

statewatch

monitoring the state and civil liberties in the UK and Europe

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EU

The “war on freedom and democracy”

The EU Summit of prime ministers on 15 December in Laeken, Belgium, adopted a "Declaration" on the future of the European Union. This speaks of the EU and Europe as:

the continent of humane values, Magna Carta, the Bill of Rights, the French Revolution and the fall of the Berlin Wall; the continent of liberty, solidarity and diversity.. the European Union's one boundary is democracy and human rights

Yet, as the prime ministers agree noble ideals, almost every one of the EU member states is facing one of the greatest assaults on civil liberties and democratic standards they have ever faced.

An EU built on democratic sand?

The justice and home affairs *acquis* in the EU - which covers policing, customs, legal cooperation, immigration and asylum - is comprised of the Trevi *acquis* (1976-1993), the Maastricht *acquis* (1993-199) and the Schengen *acquis* (1990-1999). The democratic input, by national parliaments and civil society, into the *acquis* was virtually nil - and the much-vaunted Tampere Summit Conclusions (October 1999, see *Statewatch* vol 9 no 5) were equally discussed and agreed in secret.

Moreover, the EU applicant countries are obliged to adopt these *acquis* and the Tampere Conclusions without question.

EU response to protests, “foreigners” and policing

The response of the EU governments to the protests in Gothenburg (see *Statewatch*, vol 11 no 3/4 and this issue page 18) and Genoa (see *Statewatch*, vol 11 no 3/4 and this issue page 4) has been to agree to place groups under surveillance (Justice and Home Affairs "Conclusions", 13.7.01) and to lay plans to bring together all the national para-military police units (see *Statewatch* vol 11 no 5). Now a plan is underway to create an EU-wide database on the Schengen Information System (SIS) of "suspected" protestors who will be banned from travelling to future protests (see page 16). Dissent and protest are allowed, subject to surveillance and militaristic policing.

The EU is planning to create a database (also on the SIS) of

all third country nationals inside the EU, both residents and visitors, and if they over-stay an "alert" will be put against their names for detention and removal. Such a database, when supplemented by national SIRENE bureaux "intelligence" could be used to put their activities under surveillance.

In line with the US/Bush letter to the EU in October the idea of creating a new European Border Police Force has moved centre-stage. The European Commission, which put forward the definition of terrorism covering protests (see page 11) has now put forward a whole series of ideas to restrict refugees and asylum-seekers' rights to safeguard EU "internal security".

There is much talk in the *Laeken Declaration* of the role of national parliaments, so when the Europol Convention (1995) is revised for the first time, as is planned, it will be the last time that national parliaments will have any say - they are to be excluded from having a say in future changes which will be the sole preserve of EU governments.

The “war on freedom and democracy”

On 29 November Mary Robinson, UN High Commissioner for Human Rights, the Council of Europe and the OSCE, said:

we call on all governments to refrain from excessive steps, which would violate fundamental freedoms and undermine legitimate rights... The purpose of anti-terrorism measures is to protect human rights and democracy, not to undermine these fundamental values of our societies

The reaction of the EU, and its member governments, to 11 September will have a marginal effect on combating terrorism, whereas the effect on civil liberties and democracy in Europe may be permanent. The EU says, in the, *Laeken Declaration*, that it wants to play a:

stabilising role worldwide and point the way ahead for many countries and people

The example being set by the EU is not one that any democracy would want to follow.

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EU

Ombudsman calls on the European Parliament to take action on Statewatch case

The European Ombudsman, Mr Jacob Soderman, has sent a Special Report to the European Parliament calling on it to intervene in order to get the Council of the European Union (the 15 EU governments) to obey the Ombudsman's findings that documents should be given to *Statewatch*.

Statewatch lodged a complaint with the Ombudsman concerning the Council failure to respond to requests for documents and information in July 2000. The first was a request to the Council for access to all the documents considered at a meeting of the Police Cooperation Working Party (Experts' meeting - Interception of Telecommunications) on 3-4 September 1998 - this concerned the discussion over a document, ENFOPOL 98, to extend telecommunications surveillance to cover e-mails and mobile phones. The Council tried to deny the existence of six documents listed in the "Outcome of proceedings" (the minutes) of the meeting.

The second aspect of the complaint concerns *Statewatch's* request for a list of the documents considered at a series of meetings in January 1999 including any documents not listed on the agenda or in the "Outcome of proceedings" such as "Room documents, non-papers, meetings documents, SN documents". Statewatch argued that, under the Code of Good Administrative Behaviour, citizens were entitled to have a list of all the documents considered so that they could see which views/positions were accepted and which were rejected. The Council failed to supply the lists. Moreover, *Statewatch's* complaint noted that the Council issued the following instruction when its public register of documents went online on 1 January 1999:

Confidential, Restreint, SN and non-paper documents will not be included in the public register. For this reason, from now on these documents will not be mentioned in official Council documents (in particular: on provisional agendas and in outcomes of proceedings).

The Ombudsman found that "the Council's failure to maintain a list or register of all documents put before the Council constituted maladministration and made a Recommendation to the Council. The Council responded by saying it accepted this Recommendation but the Ombudsman's Special Report concludes that its response:

raise doubts as to whether the draft recommendations will indeed be implemented

The Ombudsman view is that the "Council should establish such a list and make it available to citizens. This is vital so that citizens can use their right of access to documents properly". The report concludes that under the new Regulation on access to documents, which came into operation on 3 December the Council is obliged to place all documents on the public register.

This was the eighth successful complaint that Statewatch has lodged against the Council on access to EU documents. This is only the sixth Special Reports that the European Ombudsman has made to the European Parliament and is the strongest power available to him - it usually follows the failure of one of the institutions to respond positively to his Recommendations to change their practices.

Tony Bunyan, Statewatch editor, commented:

The European Ombudsman has laid down a marker that the registers which the Council, Commission and European Parliament are

obliged to make available to the public by 3 June 2002 have to contain information on all the documents considered at all levels of the decision-making process and the implementation of measures"

Heidi Hautala MEP wins again in Court of Justice

On 6 December the Court of Justice upheld the decision of the Court of First Instance in the case brought by Heidi Hautala MEP against the Council of the European Union for refusing to give access to its code on arms exports. The Court found that the Council had refused to consider, or grant, partial access to those sections of the document which were not covered by the exception allowing refusal.

The Court said that:

The Council must promote the widest possible access of the public to the documents it holds. If a document contains confidential information, the Council must consider whether partial access is possible

On 19 July 1999 the Court of First Instance annulled the Council's decision but the Council then appealed against this to the main court.

Council of Europe disappoints

The Council of Europe's "Group of specialists on access to official information" has prepared its final activity report which recommends a very limited form of access to documents. In Article 1 of the draft recommendation it defines an "official document" as any form of information held by public authorities:

with the exception of documents under preparation

The draft Explanatory Memorandum says that "official documents" are: "In principle, unfinished documents are not covered by this notion". It explains this is because there are "different traditions and practices" whereby some member states make documents available before they are adopted and in others documents are not "official" until they are adopted. In effect the Group has recommended the most secretive practice which excludes access to documents until they are adopted - in effect excluding civil society from any say in new measures and practices. As such it is even worse that the new Regulation adopted by the EU on access to documents.

However, the group of specialists also recommend that requests should be refused if they are "manifestly unfounded", unfounded that is in the eyes of the officials dealing with requests. Indeed the Explanatory Memorandum's notes that this includes "plainly abusive" requests where an applicant makes "regular requests designed to hinder a department's normal work" which is the language of the "dinosaurs" for secrecy who still inhabit some corners of EU institutions. It is disappointing that the Council of Europe has failed to give a positive lead on freedom of information/access to documents especially for the new "democracies" of central and eastern Europe.

Steering Committee for human rights: Group of specialists on official access to information: Final activity report (ref: DH-S-AC(2001)7), 24.9.01.

IMMIGRATION

GERMANY

Campaign enters second stage

After the self-organised International Refugee Congress in Jena in May 2000 (see *Statewatch* vol 9 no 6) the travel restriction law (*Residenzpflicht*) became the target and symbol of resistance for Germany's refugee community because of the laws' intolerable impact. After two members of the self-organised refugee group

The Voice successfully fought an imposed fine on grounds of a violation of the *Residenzpflicht* (see *Statewatch* vol 10 no 5), and after a nation-wide "civil disobedience" demonstration in Berlin, the *Residenzpflicht Campaign* is now entering its second stage, where the prosecution of the law's violations is publicly confronted by refugees.

The first public cases involving prosecution on grounds of *Residenzpflicht* violations were those of Sunny Omwenyeke and Cornelius Yufanyi, both members of *The Voice*, one of the self-organised refugee groups in Germany, which also coordinated the Refugee Congress in Jena in May 2000. Both pleaded innocent, maintaining that it was the law which was in violation of the German constitution and international human rights provisions, and not their travelling within Germany. The *Residenzpflicht* is an asylum procedural regulation implemented in 1982 together with the dispersal system, and forces asylum seekers to apply for permission when leaving their designated district, many of which are very small administrative areas which lie in the countryside with inadequate transport systems and social centres. The idea to start a nationwide civil disobedience campaign for its abolition came during the Refugee Congress, after many refugees, including its co-organiser Yufanyi, were criminalised for attending the conference: a decree by the interior ministry of Brandenburg advised administrative districts to refuse the issuing of permits for refugees to attend the conference.

The refugee groups organised a campaign and a "march on Berlin" to demand the abolition of the law and make the *Residenzpflicht* central to the fight against institutionalised racism in Germany, not only amongst refugees but also activists. The nationwide demonstration and the parallel action days in Berlin saw 4,000-5,000 participants, over half of whom were asylum seekers who travelled to Berlin without a permit from their designated districts. The refugee organisations had mobilised support in asylum seekers' centres before the demonstration, which took place under the slogan "Movement is our Right". During the action days, public discussions and exhibitions took place, and delegates among the refugees and asylum seekers presented a motion to parliamentary delegates for the abolition of the travel restriction law. Although Green party leader Claudia Roth spoke in favour of the abolition of the law together with the introduction of the new immigration and foreigner's law in Germany, the new Aliens Act has represented a drastic decline, not improvement for foreigners and refugees rights in Germany (see *Statewatch* vol 11 no 5). Germany continues to deny the right to free movement to asylum seekers in the asylum process.

The cases so far

The first cases were those of Sunny Omwenyeke and Cornelius Yufanyi. Both are active in asylum rights campaigns and increasingly saw their applications for travel permission being denied on grounds of their political activism, with assertions by the relevant Aliens Offices that it was only permitted to travel to political events once a month. Not surprisingly, the asylum seekers saw this as a deliberate attempt by the authorities to deny their freedom of expression as well as their political work against Germany's foreigner laws. Cornelius and Sunny both refused to pay the fines imposed on them after having been arrested whilst travelling to and from political events and announced they would refuse to apply for a permission to travel. The court decided in favour of the accused in both cases. Cornelius however, who also represented *The Voice* at the *Statewatch* conference this year, was ordered to pay the court costs. As he continues to insist on his right to free movement however, he refused pay and will therefore stand trial again on 17 January next year.

The next court case is that of Richard Ndakwe, who was asked to show his permission to travel on 6 April this year, when accompanying a friend to the Aliens Office in Oldenburg. His

designated district is Ammerland. The defence did not deny his presence in Oldenburg, but argued that his presence was not "criminal" and that the regulation was unconstitutional. The court, refused to take a decision on constitutionality and argued that the restriction of asylum seekers basic rights by the Asylum Procedural Law was justified on grounds of "the protection of national security" and "public order". When questioned by the defence why the reasoning of Mr Ndakwe, that he had received an invitation by his friends at such short notice that he was not able to apply for a permission to travel, did not suffice to prevent prosecution, Mrs Sanders, Aliens Office employee, simply declared that if there was no time to apply for a permit he should not travel. Richard was sentenced to pay 200 DM (which he is supposed to pay from his monthly cash handout of 80 DM with no permission to work). He has appealed this decision. The trial date has not been decided yet.

The relevant refugee groups, in particular *The Voice, Africa Forum e.V.* are planning to continue a civil disobedience campaign and take their cases to the highest courts, if necessary to the European Court of Human Rights. They refer to the continued condemnation of the *Residenzpflicht* by the UN High Commission for Refugees for its violation of international law and to Article 13 of the Universal Declaration of Human Rights, which holds that "every person has the right to free movement and the right to a free choice of residence within a state". In its decision from 1997, the German Federal Constitutional Court on the other hand thought that the mere possibility to apply for a permit to travel meant that the law did not violate any basic rights.

Contact details for *The Voice Africa Forum e.V.*: Schillergaesschen 5, 07445 Jena, Germany. Tel: 0049-3641-665214, e-mail: the_voice_jena@gmx.de. If you want to donate to the *Residenzpflicht Campaign*: FFM e.V., Stichwort "Residenzpflicht", Berliner Sparkasse, Account number (Kto.): 610024264. Sorting Code (BLZ): 100 500 00.

ITALY

Amended immigration law proposed

Northern League and National Alliance leaders Umberto Bossi and Gianfranco Fini, who respectively hold posts as Minister for Institutional Reforms and deputy Prime Minister in Silvio Berlusconi's centre-right government, have drafted a substantial amendment to the 1998 Turco-Napolitano immigration law. The 1998 law resulted in a massive increase in expulsion orders (54,135 in 1998, 72,392 in 1999 and 66,057 in 2000) and the holding of migrants in detention centres (CPT, *Centri di permanenza temporanea* - for persons due to be expelled requiring assistance or needing to have further identity checks carried out on them). Interior Ministry figures suggest a high rate of erroneous detention as 3,134 out of 9,768 foreigners detained in CPT's were expelled in 2000.

On 21 November 2001, the Senate's Constitutional Affairs Committee began its scrutiny of the amended law, aimed at sealing Italy's borders, limiting the legal entry of foreign workers to persons hand-picked in their countries of origin, extending the use of detention and making expulsions immediately enforceable. The decree is expected to be adopted without substantial changes in view of the government coalition's majority in both houses. A Committee "for the co-ordination and monitoring of the implementation of the amended law" is planned to increase political control over the management of immigration - it is to be headed by the prime minister, deputy prime minister or a minister appointed by the prime minister. An Interior Ministry working group of experts on immigration would also be set up.

"A law against immigrants"

The proposed law have been strongly criticised by migrant support groups who say that rather than being a law on immigration it is a "law against immigrants". It envisages restrictions on conditions for family reunion, the extension of the maximum period of detention from thirty to sixty days, and requires six years' legal residence rather than five, as is presently the case, to obtain a *carta di soggiorno* (a residence permit lasting for an indefinite period, making holders exempt from visa requirements and granting them the right to work, to vote in local elections and access to public services). Expelled immigrants would be forbidden from returning to Italy for ten years, rather than five, and if they do so they may be imprisoned for between six months and a year, before being expelled again.

Immediate implementation of expulsion orders by forced removal without judicial scrutiny (other than where there are outstanding court cases) is provided for. The only exception is for cases where the orders result from the expiry of an immigrant's residence permit, unless it is thought that the immigrant may not comply. Appeals would be heard by a court in the area where the expulsion was ordered, but expulsions would still take place as appeals can be filed from abroad using Italian diplomatic facilities. Detention will still be enforced if the migrant needs medical assistance or must be identified to obtain travel documents before being expelled. Expulsion would also become an alternative to detention for foreigners found guilty of minor offences and sentenced to prison terms of up to two years.

A disposable workforce?

