: all warrants are currently issued for two months (those for serious crime renewed on a monthly basis) and those for national security or economic well-being renewed on a six-monthly basis. 4.B: all warrants to be issued for three months (those for serious crime to be renewed every three months).

5.A: currently "communications data" is supplied on a "voluntary" basis subject to the Data Protection Act, the 1985 IOCA, and a Crown Court "Production order"; 5.B: the

holders of communications data will be required to provide data in response to an authorised request.

In the 1985 IOCA "serious crime" is defined, in section 10(3), as: an offence involving the use of violence or resulting in substantial financial gain or involving a large number of persons in pursuit of a common purpose, or alternatively as an offence for which a person could reasonably be expected to be sentenced to imprisonment for a term of three years or more. It should be recalled that the concept of "a large number of persons in pursuit of a common purpose" was first introduced in UK law by this Act, an Act passed under the Conservative government just after the year-long 1984-5 miners' strike. The same concept found its way into the 1997 Police Act, which was passed in great haste and without proper scrutiny in order to get it on the statute

book before the 1997 general election (see *Statewatch*, vol 6 no 6).

The Home Office paper says (p8) that under the *current* IOCA interception can be carried out "for the purpose of preventing or detecting serious crime" (in line with the above definition). However, when it discusses (p26) its *future plans* for the handing over of communications data (e-mails, internet access, itemised billing, routing and subscriber details) it simply says "data access may be authorised for.. the prevention or detection of crime" - the word "serious" is missing.

One comment in the paper on current practice may surprise some who think their e-mails are not legally open to interception. The paper says that e-mails "carried over the

### Cyber crime

At its meeting in May the Justice and Home Council adopted a "Joint Position on negotiations relating to the Draft Convention on Cyber Crime in the Council of Europe". This is the first "Joint Position" adopted under the new Amsterdam Treaty provision Article 34.2.a. The Joint Position covers the EU's negotiating position on both *computer-related* offences such as computer fraud and forgery and to *content-related* offences such as child pornography. However, the report goes on to say:

*Furthermore Member States will advocate, where appropriate, the inclusion of rules which*

*call for the application of content-related offences committed by means of a computer system.*

Such a vague and unspecific provision while covering child pornography could also be used against protest movements who use the internet to publicise events such as the "leaderless" J18 demonstration "against Capitalism" in the City of London in June.

The specific mention of "serious" criminal offences is only used when referring to the need for "mutual assistance" to "expedite search of data stored in their territory".

*Draft Joint Position on negotiations relating to the Draft Convention on Cyber Crime in the Council of Europe, K4 Committee to*

network of a PTO (public telecommunications operator) which is also an ISP can lawfully be intercepted on the ISP system, while e-mail on the system of an ISP which is not licensed as a PTO can only be intercepted on the PTO network carrying the calls, if at all."

The consultation paper from the Home Office will be followed by legislation, probably in 2000.

Concern over the Home Office plans include: lack of commitment to a strict definition of "serious crime" which justifies the use of exceptional measures; the lack of safeguards - the current IOCA Commissioner's uninformative reports and a public lack of faith in the complaints Tribunal which has found no wrong-doing since its was set up; no provision for the "surveilled" person or group to be informed of the interception; and, in the longer-term concern that new surveillance technologies are capable of large-scale "trawling" for "suspects". A comment by a senior UK police officer in *Policing Today* describing the growth of "proactive" policing:

*Then there has been the investment in covert techniques. As interviewing becomes more difficult and criminals more sophisticated, covert techniques not only became more available but increasingly used - ie, physical and electronic surveillance, use of undercover tactics and informants, and an increasing use of data capture.*

*Policing Today, June 1999; see also this bulletin coverage on new interception laws in the Netherlands and Germany;*

## EU-FBI telecommunications surveillance plan

### Commission working party

A report from the Data Protection Working Party for the Commission DG XV adopted on 3 May 1999 is critical of the privacy implications of the "Council Resolution of 17 January on the lawful interception of telecommunications" (The International User Requirements drawn up by the FBI and adopted by the EU, known as IUR 95). The Working Party is comprised of data protection experts, its chair Peter Hustinx is one of the Dutch members of the Schengen Joint Supervisory Authority.

