

## Statewatch bulletin

Vol 4 no 5 September – October 1994

### IMMIGRATION

#### SWEDEN

##### Blanket deportations

For a long time Sweden was known as one of the most liberal countries in Europe in its treatment of refugees. Over the past year however this has changed dramatically with many refugees being expelled. The change in policy started under the Conservative government in a more and more nationalistic political climate hostile to 'foreigners'. The Social Democrats, who won the September general election, have continued the same policy. Leif Blomberg, the new Minister for Immigrants, has stated that in future Sweden must be even more restrictive in its asylum policy.

The government has also changed the rules applying to a foreign citizen applying for asylum, if an applicant commits a crime they are to be expelled. But this rule also apply to the whole of the applicant's family under another rule which says a family must not be divided.

This leads to absurd results. There are now four different cases where the man of the family has committed a crime directed towards his own family - child abuse, incest and maltreatment of the wife or the children. The whole family, including the victims of the crime, have been expelled. There are also many cases where a Swedish man, married to a foreign woman, has maltreated and sexually abused her to the extent that she has reported him to the police and then wanted to get divorced. The result is that the woman is expelled since she no longer has the right to remain in Sweden allowed because of her marriage.

#### NORWAY

##### Asylum seeker forcibly injected

A Norwegian police officer was acquitted by a court in Oslo on 11 October after he had been charged with forcibly injecting an asylum seeker from Gambia with 50 milligrams of the strong sedative Nozinan.

The officer who was to accompany the asylum seeker back to Gambia on the plane was given the sedative by the police physician. The police physician had already given the asylum seeker one 50 milligram injection of the same sedative at the airport. The second dose was forcibly injected just before entering the plane by the police officer with the help of four other officers who held the asylum seeker on the ground.

The police physician was fined 5,000 Norwegian kroner last year for forceful medication and for giving another dose to the police officer. The police officer was also fined 5,000 kroner but successfully appealed against the sentence.

#### UK

##### Church pleads for amnesty

Church leaders called on the Home Office to give an amnesty to

about 6,000 people threatened with deportation and described current immigration laws and procedures as 'a modern form of the terror Jewish families faced under the Third Reich'. The Churches' Commission for Racial Justice launched a campaign against the deportation of families with British-born children with a booklet, *Breaking up the Family*, published in September.

The churches' strong language was condemned by the Home Office and the tabloid press, but their message was endorsed by the Law Society, which criticised the family reunion provisions of the new immigration rules (which came into force on 1 October), and by a former head of the migration and visa department of the Foreign Office, who described the rules he enforced relating to elderly relatives as 'cruel'.

##### EEA Order in force

The European Economic Area (EEA) order enacting in domestic law the provisions of the Maastricht treaty, which was delayed for months while experts argued as to its compatibility with the treaty's free movement provisions (see *Statewatch* vol 4 no 3), came into force on 20 July with all its original controversial provisions intact. Particularly controversial is the provision purporting to exclude from the benefit of free movement those spouses of EEA nationals believed by British officials to be parties to marriages of convenience. The EEA Order is likely to be the subject of litigation in the European Court of Justice before long.

#### GERMANY

##### 25 deportees died

Nigeria has protested to the German government over the deaths of 25 Nigerian deportees over the past three years. The latest to die, Kola Bankole, was injected with a large dose of sedatives at Frankfurt airport on 31 August, as he resisted deportation. The Nigerian embassy said that most of the 25 deaths occurred in police custody, with the majority of deportees dying of brain haemorrhages. The embassy also complained of the length of time it took the German authorities to notify them; they had only just been notified about a man who died three years before.

The protests come at a time when the German police are under attack for systematic racism. A Berlin group which helps the 12,000-strong Vietnamese community has complained of severe police brutality and racism. Berlin's Interior Minister admitted in September that 46 officers are currently under investigation for serious assaults, of whom 12 have been suspended. A Bremen court has condemned the conditions of detention for proposed deportees as inhuman, and has forbidden the use of cells in the central police station until there is a reduction in the numbers of people kept there.

*Guardian* 23.9.94, *Independent* 1.10.94, *Migration Newsheet* September 1994; see story under 'Policing'.

## FRANCE

### Battle lines drawn

War has broken out between hardline Interior Minister Charles Pasqua and the judiciary over the administrative detention and deportation of Algerians. 20 Algerians arrested in the recent round-ups of suspected 'extremists' and detained in disused barracks were deported to Burkina Faso in August. Judges who have declared Pasqua's deportation orders unlawful and revoked them have been attacked by him as lacking in judicial independence, and Pasqua has gone on TV to declare his intention of intensifying his campaign against Algerians. He has even threatened a bill to deal with the 'wayward' judiciary, as well as promising police more public order powers.

Meanwhile, in the week after the death of five French people in Algiers, French police stopped and checked 22,000 people, mostly undocumented foreigners.

*IRR European Race Audit* no 10, September 1994

## NETHERLANDS

### Border crossing checks

The Mobile Surveillance of Aliens service (*dienst Mobiele Toezicht Vreemdelingen*) consisting of some 200 military police (*Koninklijke marechaussee*) has checked 170,000 border crossers between May 1994, when the service began operations, and August 1994. Some 5,000 'illegal aliens' were stopped, of whom 4,500 were sent back to Belgium or Germany. 250 requested asylum. The checks are carried out mainly on the major highways and international railway lines. By early 1996, the service is planned to have reached its full strength of 473 marechaussees. From 1 January 1995 patrols will also be held during the night.

A new registration system for immigrants, called VAS, is being introduced in all police regions enabling the police and marechaussee to check if a person is legal or 'illegal'. VAS is being connected to council registry offices to check if 'illegal' immigrants are claiming social benefit.

### In brief

**Spain: law 'unconstitutional':** The Spanish State Council has declared unconstitutional new regulations on asylum which allow for detention at the frontier without judicial control and make no provision for access to legal advice for asylum-seekers.

**Switzerland: internment law:** A new federal law will allow undocumented foreigners to be detained for up to nine months, unless it is defeated by a referendum in December. It will also allow administrative curfews and residence orders, confining foreigners to particular zones, on suspicion of an intention to commit offences, and will give police extended powers of search for illegal immigrants at the premises of solidarity groups. The new law has been condemned by the UN Committee Against Torture.

*IRR European Race Audit* no 10 September 1994.

**Bosnian refugee suicide:** An inquest returned a verdict of suicide on Bosnian asylum-seeker Lejla Ibrahimovic, who killed herself after the Home Office refused her husband a visa to join her. After a year-long struggle, Mrs Ibrahimovic gave up and died of an overdose of sleeping pills. The Home Office granted her husband a compassionate visa after her death. *Guardian* 9.9.94

**Carrier sanctions protest:** Hoverspeed has lodged complaints with the UK and France against the laws on carriers' liability which, the company says, violate Maastricht provisions on the removal of internal frontiers. Hoverspeed owes about half a million pounds in fines to the British government, which introduced carriers' liability in 1987, and about a tenth of that amount to the French government, which only introduced the sanctions in 1993.

**Visas for Sierra Leone and Ivory Coast:** on 21 September the UK introduced visas for nationals of Sierra Leone and the Ivory Coast. Visitors and students from these countries will now need to obtain a visa before they travel (instead of when they arrive in the UK). The Home Office said that this was to stop 'the increasing number of bogus asylum seekers from the two countries'. They also said that this move was not 'prompted by European Union issues' though it would bring the UK in line with 'most other EU member states'. *Home Office press release*, 19.9.94.

**Austria: Ill treatment of migrants:** Amnesty International published a report in June detailing cases of the treatment of asylum seekers while held in detention pending deportation. In June 1993 two delegates attending the World Conference on Human Rights in Vienna witnessed police officers kick and hit an Algerian man at Vienna Schwechat airport following the rejection of his asylum application. When the delegates protested to an airport official they were told he was 'a criminal, 'an Algerian' and 'a prisoner'. In response to a formal complaint the Federal Ministry of the Interior replied that no ill-treatment had occurred. *Austria: the alleged ill-treatment of foreigners: a summary of concerns*, Amnesty, 1994.

**Germany: asylum seekers agree to go:** officials in the 16 German Länder have reported that an increasing number of asylum seekers are agreeing to leave the country voluntarily instead of waiting to be deported because once deported, people are forbidden to re-enter Germany for at least 10 years and are not entitled to any social benefits. In the first eight months of this year 81,864 people applied for asylum, 64% down on the same period in 1993. *Financial Times*, 12.9.94.

### Immigration - new material

**New immigration rules.** *JCWI Bulletin* 5(6):1-5, 1994. This article considers the Home Office *Statement of changes in immigration rules* (HC 395), that came into force at the beginning of October, and concludes that 'they would lead to innumerable breaches of humanitarian obligations imposed by international conventions...'

**Turkish workers, residence rights and family unity: some aspects of the Ankara Agreement,** Vicky Guedalla. *Immigration & Nationality Law & Practice* 7(4):119-122, 1993

**Spanish nationality law in outline,** Ella Rule. *Immigration & Nationality Law & Practice* 7(4):131-134, 1993

**French nationality law,** Alan Simmons. *Immigration & Nationality Law & Practice* 8(1):13-17, 1994

**Greek immigration and refugee law,** Nicholas Sitaropoulos. *Immigration & Nationality Law & Practice* 8(2):57-60, 1994

**Germany: assault on the constitutional right to asylum - Part 1**, Christian Wisskirchen. *Immigration & Nationality Law & Practice* 8(3):87-93, 1994.

**Asylum statistics United Kingdom 1993**. Home Office Statistical Bulletin Issue 17/94, July 1994.

**The consequences of non-implementation of community free movement rights in the United Kingdom**, Christopher Vincenzi. *Immigration & Nationality Law & Practice* 7(4):126-130, 1994

**Dual nationality and community law: the Micheletti case**, Javier Carrascosa. *Immigration & Nationality Law & Practice* 8(1):7-12, 1994

**Refugee children: treatment in international and domestic law**, David Jones. *Immigration & Nationality Law & Practice* 8(2):46-51, 1994

**Home Office guidelines on deportation - the scope for enforcement in the courts**, Jim Gillespie. *Immigration & Nationality Law & Practice* 8(2):52-56

**The prerogative in immigration and nationality law**, Ian Macdonald. *Immigration & Nationality Law & Practice* 8(3): 76-78, 1994

**Political asylum interviews: a fresh look at the role of clerks and independent interpreters**, Alison Stanley. *Immigration & Nationality Law & Practice* 8(3):79-82, 1994.

**The Rights of Third country nationals in the new European order**, prepared by Alison Stanley for ILPA, pp38. The report looks at the changing definition of 'borders' within the European Union, the problems of illegality and the position of lawfully resident third country nationals. From: Immigration Law Practitioners' Association, 115 Old Street, London EC1V 9JR. Tel: 071 250 1671.

**Asylum statistics: UK 1993**. Home Office Statistical Bulletin. July 1994.

**'Fortress Europe': the inclusion and exclusion of migrants, asylum seekers and refugees**, Mike King. 1994, pp30, £3.50. Centre for the Study of Public Order, University of Leicester, The Friars, 154 Upper New Walk, Leicester LE1 7QA.

**Control myths: the Eastern border of the Federal Republic of Germany before and after 1989**: Paper by Albrecht Funk (Free University of Berlin, Arbeitsgruppe Bürgerrechte, Malteserstr. 74-100, 12249 Berlin, Germany), 22pp, presented at the European Consortium for Political Research Conference in Madrid, 18-22 April 1994.

**Carriers' Liability in Member states of the European Union**, Antonio Cruz. Churches Commission for Migrants in Europe, CCME Briefing Paper no 17, 1994, 28pp. CCME, 174 rue Joseph II, B-1040 Brussels, Belgium.

**Detainees' Charter**: Inquest and JCWI have produced a charter for immigration prisoners. Acknowledging in its preamble that

detention for immigrants and asylum-seekers is abhorrent and wrong, it then sets out a series of demands which, while not ending detention, will subject it to proper judicial control and ensure that there are safeguards. The demands include setting an absolute time limit on immigration detention, which is currently unlimited, and automatic rights of challenge to all detentions.

*Charter for Immigration Detainees*, Inquest (081 802 7430) and Joint Council for the Welfare of Immigrants (071 251 8706).

**UK Cruel, inhuman or degrading treatment during forcible deportation**: Amnesty International, July 1994, 19 pages. Report detailing the cases of Joy Gardner, Mr G, Dorothy Nwokedi, Rukhsana Faqir and Meya Mangete at the hands of the police, immigration officials and private security firms.

**Menschenwürde mit Rabatt**: pamphlet from PRO ASYL on refugees and asylum seekers (in German). Cost DM10 from: Pro Asyl, Postfach 101843, 60018, Frankfurt, Germany.

## PRISONS

### Assault on IRA prisoners

A group of IRA prisoners at Whitemoor prison, Cambridgeshire, have claimed that they were severely beaten by prison officers following their recapture after an escape attempt during September. It is understood that four of the men are considering taking legal action against the prison officers. The governor of the prison has asked the Cambridgeshire constabulary to investigate the allegations. Following the escape attempt Semtex explosive was found at the top-security wing of the prison, leading to calls for Home Secretary, Michael Howard, to resign.

### Group 4 to run Buckley Hall

Group 4, the private security company that has been unmercifully criticised for its incompetence in prison management and escort work, has won a £33 million contract to run Buckley Hall prison in greater Manchester. It is the fourth prison to be placed in the hands of private management and will house 350 prisoners.

The decision is controversial and follows a series of escapes that took place when Group 4 took over the prison escort service in Humberside and east Midlands. They have also been criticised for their running of Wolds remand prison. Recently the Howard League submitted a memorandum to the United Nations condemning the practice of contracting out the management of prisons to private companies and arguing that it is against international law.

*HM Prison Service* press release, 29.7.94.

### Prisons - new material

**Changes in the use of imprisonment in England and Wales 1950-1991**, Christopher Nuttall & Ken Pease. *Criminal Law Review*, pp 316-323, May 1994. An analysis of trends in custody in England and Wales between 1950-1990.

**Life licensees and restricted patients reconvictions: England and Wales 1991**. Home Office Statistical Bulletin 18/94, (HMSO) 1994.

