

# statewatch

monitoring the state and civil liberties in the UK and Europe

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## EU plan to restrict access to documents

**- Brussels officials' "freedom of thought" to be protected**

**- no public access until measures adopted**

*Statewatch* has obtained a copy of the draft Regulation being worked on by the European Commission which will govern public access to documents. Under the Amsterdam Treaty the Commission is responsible for drawing up a draft Regulation which then has to be adopted - by the co-decision procedure - by the Commission, the Council and the European Parliament (Article 255 of the Amsterdam Treaty). When adopted the Regulation will apply to these three institutions. The draft, rather than "enshrining" the citizens' right of access to documents, completely undermines the intent and spirit of the Amsterdam Treaty (see *Statewatch*, vol 9 no 2).

Under the draft Regulation *Statewatch* would not have been able to get an official copy of the draft prior to its adoption (Article 1) and if it had would be forbidden from "reproducing" it (Article 8). Tony Bunyan, *Statewatch* editor, said: "*We have obtained a copy and we intend to ensure that it is "reproduced" as widely as possible so that civil society can express its anger that such a proposal could even be considered in a democratic Europe.*"

### "freedom of thought" for officials

Under the current codes of public access to documents (agreed in 1993) the citizen can *apply* for *any* document - subject to narrowly defined and applied exceptions. Under the draft Regulation two categories of documents, the majority, are to be automatically excluded from the right of access.

First, "working documents" and discussion papers are to be permanently excluded from access in order that the officials in the institutions "are free to hold preliminary internal discussions" (translated another way this could read to protect the "freedom of thought" of officials). This category would also include reports on the *practice* which flows from the adoption of measures/Regulations/Directives. The second category to be excluded from access are "working documents" prior to the

adoption of a decision. This would exclude civil society from playing any role in policymaking.

The draft also i) seeks to place a "gag" on national freedom of information law by imposing the same rules of access to the institutions documents at national level - this is likely to be rejected by Scandinavian countries; ii) to introduce new exceptions allowing access to be refused, for example, in order to protect "the stability of the Community legal order"; iii) new discretionary powers would be given to the institutions to deal with "repeated requests" - an issue *Statewatch* took to the European Ombudsman and won; iv) a completely new provision would forbid applicants from "reproducing" documents obtained - this would outlaw the photocopying of documents by lecturers, students, journalists and activists.

### Failure to consult

The European Commission has known since June 1997, when the Amsterdam Treaty was signed by the 15 EU governments, that it was responsible for drawing up the new Regulation - which will have the force of community law. For such an important decision it would have been usual for the Commission to published a discussion paper ("communication") to consult civil society before adopting a draft regulation. A draft discussion (also "leaked" by *Statewatch*) was heavily criticised by NGOs, voluntary groups, lawyers, academics and MEPs and withdrawn in June 1999. The failure to put out a discussion paper has excluded civil society from any say even in this decision. Tony Bunyan said: "*If the Commission does adopt this draft the European Parliament should send it straight back as an unacceptable basis for discussion.*"

see *Statewatch's Secret Europe* website:

<http://www.statewatch.org/secreteurope.html>  
and feature on page 19.

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## ITALY

## Surveillance: Ombudsman calls for protection of rights

Stefano Rodota, the Italian ombudsman for the protection of personal data, an authority established in the 31 December 1996 Data Protection Act, has issued a number of statements attacking efforts to undermine individual rights in the name of collective security. He has expressed concern for approaches to the surveillance of telecommunications which ask the question: "If I have nothing to hide, why should I need the protection?", arguing that this reasoning is not far removed from ideas which would deny the right to protection. Rodota stresses the importance of not accepting everything that is technologically feasible as acceptable, and feels that the only defence available to the "individual" are rules.

Rodota has been particularly active in the fields of telecommunications, stressing the importance of ensuring that the internet remains a forum for the expression ideas, guaranteeing the anonymity of users. On 10 March 1999, he met some Intel representatives to demand that they provide him with information regarding the "processor serial number" on their processors and on 15 March 1999, he asked mobile telephone service providers, Tim, Omnitel and Wind, for "detailed information on the methods of data collection regarding the location from which calls are made, and whether they are also active when the mobile phone is on standby". In October 1998, he ruled that telephone companies should allow clients to use anonymous phonecards.

In an article for *La Repubblica*, Rodota pointed out that requests by investigating magistrates and police often appear reasonable, although their effective implementation would have serious implications for civil liberties. Analysing the possible consequences of a request for unlimited access, for investigative purposes, to telephone transcripts, by judicial authorities, Rodota said that it was necessary to consider the quantitative and qualitative improvements in the collection and storage of data. He notes that telephone transcripts are now stored for up to five years, creating an enormous database of approximately 70 billion telephone calls. This represents:

*"A very tightly knit net which envelops the whole of society, which makes it possible to ruthlessly follow every trace any one of us leaves, reconstructing the totality of social relations by identifying all the people one has called, the location where the calls were made, and their length. There is an obvious risk of abuse: several national authorities have pointed it out and...a recent, concerned resolution by the Committee of European Data Protection Authorities suggested that the storing of data should even be limited to 3 months....It is no longer a choice between safety and privacy, but between freedom and privacy."*

His concerns are borne out at a European level. At the meeting of the Joint Supervisory Authority (JSA) for the Schengen Agreement in Florence on 27 and 28 May, Rodota stressed how the SIS, Europol, Eurodac, CIS and draft fingerprint databanks will contain a lot of sensitive information (6.5 million entries for the SIS alone). "The proper use of this information and adequate controls to guarantee its transparency", he continued, "can only be guaranteed by an independent authority with effective powers, and the JSA suffers a kind of small bureaucratic boycott by the European Union".

*L'Unita* 3.5.99.; *La Repubblica* 20.1.99., 20.10.99.; [www.senato.it](http://www.senato.it) "Parla il Garante: privacy ed Internet, al Parlamento chiedo che ..."; [www.privacy.it](http://www.privacy.it): "Schengen. Per i garanti europei occorre alzare il livello delle garanzie nei confronti delle banche dati", "Caso Pentium III. Il garante incontra Intel";

## Civil liberties - new material

*Human Rights Annual Report 1999*. UK Foreign and Commonwealth Office and Department for International Development, (HMSO) 1999, pp96. Report on the government's activities and thinking in the field of human rights. The achievements under "its commitment to improve respect for human rights in the UK" include three of the government's most criticised bills: those on asylum policy, "disability rights" and freedom of information. The report refers to a wide range of countries including Turkey, Kosovo, Bosnia, Albania, Russia and Belarus.

**Hidden agenda and Secret Society**, Gibby Zobel. *The Big Issue* 15.11.99 & 22.11.99. Articles on "an elite group of the West's most powerful men and women" - the Bilderberg group. The article reveals confidential minutes considering, among other things, the Russian intervention in Chechnya and the new Left.

**The Bastard - Global Edition**. Arkzin (1999). The publishers (Arkzin) started as a platform for the *anti ratna kampagna* (anti-war movement, founded in Croatia in 1991-92) to promote independent political discussions. Since then it has grown to include cultural and intellectual contributions on media and "cyber theory". Produced in Zagreb, this first international edition of *The Bastard* compiles various discussions, texts and documents that have circulated on the internet and in magazines. It attempts to make sense of a violent disintegration of the Balkans, positioning its analysis within the "Europe after", the "EU-NATO regime". Contributions include commentaries and discussions by John Pilger, Maria Todorova, Noam Chomsky, George Soros and Geert Lovink amongst others. Publishers: Arkzin d.o.o., Ilica 176, HR-10000, Zagreb, Croatia. Tel: +3851 3777866 Fax: +3851 3777867, [arkzin@zamir.net](mailto:arkzin@zamir.net), [www.arkzin.com/bastard/special](http://www.arkzin.com/bastard/special).

## EUROPE

## EU

### Justice and Home Affairs Council, 2 December 1999

The Justice and Home Affairs Council on 2 December in Brussels adopted as an "A" Point (without debate) a Decision on standard readmission clauses on the "repatriation of persons illegally resident in a Member State" to be used in Community and mixed agreements (agreements with third countries, or rather usually third world countries). The Decision has a bearing on issues such as the High Level Group on Asylum and Migration's Action Plans for five third world countries as well as others to be added over the next year (see, *Statewatch*, vol 9 no 5). The text reads as follows:

*"The Council of the European Union has decided that the standard clauses set out below should be included in all future Community agreements and in agreements between the European Community, its Member States and third countries:*

*Article A*

*The European Community and State X agree to cooperate in order to prevent and control illegal immigration. To this end:*

*- State X agrees to readmit any of its nationals illegally present on the territory of a Member State of the European Union, upon request by the latter and without further formalities;*

*- and each Member State of the European Union agrees to readmit any of its nationals, as defined for Community purposes,*

illegally present on the territory of State X, upon request by the latter and without further formalities.

The Member States of the European Union and State X will also provide their nationals with appropriate identity documents for such purposes.

#### Article B

The Parties agree to conclude upon request an agreement between State X and the European Community regulating the specific obligations for State X and the Member States of the European Community for readmission, including an obligation for the readmission of nationals of other countries and stateless persons.

#### Article C

Pending the conclusion of the agreement with the Community referred to in Article B, State X agrees to conclude, upon request of a Member State, bilateral agreements with individual Member States of the European Community regulating the specific obligations for readmission between State X and the Member State concerned, including an obligation for the readmission of nationals of other countries and stateless persons.

#### Article D

The Cooperation Council shall examine what other joint efforts can be made to prevent and control illegal immigration."

### Other issues

*UK/Spain:* The meeting opened with Mr Mayor Oreja, Spanish Interior Minister, raising the issue the dispute between the UK and Spain over the status of Gibraltar, which was holding up six measures - the Convention on Mutual Assistance in criminal matters, the Regulation on insolvency proceedings, the Regulation on the service of judicial and extra-judicial documents in civil or commercial matters, the Regulation on Eurodac, the negotiation mandate on a parallel Dublin agreement with Norway and Iceland, and the Decision concerning the UK application to participate in some of the provisions of the Schengen *acquis*. Under the Treaty of Utrecht of 1713 control of Gibraltar would pass to Spain if the UK renounced sovereignty. No resolution was reached.

*The "scoreboard" of JHA measures:* the Commission's proposal for a "scoreboard" was not ready, but would be based on the deadlines set out in the Amsterdam Treaty, the 1998 Vienna Action Plan on establishing an area of freedom, security and justice and the Tampere Council Conclusions.

*Draft Convention on Mutual Assistance in criminal matters:* (see feature in this issue on EU-FBI plan). Back in 1997 this draft Convention required the simple updating of the 1959 Council of Europe Convention. Then along the EU-FBI telecommunications surveillance plan (plus "covert operations" and "cross border investigation teams"), followed by revised "Requirements" to be placed on service and internet providers in 1998, which has held up agreement among the member states for two years. Two other issues are unresolved. First, whether "silence" from a member states which has been informed by another EU member state signifies approval or prohibition. The majority of member states say "silence" should mean approval, two disagree. Nor has the issue of the interception of satellite telecommunications been resolved. The JHA Council also agreed that data protection provisions should be included.

*Eurodac Convention:* The Commission voiced its disagreement with the procedure for approving implementing measures of the Regulation - the Council decided to retain decision-making to itself as member states. The Regulation will apply to the UK and Ireland, Denmark will conclude an intergovernmental agreement to take part. The draft Regulation has been referred back to the European Parliament for its

opinion.

*Dublin parallel agreement with Norway and Iceland:* this "Dublin" agreement has to be in place for the second half of 2000 for the abolition of border checks with the Nordic countries to become operational. In view of this self-imposed deadline the Commission proposal that a "Community agreement" drawn up rather than a "mixed agreement" which would need to be ratified by all member states - and hence involve national parliaments in having a say.

*Family reunification:* the Commission's proposal for a Directive on family reunification was presented to the meeting. Some member states voiced objections to extending the concept of "family reunification" to unmarried partners and same-sex partners.

*UK application to join Schengen:* the draft Decision allowing the UK to join certain provisions of the Schengen *acquis* but not others (eg: Article 96 on immigration controls) was agreed by 12 member states but not by Spain which not only has a problem over Gibraltar but also disagrees with "partial participation" (on Schengen issues only 13 member states have a vote).

### (Schengen) Mixed Committee

In the so-called "margins" of the JHA Council the second meeting of the "Mixed Committee", which deals with Schengen issues, was held. The Committee agreed that controls at internal borders between Greece and other member states would be lifted at land and maritime borders on 1 January 2000 and at airports on 26 March 2000. This decision brings the number of EU member states fully applying the Schengen *acquis* to ten. October 2000 is the target date for the Nordic countries to join - this will include SIS 1+ going online to allow the five Nordic countries to access the Schengen Information System.

Also under the rubric of the Schengen Mixed Committee the Finnish EU Presidency proposed a draft regulation on the "Obligations between the member states for the readmission of third-country nationals" covering the return of "third-country nationals found illegally present".

## EU

### Detecting drugs smuggled inside the body

"Fortress Europe" can be seen as the broad ideology of border control, where exactly who and what crosses EU frontiers are subject to control. While much attention is paid to measures designed to combat the "illegal" immigration of persons, very little is paid to the wider framework of border control. The (confidential) Schengen Common Manual on Border Controls, for example, which was drawn up to consolidate security provisions at the union's external frontiers (which include airports as well as land-borders) goes further than many national "standards". A major aspect of this control is the combating and detection of drug-trafficking.

With the entry into force of the Amsterdam Treaty came the incorporation of the Schengen border control regime into the EU framework. Work begun under the Schengen umbrella thus continues, and, through the ambiguity of the original agreement and subsequent measures that followed, appears to have paved the way for systems of control. The latest development is the draft recommendations for examinations to detect the smuggling of drugs *inside* the body. While these recommendations will not be legally binding, nor require amendments in national legislation, a Finnish Presidency presentation paper sees them as the first step towards more uniform drug control practice.

The policy was drawn-up on the basis of an analysis of national legal frameworks for examining suspects. As is the case with many EU measures seeking “harmonisation”, this preparatory work did not have the aim of finding a common standard in terms of privacy or legal protection of the individual, but rather, to find the other extreme: the extent of intrusion the recommendations could permit. The draft report says:

*In all Member States it should be possible to carry out an x-ray or comparable examination in order to establish whether a person is guilty of smuggling drugs inside the body... In all Member States it should be possible to conduct an examination even WITHOUT the consent of the suspect... [emphasis in original].*

This is, it could be argued, a reasonable provision for detecting the trafficking of “class-A” drugs, assuming of course that there are strong grounds for suspicion and protection is afforded to the individual:

*The Member States should however proceed with the aforementioned measures only where there are reasonable grounds to suspect the person of smuggling drugs inside the body.*

However, the essential question of what “reasonable grounds” there could possibly be for suspecting someone of carrying drugs inside their body - for surely there are no visible indicators - is not addressed. While “great care should be taken to observe the principles of proportion and delicacy”, the desired yardstick is the EU’s “risk profile” on persons likely to be trafficking drugs by this method. Although these profiles are confidential, they are by their very nature inherently stereotypical. They may be based upon some kind of police criteria for suspicion (where the targeted population is a police construction), or upon (or including) the profile of those who have been caught committing such offences. Since the latter is (in practice) merely a reflection on the former, the methodology used in drawing up the profiles is irrelevant: the process is one of constructing stereotypes.

The recommendations suggest that where the suspect does not consent to examination (if they have the right to do so), they should at least:

*be kept under observation for a sufficiently long period for any drugs packages to be eliminated from the body by natural means.*

There is also the potential arbitrary use of the powers. Research into police stop and searches and CCTV surveillance in the UK have shown that discrimination and institutionalised racism flourish in the construction and pursuit of suspicion. During preparatory discussions of the recommendations, a number of delegations went on record stressing “the importance of appropriate respect of pertinent privacy protection and human rights rules”. However, these are very unlikely to form part of the adopted measure, where vague references to “the principles” of proportion and delicacy will do little to prevent discrimination and intrusions of privacy against those who fit the EU’s risk profile.