Workers would be recruited abroad by Italian employers to fill a post (after it has been verified that no Italian workers are available) using new procedures. These involve the creation of permanent immigration counters in local police headquarters and the use of Italian consular offices abroad. Immigrants will receive the necessary documents to work, including visas, personal tax codes and authorisations to work in Italy from the consulates. Residence permits will be strictly linked to employment contracts through the "residence contract for subordinated work", which immigrants must sign at the immigration counter within eight days of entering Italy. Provisions to entitle immigrant workers to social security will result in the establishment by the department for social protection (*INPS, Istituto Nazionale di Previdenza Sociale*) and of an automated database, the Personal Details Archive for Foreign Workers, from which information may be exchanged with other bodies.

Immigrants who lose their jobs will have the remaining period left on their residence permits to find new employment (lasting one year in the case of contracts for a definite period or two years for indefinite period contracts). If the remaining period is less than six months it will be extended to six months. The possibility envisaged in the 1998 law for immigrants to enter Italy with the aim of seeking employment, subject to sponsorship by an Italian national guaranteeing shelter, subsistence and medical assistance during the period of the permit, will be removed.

This new recruitment policy would also place a number of checks and limitations on employers recruiting foreigners. Fines would be introduced for employers who fail to notify the immigration counter of any changes in an immigrant worker's situation, or those who hire migrants who do not possess the required documentation or whose documentation has expired. In these last two cases employers may also be imprisoned for between three months and a year. When applying for foreign labour, employers must state details of their accommodation and working conditions, and make a commitment to pay travel expenses for them to return to their home country upon completion of their employment.

Fast-track asylum procedures and new adjudicating bodies

A new fast-track procedure is envisaged for dealing with asylum

requests, involving new adjudicating bodies named "territorial commissions for the recognition of refugee status". The head of police who receives an asylum application would have two days to send the documentation to the relevant territorial commission who would have 30 days to conduct a hearing and a further three days to ratify a decision. Territorial commissions, appointed by the Interior Ministry, would be made up of a police official, a local government official, a UNHCR representative and headed by someone who is in line to become a *prefetto* (local police chief) who would hold a casting vote. A Foreign Ministry official may participate to provide information on the applicants' country of origin.

The "national commission on the right to asylum" would be responsible for coordinating and providing guidelines for the territorial commissions, and collecting statistical data. It would hold powers regarding the withdrawing or terminating of any status which has been granted. Headed by a police chief, it would also be comprised of an official from the Presidency of the Council of Ministers, an official in line to become a diplomat, a police representative from the Department of Civil Liberties and Immigration and an official from the Department for Public Safety. A representative of the UNHCR delegation in Italy may also take part in meetings.

The proposed law states that: "Asylum seekers cannot be detained purely for their asylum application to be examined". It then proceeds to list instances when detention is allowed, including:

- * to determine their identity and nationality if they have no documents or have used false documents on entry

- * to verify the grounds on which the asylum application is based

- * to confirm the correct procedures for admittance have been followed.

Detention is obligatory if the asylum request is submitted after migrants have been stopped for avoiding border controls, residing illegally, or have previously received expulsion or refusal of entry orders. Detention would take place in asylum seekers' reception centres, the rules for which have not yet been defined.

Legge Turco-Napolitano, D.Lgs. n.286, 25.7.98. (www.noclandestini.com/legge.htm); Ddl Senato 848, 21.11.01. (www.cittadinolex.kataweb.it , immigration); Annuario Sociale 2001, Gruppo Abele, Feltrinelli, May 2001; Brescia demonstration communique, Nov. 2001; Immigrazione: il disegno di legge Bossi-Fini ed il suo contesto, Nicola Coccia and Giuseppe Pelazza, Rosso XXI, December 2001

POLICING

ITALY

Genoa investigation conclusions "unacceptable"

On 20 September the conclusions published by a parliamentary committee looking into events during the G8 summit in Genoa, headed by Donato Bruno, were adopted by the Constitutional Affairs standing committees of the Italian Parliament and Senate. The document drafted by Bruno received the votes of the government coalition majority. Opposition parties described the document as "unacceptable", and both the centre-left coalition and *Rifondazione Comunista* presented minority documents. Events in Genoa led to allegations of police brutality during demonstrations, raids and detention, although the adopted conclusions claim that: "no doubt arises on the positive outcome

of the G8 summit" in Genoa.

Blame for the disorder is laid squarely on the demonstrators, including peaceful demonstrators who were guilty of "tolerating" violent elements by failing to isolate, expel or report them and allowing them to "join and leave [the marches] as they pleased". The unexpectedly large number of violent demonstrators, estimated in the report at 10,000, made it impossible for police forces to use customary techniques for policing demonstrations and avoiding disorder.

Controversial events which are mentioned include a march in via Tolemaide that is alleged to have become violent before reaching police lines leading to a police assault. However, the enquiry heard evidence that *carabinieri* had attacked the via Tolemaide march before it reached police lines while it was still on its agreed course. There is no mention of this, or other evidence, which could be viewed as highly critical of the behaviour of law enforcement officers in the report. Other conclusions outlined in the document are that *carabiniere* Mario Placanica shot Carlo Giuliani in self-defence, police acted legally in their raid on the *Sandro Pertini* school (having reasonably organised a force capable of confronting resistance to the raid) and no complaints can be formulated with regards to events while demonstrators were detained in a makeshift prison in *Bolzaneto carabinieri* barracks. These conclusions dismiss the substantial evidence of abuse which was heard by the enquiry, although they claim that it is necessary to await the results of investigation to draw a balance. The only reference made to possible abuses by law enforcement officers is that "some information surfaced regarding some excesses carried out by individual members of the police forces". The Democratic Left MP Franco Bassanini has responded to the report by calling for a formal investigation committee, commenting: "Not only does the document not clarify [the facts], it also distorts them and contradicts the video footage and documents acquired by the [parliamentary] Committee.

Since the publication of the parliamentary report further evidence of law-enforcement excesses has come to light, contradicting *carabinieri* statements. A ballistic report submitted to investigating magistrates on 10 December on bullets found near the body of Carlo Giuliani indicates that two different *carabinieri* fired shots in *piazza Alimonda* on 20 July. They were fired by two different pistols, both of the kind used by *carabinieri*. On 12 December, Rome daily *Il Manifesto* questioned what the guidelines for the use of firearms was, alleging that it has been admitted by *carabinieri* that eight shots were fired in corso Torino, seven in via Tolemaide and, considering that Mario Placanica (under investigation for voluntary homicide) admitted to firing twice, at least three in *piazza Alimonda*.

Considerazioni conclusive, Donato Bruno, Comitato d'indagine, 14.9.01 (www.repubblica.it/...ica/ gottoventidue/ documentog8/doc1.htm; Repubblica 14.9.01, 20.9.01; ANSA, 10.12.01; Il Manifesto, 12.12.01; www.repubblica.it, 10.12.01.

SCOTLAND

Emergency plans for protests

Emergency plans are to be rushed through which will allow Strathclyde police to spend £1 million to train 600 officers to deal with public protests. They will have helmets with built in face masks and will also carry reinforced see-through shields similar to those used by the Royal Ulster Constabulary (RUC). The goal is to have at least 200 officers who are highly trained in riot control techniques available at any time. They will receive a week's training which will include guidance from RUC officers. The other seven forces in Scotland are understood to be planning similar programmes. Additionally the Strathclyde force is to spend £360,000 on nine special riot control vehicles. Known as Public Order Vehicles they will replace the old Ford Transit vans

which have previously been used. They will have grilles, reinforced glass, special security doors and can be fitted to hold water cannons.

MILITARY

GERMANY

Deployment of armed forces marks drive for a "more active foreign policy"

In line with Germany's drive towards a "more active foreign and security policy", 497 of 635 MPs voted for the deployment of 500 German soldiers under the auspices of NATO in Macedonia at a special parliamentary session on 29 August this year. The initial budget of 120 million DM was increased by 28 million by a special chancellery decision the same day. The decision was contested in parliament due to Germany's constitutional provisions against the deployment of its armed forces abroad, but it was also in line with developments towards the erosion of Germany's passive status within the European Common Security and Defence Policy. A month later, only 40 of the 578 MPs voted against the deployment, 10 abstained. As a result the German contingent was increased by 100-200 soldiers, and for the first time became the leading force on a NATO mission. With the attacks of 11 September, it appears that there will be no parliamentary opposition to armed forces deployment abroad. The Conservatives have now called for constitutional changes to allow for military operations to take place on foreign soil without prior parliamentary approval.

Alongside 3,000 NATO troops, German soldiers took part in the 30-day long operation "Essential Harvest", which oversaw the collection of weapons from Albanian rebel groups under the agreement which was signed by the Macedonian parliament and Albanian rebels in mid-August. The decision was contested from the left and right, although the CDU/CSU (*Christlich Demokratische Union* and *Christlich Soziale Union Deutschlands*) later supported the deployment of German troops when the SPD-led government coalition (*Sozialdemokratische Partei Deutschlands* and the Green party) promised a budgetary increase for the armed forces. Slightly shaken by the near break-up of the government coalition over this vote, Schroeder and his Green foreign minister Joschka Fischer, put their weight behind creating a united front for a positive parliamentary decision on the involvement of the German army in the NATO follow-up operation. This will officially last until 27 December and is supposed to ensure the peaceful return of refugees into politically precarious areas of Macedonia, and avert any renewed fighting between the UCK and the Macedonian army (operation "Amber Fox").

A flexible constitution for a flexible army

On grounds of Germany's history of military aggression, two provisions were enshrined in the German constitution in 1947, which banned its armed forces from becoming active abroad again (Articles 26 I & 87a II *Grundgesetz*). At the beginning of the 1990s, in particular after the 1991 Gulf war, UN representatives as well as leading German politicians started to demand that Germany's army take part in "international crisis management". After several constitutional challenges by the then opposition, the SPD and the liberal FDP (*Freiheitlich Demokratische Partei Deutschlands*), the demand was granted with a 1994 ruling of the Federal Constitutional Court, allowing for the "entry into a system of mutual collective security" (to which the Federal Republic also

committed itself under Article 24(2) *Grundgesetz*), thereby paving the way for "typically related tasks and therefore also the use of the armed forces in military operations". The court interpreted the UN and the NATO as a "system of mutual collective security". Although silent on the question of an EU-led military operation, observers interpret this decision to include the EU. The ruling thereby legalised the involvement of Germany's armed forces in UN and NATO operations, however, it decided that the missions had to be strictly for the purpose of "keeping the peace" and that the government still had to seek a majority vote.

Now the Conservative leadership is demanding the abolition of this parliamentary restriction as well as a more active German army. Shortly before the parliamentary vote on the deployment of German troops in Macedonia, former Conservative party leader Wolfgang Schäuble and Conservative foreign policy expert Karl Lammer proposed a change in the constitution to put the decision on armed forces activities abroad firmly in the hands of the government, ie. with the Chancellery. Given the continuous violation of the principle of parliamentary control over army deployments by the governments (15.7.92. and 2.4.93. in Yugoslavia and 21.4.93. in Somalia), which in themselves were already a break with the principle of "no German army activities abroad" as laid down in the constitution, the way towards a flexible and active German army, militarily enforcing NATO's, the EU's and Germany's interests internationally, seems likely.

That this radical change in the constitutional philosophy on Germany's military role in the EU necessitates a thorough re-think of Germany's foreign policy was not ignored by the Conservative party: on 28 September party leader Angela Merkel and vice party leader and former defence minister Volker Rühe presented a paper in Berlin, entitled "Guiding Principles for a More Active Foreign- and Security Politics". The paper foresees a stronger transatlantic partnership between the EU and America with a view to future military support (or "military solidarity" as they call it) for the United States. It reiterates the CDU's demand for an increased military budget (from the current 46.2 billion to 50 billion DM), because in the face of the recent attacks, the armed forces are under-financed. The CDU's aim to have a permanent German seat on the UN security council is changed in the current paper: "In the long-term, the aim should be a rotation of EU member states for the seats currently held by France and the UK in the security council". One of the seats however, could also be transformed into a permanent EU representative seat for a common security and defence policy, the paper proposes.

Not the first time and not the last

The deployment of German troops in Macedonia is not the first time Germany has involved itself militarily outside Germany since the Second World War. In 1993, the federal army undertook its first military activity abroad in Yugoslavia, a government decision which was later declared unconstitutional by the Federal Constitutional Court for failing to seek a parliamentary vote, although the deployment itself was retrospectively deemed legal through the 1994 ruling. The same year, Germany's army was sent abroad a second time to Somalia (again the Court reprimanded the government for failing to consult the parliament) and in 1997 German armed forces evacuated 116 people from Tirana, Albania's capital city (here the prime minister argued the situation had been so urgent it was impossible to consult the parliament). The first post-war military operation against another sovereign state took place in Kosovo in March 1999, with the beginning of the NATO bombardments (the parliament voted in favour of a deployment of German troops). Later in June, German soldiers made up the largest contingent of the UN Kosovo Force (KFOR).

The mobilisation for the Yugoslav war received widespread criticism after an investigative television programme revealed that defence minister Rudolf Scharping had knowingly lied to the

public when he claimed on 27.4.99, that Yugoslav forces had massacred Albanians in the Albanian village of Rugovo and that the football stadium in Pristina was turned into a concentration camp. Scharping, as well as Fischer, drew parallels to Auschwitz to justify the use of German troops in former Yugoslavia. ("*Es begann mit einer Lüge - Wie die Nato im Krieg um Kosovo Tatsachen verfälschte und Fakten erfand*" - "It started with a lie - how NATO, in the war about Kosovo, falsified and invented facts", a film by Jo Angerer and Mathias Werth, first shown on 8.2.01 on ARD). This film confirmed that Germany's leading politicians had portrayed the conditions in Kosovo as a humanitarian crisis, despite well-founded information by the OSCE and other independent observers, that this was not the case. Henning Hensch, OSCE representative on site, confirmed he had informed Scharping before, that the pictures of the alleged massacre in Rugovo were false, even speakers of the UCK rebel army confirmed that the discovered corpses were the result of a fight between the UCK and Yugoslav forces. Scharping further claimed there were "concentration camp-like conditions" in the stadium of Pristina, a statement which had also been contradicted by reports by independent observers. Heinz Loquai (an ex-general who worked as a military adviser to the OSCE and led a team of unarmed observers who oversaw the ceasefire from October 1998, between the UCK and Serbian security forces) was outraged at this distortion, as "the comparison between Auschwitz and the situation in Kosovo is absolutely scandalous. As a German, one has to be ashamed that German ministers have done such a thing. Because a normal person, a regular German citizen, has to expect legal proceedings to be initiated against him, if he plays down [what happened in] Auschwitz to such an extent."

Postscript: On 16 November the government won a vote of confidence by just three votes which will allow the first deployment of German troops outside Europe since 1945. The vote, only the fourth "vote of confidence" in postwar Germany will allow troops to take part in the "war against terrorism" in Afghanistan.

Frankfurter Rundschau 29.9.01; "*Einsätze der Bundeswehr im Ausland*" (*Bundesministerium der Verteidigung*) August 2000.