Their report says that the data to be collected would cover both the "target persons and any persons with whom they enter into communication". It expresses their concern at the "scope" of the measures envisaged and in particular with the "Memorandum of Understanding" to exchange data with non-

EU states who "are not subject to the requirements of the European Convention on Human Rights and of Directives 95/46/EC and 97/66/EC."

The Working Party thus "wishes to draw attention to the risks of abuse with regard to the objective of the tapping, risks which would be increased by an extension to a growing number of countries - some of which are outside the European Union - of the techniques for intercepting and deciphering telecommunications.

Some of the provisions in IUR 95 would, they say, "conflict with more restrictive national regulations in certain countries in the European Union". They give examples of access to data concerning calls and "forbidding operators from disclosing interceptions after the fact". Moreover, when satellites or the Internet is used, it must not lead to "a lowering of the level of confidentiality and protection of the privacy of individuals." The Working Party's recommendations call for "national law to strictly specify":

1. "the prohibition of all large-scale exploratory or general surveillance of telecommunications."

2. "compliance with the principle of specificity, which is a corollary of forbidding all exploratory or general surveillance. Specifically, as far as traffic data are concerned, it implies that the public authorities may only have access to these data on a case-by-case basis, and never proactively and as a general rule."

3. "that a person under surveillance be informed of this as soon as possible."

4. "the recourse available to a person under surveillance"

5. "the publication of the policies on the interception of telecommunications as they are actually practised, for example, in the form of regular statistical reports"

6. "the specific conditions under which the data may be transmitted to third parties under bilateral or multilateral agreements"

The existing and planned UK law would fail on a number of these counts. Point 2 is directly contrary to what is being planned for the Iridium ground station in Italy where 12 EU member states are demanding Italy agree to general, unlimited and open-ended interception warrants. Point 6 taken together with the Working Party's grave reservations about the transfer of data to and from non-EU states raises major questions about Europol's planned agreements with third states and agencies within third states. *Their report is on:*

<http://www.europa.eu.int/comm/dg15/en/media/dataprot/wpdocs/wp18en.htm>

## EU

# Expulsion: policy and practice

**Since 1986 the EU has been building "Fortress Europe", exclude refugees and asylum-seekers, now, in addition, increasingly to expel people detained at points of entry or caught as "illegally resident" in the EU**

### Legitimate force for expulsion of aliens

In the light of recent deaths during forced deportations from EU member states, the question of restraint measures during expulsion is now being discussed by the EU. Although the use of restraint and methods employed are governed by national laws and implemented by local security forces, in many deportations there are no direct air links between the expelling state and the country of destination. In these cases, expulsions are carried out via transit countries, with the deportee accompanied by "escorts" (immigration officials from the sending country) whose powers of restraint are limited to a right of self-defence in airports (the flight captain has absolute authority on board the aircraft). "The fact that accompanying

officials depend wholly on the active support of those with local jurisdiction", said a December 1998 German presidency background note, "is an incentive to the persons being expelled to take advantage of the situation and use violence to break free".

The first draft of a Joint Action obliging EU member states to give mutual assistance in transit situations during expulsions by air was tabled in April. The EU hopes that once the measure is adopted, similar agreements can be negotiated with third countries. Article 4 of the proposed measure, stipulates that, on accepting a "request for transit":

*1. The requested Contracting State shall, in accordance with its national law, afford all assistance necessary to effect the departure of the third-country alien, in particular:*

(1) meeting the third-country alien at the aircraft and escorting him on the territory of the transit airport, in particular to his connecting flight;

(2) placing the third-country alien in an enclosed transit area or, if necessary, in a detention room;

(3) using legitimate force to prevent or end any attempt by the third-country alien to resist transit, for the protection of bystanders and the requesting Contracting State;

(4) providing emergency medical care to the third-country alien and his escort, to the extent required for the purposes of transit"

The provisions are under discussion by the EU's Migration (Expulsion) Working Party. Various measures relating to expulsion are being considered by EU groups, including group deportations by charter flight, best practice guidelines and a range of readmission questions.

*Assistance in cases of transit for the purposes of expulsion by air, incoming Presidency to Migration Working Party (Expulsion), ref: 14348/98, Limite, ASIM 261 MIGR 32, 21.12.1999; Assistance in cases of transit for the purposes of expulsion by air, Presidency to Migration Working Party (Expulsion), ref: 7264/99, Limite MIGR 19, 12.4.1999.*

## SWITZERLAND

### Death during deportation

On 3 March, 27-year old Palestinian Khaled Abuzarifeh died in a lift in a building of the Swiss "deportation" airport in Kloten. According to doctors he was gagged, which led to a panic attack, vomiting and death by suffocation.