*Sources: Proposed recommendations for examinations conducted in the EU and Schengen areas to detect the smuggling of drugs inside the body, NOTE from Presidency to Working Party on Illicit Drugs Trafficking, 11004/99 STUP 16, 17 September 1999; Outcome of proceedings of the Working Group on Drugs Trafficking on 23 September 1999, 11467/99 STUP 18, 22 October 1999.*

## EU

### New SIS network

Cooperation between national criminal investigation and intelligence agencies in the EU is set to be enhanced by new technologies deployed in the framework of the Schengen Information System (SIS). The new “data communication environment” - SISNET - has yet to be specifically defined, but will be based on the rapid IT transfer of detailed intelligence

following “alerts” on the SIS. By March 1999, authorities from nine Schengen countries had entered 8,826,856 records on the SIS - data relating to persons wanted for arrest, extradition, in relation to criminal proceedings or those under “discreet surveillance”; “aliens” to be refused entry at external borders; and stolen cars and other objects recorded in connection with criminal activity (this last group accounts for the majority of records). When a participating state is alerted to information entered by another, further (bilateral) information exchange follows. SISNET will apply new technology to this procedure.

User requirements have been requested from member states and will form the basis of the new system which “has to be operational by August 2001”. The next generation SIS (“SIS II”, currently being constructed) provides for the electronic transmission of photos and fingerprints (through “SIRPIT”), beyond this, SISNET may offer the capacity to transmit DNA profiles (the EU is to create an international DNA database) and ballistic analyses for the identification of firearms. SISNET will also provide links to the diplomatic missions of member states outside the EU to “exchange data on the issuing of visas”.

The Finnish delegation, whose requirements are the most detailed of the national responses would also like to see a facility for transmitting “real-time video and sound”, including that obtained during discreet surveillance operations (Article 99) and “cross-border pursuits” (Article 41, Schengen Implementing Convention). The SIRENE bureaux (used by police forces to communicate and exchange data following SIS alerts) should also be upgraded to allow video conferencing through SISNET.

Under the Amsterdam Treaty, the SIS has been incorporated into the EU framework. Norway and Iceland have also signed up to the SIS (implementation provisions are well underway) and the partial participation of the UK and Ireland (see *Statewatch*, vol 9 no 5) will soon see 17 states contributing and accessing SIS data. Enlargement of the EU will see SIS II providing the necessary increased capacity to extend the system to the candidate countries.

*Sources: New data communication environment, NOTE from SIS-TECH Working Party to SIRENE Working Party, 10820/1/99 SIS-TECH 136 COMIX 218 rev 1, 20 September 1999; Notes from delegations - Austria (11504/99), Finland (11576/99), Italy (11628/99), France (11740/99) and Germany (11807).*

## SPAIN

### End of ETA truce

On 28 November the Basque armed organisation ETA announced the end of the ceasefire which the group had declared unilaterally in September 1998. The ETA communiqué announced that with effect from 3 December it reserved the right to instruct its commando units to resume action at any time.

In the 14 months of truce there had been a number of initiatives aimed at using the political space opened up by the ceasefire. These included the Lizarra-Garazi Accord, which brought together virtually all political forces except the (conservative) PP and the (socialist) PSOE in determining a means for bringing forward the peace process, built around the idea that at a future date the Basque people would be allowed the sovereign right to determine their own destiny. An Assembly of Basque Local Councils (*Udalbiltza*) had been created bringing together all the Basque municipalities, not just from the Spanish State but from the Basque territory, Iparralde, on the French side of the border. This new group had begun to examine ways of harmonising or conjoining institutions on either side of the present frontier. Moreover, within the autonomous Basque Country itself, the present government relied on a coalition of moderate nationalists and the “patriotic” left.

The Madrid government, however, had failed to take

cognisance of the significance of these events. It even declined to consider the formal request put to it by the Basque government for the transfer of Basque political prisoners to prisons in Euskadi, rather than maintaining the policy of dispersal to remote Spanish prisons. As for direct talks between the Spanish authorities and ETA, the one meeting that took place was preceded by the arrest in France of one of the ETA leaders who was to have taken part. Belén González, who represented ETA in the meeting, was herself arrested in France shortly afterwards. The prospect of a return to armed conflict has given rise to a wide variety of reactions in Basque society over recent weeks. There have been mass demonstrations, called both by the “patriotic” left and by the Basque government, and drawing support from every part of the political spectrum. There have been negotiations within and between the nationalist camp and the parties to the Lizarraga-Garazi Accord to try to come up with political initiatives capable of forestalling a return to violence. Ten days after the date stipulated in the ETA announcement, the organisation had still given no sign as to whether it intended an early resumption of its campaign.

## Europe - new material

**Follow-up report of the Belgian Government in response to the report of the European Committee for the Prevention of Torture (CPT) pertaining to its visit to Belgium between 31.8 and 12.9.97.** European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe) (CPT/Inf 990 11) Strasbourg, 12.7.99. Comments of the Belgian government regarding progress on measures being taken towards the implementation of the CPT's recommendations. The report covers measures being taken in relation to police and *gendarmérie* establishments, detention centres for foreigners, penal establishments and a psychiatric hospital.

### Parliamentary debates

**European Council: Policing Immigration and Judicial Cooperation** Lords 11.10.99. cols. 82-99

**Special European Council, Tampere** Lords 19.10.99. cols. 946-960

## IMMIGRATION

### DENMARK

## Deportation practice leads to street actions

At the beginning of November the first sentences followed by a deportation of a person born in Denmark but of foreign nationality or with an almost life long Danish residence were handed down to three young men from Turkey and Lebanon. The Turkish man can never return to Denmark, the others are barred from returning for 10 years. The law says that a young person between 18 and 23 years of age can get Danish citizenship “by declaration” (which means that the application is voted on in parliament) avoiding the usual procedure. The three men had not used this procedure to get citizenship.

The sentences are the culmination of months of attacks on foreigners in Denmark by the mass media and the mainly rightwing politicians who have held young foreigners responsible for a rise in crime - a claim questioned by criminologists and lawyers.

There have been xenophobic suggestions from politicians covering the political spectrum, from the Social Democrats to the extreme right, over the last few years. Some have suggested that not only should “ethnic” criminals be placed in prison or closed

institutions if they are not deported, but younger brothers and even entire families should be deported if one family member commits a crime punishable by prison. The “logic” behind this position is that younger brothers would soon commit crime and that it is the responsibility of the whole family. Since the family is not able to take care of their children they should all be punished.

This latest development started at the Vollsmose housing estate in Odense, the largest town on the island Fyn. Fifty percent of the inhabitants on the housing estate were not born in Denmark and most come from Lebanon, Turkey, Somalia and Vietnam. The unemployment rate is high and the level of education is low. The people living there are ghettoised. Some have tried to move following increasing police surveillance and intervention. Young people no confidence in the social system. At clubs and discos etc. they often experience discrimination and exclusion, and they face long-term unemployment. This has led to a lot of violent confrontations.

The crime rate in Vollsmose is quite high since it exploded in the summer of 1999. Local politicians in Odense demanded more police and tougher punishment. The Minister of Justice, Mr. Frank Jensen, responded by sending a squad of 20 police officers to the area. There was a demand from some national politicians for tougher action against young ethnic people and moves by the social welfare system towards closed social institutions.

The deportation of the three young men led to reaction in the Copenhagen neighbourhood Nørrebro on the night between the 7 and 8 November. Around 20 youths overturned cars and set them alight. Windows were broken in many shops in the area. The disturbances continued for two hours before the police arrived; by which time the youths had disappeared. All the activists were masked and only two young people were arrested, but it is asserted that “ethnic” groups and so-called autonomous activists were responsible. It has been suggested that a law to outlaw the wearing of masks should be passed and the Minister of Justice has formed a team of top police officers to draw up a proposal on how to implement the mask ban during demonstrations. The government (social democrats and social-liberals) are split on the issue.

Lawyers and the director for the Danish Centre for Human Rights in Denmark, Mr Morten Karjum, have protested against the new legal practice by the courts against foreigners, which is considered as inhumane and a double sentence for non-Danish citizens.

Many young ethnic people have applied for Danish citizenship since the deportation sentences. But the government say they will make it more difficult to obtain Danish citizenship by declaration. If a person between 18 and 23 years old has a criminal record then their application for citizenship by declaration (which can only be used if you have lived in Denmark for at least 10 years) will be postponed.

### UK

## Asylum support

While the government is spending almost a year putting in place its asylum support scheme, which will switch provision from local authorities to a home office bureaucracy, the National Asylum Support Service (NASS), its interim support provisions, which came into force on 6 December, show every sign of having been rushed through in haste. They could result in hundreds of asylum-seekers spending Christmas and millennium new year on the streets. Until now, all asylum-seekers who are ineligible for income support and housing benefit - which includes those who did not apply at the port, and all whose claim has been rejected - are eligible for basic support under the National Assistance Act if they are destitute. The support - which has varied from authority to authority but is generally hostel accommodation and vouchers

- has continued for as long as they remain in the country. But the Immigration and Asylum Act's interim provisions make it unlawful for authorities to continue to provide support to single asylum-seekers whose claims have been rejected on appeal, whose need for support "has arisen solely because of destitution or the physical effects of destitution". Thus, it will be illegal to support a rejected asylum-seeker who is starving and suffering from malnutrition, although one who is suffering from a disease which is not a disease of poverty will remain eligible for National Assistance.

The ban on support applies even to those asylum-seekers who cannot leave the UK, either because they don't have travel documents, or because they are ill, or even because their country is in the grip of civil war. The home office is, for example, not returning rejected asylum-seekers to Sierra Leone or Algeria, because of the civil wars going on there. Rejected asylum-seekers who are taking judicial review proceedings are also disqualified from support if they are single. Local authorities were advised to issue two-week eviction notices to all their single rejected asylum-seekers on 6 December, to expire on 20 December.

The Home Office was strongly criticised for this total withdrawal of support (which is also a feature of the main asylum support scheme which comes into force on 1 April 2000), and so, under pressure from critics, it agreed to set up a "hard cases fund". It suggested that refugee groups such as the Refugee Council and Refugee Action, which are signing contracts with the NASS to provide a package of reception facilities and support under the main scheme, should also sign up to administer the "hard cases fund". But the charities have been warned that by taking on this role, they would make themselves vulnerable to legal challenge by asylum-seekers refused help, and so have decided not to touch the fund. It is not known what, if any alternative arrangements the Home Office has made.

Single men and women at the end of the appeal process will therefore have no access to any kind of help from local authorities, and will either be taken in by friends or refugee communities or will be on the streets. There they are likely to be joined by asylum-seekers who reject compulsory dispersal from London, either not going when they are told to, or returning to London. Before 6 December, 80 percent of asylum-seekers stayed in London and Kent. On 6 December, these areas were deemed "full" and new asylum-seekers arriving in London and seeking support will almost invariably be dispersed to another area, probably in the north-east or north-west. Only those with very compelling reasons for staying in London, such as the need for specialised treatment for torture, will be allowed to remain there.

Receiving authorities will assume total responsibility for the asylum-seekers sent to them. Up to now, dispersal has been carried out informally, and the sending authority retained responsibility. Local authorities will receive a grand total of £150 per week per single asylum-seeker, £220 for a family, with which to provide for all living needs. The interim dispersal scheme is "voluntary" - voluntary for receiving authorities, that is, not for destitute asylum-seekers, who must go where sent.

Regulations published at the beginning of December allow the Home Office to ban asylum-seekers from living in specified areas for public order reasons. Presumably this is a result of the difficulties faced by asylum-seekers in Dover and their angry response to persistent racist harassment there.

These provisions allow recalcitrant local authorities to avoid taking asylum-seekers simply by working with local news media to create a climate of hostility and then exploit it in order to refuse to take asylum-seekers. Wealthy shire counties in the north-west are already making noises about the likely effect of asylum-seekers on their residents' quality of life. They also make it possible for racist groups to control dispersal policy by threatening attacks on asylum-seekers who come to their area. It is thus the racists, in authorities and on the streets, who could end up with a decisive influence over where asylum-seekers are sent.

Those who refuse to go, or who leave their allotted accommodation unreasonably, will lose all support.

*Immigration and Asylum Act 1999; Asylum Support (Interim Provisions) Regulations 1999; Immigration and Asylum Act (Commencement No 1) Order 1999.*

## BELGIUM

### Child detention

An investigation by a group of experts has described the detention of migrant children against their will in the Steenokkerziel asylum detention centre 127bis as "psychological child abuse". This follows a inquiry launched by two lawyers against the Home Affairs ministry. Two child psychologists, a child psychiatrist and a social worker were ordered into Steenokkerziel by the investigating magistrate and they talked to the Awada family as well as members of staff. Their report described the conditions in which the children lived as follows:

*...since they arrived in centre 127bis the children often ask when they can leave and why they are in prison when they have done nothing wrong. They are scared at night and constantly ask for their toys. When they take their afternoon exercise they are scared of the constantly watching guards. One day six year old Mariam Awada grabbed hold of the railing and refused to go back in. She was dragged in by the guards, she still carries the scars. A parent told of the anger and despair felt by his children when a guard threw the bag of crisps they had been given by their uncle into the bin.*

The children have been denied the choice to eat meat because no attempt was made by the prison authorities to acquire halal meat. They have also witnessed riots as well as one inmate's suicide. This treatment has left psychological scars. 12-year old Ahmad Awada has retreated to an infantile state in which he has to wear nappies whilst Mariam suffers from temper tantrums and nightmares. The report also touched on the parents who had to watch helplessly as the condition of their children went down-hill.

The campaign for the Awada family has resulted in them being moved to an open asylum centre, though not yet to them being given permanent leave to remain in the country. In the meantime, the two lawyers pressing the case against the Home Affairs ministry are hoping that the Belgian state will be found guilty of child abuse, which would force them to free other children still detained in asylum prisons like Steenokkerziel.

*Solidair 3.11.99.*

## SPAIN

### New Aliens Law

A new Aliens Bill, superseding the existing legislation, was debated by the Spanish parliament in November. The previous Aliens law, dating from 1985, and the corresponding Regulations approved two years later, has been the main legal instruments used by the Spanish Government in its dealings with immigrants. The ethos underlying the legislation was essentially one of bureaucratic and police control of immigration. The failure of the legislation, and the fact that it gave rise to a considerable number of cases of unjust treatment of migrants, led almost all parliamentary parties to put forward several amendments. After one-and-a-half years of parliamentary debate, all sides arrived at a consensus on a text which was approved for transmission to the Senate by a plenary session of Congress on 25 November.

The new Bill represented an advance in certain areas, such as family reunion, the need to justify visa refusal, and the introduction of a means for regularising the situation of overstaying immigrants who had completed two years' continuous residence, and would now be granted temporary permission to remain. Moreover the new law clearly stated certain fundamental

rights of immigrants (of free association, assembly, freedom of expression, health, social security and so on) which had previously been covered by a variety of other enactments.

Despite these improvements, the new Aliens Bill was fiercely criticised by numerous migrant support groups for its failure to break with the ethos of the earlier law, in its implicit presentation of immigration as a potential danger that had to be controlled and was permissible only when necessary and in accordance with the national interest. In other words, migrants were still perceived as a mere "labour reserve", so that their entry is legitimate only if they obtain a work contract for a post that no Spanish national would fill - the residence permit being linked explicitly with the work permit.

The Government, however, declared at the last minute that it found the more progressive parts of the new Bill unacceptable, and citing the effects of the recent accords at the Tampere EU summit, it proposed a radical revision of the text before its passage to the Senate. In just four days, having secured the support of the Catalan conservative group *Convergencia i Unió*, it was able to return to Congress with a much more restrictive text than the one that had already been approved on 25 November. The revised version was shorn of all the features that had made the bill attractive. Thus, for example, the provision for regularising the status of overstayers, which represented a recognition of the existence of "undocumented" migrants, was reduced to cover only those who had previously received temporary leave to remain and had had this renewed on at least one occasion. Immigrants without permits were deprived of fundamental rights including the rights of association, assembly, forming trade unions and striking. The obligation to explain the refusal of a visa was restricted to family reunion residence visas and employment visas. Procedures for expulsion were streamlined and all immigration-offence penalties were increased. In an early protest at the Government's attitude, the 17 voluntary-sector organisations and two trade unions represented in the official consultative Immigration Forum withdrew from that body on 10 December.