Military - In brief

■ **Italy: Carabinieri brigade for out-of-area missions.** In late September the 2nd *Carabinieri* Mobile brigade was activated in Livorno, Italy. The new brigade will include units earmarked for out-of-area operations following last year's re-organization of the Italian paramilitary police corps. The *Carabinieri*, once part of the army, became an independent service under the command of the Chief of Defence Staff. In August 1998 the first *Carabinieri* were deployed to Sarajevo as part of the Multinational Specialised Unit. The brigade currently includes the 7th and 13th Mobile Regiments, based respectively in Bolzano and Gorizia, as well as the *Gruppo d'Intervento Speciale* (GIS), the service's anti-terrorism unit. The Tuscania Parachute *Carabinieri* Regiment will also become part of the brigade. A training centre for operations abroad will be established. *Jane's Defence Weekly* 10.10.01. (Paolo Valpolini)

■ **Europe/US: Anti Missile Air Defence for southern Europe tested.** Immediately before the attacks on 11 September US, German and Dutch forces exercised for the first time a deployable air and missile defence system on NATO's southern flank. The Dutch-sponsored exercise "Joint Project Optic Windmill VI" used US Navy facilities at Sigonella in Sicily during the first half of September. An expeditionary task force in a crisis response environment, involving over 1,000 personnel (495 Americans, 250 Dutch, 245 Germans and NATO liaison officers) was assembled. For observers it was obvious that Optic

Windmill was focused on defending targets throughout Italy against air and missile attacks originating from Northern Africa. The exercise threat nations "Sandasia", "Smalania" and "Romulia" coincided on the map with the real-world nations of Libya, Tunisia and Algeria. The "hostile" nations were described in such terms as "Islamic dictatorship", "extreme nationalist and Islamic" and "unstable-Islamic guerrillas". To counter the threat from chemical and Cruise missile forces operating with former Soviet Union, Chinese, Korean and Pakistan technology, the defending forces used Patriot batteries, a US Navy Aegis destroyer and German operations and control centres. Having started on 27 August, the exercise was cut short by the real-world terrorist attacks in the US. *International Defense Review October 2001 (JLL)*

LAW

UK

Mandatory life sentence tariff

In dismissing the appeals of Anthony Anderson and John Hope Taylor (*Anderson and Taylor v Secretary of State for the Home Department 200 EWCA Civ 1968*) the Court of Appeal held that the Home Secretary, in fixing the tariff necessary for retribution and deterrence before which a mandatory life sentence prisoner could be considered for release on licence, was not acting in breach of the fair trial provisions of Article 6.1 of the European Convention on Human Rights. The appeal followed the earlier dismissal by the Queens Bench Divisional Court of their applications for judicial review of the decisions of the Home Secretary setting the tariff period before which they might be considered for release on licence. The Divisional Court had been sympathetic to the argument that tariff setting is a classic sentencing exercise which should be a judicial function, but felt unable to apply Article 6 as a result of previous European Court decisions, most notably *Wynne v UK*, which held that the mandatory life sentence authorised life long punitive detention. These views were shared by the Court of Appeal, with Lord Chief Justices Simon Browne and Buxton explicitly stating that tariff fixing is a sentencing exercise. Simon Brown rejected submissions from the Home Secretary to the contrary, commenting that setting the tariff is, "in substance the fixing of a sentence, determining the length of the first stage of an indeterminate sentence-that part of which must be served in custody before any question of release can arise." (paragraph 57.) However, whilst the Court recognised that the situation in domestic law is not logical, two factors persuaded it that it had no power to allow the applications.

Firstly, the mandatory life sentence system has been upheld on numerous occasions by both Parliament and the House of Lords, despite criticism. The Lord Chief Justice felt therefore that this was an area where the Courts, including the ECtHR, had shown deference to the will of Parliament. Secondly, the decision in *Wynne* had not been overturned or distinguished and was reaffirmed in *V and T v UK* as providing the basis for distinguishing between the sentences of detention at Her Majesty's Pleasure and the mandatory life sentence. Outside of its impact on prisoners, the view expressed that it is always appropriate to defer to ECtHR decisions, rather than simply taking them into account as required by the Human Rights Act 1998 s2, has potentially serious implications for public law decision making more generally.

Law - new material

The law on extradition: a review. A Justice response. *Justice*, June 2001, pp10. Response to the consultation paper published by the Home

Office in March 2001 (see *Statewatch* vol 11 no 2). Focuses on the radical Tier 1 fast-track extradition proposals to be introduced for EU member states. The report questions whether the justifications for change stand up to scrutiny, whether the Human Rights Act can adequately replace existing safeguards on conditions in the requesting state, and whether minimum common standards, which are not discussed in the consultation paper, should be introduced in the areas of bail, detention, legal aid and interpreters as part of the review. It notes that insufficient attention is paid to protecting the fundamental rights of defendants in requesting countries and expresses concern over the future addition of countries with less than satisfactory legal systems to fast-track extradition procedures. Necessary safeguards which *Justice* argues should be maintained include "a minimum punishability requirement of 12 months imprisonment in the requesting state", double jeopardy, dual criminality, that is, the requirement that a criminal offence be considered as such in both countries (because "the laws of our European partners, like our own laws, are littered with absurd offences that have no place in a modern democracy"), specialty (that the extradited person only be tried for the offence for which their extradition was sought), political offence exception, and *in absentia* trials.

Reforming French criminal justice, Jacqueline Hodgson. *Legal Action* November 2001, pp6-8. This article considers recent changes in French criminal justice to comply with the European Convention on Human Rights and discusses how it contrasts with the UK's adversarial system. Considers the "Criminal procedure code", "Investigatory and judicial roles", "Police custody", "Judicial supervision", "Detention of witnesses" and "Suspects' rights".

Advance disclosure: reflections on the Criminal Procedure and Investigations Act 1996, C Taylor. *Howard Journal of Criminal Justice* vol 49 no 2 (May) 2001, pp114-125. The Criminal Procedure and Investigations Act (CPIA) 1996 introduced a regime for advance disclosure which is at odds with the operational practices of police officers, the Crown Prosecution Service (CPS) and defence solicitors. Discretion in matters of disclosure has largely been returned to police officers with evidence of flawed supervision of the process by both police and CPS. As a consequence errors, whether inadvertent or otherwise, may not be recognised and the result is a system which presents real risks of future miscarriages of justice.

PRISONS

UK

Wormwood Scrubs court case decisions

England's biggest criminal investigation at a jail, involving the criminal trials of 27 prison officers from London's Wormwood Scrubs prison who were accused of assaulting inmates, ended in September with the conviction of six officers. Following their imprisonment the director-general of the Prison Service, Martin Narey, said in an interview with the *Guardian* newspaper that it:

would be naive to suggest that there weren't other incidents at Wormwood Scrubs where other prisoners were abused. There was a culture of violence...which was utterly unacceptable at the time of these appalling assaults

The former chief inspector of prisons, Sir David Ramsbotham, said that a public inquiry should examine "the failure of managers and senior prison service managers to do anything when they knew what was happening, because they were being told" (see *Statewatch* vol 8 nos 2, 3 & 4, 5, vol 9 no 1). Two of the six jailed Prison Officers had their convictions quashed at the Court of Appeal at the end of September.

In 1994 the former chief inspector of prisons Sir Stephen Tumin warned, in his annual report, of "the illegal use of force" against prisoners by staff taking place in the segregation block at

Wormwood Scrubs. Two years later his successor, Sir David Ramsbotham, repeated these concerns. A police inquiry - Operation Mevagissey - was launched following the compilation of a dossier alleging serious assaults on inmates written by the solicitors, Hickman and Rose in 1998. In the summer of 1999 the director general of the Prison Service, Martin Narey, announced that there was evidence to prosecute 27 officers from the prison on charges relating to assaults on prisoners.

September saw the culmination of the criminal trials against the officers and the jailing of six of them after two separate trials at Blackfriars Crown Court. In July three prison officers, Andrew Jones, Daniel Brewer and Craig Atkinson were found guilty of assaulting Timothy Donovan and in September they were jailed for 12, 15 and 18 months respectively. In September another three officers, John Nicol, Robert Lawrie and Darren Flyer were found guilty of assault occasioning actual bodily harm on Stephen Banks and were jailed for between three and a half and four years. The three attacked Banks, slamming him into a wall before charging him with assaulting them and entering into the prison record that he was an inmate known to be violent towards staff. Banks had been told, "There's going to be another death in custody" and "Do you know how easy it is to break a neck?"

Judge Byers, in the Donovan case, told the officers they had

Not only abused the trust and authority placed in you, but clearly your behaviour disgusted colleagues who saw what was going on in that cell. No one who heard those colleagues give evidence could have failed to notice the shock they felt by what they witnessed. During the course of that incident, not only did you let yourselves down but also the public and the Prison Service. (Guardian 5.9.00.)

The same judge, in sentencing the officers involved in the assault on Stephen Banks, told senior officer John Nicol, "If you behave like a vicious thug you will be punished like a vicious thug." Sentencing the officers he added:

I can only conclude that this episode was done for your own bizarre and sadistic entertainment. Such behaviour is bound to outrage all right-thinking people in a civilised society

The Crown Prosecution Service commented: "The CPS is satisfied to have secured justice in the cases of prison officers who have been convicted. Those in authority in prisons have a duty to ensure the safety of those in their care."

However, by the end of September two of the officers involved in the Donovan case - Andrew Jones and Daniel Brewer - had their unanimous guilty verdicts quashed at the Court of Appeal, when Lord Justice Kennedy, sitting with Mr Justice Morland and Mr Justice Silber, ruled that the jury's unanimous verdicts were "an impermissible process of reasoning." They argued that it was a case of restraint of a prisoner, which had gone too far and accepted the defence's reasoning that because the same jury had acquitted the prison officer who was alleged to be the ringleader "how could they convict two other prison officers?"

The Appeal Court decision means that only four prison officers of the 27 charged have been found guilty in the ten trials covering the assaults. Lawyers and campaigning groups representing the alleged victims have said that this is only the tip of the iceberg. Their fears were confirmed when it was revealed by the *Independent on Sunday* (28.10.01) that police are investigating a further 52 allegations of prison officer violence at Wormwood Scrubs in Operation Mevagissey II. Among the claims are allegations of physical and sexual assaults that took place between February and October 2001. At the end of October the Independent Board of Visitors at the prison called for an independent inquiry into the prison, but the Home Secretary claimed that this would be difficult because: "Many of the prisoners at Wormwood Scrubs still have civil claims outstanding in respect of these matters or have cases under investigation with a view to starting proceedings."

Independent 10.8.01, 5.9.01; Guardian 15 & 17.9.01

UKDS to run new prisons

UK Detention Services (UKDS) has been chosen by the Prison Service as preferred bidder for a new 450 place women's prison at Ashford, south-east England and joint preferred bidder with Premier Custodial Group Ltd for the proposed mens and women's prison at Peterborough in Cambridgeshire. Both prisons will be Category B and privately financed, designed, built and run. Ashford is expected to open in July 2003 and Peterborough in 2004. According to the prison service, the Ashford contract is worth about £43m in capital project costs, and £213m overall. Neither UKDS nor Premier has any experience of working with women prisoners in the UK. Making the announcement, Director General of the Prison Service, Martin Narey stated that: "These awards will provide modern prisons quickly and at a cost that represents good value for money for the taxpayer. They will help to relieve the pressure on existing prisons in the London and eastern areas and provide much needed additional places, particularly for women."

A round up of some of the most recently filed accounts of British companies operating prisons, prisoner escort services, electronic monitoring and immigration detention centres shows that Premier Custodial Group Ltd, the UK's largest private prison service operator, had a pre-tax profit of £12.4m for the period 28 September 1999 to 31 December 2000. Revenues were £160.9m. The directors reported that they were "optimistic about the long-term prospects for continued growth."

Wackenhut (UK) Ltd - which used to run prison industries at HMP Coldingley, manages Tinsley House immigration detention centre. The company's revenues for the year ended 31 December 2000 were £22.56m and pre-tax profit was £0.76m.

Group 4 Prison Services Ltd is involved in the design and operation of remand centres and prisons and the provision of associated security services. For the year ended 31 December 2000 the company made a pre-tax profit of £2.68m (£1.96m in 1999) on revenues of £27.25m (£28.05m in 1999).

UKDS operates and manages prisons but also tenders contracts for the design, construction, management and financing of other similar projects. During the financial year ended 31 December 2000 the company continued to run HMP Blakenhurst, held the contract to finance, design, build and run HMP Forest Bank and was awarded a contract to manage the Harmondsworth Immigration Detention Centre. The company made a pre-tax profit of £1.89m (£0.75m in 1999) on revenues of £23m (£11.91 in 1999). The company paid directors fees and pension contributions of £171,000 and paid £80,000 in fees to Nicholas Hopkins Associates for public relations services.

Securicor Custodial Services Ltd's principal activities are prisoner escort, court custody services and prison management operations. The company also has an electronic monitoring contract. The accounts for the year ended 31 September 2000 noted that "concerns regarding the increasing application of performance penalties outside of contractual terms and conditions have been resolved. However, there is continuous customer pressure to deliver improving standards of service in all contract areas." The company's revenues for the year were £36.7m. Pre-tax profit was £238,484 (£1.21m in 1999). The company's highest paid director received £148,695. Total directors' remuneration was £673,000, excluding pension contributions.

National Coalition of Anti-Deportation Campaigns 28.11.01

Deaths in prison and under community supervision

Two recent Home Office Research, Development and Statistics Directorate reports detail statistics on deaths in prison and under

community supervision. Key points in the reports are as follows:-

1. 1,503 offenders died in 1996-1997. Of these, 1,267 were in the community and 236 in prison. Standardised mortality ratios showed that community offenders were almost four times more likely to die than the general population and prisoners were almost twice as likely to die as the general population.

2. Male community offenders had higher death rates than the prisoners for overall mortality, accidental death and homicide. This apparently reflects their greater opportunity to engage in anti-social and potentially life-threatening behaviour such as drug-taking, physical assaults and (drink-driving) related traffic accidents.

3. Death rates in the two offender groups were similar for natural causes and suicide/self-inflicted deaths.

4. Drugs and/or alcohol (as a main or contributing factor) accounted for a greater proportion of deaths among community offenders (46%) than prisoners (3%). Almost two-thirds of accidental deaths and around one third of suicide/self-inflicted deaths among community offenders could be traced to drugs and/or alcohol.

5. For both offender groups, natural deaths were most common among older offenders (45-54 and 55+) and violent deaths were most common amongst young offenders (15-24 and 25-34).

6. Those ex-prisoners who died while under the post-custodial supervision of the Probation Service tended to do so within the first few weeks after being released from prison. Over one-quarter of all deaths had occurred within four weeks of release and by 12 weeks over half of all deaths had occurred. Accidents (often involving drugs and alcohol) accounted for the largest proportion of these deaths. Past research has identified offenders in prison to be at higher risk of death than the general community and suicide the biggest killer of all prisoners. Risk factors include being young, male, unemployed before imprisonment, mentally ill, having substance mis-use problems and a history of self-harming. There is evidence to suggest that the early stages of custody are a vulnerable time for prisoners.

7. When examining the death of offenders, comparisons are often made with the general population; what is neglected in such comparisons is the fact that the prison population is disproportionately male, young, economically, physically and mentally disadvantaged and poorly educated. It is more meaningful to compare prisoners with other types of offender - those serving community sentences or ex-offenders being supervised in the community - in order to understand the additional impact being in prison has on death rates and causes.

There has been little research on the deaths of community offenders. Such research as has been done has found that: i) community offenders also have a higher risk of death than the general population; ii) community offenders in their 20s and 30s have the highest risk of violent death; iii) drugs and alcohol account for a large proportion of deaths among community offenders; iv) around half of all deaths of community offenders are accidental and one in five is due to suicide or self-harm.