**Women in prison**, Lucy Berrington. *The Big Issue* 89 (August 1) pp16-17, 1994. This article discusses alternatives to imprisonment.

**The path to community prisons.** *Penal Affairs Consortium* September 1994. Discussion of community prisons that advocates 'that most prisoners should be held...near their home areas.' Available from 169 Clapham Road, London SW9 0PU.

**Prison Watch press releases.** No 95 (20.7.94.) and No 96 (27.7.94.). Press release no. 95 is a response to the report by the Chief Inspector of Prisons on Exeter Prison on five recent suicides. No. 96 deals with the inquest on Simon Hale who was found hanged at HMP Birmingham in January.

## POLICING

### UK

#### More west Midlands police corruption

Hundreds of thousands of pounds have been paid in bribes to police officers from the West Midlands constabulary, according to an edition of the television programme *World in Action* in September. The evidence, which included taped conversations, came from a former West Midlands police officer, David Wilkinson, and a local criminal, David Harris. They allege that sums of up to £45,000 were paid to police officers to have convictions overturned or reduced to non-custodial sentences. Details of the allegations have been passed to the Director of Public Prosecutions and an inquiry by Leicestershire police is expected to end shortly.

The *World in Action* allegations are only the latest in a series of corruption claims against the force that led to their Serious Crime Squad being disbanded in 1989. Hundreds of thousands of pounds has been paid in compensation to the twenty men who have had their convictions quashed.

The latest awards include £50,000 damages for David Treadway, who made a confession to a series of armed robberies after being tortured by officers from the Crime Squad. The award was made by Mr Justice McKinnon, at Birmingham Crown Court, after he heard that Treadway had a plastic bag forced over his head until he lost consciousness. When he recovered another bag was placed over his head until he admitted his guilt. Describing the treatment of Treadway as 'nothing less than torture', McKinnon went on to describe the events as 'oppressive, cynical and unacceptable.'

A second case, in September, saw Delroy Hare, who had served six years in prison for a robbery, awarded nearly £100,000 in settlement of his miscarriage of justice claim.

The West Midlands force is also facing a separate investigation by the Police Complaints Authority following allegations that they used an *agent provocateur* to get convictions against innocent men. *Guardian* 29.7.94., *World in Action* 12.9.94.; *Independent* 15.9.94., *Observer* 25.9.94.

#### Operation Jackpot: cover-up alleged

MPs and political activists have criticised the decision of the Crown Prosecution Service (CPS) to prosecute only two of the 46 Stoke Newington police officers under investigation for planting drugs, assaulting suspects and criminal damage.

The CPS decision follows a three year police investigation,

codenamed Operation Jackpot, into 130 incidents of corruption that included drug dealing. The investigation is understood to have recommended that ten policemen involved in the incidents should face criminal charges.

The two officers charged are PC Ronald Palumbo and Detective Constable Barry Lyons who have been charged with conspiracy to pervert the course of justice. Both have been suspended since 1992. The CPS said that there was 'insufficient evidence to charge any other officers.'

The decision was condemned by the Hackney Community Defence Association, who said that the decision 'was an insult to the community. Local MP, Diane Abbott, also criticised the decision, calling it a cover-up.

*Independent* 27.7.94.; *Voice* 2.8.94.

#### Silcott detectives cleared

The policeman who led the inquiry into the death of PC Keith Blakelock in the Broadwater Farm uprising in 1985, has been cleared of fabricating the evidence against Winston Silcott that led to his conviction. Detective Chief Superintendent Graham Melvin, along with Detective Inspector Maxwell Dingle, were found not guilty at the Old Bailey, in July, of charges involving conspiracy to pervert the course of justice and perjury.

Silcott's conviction was overturned on appeal during 1991 when ESDA testing showed that interviews with him had been fabricated. Two other men, Engin Raghıp and Mark Braithwaite, were also cleared of any involvement in Blakelock's murder, after serving four years in prison. Silcott has received an interim payment of £10,000 as compensation for his false imprisonment.

*Guardian* 27.7.94.

#### 'Walking with a purpose'

This was how the Home Secretary Michael Howard described one of his new initiatives to cut down crime. The idea of 'Street Watch' is that members of the public, with the agreement of the local police, walk around their area and be the 'eyes and ears' of the police. The response of police organisations varied from luke-warm to highly critical. The President of the Association of Chief Police Officers (ACPO) Sir John Smith, when asked about the value of the scheme on BBC Radio, suggested the question should be put to the Home Secretary. The Superintendents Association and the Police Federation were not consulted.

While the police are concerned that they are being given more work to do with less money others question whether 'walking with a purpose' will lead to vigilante patrols by groups with no definable line of accountability.

*Home Office* press release, 28.9.94; *Police Review*, 30.9.94 & 7.10.94; *POLICE*, September 1994.

#### Police attack Criminal Justice Bill rally

About 80,000 people marched from the Embankment to Hyde Park in London in protest at the Criminal Justice Bill, on 9 October. The march, one of the largest seen in the capital in recent years, was notable for the many young people who took part. It was also, as many of those who took part observed, good-humoured, with a carnival-like atmosphere that included fire-eaters and unicyclists.

At the end of the march a rally took place in Hyde Park. Sound-systems that accompanied the march set up at the Marble Arch end

of Park Lane. Throughout the afternoon riot police assembled in large numbers, using increasingly military tactics to enclose two thousand people drawn to the music. Several fierce charges by riot police, into the front of the crowd in the park, provoked sporadic - but minor - missile throwing by demonstrators in response.

In the early evening the sound-systems moved into nearby Cumberland Gate. The celebratory mood of the crowd changed as mounted riot police charged into the rear of the demonstrators. Simultaneously, police attempted to gain access to the park as a police helicopter warned that force would be used if people did not disperse.

A number of skirmishes took place between police and demonstrators in the park. The clashes continued in Oxford Street as riot police charged and running battles broke out. Police are believed to have made about 40 arrests and another thirty demonstrators were treated in hospital. Among those injured was a journalist who was truncheoned by three police officers. The Labour MP, Jeremy Corbyn, who chaired the rally in Hyde Park, condemned the unprovoked police attack and called for the officer in charge - Chief Superintendent Richard Cullen - to be disciplined.

The Criminal Justice Bill will criminalise many young people, and is due to come into law at the end of October. Among its measures are: \* abolition of the right to silence; \* powers of arrest against squatters and new-age travellers; \* police powers to take body samples; \* new powers of stop and search; \* new 'trespass' laws against those attending raves; \* longer custodial sentences.

### **Gay men harassed by parks police**

Gay activists have attacked parks police following allegations of harassment in South London. The campaigning group 'Outrage' has issued a leaflet warning gay men of increased police activity after police arrested a man in Battersea. Outrage alleges that police are unfairly singling out gay men who use parks as cruising areas. The incident in Battersea occurred after police followed up a complaint that claimed that men were having sex in Battersea Park.

It is the latest event in a long sequence, starting in Manchester when police took down the registration numbers of cars seen in the vicinity of a known cruising ground. The owners of the cars were then sent letters telling them of the police operation and asking them for information. After complaints the police were forced to withdraw the letters and apologise to the people concerned.

More recently the leading gay activist and spokesperson for Outrage Peter Tatchell was accosted by police officers while on Hampstead Heath with friends. He says that he was grabbed by one policeman who let a dog loose on him: 'It jumped up and bit me on the arm and clawed my chest, drawing blood', Tatchell stated.

Outrage argue that these incidents reveal double standards in the way police treat heterosexual and homosexual sex in parks. As Tatchell points out: 'Heterosexuals are just warned if they are found having sex in parks, but homosexual men are prosecuted'.

Police and council officers both deny targeting gay men.

*Pink Paper* 7.10.94.

### **Recorded racial 'incidents'**

The number of racial 'incidents' recorded by the police in England and Wales rose by over 2,000 for the year 1993-94. The number of recorded 'incidents' was:

1985:5,900

1986:6,566

1987:5,305

1988:4,383

1989:5,044

1990:6,359

1991:7,882

1992:7,734

93/94:9,762 [1]

[1] Figures are now collected on a financial year basis.

The figures are based on reported 'incidents' in line with the definition laid down by the Association of Chief Constables (ACPO) which is: 'Any incident in which it appears to the reporting or investigative officer that the complaint involves an element of racial motive, or any incidents which include allegations of racial motivation made by any person'.

The Campaign Against Racism and Fascism commented: 'The racist attacks formally logged by the police represent only a fraction of those actually committed. But even these figures register a alarming increase, what we really need to know is in how many "incidents" were the perpetrators arrested and convicted'.

*Commons Hansard*, written answer, 14.7.94.

### **GERMANY**

#### **Police racism**

Since the spring German police have come under strong criticism for racism in their handling of migrants. Action has only been undertaken in one Land (region), Brandenburg where police officers were accused of ill treating Vietnamese dealers of smuggled cigarettes. Here the investigation proceeded due to the support of the Brandenburg Commissioners for Foreigners and the local police chief - both are women from the civil rights movement in the former GDR. In neighbouring Berlin officers conducting an investigation into similar cases have been publicly accused of making false accusations.

Discussion of police racism came to the fore in Hamburg. On 12 September the Interior Minister of Hamburg, Mr Hackmann surprisingly resigned because he could not act on accusations of racism, largely because he got little response from the police. The week before *Tageszeitung* reported that a 44 year old Senegalese man, Mr Dialle D. was heavily beaten for having worn a sticker saying 'no chance for Nazis'. Two officers had been fined but not suspended until the newspaper publicised the attack. Mr D however had his passport confiscated and his residence permit revoked.

This came in the wake of major concerns about the actions of Hamburg police, especially the so-called E-units, special support police units, about which the Social Democrat dominated Senate and Mr Kackmann had done nothing. Two days after Hackmann's resignation 27 Hamburg police officers were suspended from duty. But on 29 September Hackmann's successor Mr Wrocklage lifted the suspension on the grounds that there was not sufficient evidence to proceed with the investigation.

*Tageszeitung*, 14.9.94 & 30.9.94; *Frankfurter Rundschau*, 14.9.94; *CILIP*, Berlin.

### **FRANCE**

#### **Amnesty condemns police actions**

Amnesty International have issued a strongly worded report on the

actions of French police in shootings, killings and ill-treatment over the past eighteen months and the role of the government and court for inaction. The report highlights 11 cases up to June 1994 where the victims are often juveniles and most concern migrants. At the centre of their criticism is the Interior Minister Charles Pasqua. He was also Interior Minister from 1986 to 1988 when police were accused of at least 14 illegal killings. Mr Pasqua, a policeman's son said he would 'cover' the force in event of mistakes.

There was a national outcry when in just four days in April 1993 police had shot and killed three unarmed young men in separate incidents. Two of them were minors, and one, Makomé M'Bowole, 17, was shot through the head while being interrogated in a police station. In June 1994 two young men, Joel Nebor and Frédéric Adom, both 25, were repeatedly shot and killed by an off-duty police officer during an attempted robbery in Paris. Amnesty say the officer opened fire at close range even though his life was not in danger.

The list of shootings and killings by police officers is as follows:

Eric Simonté (April 1993) Chambéry  
Makomé M'Bowole (April 1993) Paris  
Rachid Ardjouni (April 1993) Wattrelos  
Fabrice Omont (April 1993) Cherbourg  
Maftah Belkham (June 1993) Firminy  
Franck Moret (July 1993) Saint-Berthélemy-de-Vals  
Romuald Duriez (October 1993) Arles  
Mourad Tchier (December 1993) Lyons  
Ibrahim Sy (January 1994) Rouen  
Joël Nebor & Frédéric Adom (June 1994) Paris

The report also condemns 'prosecutorial inertia' in the investigation of allegations of ill-treatment and of illegal shootings by Public Prosecutors. They were, it says, failing to apply the law and leaving it to the victims and their families to lodge formal complaints before an investigation could be started.

A consistent feature of the shootings and the many cases of police ill-treatment (19 further cases are detailed) was of police racism.

'Time and again, French law enforcement officers ignore their own guidelines on the use of arms. It is high time the French government took concrete steps to rectify shortcomings in police training and practice, and the practice of prosecutors and courts', the report concludes.

This report comes in the context of recent increases in police powers - random identity checks and the installation of permanent police video surveillance cameras on roads and in public places - and new proposals before the Senate to allow police to search all cars within six miles of anti-government protests.

*France: Shootings, killings and alleged ill-treatment by law enforcement officers*, Amnesty International, 12.10.94.

## SWITZERLAND

### New law on 'organised crime'

The Swiss parliament agreed on 22 September government proposals for a new law on 'organised crime' (although no definition of what it is has been given). The Federal Minister of Justice and police is quoted as saying that: 'Switzerland should not be an "island of security" for organised crime or any other criminals'.

The new law allows the Federal authorities to: start a new central police coordination office with a new computer data system - to

include hard information and 'intelligence' (soft data) - and to appoint Swiss police officers as liaison officers in other countries. The law also gives a legal basis to the national drugs computer database named DOSIS introduced over a year ago.

The data protection provisions covering the new centralised police computer system are based on the UK model rather than the more liberal German one. The UK model allows less subject access than existing Swiss data protection laws and it is thought this will also be used in the planned state protection law due in parliament in December.

*Kommittee Schluss mit dem Schnuffelstaat*, Bern, Switzerland.

## NETHERLANDS

### Homes 'bugged', journalists raided

In its ongoing hunt for suspected Rara activists the *Binnenlandse Veiligheidsdienst* (BVD) has now resorted to bugging several houses. 'Rara' is an anonymous Dutch group (or groups?) which over the past nine years has claimed several firesettings and bombings against targets like Apartheid-related corporations, immigration authorities' offices, the Ministry of the Interior, and the house of the State Secretary of Justice and immigration.

During the renovation of a house, the inhabitant found an extensive electronic network installed under the roofing tiles, leading to microphones in the rooms. After installing a hidden video camera, the bugging equipment was sabotaged. Soon afterwards the video recorder registered a technician, presumably dispatched by the BVD, who attempted to repair the installation. In a similar case in another dwelling, a hidden microphone connected to a transmitter was recently discovered and deactivated.