## GERMANY

### Asylum practice violates children's rights

A study published in August by the two United Nations bodies UNICEF and UNHCR, has found that Germany is in violation of basic child protection standards. Refugee organisations and legal experts have condemned the treatment of young refugees by Germany's immigration and deportation authorities for several years now. Apart from not giving unaccompanied child refugees proper representation in their asylum procedures, German authorities deport children even if it is not determined how, or even if, they are received in the countries they are being deported to.

Basically, say practitioners, the 1989 Convention for the Protection of the Rights of the Child has not played a role in Germany's asylum practice at all. The reason for the UNICEF/UNHCR study not having found a direct legal violation of the Convention, is that Germany included two exceptions in its ratification in 1992. One of them holds that the Convention will not have the power to infringe on the right of the government to decide on laws and regulations governing the entry or residence of foreigners.

Human rights organisations assert that the insecure status of children is particularly problematic as it poses severe obstacles to education and training possibilities, not only in the area of education, also in that of medical care, young refugees are disadvantaged. Free medical treatment for the around 200,000 child refugees resident in Germany today, is only available in

cases of "acute illness" or pregnancies. Although UNICEF has demanded the full enforcement of children's rights in Germany, a change in practice towards foreigners, minor or not, be it institutional, educational or medical, seems unlikely.

*Migration und Bevoelkerung, Humboldt-Universitaet zu Berlin (September) 1999. The study is available in German on the net: [www.unicef.de](http://www.unicef.de) (under Forum/Mediathek/ Jahresberichte und Studien)*

### Schily's "economic" asylum claims refuted

Asylum and human rights organisations have severely criticised the latest public statement by Germany's interior minister, Otto Schily (SPD), claiming that 97% of asylum seekers to Germany are not genuine refugees fleeing from persecution but come for economic reasons. Investigations, especially of deportations to Turkey, have shown that it is not the asylum seekers' stories which are bogus, but Germany's asylum practice itself.

"Only 3% [of all asylum seekers] are genuine (*asylwuerdig*)", Schily exclaimed at the beginning of November, "the rest are economic refugees". The German representative of the UN High Commissioner of for Refugees, Jean-Noel Wetterwald refuted Schily's assertion, adding that last year alone, 30% of all asylum seekers in Germany came from Kosovo, "and these people hardly fled for economic reasons". The Green party secretary, Reinhard Buetikofer, also attacked the interior minister, saying that "Schily, with this statement, is threatening to question an important component of [the democratic process] in our republic...A minister of constitution, which Schily necessarily is, should concentrate on the protection of the Basic Law, not its erosion."

After Schily's claim, the *Frankfurter Rundschau* (11.11.99) reported that figures from the Federal Office for the Acceptance of Foreign Refugees (BAFL), which is under the direct authority of Schily's ministry and publishes its statistics on the internet ([www.bafl.de](http://www.bafl.de)), stand in contradiction to Schily's claim as well. Whereas the granting of an official refugee status under Article 16 of Germany's Basic Law only amounted to 3.48% in the first ten months of this year, the gradual undermining of the right to asylum via legal changes in Germany and Europe generally, has led to the creation of various "sub-statuses" of people who are clearly persecuted, just not adequately protected.

During the same time span around 5.17% of asylum-seekers in Germany have received so-called "small asylum" (temporary protection) under paragraph 51 of the Foreigner Law (AuslG.) which implements the Geneva Convention in its provision on non-refoulement. A further 1.6% fall under paragraph 53 AuslG., which concerns people who are under threat of torture, the death penalty, inhuman punishment or concrete danger to life and limb; they obtain a residency permit. 10.25% of asylum claimants have officially been categorised as being under threat of persecution. Moreover, these figures neither include asylum seekers' claims which were rejected on false grounds and later overturned in the appeals procedure, nor those who face the threat of torture and are deported anyway.

Only 15% of Turkish asylum seekers for example, the majority of them Kurds, received protection under paragraphs 51 & 53 AuslG. in 1998. In a recent study, the asylum rights group *Pro Asyl* has documented at least 19 cases since 1997, where Kurdish asylum seekers were denied protection by the German courts, deported and consequently severely tortured and imprisoned in Turkey. This number is expected to be the tip of the iceberg, not least because it only deals with one country and excludes the so-called repatriation of the largest group of asylum seekers this year, around 20,000 Kosovar refugees. Justifications for rejecting Kurdish asylum claims are usually based on the alleged existence of an "internal flight alternative" (west Turkey), allegations of false documents or the plain dismissal of the fact

that desertion, for example, leads to political persecution in Turkey.

Schily's numbers game, it seems, bears little relation to reality. The abuse of asylum statistics however, is unfortunately a well established practice in German politics. The danger, as expressed by the German Amnesty International General Secretary Barbara Lochbihler, that the right to protection for the politically persecuted will degenerated into becoming a pawn in the game of politics, has therefore long been realised.

*Pro Asyl "Von Deutschland in den Tuerkischen Folterkeller - Zur Rueckkehrgefahrung von Kurdinnen und Kurden" (Oktober) 1999*

## GERMANY

### “Unite Against Deportation” conference

Preparations are being made for the first national Refugee Conference of The Caravan for the Rights of Refugees and Migrants in Germany (*Die Karawane*), to take place from 21 April to 1 May 2000 in Jena, East Germany (Thuringia). *Die Karawane*, a loose network of illegalised refugees and migrants and various anti-racist and refugee groups, toured and demonstrated in 44 German cities last year. Under the slogan: “We have no vote but we have a voice”, this “travelling demonstration” aims to highlight the criminalisation, exploitation and isolation of Germany's refugee communities faced with increasing racist attacks, social exclusion and the constant threat of forceful deportation.

In an attempt to strengthen a refugee movement from below in Germany, the refugee conference next year is hosted by the first self-organised African Human Rights Group in east Germany, *The VOICE e.V., Africa Forum*, and is aimed at stimulating discussions about the situation of refugees and migrants in Germany and Europe.

Under the title “Unite against deportation”, the main focus of the conference will be the “Social Exclusion of Refugees: restriction, isolation and deportation”. Osaren Igbinoba, one of the chairmen of *The VOICE*, commented that

*the theme of the congress is particularly important because of the increasing deplorable conditions of asylum seekers in Germany, against the background of social exclusion and isolation, the threat of deportation and the actual continued mass deportations of refugees from Germany and other European Union member states, even to countries where neither the safety of their lives nor their security could be guaranteed. The congress particularly welcomes the contribution of refugees themselves, interested individuals, student and social groups, trade unions, pro-democracy movements and the entire “sincere” progressive block in order to organise resistance and rise up to the challenge and unite and fight assiduously against deportation of any kind, where ever it exists.*

The Conference will examine state policies of isolation, restriction and deportation, information on human rights abuses against refugees during detention and deportation is being compiled and related to the state toleration and acceptance of fascism and racism in modern day German society. On a European level, anti-racist and monitoring groups from different countries are being invited to discuss the developments within the restrictive harmonisation of European asylum and immigration law, with specific focus on the Amsterdam Treaty together with the Draft Action Migration Plans of the High Level Working Group on Asylum and Migration, EURODAC and the European border regime in relation to eastward enlargement and the adoption of the Schengen acquis.

The conference also aims to raise awareness amongst the German public on problems of social and political struggles of refugees. The grassroots resistance movements of the illegalised

and marginalised, such as the *sans papiers* in France and *Kein Mensch ist Illegal* in Germany, will serve as a starting point to try and strengthen the relatively recent development of a self-organised resistance struggle against criminalisation and deportation of refugees in Germany. Plans are being made to invite the *sans papiers* to hold their next European-wide meeting in Jena (the first was in Paris in March 1999, the second is taking place in Amsterdam this December) in order to improve networking across Europe.

The Conference will, uniquely, link Europe's border regime to a wider political analysis including the involvement of European based transnational corporations in countries of origin and their role in stabilising and perpetuating repressive and dictatorial regimes. The conference also aims to take a critical look at the positions and ideologies of non-governmental organisations, proposes that their human rights activities might be selective and tackles the question as to whether church asylum is political or humanitarian. The main aim of the conference however is to draw together resistance movements, discuss future strategies and stimulate refugee engagement and participation in the struggle for justice.

One of the few groups in Germany that has come out of this struggle is *The VOICE e.V. Africa Forum* based in Jena. The organisation was founded in October 1994 in the refugee transit camp in Muehlhausen in Germany, originally with the aim to create awareness of the political situation in Africa and the social and economic exclusion of refugees in Germany. Through continuous campaigning they were able to expand the self-organisation of refugees with groups who organised themselves in Augsburg and Hesse. As coordinators and one of the main organisers of the Refugee Conference, *The VOICE* has started visits, cultural events and public meetings with anti-racist groups and refugees in various cities in Germany. As the majority of its members do not have a regular status and are not allowed to work, their organisation is under constant threat of bankruptcy and they are asking for financial support from individuals and organisations from Germany and Europe, in order to enable their work to go ahead.

*For more information on the conference contact The VOICE e.V. Africa Forum, Human Rights Group. Schillergaesschen 5, 00745 Jena, Tel: 0049-3641-665214 or 449304, Fax: 0049-3641-423795 or 420270. Donations: The Voice e.V. Ktonr. (account number): 1363638, BLZ (branch code): 83053030, Sparkasse Jena, 07745 Jena, Germany.*

## UK

### Court upholds refugee status

A week after the Court of Appeal stopped the Home Secretary from returning certain asylum seekers to France and Germany on “safe third country” grounds (see *Statewatch* vol 9 no 5) the High Court came to the defence of another article of the 1951 Geneva Convention Relating to the Status of Refugees. Article 31 of the Convention clearly stipulates that no asylum seeker should be penalised for “...their illegal entry or presence...provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”. The cases were those of an Algerian, an Iraqi Kurd and an Albanian. The three are among hundreds against whom criminal proceedings for entering on false documents have been brought, resulting in many cases in prison sentences of between six and nine months.

In a ruling which appeared to be strongly critical of both the Home Office and the Director of Public Prosecutions (DPP), Lord Justice Simon Brown said “One cannot help wondering whether perhaps increasing incidence of such prosecutions is yet another weapon in the battle to deter refugees from seeking asylum in this country.” The judge added that he was struck by the fact that neither the Home Secretary nor the DPP appeared to have given

“the least thought to the UK's obligations under Article 31”.

The immediate implication of the ruling is that asylum seekers who have been jailed for entering the UK on false documents will be able to challenge their sentences in court, whether they pleaded guilty or not guilty to the offence with which they were charged, (usually, an offence under the Criminal Attempts Act 1981). Lord Justice Brown stated that there will now be people in jail who should not be, as a result of the Home Office and the CPS pursuit of these prosecutions, in contravention of the Geneva Convention.

Under the new Section 31 in the Immigration and Asylum Act the use of false documents, which are declared on arrival, and used to leave the country of origin will not be subject to sanctions.

*Independent on Sunday 25.7.99; Guardian 30.7.99; Times 30.7.99; Independent 30.7.99.*

## Immigration - in brief

■ **Italy: Correction.** In “Roma camps attacked in Naples” (see *Statewatch* vol 9 no 3 & 4), the quotations attributed to the UN Committee on the Elimination of Racial Discrimination (CERD) were in fact written submissions by the ERRC (European Roma Rights Centre) to the CERD. The CERD's Concluding Observations state concern “at the situation of many Roma who, ineligible for public housing, live in camps outside major Italian cities” which “in addition to a frequent lack of basic facilities...leads not only to a physical segregation of the Roma community from Italian society, but a political, economic and cultural isolation as well.” *UNCERD Concluding Observations available from: www.errc.org*

## Immigration - new material

**Review: “United Kingdom Asylum Law in its European Context”,** Prakash Shah and Curtis Francis Doebbler (eds.), 1999, pp.162.

This discussion on the 1996 UK Asylum and Immigration Act goes beyond listing legal provisions and articles. It is a useful contribution for all those fighting to “prevent the deterioration of the basic humanitarian protections of asylum seekers”. It critically assesses the removal of rights to benefits, the “safe third country” and “safe country of origin” rules, employer sanctions and the emergence of numerous classifications and statuses of asylum seekers, which has led to the practical abolition of fair asylum procedures. The book points to the fact that in its attempt to simply reduce the number of incoming asylum seekers, the EU harmonisation effort implies “that most applicants are economic migrants rather than refugees, as if those categories could be conceived of in a mutually exclusive sense in the first place”. Concerning the discussions on Schengen and Dublin the authors conclude that “it has become apparent that EU states were not that interested in pursuing an end to the problem of refugees in orbit, but rather more keen to ensure the relocation of the problem outside the Union” (see *Statewatch* vol 9 no 5 on the globalisation of immigration control).

**Life without cash.** *In Exile* (The Refugee Council) Issue 5, June 1999, pp14-15. The worst aspects of the voucher system are highlighted. Attention is drawn to its inconvenience and impracticality, as well as to the humiliation and stigmatisation which it causes to asylum seekers. Comments from MPs opposed to the system, and a case study of a pregnant young woman's experience of living on vouchers are included.

*In Exile.* The Refugee Council, Issue 6 (September) 1999. This issue gives details of the way in which the Refugee Council believes that the government's new support system for asylum seekers will work in practice. Questions are again raised about how asylum seekers are to survive on, at best, 80% of income support. In spite of government claims that the decision making process for asylum claims will be speeded up, asylum seekers will most likely have to survive on less than the minimum support for meeting a person's basic needs for a

considerable period of time, such is the extent of the backlog of cases awaiting an initial decision.

**Learning the lessons of Dover.** *CARF* No 52 (October/November) 1999, pp3-5. Excellent article on the situation of asylum-seekers in Dover, Kent and plans to disperse them across the country. It covers the racism of the local people, the media, Dover council and Labour Party asylum policies, but most importantly gives a voice both to the asylum seekers themselves and their support networks.

**Infodienst des Bayerischen Fluechtlingsrates.** Bavarian Refugee Council, No 69 (September-October) 5 DM. This bi-monthly bulletin is a valuable source of information, reporting on current developments in refugee support work and activities of anti-deportation campaigns. Includes critical statements on Germany's asylum and deportation practices towards specific refugee groups (this issue covers Turkey/Kurdistan, Iraq, Angola, Togo and former Yugoslavia). Available from: Bayerischer Fluechtlingsrat, Valleystr. 42, 81371 Munich, Germany. Tel: 0044-89-762234, Fax: 0044-89-762236, bfr@ibu.de.

**Moechten Sie hier leben?** (Would you want to live here?). Bavarian Refugee Council, 1999. This pamphlet criticises the mass accommodations of asylum seekers in homes in Germany and demands humane temporary living conditions for refugees with a view to decentralised housing. They point out that it is not only the lack of sanitary provisions, the danger of racist attacks and the inadequacy of all facilities which leads to the impoverishment and destitution of refugees. But it is also the isolation, the humiliation of a rigid house rule enforced by the “caretaker” and finally the lack of a private sphere, which can lead to depression, alcohol abuse, psychosomatic illnesses and nervous breakdowns. The Council includes a set of minimum criteria which it demands from the municipal authorities and the free state of Bavaria. Available from: Bayerischer Fluechtlingsrat, Valleystr. 42, 81371 Munich, Germany. Tel: 0044-89-762234, Fax: 0044-89-762236, bfr@ibu.de.

**Dire Straits: Spain's tide of immigrants,** Beatriz Conesa. *International Police Review*, (January/February) 1999 pp20-22. Analyses the structure of anti-immigration policing along Spain's southern coast, one of the main areas of immigration from Africa into the EU. Outlines the advanced operational techniques and technology which are used in operations, noting that “they are in fact carried out on behalf of the entire EU”, as part of the Southern Project of the European Union. Links immigration to mafias and drug smuggling, states that immigrants “often deliberately omit to bring identification papers with them” to benefit from available legal loopholes, and offers estimates of numbers who have crossed undetected, and of arrests carried out in Algeciras.