Research Findings 153-Deaths of offenders in prison and under community supervision (<http://www.homeoffice.gov.uk/rds/pdfs/r153.pdf>); Home Office Research Study 231-Rates and causes of death among prisoners and offenders under community supervision <http://www.homeoffice.gov.uk/rds/pdfs/hors231.pdf>

Prisons - in brief

■ **Scotland: More suicides at Cornton Vale.** At the end of October two women committed suicide in Cornton Vale prison. Between 1995 and 1998 eight women hanged themselves in the prison. An inquiry at the time found that the regime "was wholly

inadequate and inappropriate". Since then the number of women in the prison has continued to rise to record levels. At the time of the latest suicides there were 247 in a prison designed for 178. Up to 90% of the women have used drugs while many others have been jailed for not paying fines, prostitution and shoplifting. The record numbers of women imprisoned in Scotland is reflected in the figures for England and Wales. At the end of October there were a record 68,127 in prison overall while the number of women passed the 4,000 mark, a rise of more than 200 per cent since 1991.

■ **UK: Prisoner Solidarity:** Mark Barnsley and two other prisoners, John Bowden and Jimmy Wright have begun a series of solidarity hunger strikes - on the first Saturday of every month - in support of the Turkish hunger strikers. The initiative is intended as a way of linking up prisoner-activists as an attempt to rebuild prisoner solidarity in British jails. Supporters of the Justice for Mark Barnsley Campaign on 3 August 2001 occupied and shut down Hepworths Building Products in Eddlington, South Yorkshire in a protest at Hepworth's use of prison labour at HMP Wakefield. The campaign has called for further such actions against companies which use prison labour and against Aramark PLC, a private company which now runs most prison canteens. A pamphlet of writings by Mark Barnsley and his supporters is available from the Justice for Mark Barnsley Campaign at £6 inc p&p from PO Box 281 Huddersfield HD1 3XX Tel:07944 522001 e mail: barnsleycampaign@hotmail.com www.freemarkbarnsley.com

■ **UK: IEP Scheme challenged.** Three prisoners have won the right to a judicial review of policy decisions taken by the governor of Frankland prison which, they argue, lead to inmates who maintain their innocence suffering harsher conditions. David Gorman, Darren Vickers and a third who does not wish to be named, have always protested their innocence. The central issue of the judicial review is the Incentives and Earned Privileges (IEP) Scheme, which sets up basic, standard and enhanced regimes as a way of policing inmate behaviour. In order to qualify for "enhanced" status at Frankland prisoners must first "address their offending behaviour and undertake courses such as the sex offenders treatment programme." Prisoners who maintain their innocence are denied access to - and would in any case for the most part refuse - such offending behaviour courses and are therefore punished for maintaining their innocence at Frankland. Both Gorman and Vickers were on enhanced status at previous jails, but were downgraded to standard at Frankland. *Observer* 5.8.01

■ **Scotland: tariff setting.** In May 2001 the Scottish Parliament passed the Convention Rights (Compliance) (Scotland) Act 2001 to bring Scots law into line with the European Convention on Human Rights. One positive result of this has been that from 8 October, politicians lost the authority to intervene on public interest grounds with parole board decisions. Parole boards in Scotland have sole responsibility for determining whether life sentence prisoners should be released.

Prisons - new material

Prison Service Journal. issue 137 (September) 2001. Contains articles on diversity in prisons, prisoners' complaints of racism, institutional racism, an interview with Deputy Assistant Commissioner John Grieve, and an article looking back at The Maze (from the perspective of its ex-Deputy Governor). Available from Room 428, Prison Service Headquarters, Cleland House, London SW1P 4LN.

Prison Service Journal. issue 138 (November) 2001. Articles by contributors, including INQUEST and Daniel Machover, on suicide and self-harm in prisons, and features on the Halliday Review of the Sentencing Framework, restorative justice, denial in sex offenders.

Available from PSJ, Room 418, Cleland House, Page Street, London SW1P 4LN.

Prisoners Legal Rights Group Bulletin no 17, 2001. Contains recent case reports and analysis of Prison Service Orders and Instructions. Available from: Prisoners Advice Service, Unit 210 Hatton Square, 16/16A Baldwins Gardens, London EC1N 7RJ, Tel: 0207 405 8090.

Howard League for Penal Reform **Annual Review 2001**. Available from the Howard League, 1 Ardleigh Road London N1 4HS.

Prison Report Autumn 2001. Contains articles on the Halliday Report and housing issues for prisoners. Available from Prison Reform Trust, 15 Northburgh Street, London EC1V 0JR.

RACISM & FASCISM

SCOTLAND

Criminal justice system "institutionally racist"

Two reports into the murder of Surgit Singh Chhoker who was stabbed to death outside his home in November 1998 were published at the end of October. In presenting the findings of the reports the Lord Advocate admitted that Scotland's criminal justice system including the police and the Crown Office was institutionally racist and had failed in its duty to the victim's family and a "vulnerable minority community". The failure to secure a murder conviction against any of the three accused of Mr Chhoker's murder led to the case being compared with the Stephen Lawrence case in England.

One of the reports found the prosecution had made fundamental mistakes in preparing the case and in liaising with the family but denied that racist behaviour had influenced these mistakes. The other report, authored by Dr Raj Jandoo, found evidence of institutional racism defined as "occurring wherever the service provided by an organisation fails to meet equally the needs of all the people whom it serves having regard to their racial, ethnic or cultural background".

In responding to the reports, the Lord Advocate announced a review of the High Court system and internal Crown Office procedures, the formation of a dedicated High Court unit in Glasgow, an independent Crown Office inspectorate and an inspection into "race" and the police to be carried out in 2002. Speaking for the Chhoker Family Justice campaign, Amer Anwar said that "if there is to be a legacy of Surjit Singh Chhoker and all those who have lost their lives to racism and bigotry, we demand that no other family should ever again have to start a campaign to fight for justice and accountability".

Sunday Mail 28.10.01; *The Guardian* 1.11.01; *The Independent* 25.10.01.

GERMANY

Cameroonian dies after being force-feed emetic

On 9 December, 19 year-old Cameroonian Achidi J. fell into a coma and was declared brain dead after a public prosecutor ordered police to force-feed him an emetic (Ipecacuanha) to make him vomit. Achidi is the first person to die in Hamburg from this practice since its introduction in July. The use of emetics has increased in Hamburg since a far-right Senate was elected on 14 July and it is invariably Africans, suspected of drug-dealing, on whom it is used. On 10 December, around 500 people demonstrated in Hamburg city centre and in front of the

forensic department of the responsible clinic, in protest at racist police practices.

Far from being used merely to find drugs, the use of emetics have been used as a means of torture by police officers. Research by the *Anti-Rassismus Büro Bremen* uncovered police misconduct in Bremen since 1992, when victims reported arbitrary arrest, physical and verbal abuse, electric shocks and beatings by the regional drugs squad. Between 1992 and 1997, the monitoring group observes, Ipecacuanha has been used around 600 times, almost exclusively on Africans. Of 400 cases between 1992 and 1994, only half have led to the detection of drugs in the stomach.

Amnesty International has declared the use of emetics a "cruel, inhumane and derogatory treatment" which, in 90% of all cases, is applied to black people. The police method is known to be dangerous, in many cases leading to emergency treatment and hospitalisation. One young African who publicised his ordeal in 1996 was again force-fed with the syrup the following year with the doctor's explanation: "...for all the stupid things you did last year". The *Anti-Rassismus Büro* faced four charges for "inciting racial hatred" (against the German police, not the African victims) after conducting and publicising their research and the confiscation of their brochure on the police misconduct.

The Hamburg Medical Council has repeatedly condemned the forced use of emetics and has again demanded an end to the practice. The forensic department of the University Clinic Eppendorf regularly carries out the procedure on behalf the police. Its chairman, Professor Klaus Püschel, rejected any criticism of the practice said in future he would personally carry out force-feeding with Ipecacuanha. Whilst several GAL (Alternative List/Green party) members demanded the immediate abolition of this practice, CDU (Conservative) MP Dietrich Wersich thought the treatment of patients against their will belonged to everyday medical practice - if they suffered from dementia for example.

junge Welt 11.12.2001; *taz* 11.12.2001. See <http://www.is-bremen.de/arab/> for details on the research on racist police practices in Bremen and the use of emetic.

Police provoke clashes with anti-fascists

On 1 December, around 3,000 nazis descended on Berlin to object to the *Wehrmachtsausstellung*, an exhibition uncovering war crimes by the regular German army during the second world war - destroying the myth that the *Wehrmacht* was different from Hitler's SS in its anti-emitic sentiments or genocidal tendencies. It has been pursued throughout its tour of Germany by far-right demonstrations and one bomb attack. In Berlin, 5,000 people held a counter-demonstration which was harassed by the police and led to clashes directly in front of Berlin's historic synagogue - marginalising the peaceful blockade by the Jewish community against the nazi presence. The nazis had an undisturbed rally and a safe journey to a from their demonstration.

The *Wehrmachtsausstellung*, researched and compiled by the *Hamburg Institute for Social Research*, has created political upheaval since its first tour through Germany and Austria in 1995. It documents in great detail the war crimes committed by the regular army during the nazi period, in particular in Russia and eastern Europe. Some critics have argued that the new exhibition partially excuses not the war crimes but the motivation of the *Wehrmacht* in denying its institutionally anti-semitic character. The many photos of grinning soldiers in triumphalist postures in front of their dead victims at least questions this position.

The Berlin demonstration against the exhibition was the biggest organised by nazis in Berlin since 1945. Originally, the march was planned to pass through the old Jewish quarter, but the

Berlin authorities changed the route at the beginning in November. Despite this it ended up near the synagogue - with nazis shouting slogans like: "Glory and honour to the German soldier".

The area in front of the Synagogue became a battlefield, with burning barricades, a few demolished police cars and 30 arrests. The Jewish community continued its sit-in and chanted at the police: "Shame on you". The police threatened to forcibly end the protests. Andreas Nachama, former chair of a Jewish community organisation commented: "It is unacceptable that the counter-demonstrators are portrayed as the "baddies", when those shouting the slogans become those who "behaved" and are portrayed as good."

Telepolis 4.3.97; Jungle World Nr 50, 5.12.2001; <http://de.indymedia.org>

SECURITY & INTELLIGENCE

UK

Israeli embassy convictions

On 1 November, the Court of Appeal dismissed the appeal by Samar Alami and Jawad Botmeh against their convictions for the bombing of the Israeli embassy and Balfour House in London in 1994. Samar, a Lebanese-Palestinian, and Jawad, a Palestinian, were sentenced to twenty years imprisonment in 1996 after being convicted of conspiracy to cause explosions. Both have consistently maintained their innocence. Their appeal was based on the fact that there was no direct evidence against them, both had alibis and in particular the failure of the prosecution to disclose crucial evidence (see *Statewatch* vol 9 no 1, vol 9 nos 3 & 4).

In 1997 the former MI5 operative, David Shayler, revealed that the security services had received reliable information beforehand indicating that a known organisation - with no links to Samar or Jawad - was planning to bomb the Israeli embassy. While Shayler's revelation was initially discredited by the government - Foreign secretary Robin Cook described Shayler as a "fantacist" - it was later admitted by the security services. It has

since been disclosed that this information had not been acted upon, because of "at least six instances of "human error".

In October 2000 the Appeal court proceeded with a closed hearing in the absence of the defence team at which the prosecution presented the documents that had not been disclosed at the trial. This resulted in the release of a single piece of evidence - a handwritten note outlining the information received by the intelligence services before the bombings that confirmed Shayler's claims, (the note added that later information indicated that the organisation was not responsible for the bombings).

Throughout November's appeal the defence repeated specific requests for further information relating to the London attacks, as well as others in Argentina and Panama. Other information, pointing to a suspect unconnected to those convicted, was also excluded. Amnesty International has also expressed concern that Samar and Jawad:

have been denied their right to a fair trial because they have been denied full disclosure - both during and after the trial - of all information, including intelligence information, that may have been relevant to the investigation of the bombings.

MI5, having initially claimed that there was an "intelligence vacuum" around the case, then admitted that information had not been disclosed at the trial due to "human error". They then refused to disclose it, despite numerous requests from Samar and Jawad's solicitor, Gareth Peirce, claiming that it was not relevant. Following disclosures by David Shayler which showed that the information was pertinent, MI5 acknowledged that there had indeed been a warning about the attack, but argued that it didn't impact on this particular case. Their claim is challenged by Amnesty, who conclude that:

This case highlights some of the dangers of the use of Public Immunity certificates to block disclosure of evidence and raises questions about the accountability of the intelligence services

Freedom for Samar & Jawad campaign: BM Box FOSA, London WC1N 3XX; email: postmaster@freesaj.org.uk; www.freesaj.org.uk

EU

Does the EU definition of "terrorism" cover protests?

Despite reassurances the definition covers acts with the aim of: "unduly compelling a Government or international organisation to perform or abstain from performing any act"

The effect of the definition of "terrorism" agreed by the Justice and Home Affairs Council in Brussels on 6 December is unclear. Many groups in civil society from across the EU strongly criticised the European Commission's proposal and the Council of the European Union's first draft position because they could clearly have embraced protests, anti-globalisation movements and trade unions. The final text appears in "Recital 10" (see below) to exclude applying the definition to normal democratic protests as does the "Statement" which is attached.

However, the scope of the definition is so broad that, in certain circumstances, it is not at all clear that it could not be used against protestors and others.

The stages of the decision

The European Commission put forward a proposed Framework Decision on combating terrorism (24.9.01), the European Parliament was "consulted" and the final decision lay with the Council (representing the 15 EU governments).

The Commission's definition of "terrorism" covered:

*seriously **altering** or destroying the political, economic or social structures of those countries*

The first draft of the Council's position (Article 1) went even further and defined it as:

*seriously **affecting**, in particular by the intimidation of the population or destroying the political, economic or social structures of a country or of an international organisation (emphasis added).*

Either of these definitions, coupled with the planned new operational measures, could see protestors and other groups treated as if they are "terrorists" (see *Statewatch* vol 11 no 5).

In early October (10.10.01) there were only outstanding issues for the Council on penalties (Article 5) and jurisdiction (Article 10) - the scope of the definition was not an issue at this stage. Nor was there any change in the situation by 26 October.

The Commission's proposal was published on 24 September and on 27 September *Statewatch* posted on its website one of the

first of many critiques that were to be made by NGOs, lawyers, academics and others. Strong criticism of the definition of "terrorism" at the EU level was fuelled by draconian new laws being introduced in a number of member states at national level. By 14 November there was a shift in the Council, a small minority of EU governments:

wanted to restrict this definition as far as possible in order to ensure that legitimate action, such as in the context of trade union activities or anti-globalisation movements, could under no circumstances come within the scope of the Framework Decision

What had not been an issue for the Council until 5 November now became one and a "Recital" (no 10) was added to the draft Council position saying:

Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the freedom of assembly, of association or of expression, including the right of everyone to form and join trade unions with others for the protection of his or her interests [the words "and the related right to demonstrate" were added on 16 November]

The explicit "right to demonstrate" is thus directly related to trade union activity and not to other forms of protest.

By 12 November the scope of the definition of terrorism changed and, after the specially-called Justice and Home Affairs Council on 16 November, read:

terrorist offences include the following list of intentional acts which, given their nature or their context, may seriously damage a country or international organisation.. where committed with the aim of:

- (i) seriously intimidating a population, or*
- (ii) unduly compelling a Government or international organisation to perform or abstain from performing any act, or*
- (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or international organisation*

These new definitions of terrorist "aims" may seem very general and they are - having been taken from UN conventions on terrorism largely drafted by the US, EU and G8 countries.