The BVD when contacted through a solicitor initially refused to discuss ongoing operations, but once the names of the clients were mentioned they anxiously pressed for more information. The individuals involved believe they are targeted as suspected terrorists, but deny having any relation to the mysterious Rara organization and have expressed their concern and anger over such extreme violations of their privacy.

### Raids on journalist collective

On Wednesday 28 September, police detectives searched the premises of the journalist collective foundation *Opstand* ('Uprising') in Amsterdam and the houses of three members of the foundation's board. Two computers plus files, office equipment, personal correspondence and most of the documentation were confiscated. No explanation was given for the raid other than 'ongoing investigations' against unknown suspects. It was made explicit that none of the board members or staff was in any way considered as a suspect, and nobody has been questioned or detained. The journalists of *Opstand* have concentrated and published on issues such as immigration, the exploitation of 'illegal' immigrants by employers, unemployment and new labour relations shaped to Japanese models.

Although the public prosecutor refuses to comment, it has been suggested that forensic text analysis of 'Rara' press statements has indicated some similarity with texts produced by *Opstand* journalists. Although the BVD security service has in the past claimed to know the 'Rara' activists and used intrusive methods in its investigations, all cases remain unsolved.

*Stichting Opstand*, PO Box 11127, 1001 GC Amsterdam Holland, tel/fax +31 20 6649395.

## EU

### False police data challenged

Three brothers who were wrongly recorded as football hooligans by the Belgian police and subsequently by the UK National Criminal Intelligence Service's (NCIS) Football Intelligence Unit, have started an appeal to the European Commission to have their records corrected (see *Statewatch* vol 3 no 2). After being falsely recorded by the Belgian police in 1990 they were later twice detained by them and one was deported to the UK in handcuffs.

Now their case is being taken to the European Commission - the first stage of appeal at the EU level - by Liberty. The Commission is being asked to obtain undertakings from the UK and Belgian governments that their police records will be corrected. The brothers are taking this action after appeals to the Home Office, Foreign Office, the Data Protection Registrar and the UK and Belgian police failed to get their records amended.

The Data Protection Registrar suggested that the NCIS should be asked to amend their records 'by making clear that you were only circumstantially involved' - the family say they were not involved at all apart from being on the train that was searched. An approach to the Belgian Data Protection Commission was no help either as legislation was only recently enacted and 'does not apply to the Belgian police at this time'. A letter from the Foreign Office revealed that the Consular Department has its own 'Consular database' which recorded that one of the brothers had been detained. The NCIS denies it was the source of this 'loose statement' on the Consular database which says they 'had been detained in Belgium on a charge of disorderly behaviour and assaulting the police (a wholly inaccurate statement). For its own part the NCIS will not amend its records until a correction is sent over by the Belgian police (the original source).

The NCIS also says that the term 'arrest' on their records does not imply they were cautioned, taken in custody and charged it simply means 'as soon as someone is detained against their will, they are arrested'. The fact that someone might be temporarily 'detained' (arrested) but no further police action taken should, the family says, not be recorded as nothing has transpired - in this case it led to their later detention because they were on the 'list'.

### Court given wrong information

A businessman from Kent is to sue the Kent police for sending information to a Belgian court. He was arrested in 1991 for 'driving suspiciously' close to a field where a consignment of drugs had been found. In court a fax from the Kent police was read out in court, it said he was 'strongly suspected of being involved in drugs. It is suspected he uses his boats to bring drugs to England'. His solicitor said he had no previous convictions for drug offences and at the time had never been interviewed about drugs. He was convicted and spent seven months in prison.

In another case a lorry driver, Ron Williams, from Newport in Wales found himself described in a French court as an armed robber. He was convicted of drugs smuggling and got a two year prison sentence. The records sent to the court from the UK said he has three convictions for armed robbery but he had no criminal record at all. The information sent referred to another "Ron Williams" with a different middle name and different date of birth. Stephen Jakobi of Fair Trials Abroad said that unsubstantiated 'off-the-record' information would not be allowed in the UK although it is in France and Belgium.

*Information from the family; letters from the Data Protection Registrar, 1.10.93 & 30.11.93; letters from the NCIS 16.7.93 & 30.9.93; letter from the Foreign Office 18.5.94; Sunday Telegraph, 14.9.94.*

### In brief

**Football arrests down:** the National Criminal Intelligence Service's Football Intelligence Unit has produced figures for the 1993/4 football season showing that the overall number of arrests has fallen by 8%, from 4,588 to 4,227. The most dramatic drop however occurred in Division Two (down 27%) and Division Three (down 11%) where there was 'less policing and more stewarding' provided by the club's themselves. Of the total of 4,227 arrests only 13 were for 'racial or indecent chanting'. *National Criminal Intelligence Service*, press release, 4.8.94.

**New police caution:** the new police caution, planned for use from March 1995, reads as follows: 'You do not have to say anything. But if you do not mention now something which you later use in your defence the court may decide that your failure to mention it now strengthens the case against you. A record will be made of anything you say and it may be given in evidence if you are brought to trial'. This will replace the much shorter: 'You do not have to say anything unless you wish to do so, but what you say may be given in evidence'. The change is based on the provisions of the Criminal Justice and Public Order Bill which will allow judges and prosecuting lawyers to make unfavourable inferences if a defendant remains silent.

**Scotland: Deaths in custody:** the Scottish Secretary said that there were 50 deaths in police custody from 1989 to April 1994 and a further 56 deaths in prison custody. A full listing is given in a written answer in July. *Common Hansard*, 12.7.94.

**Netherlands: Informers fund:** The Ministry of Justice has a secret fund of dfl 1.5 million annually to buy information from criminals. A confidential circular issued earlier this year sets out that in principle, the justice department can spend up to dfl 100,000 for a valuable tip that solves a major narcotics case. In exceptional cases, amounts far above 100,000 guilders may be paid. Civil servants say the 1.5 million is an 'open-ended' budget, and they estimate that last year 'much more' was spent.

**'Organised crime':** addressing the Civil Liberties Committee of the European Parliament on 15 September Mr Manfred Kanther, German Minister of the Interior, said a definition of 'organised crime' was 'not a problem...the concept of "organised crime" will gain meaning through the accumulation of many different offences'.

**Belgium: police liaison officers appointed:** The Belgian gendarmerie has appointed liaison officers in Colombia (Bogota), Austria (Vienna), Spain (Madrid) and Netherlands (Hague). The Police Judiciaire has sent liaison officers to Italy (Rome), USA (Washington), France (Paris) and Germany (Wiesbaden). The gendarmerie also plan to send liaison officers to Turkey (Istanbul), Canada (Ottawa) and UK (London). These liaison officers have been appointed for three years and have diplomatic status.

**Belgium tests Schengen: SIRENE requests magistrates appointed:** The Belgian Schengen Commission SIRENE

(Supplementary Information Requests at the National Entries) has said that SIRENE magistrates should be appointed in the major juridical districts to control requests from other countries for action to be taken against the requesting country's nationals. This is to prevent abuse of people's legal rights and stems from the dispute between Belgium and Spain over the extradition of suspected ETA activists. The Director of the Belgian SIRENE is Mr Leo Debruyne from the Police Judiciaire, he was formerly responsible for terrorism and fraud. The SIRENE system provides national contact points in each of the Schengen countries providing data to the computerised Schengen Information System (SIS).

### **Policing - new material**

**Policing the police**, Hilary Kitchin. *Legal Action* pp6-7, August 1994. On issues of police accountability raised by the Police and Magistrates' Courts Bill.

**The battle for Orgreave ten years on**, Tony Moore. *Police* pp40 & 42, (June) 1994. The author was responsible for running the public order course at the Police Staff College at Bramshill during the Orgreave picket. He concludes that the £425,000 out-of-court compensation paid to picketing miners' by South Yorkshire police for assault shows that police 'evidence gathering techniques...were completely inadequate.'

**Winston Silcott: from the inside speaking out**, Tessa Mayes. *Guardian* 13.8.94. This is an interview with Winston Silcott, that took place in Swalesdale Prison, Kent, following the much publicised £10,000 interim compensation payment for his wrongful conviction for the murder of PC Blakelock in 1985.

**The Offenders Index: a short guide**, Home Office, July 1994. Covers 1963-1993 with nearly 6 million 'criminal histories'. Available from: S1 Division (Offenders Index), Home Office, Room 841, 50 Queen Anne's Gate, London SW1H 9AT.

**Squeezing the assets**, Patrick Hook. *Police Review*, 30.9.94, pp22-23. Looks at the introduction of the Drug Trafficking Offences Act 1994 and its effectiveness in seizing assets assumed to have been bought with trafficking proceeds.

**Policing Today** The first issue of a new glossy magazine from the Association of Chief Police Officers (ACPO) carries articles by ACPO President Sir John Smith on the government's review policy; the right to silence; Protecting police on the streets?; and Robert Reiner on 'A truce in the war between police and academe' in which he describes the 'happy rapprochement between academic researchers and the police' based on the 'lucrative' source of 'research money even in recessionary times' for universities in providing courses for police officers and carrying out policy oriented research. Policing Today, Major Exhibitions & Conferences Ltd, 305 Ballards Lane, London N12 8NP. £20 a year.

**Do the poor experience more crime and greater fear of crime?** Paper by Christina Pantazis and David Gordon (Department of Social Policy, University of Bristol, 8 Woodlands Road, Clifton, Bristol BS8 1TN), 37pp, presented at the 22nd Annual Conference of the European Group for the Study of Deviance and Social Control, Komotini, Greece 25-28 August 1994.

**Grey policing: the development of the collaboration between public police and private agencies:** Paper by Lode van Outrive (Department of Criminology, University of Leuven, Hooverplein 10, B-3000 Leuven, Belgium), 6pp, presented at the 22nd Annual Conference of the European Group for the Study of Deviance and Social Control, Komotini, Greece 25-28 August 1994.

**Professional discourse and criminal insanity in England c.1800-1930:** Paper by Tony Ward (School of Law, De Montfort University, Leicester, UK), 17pp, presented at the 22nd Annual Conference of the European Group for the Study of Deviance and Social Control, Komotini, Greece 25-28 August 1994.

**Court video surveillance.** Terry Thomas, *New Law Journal* 15.7.94. 2pp; **Court video surveillance in child protection work.** Terry Thomas, *Family Law*, September 1994, pp524-525.

### **MILITARY**

#### **Paras escape war crimes charges**

In July the Director of Public Prosecutions, Barbara Mills, decided not to prosecute members of the Parachute Regiment over alleged war crimes during the 1982 Malvinas/Falklands war.

An inquiry was initiated following allegations of the summary execution and mutilation of Argentinean prisoners of war in a book *Excursion to Hell - the battle for Mount Longdon* by Vincent Bramley, who had fought with the Third Battalion of the Parachute regiment during the conflict. His account of the twelve hour battle - in which nearly fifty soldiers died - claimed that prisoners were beaten and then shot and dumped in mass graves. Some were mutilated and their ears taken as souvenirs (several ears were later found in the kit bag of a dead British soldier).

A police enquiry, headed by Metropolitan Police Superintendent Alec Edwards, recommended prosecution after an investigation that involved interviewing Argentinean veterans of the war and excavation at Mount Longdon. Bramley's claims were also supported by other British soldiers who participated in the Mount Longdon battle.

The DPP concluded that there was not enough evidence to warrant a prosecution and that no proceedings should be initiated. The decision, which was condemned as a cover-up by the Argentinean War Veterans Association, was welcomed by Conservative MPs. Major Jeremy Hickman of the Parachute Regimental association said that his members were 'delighted with the decision.'

This is not the first occasion that the Parachute Regiment have been accused of atrocities. In 1972 fourteen civilians taking part in a civil-rights rally were shot dead by the 'Paras' in Derry, Northern Ireland. No one was prosecuted.

*Guardian* 15.7.94; *Times* 15.7.94.

#### **BNF plutonium used in US tests**

Following disclosure by the US Department of Energy, British Nuclear Fuels (BNF) has confirmed that civilian grade plutonium, from its Calder Hall and Chapelcross reactors, was used in US atomic bomb during tests in Nevada in 1962. The reprocessed material was supplied under the 1958 US/UK Mutual Defence Agreement, which has not been published.

The disclosure came soon after Foreign Affairs minister, Baroness



Chalker, told the House of Lords that 'reprocessed plutonium from commercially operated power stations is not suitable for weapons manufacture.' The admission has cast serious doubt on the differentiation between 'civil' and 'military' types of plutonium and raised questions concerning the use of plutonium from commercial reactors in British nuclear weapons programmes.

### **Military - new material**

**A2 and the 'reds in khaki'**, Julian Putkowski. *Lobster* (Stephen Dorril) No 27:18-26, 1994. On the establishment by the British Army, in 1919, of a covert organisation designed to counter the British left following the First World War and the Bolshevik revolution in Russia.

**Defence conversion and economic reconstruction in Eastern Europe**, Richard Latter. Wilton Park Paper no 82, 23pp, HMSO, £8.00.

**Security and arms control in post-confrontation Europe**, Jenonne Walker. Published by Oxford University Press for the Stockholm International Peace Research Institute (SIPRI), 192pp.

**Security and disarmament: the Turkey Connection: Military Build-up of a New Regional Power**. Written by staff members of AMOK. Pax Christi International, Oude Graanmarkt 21, B-1000 Brussels, 1993, pp68.

**Beyond the famished road: new policies for common security**, Alan Simpson MP. *Socialist Campaign Group/Mushroom Bookshop* pp32, 1994. This pamphlet proposes new policies for defence and security following the end of the 'cold war.' Among its suggestions are the abolition of the Foreign Office and the surrendering of Britain's seat on the UN Security Council.

### **Parliamentary debates**

NATO Headquarters *Commons* 9.5.94. cols. 53-60

The Army *Commons* 4.5.94. cols. 725-818

'Front line first' *Commons* 14.7.94. 1169-1190

Defence *Lords* 14.7.94. cols. 1977-1996

Defence *Lords* 26.7.94. cols. 594-687

## **RACISM & FASCISM**

### **Berlin 7**

The trial of the Berlin 7 took several unexpected turns in October (see *Statewatch*, vol 4 no 4). The 100 page statements from two of the defendants, state witnesses, have been withdrawn. The first by 17 year old Erkan Sonmez, who is registered as mentally ill, was retracted in court. The second by Bahzdin Yoldas was withdrawn by the judge after it was shown to have been substantially based on Erkan's statement. With this collapse in the state's case the charge of 'premeditated collective murder' was also dropped. The seven remain charged with offences of affray which could result in sentences of between 3-8 years in prison.