## LAW

## Law - in brief

■ **UK: Black man fined for racially aggravated harassment:** A black man has been convicted at Ipswich magistrates court for racially aggravated harassment under legislation introduced as part of the Crime and Disorder Act 1998 to protect black people. Andrew Wilson was fined £50 after calling police officers “white trash” when they questioned him in the street as he helped a friend to move his television. Peter Herbert, of the Society of Black Lawyers described the prosecution as “a joke” saying that the legislation was never intended to protect white police officers from members of the black community. Lee Jasper, of the 1990 Trust compared the prosecution with the introduction of race relations legislation in 1965. Then, Jasper points out, five out of six of the first people to be prosecuted under the legislation were black. Mr Wilson will appeal against his conviction, but the Suffolk crown prosecutor defended the decision saying that the legislation applied to all perpetrators of racist incidents. *Independent 27.7.99.*

■ **UK: M25 Three - CCRC refers Rowe's conviction to Court of Appeal.** The Criminal Cases Review Commission referred the conviction of Raphael Rowe (one of the M25 Three) to the Court of Appeal in October. Rowe, who was convicted of armed robbery and possession of a firearm in June 1996, has always maintained his innocence (see *Statewatch* vol 2 no 6, vol 3 no 2 & 4, vol 7 no 2). Earlier this year the European Commission of Human Rights ruled that the three men had not received a fair trial. *Criminal Cases Review Commission press release 29.10.99.*

## Law - new material

*Inquest Law.* INQUEST, Issue 2 (Summer) 1999. This is a new journal from the Inquest Lawyers Group. It covers the Parliamentary Ombudsman's report into the death of Kenneth Severin, disclosures and inquests into deaths in custody, Blair Peach and the inquest into the death of Nathan Delahunty.

**Statue of Liberty**, Terry Falco. *Police Review* 2.7.99., pp28-29. Looks at the implications for the police of the wider effects of Section 6 of the Human Rights Act 1998. Specifically the author is concerned about "the removal of the absolute bar on suing police for negligent investigations [which] has broadly brought the British police service into line with other countries."

**Transforming the Crown Court - consultation document. The emerging proposals.** The Court Service, September 1999, pp75. The aims and objectives regarding improvement of the Crown Court are set out in the Lord Chancellor's foreword and in the Executive Summary. The rest of the document sets out the current proposals for achieving these aims and objectives in the context of an anticipated increase in workload to arise from the entry into force of the Human Rights Act and the Crime and Disorder Act. The principal aims are a reduction in delays and costs, an improvement in the quality of service, increased cooperation between criminal justice agencies and increased use of information technology in the Crown Court. The next report, containing a full set of proposals for change is due to appear early next year.

**Jack Straw's juryless courts**, Lee Bridges. *Guardian* 25.11.99. Article on Jack Straw's proposals to curb the right to trial by jury. The legal profession has accused the Home Secretary "of abandoning principle and threatening a fundamental civil liberty" and, as Bridges shows, the cost savings that motivated him are unrealistic.

**Youth and Criminal Evidence Act 1999: Part 1 & 2**, Vera Baird. *Legal Action* October & December 1999, pp16-18 and pp15-16. These articles outline the main provisions of the Act.

**Implications of the Human Rights Act**, Keir Starmer. *Legal Action* October 1999, pp19-29. Starmer discusses the application of the European Convention on Human Rights in UK domestic law.

## MILITARY

### EU

## Rapid reaction force

The Anglo-French summit in November in London urged the European Union to develop the capability to rapidly deploy and sustain a combat force of up to 60,000 personnel (corps-level) for crisis management operations. Up to 500 aircraft could be provided in support. Officials said that such a force would be able to undertake the full spectrum of so-called peace support operations (including fighting wars in the form of "peace-enforcing") but that the collective defence of Western Europe would remain NATO's mandate.

The proposed EU force should be capable of full deployment within 60 days and be sustained for at least a year. Senior US

decision makers, while welcoming efforts to strengthen Europe's defence capabilities, have stressed that in time of crisis full consultation should take place in NATO's North Atlantic Council before a decision is made that the alliance will not undertake military action and that the EU will act. The recent talk of an "autonomous" EU defence capacity has aroused concern in Washington. In October Deputy Secretary of State Talbott warned in a speech that autonomy could split NATO by leading European countries to consult among themselves first in a crisis rather than with the Americans. French president Chirac and UK prime minister Blair agreed to make their joint service headquarters - France's *Centre Operational Interarmees* and the UK's Permanent Joint Headquarters - available as options to command EU-led operations. A multinational cell including officers of other EU nations will be located at each headquarters.

In the first week of December the German-French summit in Paris also took some decisions in this field. A German proposition to create a European military air transport command was supported. A decision was taken to strengthen and combine the means of intelligence, communication and control of the two countries. At the moment Germany has not yet decided to take part again in the common development of spy satellites, from which it has withdrawn for financial reasons. But the capability of the military communication satellite Syracuse-3 will be shared. Germany and France also have the ambition to let the general staff of Eurocorps take command of the KFOR mission in Kosovo in the summer of 2000 albeit under general control of NATO.

*Jane's Defence Weekly* 1.12.99. (Ian Kemp); *Le Monde* 3.12.99. (Jacques Isnard); *International Herald Tribune* 26.11.99 (Tom Buerkle)

## Military - in brief

■ **Italy: Cermis - airbase captain cleared.** Maurizio Block, the Padua military prosecuting magistrate investigating former Aviano airbase captain Orfeo Durigon in relation to the Cermis disaster (see *Statewatch* vol 9 no 2, 3 & 4), has argued that the case should be closed. He concluded that the Aviano chain of command had no responsibility for authorising foreign low altitude training flights. Under present regulations, the Italian command has no specific authority to carry out substantial checks on operational and training flights by foreign planes stationed at Aviano airbase. Furthermore, the Prowler plane in question was in transit at Aviano, and was therefore operating outside of the norms of the US-Italian bilateral treaty. Block stressed that Durigon's duties were formal, involving air traffic assistance and formal controls. The US commander is responsible for informing his Italian counterpart about scheduled flight activity. Block added that the US chain of command has vowed to establish tighter relations with Italian authorities. The Bari military tribunal investigating colonel Celestino Carratu will be responsible for closing the judicial proceedings into a tragedy Block was quoted as describing as "nothing, a story that's dead and buried". The proceedings relate to confirmation of the authorisation of flights which broke NATO rules on low altitude exercises, issued from the control centre in Martina Franca. However, after Block's conclusions on the lack of control powers by Italian military authorities over flights by foreign aircraft on Italian soil, a different outcome seems unlikely. *Il Manifesto* 30.7.99.

## Military - new material

**They're not defending our realm**, Richard Norton-Taylor. *Guardian* 18.11.99. Piece on the Yorkshire-based RAF station Menworth Hill which "in reality, is a National Security Agency base used to eavesdrop on military, diplomatic, commercial and civil communications for over more than 40 years."

**This is just between us (and the spies)**, Sulette Dreyfus. *Independent*

*Review* 15.11.99. Article on the US National Security Agency which has “designed and patented a new technology that could aid in spying on international telephone calls...[It] is for a system of automated topic spotting and labelling of data.” US patent number 5,937,422.

**Arms exports to Indonesia**, Nicholas Gilby. Campaign Against the Arms Trade (October) 1999, pp38. This paper takes as its starting point the pledges made by the Labour government when it came to power not to “permit the sale of arms to regimes that might use them for internal repression” and to “spread the values of human rights, civil liberties and democracy which we demand for ourselves”. It contextualises the pledges in two chapters, one an examination of the intermingling of economic, political and military priorities of the Indonesian regime and the concomitant corruption and repression that accompanies it. The second chapter looks at UK exports (British Aerospace, Heckler & Koch, Alvis, GKN, Land Rover, Courtalds and GEC Marine) and policy and concludes that “the Labour government has failed to deliver on the pledges it made”. The report explicitly states that: “Since Labour’s election the human rights record of Suharto and Habibie has been appalling...That the Labour government has still been prepared to enable the upgrade of the Indonesian military for commercial reasons is scandalous”. A third chapter considers other exporting countries, including the USA, Australia, New Zealand, Russia, France, Germany, Belgium, Sweden, Thailand, South Korea, Japan, South Africa and China. Available from: CAAT, 11 Goodwin Street, Finsbury Park, London N4 3HQ; Tel. 0171 281 0297; email: enquiries@caat.demon.co.uk

## NORTHERN IRELAND

### NORTHERN IRELAND

#### Sinn Fein negotiators bugged

Sinn Fein (SF) chief negotiator Gerry Adams called a press conference at the beginning of December to denounce the British security services after sophisticated surveillance equipment was found in a car that the SF team had used during Good Friday Agreement talks. The device, believed to include a Global-Positional Satellite tracking device and a radio to transmit conversation, was carefully wired into the body of the car. Adams demanded an explanation from prime Minister Tony Blair who responded to a question in the House of Commons by saying “I never comment on security allegations.” However, he later suggested that the device had been placed to protect the SF team. Adams was unconvinced by Blair’s spin, claiming that he felt “shafted” by the discovery. This is not the first time the government has bugged the Sinn Fein negotiating team at delicate stages of the peace talks; Sinn Fein discovered a device planted in their Stormont office earlier this year and in 1998 a key negotiator, Gerry Kelly, discovered that a house that he used had been bugged.

#### Northern Ireland - new material

**Forget the weapons and learn to trust Sinn Fein**, Michael Oatley. *Sunday Times* 31.10.99. Oatley is “a former MI6 controller for the Middle East and counter-terrorism, and for Europe.” Here he argues that decommissioning of weapons is not a central issue to the peace protest and that Sinn Fein “is serious about peace.”

**For queen and country**, Liam Clarke. *Sunday Times* 21.11.99. Article on the “Force Research Unit” (FRU) a military undercover operations unit that, according to a former member, was responsible for an arson attack on the offices of a police inquiry into collaboration with loyalist paramilitaries. The government has sought an injunction preventing further revelations of the undercover unit’s “dirty tricks”.

**“A new beginning: policing in Northern Ireland”**. CAJ’s commentary on the Patten report. The Committee on the Administration of Justice (November) 1999, (Submission no S.91) pp24, £3. This is the CAJ’s submission to the Secretary of State regarding the Patten report on the Royal Ulster Constabulary. It tackles Human Rights; Accountability; Policing with the Community; Policing in a Peaceful Society; Public Order Policing; Management and Personnel; Information Technology; Structures; Size of the Police Service; Composition of the Police Service & Recruitment; Training; Education and Development; Culture, Ethos and Symbols, Cooperation with other police services and Implementation.

**Recent developments in the Finucane case: Additional submission to the Criminal Justice Review**. Committee on the Administration of Justice (October) 1999, pp8. This paper updates CAJ’s submission to the Criminal Justice Review. It records significant developments in the Pat Finucane murder including evidence from William Stobie, a police informer who was charged with Finucane’s murder last June.

#### Parliamentary debate

**Political Progress in Northern Ireland** *Lords* 22.11.99. cols. 190-202

## POLICING

### UK

#### Police clash with N-30 protesters

In London the declaration of an international day of action on 30 November by civil rights and anti-capitalist campaigners in response to the start of World Trade Organisation (WTO) talks in Seattle, led to demonstrations in several locations throughout the morning and afternoon, including Trafalgar Square and Bow Street Magistrates’ Court. In many instances, police greatly outnumbered demonstrators.

A joint operation, “Operation Benbow”, involving three forces, the Metropolitan Police, the City of London Police and the British Transport Police was coordinated by a team of 50 officers. This operation involved a large police presence, including riot officers at Euston station before there was any hint of trouble. This played a part in starting clashes between police and demonstrators leading to forty arrests with seven people needing treatment in hospital.

Reclaim the Streets, organisers of last June’s J-18 carnival in the City, which ended in widespread confrontations between the police and demonstrators, organised a demonstration outside Euston station which was attended by around 2,500 people. Speakers at the demonstration included an RMT rail trade unionist, a nurse from University College Hospital who spoke against job losses resulting from privatisation, the Campaign Against the Arms Trade, who pinpointed Labour links to arms producing businesses, an anti-GM crops activist, the “Free Mumia Abu-Jamal” campaign and the Movimiento Zapatista. The speeches called for “fair trade rather than free trade”.

The demonstration was noisy but non-confrontational, despite a heavy police presence, with police photographers taking close-up pictures of protesters to identify individuals taking part. At 18:55 the clashes began as demonstrators were leaving the rally via the Eversholt Street exit from the bus terminal at the front of the station, where they were met by policemen. Brief clashes, during which a barrier was thrown at a police cordon, were followed by 20 minutes of police charges with shields and batons, clearing an area largely filled by passive bystanders. Police closed in from all sides, as protesters overturned and set alight a British Transport police van which, inexplicably, had been left unattended in the bus terminal. Eventually 100 people were surrounded by policemen and photographed, as a brief sit-in protest by demonstrators

demanding the release of those encircled partly blocked traffic along the Euston Road.

*Independent 1.12.99., Guardian 1.12.99.*

## NETHERLANDS

### Do-it-yourself sleuthing

A questionnaire, the police response to an arson attack on Bierset airport, has been sent to the airport's 1,000 employees. The list of questions effectively asks them either to admit to the crime themselves or to inform on their workmates.

The questionnaire, starts by asking the workforce "if you were in charge of the investigation into this fire, how would you proceed?" After asking about people's whereabouts on the night of the fire, it says: "did you start the fire? If not do you know who did?" and the next questions are "Should we believe you? If your answer is yes tell us why?" and "What would you say if we found out that you had been lying to us?". The final question put to the employees asks them to name the amount of compensation they are prepared to pay if they are found guilty of starting the fire. The methods being used have been described by the Liege League for Human Rights as "most unusual".

Whilst the questionnaire itself appears to have an element of farce about it the methods used to force it upon the airport employees are disturbing. Anyone who fails to complete the questionnaire has been threatened with arrest and interrogation. This has provoked a storm of protest amongst the workforce. The local trade union has condemned the questionnaire as undemocratic whilst the League for Human Rights pointed out that: "it is too easy just to look for the perpetrators amongst the workforce. On top of this threatening people with interrogation is pressurising potential witnesses."

One of the men in charge of the investigation, investigating magistrate Closon, recently decided that a case in which a man was killed did not have a racial element. This was despite the fact that witnesses described the assailants as having shaven heads, combat boots and screaming "dirty nigger".

*Solidaire 27.10.99.*

### Policing - in brief

■ **Netherlands: Police create eco-activist database:** Various police authorities have come together with the *Binnenlands Veiligheidsdienst* to create a national eco-activist database. Their aim is to collect information regarding activists centrally to prevent them disrupting major construction projects. The scheme involves all the areas in which major construction works are taking place, such as the controversial Betuwelijn high speed rail project or the expansion of Schiphol airport, which are likely to be targeted by eco-activists such as the *Groen Front* (Green Front). The activities of these organisations are normally peaceful yet tend to delay completion whilst costing the police a fortune in overtime. By having a central collection point of information concerning these activists the police hope to prevent such campaigns in the future. The police are particularly concerned that Dutch eco-activists are being inspired by campaigners in the UK who have managed to delay similar projects for years.

■ **UK: Stevens appointed Met Commissioner:** Deputy Commissioner John Stevens was named as the next head of London's Metropolitan police force in August, succeeding Sir Paul Condon. Stevens will take over the 44,000-strong force in January on a five-year contract on an annual salary of around £130,000. Earlier this year he was selected to reinvestigate the murder by a loyalist death squad, allegedly with security force collusion, of civil-rights lawyer Pat Finucane in Northern Ireland. Stevens previous experience, particularly his involvement in

controversial Northern Ireland investigations, led government ministers and the Home Office to conclude that he would be "a safe pair of hands" for the post-Lawrence inquiry Metropolitan police force. At his first public engagement since the announcement, at the London School of Economics in September, Stevens spoke on the problems of corruption and racism due to bad individual police officers. However he was told by the Stephen Lawrence family solicitor Imran Khan that he "must accept with willingness, and not the difficulty shown by his predecessor, that institutional racism exists within the force."