Since Khaled Abuzarifeh's death, the Swiss police have started to put a small tube through the tape and mouth in order to avert suffocation. The police monitoring group *augenau*f has initiated legal proceedings against the Zurich Cantonal Minister for police matters, Rita Fuhrer, and unknown police officers. The charges also concern the case of Lukombo Lombesi Joao whose arms and legs were bound during deportation and only loosened once during the several hours long flight on 9 May. Long term binding can lead to serious injuries and Lukombo had to undergo medical treatment after the failed deportation attempt. The case became prominent after the deporting officers were attacked at a transit stop in Yaounde, Cameroon; the deportee injured a policeman during the incident and the three officers and Joao returned to Switzerland. According to *augenau*f however, no charges were brought against him. The General Secretary for social matters and internal security, Hans-Peter Tschaepeler, said he could not take a position on the allegations.

### Deportation without papers

On 3 June, the police monitoring group *augenau*f and the *Berner Zeitung* newspaper received an anonymous letter from deportation police officers pointing out illegal deportation practises involving the Swiss Federal Office for Refugees (BFF), the Zurich Foreigner's Police (Frepo) and the Swiss embassies in the capitals of Ghana and the Ivory Coast, Accra and Abidjan. According to a report by the monitoring group, African refugees whose deportation from Switzerland is stalled because of missing travel documents have, for the last nine months, been deported illegally through the "west Africa route". The BFF issues travel documents which are sealed and sent to the airport in Zurich or to the destination airport. According to the anonymous police letter, it is impossible to ascertain the validity of the identity on these papers, as a recent case showed discrepancies between statements by the refugee,

the BFF and the African embassy concerned.

The uncertainty of the refugees identity however, did not halt the deportation process. By issuing BFF "travel documents", the Swiss deportation authorities circumvent an otherwise necessary official contact with the relevant authorities in Ghana and the Ivory Coast. Once deported to Accra or Abidjan, the Swiss police hand the refugee over to "contact persons", usually local lawyers who are paid by the Swiss embassies on a "case by case" basis. The monitoring group, *augenau*f, fear that if a refugee's identity is not established they will be deported to the "first best country" in Africa.

There are several documented comments and communications between the police and deportation authorities which mention that a "deportation via Accra" was only possible now, if one could exclude the possibility of the deportee "originating from Gambia or Sierra Leone". On 4 February, the Swiss ambassador in Accra granted a request by the BFF for a "deportation to Accra with identification on location through the lawyers", if the refugees concerned were not from Sierra Leone or the Sudan. According to files available to the police monitoring group, the BFF have had increasing difficulties with the west Africa route since March 1999. Since April 1999, the Frepo has avoided official mention of the route.

In two cases, *augenau*f was able to establish contact with refugees deported this way. In both cases the refugees alleged that they were subjected to extreme force by the Swiss police, including binding and taping. 17-year old Michael Collins, who was deported on 7 June, was able to phone Switzerland from his detention in Abidjan. He said they wanted to deport him to Sierra Leone and that the police were beating him. Back in Switzerland, his asylum application was rejected by the BFF because they did not believe him to be from Sierra Leone. On 15 January, the Frepo wrote to the BFF saying that the refugee was still insisting he was from Sierra Leone; they, however, thought he was Ghanaian and therefore wanted to initiate a "deportation via Accra".

The authorities in Sierra Leone refused to issue *laissez-passer* papers due to the unstable situation and the closure of the only airport in Freetown. No one has heard of Collins since 14 June.

## AUSTRIA

### Another deportation death

On 1 May a Nigerian man, Marcus Omofuma, died during the course of a deportation. Marcus was a 25-year old who had come to Austria seeking asylum in September 1998. His claim was refused, as was the appeal he made in January 1999. On the same day that his appeal was refused, his deportation was ordered.

Marcus was to be sent from Vienna to Lagos, accompanied by three Belgian Federal Police detectives on the Vienna to Sofia stage of the flight. The Ministry of Interior decided that Marcus would need this escort as he was likely to resist deportation. The grounds for this presumption were made clear by the Secretary of State for Public Security, who explained that whilst "other deportations posed no problems", those involving Africans were different. "If you saw the force with which they resist, you would think twice before being so critical [of deportation methods]."