The case arose out of a clash in a Chinese restaurant in April 1992 where anti-fascists discovered members of the far-right Deutsche Liga/Die Nationalen were meeting. When news of the meeting was

learnt there was a spontaneous gathering of anti-fascists who went to the restaurant. In the ensuing confrontation the secretary of the far-right group, Gerhard Kaindl, sustained several knife wounds and later died.

No arrests were made until November 1993. But in October 1992 a representative of Deutsche Liga/Die Nationalen admitted that he was given a name of the alleged perpetrators by the police during a witness interrogation. The Deutsche Liga announced in their newspaper that the names and addresses of those alleged to be involved could be obtained from their office.

Of those on trial four said they took part but had nothing to do with the stabbing, one has made no statement, one - Erkan has retracted his statement, and one, Abidin Ersalan, said he did not take part and only heard about it the next morning. The police are still looking for four other people.

International Solidarity Group, Dieffenbachstrasse 33, D-10967 Berlin, Germany. Tel & fax: ++ 49 30 694 93 54.

### **BNP headquarters to close?**

The British National Party (BNP) has been instructed by Bexley council to stop using its premises in Upper Wickham Lane, Welling, south London, as an office/headquarters. The BNP originally obtained permission, from the then Conservative run council, to use the premises as a bookshop, despite tremendous local opposition. Once they moved in the building was transformed, taking on the appearance of an armoured bunker, and became the Party headquarters. It became the organisational heart of the BNP's 'rights for whites' campaign which led to a spate of serious racist attacks in the area. The council's decision requires the BNP to 'cease the unauthorised elements of their use and restore the property to its previous appearance'. The BNP have said that they will appeal to the Secretary of State for the Environment against the enforcement order.

*Bexley Council press release 5.9.94.*

### **Refugees attacked**

Nearly seventy Bosnian Muslim refugees, who have been housed on a council estate in south Ockenden, Essex, have been subjected to a concerted campaign of racial harassment by local youths. The campaign has lasted for ten months and has escalated from threats to attacks on people and property. Police have charged four people with assault in connection with the attacks.

### **C18 step up attacks in the north**

Combat 18 (C18), the nazi paramilitary group has stepped up its violent activities in the north of England. The group has launched a series of attacks, that include firebombings, on trade unionists and labour movement activists in the Leeds area of west Yorkshire. Some of those attacked were included on a hit list drawn up by C18 earlier this year. In Darlington several British National Party (BNP) members appeared in court charged with an attack on a trade unionist, Dave Hardaker. A young black man was badly beaten by the same gang later that evening. Since the arrests several witnesses have been threatened.

In London C18 put in an appearance at the recent Shadwell by-election count in east London where the BNP stood a candidate, Gordon Callow. Callow, who was formerly a supporter of Oswald Mosley and a member of the National Front, came third with 300

votes. The appearance of C18 in the vicinity of the count was surprising as they have recently opposed the BNP's decision to contest elections. They have advocated a more violent approach (several C18 members have been arrested in possession of weapons destined for Loyalist paramilitaries in Northern Ireland). While they kept a distance between themselves and the BNP candidate on the night - preferring to drink at a public house about a mile away - less tacit collaborations can be expected in the future.

## FRANCE

### Ban on Muslim *hijab*

The French government banned Muslim girls from wearing head scarves - the *hijab* - to state schools during September. The Education Minister, Francois Bayrou, issued instructions to all state schools to enforce the ban immediately. The decision, which was greeted with alarm by several French Muslim associations, places on a legal footing a decision that was less formally introduced in 1989. Then, schools were encouraged to 'persuade' schoolgirls from wearing the headscarves. This 'persuasion' resulted in a large rise in the number of young Muslim women wearing them. Shortly after the announcement about 300 people took part in a march in support of 24 women students from the Saint Exupery school in Paris.

The ban is perceived by many Muslims as an intensification of the anti-Arab hysteria that has swept France over the last few years. This view is supported by a spate of police shootings, raids and deportations; over 2000 Muslims were deported from France in 1993. A statement by the Muslim associations warned that the ban would lead to many Muslim families withdrawing their children from state schools. Critics believe that this is exactly what the French government would like to see happen.

### In brief

**Italy: Foreigners chased off:** Mayors in towns near Genoa posted police at railway stations during the summer to chase away Gypsies and non-EC foreigners who try to enter the towns. The mayors claimed that these groups, who came into the towns to sell things on the street, depressed house prices and increased crime.

**Switzerland:** At the end of September Swiss voters approved a government proposal making racial discrimination, racist propaganda and denial of the Nazi Holocaust illegal. The result was 54.6% in favour and 45.4% against. The referendum was forced by rightwing and racist groups collecting the 50,000 signatures needed to trigger the vote after the parliament voted in June 1993 to adopt the UN Convention on Racial Discrimination. *International Herald Tribune*, 26.9.94.

**Norway: Blitz bombed:** On 21 August a bomb exploded at the Blitz community centre in Oslo. The group has been active for the past twelve years in opposing fascists groups. Contact: Blitz, Pilestredet 30c, 0164 Oslo, Norway.

**Blacks targeted by Customs:** Statistics released in September show that half of all passengers searched by UK Customs on arrival in Britain are black, despite the fact that white suspects are three times more likely to be carrying drugs. Of the 911 people found to be smuggling drugs in the year to April 1993, three-quarters were white. A spokesman said that black people were more likely to

carry larger quantities, but could produce no figures to support the claim. *Observer* 11.9.94.

## Racism & Fascism - new material

*Newham Monitor* 6 (July-September) 1994. Contains articles on the British National Party election campaign in south Newham, Oliver Campbell and Campsfield.

**Christian crusaders for fascism,** *CARF* 22, pp8-10, 1994. On the Christian right.

**A fascist return to Cable Street?**, Paul Anderson. *New Statesman & Society* 2.9.94, pp18-19. On the British National Party by-election campaign in the Shadwell ward in Tower Hamlets.

**Out on the right-wing.** *Fighting Talk* (Football special issue) undated. Short but useful article on the history of fascists at football. Available from AFA, BM Box 1734, London WC1N 3XX.

## EUROPE

### EU

#### Commission visa proposal

In August the European Commission published its proposal for a new uniform visa to be used by EU states - a format already agreed by the nine Schengen countries in the EU. From 1 January 1996 all EU states will be expected to adopt this common format for all forms of visas - visitors up to three months, transit through a port or airport, and re-entry within a specified period.

The 'security features' include: a sign of nine ellipses, the logo of the issuing country and a unique number. The single line sections to be completed give: the period of validity (s.6); the period of validity (s.7); number of entries and duration of stay (s.8); place of issue (s.9); date of issue and passport number (s.10); type of visa - *A* for airport transit, *B* normal transit, *C* period of stay (s.11).

S.12 will contain 'Remarks' in two and a half lines which will contain 'any further information which is considered necessary'. S.13, a large blank space, is reserved for 'the relevant machine-readable information to facilitate external border controls'.

Article 4 of the proposal sets out 'personal data protection'. A person can apply to the issuing authority for a copy of any information which is only machine-readable and will be able to request information is rectified or erased if it is 'inaccurate, irrelevant or excessive'. As these terms are not defined a difference of opinion could occur between the individual and the issuing authority and the individual could consider information the authorities consider necessary as prejudicial. Moreover, the take-up by individuals of their right of access to official information is notoriously low because of the effort needed and the cost.

*Proposal for a Council Regulation (EC) laying down a uniform format for visas*, COM(94) 287 final, 4.8.94 in the Official Journal no C 238 page 8, 26.8.94.

### EU

#### Secrecy case: Council defends its practice

The European Council, which represents the 12 EU governments, has defended its practice of refusing to release documents to journalists and the public in its defence in the European Court of Justice in the case brought by the *Guardian* newspaper. The

*Guardian's* case was lodged with the court in Luxembourg in May and the Council responded at the end of July (see *Statewatch*, vol 3 no 6; vol 4 nos 1, 2, 3, 4).

The Council, in asking the Court to reject the *Guardian* case, says that the repeated declarations by the EU Prime Ministers at Summit meetings for 'transparency' and 'openness' were no more than 'policy orientations' and had no binding effect. These declarations were 'of an eminently political nature and not binding on the community institutions'. Further it maintains that it cannot make minutes and preparatory documents available because they would reveal the position of different governments who would feel 'compromised' if their views were known. Its submission says:

'What is in fact at stake for the council is the basis on which it operates as an institution. It is, therefore, the functioning of the entire decision-making process of the community which is in question' (Emphasis in original).

What the submission in its defence does address is the fact that the Council is the only legislative body in Europe to deny access to the official record of its proceedings. In national parliamentary systems it is usual for governments to produce statements, reports, or 'White Papers' in addition to parliamentary Bills prior to the adoption of policy and legislation, and to be open to questioning and debate. None of these 'normal' procedure operate as far as the Council (and the various Councils of Ministers) is concerned - the first the press and public know of a new policy is when it has been agreed by all 12 states and is therefore not open to amendment.

The *Guardian* case has received backing from the Legal Affairs Committee of the European Parliament (unanimously), the European Trade Union Federation, the European Ecumenical Commission for Church and Society, the European Roundtable of Associations and Foundations, and the Norwegian Union of Journalists and from the Dutch and Danish governments.

*Case T-194/94 J.Carvel and the Guardian Newspapers Ltd v. Council of the European Union.*

## EU

### Council of Justice & Interior Ministers

The Council of Justice and Interior Ministers held an 'informal' meeting in Berlin on 7 September. Mr Manfred Kanther, the German Interior Minister, leading for the German Presidency of the EU, called for Europol to be given operational powers. There should, he argued, be a 'European FBI' with officers able to cross national boundaries with powers to carry out investigations and make arrests. This long-standing German demand did not meet with much support from other Ministers, partly because there is not yet agreement on the details of setting up of Europol itself (see *Statewatch*, vol 4 no 3 on the draft Europol Convention and this issue on recent changes to it).

The programme of the German Presidency on immigration and policing under Title VI (the 'third pillar') gives a summary of measures and policy developments in the pipeline. On immigration and asylum: 1) draft resolutions (that is, policy decisions for the EU states) on the admission of self employed persons from third countries; admission of students from third countries; burden-sharing with regard to the admission and residence of refugees from third countries. 2) Another measure is directed at cooperation between member states on repatriation. The 'Immigration Law Practitioners Association' comment: 'Does this mean, for instance,

the Member States will hire trains to travel across Europe collecting Romanians refused asylum?' 3) The Dublin Convention, agreed in 1990, still has to be ratified by four of the 12 EU states - the Convention set out the principles of asylum seekers only being able to apply to one country in the EU. 4) Discussion on the common list of countries whose nationals require visas to enter the EU. The 'list', drawn up by the European Commission, is based on that agreed between the nine member countries of the Schengen Agreement in the EU. This list of 112 countries includes 38 countries, largely from the Commonwealth, only seven of whom currently require visas to enter the UK. The Commission's listing, published in December 1993, did not include the so-called 'white list' of 20 countries who would not need visas to enter. These countries are: Andorra, Austria, Canada, Czech Republic, Finland, Hungary, Iceland, Japan, South Korea, Liechtenstein, Malta, Monaco, New Zealand, Norway, San Marino, Slovak Republic, Sweden, Switzerland, USA and the Vatican. 5) the German Presidency is proposing that CIREFI (the Centre for Information, Reflection and Exchange on Crossing of the External Borders and Immigration) should be made into an 'operational instrument' to combat 'illegal' immigration and develop into an 'international notification system for a European intelligence and information gathering centre'.

On policing there is little new in the work programme. The Europol Convention is to be advanced (see story in this issue); an 'Europe-wide review' of organised crime is to be conducted; and the introduction of electronic immobilisers to prevent vehicle theft to be investigated. The German Presidency programme is quite candid on the expected role of the European Information System (EIS): 'this *police* database is to perform essentially the same functions as the Schengen Information System, but at EU level'(Italics added).

### Berlin Declaration

On 8 September the Interior Ministers of the 12 EU states plus Austria, Sweden, Norway and Finland met with Ministers from Central and Eastern Europe (Bulgaria, Poland, Romania, the Czech Republic, the Slovak Republic and Hungary) to agree the 'Berlin Declaration on Increased Cooperation in Combatting Drug Crime and Organised Crime in Europe'. The Declaration covers increased police cooperation including the exchange of liaison officers; 'cooperation on the use of informants and undercover agents' and 'controlled deliveries' ('sting' operations) to combat the drug trade; assessment of the threat of nuclear 'theft'. And on immigration: improved cooperation on visa policies; 'effective borders controls and border surveillance'; action against sea and air carriers 'transporting aliens without the requisite documents'; introduction of penalties for the 'illegal smuggling of aliens'; 'rapid return to their home countries or countries of origin of aliens..'. As a first step towards 'operational' cooperation the Central and Eastern European countries were 'invited to participate informally in the existing correspondent's network on football hooliganism'.

*Berlin Declaration on Increased Cooperation in Combatting Drug Crime and Organised Crime in Europe*, Berlin, 8 September 1994; *German Presidency note* for informal Council meeting, 7.9.94; *European Report*, 10.9.94; *Objectives and Major Topics in the field of Home Affairs in the EU in the second half of 1994*, Federal Ministry of the Interior, Bonn.

## EU

### What is a parliament?

In a speech at Leiden University on 7 September John Major set out the UK government's view of the role of the European Parliament (EP). Parliaments, he said, 'take time to mature', the EP is a 'fledgling institution'. The EP, in his view:

'sees itself as the future democratic focus for the Union. But this is a flawed ambition, because the European Union is an association of states, deriving its basic democratic legitimacy through *national* parliaments. That should remain the case. People will continue to see national parliaments as their democratic focus. It is national parliamentary democracy that confers legitimacy on the European Council.