■ **UK: Police pay Silcott £50,000 compensation.** The Free Winston Silcott campaign has welcomed the £50,000 compensation award paid to the prisoner for his wrongful conviction for the murder of PC Keith Blakelock during the Broadwater Farm riots in north London 14 years ago. Silcott, whose conviction for Blakelock's murder was overturned when it was revealed that statements attributed to him by the police had apparently been fabricated. Winston is still battling against a sentence for the murder of a man at a party after acting to defend himself from a knife attack. He has become a vocal campaigner for prisoners' rights and has campaigned against miscarriages of justice on behalf of other prisoners. Scotland Yard has said that it will challenge a £500,000 legal bill arising from the out of court settlement. The Free Winston Silcott Campaign has a website (<http://winston-silcott.webjump.com>) and you can write to Winston at: Winston Silcott B74053, HMP Maidstone, County Road, Kent ME14 1UZ.

### Policing - new material

**Pushing back the boundaries,** Carol Jenkins. *Police Review* 23.7.99. pp20-22. Discussion of the redrawing of police force boundaries, under the Greater London Authority Bill, which will bring the Metropolitan police in line with the 32 London boroughs and will establish a Metropolitan police authority.

**Public Order review,** Jo Cooper. *Legal Action* August 1999, pp17-19. Article on developments in public order and arrest cases covers offensive weapons, random stop and searches, media photographs, obstruction, trespass and racially aggravated offences.

**Grass roots,** Carol Jenkins. *Police Review* 17.9.99., pp16-17. This piece looks at the new ACPO voluntary guidelines on "Codes of practice in relation to the covert law enforcement techniques" which cover five areas: informant management, undercover police operations, intercepting communications, intelligence management and surveillance.

**Is the racist Bobby really changing?** *Black Perspective* No 17 (Autumn) 1999, pp4-11. This article examines the police "PR offensive" since the Stephen Lawrence inquiry and includes an interview with John Grieve, head of the Met's Racial Crime unit.

## PRISONS

### TURKEY

#### 11 executed in Turkish prison

After the death of eleven left-wing political prisoners in Ulucanlar, Ankara's central jail on 26 September, prisoners all over the country protested for about a week, taking over 90 prison wardens hostage. Turkish human rights organisations described the events that triggered off the revolts as a massacre, the Turkish prime minister Bulent Ecevit declared, shortly before security officers stormed the building, "the state must impose its authority, whatever the costs".

After the uprisings, hundreds of paramilitaries surrounded prison buildings around the country. Negotiations, with the help of lawyers and independent intermediaries, ended on 1 October, with the last 17 hostages being released from Bayrampasa prison in Istanbul and the government promising an unlikely prosecution of the security officers responsible for the shootings. The prisoners died from head injuries and gun shots, seemingly fired from close range.

The prison revolts had started when an attempt was made to transfer political prisoners from Ulucanlar to other jails around the country. Although prison conditions in Turkey are appalling, the existence of common sleeping areas had up to now allowed prisoners to organise themselves. The relocation of inmates, and specifically political prisoners, to “modern” jails entails single cell accommodation and therefore isolation and more exposure to abuse by prison staff.

The recent events mirror those of three years ago. Unlike the massacres of Ulucanlar, they have been internationally condemned. Special Branch forces had stormed prisons in Diyarbakir and Umraniye and battered several PKK and left-wing inmates to death. The following 69-day hunger strike cost eleven prisoners their lives. Then, like now, the authorities refused to release the dead bodies for independent autopsy or even return them to the families. After pressure from the families and public protests, authorities have allowed the release of tissue samples which are supposed to identify if the victims of this recent incident were shot from close range. Fellow prisoners reported that those killed were first knocked unconscious and then executed by Special Branch officers.

*Jungle World 6.10.99; Guardian 28.9.99.*

## ITALY

### Death at Regina Coeli

Rome investigating magistrates have opened inquiries into the death of Marco Giuffreda in Rome's Regina Coeli jail on 2 November. Arrested on 28 October and charged with dealing heroin, he had been granted house arrest on the morning of Saturday 30 October, but the judicial order had not been executed, probably due to staff shortages for the All Souls' weekend. Giuffreda had no criminal record, and was a non-chronic hepatitis C sufferer (although police reportedly suggested that he was an Aids sufferer to the press). He began feeling ill on Saturday 30 October, was brought to the jail's infirmary on Monday, and was soon transferred to hospital, after spending two days in the overcrowded “first section” where the newly arrested and drug addicts are kept. Alessandra Beccaro, deputy director of Regina Coeli, describes it as “the nightmare [literally “hell”] of the first section, which is always in an emergency situation, where overcrowding is such that you can't control anything. You don't know what happens in those cells, if the detainees are beating each other up. Or whether a person is ill”.

Giuffreda died in the Spallanzani hospital on Tuesday afternoon, after another hospital transfer, doctors saying he had a “bilateral bronchitis”, and no one from the jail even informed his family of the death. Their lawyer was told of Marco's death when he called to ask why the judicial order for a house arrest had not been carried out.

Following this tragic incident, Giancarlo Caselli, head of the *Dipartimento Amministrazione Penitenziaria* (Dap, Department of Penitentiary Administration), sent out a letter to remind jail authorities that people who are granted house arrest have a right for the judicial order to be carried out “immediately”. His message stresses that any time spent in jail after the order has been received is unlawful, and breaches “principles which are established at a constitutional level”, regardless of whether the

delay has bureaucratic causes. *Il Manifesto* reports that Alessandro Margara, the previous head of Dap, had written a similar letter on 3 June 1998, in which he criticised jail administrators for delays in the execution of house arrest orders, which must be immediate. After his departure, deputy head Paolo Mancuso was responsible for a new letter explaining that “the demand that those orders must be executed “immediately on reception” should be interpreted to mean that procedures should be immediately commenced and, when these are concluded, just as immediately the detainee must be transferred to house arrest”. Thus, it relieved authorities of blame if the correct bureaucratic procedure had been initiated. In Giuffreda's case the procedure had been commenced, but his file was awaiting scrutiny for at least 36 hours which cost him his life.

## ENGLAND, WALES & SCOTLAND

### Deaths in Custody

There were three suspected suicides in Scottish prisons in November 1999. Between 1989 and 1999 there were 115 suicides in Scottish prisons, including eight between March and November 1999. According to the *Scottish Sunday Post* this means that more people have died in Scottish prisons in the last ten years than were executed by the state in the course of the century. There were 34 executions between 1900 and 1964. Most of those taking their own lives were prisoners on remand. Up to March 1999 there were 107 suicides, 65 (61%) of whom were on remand. In the previous year there were 15,000 prisoners remanded in custody compared with 18,000 convicted prisoners. Clive Fairweather the Chief Inspector of Prisons has pointed out that:

*every Monday, up to two hundred prisoners are received at Barlinnie prison in Glasgow. Many will be suffering withdrawal symptoms from drug use, fears for the future, and possibly depression. It is nigh on impossible to screen them all quickly and decide who is at acute risk of suicide.*

There have been parallel debates in England and Wales concerning deaths in custody. In September the governor of Brixton indicated that there had been 26 incidents of self harm in the prison during the month while in August there had been 11 incidents of self harm with four attempted hangings. In October more than two hundred people took part in a demonstration highlighting the names of the 1,350 black and white people who have died in prisons, psychiatric hospitals and police cells since 1990. Five hundred and fifty of these deaths were in police cells while seventeen black people died in custody between January and October 1999. In the same month an inquest into the suicide of a male nurse at Walton prison heard that other members of staff had threatened him after he complained about the behaviour of the night staff at the prison. Two other nurses who had made similar complaints about the bullying of staff and prisoners had been on sick leave for several months. The government has refused to release the results of the internal inquiry into the allegations. Louise Ellman the local MP argued that: “this matter must not be swept under the carpet. It raises serious concern about the way the health service operates in prisons”.

These issues come on the back of a number of reports published earlier this year on deaths in custody. In March, the Parliamentary Commissioner upheld a complaint brought by Inquest on behalf of the family of Kenneth Severin, one of three black people to die in prison following the use of restraint by prison officers. The Ombudsman concluded that the “complaint on behalf of Mr Severin's family was fully justified” and added that there were failings:

*Largely attributable to operational shortcomings on the part of PS (Prison Service), in the form of, respectively, inadequate local arrangements to ensure that incidents involving prisoners in the*

health care centre were managed by health care staff, and inadequate local and national arrangements for training regarding the risk of positional asphyxia following restraint. Whether Mr Severin's death would have occurred in the absence of those failings must remain a matter for speculation.

As Deborah Coles of Inquest pointed out “this damning criticism by the Parliamentary Ombudsman is 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”.

These issues follow on from a number of reports published earlier in the year. In April, the Chief Inspector of Prisons published his report *Suicide is Everyone's Concern*. The report noted that the rate of self-inflicted deaths in custody had more than doubled between 1982 and 1998 and that “in contrast to the falling rate of suicide in the community, the rate in prison has increased dramatically”. A report at the same time by the Howard League for Penal Reform came to a similar conclusion. The League pointed out that there had been 82 suicides in 1998 and that while a direct comparison between figures was problematic nonetheless “the suicide rate in the community in England and Wales in 1998 was 12 per 100,000, while the suicide rate in the prison population was 126 per 100,000”.

*The Sunday Post*, 14 November 1999; *The Observer* 31 October & 7 November 1999; *Liverpool Echo* 29 October 1999; *Inquest (1999) Summary of the Parliamentary Commissioner's Report on the death of Kenneth Severin*; *Inquest Law Issue 2 Summer 1999*; *Her Majesty's Inspectorate of Prisons for England and Wales (1999) Suicide is Everyone's Concern*; *Howard League for Penal Reform (1999) Desperate Measures: Prison Suicides and their Prevention*.

## Prisons - new material

**The Rehabilitation of Offenders Act 1974: the case for review and reform.** Penal Affairs Consortium (November) 1999. This paper makes the case for a fundamental review of the Rehabilitation of Offenders Act. It contains three recommendations on spent prison sentences, shortening of rehabilitation periods and an appeal system for offenders who have served a sentence of over four years but who have not reoffended for at least seven years and can show a demonstrable change of lifestyle.

*Prison Privatisation Report International*. Prison Reform Trust, No 31 (October) 1999, pp4. This issue focuses on a new “competitive tendering exercise in the UK and new policy statements by the Government” in light of the decision to withdraw Group 4's prison management contract in October.

**Action on prisons**, Daniel Machover. *Legal Action* October 1999, pp9-10. This piece considers the Prison Service's Performance Standards Programme and the Wormwood Scrubs Action Plan (July 1999) in light of the arrest of 25 prison officers on charges of assaulting prisoners.

## RACISM & FASCISM

UK

### Ricky Reel inquest returns open verdict

The response of the criminal justice system to the Macpherson inquiry into the racist killing of Stephen Lawrence became clear at the inquest into the death of Ricky Reel at Fulham town hall in November. The jury's verdict of an open verdict, based on a lack

of evidence, not only contradicted police claims of an accidental death but also upheld the claims of Ricky's family and friends on the “seriously flawed” original police investigation. The refusal to allow a critical Police Complaints Authority (PCA) report as evidence allowed the police counsel to object to any serious questioning of police witnesses. However, Ricky's mother, Sukhdev, said that the family felt “vindicated” by the coroner's jury verdict.

Ricky disappeared and was found dead in suspicious circumstances, after being racially attacked in Kingston town centre, in October 1997 (see *Statewatch* vol 8 no 1). In the first week of his disappearance the police took no action, and his family and friends carried out searches and interviewed witnesses. A week later Ricky's body was removed from the Thames after what police described as an accident; they refused to investigate other theories despite serious concerns raised about their investigation.

Given the police response the family instigated a complaint against them and an investigation was undertaken by Surrey constabulary under the supervision of the PCA. The report was completed in 1998 and early this year was shown to the family and their solicitor on condition that its contents were not divulged to the public. The family continue to demand that the report be published but it is owned by the Metropolitan police who refuse to release it, erroneously advising the Home Secretary that it is covered by Public Interest Immunity (PII). This issue was raised by the Labour MP, John McDonnell, in speech at the House of Commons on October 20.

Observing that “our policing system has failed the Reel family” McDonnell went on to assert that as important as incompetence was the “culture of secrecy” that permeated, and continues to permeate, the force:

*the culture of defensive secrecy...still pervades our policing system [and] clearly undermined and continues to undermine, the confidence of the Reel family in the capacity of the police to appreciate and respond to their needs.*

In particular McDonnell points to the failure to publish the PCA report, drawing attention to the recommendations of the Macpherson report which clearly stipulate the need for openness and transparency in Recommendation 10:

*investigating officers reports resulting from public complaints should not attract Public Interest Immunity as a class. They should be disclosed to complainants, subject only to the “substantial harm” test for withholding disclosure*

The Metropolitan police argument that the report is covered by PII is undermined further by the ruling in a case concerning the West Midlands police where it was established:

*that there was no general public interest immunity in respect of documents coming into existence during investigation into a police complaint.*

As the PII “defence no longer exists” McDonnell felt justified in summarising the report, listing important conclusions reached by the inquiry. “Overall”, he said;

*the report condemns the [original police] investigation because it lacked focus, it eliminated the racial incident earlier in the evening too readily, it lacked thoroughness, and there was a failure to initiate an early reconstruction of what happened that night. There was also confusion over the ownership of the investigation of the racial incident. The investigators came to the conclusion of accidental death before there was any corroboration, and there was a failure to adopt the policies that would have ensured that professional standards were maintained in the detail of the investigation.*

McDonnell's summary of the report effectively summarised the criticisms of the Reel family. He also asked rhetorically if the “bizarre and tortuous logic to maintain this culture of secrecy” would “mean that the PCA report itself will not even be available

at the inquest?" This, in fact, was the case.

The inquest itself bordered on farce, with coroner, John Burton, whose questions prompted ripples of laughter from the media in the public gallery and counsel for the police refusing to allow his clients to answer any questions that might be based on evidence touched upon by the PCA report. It was clearly a harrowing experience for the Reel family, but the jury's open verdict vindicated their campaign and accepted criticism of the "flawed" and inadequate police inquiry.

However, this was a battle of "spin" for Commander John Grieve, of the Metropolitan police's racial crimes unit. He told the assembled media on the steps of the town hall that the open verdict was "entirely consistent" with what the police had always claimed. This was despite officer after officer telling the inquest that they believed Ricky's death was an accident. But Grieve's attitude was summed up off camera when a passerby approached making racist assertions and asking why he wasn't "arresting all the black muggers" he pretended not to hear, ignoring the comments until she moved on. Then, shrugging his shoulders, he turned to the assembled media and asked "You see what I have to put up with."

*The Ricky Reel Campaign can be contacted c/o SMG Unity, PO Box 304, Southall, Middlesex UB2 5YR; Fax 0181 813 9734; email: reel@ncrm.org.uk*

## WALES

### Police officers disciplined

Five police officers are to be disciplined, following an investigation under the supervision of the Police Complaints Authority (PCA), after the victims of a racist attack were arrested and charged with violent disorder. Marcus Walters and Francisco Borg, were attacked by a racist gang who surrounded their car, smashing the windscreen and attempting to set a pitbull terrier on them, in August 1997. When they attempted to escape they were stopped by police officers who had observed the incident but still sprayed them with CS gas.

Both students were charged with violent disorder although the Crown Prosecution Service dropped the charges before they came to court when it was revealed that the incident, which took place on a busy Cardiff street, was caught on closed-circuit television cameras. Only one of the racist gang was detained at the scene; three men, with links to the National Front, were later convicted for their part in the attack (see *Statewatch* vol 8 no 3 & 4). Walters and Borg are now taking a civil action against the police.

One police officer has been charged by the PCA with neglect of duty and discreditable conduct and will face disciplinary action which could lead to his dismissal. Another officer will be admonished while the three others will receive "advice". However, Marcus Walters insisted that all five officers should be sacked; "There should be five dismissals from the police force", he asserted. His view was shared by Hilary Brown of the local Citizens' Advice Bureau, who played an important role in getting the charges against the two students dropped, and insisted that: "...the recommendations of charges are totally inadequate. All five officers failed the boys on that day and should have been sacked. Some of them should have been charged with criminal offences..."