For the duration of the flight, Marcus was chained (hands and feet) and gagged with tape over his mouth. Shortly before the plane was due to land, the detectives noticed that he had become "calm" but on arrival at Sofia his chains and gag were removed and he appeared to be

unconscious. A doctor was called, who confirmed immediately that Marcus was dead. The Bulgarian authorities ordered an autopsy, which later revealed that he had suffocated due to the gag. The Austrian Interior Ministry issued contradictory statements in relation to the question of Marcus's general fitness; whilst a spokesman had acknowledged that Marcus suffered from chronic bronchitis, Interior Minister Schloegl claimed that he had undergone a medical examination in detention which had revealed "no particular problems". A spokesperson for *SOS Mitmensch* explained that African immigrants were particularly vulnerable to colds because of the climatic change they experience when they come to Europe. Because of this, gagging is a particularly dangerous practice; if the nose is blocked, the risk of suffocation from gagging is greatly increased.

The reaction in Austria to this death has polarised. The Green and Liberal parties, as well as MPs in the governing coalition and human rights organisations condemned it and demanded that those responsible in the Interior Ministry, government and police resign their posts. Amnesty International stated that,

*Deportees were increasingly badly treated and are submitted to worse treatment than those who are detained during the examination of their asylum claims, although they have done nothing wrong.*

Chancellor Klima, for his part, gave his full support to Interior Minister Schloegl, in the face of calls for the latter's

resignation, despite the government's decision to suspend all deportations of people likely to offer strong resistance in order to review procedures in these cases. Schloegl stated that tape will no longer be used to gag deportees, apparently ignorant of the fact that a court order already prohibited its use. It is now envisaged that a kind of helmet will be worn by deportees which will stifle any sounds they make and will prevent them from biting. The Minister claimed that the gag was applied in this case because airline staff had insisted that Marcus be calmed down before he boarded.

The MRAP in France issued several statements denouncing the death and drawing attention to many other similar cases of violent deportations from Fortress Europe. Among the cases cited were those of Semira Adamu, a Nigerian woman killed during deportation from Belgium (see *Statewatch vol 8, no 5*); Blandine K, a pregnant woman who lost her baby because of violence she suffered at the hands of the Belgian authorities during her deportation and a Romanian man who suffered irreversible brain damage as a result of having been gagged during deportation from Holland and is now in a wheelchair. The MRAP stated that since 1992 over 900 people have died as a result of trying to come to start new lives in Europe.

*Justice for Marcus website:*

[www.multimania.com/revolt1/justice/index.htm](http://www.multimania.com/revolt1/justice/index.htm)

## SWITZERLAND

# Treaties with Schengen neighbours

**Despite being outside the EU Switzerland is cooperating with Germany, Austria, France and Italy on policing, immigration and border controls and customs**

On 27 April, the Swiss Justice Minister signed two treaties with the Interior ministers of Germany and Austria, the last of four packages of bilateral Conventions between Switzerland and her four neighbouring countries - all of which are members of the Schengen group. The main areas covered in the Conventions are judicial cooperation, readmission agreements concerning third country nationals and, most importantly, police cooperation. Treaties with France and Italy were signed last year and were ratified by parliament in its April session.

Although Switzerland will stay outside the EU for the next few years and therefore will not accept freedom of movement for EU citizens, the main interest of the Justice Ministry (EJPD) is to bring the country in line with EU migration and asylum policies and the EU's standards of police cooperation. The results of the negotiation with the neighbouring countries are, however, by no means homogenous. This is, in part, a consequence of the fact, that previous treaties on judicial cooperation and on readmission have not been renewed.

Thus the readmission treaty with Austria stems from the 1950s. The readmission agreement with Germany, which dates from 1993, was the first of the "modern" agreements and was followed in 1998 by treaties with France and Italy. All three authorise a regulation which allows the deportation authorities to transfer the refugee who is being "readmitted" to the nearest airport of the respective EU country. Deportations, in the case of Switzerland, will no longer occur from Kloten or Cointrin, but, for example, through the Italian airport in Milan. Germany has already been practising deportations through Kloten for quite some time. One outcome of this practice is that the public protests, against taping or gagging, will be greatly reduced

because of the secrecy of the event - unless there is a tragic death, as in the case of Khaled Abuzarifeh in Kloten on 3 March. A Memorandum of Understanding with Germany (December 1997), that preceded the convention on police cooperation signed on 27 April, clearly foresees "common repatriation contingents" of third country nationals and the "use of common charter flights".