'The European Parliament is not the answer to the democratic deficit, as the pitifully low turn-out in this year's European elections so vividly illustrated. The upshot, sadly, has been an unrepresentative and rather incoherent range of parties in the new European Parliament, in which fringe, protest and opposition groups are over-represented.'*(Italics in text)*

This argument begs many questions. What is a 'fledgling' parliament (a term usually applied to 'parliaments' in totalitarian countries)? The EP was founded in 1957 and has been a democratically elected body since June 1979, some 15 years. The future powers of the EP will be a major issue in the 1996 intergovernmental conference.

### **Consulting parliament**

At the General Affairs Council of the EU on 20 July the German Presidency presented draft guidelines for 'consulting' the European Parliament in the fields of: defence and security (Title V of the Maastricht Treaty) and justice and home affairs (Title VI). German Foreign Minister Klaus Kinkel said the majority position of the Council was that there should be 'a gentleman's agreement, guidelines or a code of conduct... but not a formal interinstitutional agreement'. This runs contrary to the provision of Article K6 of the Maastricht Treaty which says the EP must be 'consulted' on 'principle aspects' of justice, immigration and policing policies (see *Statewatch*, vol 4 no 4).

The guidelines propose that the EP should be informed when action plans have been adopted, and that the Presidency (which changes every six months) should gather the views of the parliament on initiatives. This falls well short of the EP being 'consulted' on major issues which would require *draft* proposals being formally submitted on which the EP could express a view in advance of a final decision. The guidelines also differ between defence and security issues and 'third pillar' ones (Title VI: immigration, justice and policing). On defence and security issues there is to be a three-monthly colloquium with the parliament's committee and the Secretary General of the Council (or relevant senior official) in attendance to answer questions - but not at the Civil Liberties and Internal Affairs Committee of the EP which covers Title VI matters.

*Speech by PM John Major at Leiden University, 7.9.94, Downing Street press release; Agence Europe, 21.7.94.*

### **POLAND**

#### **Official secret law**

The Polish lower house of parliament, the Sejm, has passed - by

268 votes to 75 - an Official State Secrets Bill under which journalists who reveal confidential government information considered vital to the strategic, diplomatic and economic interests of the state could face prison sentences of up to 10 years. The bill is expected to pass through the upper house, the Senate, and will only be stopped if President Lech Walesa exercises a veto (a veto can be overturned by a two-thirds majority in the parliament).

The bill put forward by the ruling coalition of the Democratic Left Alliance and their rural allies follows a series of newspaper reports of corruption in government and in the police. An annex to the bill lists 71 forms of state secret punishable by prison sentences of between six months and 10 years. It is intended to replace a 1982 communist law and leaves the definition of what constitutes a 'secret' to government officials and allows for no right of appeal. The bill also provides for information about security and intelligence services to be kept secret for 80 years. The Sejm rejected an amendment calling for a defence of 'public interest', however the architect of the bill the Interior Ministry has agreed that journalists can reveal 'secrets' but only with the consent of the Supreme Court.

The Polish Journalists' Association said: 'The spirit of the law contradicts the democratic order we have been building since 1989'. The *Trybuna* newspaper, which usually supports the government, said: 'State officials tend to abuse any secrecy regulations to veil their incompetence or wrongdoings'.

*Balkan News, 18.9.94 & 25.9.94; Guardian, 17.9.94; Hynet/Europe, 29.9.94.*

### **GERMANY**

#### **Nuclear ploy?**

On 10 August German customs official seized a quantity of plutonium 239 in Munich amidst strong suggestions that it had originated in Russia. It was called 'the biggest-ever plutonium find in Germany, and probably in the world'. Bavarian state police who ran the 'sting' operation seized the material from couriers (two Spaniards and a Colombian) who arrived on a Lufthansa flight from Moscow. Undercover agents had asked suspected nuclear dealers to supply samples of their wares. However critics asked why the Russian authorities were not notified before the flight took off.

The actual substances seized were 300 grams of mixed-oxide fuel, a blend of natural (non-bomb) uranium and plutonium that powers civilian reactors. Four earlier police finds of plutonium and uranium in Germany turned out to be six grams of one and less than one gram of the other. In no case was anything like the materials necessary to manufacture a nuclear bomb found. A German expert told *Newsweek*: 'The European market consists almost exclusively of undercover policemen'. A senior official of the opposition Social Democratic Party accused the government of staging election stunts and said: 'There is serious suspicion that these most poisonous of poisons were brought into Germany with the help of German authorities'. Mr Bernd Schmidbauer, the coordinator of the secret services, said the accusations were 'absurd'.

The Association of Medical People Against Nuclear War (IPPNW) denounced members of the Bavarian office of criminal investigation for the unauthorised use of radioactive substances. The substances seized in the Munich 'sting' were allegedly destined for Pakistan or Iraq underlining the suspicion that it was all arranged by the police themselves as it makes no sense to pass from Russia through Germany to deliver something to these countries.

The Interior Minister of Rhineland Palatinate, Mr Zuber (SPD) claimed that in this Land there had been 20 cases, between 1992 and the middle of 1994, where alleged nuclear material was offered for sale. But these figures include only two cases of confiscation of real radioactive substances (natural uranium). The rest, like all seven this year, have been cases of fraud.

Officials of other EU governments said there was no evidence of an organised 'Russian mafia' trading in nuclear material and that aggressive undercover 'sting' operations intended to ensnare nuclear smugglers had created an artificial demand.

*Süddeutsche Zeitung*, 26.8.94 & 1.9.94; *International Herald Tribune*, 24, 26, 27, 29.8.94; 1.9.94; *CILIP*, Berlin.

## TURKEY

### Death sentences demanded for Kurdish MPs

Six Kurdish parliamentarians, members of the pro-Kurdish Democratic Party, who were detained in March and charged with treason, are still being held in custody after six months. The six, Sirri Sakik, Ahmet Turk, Mahamut Alinak, Orhan Dogan, Hatip Dicle and Leyla Zana, have been stripped of their parliamentary seats and face the death penalty if convicted. (see *Statewatch* vol 4 no 2).

Shortly after the arrest of the parliamentarians, thirteen journalists from the Kurdish daily *Ozgur Gundem* were arrested on charges of 'separatism' and membership of the Kurdistan Workers' Party. The paper has been shut down by police. During a court appearance in June the journalists accused the police of torture; the State Prosecutor denied this but admitted the existence of 'non-violent torture'.

According to Ankara's Human Rights Foundation there are 108 people (including the six MPs) in jail for supporting Kurdish rights in Turkey. Amnesty International has recorded the cases of 24 people who had been 'disappeared' by the Turkish security forces in the six months until June. Many more have been abducted and were later found dead.

*Journalist* August/September 1994, *Amnesty International newsletter* August 1994

### Europe - new material

**A look at French criminal procedure**, Helen Troulle. *Criminal Law Review* October 1994, pp735-744. Looks at the history of the French criminal system and the 1993 Socialist government's reforms.

**Chronicles:** produced by the Laboratory of Criminological Sciences, University of Thrace, 11 rue Pan., Tsaldari, 69100 Komotini, Greece. Articles include: Electronic monitoring and the criminal justice system (E Trivisas); Crime in modern-day Greece, an overview (N Courakis); The brave new world of ethnic groups in the overcrowded prisons: a challenge for the guardians of human rights (K D Spinelli, K Angelopoulou, N Koulouris); Explanatory note on the draft law on the 'Correctional code'.

**The constitutional structure of the Union: a Europe of bits and pieces**, Dierdre Curtin. *Common Market Law Review*, no 30, 1993, pp17-69.

**The legal bases of the third pillar and its position in the framework of the Union Treaty**, Peter-Christian Müller-Graaf.

*Common Market Law Review*, no 31, 1994, pp493-510.

## CIVIL LIBERTIES

### NETHERLANDS

#### Chipcards opposed

The office for student bursaries (*Informatie Beheer Groep*) is preparing an experiment with a new chipcard for students. The chipcard will contain the holder's fingerprint and digitized photo. The card, to be issued to all students and pupils over 17, will replace the current student ID card and the student public transport reduction card. It can also serve to register exam results. Student organizations have rejected the chip card as a new step toward Big Brother.

The fingerprint database will soon hold data on a considerable section of the active population that would be of interest to law enforcement agencies. There is a clear trend in access technology to make increasing use of a person's fingerprint for identification purposes. This in spite of the fact that journalists have recently demonstrated that it is relatively easy to copy a fingerprint taken eg: from a drinking glass and make a rubber finger jacket which leaves indistinguishable but forged prints. The journalists succeeded in fooling the fingerprint check used at Schiphol airport to accommodate frequent airline passengers.

#### Civil liberties - new material

**New Statesman guide to Trade Unions and the labour movement 1995.** *New Statesman supplement* 2.9.94.

**Sentencing rapists: first tier courts in 1991-92**, Paul Robertshaw. *Criminal Law Review* pp343-345, (May) 1994. Article on 'soft or inappropriate' sentences for rape that concludes that 'there are grounds for thorough monitoring and review of rape sentences and, perhaps, of the criteria for approving judges for this class of case.'

**Liberty in Britain: a diamond jubilee history: 1934-1994.** Brian Dyson, Civil Liberties Trust, pp100, £6.99. A very useful history of NCCL, now Liberty, written by the Hull University archivist. It traces the establishment of NCCL under Ronald Kidd in 1934, the difficult postwar years, its reemergence in the late 1960s as a campaigning organisation, and the debates which proved controversial over the miners' strike and 'free speech' for racists and fascists.

## NORTHERN IRELAND

#### PTA: mixed news

The exclusion order imposed on John Gallagher, which is the subject of a reference from the High Court to the European Court of Justice (ECJ), has been allowed to lapse. There is no sign, however, that the government intends to lift the order against Sinn Fein president Gerry Adams, whose case was also referred to the ECJ in July, or that against Kevin McQuillan (see *Statewatch* vol 4 no 4). The ECJ's ruling is awaited on the compatibility of the PTA's provisions on exclusion with European free movement law and with the fundamental rights (such as freedom of speech and the

right to life) and safeguards guaranteed by the European Convention on Human Rights.

Gallagher's solicitors intend to proceed with their ECJ case notwithstanding the cessation of the order against him, because of the importance of getting a definitive ruling on the legality of the PTA.

### Coroner gives up

Belfast coroner John Leckey finally abandoned the attempt to hold inquests into the deaths of James McKerr, Eugene Toman, John Burns, Roddy Carroll, James Grew and Michael Tighe after the July ruling that he was not entitled to call for the working documents, papers and tapes used in the Stalker and Sampson inquiries (see *Statewatch* Vol 4 no 4). He said that the ruling meant that his aim of fully examining the circumstances surrounding each killing was 'no longer achievable'. Relatives expressed disappointment but no surprise, adding that the cover-up by the courts confirmed their long-held belief of a shoot-to-kill policy. *Independent* 9.9.94.

### Review

**Bear in mind these dead: an index of deaths from the conflict in Ireland 1969-1993**, Malcolm Sutton. *Beyond the Pale* 1994, pp226, £9.95.

An index of deaths from the conflict in northern Ireland may seem an unusually morbid topic for a book. Unfortunately, the selectivity with which these deaths are reported in the British press makes such a record indispensable. Sutton explains his research thus: 'Firstly it is a memorial to all the people who have been killed since 1969...Secondly, I wanted to produce as accurate a record as possible in order to enhance current understandings of the conflict, and as an archive for future historians.'

The book deals with each death individually, recording them in chronological order with a commentary on the circumstances. An appendix provides an index of names that allows for easy reference. An additional appendix presents a statistical summary and breakdown of killings by the main protagonists.

### Northern Ireland - new material

**Collusion - Britain's links with loyalist death squads.** *Ireland Information Fact File* 1994. Informative journal detailing the many links between British forces in Northern Ireland and Loyalist death squads. Available from: Sinn Fein Foreign Affairs Bureau, 51/55 Falls Road, Belfast 12.

**Living with the gun**, Michael Clarke. *Police Review* pp16-18, 17.6.94. Looks at the experience of the RUC and the question of arming police officers in Britain.

**Independent assessor of military complaints procedures in Northern Ireland: first annual report, 1 January 1993-31 December 1993.** HC369, HMSO, 1994, pp42, £8.25. The 'independence' of the assessor can be evaluated by his remarks on unsatisfactory replies to complaints: "Those who are believed to be associated with a terrorist organisation will properly attract the attention of the security forces. They are therefore likely to be stopped and questioned or searched more often than others, and thus feel they are being unduly harassed. If they complain, the

investigation will indicate that they have been frequently stopped, questioned or searched but the reply will not state the underlying reason. In such cases replies will inevitably appear somewhat bland, but the complainants *should have a good idea why they have been "harassed"* (our emphasis).

**Independent commission for police complaints for Northern Ireland: sixth annual report 1993.** HC380, HMSO 1994, pp44, £8.10.

**Intelligence quotas**, Patrick Fitzgerald. *New Statesman & Society*, 7.10.94, pp16-17. Assess the effect of the ceasefire in Northern Ireland on the workload of the intelligence agencies.

### Parliamentary debates

Criminal Justice (Northern Ireland) Order 1994 *Lords* 416-418

## SECURITY & INTELLIGENCE

### New lines of tapping

The introduction of digital switching in the telephone system has changed the method of telephone-tapping by British Telecom (BT) which it provides on an agency basis to MI5, Customs, Special Branch, the National Criminal Intelligence Service, and police forces. Under the old 'Tinkerbell' system tapping circuits had to be physically connected to targeted phone lines. Now 'taps' can be simply set up using the software programs within the exchange switching system, moreover this can be done remotely without ever going near the telephone exchange building.

The 'requesting agencies' increasingly have intercepted calls relayed directly to their headquarters where they can analyse and transcribe telephone calls. The BT bill for internal agencies is sent to the Home Office - an estimated £10 million for a reported annual volume of 35,000 taps.

PBXs (Private Branch eXchanges) used in factories and offices used to present a greater problem because of the need to monitor all calls to track down the user of one extension phone. Now software developments, introduced by Oftel the telecom regulatory body, allow a single extension to be tapped.

The ability to tap digital public exchanges and PBXs remotely enables GCHQ (Government Communications Headquarters) to monitor phone calls in Moscow or Baghdad. Similarly, intelligence agencies outside the UK can tap into a phone here.