*Messages of support can be sent to The Butetown Two Campaign, c/o The 1990 Trust, South Bank Techno Park, 90 London Road, London SE1.*

## ITALY

### Bombs in Rome

Two rudimentary bombs were placed in symbolic locations in

Rome on 23 and 26 November, causing widespread alarm but no injuries, one of the bombs did not explode. The first, in Via Tasso, exploded outside a museum commemorating the liberation from nazi occupation. It had been a nazi prison, interrogation and torture chamber in which several partisans lost their lives, run by Sipo (SS security police), from September 1943 until allied troops entered Rome nine months later. The second bomb, which failed to explode, was planted near the *Nuovo Olimpia* cinema, near the parliament, where "The Specialist", a film on the trial of nazi war criminal Adolf Eichmann, was showing. Both bombs were claimed by the previously unknown *Movimento antisionista* (anti-zionist movement), which issued crude anti-semitic remarks and a warning "We have struck behind the Parliament, symbol of zionist power, this time we have been merciful,...what we do next time will be worse."

Investigators have been focusing on right-wing groups, particularly *Forza Nuova* (FN), which have been recruiting among the supporters of Roma and Lazio, the capital's two football teams in the last few years. The FN is affiliated to the International Third Position and its leader, Roberto Fiore, was uncovered running "bogus" Catholic charities in Britain to finance and establish a racist village in Los Pedriches, Spain. Searches by the police and *carabinieri* in the houses of right-wing supporters' groups, skinheads and nazi-skins led to 96 arrests, with 59 persons charged for minor offences (drug-related, petty theft and robbery).

The first major breakthrough came in relation to the second bomb, as searches found gunpowder of the same type, along with bullets. Investigators are allegedly treating this bomb as a separate incident. They believe it was planted by someone who attended the Roma-Newcastle game on 25 November, and was looking to gain a reputation among his peers. The cigarette which left to burn the short fuse attached to the bomb failed to ignite the bomb. Investigators have examined the saliva and have read the bomber's DNA trace. Interior Minister Rosa Russo Jervolino has warned that the government views these intimidatory acts as "a single act ... it is careful to fit it into.. (a)... strategy of neo-nazi and anti-semitic tension".

### Racism - in brief

■ **Netherlands: Bilderberg group's royal roots.** An article in the Dutch magazine *De Groene Amsterdammer* has revealed the leading role played by the Dutch royal family in the founding of the secretive "Bilderberg group". This top-level anti-communist think-tank, which recently celebrated its 45th anniversary, brought together leading financiers, politicians and generals in the 1950's to plan the west's counter-insurgency strategy was chaired by Prince Bernhard, consort of the former Queen Juliana. This role has now been taken on by his daughter Queen Beatrix. In an interview with the *Groene Amsterdammer* Bernhard reveals how anti-American sentiment led him and others to come together in the Bilderberg hotel in the Veluwe. He also reveals how after having been turned down for funding by the Marshall programme he went to the CIA, who where more than happy to help. Interestingly Bernhard has little to say about his eventual departure from Bilderberg in the wake of his implication in the Lockheed bribery scandal of the early seventies. The article provides an insight into the formation of one of the most secretive top-level organisations of the cold-war era. *Het Jubeljaar van Bilderberg, De Groene Amsterdammer Issue 123:23.99*

■ **Italy: Radical Party linked to fascists.** After the Radical Party's success in the European elections (8.5% of the vote, seven MEPs), two of their leaders, Marco Pannella and Emma Bonino, unsuccessfully tried to set up an alliance with nationalist and fascist parties. They called the proposed alliance with Le Pen's

*Front National*, the *Lega Nord* and *Vlaams Blok* "technical", pointing to the benefits larger parliamentary groupings enjoy. The initiative was aimed at ensuring that "all MEPs", including those furthest from their own views, should be able to fully exercise their power as MEPs. Bruno Zevi, honorary president and one of the founders of the Radical Party, called the initiative "a disgrace", and took the stand, opening the party's July congress, saying: "Explain why you have chosen to register the MEPs in the group that includes Le Pen's racist right." He walked out of the congress, stressing that anti-semitism by Radicals was "unthinkable", and dismissing talk of a "technical alliance" as a betrayal of their historical heritage. *Il Messaggero* 13.8.99., *Il Manifesto* 1.8.99., *La Repubblica* 30.7.99., *La Stampa* 17.8.99.

■ **UK: Racist jailed for explosive devices** : James Shaw, a National Front (NF) parliamentary candidate who played an important role in the organisation during the 1970s, was jailed for nine years at the Old Bailey in November after pleading guilty to possessing explosive devices, racist material and offensive weapons. Police arrested Shaw, who worked as a security guard, in west London last April and discovered two home-made devices in a bag that he was carrying; a raid on his home in Brentford uncovered more devices and NF literature. In mitigation Shaw's counsel told the court: "He has a pathological interest in bombs and hates everyone. He hates everyone equally. That is his problem". *Sunday Times* 28.11.99.

■ **Austria: Haider condemned for Auslander-card plan**: Austria's second largest political party, the racist *Frieheitliche Partei Osterreichs* (FPÖ, Freedom Party), led by Jorg Haider, has called for the introduction of a compulsory identity card for

migrants from outside the EU. The A-card (or *Auslander* "foreigner" card) would help the authorities to track illegal immigration, claimed Haider. The proposal was widely condemned and opponents have compared the cards, which would hold personal information, length of stay, fingerprints and a photograph, with the identity cards that the nazis forced Jews to carry.

## Racism & fascism - new material

*Roma Rights*. European Roma Rights Centre, Newsletter no 3, 1999. This issue of the newsletter focuses on Roma identities, compiling personal accounts and dealing with Tony Gratliff's (French director of Algerian/Romani origin) latest film *Gadjo Dilo*. A special section publishes testimonies from Roma in Kosovo, including a list of those reported to have "disappeared" in 1999. Available from: ERRC, H-1525 Budapest 114, P.O. Box 10/24, Hungary, Tel: (361) 428 2351, Fax: (361) 428 2356, e-mail 100263.1130@compuserve.com, net: errc.org

*European Race Bulletin*. Institute of Race Relations, Bulletin 31 (November) 1999, pp47. The Bulletin contains a round-up of racism and fascism across Europe. It also contains an important and useful feature on "The extreme-Right in local and central government" which includes country profiles and statistics.

**Tackling the beast in Brum: fascism and anti-fascism in the West Midlands**. *Fighting Talk* Issue 22 (October) 1999, pp21. Previewing a planned pamphlet this article gives an overview of the history of fascism in the West Midlands which, "heavily populated and industrialised, has long been an important target of the Far Right." Available from Fighting Talk, BM 1734, London WC1N 3XX (£1.50).

## EU-FBI TELECOMMUNICATIONS SURVEILLANCE PLAN

# Secret services and G8 intervene

### Interventions by the EU's internal security services and a G8 Sub-group on surveillance and data protection

The EU-FBI telecommunications surveillance plan has been held up since early summer over the revised set of "Requirements" to be laid on internet and service providers (ENFOPOL 19) and the draft Convention on Mutual Assistance in criminal matters - now held up for nearly two years due to the inclusion of provisions on interception and the inability of EU member states to reach agreement (see *Statewatch* vol 7 no 1, 4 & 5; vol 8 nos 5 & 6; vol 9 no 2).

The intervention of new players is partly responsible for the hold-up. First, the internal security services of EU member states have directly intervened because they considered the restrictions of their "freedom" to conduct surveillance could be limited by the draft provisions in the draft Convention. The potential role of the internal security services (like MI5) cropped up earlier in the discussion over the provisions in the draft Convention because the UK is the only EU member state to formally give, by law, a role to MI5 to assist the police in their crime role. The other EU member states have no problems as they maintain the draft Convention only covers "crime" and policing - which has always begged the question that if this Convention is not to cover surveillance by internal security services what does? The answer is nothing covers or limits or makes accountable their surveillance of telecommunications.

The Justice and Home Affairs Council on 2 December agreed that the draft Convention, while placing a general obligation on the "intercepting" member state to inform the member state in which the interception is carried out, this will only apply to "criminal" proceedings and investigations - and not to "interceptions undertaken for national security purposes".

The effect is that the surveillance of telecommunications by internal security agencies is left untouched by the draft Convention but allows them to take advantage of access to telecommunications being opened by the "Requirements" to be laid on internet and service providers under the EU-FBI plan.

The EU-FBI telecommunications surveillance plan is intended to serve the "law enforcement community" as distinct from the "military-intelligence community" (which uses ECHELON). The latter covers intelligences agencies like NSA and the CIA in the US and MI6 (the overseas Secret Intelligence Service) in the UK. This leave internal security agencies primarily dependent on the EU-FBI plan for its surveillance work. So, although EU member states have to at least create the appearance of control and accountability and even data protection for policing activities these provisions could limit, or lead to the exposure of, internal security service surveillance. This is especially the case when the line between traditional "internal security" and "combating crime" is increasingly blurred in fields like computer crime, environmental and political protests, and "illegal immigration".

### Secret groups

While the draft Convention on Mutual Assistance in criminal matters sets out powers of surveillance and interception within the EU the "Requirements", which will also apply within the EU, are subject to international agreement through a series of hidden working parties.

These secret working groups include: i) the EU Police Cooperation Working Group (Telecommunications) and its

Technical Questions Sub-Group; ii) IUR, the International Users Requirements group; iii) STC, Standards Technical Committee; and ILETS, International Law Enforcement Telecommunications Seminar.

ILETS is a key group comprising the Cold War UKUSA countries - the US, Canada, Australia, New Zealand and UK - plus Hong Kong and Norway and 14 EU member states (15 minus the UK which was a founding member). Aside from strictly technical questions membership of these groups overlap so that EU member representatives on the Police Cooperation Working Group may also be on ILETS. The drafts of the original IUR 95 "Requirements" adopted by the EU in January 1995 and the proposed revisions in 1998 (to include internet service providers and satellite phones) in ENFOPOL 98 (and its two revised versions) came from this group into the EU policymaking process.

### The "Lyon Group"

While ILETS works on technical matters (and their policy implications) a much more high-powered driving force on the global interception of telecommunications is the "Lyon Group" and especially its "High-tech Crime Subgroup of G8 Senior Experts' Group on Transnational Organised Crime."

The G8 Senior Experts' Group on Transnational Organised Crime came out of the G8 Prime Ministers meeting on 27 June 1996 in Lyon, France. The first "G" Prime Ministers' Summit was held in Rambouillet, France in 1975 comprised of US, France, UK, Germany, Italy and Japan. Canada joined in 1976 (making G7) and in 1977, at the London Summit, the European Community joined its membership. The European Community's delegation is made up of a EU Presidency representative (currently Finland), the head of the European Commission (Romano Prodi, who previously attended as part of the Italian delegation) plus the Commissioner for external affairs (Chris Patten). Since 1994 Russia attended its meetings and became a full member at the Birmingham Summit in 1998, making up G8.

All "Summit" meetings, such as EU Summits and G8 Summits try to sort out outstanding differences between members but the real work is done beforehand by officials and "experts" - and much of the latter's work goes through "on the nod" into the final conclusions. G8 Summits (and other meetings) are prepared by high-ranking officials known as "sherpas" and "sous-sherpas". National "sherpas" are each supported by two "sous sherpas" (one covering foreign affairs and finance, the other "political" matters including justice and home affairs).

Alongside G8 is "P8" ("Political 8") which deals amongst other matters with terrorism, crime and illegal migration which since the Lyon decision has led to the creation of a series of other groups and meetings (such as the G8 Justice and Interior Ministers who last met in Moscow on 19-20 October 1999).

### Sub-Group on High-Tec Crime

The "problems" for the G8/P8 states were broadly defined at the 1998 Birmingham Summit under the UK Presidency as:

*The main obstacle facing a G8 achievement of any goals set out in Birmingham appears to be the barrier of red tape obstructing law enforcement agencies from cooperating across national jurisdictions. The G8 will need to address the inconsistencies between justice systems from one member country to another if the problem of international crime is to be dealt with effectively.*

The key phrases here are "red tape" (procedures, control and accountability) and "inconsistencies between justice systems" (data protection and legal restrictions). In this context the Minutes of the G8 Subgroup on High-Tec Crime held in Paris on 18-21 May 1999 sets out a whole agenda influencing the EU-FBI plan.

The first issue the Minutes cover is the "Preservation of Traffic data" covering "historical traffic data" and the "collection of future data". The Minutes state that:

*Delegations agreed that privacy legislation (e.g. implementing the 1995 and 1997 EU Data Protection Directives), national laws implementing the Directives, and market forces are among the significant obstacles to law enforcement's ability to obtain historical data for use in criminal investigations. (Disclosure of that traffic to foreign investigators is also complicated by these and other impediments). Privacy directives, to the extent they require the deletion of connection information, can effectively erase the trail of connections that might otherwise identify the source of criminal activity.*

It goes say that a further impediment is "anonymous free Internet services.. contribute to the absence of useful traffic data."

Two solutions are suggested for this "problem". The meeting of G8 Justice and Interior Ministers in Moscow on 19-20 October adopted "Principles on Transborder access to stored computer data" defined simply as covering "law enforcement agents employed by law enforcement agencies.. investigating criminal matters". The "Principles" say "each State" will ensure that data is preserved, "particularly data held by third parties such as service providers" for the purpose of seeking:

*access, search, copying, seizure or disclosure, and ensure that preservation is possible even if necessary only to assist another State.*

The second "problem" with "historical data" is that there is no obligation for service and internet providers to keep data of their users messages etc. The 1997 EU Directive on Telecommunications Sector Data Protection allows service providers to keep traffic data for billing disputes but this is rarely used as users are not billed by individual connection. Some countries allow traffic data to be preserved to guard against subscriber fraud but the Minutes observe there are no provisions for "infrastructure protection" or "other suspected illegal activity". The Sub-Group's view is that G8 should prepare "G8 Recommendations on Data Preservation" and that at national level the EU Directive should "either mandate or allow ISPs to retain particularly critical categories of traffic data for minimum time periods."

As to "future traffic data" ("real-time connection information", as it is happening) a number of delegations reported that national laws "imposed heightened limitations" on the "ability of law enforcement" to obtain future traffic data and "share it with foreign law enforcement". Several countries treated "future traffic data" as "interception" which "involves more stringent prerequisites and may only be available for certain offences". Moreover, although national laws may permit the "capture of future traffic data for domestic purposes, its laws may not permit it to do so solely for the benefit of a foreign state". The Sub-Groups solutions to this "problem" include treating "future traffic data" on the same basis as "historical data" to avoid being defined as interception and amending Mutual Legal Assistance Agreements (MLAA's) and national laws to allow interception on behalf of foreign states and agencies.

It also suggests that "important investigative techniques" could be used: "for the benefit of a foreign government and in the absence of a criminal offence or serious criminal offence, in the conduit country". This perhaps fits in with the "hypothetical intrusion exercise" the Sub-Groups agencies are testing their investigative techniques on - this suggests an interventionist, proactive approach which could "interfere" with telecommunications.

The "Principles on Transborder Access", agreed in Moscow, also covered instances where there was a formal request for access to data (under MLAA's) and "Transborder access to stored data not requiring legal assistance" - this latter aspect covers accessing "publicly available (open source) data" and:

*accessing, searching, copying, or seizing data stored in a computer*

*system located in another State, if acting in accordance with the lawful and voluntary consent of a person who has the lawful authority to disclose to it that data.*

In effect, US or UK security agencies could gain access to data where authorised to do so by a US or UK multinational operating in the surveilled country.

The G8 states have set up a 24-hour "point-of-contact network" that also acts as a "warning system" which "could be used proactively". All EU and Council of Europe states have been invited to join the network, with Spain and Denmark responding first.

### EU problems

The Irish government has told the EU that it is currently unable to cooperate fully in assisting other states on the interception of telecommunications. Under present legislation "interception cannot be ordered to assist in the investigation of a criminal offence in a foreign jurisdiction." If, however, a foreign law enforcement agency is "cooperating in a joint investigation" with the *Garda Siochana* then it is up to the GS Commissioner to decide whether to make an application for "interception authorisation".