The agreement with Italy was eagerly sought by the Swiss government because most asylum seekers come from the south to cross the Italian border into Switzerland. If agreement on repatriation issues are strictly enforced the Swiss government would be able to cut its asylum budget. To reach agreement on the repatriation issue Switzerland had to compromise on judicial cooperation accepting, for the first time, rogatory letters relating to fiscal offences; this should stem the frequency with which Italian requests in *mani pulite* (the "clean hands" corruption scandal) cases were rejected. The new convention on judicial cooperation with Italy does not change material law, but enables a new conciliation procedure in difficult cases. The convention also regulates interrogation by video conference.

The conventions on police cooperation however, reveal not only the Swiss government's interest in being included in Schengen cooperation, but also the positions of its neighbours in the EU. The conventions negotiated with Germany and Austria include a system of automatic data exchange very similar to the Schengen Information System (SIS), which is not included in the treaties with France and Italy. The German and Austrian treaties go further than the existing regulations of the Schengen Implementation Agreement (SIA) on cross-border policing and cooperation.

The German *Bundeskriminalamt* (BKA, Federal Office of Crime Police), as well as the Austrian police headquarters - in practice the SIRENE bureaux - will be able to transfer data on wanted persons and objects to the Swiss Federal Office of Police Matters (BAP) and vice versa. The information transferred can be put on the respective national police computers for automatic access to the rest of the police authorities. The categorisation of data is that of the SIS:

- \* persons wanted for extradition
- \* persons (and objects) to be put under discrete surveillance
- \* persons whose whereabouts should be cleared (missing persons, persons who are to appear before court)
- \* wanted objects

Data on persons to be refused entry at borders or to be expelled, is automatically transferred by Germany, although the Swiss authorities will not transfer comparable information. Between Austria and Switzerland, data of this kind will only be transferred on a case by case level and not online.

The conventional forms of information exchange will be expanded. Information will not only be transferred for the prosecution of offences but also for "preventative" purposes where concrete evidence is not required. As in the SIA information may be forwarded without a previous request and on the sole authority of the respective police authority if they think the information may be "valuable" for their colleagues on the other side of the border. Finally, information exchange may not only be channelled through the central police authorities, but between regional police forces, especially near the border.

With all four neighbouring countries, special forms of communication and centres for cooperation at the borders will be established. Police and custom's authorities are granted immediate information without a previous request. Common investigation and observation teams may be set up, also to co-ordinate readmission. Mobile border control units are planned to carry out common stop and search operations at and around borders. The treaty with Austria even allows Austrian officers to take part in operations in Switzerland up to 10 km inland. A more direct police cooperation however, will be achieved through "liaison officers". While in the treaties with France and Italy, the respective foreign police officers only have the status of observers, the treaties with Germany and Austria allow the officers executive powers if "urgent matters prevail". Here also, "urgent matters" are not limited to crimes actually

committed but are defined in vague terms of "public safety" and preventative measures.

The bilateral agreements differ in their scope and range of cross border police activities, mainly due to fears of a threat to national sovereignty. The treaty with Italy has no provisions for cross border hot pursuit and observation activities. The treaties with Germany, Austria and France however, not only incorporate both forms of cross border policing but go far beyond the formulations of the Schengen Convention. In the case of Germany and Austria, cross border observations are not limited to persons who have committed an extraditable offence, but include so-called contact persons and preventative measures to avert a serious crime. These provisions have been laid down despite the fact that legal preconditions are very different or non-existent in each country. Further, the treaties with Germany and Austria provide for co-operation in controlled deliveries. Included in all treaties is cooperation in the policing of "big events", which include football matches, rallies and demonstrations. One of the aims here is to exchange data on persons that are expected to take part in the event in order to deny them entry into the respective country.

Finally, the treaty with Germany is the only one to regulate cooperation in undercover police operations. Switzerland will accept the activity of German undercover police agents on its territory and vice versa. This refers not only to cross-border undercover activities, but police and prosecution authorities may also request an undercover agent to act in a national investigation without any reference to the neighbouring country.

At the press conference after the signing of the treaty, the German minister of the Interior, Otto Schily, declared the treaty with Switzerland a model of co-operation to be emulated within the "area of freedom security and justice" in the TEU. A similar bilateral convention will be negotiated between Germany and Austria, says the latter's Interior Minister, Schloegl.