In addition to monitoring international cables, telexes, and e-mail (which goes down the phone line courtesy of the 'Postmaster', BT), GCHQ compiles a weekly 'Travel Digest', derived from intercepted communications, of the intended movements abroad of individuals identified on an MI5-produced watch list.

*New Statesman & Society*, 'All about eavesdropping', Patrick Fitzgerald. 29.7.94, pp30-31.

### In brief

**Portugal's SIS chief resigns:** The head of the Portugal's main intelligence service *Servicos de Informacao e Seguranca* (SIS), Ramiro Laderio Montiero, has resigned following an inquiry by a parliamentary commission. The investigation, which inquired into allegations of corruption on the island of Madeira, found that the

SIS had been involved in 'activities beyond its charter'. Mr Joao Evangelista, the SIS chief in Madeira was also sacked. *Financial Times* 24.5.94.

**The Red Flag:** first issue of the journal of the Labour Committee on Democratic Accountability of the Secret Services contains articles on: Secret services and the struggle for socialism; Gladio: from Chile to Italy. £2 from: LCDASS, 27 Old Gloucester Street, London WC1N 3XX.

**Overseas students to be vetted:** University vice-chancellors have agreed with the Education Ministry to security vet appointments from 15 countries on the grounds that they may be seeking to acquire knowledge to be used in the manufacture of nuclear weapons. The 'advice' to be supplied by the Foreign Office will affect postgraduate and post-doctoral appointments. Nuclear physicist Peter Hodgson, a fellow of Corpus Christi College Oxford said that the danger of proliferation of weapons through overseas graduates was minuscule and probably non-existent: 'Far more dangerous is the threat that a directive could hinder perfectly harmless pure academic research because of some illusory connection with weapons'. *Times Higher Education Supplement*, 26.8.94.

### Security & intelligence - new material

**The evolution of the Canadian intelligence establishment, 1945-1950,** Scott Anderson. *Intelligence & National Security* 9(3):448-471, 1994.

**Democracy, dictatorship and the regulation of arms exports: the UK and Iraq,** Davina Miller. *Intelligence & National Security* 9(3):536-543, 1994. This is an extended review of four books that deal with the Matrix-Churchill affair.

**Bargain basement bugging,** Paul Beaumont. *Police Review* pp26-27, 29.7.94. On the ease with which 'secret surveillance and electronic eavesdropping' can be carried out.

**The Dirty Business of Economic Spies:** Erich Schmidt-Eenboom and Jo Angerer have published a new book "Die schmutzigen Geschäfte der Wirtschaftsspione" (The Dirty Business of Economic Spies), Dusseldorf, etc: Econ Verlag, 351 pp, ISBN 3-430-18007-4, DM 48,-. The book is on the role of state intelligence agencies in economic intelligence and espionage. It has chapters on Japan, the BND (German criminal intelligence), France, satellites, US economic intelligence, a 9-page 'portrait' of Woolsey, CIA front companies, the Clipper debate, the KGB and its offspring, and the covert relations between intelligence communities and business.

**Review: De Muren Hebben Oren...** Backlash, Hack-tic, Jansen & Janssen (Backlash, Amsterdam 1994).

'De Muren Hebben Oren' (The Walls Have Ears) aims to be a simple guide to the various ways in which those who want to listen in to other peoples' conversations go about doing it. The book gives brief but useful descriptions of the kind of people who would want to listen in to conversations, such as the police and the Dutch Secret service (BVD).

It covers the latest Dutch legislation on phone tapping and other forms of bugging. It also gives detailed tips on how to avoid eavesdroppers, from such things as codes which are fairly simple to

use but quite hard to crack through to an update on the latest anti-bugging technology. Along the way it manages to debunk a few myths, such as the fairly widely held view that mobile phones are untappable.

The book is currently in Dutch, Spanish and German, and may soon be available in English. It is well written and informative, and aimed primarily at activists yet manages to provide information without being polemical. This edition in Dutch will be of most use to people living in Holland and to a lesser extent Belgium. However both the update on legislation and technology will be of interest to other Europeans. After all, what happens in one European country tends quickly to become the norm for others.

**Public Records revelations in Scotland:** *Scotsman*, Stephen Breen and Severin Carrell, 25.8.94. Page feature on the surveillance of Sinn Fein groups in Scotland in 1920; police inaction against attacks on Catholics in the 1930s; and raids on Scottish nationalist groups thought to be pro-Nazi because of their 'anti-English' stance in 1941.

**Report of the Commissioner for 1993 under the Security Service Act 1989:** HMSO, March 1994, Cm 2523, £2.90. The six-page report is almost entirely devoted to the European Commission of Human Rights's decisions in the cases of David Esbester (who claimed to have lost a job through vetting); Vanessa Redgrave (who found a 'bug' in her house and of files kept on her) where the Commission found that because of her 'continuing political commitments there was reasonable likelihood' that MI5 kept her under surveillance and held that this was 'necessary in a democratic society'; Patricia Hewitt and Harriet Harman, who complained of surveillance and the keeping of records on them, whose case was also rejected.

### LAW

#### ECHR rules on right to silence

In what promises to be an important ruling for campaigners against the Criminal Justice Bill's attacks on the presumption of innocence and the right to silence, the European Commission on Human Rights ruled that the use at Ernest Saunders' trial, of incriminating evidence obtained oppressively substantially impaired his ability to defend himself against the criminal charges facing him. The Commission ruled that Saunders was deprived of a fair hearing within the meaning of Article 6:1 of the European Convention on Human Rights. The case now goes to the European Court, whose ruling is not expected until 1996.

#### Judges

Figures provided by the Lord Chancellor's Department show that of 2,305 members of the judiciary - from High Court judges to Assistant Recorders - there are only 170 women and only 22 black people. The figures excluding part-time recorders and assistant recorders are even more stark with only 74 women and 5 black people out of a total of 1,300 full-time members of the judiciary.

Of the 10 Lords of Appeal in Ordinary none are under 60 years old, eight are aged between 60-70, and 2 are over 70. Of 128 Supreme Court judges (Lord Justices of Appeal and High Court judges) 63 are under 60 years old, and 65 are over 60; Circuit

judges 299 are under 60 years old, and 211 are over 60. Looked at another way none of the Lords of Appeal in Ordinary are under 50, only 8 of the Supreme Court judges are under 50 as are only 66 of 510 Circuit Court judges.

*Commons Hansard*, written answers, 12.7.94.

## Law - new material

**Public order review**, Jo Cooper. *Legal Action* pp13-15, August 1994. Continuation of a piece on trends and significant developments in public order and arrest cases over the past year.

**The prosecutor's fallacy and DNA evidence**, DJ Balding & P Donnolly. *Criminal Law Review* pp711-721, October 1994. Argues that it is inappropriate for an expert witness to express an opinion as to whether or not DNA samples have a common origin.

**The role of law in the rule of law**, David AO Edward. *Hume Papers on Public Policy* 2(1):1-9, 1994. Text of a talk given by a judge of the Court of Justice of the European Communities.

**Law Commission Twenty-eighth annual report 1993**. [HC 341] HMSO 1994. Includes sections on public law, confidence and privacy and evidence.

**Digest of information on the Northern Ireland Criminal Justice System 1992**. HMSO (Belfast) 1993, pp51, £9.95. Includes chapters on Crime, Victims and offenders, Prosecutions, Sentencing, Prisons, Expenditure and Human resources.

## Parliamentary debates

Police and Magistrates Courts' Bill *Commons* 5.7.94. cols 156-290  
Criminal Justice and Public Order Bill *Lords* 5.7.94. cols 1141-1210; *Lords* 7.7.94. cols. 1454-1506; *Lords* 11.7.94. cols 1516-1632; *Lords* 12.7.94. cols. 1643-1810; *Lords* 19.7.94. cols 141-224  
Police and Magistrates' Courts Bill *Lords* 18.7.94. cols. 11-55

## Books received

All books are listed on the online database.

**Why me? One woman's fight for justice and dignity**, Anne Maguire. *Harper Collins* 1994, pp137, £4.99pb

**Reporting crime: the media politics of criminal justice**, Philip Schlesinger & Howard Tumber. *Clarendon Press* (Oxford) 1994, pp286, £12.95 pb.

**Policing in a divided society: a study of part time policing in northern Ireland**, Richard Mapstone. *Avebury*, 1994, pp153, £30

**Forging war: the media in Serbia, Croatia and Bosnia-Herzegovina**, Mark Thompson. *Article 19* 1994, pp271, (no price).

**Policing South Africa: the SAP and the transition from apartheid**, Gavin Cawthra. *Zed Books* 1993, pp226, £12.95 pb.

**The best interests of the child: reconciling culture and human rights**, Philip Alston (ed). *Clarendon Press* (Oxford) 1994, pp297 (no price given).

**Women, violence and crime prevention: a West Yorkshire study**, Jalna Hanmer & Sheila Saunders. *Avebury* 1994, pp407, £39.50

**Organising Europe: the institutions of integration**, Clive Archer. Edward Arnold, 1994, pp304, £12.99 pb.

## Extradition of James Joseph Smyth

### Introduction

In September 1992 the United Kingdom filed a formal request for the extradition of James Smyth from the United States, where he had been living since 1984. Smyth, who had been convicted in a Diplock court in 1978 for the attempted murder of a prison officer, had escaped with 38 others from the Maze prison in 1983. His hearing began in San Francisco on 27 September 1993 and closed without the usual closing arguments on 9 November. Instead the court asked both sides to submit written briefs in support of their respective positions. These included two briefs focusing specifically on the statistical evidence.

### The legal background

In 1986 the United Kingdom and the United States signed a Supplementary Treaty on extradition which eliminated the political exemption defence in the Extradition Treaty between the two countries. This had permitted a number of Republicans to argue successfully against their extradition on the grounds that their 'crimes' were political. Although the supplementary Treaty abolished the political exemption under Article 3(a) it provides:

*Notwithstanding any other provision of this Supplemental Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he would, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.*

Last May the Court issued a ruling on the interpretation of this Article. It ruled out any examination of the fundamental fairness of the Diplock system and limited the inquiry to alleged past or future discriminatory treatment Mr Smyth has received or will receive. On receiving details of the ruling, Smyth requested discovery of information particularly concerning the British government's investigations into the alleged shoot to kill policy and collusion between the security forces. The British Government refused to produce the documents even for an in camera review. The court, in fairness to Smyth, therefore imposed the following 'rebuttable presumption' on the hearing:

1) Catholic Irish nationals accused or found guilty of offences against members of the security forces or prison officials are subjected systematically to retaliatory harm, physical intimidation and death in Northern Ireland.



- 2) Members of the security forces in Northern Ireland either participate directly or tacitly endorse these actions.

This meant that the British government was forced into a position where it was required to rebut the presumption by a preponderance of evidence. However, the ultimate burden in establishing a defence under Article 3(a) by a preponderance of evidence rested with Mr Smyth. Put simply, this meant that if Smyth's and the British government's evidence was placed on a set of scales, he had to make them tip slightly in his favour.

During the hearing the British Government called on witnesses. They included John Chilcot, the Permanent Under Secretary of State for Northern Ireland; Wolf Monahan, an Assistant Chief Constable of the RUC; Allistair Irwin, a Brigadier in the British Army, John Baxter, the present Governor of the Maze Prison; Jennifer Blaney, an RUC Constable responsible for compiling statistics.

Smyth called 22 witnesses and introduced over 60 exhibits. Most of the witnesses provided evidence about specific incidents of discrimination suffered by people who are in the same group as Mr Smyth. In addition, he introduced a mass of statistical evidence to support the inference that if returned he would be punished, detained, or restricted in his personal liberty on the grounds of his race, religion, nationality or political opinions.

### **The judgement**

Judge Barbara Caulfield gave her 48 page judgement on 15 September rejecting the request for extradition. At the outset she pointed out that although both the government and Smyth had presented many statistical reports, the evidence and the testimony of the witnesses interpreting the evidence 'demonstrates the inability to draw any logical conclusion from the statistical evidence'. She went on: 'The statistical evidence regarding a pattern of arrests, detentions, or treatment of individuals in Northern Ireland is flawed by the lack of scientific record-keeping or collection techniques'. The court therefore relied solely on the evidence of witnesses testifying at the trial on the issues presented to the court.

The Court reached a number of conclusions over the facts. Some of the more important findings were as follows. First, it found that the security forces consider that a person's status as a republican to be sufficient grounds alone to justify arrest, detention and interrogation. Second, that frequent contact with the security forces marks a person as a target for loyalist terrorists. Third, that Republican prisoners who had escaped and had been recaptured in 1983 were forced to run a gauntlet of guard dogs which were allowed to bite them and no disciplinary action was ever taken against the prison officers. Fourth, the prison officers at the Maze keep a 'Red Book' in which they listed trouble makers in the prison. It has always contained a disproportionate number of republicans. These prisoners are then moved and strip searched more frequently than other prisoners. In addition, the Court noted that witnesses on behalf of Smyth had testified to numerous instances of misconduct by the security forces. It then proceeded to list these instances which included harassment of Sinn Fein members, bribes and physical assaults to obtain information and suggestions that the security forces colluded in the murder of a number of Republicans.

Having reviewed all the facts and made a number of points on the law, Judge Caulfield concluded: 'the court is convinced that, if extradited to the U.K., Mr Smyth would be punished, detained and

restricted in his personal liberty by reason of his status as a Catholic Irish national and on account of his political opinions as a republican and member of Sinn Fein'. The court concluded that Smyth had established three separate and independent defences to his extradition.

First he established a defence with the benefit of the presumption awarded during discovery. The court considered that the UK did not rebut the presumptions placed on it. It had attempted to do so with a simple 'conclusory statement that the presumption is incorrect'. But this was not acceptable to the Court. It showed why by reference to the Steven's Inquiry into alleged collusion between the security forces and loyalist paramilitaries. A UK. witness had produced a summary of the report for the court and stated that most of the recommendations had been implemented and this would prevent repetition of the problems. But the witness refused to produce the actual report, refused to describe the problems uncovered, and which of the over eighty recommendations had been implemented or how they were implemented. The court therefore concluded that without hearing the magnitude of the original problems or how the problems were supposedly dealt with, the court could not accept the assertion that information leaks and collusion did not persist.