The EU Directive on Data Protection does not cover justice and home affairs issues and only recently have the Council (EU governments) been considering whether or not to include such provisions in a series of measures - some adopted, some planned such as Europol, the Customs Information System or Eurodac. One of the reports on this internal discussion says:

*"if the objective of the Horizontal Working Party on Data Processing were primarily to look for "the lowest common denominator" in physical data protection under the Third Pillar, how would it be possible to disregard Council of Europe Convention No 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data?" (emphasis in original).*

In its 31st report the UK's House of Commons' European Scrutiny Committee has said that it is: "somewhat surprised that the UK does not impose restrictions on the use of information it supplies to other EU member states". This arose in reaction to the Home Office's comments on a German proposal for data protection to be inserted in the draft Convention on Mutual Assistance in Criminal Matters. The proposal would allow intercepted data supplied to another state "not only to be used for the purpose for which it has been communicated but also for other purposes", including unrelated criminal investigations and prosecutions. The Home Office comments:

*This proposal may be controversial since some Member States provide information on condition that it is used only for the purposes specified in the request, or for other purposes with the prior consent of the requested state. The UK does not impose this condition.*

The UK therefore supports the German proposal because "it would avoid the need for prior consent from the requested state before making use of information in other criminal investigations."

### ECHELON and Italy

On 3 March 1999, the Rome attorney's office opened a preliminary investigation into ECHELON to find out whether this surveillance activity violates the Italian penal code. Stefano Rodota, the Italian ombudsman for the protection of personal data, welcomed the initiative because "it can contribute to offer public opinion with precise information to base its judgements on." He added that research into the technical aspects of the ECHELON network is crucial in order to develop legal and technological measures which, he feels, must be established at a supranational level, due to ECHELON's characteristics. He was critical of the refusal by countries involved in the ECHELON network to respond to allegations, in spite of an explicit request

from the European Parliament. Rodota said it was not a simple question of national sovereignty "through this surveillance, one effectively enters the physical borders of a country. What suffers is the freedom of every citizen, whose physical movements and communications are controlled, step after step." Furthermore, he reasons, if it is used to discover commercial information, as has been alleged, such a network becomes invaluable.

*"Echelon - Dichiarazione del Prof. Rodota all'Agenzia Agi su avvio indagine Procura di Roma", 3.3.99.*

### ECHELON and Denmark

"We know that we don't know anything apart from what has been reported in the press". This is in essence the response of Danish ministers when asked about possible Danish involvement in the international surveillance system ECHELON. The latest attempt to get information about ECHELON was during a debate in the Danish Parliament 9 December. Three Ministers - Justice, Defence and research - were asked to answer the following question from the MP's, Mr Keld Albrechtsen (the Red-Green Alliance/Enhedslisten) and Mr Knud Erik Hansen (Peoples Socialist Party/SF): "What can the ministers say about the parliamentary control of ECHELON and other surveillance systems abroad and at home.. and what are Government intentions to strengthen parliamentary control?" The Minister of Defence, Mr Hans Haekkerup, said: "Neither the Ministry of Defence nor the military intelligence participates or contributes to ECHELON. But during the debate he repeated what he had already said to the parliament's Europe Committee in September: Denmark has established co-operation agreements with a number of countries leading to information being exchanged. The interception of communications by the military intelligence service is only related to Danish security interest abroad. But he also admitted that Denmark receives information's from foreign intelligence services and that he did not know if they had been intercepted according to legal guarantees for the individual. The debate ended with a majority of the parties - "the unified listening parties" as they were called during the debate - in parliament rejecting the proposal from Enhedslisten and SF. The Danish debate about ECHELON has now been going on for nearly three years and took off again when British journalist Duncan Campbell spoke at a meeting in Copenhagen in September about the report "Interception Capabilities 2000".

*P8 - Senior Experts Group Recommendations: "To combat Transnational Organised Crime" (Paris, 12 April 1996); Summit Performance Assessments by Issue: G8 1998 Birmingham: Crime; Evaluation Report on Ireland on Mutual Legal Assistance and Urgent Requests, ref 9079/99, CRIMORG 70, 18.8.99; Protection of personal data in the Third Pillar of the European Union: Proposals on determining the remit of the Horizontal Working Party on Data Processing, ref 7718/99, JAI 36, 26.4.99; Draft Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union - data protection, from the German delegation, ref 11084/99, COPEN 37, 17.9.99; Select Committee on European Scrutiny, 31st report, 19.11.99.*

## New phone and fax numbers for Statewatch

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# Draft regulation on public access

The European Commission's draft regulation on public access to documents was "leaked" to *Statewatch* before being considered by the full meeting of Commissioners who are expected to discuss it in January

Under Article 255 of the Amsterdam Treaty the Commission was charged with drawing up a draft regulation governing the public's "right of access" to documents from the Council, the Commission and the European Parliament. The draft regulation has to be adopted, by co-decision, within two years of the Amsterdam Treaty coming into effect (by the summer of 2001).

The regulation, and subsequent rules of procedures to be drawn up by the three institutions, would replace (and have the force of community law) the Council decision of 20.12.93 (93/731/EC), the code of conduct concerning public access to Council and Commission documents (6.12.93), and the subsequent rules of access adopted by the European Parliament.

Article 1 of the draft regulation says that the "Scope of application" instead of setting out the right of access sets out instead all the documents to be permanently excluded from the right of access. Under the present 1993 Decision (Council) "the public shall have access to Council documents" (Article 1.1). There currently are *no exceptions as to which documents the public can apply for* (the request may be refused under the present specific and limited rules under Article 4 and the applicant has the right of appeal). This Article sets out a whole range of exceptions which the public cannot even apply for. The documents to be *permanently excluded* from the right of access cover the majority of documents produced by the institutions and include: a. working documents including those produced under the umbrella of the officials' "freedom of thought" and discussion papers (Article 1.2); b. "other working papers" including all reports/documents leading up to a policy decision or report on practice. The wording here might seem ambiguous, it says these "working papers" will not be accessible "until the taking of the formal decision".

This could mean that such documents would become available at the point of the final decision or after the final decision. The actual intent however is set out in the unpublished "communication" by the Commission. This says:

*"an embargo could be imposed.. to delay access to certain documents to avoid any interference in the decision-making process and to prevent premature publication of documents from giving rise to "misunderstandings" or jeopardising the interests of the institution (eg: granting access to preparatory documents only after the formal adoption of a decision)." (Discussion paper on public access to documents 23 April 1999, Commission)*

This would completely exclude civil society from playing any part in the decision-making process.

Having excluded most documents from the right of access Article 4 then greatly extends the current exceptions from access in the 1993 Decision. Documents may be refused, in addition to the present restrictions, to those documents which could "endanger the protection of the public interest" where they concern "defence", "relations between member states or the institutions and organs of the community or the outside community" and the "stability of the Community legal order". And, in a catch-all conclusion under "public interest" says this includes "preparatory measures".

Article 7 gives discretion to officials, by finding an "amicable solution", where applicants make "repeated requests", after consulting them - in practice applicants are rarely "consulted", the institution makes a decision against which the applicant has to appeal. Article 8 would introduce an entirely new restriction on freedom of information, not in the current 1993

Decision, forbidding applicants from "reproducing" documents. Such a provision has no place in democratic society and displays the authoritarian instincts of the officials in the institutions. Article 10 would place a "gag" on member states' national laws on freedom of information and would impose an EU-wide ban on the provision of documents.

## Europol and access

In April the European Ombudsman, Mr Jacob Soderman, launched an own-initiative inquiry by writing to Europol asking if they had adopted rules concerning public access to documents. On 15 July Mr Storbeck, the Director of Europol, replied that: "I am willing to consider our possibilities to adopt general rules on public access in the near future." On 24 September Mr Soderman replied welcoming the response and asked to be kept informed "on progress". The Ombudsman's own initiative inquiry remains open.

## General Affairs Council decision

The General Affairs Council on 6 December adopted a decision to extend its policy on public access to documents, with Spain voting against on the grounds that any change should wait until the new regulation is agreed. Under the decision: i) all agendas will be published, with document references, "where the Council acts in its legislative capacity" (while welcome this would appear to exclude the majority of agendas of working groups which are concerned with non-legislative *practice*); ii) the public register will include references to classified documents; iii) by 1 July 2000 the register of documents will indicate if a document has already been released to an applicant and will automatically be available - *Statewatch* has asked the Council to take a different approach, one supported by a non-paper from Denmark and Sweden, namely that *all* documents should automatically be made available to applicants except for "classified" documents falling precisely under one of the exceptions. The irony of this move is that the availability of documents will be dependent on citizens first applying for them and being granted access - if no one applies for a document it will not be automatically available.

## Call for investigation

Steve Peers, Reader in Law at Essex University, has written to the European Ombudsman asking him to investigate: first concern the Council's failure to publish the Schengen *acquis* - which now forms part of community law. The incorporation of the *acquis* was agreed at Amsterdam in June 1997 and came into effect in May 1999. Second the decision of the Tampere Council in October 1999 to limit public access to documents considered by the "Body" drawing up the Charter of Rights only to those presented at hearings should be challenged.

*Proposal for a European Parliament and Council Regulation concerning public access to documents of the European Parliament, Council and Commission, draft, SG.C./VJ/CD D(98) 159/2, 29.11.99; General Affairs Council, press release, 6.12.99; Steve Peers, letter to the European Ombudsman, 30.11.99; Non-paper on transparency and public access to documents in the EU, from Denmark and Sweden, 6.12.99; Letter from Mr Soderman to Europol, 30.4.99; Letter from Mr Storbeck, Europol, 16.7.99; Letter from Mr Soderman to Europol, 24.9.99. The text of the draft regulation and the Commission's unpublished discussion paper is on the internet at: <http://www.statewatch.org/secret europe.html>*

# The Patten report on policing

## Implementation of the Belfast Agreement limps on as Unionist backlash continues

It was never supposed to be like this. By the time the Patten report was due for publication, the main elements of the Belfast Agreement should have been implemented, including the all-important political institutions - the North/South Ministerial Council, the (N/S) implementation bodies, the British/Irish Council and the government of devolved functions within Northern Ireland itself through a twelve-member Executive Committee answerable to an Assembly. While some provisions of the Agreement were in place by the summer of 1999 - the Human Rights Commission, the Equality Commission, prisoner releases, new victims' policies and commissions reviewing criminal justice and now the Patten Commission on policing (published 9th September 1999) - the governing institutions were not established until December 1999.

The Patten Report (A New Beginning: Policing in Northern Ireland. The Report of the Independent Commission on Policing for Northern Ireland - available at <http://www.belfast.org.uk/report.htm>) was always predicted to be the most controversial element of the Agreement due to the one-sided nature of policing historically and the strong sense of ownership of the Royal Ulster Constabulary by unionists. The Report should have been published in an atmosphere of political consolidation but instead it arrived at a time of political crisis, a crisis so deep that the Agreement itself came close to collapse. The Belfast Agreement (made 10th April 1998) was endorsed in Ireland North and South by a referendum held on 22nd May 1998. The 71% majority in favour of the Agreement in the North (and over 90% in the South) comprised almost universal support by Irish nationalists but unionists were split about 52/48 for and against.

The Agreement envisaged rapid movement on the establishment of the political institutions. Elections for the Assembly were held in June 1998 and a First and Deputy First Minister elected (David Trimble, Ulster Unionist Party and Seamus Mallon, Social Democratic and Labour Party). The Agreement assumes that a transitional Executive would be formed, using the D'Hondt system (Ministers selected in proportion to party strength) immediately following the election, with government devolved in a matter of months. Regarding the sequencing of the North/South political arrangements, the Agreement states "during the transitional period between the elections to the Northern Ireland Assembly and the transfer of power to it, representatives of the Northern Ireland transitional Administration and the Irish Government operating in the North/South Ministerial Council will undertake a work programme, in consultation with the British Government, covering at least 12 subject areas, with a view to identifying and agreeing by 31 October 1998 areas where co-operation and implementation for mutual benefit will take place." The N/S Ministerial Council was not established until December 1999, although Mallon and Trimble announced agreement on matters for N/S co-operation and implementation (as well as on the Northern Departments/Ministries) on 18 December 1998. Since then there have been several high profile attempts to establish the Executive but Trimble's party continued to insist that they would not enter an Executive with Sinn Fein (due two ministries) unless the IRA begins to hand over weapons and explosives. The IRA has stated on a number of occasions that it will not do this, and Sinn Fein maintains the position that it does not speak for the IRA. Furthermore Sinn Fein claims to be honouring the

Agreement which commits parties to "reaffirm their commitment to the total disarmament of all paramilitary organisations ... [and to] confirm their intention to continue to work constructively and in good faith with the Independent Commission, and to use any influence they may have, to achieve the decommissioning of all paramilitary arms within two years following endorsement in referendums North and South of the agreement and in the context of the implementation of the overall settlement." The Irish and British governments engaged in intensive political negotiations in June and July 1999, and went so far as to trigger the D'Hondt system for appointing ministers in the Assembly on 15 July. They had failed to convince the Ulster Unionist Party, however. The Unionists refused to turn up at the Assembly, leaving the SDLP and Sinn Fein as the only parties to nominate ministers. The Executive was then dissolved because it failed to contain at least three Unionists. Seamus Mallon (SDLP) promptly resigned as Deputy First Minister, but David Trimble felt no need to resign and continued to draw his First Minister's salary of £60,164. The two governments then pulled back from the process and asked George Mitchell (the US Senator who brokered the original Agreement) to see if he could make any progress. After talks held in Belfast and London, Trimble went to the 860-strong Ulster Unionist Council (the ruling body of the Ulster Unionist Party) on 27 November, and secured narrow majority support for a motion backing the setting up of an Executive but subject to a commitment to return to the Council in February. Trimble is committed to resigning and collapsing the Executive if the IRA fails to commence decommissioning by February.

If the unionists continue to have serious doubts about the Agreement, then The Report of the Independent Commission on Policing for Northern Ireland only adds to them. The Commission was chaired by Chris Patten, a cabinet Minister in the Thatcher administration and former Governor of Hong Kong, and it had 7 other members with very different backgrounds. There were only three people who worked in Northern Ireland, Mrs Lucy Woods, former Chief Executive of British Telecom in Northern Ireland, Peter Smith, a practising barrister, and Mr Maurice Hayes, previously Northern Ireland Ombudsman and a Permanent Secretary in the Department of Health and Social Services. There were three members from North America: Dr Gerald Lynch, President of John Jay College of Criminal Justice, Kathleen O'Toole, a career police officer from Boston, and Professor Clifford Shearing, Professor of Criminology and Sociology at the University of Toronto. The other member was Sir John Smith, a former Deputy Commissioner of the Metropolitan Police and a former Inspector of Constabulary.

### Origins of the Independent Commission

The Commission's immediate origins lie in the Good Friday Agreement. This called for a new beginning to policing in Northern Ireland and recorded that:

*The participants [in the negotiations] believe it essential that policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operates within a coherent and cooperative criminal justice system, which conforms with human rights norms.*

The Agreement stated that an independent Commission would be set up to make recommendations on the future of policing in line with these accepted principles.

The RUC, which costs over £600 million per year, currently has nearly 13,000 officers made up of 8,500 regular officers, a full time reserve of 2,900 and a part-time reserve of 1,300. In addition, there are 3,000 (full time equivalent) civilians. There is therefore one full-time officer for every 140 people in the population compared with one officer for every 422 people in England and Wales. Northern Ireland therefore has three times as many police officers per head. The Special Branch is made up of 850 officers, some 10 per cent of the total regular force strength. Catholics make up fewer than 8 per cent of uniformed officers.