The second "aim" is so general as to embrace the objectives of millions of people and thousands of groups in civil society.

However, what is critical to understanding this Framework Decision on "terrorism" are the offences to which they must relate, for example, as set out in the Commission's Article 3.f (now Article 1.e in the Council text).

The Commission's proposal said offences should include:

Unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property (Article 3.f)

The Council's agreed text says:

causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on a continental shelf, a public place or private property likely to endanger human life or result in major economic loss

The agreed text is better in that "unlawful seizure" is deleted. However, "information system" has been added to cover "hacking", so has "fixed platform" (eg: oil rigs in the North Sea like the Brent Spa which was occupied by Greenpeace) and "major economic loss" (which is a separate category).

Taking the "worst case scenario" a group could have the "aim" of seeking to get a "Government or international organisation to perform or abstain from performing any act" and in the course of such aim commit the offence of "causing extensive damage" to government or private property or cause "extensive damage" resulting in "major economic loss". Indeed it is arguable that the totality of events in Genoa would fit this description.

It should also be noted that it will be an offence to "threaten" to commit any offence as defined in Article 1.e. (under Article 1.j); that a "terrorist group" means "a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences" (Article 2.1); and it will also be an offence to "incite, aid or abet" a planned or actual action under Article 1.e (Article 3).

This was the extent of the Council's draft positions on 10 October, 26 October and 14 November. However, on 16 November the Council added a "Statement" (which is attached to the final text). This says that the definition of terrorism:

cannot be construed so as to argue that the conduct of those who have acted in the interests of preserving or restoring democratic values, as was notably the case in some Member States during the Second World War, could be considered as "terrorist acts". Nor can it be construed so as to incriminate on terrorist grounds persons exercising their legitimate right to manifest their opinions, even if in the course of the exercise of such right they commit offences

This statement would appear to first, recognise a distinction between "terrorism" and liberation struggles and second, to recognise that people can "manifest their opinions" without being terrorists. Whatever the meaning of these general commitments it should be noted that a "Council Statement" has **no legal force** and is simply a statement of political intent.

The proposal put forward by the European Commission on 24 September had the clear intent to embrace protests in the definition (eg: it could also cover "urban violence"). The Belgium Presidency of the EU and the majority of EU governments supported the Commission proposal on the scope of the definition of terrorism. It was only in November that critical voices in civil society were picked up by some of the media, some national MPs, some trade unions and then a handful of EU governments that any change occurred.

By the end of November the Council had added "Recital 10" and agreed the "Council Statement". The European Parliament's draft report was silent on the issue and only at its plenary session on 29 November were amendments introduced recognising there might be a problem. At this plenary session of the European Parliament Mr Vittorino, the European Commissioner for justice and home affairs, tried to argue that it was never the intention for the definition to cover protests, "The Council and the Commission agreed this from the very outset", he said. This was clearly not the case.

The Commissioner's statement coincided with a strong, high-level, statement, issued on the morning of 29 November, by Mary Robinson, UN High Commissioner for Human Rights, the Secretary General of the Council of Europe and the Director of the OSCE Office for democratic institutions and human rights. The statement called:

on all governments to refrain from excessive steps, which would violate fundamental freedoms and undermine legitimate dissent

Conclusion

The acid test will be how EU governments translate the Framework Decision into national law and how it is used. Writing in the last issue of *Statewatch* Thomas Mathiesen, professor of sociology of law at Oslo University, said:

Methods of political protest available to ordinary people are under attack. Regardless of whether the attack is consciously planned and/or an unintended consequence of a major panic (it is probably a mixture of the two), it is politically dangerous. As far as the Commission's and the Council's definitions are concerned, they may possibly not be used in such a broad and generalised way at first. From long experience we know, however, that discretionary measures in this area will be employed less carefully, and more broadly, as time passes, when the time is ripe and when the need is there.

Scenes from the "war on freedom and democracy"

Reports from Germany, Denmark, the Netherlands, Sweden, Belgium and the UK

DENMARK

Asylum rights threatened by anti-terror legislation

A few days before losing November's general election social democratic Prime Minister, Poul Nyrup Rasmussen, presented a number of legal measures as the Danish contribution to the international fight against terrorism. Among the changes are several amendments to the Aliens Act, which will introduce fundamental changes in asylum procedure. Also, criminal justice legislation, the tax law and laws covered by the Public Finance ministry are to be amended following calls by the United Nations Security Council and the EU Commission.

Rasmussen's government will be replaced by a right-wing coalition comprising the Liberal Party (*Venstre*) and the Conservatives which will have a majority with the support of the extreme right Danish Peoples Party (*Dansk Folkeparti*). However, the new parliament will not change the main thrust of the anti-terrorist policy since both government and opposition supported the amendments during the election campaign.

The changes to the Aliens Act will alter the law in nine areas:

* *"much stronger co-operation between asylum authorities and police and military intelligence services in asylum cases" with regards to the sharing and exchange of information;*

* *ensuring that the state prosecutor gets the necessary information to be able to decide whether or not to bring charges against a foreigner who has committed serious crimes before arriving in the country - for example financing, planning or participating in acts of terrorism;*

* *a widening of the possibilities to expel a foreigner from the country in the interest of national security;*

* *changes to the exclusion clauses in the Aliens Act with regard to prohibiting foreigners who have committed serious crimes from staying in Denmark, as well as withdrawing permission already granted to a person who is discovered to have committed a serious crime;*

* *a narrowing of the use of the refoulement clauses in the Aliens Act, meaning that Denmark should not interpret them in a wider way than they are internationally;*

* *in instances where an asylum seeker has been rejected but cannot be sent back to his home country because of fear of persecution, the case should be evaluated regularly to see if a way to expel him or her can be found. No time limit is set for the evaluation;*

* *introducing controls by having rejected asylum seekers report regularly to the police - where they do not they will be subject to imprisonment;*

* *wider use of fingerprints, both nationally and internationally;*

* *more foreigners will be entered into the Schengen Information System as unwanted aliens in the Schengen Area - meaning that all foreigners whose asylum claims have been rejected under the Alien's Act will go on to the database.*

The explanatory notes to the law, relating to cooperation between the intelligence services and asylum authorities, say that a special forum will be set up in which representatives from the national police force, the military, the Interior ministry, the Refugee Appeal Board and regional authorities will participate.

This forum "shall with short notice be able to take account of current intelligence needs". The police and the military

intelligence shall have "insight into one or a group of cases, for instance all cases regarding certain nationalities or groups of cases within these nationalities" in order to protect the state. The amendments will make it legal to give the intelligence services access to all cases involving asylum, family reunification, visa applications to Denmark, cases withdrawing permission to stay and cases of expulsions. In short, the intelligence services will have full and complete access to all the personal details of foreigners, asylum seekers and refugees in the country.

When a threat to public order, security of the state or public health is found (or thought to be found), the asylum authorities are obliged to pass the information to the police. They will present it to the Minister of Justice who will decide which conclusion the asylum authorities should reach. If the police/Minister of Justice concludes that there is a threat to state security, then the person will be denied a visa, asylum or permission to stay; they may be expelled - if the intelligence services deems it necessary. The basis of the decision - the specific information - on which the decision is taken will not be presented to the person, and perhaps not even to the asylum authorities themselves. They must simply follow orders from the police/Ministry of Interior.

In line with this the right of access to information, it is proposed, should be altered in cases where the police and military intelligence services find that state interests are threatened. Not even the lawyers representing foreigners will have access to information about their clients cases: "there is no means of bringing the decision that a foreigner must be regarded as a threat to the state before another authority".

The new prime minister, Anders Fogh Rasmussen, is planning follow up the amendments in the new year.

GERMANY

Summary of anti-terror measures in the federal states

Almost all federal states (*Länder*) in Germany have already or are about to introduce security packages after September 2001. Here is an overview.

Bavaria wants to invest an additional 391 million DM in "security" until 2006: the police will receive 650 more personnel, the Regional Office for the Protection of the Constitution (Germany's internal security service, *Landesamt für Verfassungsschutz* - LfV) will receive 50 more, the foreigner authorities 40, the criminal justice system (the public prosecution and prisons) 80 more, and the financial department of the Inland Revenue will receive 50 more positions. The Bavarian government wants to spend 147 million DM alone on police technology: CCTV surveillance, armoured vehicles, operational deployment technology, DNA analysis.

Hesse will set aside 400 million DM over a period of three years. The police will receive 350 more personnel (250 guards, 100 administrative posts), the LfV will receive 20 more posts. 250 million DM will be invested in new police information technology. **Baden-Württemberg** agreed to increase its budget by 57 million DM. 10 million will go to observation technology and 5.7 million will be spent on personal and technical equipment for non-suspect related stop and search operations. The LfV will receive 15 more employees, in particular "Islamic specialists".

In the **Saarland**, an additional 4.5 million DM will be spent on security. In the case of **Rheinland-Pfalz**, no specific measures

are known. **Hamburg** will invest another 1 million DM. In **Bremen**, the police and the LfV are saved from planned budget cuts. If necessary, they will receive another 5 million DM.

In **Schleswig-Holstein**, an additional 25 million DM is to be invested: the LfV will receive more personnel, amongst others for internet research and for the processing of applications for naturalisation. A new observation team as well as a working group on Islam will be set up. The Regional Crime Police Office (LKA) will also receive more positions (three accountants, 12 employees for data collection and dragnet control operations).

Lower Saxony will create 60 more positions for the public prosecution and finance departments, as well as 28 more positions for internal security services. The package costs 22.1 million DM. **North-Rhine Westphalia** wants to employ 35 computer specialists and 60 more security service employees for the police. The LfV will receive 71 new posts, amongst others for a surveillance unit and Islamic experts. The LfV is planning to increase its deployment of undercover agents and secret service measures. This year will see additional costs of 36 million DM, the next five years will cost around 370 million DM.

Shortly after the attacks, **Berlin** transferred 50 LKA members to the LfV. The latter has received 1.3 million DM (material costs for telephone interception, surveillance technology and the payment of "self-employed co-workers") out of the 13 million DM emergency programme of 18 September. The biggest part of this first package however, will cover the costs resulting from the protection of persons and objects in the capital city. On 30 October, the Senate agreed to spend an additional 2.7 million DM for the fire-brigade and the police (amongst others for the technical equipment of the LKA).

From the new *Länder* (former East Germany), only **Mecklenburg-Vorpommern** is not planning any extra expenditure. The budget has been passed and no additional money has been agreed. **Brandenburg** on the other hand had agreed on 30 more positions for the LfV before the attacks. The additional package from October originally cost 73 million DM. The double budget from 2002/3 however, is now increased by "only" 36 million DM, of which 23 million are designated towards the interior ministry. Plans include more positions for the LfV, the LKA and for the police departments (amongst others, more surveillance employees).

Saxony is also creating new positions for the LfV, but the number is secret. Here also, more personnel are being planned for the criminal police and the mobile police forces. A police unit for the protection of objects is under construction. **Saxony-Anhalt** will give a further 8 million DM to police and LfV. This will, amongst other things, pay for another 15 new positions at the LfV. **Thuringia** announced a 50 million DM programme. This includes more employees for internal security offices, crime police departments, mobile surveillance units as well as financial investigation departments.

Several federal states (Hesse, Baden-Württemberg, Saxony) have created special telephone lines with either the police or internal security services for informants, where civilians can air their "knowledge" of "Islamic terrorism". The police regulations have again been reshuffled: Lower Saxony, Bremen and Schleswig-Holstein introduced regulations for dragnet control in fast-track procedures. Thuringia wants to legalise CCTV observation, Baden-Württemberg is planning so-called preventative telephone interception.

Marion Knorr, *Bürgerrechte & Polizei/CILIP* 70 (3/2001)

The anti-terror budget

On 9 November 2001 the Lower House of the German parliament agreed to increase tobacco and insurance taxes in order to finance the government's 3 billion DM anti-terror programme. The federal army will receive half of this sum, the interior ministry

(BMI) will "only" get 500 million DM and the external security service (*Bundesnachrichtendienst* - BND) 50 million DM. The BND will use the money for more personnel (experts on terrorism) and improved technology. The BMI will give 241.8 million to the Federal Border Guards (*Bundesgrenzschutz* - BGS), to create a "sky-marshals" unit and improve technological equipment. Altogether, 1,450 more police personnel, 100 IT specialists and 470 administrative personnel will be employed.

The Federal Criminal Police Office (*Bundeskriminalamt* - BKA) will receive another 85.3 million DM to create 244 more jobs in the areas of investigation, analysis and evaluation and personal protection, for scientific-technical areas as well as for Europol. The BKA will also receive more for surveillance, for example for the renting of premises for undercover work, and additional funding for the Central Unit on Money Laundering. The budget of the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*) is increased by 18.972 million DM in order to surveil the terrorist activities of citizens and foreigners, according to the official explanation. Another 31.149 million DM, and an additional 21 positions, will be allocated to the Federal Office for the Security in Information Technology (*Bundesamt für die Sicherheit in der Informationstechnik*).

More BMI money (28 million DM) is earmarked for the mobile police forces in the federal states. The Federal Administration (*Bundesverwaltungsamt*) will get 18.637 million DM to expand its central register for foreigners (*Ausländerzentralregister*) and the Federal Office for the Acceptance of Foreign Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*) 5.87 million DM to improve its IT security and other measures. 50 million DM are invested into civilian protection and prevention of catastrophes. The BMI itself will spend 4.443 million DM to increase personnel in those departments that deal with security.

The Federal Centre for Political Education (*Bundeszentrale für Politische Bildung*) will get 1.956 million DM. Only 999,000 DM will be spent on the improvement of "inter-religious dialogue" with the Muslim community and 501.000 DM for the integration of Muslims in Germany as well as information campaigns.

NETHERLANDS

Increased racist attacks since 11 September 2001

On 4 October 2001, Amnesty International published a report on the growing number of racist attacks around the world. Amnesty specifically pointed to the US, the UK, Poland, Denmark and the Netherlands as countries where racial attacks are on the rise after 11 September. That the attitude towards has Muslims changed in Holland is also reported by the European Observatory against Racism and Xenophobia, which in October, reported a rise in incidents directed against Muslims in Holland, Belgium and Sweden. The Dutch Council against Discrimination reported that in the first three weeks after the attacks they had received 90 complaints directly related to it.

Mosques in Apeldoorn, The Hague, Gorinchem, Heerlen, Rijssen, Uden, Venlo, Vlissingen and Zaandam were set on fire in the three weeks after the attacks. The Mosque in Gorinchem was badly damaged, when a molotov cocktail was thrown through a window and burnt down the whole of the first floor. After the fire in the Mosque in Gorinchem, A. Majid, chair of the General Fund for Muslim Institutes said that there are almost daily arson attacks and graffiti sprayed on Mosques.

Islamic schools were also targeted, one in Nijmegen and the other in Maastricht, have received threats by phone. And in Zwolle, a petrol station with a Turkish owner, who has lived in the town for more than 30 years, was set on fire. The graffiti on his window (written in German), declared that all Muslims should

be deported from Holland. A. Majid said that there is a lot of unrest within the Muslim community and added:

We came to Holland in our flight from repression. In Holland we thought we would find some peace to build up our lives. That dream is now brutally destroyed (de Volkskrant).