Second, Smyth established the separate and independent defence that he would be punished on his return to prison in Northern Ireland. The court concluded that Smyth's past treatment at the hands of the security forces and prison staff shows that he is likely to face discriminatory treatment in prison in the future. Among other evidence in support, it recorded the attacks on the captured prisoners in 1983 and the subsequent denial of medical treatment to the wounded prisoners for several days and the prison officers' attempt to pervert the course of justice at trial.

Third, Smyth established that he would suffer upon his release into the general population at the conclusion of his prison term. The court considered that the conduct of the security forces has not changed in the last several years. Notwithstanding the UK's claims that whatever misconduct had occurred in the past, the court was not convinced that the new procedural safeguards prevented misconduct. It concluded that it remains 'unconvinced that the security forces' conduct has changed so as not to warrant deep concern about the way Mr Smyth will be treated once he returns to civilian life in Northern Ireland'.

The judgement therefore amounted to a severe public criticism of a range of British policies and practices in the north of Ireland. Yet few of the details of the findings were reported by the British media. Most coverage focused on the individuals - Smyth and the prison officer he was convicted of attempting to murder. Little or no mention was made of the broader issues of security forces and prison personnel misconduct and the ongoing discriminatory treatment against Republicans. The British media, including the BBC, once again has shown itself to be simply a mouth piece of the government.

### **EUROPOL**

#### **Update on the draft Convention**

The draft Europol Convention has undergone a number of changes since our report in *Statewatch* vol 4 no 3 and there are still significant differences between the Member States of the EU to be resolved. The German Presidency intended the Convention to be ready for signing at the Council of Justice and Interior Ministers on

30 November, indeed this was stated as their primary objective under the 'third pillar' over a year ago. However, unless there is a major change of policy by the UK and France over the role of the European Court of Justice and the European Court of Auditors agreement will not be reached in time for this meeting.

### Points of difference

At the Informal Meeting of Justice and Interior Ministers in Berlin on 7 September a revised draft of the Europol Convention was discussed (dated 28 June 1994; this updated the 8 November 1993 and the May 1994 versions). The first area of disagreement is over national access to the computerised Europol database. The planned system architecture has three elements: a) an information system with standardised data, contributed by national criminal intelligence centres; b) an index system of key words to the analysis data files; c) the analysis data files which will also include data in a 'non-standardised form', that is 'intelligence' or 'speculation' about an individual, where 'sensitive' data can be entered. The current proposal is that national liaison officers will only have access to the standardised data each of them has contributed and not to any of the 'sensitive' data. France, supported by Italy and Spain, want all the information held by Europol to be accessible at national level.

The Objectives set out in the June 1994 draft Convention include 'terrorism' in addition to drug trafficking and serious (organised) crime (Article 2.1). Spain insists this should be included while the UK's long-standing official position is that the current structure for combatting terrorism works perfectly well. Unofficially the UK government likes the present system - the only bit of the old Trevi system to survive - because it created it, with the European Liaison Unit of the Metropolitan Police Special Branch coordinating intelligence with other EU Special Branches and internal security agencies. The UK also does not want to entrust anti-terrorism to 'untrustworthy' police officers from certain EU states. A 'compromise' on this issue is in sight with the inclusion of a general remit to cover terrorism included in Europol's objectives but with the assign of specific forms of terrorism at a future date (eg: nuclear thefts).

The three other issues which divide the EU states may not be so easily resolved. A new Article 31 which says: 'An examination is needed as to whether it is necessary to provide, in the Convention, provisions ruling parliamentary control of Europol activities...'. Under consideration is either strengthened control by the European Parliament, a mixed commission of the EP and national parliaments, or a joint commission just composed of members of national parliaments. Any of these options would run counter to the inter-governmental nature of the Convention and thus run into implacable opposition from the UK among others. The same goes for the proposed roles of the European Court of Justice and the European Court of Auditors. The majority favour using both of these bodies partly for reasons of efficiency (they work and have long track-records) and partly to link Europol into the main institutions of the European Union. A minority, including the UK and France, again want to preserve the 'intergovernmental' nature of this Convention (and the others in the pipeline, the Customs Cooperation Convention, European Information System, and the External Borders Convention).

The key issue of the role of the European Court of Justice. The current draft Convention would allow the court to have jurisdiction over: a) differences of opinion between member states or between member states and Europol; b) proceedings brought by individuals concerning the data being held on them; c) disputes between

Europol and its employees; d) disputes concerning damages for which Europol might become liable. The alternatives on the table are only allowing individuals, under b. above, to complain to national courts about the actions of national criminal intelligence units (thus apparently excluding the possibility of complaining about the analysis data files held centrally by Europol) or allowing the complainant the option of choosing between a national court and the ECJ. These alternatives are semantic unless the primary objections by the UK and France to allowing the ECJ any role at all is overcome.

### Changes in the Convention

There have been a number of significant changes in the draft Convention. The 'forms of crime' to be covered by Europol listed in an annex to Article 2 have been extended to include: investment fraud, aggravated burglary, and 'clandestine/illegal immigration'. The data which can be stored by Europol defined in Article 7 covers 'persons under suspicion of having committed a crime' (7.1.1.) and 'persons when there are grounds to believe that they will commit crimes' (7.1.3).

The role of the Management Board of Europol, to be comprised of one representative of each member state (Interior Ministry officials), has been expanded in the new draft (Article 25). The Board will take part in the discussions to extend Europol's aims, the adoption of regulations governing the data to be kept, the appointment or dismissal of the director and assistant directors, and 'the adoption of provisions relating to the protection of secrecy'. Article 28, headed 'Protection of secrecy' deals with keeping Europol information secret and for the vetting of Europol staff by their national state. Article 41 says that 'reservations' to the Convention are not permitted, meaning a state cannot opt out of selected provisions they have to accept the whole proposal as agreed.

Article 42 says that the Convention comes into effect after all the 12 (soon to be 16) states ratify the Convention according to their national procedures (at this point the 'activities of Europol start, those of the Europol Drugs Unit shall cease..' the latter's role being taken over).

The procedure for adopting a EU Convention is that first Ministers from the states sign it collectively after which it *cannot be amended*. Each country then has to ratify the Convention according to their national parliamentary procedures. In the UK it will be ratified under the archaic 'Ponsonby rules', probably with no parliamentary vote or debate. Other EU parliament however can be expected to take their role more seriously, as they did over the adoption of the Schengen Agreement and the Dublin Convention. This process may take several years, for example, the Dublin Convention signed in June 1990 has still only been ratified by 8 of the 12 states and is not expected to come into effect until 1995. Due to the nature of the Dublin Convention several countries have already implemented its provisions. However, this is not possible with Europol which is to be a European state agency with a central HQ and database in the Hague. How EU states will overcome the legality of operating Europol before the Convention is ratified - a budget for 1995 has already been agreed and 70 staff are in post - must remain a matter of speculation.

*Convention for the creation of a European Police Office (Europol)*, 28.6.94, Restricted, EUROPOL 64, 8074/94; *Provisional text of the draft Convention on the Establishment of Europol*, 8.11.93, Restricted, ENFORC 3, 9757/93; *Revised draft Convention*, 30.5.94; *Note by German Presidency*, 7.9.94.

## NORTHERN IRELAND

### Costing the peace

On 31 August, the IRA announced that from 1 September there would be a ceasefire: 'Recognising the potential of the current situation and in order to enhance the democratic peace process and to underline our definitive commitment to its success the leadership of Oghlaigh na hEirreann have decided that as of midnight Wednesday August 31 there will be a complete cessation of military operations. All our units have been instructed accordingly'.

The announcement has given rise to widespread speculation over the future governance of the North of Ireland and over the nature of any possible agreement between the Irish and British governments, and unionist and nationalist parties. While many in Ireland and internationally now believe that it is only a matter of time before the British government finally relinquishes sovereignty over the North (which it claims under the Government of Ireland Act 1920), it is doing little to prepare that ground either economically or politically. On the contrary, the British position is that the future of the North rests on a head count of British versus Irish nationalists within the six counties alone. This crude majoritarianism has renewed traditional unionist speculation over demographic trends (when will Catholics be in a majority?) and given rise to the usual repertoire of policy proposals for containing or reducing the Catholic population. The British support for what amounts to a unionist veto over any possible future arrangements is contradicted by the government's apparent commitment to the principle of Irish self-determination contained in the Downing Street declaration of 15 December 1993. It is also contradicted by the fact that British and Irish people living outside of the North of Ireland have legitimate material and political interests in the future of the six counties.

A particular focus of debate since the ceasefire has been the idea of a 'peace dividend'. While this has been largely discussed in terms of the economic implications of peace 'new investment from the U.S. and aid from the EU' it is clear that much of the speculation focuses on the vast resources that have been committed to containing the conflict over the past twenty-five years. If the peace process continues, there are huge implications for the military, the intelligence agencies, policing, prisons, the courts and the legal profession. Furthermore, the special laws applying in British and Irish jurisdictions are under scrutiny and the civil liberties lobby has already called for the repeal of the Prevention of Terrorism Act.

The scale of potential change is outlined in a recent pamphlet on 'the costs of the war and the dividends of peace', published by the West Belfast Economic Forum. The pamphlet takes as its starting point a figure produced by the House of Commons research department and quoted by Tony Benn in the adjournment debate of 22 October 1993: 'I asked the House of Commons research department to calculate the total cost of the emergency and, at current prices, the cost of the war has been £14.5 billion'.

The WBEF pamphlet questions this figure on a number of grounds. Firstly, the Benn figure ignores conflict-related costs falling on social services. It does not include additional health and social services costs associated with the 3,330 deaths, 35,000 injuries and mass stress of the conflict, particularly within working class communities. Excluded are the costs to the housing budget of emergency re-housing due to sectarian attacks.

Secondly, the figures are based on attributing two-thirds of the costs of prisons and the RUC to the conflict, whereas a more realistic proportion is three-quarters, taking account of the number

of political prisoners and the size of a peace-time police force merited by the six county population. Excluding the war related element of Garda operations, for instance, gives a garda/population ratio of 1 to 400. On this basis the Northern six counties would need a police force of approximately 3,750 (including civilian staff), or a mere 23% of its current size. Turning to prisons, at September 1990 Northern Ireland had 110 prisoners per 100,000 population, the same as Hungary, 20 more than England & Wales and twice the rate for Italy. But 83 (75%) of these were being held for scheduled (ie: politically-motivated) offences. For both police and prisons, therefore, 75% of costs are conflict-related, not two-thirds.

Thirdly Benn's figure makes no attempt to identify the costs of intelligence agencies. We do not have the information to calculate intelligence costs pertaining to the North since 1969. Although the budgets of the Security Service, the Secret Intelligence Service (MI6) and the Government Communications Headquarters (GCHQ) are now known, it is only in respect of MI5 that we have any clue as to the scale of Irish-related activity. GCHQ must be spending a significant proportion of its £550 million per annum budget on listening to Irish telecommunications. Intelligence costs must add up to at least £600 million for the last 25 years, argues the pamphlet.

A fourth problem with Benn's total is that no allowance is made for the broader economic costs of lost output, investment and the damage to the tourist industry. When this issue was first seriously tackled for the New Ireland Forum, it was estimated that 40,000 manufacturing jobs had been lost to the conflict between 1969 and 1982. A similar analysis published in January 1994 concluded that, without the conflict, at a minimum Northern Ireland could have retained the 46,000 manufacturing jobs in foreign-owned companies which were lost between 1973 and 1993. The North loses at least £81 million per annum in tourist revenues. The Republic loses a further £17 million and another £10 million in extra electricity generating costs because of the lack of a North/South interconnector.

A fifth problem is that it is too often assumed, as the Benn figure does, that the costs of the conflict only occur within the North itself. This is obviously not the case. Damage and immediate loss of trade costs in Britain have been running to hundreds of millions of pounds a year in the 1990s. One estimate quoted £1.8 billion as the overall cost of the Baltic Exchange and Bishopsgate bombings. Closing Heathrow for a few hours diverted more than 150 aircraft, supposedly at a cost of £10,000 a piece. Each of the forty-two bombing incidents in Britain last year will have been followed up with police interviews of potential witnesses - on occasions up to a thousand people have been interviewed by the police. The more routine costs of protecting politicians and other targets are already making some police forces creak.

In all the parliamentary debates on the Prevention of Terrorism Act, the costs have rarely been mentioned. The pamphlet suggests that the cost of the PTA since its introduction is in the region of three-quarters of a billion pounds. Finally, there is the estimated £12,500 million which the South has spent policing the border since 1969.

Excluding the general economic effects of the conflict and sticking to those items that can be costed with some confidence, the pamphlet estimates the total cost of war since 1969 as a minimum of £23.5 billion. This is equivalent to the total British defence budget for one year. It is twice the total annual public spend in the South. 'This war has cost everyone in Britain the equivalent of

£427, or £4,700 for every person in Ireland. The total works out at £15,600 per person in the North'.

The pamphlet goes on to make the point that the territorial distribution of costs has changed over the years. Over the 25 years as a whole, 10.5% of the costs have been incurred in the South, 7.5% in Britain and 82% in the North. But this territorial pattern changed in the last five years. If we take the costs of the war for 1993/4 - £2,250 million (equivalent to about a tenth of the British defence budget) - 30% of this fell in Britain, 12% in the South and 58% in the North. The conflict has thus reached a pitch in economic terms in which as much as 42% of the costs arise outside the North of Ireland.

The pamphlet argues that if £2.25 billion can be spent on war in a year, then a substantial proportion of this resource can be transferred to securing the peace through investment in social and economic development. Peace could mean 1,000 MI5 officers looking for work, the saving of £500 million 'additional costs' of the British Army, 1400 less prison officers, and 12,000 less RUC personnel. Much depends on the rate at which armed forces are demobilised, the speed of release of political prisoners and just how policing comes to be reconstituted, but in any event the British Treasury will want to get its hands on the peace dividend to reduce budget deficits. And this bears on another issue raised in the pamphlet: the British subvention.