### **The Commission's report**

The Commission's Report contains a large number of criticisms of the RUC and the way that it is controlled. These are spread throughout the report but taken together they amount to an extensive indictment. The Commission is highly critical of the management system and suggests that the force is, in fact commanded, rather than managed. Over two thirds of the officers considered that their own appraisal system was inadequate and the Commission formed the impression while visiting police stations that, incredibly, officers were not clear what was expected of them in terms of "good behaviour" and many officers spent far too long in one specialist area. This was a particular problem for Special Branch. It also notes the failure of the RUC to keep basic information on its activities. For example, while there is no actual legal requirement for records to be kept of roadblocks, stops and searches, no such records are kept so it is impossible to judge how such policies work in relation to sectarian geography or assumed threats. There is a distinct absence of community policing and this, the Commission claimed, cannot be laid entirely on the security situation. In relation to the use of Plastic Baton Rounds, it was "surprised and concerned" that the government and Police Authority and the RUC have collectively failed to invest more time and money in search of an alternative. On civilianisation, it points out that, over the years, the Police Authority set the RUC modest targets but these have never been achieved. The police estate was found to be in very poor state but the Commission gained the impression that neither the RUC nor the Police Authority, who were responsible for it until 1999, had a strategy for management of it. IT provision within the force was seriously inadequate. Operational officers had very limited access to IT systems and CID officers were completely devoid of any direct computer access. Standard software for murder inquiries available to police forces in England and Wales had to be specifically purchased for one murder inquiry which the Commission observed. It noted, however, that Special Branch had access to such systems but the CID did not. The Police Authority also comes in for criticism, not least for failing to apply a more structured approach to budgetary planning and to costing its policing plan.

### **Policing: "collective responsibility"**

The Commission's Report is radical and is based on a number of underlying principles which are propounded throughout the report. Its key conception is that policing is not something that is carried out for, or on behalf of, a community. On the contrary, it considers that "Policing should be a collective responsibility: a partnership for community safety." At the same time, it argues that neighbourhood policing should be at the core of police work. This radical conception of policing naturally has far-reaching structural and other implications. It means that policing has to be decentralised to much smaller units, that the management style has to be open and delegated, and that every

level of policing is democratically accountable to local neighbourhoods. At the same time, the form of policing has to be far less reactive and much more geared to problem-solving and crime prevention in conjunction with a range of other agencies. In addition, the Commission argued in line with the Good Friday Agreement that the fundamental purpose of policing should be the protection and vindication of the human rights of all.

In line with these principles the Patten Report makes a number of far-reaching proposals which go well beyond recommendations about names (the RUC will become the NI Police Service) and symbols (new insignia and no union flags) which have dominated the headlines. It argues that neighbourhood policing involves a radical decentralisation of both staff and resources so that the entire police organisation supports the officer teams working with the public. On this model of policing the interface between the public and the police becomes the main focus of activity and the old hierarchical structure, with the Headquarters dominating the whole structure, has to be abolished. It therefore recommends that the District becomes the focus of policing with a devolved management and command structure, and with District Commanders having fully devolved authority over the deployment of personnel and budgets. In addition, each neighbourhood will have a dedicated policing team made up of officers who will serve between three and five years in the same neighbourhood. It is proposed that they patrol on foot, have their name clearly displayed on their uniform and would have the power to determine their own local objectives in consultation with community representatives. They should be required to conduct crime pattern and complaint pattern analysis to provide an information-led problem solving approach to policing.

This new form of policing, the Commission argues, must be democratically accountable in two senses: in an obedient sense to both the community which is served and to the law, and secondly in what it calls an "explanatory and co-operative" sense. Here the police and the public must cooperate and work in partnership to ensure trust and effective policing. Police accountability, according to this model, covers a range of aspects including legal, financial and democratic controls and for it all to work, above all, there must be transparency so that the community knows what the police are doing and why. Its major accountability recommendation is that there should be a Policing Board to replace the existing Police Authority with responsibility to adopt an annual policing plan, to negotiate the budget, to monitor police performance and to co-ordinate its work with other agencies involved in public safety and education. It is to have 19 members, 10 of whom should be Assembly members drawn from the parties on the basis of the D'Hondt system. Another 9 will be appointed by the Secretary of State in consultation with the First Minister and the Deputy Minister.

### **District Policing Partnership Board**

The Commission further argues that each District Council should have a District Policing Partnership Board (DPPB) as a Committee of Council, with a majority of elected members and a minority of elected members selected by the Council with the agreement of the Policing Board. In Belfast, because of its size, it recommends that the board should have four sub-groups, including West Belfast. The DPPB's role should be advisory, explanatory and consultative and it would have the responsibility of submitting a report to the Police Board annually, which should be published. In addition the Commission recommends that District Councils should have the power to contribute towards the cost of extra policing. This could either be in the form of extra services from the police, other statutory agencies or from the private sector.

This proposal will mean that populations of around fifty to sixty thousand people in Northern Ireland will have a formal, statutory, democratic body through which to express their views and demands on policing and, more importantly, the statutory body will have the power to change the situation through the provision of additional services. This has the potential of breaking down the state's monopoly in the provision of policing and provides the opportunity of dealing with underlying social problems, and at the same time it will provide some democratic control over the use of private security firms. But the key question is how far these DPPB's will be able to influence policing. The report makes clear that they are only advisory, consultative and explanatory. The District commanders will be firmly in control, although they must take the views of the DPPB's fully into account.

The final important recommendation relating to accountability concerns the notion of operational independence. Currently, Chief Constables throughout the United Kingdom appeal to this notion to oppose any review of their decisions. The Commission recommends that it should be changed in Northern Ireland to make clear that the Chief Constable of the new police service is not in fact independent but can be held to account for his or her decisions. It suggests that the phrase should be changed to operational responsibility to reflect this fact. Although this is a distinct improvement over the current situation, the proposal falls far short of providing any democratic influence over decisions before they take place.

### **Transparency**

The Commission's recommendations on transparency are far-reaching and it appears to be unaware of the extent to which they challenge the thinking of the current Home Secretary on freedom of information. While recognising that it would be inappropriate to release all details of police operational techniques, the principles and the legal and ethical guidelines, including covert policing, such as surveillance and the use of informers, should all be published. It argues that the presumption should be that everything should be available for public scrutiny unless it was in the public interest - not in the police interest - to hold it back. It draws attention to the fact that briefing notes and statistics on a range of issues were not readily available for the Commission's scrutiny.

The Commission, however, makes no reference to the draft Freedom of Information Bill which takes a much more restrictive stance in terms of what information the police should release to the public. Not only will all information held by the National Crime Intelligence Service be totally exempt from access but also any information held by the police or other public body which may "prejudice" the prevention or detection of crime, the apprehension or prosecution of offenders, the administration of justice, the assessment or collection of any tax or duty or of any imposition of a similar nature, the operation of the immigration controls or, the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.

To further enhance accountability, the Commission proposes the establishment of two new offices - a Police Ombudsman (sic) and a Commissioner of Covert Policing. The latter would have a Complaints tribunal with full powers to investigate complaints made to it involving covert police operations. The Police Ombudsperson would not only investigate complaints but would have the power to initiate inquiries or investigations even though no complaint has been received.

But there is no suggestion that the standard of proof in relation to complaints should be altered. The Commission argues that the Ombudsperson should also be responsible for compiling data on trends and patterns in complaints or against individual

officers and to make recommendations based on this analysis. Thrown in at the end, is the controversial recommendation that the Ombudsperson should have access to all past reports on the RUC. These include the Stalker and Stevens reports which have been consistently denied to various judicial bodies and investigations.

The Commissioner for Covert Policing would be a senior judicial figure with responsibility for ascertaining whether or not surveillance, use of informants, undercover operations and the interceptions of communications were justified. In other words, could the same results be achieved by conventional practices and, if not, do the covert methods adopted comply with the law? The Commissioner can initiate inquiries or respond to the police Ombudsperson, the Policing Board, the DPPBs or others. Currently, there is a Commissioner appointed under the Interceptions of Communications Act 1985 to oversee the Secretary of State's power to authorise phone taps. But the role and function is so restricted and the annual reports so bland and uninformative that the post fails to enhance the accountability of the police in this area. Whether or not the proposed extended role and functions of the Commissioner for Covert Policing increase the accountability of the police in this critical area will remain to be seen.

The Commission's proposal that policing should be underpinned by human rights leads to a number of positive recommendations: a new oath acknowledging the importance of human rights, a comprehensive training programme which places human rights to the fore (currently of 700 training sessions only 2 cover human rights - 38 fewer than are spent on drill), the closure of the Holding Centres and the introduction of human rights based performance indicators. However, any good that may come from these proposals are immediately countered by the failure to oppose not only existing Northern Ireland-based "emergency" anti-terrorist law but also the new UK-wide implementation of the Lloyd Report (which seeks to unify anti-terrorist law throughout the UK and make it compatible with current rulings by the European Court of Human Rights). At the same time, Patten makes no suggestions whatsoever about how to deal with officers, who in the past, have been responsible for human rights abuses.

The Commission recommends important changes to the Special Branch which does not appear to have been reformed since the extensive criticisms made by Stalker, despite a government statement to the contrary. Several serving and retired officers reported to the Commission that they considered it as a "force within a force". It was a common observation that sub-divisional commanders often knew little about the activities of the Branch in their areas. In addition, it enjoyed priority status in terms of access to resources. It was able to run a training unit for 90 officers and "even an aircraft" - a fact which the Commission commented upon twice. While recognising the need for a specialist intelligence capacity, the Commission considered it unhealthy to have a "force within a force" and did not consider that the present size of the Branch was justified. It proposed that the Special Branch and the Crime Branch should be brought together under the command of a single Assistant Chief Constable and that district commanders should be fully consulted before security operations are undertaken in their district.

The final set of proposals cover the composition of the new force. It recommends that the approximate size of the police service over the next ten years should be 7,500 and that the Police Reserve should be phased out. This will mean that Northern Ireland still has one officer for every 220 people compared with one officer per 422 in England and Wales. Generous retirement and severance packages should be offered to achieve the reduction. To make the police more representative, Patten recommends that for every Protestant appointed one Catholic should also be appointed.

## Orange and loyal orders

One of the most controversial aspects of the Report is the failure to recommend that membership of the Orange and other Loyal Orders is incompatible with membership of the new Police Service. In an anonymous cultural audit less than 1 per cent of police officers said that they were members of the Orange Order while some 8 per cent said that they were Masons. Most significantly, the Report notes that a number of retired police officers pointed out that membership of the Masons was relatively large in the Special Branch. Masons, of course, were also over-represented in the "force within a force" in the Greater Manchester Police which investigated Stalker's friend Kevin Taylor. Patten therefore lends indirect support to the idea that Stalker's own demise may have stemmed from a Mason conspiracy. But instead of arguing that membership of a secret and/or sectarian society is incompatible with being a police officer, it recommends that membership should be permitted because membership of the Orange Order was large and it did not want any section of society being excluded from the new form of policing. In any event, it felt that the new oath according "equal respect to all individuals" would take precedence over any oaths or qualifications associated with other organisations.

## Reactions and backlash

Even before the Patten Report was published, it was receiving negative responses from the RUC and unionists. The Northern Ireland Office leaked the key findings some two weeks ahead of publication. The Chief Constable, Sir Ronnie Flanagan, responded immediately by writing to every RUC officer saying he was "concerned but not nervous" but recognised that "some of the suggested recommendations will have caused tremendous anguish". According to the Sunday Times, he asked officers to "stay calm". He further elaborated his position to the BBC: "I have something like 16,000 people working in policing in this province and when you include all of their family members you are probably looking at something approaching 160,000 people: ten percent of the population directly affected by what Patten will bring forth... All members should be assured that the entire organisation including all the staff associations and PANI (the Police Authority) will be working flat out to ensure that the interests of all members and their families will be represented... There is no doubt that whatever Patten recommends will have to be implemented very carefully following a consultation period and in the light of the prevailing security situation. Undoubtedly many of his recommendations, whatever they may be, will require legislation and implementation over a lengthy evolutionary period."

At the same time, the Irish edition of the Sunday Times reported that "senior RUC officers have rejected key aspects of the Patten Report and will refuse to implement some of its provisions". On publication day, Flanagan appeared to broadly welcome the report but added "let no-one underestimate the hurt that will be caused by the suggestion that the title should be changed and the emblem and the crest of this organisation should be changed". Two days later he went on the offensive, warning British ministers against cuts in RUC personnel: "At present the security situation is not one that would enable the beginnings of some of those recommendations let alone their full implementation". A few days after this he was quoted as saying that he could not contemplate any role in a police force which allowed paramilitary involvement and could not be part of any move to reduce the RUC's ability to protect the public.

These reactions from the upper echelons of the RUC are a warning that they have the power at best to reject specific proposals which they do not like and at worst to destroy the Commission's attempted reconstitution of policing in Northern Ireland. It is the RUC which advises British ministers on the level of security threat, and they will not contemplate change until that

threat reduces. Clearly, Flanagan's behaviour, and that of his senior officers, raises a fundamental constitutional issue of whether the security establishment is a law unto itself or is under democratic authority. If the government goes ahead with Patten and against his "security assessment" then he will resign, possibly taking many senior officers with him.

There are now weekly press releases from the Chief Constable about the "growing terrorist threat" from anti-Agreement Republicans. The Police Authority has also criticised Patten, complaining in somewhat naive terms that there is no evidence that the change of name will increase the recruitment of Catholics. It has criticised the "Balkanisation" of policing through district partnership boards and has attacked the proposed 50/50 recruitment quotas. Meanwhile, it has put in a bid for an increase in budget to fight ordinary crime.

By the close of the Patten consultation period in December 1999, the RUC was warning the British government that many serving officers are opposed to taking a new oath of office which requires them to carry out their duties with proper regard for human rights. They argue that the new oath implies an admission that they have not respected human rights in the past.

The most vociferous response has come from the unionist camp. Trimble dismissed the Patten Report as the "shoddiest" report he had read in 35 years. His deputy, John Taylor, used the publication of the Report as the occasion for announcing that the Agreement was dead as far as he was concerned and that he was withdrawing from George Mitchell's review. In a radio interview he said in quasi-racist tones that he expected no better from Patten because of his "roots from Galway". Trimble's dismissal of the Report attracted sharp reaction from Patten himself. Explicitly referring to Trimble, Patten stated: "I don't say this provocatively but it really does seem to me that we were given a very clear agenda and I'm surprised that those who gave us that agenda didn't understand what the consequences would be."

Elements within the British Conservative Party have lined up with Trimble in rejecting the Patten Report and backing a Save the RUC campaign sponsored by the *Daily Telegraph*. They appear to be intent on undermining Patten at the legislative stage and will seek to make Sinn Fein's participation in policing structures legally dependent on IRA disarmament. Supporting this campaign in an editorial (28 September) The *Daily Telegraph* complained that Patten belonged to the "culture of Therapy" as opposed to the "culture of discipline": "If the police are nice, the 'communities' will be nice back. Scrap the 'militaristic' culture of the RUC. Make sure that whatever else it is, the force is not a 'force' but a 'service' with 'customers', trained up in racial sensitivity and gay awareness. In other words, the police of the future will owe more to John Inman than to John Thaw.". It went on to complain that the Northern Ireland Police Service involves "political indoctrination" to make members "loyal to the European Convention of Human Rights rather than the Crown". The Patten Report therefore "undermines the theoretical and emotional basis of Britain's independence".

On the Nationalist and Republican side, the Patten Report has received a qualified welcome. The SDLP has called for Patten to be implemented in its entirety and is concerned that the British government may retreat from early commitments to do so. Sinn Fein's submission during the consultation period argued that some of the proposals were useful but that targets were too modest and change would be too slow to come. The Party's preferred option remains disbandment of the RUC and the creation of a replacement service, entry to which would involve human rights vetting. It will not encourage people to join Patten's police organisation on the basis of existing reform proposals.

Draft legislation is due for publication at the end of January with a view to implementation from July 2000.

## “Champion of privacy 1999”

Statewatch was given a “Champion of privacy” award at the annual presentations organised by Privacy International held at the London School of Economics on 18 October 1999.

The award recognised Statewatch’s work on civil liberties in the EU and especially its work on exposing the EU-FBI telecommunications surveillance system.

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University of Oslo

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## Secrecy and openness in the European Union

by Tony Bunyan (October 1999)  
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<http://www.statewatch.org>

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Statewatch’s European network of contributors is drawn from 12 countries.

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