*This article is based on a study by Stiftung Archiv Schnueffelstaat Schweiz, "Ueber die Hintertuer ins Europaeische Polizeilias." [A Study of the bilateral treaties between Switzerland and her neighbours with an emphasis on police cooperation] compiled by Heiner Busch. Order from: Stiftung ASS, PO Box 6948, 3001 Berne, Switzerland.*

## SPAIN

# Interior Ministry officials investigated over GAL murders

The National Audience in Madrid has ordered an investigation into high-ranking Interior Ministry officials, following evidence arising from the trial of Miguel Brescia. The Brescia case is one of a string of ongoing trials and investigations into crimes carried out by the *Grupos Antiterroristas de Liberation* (GAL) and has led to broader questioning of the roles of the Spanish political, police and secret service institutions. GAL units were active in the French and Spanish Basque Country from 1983 to 1987. It carried out kidnappings and assassinations of known or suspected ETA members on behalf of the Interior Ministry, which was responsible for financing these operations from its "reserved funds". GAL membership included members of the Spanish police, Information Services of the Interior Ministry, secret service, military intelligence (CESID), Guardia Civil, as well as criminals, murderers, mercenaries, extreme right-wingers, former military and intelligence personnel, sometimes

hired on an "ad-hoc" basis. Members of the French police and secret services were also involved.

Miguel Brescia received a 68 year sentence on 4 June for the murder of Christophe Matxikotte, a 60 year old farmer, and Catherine Brion, 16, who Brescia and another hired gunman machine-gunned to death in their vehicle in Bidarray (France) on 17 February 1986. It later emerged that they were not the intended targets of the attack but victims of one of several lethal "mistakes" on the part of GAL units. The trial was told that GAL was a terrorist group: "which, due to its previous actions, brought fear and insecurity to inhabitants of French Basque Country locations, who were potential victims of its violent actions, as a result of their social and geographic position". The trial heard that Brescia was not a GAL member, but a hired mercenary.

The Audience has ordered further investigation into the

roles played by the former State Secretary for Security, Rafael Vera, the former Director of State Security, Julian Sancristobal, the former government envoy to Navarra, Luis Roldan, the former regional president of Navarra, Gabriel Urralburu and the former deputy commissioner of police in Bilbao, Jose Amedo. Hitman Pierre Frugoli received a life sentence after his trial in December 1985 for participating in the killing of four members of ETA's military wing in Bayonne. In court he said that Amedo had contacted him, offering 200,000 francs for every attack he carried out, with a 100,000 francs bonus for everyone he killed, inextricably linking the police with GAL activities (see *Statewatch* vol 5 no 1).

Amedo is presently in jail in connection with the murder of *Herri Batasuna* leader Santiago Brouard, killed by a GAL unit on 20 November 1984. In the Brouard investigation, a former CESID agent (protected witness 2864) gave evidence to magistrates on 7 May. He confirmed that there was a meeting, attended by police and anti-terrorist authorities including Amedo, Sancristobal and lieutenant colonel Rafael Masa, in the Ercilla hotel in Bilbao on 6 December 1983, to discuss several assassination attempts. On 28 May, the National Audience in Madrid sentenced Ismael Miquel to 45 years in prison, after he was extradited from Thailand, where he had been convicted on drug smuggling charges. He was guilty of "involvement in an armed group", murder, possession of an arsenal of weapons and falsifying documents, in connection with the murder of Frenchman Robert Caplanne on 14 December 1985. Caplanne was mistaken for ETA militant Enrique Errasti Villar, and was shot near the "Royal" bar in Biarritz, and died 10 days later. The judgement stressed that the proceedings were closed but incomplete, as the Interior Ministry officials responsible for commissioning the crime, being part of GAL and ordering "the extermination of ETA members", were not identified.

These officials allegedly offered Miquel information about ETA members who should be assassinated, including photographs, data he had no formal access to, materials to adopt false identities, weapons and money. He was found in possession of identification cards and driving licences which are only available to specific authorities. Miquel refused to reveal his superiors' identities, or to discuss the murder of Robert Caplanne so long as he was kept in custody, demanding to be freed. A GAL commando was found guilty of Caplanne's murder in December.