In the last week of October Mustafa Citak was run over by a car driven by two military personnel in Apeldoorn and had to be operated on. Before the incident, the two soldiers shouted "Fuck Islam", "Death to Muslims" and "All Muslims should get a bomb up their arse" (*de Volkskrant*). After a short fight between Mustafa and his friend with the two soldiers, the men shook hands. A minute later, when Mustafa crossed the street, he was run over. His recovery will take at least a year. The two soldiers were arrested near the incident after they drove into a car. The driver has been charged with attempted manslaughter and the other with defamation.

BELGIUM

Special investigation measures

The Belgian government is proposing a new law on special investigation measures which in theory can only be used in exceptional circumstances, but the exceptions are so wide that they could become normal practice. The new measures are observation, infiltration and working with informers, interception of post without knowledge of the receiver, house search without knowledge of the occupant and without an order from the judge of investigation, delayed interception.

Observation is the surveillance of people for more than five days or with a technical device. The new house search can be used to plant a device. This surveillance is not permitted in the living space itself, but can be done in offices or in areas surrounding a living space. Delayed interception means the observation of the traffic of goods which otherwise would be seized, for example, drug trafficking. All these new measures can be authorised by the public prosecutor.

Conversations can be recorded including in the home and entering is allowed to place such a listening device. This still needs an order from the judge of investigation.

These measures are limited to varying lists of crimes, including the crimes for which interception of telecommunications are allowed and for membership of criminal organisations. The definitions and the list are very wide so it is hard to see what the limits are. The interception of mail is even possible for any crime with a maximum penalty of just one year which could cover almost everything. These measures are part of the so-called pro-active investigations which a crime does not have to be committed. The suspicion that a crime may be committed is enough to allow the use of these methods.

Another significant change is that most new powers are given to the public prosecutor and not to the judge of investigation. In the Belgian system the *procureur*, who acts as the public prosecutor, has limited competencies. The more intrusive surveillance methods like searching a home, interception of telecommunication and detaining people are the competence of the judge of investigation. The *procureur* acts under authority of the college of *procureurs-generaal*, and ultimately under the Minister of Justice. The "judge of investigation" is an independent judge. The shift of powers strengthens executive power.

To complete the picture the police are to be granted exemption from prosecution when using these powers authorised by the *procureur* - who is, in turn exempt too from prosecution.

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SWEDEN

Insufficient evidence

Margareta Linderöth, a supreme chief at the Swedish Security Police, has publicly stated that evidence presented to them, concerning three Swedish citizens put up on the UN list of terrorists/terrorist supporters after 11 September, lack any substance.

Sweden has twice demanded that the US present evidence showing that the Swedish people on the UN list actually have connections with terrorism. The documents forwarded to Sweden however do not, according to the Swedish Security Police, contain anything that confirms these suspicions. The three Swedish people have had all their financial resources frozen for over a month and have all consistently denied the accusations (*Swedish Radio*, 14.12.01).

BELGIUM-SCHENGEN-SWEDEN

Swedish citizen expelled from 14 countries for "fly-posting" in Brussels.

A Swedish citizen, Per Johansson, has been expelled from Belgium and can no longer travel in 14 European countries after pasting up an anti-EU poster in Brussels. The police arrested Per Johansson, who is an active member of a legal Swedish left wing party, just three days before the Laeken summit. The police expelled him from the country for only one reason: he had been helping friends putting up the poster, announcing an anti-EU meeting.

Mr Johansson has not only been expelled from Belgium, but will also not be able to travel in Germany, Austria, Spain, France, Greece, Italy, Luxembourg, Netherlands, Portugal, Island, Norway, Finland and Denmark all members of the Schengen agreement. His exclusion order has no expiry date.

While pasting up posters in unauthorised places is considered to be a minor crime in Scandinavia, it is regarded as a quite serious offence disturbing public order in Belgium. A leading member of the Danish June Movement, Ms Drude Dahlerup described the incident as terrible and said there was a complete lack of proportion between the offence and the punishment: "I would like to invite Mr Johansson to visit me in Denmark and test if this is something the Danish responsible authorities intend to obey", she said.

source: www.euobserver.com

UK

Anti-terrorism, Crime and Security Act

On Friday 14 December the "Anti-terrorism, Crime and Security Act" received the Royal Assent (became law). Most of the Act does not concern terrorism but criminal investigations and surveillance. The ATCS Bill was introduced 12 November and just three days were allowed for the House of Commons to consider 122-pages, 124 Clauses and 8 Schedules (amending existing laws).

The Bill passed through the House of Commons with huge government majorities on all the votes - with some 20 Labour MPs and the Liberal Democrats voting against. It was left to the unelected House of Lords to exact a number of very important amendments while still leaving the Act a major assault on rights and liberties. The Act:

i) allows the unlimited detention of terrorist "suspects" who cannot be removed from the country. This "suspicion" is to be based on "intelligence" reports from the security and intelligence agencies. The "suspect" will not know what the evidence against them is. This has required the UK to derogate from Article 5 of

the European Convention of Human Rights.

ii) requires telecommunications providers to retain all traffic data - e-mails, faxes, phone calls and mobile calls and internet usage - for a period of 12 months. This can be accessed:

a) for the purpose of safeguarding national security

b) for the purposes of prevention or detection crime or prosecution of offenders which may relate directly or indirectly to national security

The concept of "national security" covers not only "terrorism" but also "subversion". Indeed, the Home Office press release simply says the law and order agencies will get access for "terrorist and criminal investigations". The requirement of telecommunications providers to retain all data is a derogation from Article 14 of the 1997 EU Directive on privacy in telecommunications.

iii) allows the government to "fast-track" EU justice and home affairs measures by introducing them by secondary legislation

(which does not allow for amendment and probably not even a parliamentary vote) instead of by primary legislation.

iv) gives the police the power to remove "hand and face coverings" to identify people.

v) allows the exchange of personal data between the police, customs and immigration and the inland revenue (tax) agencies.

vi) allows fingerprints of asylum-seekers and refugees to be kept for 10 years.

vii) extends the powers of the British Transport Police and the Ministry of Defence Police to operate in a civilian role.

There were demands in parliament for the whole Act to have a definite time limit (eg: 12 months) which was rejected. The Act will be reviewed after 2 years by a committee of Privy Counsellors (senior, trusted MPs) who will be able to recommend that issues of concern can be debated in parliament. In effect, this "temporary" Act is a permanent one.

EU

EU to set up databases on protestors and "foreigners"

Under the EU's "Anti-terrorist roadmap" new databases on the Schengen Information System are to be created

The Council of the European Union (the 15 EU governments) are discussing plans to create two new dedicated databases on the Schengen Information System (SIS). The first database would cover public order and protests and lead to:

Barring potentially dangerous persons from participating in certain events [where the person is] notoriously known by the police forces for having committed recognised facts of public order disturbance

"Targeted" suspects would be tagged with an "alert" on the SIS and barred from entry to the country where the protest or event was taking place.

The second database would be a register of all third country nationals in the EU who will be tagged with an "alert" if they overstay their visa or residence permit - this follows a call by the German government for the creation of a "centralised register".

Both of these new databases are being put forward under the post-11 September "Anti-terrorism roadmap" (item 45 on the version of 15.11.01, to "Improve input of alerts into the SIS").

In its report reacting to Gothenburg and Genoa on 13 July the Justice and Home Affairs Council agreed to the creation of national databases of "trouble-makers" but put off the decision to create a centralised EU-wide database that is, until now.

SIS to hold database on protestors

The Conclusions of the special Justice and Home Affairs Council on 13 July - after Gothenburg but before Genoa - said that:

1. Police and intelligence officers should: "*identify persons or groups likely to pose a threat to public order and security*"

2. All legal and technical "*possibilities*" should be used for the: "*more structured exchanges of data on violent troublemakers on the basis of national files*". At that time the Council (EU governments) were divided 8-7 against the creation of a "European database of troublemakers".

3. All legal possibilities: "*should be used to prevent such individuals.. from going to the country hosting the event*". The criteria for preventing people attending protests is to be where there are "*serious reasons*" (in the eyes of police and security agencies) to believe that: "*such persons are travelling with the intention of organising, provoking or participating in serious disturbances of public law and order*".

The rationale of these Conclusions feed into the post 11-September definition of "terrorism" put forward by the European Commission which extends to protests and demonstrations (see,

proposed Framework Decision on combating terrorism).

Now the EU Presidency of the Council of the European Union (Belgium) has put forward (15.10.01) a proposal that the Schengen Information System (SIS) be extended to cover:

Potentially dangerous persons who are to be prevented from entering countries for sports, cultural, political or social events

Under the plan the scope of the SIS - the EU's police cooperation, internal security and border control database - would be widened to allow for "alerts" to be placed on people:

known by the police forces for having committed recognised facts of public order disturbance

Under the proposal, Article 99 of the Schengen Implementing Convention would be extended. It currently allows police forces to enter the names of people on the SIS to be placed under:

discreet surveillance or specific checks... where there are real indications to suggest that the person concerned intends to commit or is committing numerous and extremely serious offences

Although Article 99 is currently only available for "extremely serious offences", the proposed extension would allow the inclusion on the SIS of people:

with the intention of organising, causing, participating or fomenting troubles with the aim of threatening public order or security

An "alert" on these 'trouble-makers':

would cause the person to be barred from entering the country during a limited period before and after the event takes place

"Football hooligans", demonstrators, in fact anyone with a public order misdemeanour to their name, could face bans on entering other EU countries during such periods:

The specific event could be any sports, cultural, political or social event

The Belgian presidency's explanatory notes, headed:

Barring potentially dangerous persons from participating in certain events

makes clear the intent of the proposal:

Example: A known violent football fan can be barred from attending a football match, if there are indications that the person might cause disorders before, during or after the game. The measure could be extended to violent demonstrators as well.

The overall purpose would be to:

Limit the risk of public disorder during a sports, social, cultural or political event by targeting known individuals, resulting in increased internal security in the Schengen territory

The targeting of "known individuals" will be based on information gathered at national level (by police and internal security agencies) and passed on to the SIS in Strasbourg. The database of suspected "troublemakers" held on the SIS will then be accessed by national police and internal security agencies when there is an assumed "threat" for a particular event in that country. **This would deny people the right of free movement in the EU and the right to protest.** However, the placing of an "alert" on the SIS that a "targeted" person is a suspected "troublemaker" could be accessed and used to stop them travelling (during the period of a prescribed event) for other purposes such as visiting friends or to go on holiday - **it would constitute a quasi criminal record.** Moreover, the construction at national level of a register of "known individuals" means that the **normal political activity of groups and organisations will have to be placed under regular surveillance.**

German government calls for EU-wide "foreigners" database

In the immediate aftermath to the 11 September attacks in the USA the German government put forward far-reaching proposals to the meeting of the EU Justice and Home Affairs Council on 27-28 September. These included a proposal that at the national level:

each Member State should maintain centralised population registers and centralised registers storing data on third-country nationals present in the territory of the Union

Only five EU member states have computerised and centralised population registers:

Belgium, Denmark, Luxembourg, Finland, Sweden.

Another five EU member states have "municipal registers" (that is register compiled and held at the municipal level but not in a form which can be accessed at national level), these are:

Germany, Spain, Italy, Netherlands, Austria

Five EU member states do not have population registers:

France, Ireland, Portugal, UK, Greece (Greece does have municipal records but only of Greek nationals).

However, the data held on these national and/or municipal records is often out of date and/or incomplete. Only two EU countries have registers of "foreigners" (third-country nationals):

Germany, Luxembourg

(Source: Demographic Statistics, Eurostat, 1960-99)

The German government also proposed that there should be established:

a European central register of third-country nationals present within the territory of the Union

It might have been thought that such a far-reaching, and potentially dangerous, idea would have been noted and forgotten but it was not, it re-appeared on the measures to be taken post-11 September under the Council's "Anti-terrorism roadmap".

The German "central foreigners register" (AZR)

The German central foreigners register (AZR) was set up in 1953 and is based at the Federal administration office in Cologne. Originally a card index, the AZR was the first federal register to be automated in 1967. Since then, it has been continuously expanded. Up to 1994 its legal basis consisted of a single phrase in the 1959 law on the creation of the federal administration office.

The new law on the AZR in 1994 legitimised its technical and practical status at that time which covered registers with the

data on all foreigners with more than temporary status in Germany (i.e. more than a three months tourist visa), everyone who asked for asylum, all war and civil war refugees and all people on which an immigration law decision has been taken (whether in favour or against them).

The individual files include names, surnames, knowledge and writing ability on German law and language, other languages, former names, aliases, sex, nationality, date and place of birth, civil status, the numbers and further details of personal documents, last address in home country, nationality of husband or wife, every change of address, every entry or leaving of the country, status under the immigration or asylum law.

The file also includes: reasons for denial of a visa, if a person has been denied naturalisation, if a person is on the police wanted persons list for denial of entry, for arrest or are to appear before a court (under Article 98 of the Schengen agreement), if there are "reasons to believe, that a person is suspected" of having committed or planned to commit in the future an offence of "trafficking" of immigrants, trafficking of illegal drugs, membership, support or propaganda for a criminal or terrorist organisation or another offence with a terrorist intention - this can be based on uncorroborated suspicion or rumours. In these cases there will be a record of the decision or a short report.

This data held on the AZR allows the permanent surveillance of a person. Those who have access to the AZR can follow the movements of a "non-german" person from one flat to another, they know if a child is born or if he or she marries. The police intelligence can be passed to the immigration offices and lead to their removal from Germany, even if the rumours have never been substantiated.

The AZR can also be accessed online by police and internal security service (offices for the protection of the constitution). These agencies can also get data on so called "group enquiries". This means that they can select the files of an indefinite number of people according to a certain search criteria. The AZR is thus another police or intelligence data bank.

In the proposed new law on "combatting international terrorism", which Interior Minister Otto Schily wants to pass through parliament before Christmas, another expansion of the AZR is planned. Persons with permanent residence, who up to now could not be subject to group enquiries, will now be included. The visa system, a part of the AZR, will be expanded to become a visa decision system, that means it will hold every decision on visas with all the personal details and files - this means that not only the overseas consulates and the immigration offices will get access but also the police and internal intelligence agencies.

SIS to hold database on "foreigners" in the EU

The 20 September Conclusions of the Justice and Home Affairs Council and the regular updates to the Anti-terrorism roadmap contain a number of measures and new "operational" practices which imply fundamental changes in external borders controls and the control of "foreigners" within the EU - as did the October US/Bush letter of demands on the EU.

The German government proposal for an EU register of third-country nationals (based on similar national registers) has been taken up by Belgium, the current EU Presidency, who are proposing to amend the rules for Articles 96 and 99 (public order, see above) governing "alerts" on the Schengen Information System (SIS).

It is proposing to amend Article 96 so that:

data of persons entering the Schengen area are introduced and that it is checked whether they have left the area after the expiration of their visa or permit. In case the person does not leave the area within the prescribed time frame, an alert could automatically be raised under a new paragraph of Art. 96. The data of the person should not be visible during his authorised stay and would have to be deleted after the

person left the Schengen area.

The official logic is spelt out as "checks at entry and leaving the Schengen Area for citizens of third countries" so that:

When the person does not leave the area within the prescribed time, an alert is automatically inserted in the SIS

Overall this would mean adding to the existing categories held under Article 96 (people to be refused entry on grounds of public order and national security or against whom there is a deportation or expulsion order or prohibition on entry) "alerts" for people who overstay their visa period or their residence permit period. In order to do this a database has to be set up at national level of all visas issued and all residence permits and this data sent to the central collection point on the SIS - this data would not be "visible" during the period of "authorised stay" and would be deleted when the person has left the Schengen area. If the person failed to leave the "Schengen Area" within the prescribed time-limit an "alert" would be flagged against their name as an illegally present person. National data which is placed on the central SIS system is then accessible through thousands of terminals (mostly police and immigration) across the Schengen countries.