In the last financial year, Britain spent £3.4 billion more in the North than was raised there in taxation. In other words one half of the Northern Ireland public expenditure programme of £7 billion (which excludes army costs) was paid for through subsidy, an amount equivalent to about 17% of the combined North/South public expenditure. Yet over half of the subsidy is war-related costs. The pamphlet argues that the British subvention need not be a barrier to Irish re-unification providing there is the political will to invest in peace in the medium term. The economy can be successfully restructured in conditions of peace, thereby saving Britain its subvention in the longer term. The main impediment to such a scenario, the pamphlet argues, is British government support for those vested interests in the military, in intelligence, in the police and prisons which stand to lose from the peace.

With the Irish government setting the pace with talk of prisoner amnesty, border road openings and demilitarisation, the scene is set for a protracted period of tension between the British and Irish governments. While the Irish and other governments have welcomed Sinn Fein in from the cold, the British government plays for time, aligning itself more visibly in the process with unionism. Its practice sits uneasily with claims to have no selfish or strategic interest in the North of Ireland.

*25 Years On: The Costs of War and the Dividends of Peace*, available from West Belfast Economic Forum, 216 Falls Road, Belfast BT12 6AH, Price £3.00. (ISBN 0 9521888 3 X)

### Identity cards

At the Conservative Party Annual Conference Home Secretary Michael Howard announced that the government would be publishing a Green Paper putting forward the introduction of a national identity card. Although he thought it would initially be 'voluntary' he foresaw that everyone would want to carry one very quickly. It would be a multi-purpose 'smart' card acting as a driving licence, with social security details, be a credit and bank card, and hold medical donor details, for a start.

On 8 August Dr Brian Mawhinney, the Transport Secretary, had announced that credit card style driving licences bearing the holder's photograph will be introduced in July 1996. The licence will initially be issued to learner drivers and eventually extended to the 32 million qualified motorists. The arguments put forward included convenience: 'the current version is not popular with motorists to carry around' and the fight against vehicle licence fraud. In addition it is claimed that it would prevent the impersonation of driving test candidates, an offence for which nine people were convicted last year.

Dr Mawhinney made it clear that this was not intended as a precursor of a compulsory identity card. Yet in a TV news broadcast he was very careful with his words: 'I am not talking about a national identity card system *today*'. He said they would hold 'fairly straightforward information *initially*' (italics added). A range of evidence suggests, however, that these new cards are the precursor to a compulsory identification scheme. First, computer companies have been consulted extensively on the practical implications. Second, Liberty has received inside information from Conservative Central Office that senior Conservative politicians have been discussing for sometime how best to introduce a national identity card. Third, the police are strongly in favour particularly in the context of a 'borderless' Europe.

In Europe there have been significant increases in the introduction and use of identify cards in recent years. Ireland is introducing a universal benefit card, Portugal's system is becoming compulsory and the Netherlands is introducing legalisation requiring people to identify themselves in certain circumstances. Of the twelve countries in the EU, six currently have compulsory and 3 voluntary schemes. At the same time there has been a move towards the introduction of machine readable cards.

### Machine readable cards

Developments in technology of the storage of information and identification further increases the likelihood of the introduction of compulsory cards. These pose new threats to civil liberties. The standard method in current identification schemes is to build in a machine readable magnet strip to a form or card. The amount of information which can be held is fairly limited, but it can be quickly read by a scanner and the information checked against police or other computerised databases. Over thirty countries are currently using this method on machine readable passports including the UK version of the EC passport. It is also used on the new National Insurance card introduced in 1984. Moreover, it will be the method for storing information on the new driving licences.

This technology is already obsolete. It is now possible to produce smart cards carrying chips which can store vast amounts of data. The Government has made it clear that it would like to add a micro-chip at some stage to the new driving licence to hold details like driving endorsements or organ donor information. The information on a micro-chip can be updated or changed every time it is passed through a machine. The individual holder will, however, have no control over the type of information entered or its accuracy. The technical capacity already exists for the information on a smart card to be accessed by a range of government officials via the Government Data Network. This is a dedicated computer network which links together four major Government Departments: Home Office, Customs and Excise, Inland Revenue and Social Security. The potential is therefore in place for any official to stop a member of the public and access information on that individual from a variety of separate databases.

The technology of identification is also moving ahead rapidly making the other component of the proposed driving license - the photograph - obsolete. Currently, photographs on ID cards are digitised and hence can be stored on a computer and if necessary, reproduced. Matching photographs is more difficult, however, because only a flat image of person is reproduced taken from one point. It is now possible to take a 'panoramic' photograph of an individual providing a digitised record of any view and a reconstruction of the head from any angle. This will enable an individual captured on video to be matched with still photographs held for identification purposes. In addition, in time these 'all round' photographs are likely to become the standard method of security control. People will be required to stand in front of a video camera, place their identification card in the machine and if the video photograph matches the photograph on the ID they will be allowed to proceed.

Other methods of identification are currently being tried out. Frankfurt and Amsterdam (Schiphol) airports have been experimenting with matching recorded digitised maps of the individual's hand or fingerprint with an individual's actual hand or fingerprint. One method records the information onto a smart card and then matches the information from the smart card and the scanned image of the passenger's hand or fingerprint at a security check. The disadvantage of this method is that the information can be forged onto the card. Frankfurt airport has therefore gone one step further and stored the digitised hand print together with information from the German's machine-readable identification card. The passenger then inserts their ID and places their hand on a scanner. The computer then retrieves the digitised hand print from details on the ID and compares it with the scanned image. If it matches the passenger is allowed to proceed.

All these new technologies offer governments comprehensive methods of social control unique in our history. Yet there appears to be very little opposition to either the new driving licences or to a compulsory ID. The Labour Party's spokesperson raised no objection in principle to the new licence provided it was cost effective. Roy Hattersley, former leader of the Labour Party, argued that it would save black or Asian motorists from 'intolerable humiliation' by being forced to stand by their cars while persuading the police of their rightful ownership. He ignored, however, the French experience where ID cards are compulsory and where black people are constantly harassed. Liberty's General Secretary Andrew Puddephatt said they were opposed to it in principle. It would, he said, do little to combat crime and would be used to harass black and young people.

*Guardian*, 10, 12, 24, 29.8.94; *Government Data Network Contract Awarded*, CCTA Press Release, 19.5.1988.

[BOX]

### **ID cards in the UK: 1939-1952**

It is easily forgotten that Britain had an identity card system between 1939 and 1952. The compulsory issue of identity cards was introduced under the National Registration Act 1939, a piece of wartime emergency legislation. The Act set up a National Register, containing details of all citizens, who were then issued with cards.

The Register comprised 'all persons in the United Kingdom at the appointed time' and 'all persons entering or born in the United Kingdom after that time'. The details entered in the Register were:

name, sex, age, occupation, address, 'condition as to marriage', membership of armed forces. It was compulsory to carry the card, section 6, sub-section 4, of the Act stated:

'A constable in uniform, or any person authorised for the purpose under the said regulations, may require a person who under the regulations is for the time being responsible for the custody of an identity card, to produce the card to him or, if the person so required fails to produce it when the requirement is made, to produce it within such time, to such person and at such place as may be prescribed'.

In a parliamentary debate on the ID card in 1947 the Government's spokesman, Aneurin Bevan MP said:

'I believe that the requirement of an internal passport is more objectionable than an external passport, and that citizens ought to be allowed to move about freely without running the risk of being accosted by a policeman or anyone else, and asked to produce proof of identity'.

It was not until 22 May 1952 that identity cards were abolished and it is unlikely that it would have been abandoned had it not been for the test case of *Willcock v Muckle* (1951, 49 LGR 584). In this case a driver was stopped in connection with a motoring offence and asked to produce his card. On his refusal to do so, either then or subsequently, he was charged with an offence under Section 6(4). When the case reached appeal in the King's Bench Division, Lord Chief Justice Goddard delivered a ferocious attack upon police practice:

'Because the police have powers, it does not follow that they ought to exercise them on all occasions as a matter of routine. From what we have been told it is obvious that the police now, as a matter of routine, demand the production of a National Registration Card whenever they stop or interrogate a motorist for whatever cause... This Act was passed for security purposes: it was never intended for the purposes for which it is now being used.'

No separate statistics of offences under the National Registration Act are available for the years 1939-48, since they were hidden under 'other misdemeanours'. However, in 1949, 521 people were convicted of offences against the Act, in 1950, 470 (409 men, 61 women) were charged, 436 were convicted, 19 cases were otherwise disposed of, and 15 were dismissed. In 1951, 273 (232 men, 41 women) were charged, 235 were convicted, 16 otherwise disposed of, and 22 dismissed. In 1952, the year the system lapsed, 8 people only were charged, of whom 3 were convicted. By this time *Willcock v Muckle* had taken the carpet from under the police's feet and the government decided to allow the system to lapse.

The introduction of compulsory ID cards in 1939 was legitimated by the nature of the emergency. However, as one civil liberties observer commented: 'Voluntary' ID cards may seem unobjectionable until you realise they can easily become 'compulsory' either through the need to carry them to get every day service, or because a government panics and makes them mandatory because of some perceived threat'.

*State Research* no 5, April/May 1978.

**International day against Fascism and Antisemitism:** 9 November 1994, the 50th anniversary of the 'Kristallnacht' pogrom in Nazi Germany, a day of action focuses on the continuing persecution of Europe's Roma. Details from: Roma National Congress, Simon von Utrecht str. 85, d-20359, Hamburg, Germany. Tel: ++ 49 40 319 4249 or from: UNITED, Postbus 413, 1000 AK Amsterdam, Netherlands. Tel: ++ 31 20 683 4778.

**Practical problems of UK implementation of the European Union Immigration Law:** Immigration Law Practitioners' Association (ILPA), 25 November, London. Speakers include: Ian Macdonald QC, Nick Blake QC, Mme Helene Gacon (GISTI, France) and Nuala Mole (AIRE Centre). Details: ILPA, 115 Old Street, London EC1V 9JR. Tel: 071 250 1671.

**Training in immigration and nationality law and practice:** Courses organised by the Joint Council for the Welfare of Immigrants, 115 Old Street, London EC1V 9JR. Tel: 071 251 8708.

**Shaping the future: new directions for legal services:** an international Legal Action Group (LAG) Conference, Saturday 12 November 1994. City University, Northampton Square, London EC1. £25 (limited places available for students at £5). Details: LAG, 242 Pentonville Road, London N1 9UN.

**EU asylum policy - domestic security: uncontrollable and arbitrary police power.** 4-9 December 1994 in Duisburg, near Dusseldorf, Germany. Organised by the International Committee of the Young-Democrat-Young Left, Bundesgeschäftsstelle: Chausseestrasse 8, 10115 Berlin, Germany. Tel: ++ 49 30 2833245.

**Tribunal on asylum seekers in Europe:** 8-12 December 1994, Berlin. International tribunal to consider the accusation that all European states have broken human rights conventions and agreements in regard to the treatment of asylum seekers. Organised by the Basso Tribunal, c/o AStA TU Berlin, Marchstrabe 6, 10587 Berlin, Germany. Tel: ++ 49 30 314 24437.

**Challenges to Law at the end of the 20th century:** Conference, Bologna, Italy, 16-21 June 1995. Details: André-Jean Arnaud, REDS, Droit et Société, Domaine Saint-Louis, F-11160 Rieux-Minervois, France.

**Value and Commitment in Diversity:** Annual Conference of the Socio-Legal Studies Association, 27-29 March 1995, Leeds. Details: David Wall or Adam Crawford, Centre for Criminal Justice Studies, Leeds University, Leeds LS2 9JT.

## CONTENTS

*Statewatch* is produced by an independent group of journalists, researchers, lawyers, lecturers and community activists. *Statewatch* does not have a corporate view, the opinions expressed are those of the contributors. *Statewatch* bulletin is published six times a year.

c. *Statewatch*. Material from bulletin may be used provided an acknowledgement is given.

Published by *Statewatch*, PO Box 1516, London N16 0EW.  
Tel: 081-802-1882 Fax: 081-880-1727.

e-mail: [statewatch-off@geo2.poptel.org.uk](mailto:statewatch-off@geo2.poptel.org.uk)

Printed by Russell Press, Radford Mill, Norton Street, Nottingham NG7 3HN

ISSN 0961-7280

## Statewatch briefings

**The Schengen Agreement:** *Statewatch briefing* full text of the Agreement plus an introduction, European Parliament resolutions, and a select bibliography. Cost: £5.00 inc p&p (Europe £6.00; outside Europe \$15 or £7.00 sterling).

**Statewatching the new Europe: a handbook on the European state:** 208 page paperback, £4.50 from *Statewatch*, PO Box 1516, London N16 0EW.

**Back issues of Statewatch:** Single copies of back issues are available at £1.00 each - ie: full set of back issues, Vols 1-3 costs: £17.00. Volume 1 had five issues, nos 1-5; Volumes 2 and 3 had six issues.

## Contributors

Editor: Tony Bunyan, Co-ordinator: Trevor Hemmings; Reviews Editor: Nadine Finch; Lee Bridges, Heiner Busch, Phil Collins, Unmesh Desai, Barbara Forbes, Paddy Hillyard, Stef Jansen, Peter Klerks, Ida Koch, Steve Peak, Phil Scraton, Joe Sim, Ann Singleton, Ragnild Sollund, Dennis Tollborg, Mike Tomlinson, Frances Webber, Catherine Weber, Simone White; the Centre for Studies in Crime and Social Justice (Edge Hill College, Lancashire), Jansen & Janssen (Amsterdam), the Institute of Crime, Justice and Welfare Studies (Liverpool Polytechnic), CILIP (Berlin), Legal Action Group, Liberty, the Northern European Nuclear Information Group (NENIG), Reflex (Paris), Quaker Council for European Affairs (Brussels).

## Subscription rates - Bulletin (6 times a year)

Individuals £12 pa (UK & Europe), Unwaged (unemployed & students) £8 pa (UK & Europe); Voluntary groups £16 pa (UK & Europe); Institutions £20 pa (UK & Europe); outside Europe add £4 pa to subscription rate.

**The Statewatch on-line database:** Registration is available free to all subscribers to the bulletin, the only cost is 20p a minute for usage. Write, phone or fax for details.

**Subscriptions from outside UK:** must paid in sterling (£) by Eurocheque or international money order or with a sterling cheque drawn on a UK bank or by Visa and Access credit cards (please give name on card, address, card no. and expiry date). The bulletin will be sent by Air Mail at printed paper rate.

**Make cheques payable to: Statewatch.**