The National Audience is also holding preliminary hearings involving *Guardia Civil* general Enrique Rodriguez Galindo and the former civil governor of Guipuzcoa Julen Elgorriaga, on trial for the kidnapping, torture and murder of supposed ETA members Jose Antonio Lasa and Jose Ignacio Zabala. They were kidnapped in Bayonne (France) in October 1983, held in the basement of an Interior Ministry building in San Sebastian, where they were interrogated and tortured, for several weeks, before being moved to Alicante, where they were shot and buried in quicklime. An Alicante radio station received a call in January 1984 claiming responsibility for the killing of the two refugees on behalf of the GAL.

Investigating magistrates in San Sebastian heard evidence on 28 May from the former *Diario 16* editor Jose Macca, in relation to the death of Mikel Zabalza. Zabalza was found dead in the Bidasoa river in November 1985, days after his arrest on suspicion of collaborating with ETA, as official reports indicated that he had drowned after jumping into the river, handcuffed, to escape the *Guardia Civil*. The prosecutor, Inigo Iruin, said Macca's account of the testimony of former *Guardia Civil* Vicente Soria, who claimed he had seen Zabalza dead in a lift in the Intxaurreondo *Guardia Civil* barracks, was "very important".

*El Pais* 8.5., 29.5, 5.6; *An Phoblacht/Republican News* 29.4.99; A. Baeza "GAL: Crimen de Estado" (Coleccion "Buhardilla Vaticana") 1996.

## EU

### Openness: Victories in the court

Heidi Hautala MEP has won her case the Council over access to Council documents concerning arms export licences. On 19 July the Court of First Instance said that the right of access is to be considered not just to "documents" but to the information contained in them. It therefore ruled that the Council did not make such an examination and annulled (overturned) the Council's refusal of access. The decision turned on the issue of granting "partial access" where information which "might harm international relations" is removed (ie: "struck out" with a felt pen) but granting access to the rest of the document. Applicants are refused many documents on the grounds that the "positions" (views) of EU member states are in the document. Ms Hautala said:

*The judgment is a major step in a campaign towards more transparency in the European Union. The Court has once again proved that it is the core institution, together with the European Ombudsman, that defends the fundamental principles of democracy. It is up to the European Commission and the EU Member States to make sure that the exceptions to openness are tightly defined, now that a new Regulation on access to documents is being prepared.*

Ms Hautala sued the Council of Ministers in January 1998, after she was twice denied access to a report on the implementation of the eight criteria for arms exports in the EU Member States. The criteria were defined by the European Council in 1991 and 1992.

In another landmark decision announced on the same day by the Court of First Instance the court found that the Commission was wrong to refuse to give access to the minutes of "comitology" committee to *Rothmans*. The Commission tried, unsuccessfully, to argue that it was not the author of the documents.

#### A new code of access

In the last issue of *Statewatch* (vol 9 no 2) it was reported that the European Commission had prepared a draft Discussion paper on public access. It had been intended that this paper would be formally adopted and published by the Commission in June and be followed by a draft Regulation. However, it appears that the paper was withdrawn from the Commission's agenda. The draft Commission paper, widely criticised by voluntary groups, lawyers and MEPs, would have undermined the right of access to documents. The Finnish government had been expecting that both the discussion paper and the draft Regulation could be advanced during its Presidency of the EU. However, no further drafts are now expected until October.

The Utrecht-based Standing Committee of experts has stolen a march on the Commission by issuing a draft Proposal on the right of access to documents together with a detailed explanatory report. The Proposal preserves the essential definition of what constitutes a "document" which includes:

*all documents produced or considered by the [three] institutions or by the subsidiary organs of the said institutions if the bodies in question were set up by those institutions or if the said institutions participate in their functioning.*

*Judgement of the Court of First Instance, 19.7.99 in Case T-14/98, Heidi Hautala v Council; Judgement of the Court of First Instance, 19.7.99 in Case T-188/97, Rothmans v Council; Draft Regulation of the European Parliament and Council Regulation laying down the general principles and the limits of the citizen's right of access to documents of the European Parliament, the Council and the Commission, and its explanatory memorandum, drafted by Professor Deirdre Cutrin and Professor Herman Meijers for the Standing Committee of Experts in international migration, refugee and criminal law, July 1999, from: Postbus 201, 3500 AE Utrecht, Netherlands.*

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## Web database

Statewatch has a searchable database on the World Wide Web. The url is:

<http://www.statewatch.org>

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