This would, in effect, be a European central register of third-country nationals present within the territory of the Union.

Under pre 11 September plans access to the SIS is already to be widened to give access to immigration, driving licensing and other law enforcement agencies and its capacity increased to allow the non-Schengen countries (UK and Ireland) and accession candidates to participate (see *Statewatch*, vol 11 no 1).

Who is on the SIS?

One of the greatest problem for people who are put onto a database on the Schengen Information System is that they are not told their names are on record, that is, until they attempt to travel (if they are on the protestors database) or when they are detained for removal from the EU (if they are a third country national whose time limit has expired). For a person to get their name removed from such lists is extremely difficult.

For full documentation please see the Statewatch website: www.statewatch.org/observatory2.htm

GOTHENBURG

Policing protests - Gothenburg June 2001

Have the police learnt lessons, or will there be a stronger response next time?

The events surrounding the EU summit in Gothenburg in the summer of 2001 have once again focused attention on the wisdom, legality and consequences of certain police activities. We have been presented with account after account of abusive treatment, physical and psychological violence, and the provision of inadequate information - often no information at all - about the reasons for detention or arrest. We have been told of degradation, long periods in police custody, in certain cases (primarily involving foreign citizens) extending up to a couple of days, without being told why and with nothing to eat or drink; private possessions were ransacked and in several cases destroyed - particularly cameras and film. In short, a veritable catalogue of offences against the most elementary principles of a state supposedly governed by the rule of law. We were "treated like terrorists and hooligans" as one of the arrested youths put it. Several different sources present similar descriptions of the civil rights violations and injustices that took place. But despite this level of agreement, it remains difficult, not to say impossible, to be sure how much of what we are being told is in fact true. Even if we assume for the sake of argument that only a small proportion of these reports have a sound basis in fact, however, we are facing a very grave situation indeed. For this reason, the material compiled here raises a great many difficult and unpleasant questions.

The rule of law

How could so many of the basic principles of the rule of law be undermined over the course of just a few days in Gothenburg? On several occasions, the police - with or without the approval of their superiors - acted in a judicial vacuum, which clearly allowed too much room for the making of arbitrary decisions in relation to individual incidents. We must not forget, of course, that the police are entitled to use force. Their central task after all is the maintenance of "public order and safety". In this they are permitted by law to resort to the use of force in certain circumstances, and in certain extreme situations even the use of deadly force. There must however be a concrete need, which is to say that measures short of the resort to force must be insufficient; and the use of force must constitute a reasonable means of

carrying through the measures at issue, i.e. the use of force must be proportional to the threat posed. It is not altogether clear what is included in the concept "public order and safety". Lawyers have made several more or less unsuccessful attempts at defining the content of this phrase. In his classic book *När och hur får polisen ingripa?* (Where and how are the police entitled to intervene?, 1978), Erik Sjöholm writes that while the concept of "public safety" may be relatively uncomplicated from a juridical point of view, the concept of "public order" is extremely complex, since it is highly "changeable and elastic and is also defined by unwritten norms". These are conditioned by prevailing social, ethical and moral perceptions, values and conventions, which are affected not only by general societal trends at the aggregate level, but also by current ideas and conditions in different areas and even in the same area at different times.

In practice, these formulations are weak and provide little guidance for the actions of the individual police officer in a concrete situation. Since these are first and foremost quite general clauses, a great deal of room is left for discretion. This becomes particularly evident in the context of sizeable public order disturbances. In a stressful situation, how does one decide how much force is "no more than the situation demands"? When even lawyers are not sure what is meant by "public order and safety", how is a police officer to decide? Clarity and explicitly formulated directives from senior police officers are therefore essential.

The evidence suggests that there were several incidents where individual police officers were not given the leadership they needed during the events surrounding the EU summit in Gothenburg. In other words, the way the situation in Gothenburg developed may to some extent be the result of the way senior police officers reacted. The information being communicated from the police leadership to the officers on the street was from time to time wholly insufficient. And how well prepared were the police? Were senior officers aware of the risks they were taking when they made certain operational decisions? I do not believe they were. The overzealous use of force by certain police officers would in this case seem, at least in part, to have a structural

explanation. And this lack of professionalism is worrying. We have to demand more of the police than we do of demonstrators, however prone these latter are to violence, and irrespective of whether they choose to mask their faces. The police must be trained to deal with stress and provocation. Police officers should never find themselves in a situation where they too start throwing bricks and stones.

“Chaos - the Gothenburg operation, June 2001”

Many of the police who had been drafted in were clearly badly prepared. This is shown very clearly in the Swedish Police's own inquiry into the events in Gothenburg. The report was published on 26 September under the title “Chaos - the Gothenburg operation, June 2001”. Almost 60 per cent of the police spoken to in the course of the inquiry reported that they had not received suitable training for the tasks they were asked to perform in the course of the Gothenburg assignment; 70 per cent reported that the information they received during the operations was inadequate and a similar proportion that radio communications were poor; two thirds of police officers were inadequately equipped to carry out the tasks required of them. In addition, working shifts were long (in 250 cases, officers worked for 19 hours or more at a stretch) and rest periods short. In total, 541 of just over 900 police officers were critical of the actions of their own senior officers.

Two paragraphs of the Police Act already notorious in Sweden (13b and 13c), were much relied upon during the events in Gothenburg. These provisions were introduced in 1998 as a means of dealing with public order disturbances involving large crowds. The covering paragraph (§13) previously required an examination of whether or not an intervention was justified for each individual person. With the introduction of the new provisions, however, this requirement was removed. Paragraph 13c requires only that the police examine the question of whether the crowd as such may be deemed to have disturbed the public order and whether the person against whom the intervention is directed can be considered to be a participant in the crowd:

“The provisions are aimed at maintaining public order, and not in the first instance at securing a later conviction for any offence” (Committee Directive 2001:60).

It was thus made possible for the police to cordon off and conduct mass arrests of a crowd that disturbs the public order, or that presents an immediate threat of doing so. These provisions have been used by the Swedish police on those occasions when they have decided to isolate and round up large congregations of people, who have then been removed by bus to various different locations and from there sent home under their own steam. The risk with this mode of operation is that the “wrong” people may happen to be at the place where this ‘rounding up’ process takes place, as has indeed happened. In Gothenburg, it was largely this particular section of the Police Act that was relied upon. Only on very rare occasions did the police actually inform those concerned of the legal basis for their actions, however. Furthermore, once a crowd has been isolated, it should first be charged to disperse of its own accord, before steps are taken to remove the participants by force. This quite evidently did not occur in Gothenburg.

Liaison to gather intelligence

Hans Nordenstam is one police officer who must feel he has been totally steamrollered by his superiors. He was in charge of the negotiating team that established contact with the various factions among the demonstrators prior to the EU summit in Gothenburg. Looking back, it would now appear that the principle reason senior officers established this negotiating group was as a means of collecting information in order to hone the effectiveness of response measures. The group was never

intended to achieve anything concrete by means of these negotiations. If there had been such an intention, why were the possibilities for negotiation not examined prior to the police storming of the Hvitfeldtska college on 14 June? Nordenstam's bitterness must have been acute as he watched the confidence he had worked so hard to build being ground to dust between police riot shields.

The events at the Hvitfeldtska sixth form college are central to the developments that followed. The local authority had put the college buildings at the disposal of demonstrators and conference participants who had travelled to Gothenburg. The college was to provide them with premises in which to sleep, eat, listen to presentations and participate in seminars. On the Thursday morning, the police cordoned off the school by setting out a large number of containers (at a cost of approximately 1.5 million Swedish kronor, ie: about half of cost of the criminal damage caused to Gothenburg's main shopping street, the Avenue). Finally, they stormed the building and by midnight they had emptied the premises. The reasons given for this action were “information that stones and planks of wood had been taken into the school”. But even if this was in fact the case, one has to ask whether the objectives of effective policing would not have been much better served if these stones had stayed in the school rather than ending up out on the street? That these stones should somehow have constituted an arsenal and thereby a pre-requisite for stone-throwing down in the town seems a little far fetched given that the streets of the city centre are themselves comprised of similar stones.

The press conference assurances of Håkan Jaldung (chief of the county force, and responsible for operations in connection with the Gothenburg summit) that the dangers associated with *not* besieging the school would have been far greater are simply not credible. His attitude regarding the way disturbances of this kind should be dealt with has been evidenced before, in relation to “football hooligans” for example. Jaldung's prescription then involved a massive, quick, and forceful intervention in line with the motto prevention is better than cure. Such an operation requires police officers who are “psyched up” and ready to go into action without hesitation. This may well have been the thinking behind the operation against the Hvitfeldtska college - a zealous hope that any and all potential troublemakers would be gathered there. A quick move to isolate and neutralise this group and the rest of the week would be a walk in the park from a security point of view. The Swedish police would show an international audience how this type of public order disturbance could and should be dealt with. This was not what happened, of course. The troublemakers that the operation was intended to neutralise were not there. In addition, the operation cost the police a great deal in terms of resources. The quick, massive intervention bled police resources and led to an escalation in the use of violence by the groups ranged against them. Several international studies of this type of conflict have found similar patterns in the past. Operations of this kind are nothing but counterproductive, which was precisely what occurred at the Hvitfeldtska sixth form college on 14 June. The operation cannot have been seen as anything other than a major provocation.

None of those arrested with extreme brutality charged

In the context of future police training in Sweden, the operation at the Hvitfeldtska sixth form college may well become a classic example of police miscalculation; possibly in competition with the storming of the Schillerska sixth form college by the national Emergency Response Unit on the Saturday evening. Besides being carried out in a highly unprofessional manner - how is it possible that the commanders of such an “elite” force had no access to plans of the building they proposed to storm and then rang up those they were about to take action against to ask if they had a plan of the building they could spare - the operation was

also characterised by the use of excessive and unnecessary force. Masked and with automatic weapons drawn, the Swedish anti-terrorist unit went after an “armed German terrorist”. It would be interesting to know which particular “credible source” the police relied upon for this information. Was it an anonymous tip off? Information gleaned from plain-clothes undercover officers? Or information from colleagues working in police intelligence? Whatever the answer to these questions, there was no German terrorist. Not one of the 78, mostly very young persons, who were arrested with extreme brutality is today suspected of any offence at all in connection with these events. It is difficult to describe this major operation as anything other than a grave mistake.

There remains a great deal to be investigated in connection with the events in Gothenburg last June. It is still difficult to see the whole picture with any degree of clarity and there is a great deal of uncertainty as regards what caused what. Two individuals who do not seem to have been troubled by uncertainties are Gösta Westerlund (GW), a former police officer, now a lecturer in criminal law, and the senior public prosecutor Sven-Erik Alhem. They believe that the law will show itself to be equal to the task of clearing up the complex political events that took place in Gothenburg down to the last detail. I am “convinced that the final outcome will be a good one,” as Alhem wrote in a newspaper article (*Sydsvenska Dagbladet* 21.8.2001). GW does not content himself with the hope that things *will turn out* well, but rather maintained from the word go that the police had done nothing wrong- not even when a youth was shot by police as he was on his way away from a stone throwing incident (*Sydsvenska Dagbladet* 18/8 2001), at least not from a “strictly legal perspective”. When GW defends the police shooting on the basis of self-defence, he maintains quite correctly that such a right exists in the face of a “criminal assault that has either already begun or is imminent”. According to GW, both these criteria were filled: *Imminent*, even if the stones thrown by the victim of the police shooting had not reached them; *already begun*, since even if the demonstrator was on his way away from the scene when the shot was fired, an assault is not over “until it is clear that it has ceased”. And in the case in question, the demonstrator could according to GW “just as easily have been on his way to collect a third stone”. Throwing stones at police officers is a criminal offence. But was the threat posed of such a magnitude that it justified a life-threatening shooting? In addition, two plain-clothes anti-terrorist officers were on their way to arrest the stone-thrower when the shot forestalled them (one of these officers, incidentally, was very nearly wounded himself). Thus, despite the fact that the stones did not reach the police, and despite the fact that the individual in question was on his way away from the scene, according to GW, the police did the right thing in shooting. “In order to keep the “hooligans” at bay, in the end there was no alternative other than to open fire”.

But there was an alternative. This alternative is commonly known as providing back-up. According to the senior officer in charge of operations in Gothenburg, Håkan Jaldung, saboteurs had knocked out the police’s coordinating communications system by spoiling transmissions:

The police officers on the street had no means of contacting one another. I had 400-500 officers in the vicinity prepared to go in that we were unable to use.

Not only does this sound like a rationalisation constructed after the event, it is also factually inaccurate, at least if the story told by one of the police officers who was in the vicinity along with his colleagues is to be believed. “It is quite incredible; how can he [Jaldung] say that? I heard quite clearly on the radio that our colleagues were in trouble. But we were not permitted to intervene.” It seems highly likely that the shots that were fired need not have been if the police who found themselves in difficulty had been provided with the back-up they needed. If Gösta Westerlund’s strict legal arguments relating to assaults that

are imminent or already underway and his understanding of “no alternative” become the yardstick for the use of force by the Swedish police in future, we will be seeing more shootings than we could ever have imagined.

Those convicted of rioting in Gothenburg have received significantly stiffer sentences than those previously passed in Sweden for offences of this kind. The offences have been regarded as “extremely serious since they took place in the context of rioting that had been planned, prepared and organised.” It would be wise to come back and analyse these sentences once they have been imposed. It is important to remember that stiff sentencing can prove counterproductive in that it creates martyrs, which in turn plays right into the hands of those whose goal is an escalation in the use of violence.

The events that took place in Gothenburg will undoubtedly make their presence felt in future demonstrations, both via the police and demonstrators. In order to minimise the negative effects of this presence it is important that all parties involved, and particularly legislators, maintain control and do not allow themselves to be overcome by any kind of moral panic reaction where the measures introduced are not based on objective considerations but on the need for a quick fix to quieten noisy expressions of opinion. Otherwise there is a grave risk that even adherents of non-violence (among both police and demonstrators) will decide to resort to violence in future demonstrations. The events in Gothenburg, and then later in Genoa, have already been used as a motif in discussions within the EU on the criminalisation of political protests and the establishment of a special anti-riot police force.

A process of “normalisation”?

There is a risk that the events of Gothenburg and Genoa will figure in a process of normalisation. They will be referred to time and again as representative of a concrete threat that justifies increases in police resources and a tougher response. Seventy years ago, in Ådalen in Sweden, five people were shot and killed by the Swedish military during a peaceful workers’ demonstration. These events led to the military being excluded from the maintenance of public order and safety during peacetime. Today there are a number of people willing to draw completely the opposite conclusion, who contend that the events in Gothenburg actually justify the introduction of the military. The Inquiry that was established to investigate the events in Gothenburg, was directed amongst other things to examine the possibility of making use of the reservist civilians trained for deployment as police in periods of international crisis even when no such crisis exists (Committee Directive 2001:60). The board of this Inquiry includes the former Social Democratic Prime Minister Ingvar Carlsson, and the former leader of the conservative Moderate Party Ulf Adelsohn. The impartiality of Adelsohn is open to serious doubt following a radio interview where he aligned himself with views being expressed in defence of police actions and claimed that what the Swedish police needs above all else are new strategies and tools for implementing the use of force.

In order to prevent the further spread of public disorder and insecurity - among demonstrators, the police and the public in general - it is important that the Gothenburg carbuncle be properly lanced and dissected. There is a very grave risk that politically committed youths who find themselves being treated like terrorists and hooligans will start to behave exactly like hooligans and terrorists. The societal response - primarily that of the media and the justice system - becomes in turn a self-fulfilling prophecy. We create precisely what we fear the most, simply by acting thoughtlessly and without exercising the necessary self-control.

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The European Commission's White Paper on governance: A vista of unbearable democratic lightness in the EU?

Examines the background to the planned "debate" on the future workings of the EU and whether it can meet the demands of civil society for the right to know what is being discussed and how decisions are made

The context of the Commissions' "governance" agenda

The defining act of the Prodi Commission was, according to its own rhetoric, to be its much-vaunted, much touted, White Paper on Governance in the European Union, just as the White Paper on the Internal Market was considered the (highly successful) equivalent of the Delors Commission. The sub-text of the White Paper on Governance from the very beginning of its preparation was the ambition to introduce more democracy into the various phases of policy preparation, decision-making and implementation processes of the European Union. Indeed the Commission's "Work Programme" of October 2000 is explicitly sub-titled "Enhancing democracy in the European Union". It grandly proclaims in this perspective that: "if it is accepted that democracy in Europe is based on two twin pillars - the accountability of executives to European and national legislative bodies and the effective involvement of citizens in devising and implementing decisions that affect them- then it is clear that the reform of European modes of governance is all about improving democracy in Europe".

The White paper adopted by the Commission at the end of July 2001 is more modest in its ambitions. The sub-title has disappeared and the focus is much less about the general public interest in enhancing democracy and much more about enhancing the traditional role of the Commission in the Union's decision-making processes (in particular by strengthening the so-called "Community method" of decision-making). The White Paper is rather "about the way in which the Union uses its powers given by its citizens. It is about how things could and should be done". At the same time the decision by the Commission to focus only on those aspects of the topic which did not in principle require Treaty amendment, a task regarded as more appropriate for the forthcoming Inter-Governmental Conference to amend the existing Treaties in 2004, is not only artificial but limits both the approach and the recommendations of the White Paper very considerably.

That said the Commission did attempt to portray the process leading up to the adoption of the White Paper as an open and inclusive one and to work on improving its image as a listening and engaged public administration. Quite striking were the pains taken by the Commission to ensure that the process leading up to the production of the definitive White Paper was as open and inclusive as possible (via extensive Internet sites and links, public hearings, invited experts and other "actors") and to listen and engage publicly with some of what it termed the "new actors of Europe". The latter term it transpired related mainly to "new" actors such as local and regional authorities involved in the process of implementation and enforcement of Community (first pillar) law as well as constitutional entities such as national parliaments. In addition the term "civil society" was reserved for a wide-range of non-governmental actors albeit that their positioning in the rule-making process was clearly prior to the drawing up of policy proposals rather than in a continuum during the policy-making and implementation process in its entirety. The term "governance" itself involves recognition of the need to move beyond being a *bounded* public administration towards a more *unbounded* existence where it is recognised that there is a need to include outside interests and stakeholders in the process

of decision-making. The use of the word "governance" is precisely meant to indicate a level and intensity in the "unboundedness" process. The conscious use of the term "governance" thus announces a significant erosion of the boundaries separating what lies inside an administration and what lies outside (politics, the citizens, other stakeholders).

A certain chronology of events is also not without its relevance in understanding the process and outcome of the White Paper on Governance. An important part of the impetus leading to the production of the White Paper by the Commission was not self-imposed but rather were framed by the events leading to the resignation of the Santer Commission in March 1999. The Committee of Independent Experts' First Report in March 1999 (CIE) rather publicly lanced the boils of secrecy and of lack of (collective) responsibility of the Commission as a whole. A secretive administrative culture is the single and predominant reason given by Paul van Buitenen, the whistleblower, in his book *Strijd voor Europa (The Struggle for Europe)*, to explain why the events in question could happen and how those facts became submerged in what at times amounted to a virtual conspiracy of silence. The resulting crisis was for many Euro-sceptics empirical vindication of the so-called "rottenness at the heart of Europe". The reflections by the CIE on increasing the accountability and the transparency of the Commission and of the EU political system in general were forward-looking and designed to enable the body politic in general and the Commission in particular to find paths back towards some level of good health. The gist of the general problem, according to the Committee, is openness and transparency as linked with responsibility and accountability in European political and administrative life. These fundamental principles should permeate the Commission's, and indeed the Union's, political and administrative culture in all areas and at all levels. This reflects a sense of contemporaneity that many can identify with in many different political and administrative contexts all over the world.

So far so good. The (Kinnock) White Paper on Administrative Reform which was produced in March 2000, after an extensive (internal) consultation process, focused on those issues of internal reform and management which could be dealt with by the Commission as part of its own internal organisation. Moreover given the (amazing) fact that in all its 50-odd years of existence as the most important part of the public administration of the EU it had never undergone a proper reform of the way it is organised and functions, this exercise was scandalously overdue and could, given time constraints, only touch upon the tip of the iceberg in terms of the most pressing organisational and management defects highlighted by the CIE in its reports.

But in undertaking this in itself rather limited exercise of internal administrative reform the Commission came up repeatedly against the glass ceiling that, no matter how it twisted and turned in terms of reformed managerial and financial re-organisation, it simply did not have the resources to cope with the (ever-increasing) number of tasks allocated to it. At the root of many of the Commissions' problems in carrying out its various tasks is that it has simply acquired too many roles cumulatively over the past decade in particular without a concomitant increase in resources. Overload led to confused priorities and inadequate co-ordination.

The changing scope of public administration in the European Union

Given the unique (albeit still largely undefined) nature of the EU, there is more to the story of the evolution of public administration or public tasks at that level than a simple parallel with national administrations, also in terms of their “unboundedness” or otherwise. Given the unique configuration of the EU as a multi-level governance polity, it was never just simply a matter of a central administration with some decentralised tasks (at the national level). Rather, there was from the very beginning a complex interweaving of the tasks of the (central) (direct) administration, the Commission, with the tasks of the (central) (indirect) administrations of all the Member States, sometimes as an elaborate partnership arrangement, sometimes as a straight-forward hierarchical arrangement.

The contours of certain more specific trends can nonetheless be discerned at least in outline form in the overall EU public administration landscape. I would in any event mention the following examples. First, the power which “experts” acquired within the centralised power-structure of the Commission via the instigation and exponential growth of the comitology procedures is an example of the erosion of administrative boundaries and has been richly documented in recent years. Second, an increasing number of (sensitive) tasks of public administration are arguably carried out by a growing number of independent bodies such as Europol, pro-Eurojust, etc., and there are clear moves to move towards regulatory (and operational) as well as more classical information-gathering agencies also in this field. Third, there is a marked growth in position and tasks and influence of informal committees with no legal basis (eg, Chief of Police tasks, also other examples in CFSP and external relations. Fourth, the General Secretariat of the Council exercises powers comparable to a public administration over certain policy areas and such tasks have gradually grown in importance and significance since the Treaty of Maastricht. To say that the latter are simply “inter-governmental” in nature and effect is in my view to close ones eyes to the reality of an increasingly inter-twined and complex fabric of public administration at the level of the EU. Finally, on the national side of public administration this too has become much more variegated both as a result of the “hiving-off” of functions to (quasi-) private sector parties and as a result of increasing trends towards decentralisation and regionalisation at the national levels of administration.

Instead of a vision of public administration and governance as it has developed over the years, in all its detail and its fragmentation, the Commission chooses instead to focus exclusively on classical aspects of the decision-making and implementation process as it relates to its own tasks and functions as originally conceived and honed in the foundational years of the EC (“the Community-method”). The fact that the Commission does not at any stage make the slightest reference to the growing governance structures in the field of policing and criminal law (the so-called “third pillar”), in which it is now actively involved, is remarkable. The only explanation I can give is that of the entire philosophy which underpins the WP itself in its final form, namely that for political reasons consolidation and re-trenchment of its classic institutional position are of the order of the day despite clear evidence of the fact that the whole question of governance at the level of the EU can only be begun to be understood by placing it more in a wider context of “structural pluralism”. The Commission therefore deliberately chooses to ignore completely a difficult and rapidly evolving part of governance in the EU, namely its new functions and tasks in the field of criminal and policing law in particular (so-called third pillar), its tasks (and those of other institutions) in regard to the myriad bodies, working parties, organs and networks in and around these areas and the serious lack of co-ordination among them as well as the exponential growth in data-bases, some based

in the Commission, some not, and the growing number of proposals to link that data outside of any broader control framework of good governance or anything else.

The horizontalisation of governance and problems of accountability

Part of a possible significant shift in contemporary society is indeed the advent and multiplication of networks right across the various spectrums of economy, polity and society. Networks are explicitly conceptualised as pluri-centric forms of governance in contrast to uni-centric or hierarchical forms of governance. It is in any event becoming a truism that information and communications technology (hereafter: ICT) has a strong network character: the Internet has been described as a loosely connected network of networks with communication technology at their core. The horizontalisation of governance in the form of networks can indeed be regarded as a major trend in modern-day public administration. In the EU it is certainly not limited to the fields of economic policy making and related areas. Also in the sensitive fields of policing and criminal law we are witnessing an untold and very scantily documented rise in different forms of network governance outside and in addition to formal institutional structures. If we read the Council conclusions of 20 September last it finally is laid down in black and white for all to see just how central a role committees of (senior) civil servants, networks of public prosecutors and task-forces of Police Chiefs, and quasi-institutions such as the Provisional Judicial Cooperation Unit (Pro-Eurojust) are assuming, in the construction of EU policy-making in the field of law enforcement.

One major problem is that the trend towards increased horizontalisation of governance relationships does not fit at all with an understanding of accountability in purely vertical pyramidal terms. In other words, accountability as it has been traditionally understood and applied in the Member States of the EU and in the EU itself (despite the absence of the rigid division of powers found at the national level) is premised on the vertical structure of public administration and the absolute primacy of (representative) politics in that context. The democratic process by which the executive is accountable to the legislature is the crowning principle of this system and the concept of administrative responsibility (or ministerial responsibility) its symbolic seal. Such vertical accountability is embedded, albeit certainly imperfectly, in the EU system as well. Indeed in recent years it has been reinforced in significant ways, in particular by the development of (further) executive responsibility to the European Parliament and indeed this would seem to be part of the Commission’s implied agenda for the 2004 IGC institutional reform process.

But at the same time there is more to developing notions of accountability tailored to the modern-day “fourth branch” of government, both at the national level and at the international level and their complex inter-weavings. More effort of imagination is required than a simple copy (albeit adapted) at the level of EU structures and processes of the classical national system of vertical accountability. The clash between the vertical structure of government and the trend towards horizontal networks, no fan of hierarchy, is one of the main problems facing government (governance) in the information society. This fundamental problem is not alluded to at any stage in the White Paper. Instead, the Commission in its WP is content to adopt a congratulatory approach to its information policy (including the controversial new regulation on public access to documents) and some meagre thoughts in a separate communication on developing its communications policy. Indeed further examination of the Report of the (internal) Working Group 2a (“Consultation and Participation of Civil Society”) as well as that of Working Group 1a (“Broadening and enriching the public

debate on European matters”), reveals that the general attitude displayed within the Commission to the significance of ICT is a highly ambivalent one, confined largely to viewing it in purely *instrumental* terms. In other words, it tends to focus on the introduction of more *on-line information* (for example, databases providing information on civil society organisations active at the European level or listing all consultative bodies involved in EU policy-making) rather than on reflecting on the *institutional* potential and dynamics of the technology in a broader (citizenship) framework.

The decision by the Commission not to deal with the key issues of access to information and the linked question of the communication policies of the institutions is a major defect in the White Paper and pre-determined a fairly marginal role for “active” civil society representatives in its development of the governance agenda in the EU. In my view the Commission in its WP gravely underestimates the changing relationship between public administration and citizen and the role which ICT is playing in that regard. It is a rather futile exercise to attempt to pigeon-hole as part of an exclusively vertical pyramid of accountability the role of the citizen and their civil society representatives in the manner which the Commission attempts to do. In effect the Commission’s contribution only goes in the direction of expanding the composition of an advisory and to date fringe-organ, namely the Economic and Social Committee, to include “representatives” of civil society. Actually the point is not only the risk that the Commission “selects” according to certain criteria a limited number of Brussels-based NGO’s with sufficient capacity etc., giving it funds, buying its loyalty, but that a golden opportunity is lost to harness the energy, the interest and the engagement of a wide variety of civil society actors, many of whom are not necessarily looking for strict “participation” rights as such but rather to engage in a vigorous and dynamic fashion in public debate, where different viewpoints can be heard, deliberated upon and ultimately be decided upon by the formal decision-makers.

The evolving relationship between citizens and public administration

What is as a matter of fact (rather than pious aspiration) very striking in these times is the empirical evidence pointing towards the increasing interest of citizens in theme-related information and theme-related activity as an alternative form of political engagement. As a result of engaged, albeit non-traditional, political activity citizens not only have much greater motivation to themselves (or via an association or interest group to which they belong) seek out information as to the performance of the public administration, they are thus better placed than ever to scrutinise the manner in which public administration tasks are carried out. Moreover it follows that (large groups of) citizens no longer need or wish to have passive relations with the public authorities but rather wish to play a vigorous part in defining these contacts as they see fit. In other words, citizens are themselves developing their role, using the technology offered to them by ICT both in terms of acquiring information and maintaining virtual and horizontal relations with no traditional time and space constraints, and are more willing to actively engage on (specific) issues than in times where a more heroic view of politics prevailed.

In other words the input of civil society is in my view not to be harnessed to some convenient point in the decision-making system and then that a chosen few are selected at the behest of a central actor (in this instance the Commission or an organ such as the Economic and Social Committee) to be allowed to participate in the formulation of an opinion of an advisory organ with a very limited role to play across the broad thrust of the public administration and governance process. A more fruitful and tailored approach is to seek “spaces” for deliberation by a wide

range of interested parties at various stages in the decision-making and implementation processes, prior to the adoption by those formal political actors who ultimately can be held responsible and to account in a mature political system. At the same time it can additionally be considered whether actors from a broadly based civil society should be given an opportunity to input into the public debate at certain crucial moments (a type of “notice and comment” as provided for in the US Administrative Procedures Act and in the UN Aarhus Convention). The initiation of such procedures at the level of the EU needs to take account of the scattered and eclectic nature of public administration at that level.

Another avenue worthy of serious exploration is the grant of digital access rights to information also at the level of EU public administration and governance structures. In the Netherlands the Dutch Commission on Constitutional Rights in the Digital Era recently drafted proposals to adapt the Dutch Constitution to the information society and included a right of access to information held by the government. Recognition of information rights can help to render the constitutional state an appropriate accommodation for the information society; such embedment is particularly important in the European (constitutional) context. Moreover only an approach which integrates dynamic and tailored information rights for citizens into thinking on accountability of rapidly changing governance structures across a broad range of policy-areas can begin to contribute seriously to the debate on genuine improvement of democracy at the level of the European Union and at the (inter-twined) level of the Member States. From that fundamental perspective the Commission’s White Paper on European Governance bears witness to an almost existential lightness and certainly does not offer those struggling with complex issues of governance and of democracy with serious vistas out of contemporary dilemmas associated with the European Union’s perceived lack of legitimacy on the part of citizens.

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