

PLATFORM 'FORTRESS EUROPE?'

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Platform "Fortress Europe?"(PFE) is an international network of groups and individuals concerned with European harmonization in the fields of internal security, policing, justice, immigration and asylum and its effects on fundamental rights and liberties.

By serving as a forum of mutual information, analysis and critical debate among experts and laymen, scholars and practitioners in both the East and West of Europe, PFE wishes to encourage a common search for alternative policies in conformity with human rights and constitutional democracy. As an informal and open network, PFE refrains from taking public stands, leaving such to the own initiative of each participating group or individual.

PFE is associated with the European Civic Forum.

The PFE's **Circular Letter (CL)** is published 10 times a year. The Circular offers a selection of news, comment and messages based essentially on the contributions of its readers. Its main aim is to facilitate direct contacts among the participants of PFE.

i 4 0ispain:/s

s- Spanish-Moroccan police cooperation against boat people p./s

s- Planned ammendment of Spanish penal law threatens the freedom of press p./s

sPortugal:/s

s- The everlasting trial of a national hero p./s

s- Amnesty for illegal immigrants in Portugal p./s

sSwitzerland:/s

s- No end to unbridled telephone tapping p./s

s- Swiss court confirms right to resistance against deportation of persecutees p./s

sCroatia:/s

s- President Tudjman's crackdown on the freedom of press p./s

sEurope:/s

s- Intelligence cooperation: The German-Russian agreement p./s

sOpinion:/s

s- Divide and conquer: Social policy and the division of labor in the EEA p./s

sSPAIN/s

sSPANISH-MOROCCAN POLICE COOPERATION AGAINST BOAT PEOPLE/s

sThe introduction by the EC of the visa obligation for nationals of the Maghreb states has lead to a dramatic increase of refugees and migrants seeking to enter into Spain illegally by crossing the Strait of Gibraltar in small and unadapted boats. According to concurring estimates presented by Spanish relief organizations and Moroccan opposition circles at least 300 boat people died since the beginning of this year in attempts to cross the Strait./s

sSpain and Morocco are reacting by increasing police cooperation./s

s/s

sAlready after the introduction of the visa obligation for citizens from the Maghreb countries and the rest of Africa by the EC, a year ago, the Spanish police force "Guardia Civil" set up an extra-territorial outpost at the Moroccan ferry port of Tanger in order to "filter" out unwanted immigrants. Recently, agreement has been reached to vigorously enforce the provisions on deportation and repatriation already included in the Spanish - Moroccan treaty on "Friendship and Cooperation" of 1990./s

sThe Moroccan government had previously refused to take back third country nationals, even when they had started their passage from Moroccan ports. Now, Morocco has agreed on doing so, on condition however, that Spain bears all the costs involved. Under these conditions more than 2000 deportations have been carried out, alone in 1992. /s

sIn view of a speedy entry into force of the Schengen Treaty Spain expects a further rise of the migratory influx. Anxious not to jeopardize their bargaining position in the negotiations on Moroccan association with the EC the Moroccan authorities have drastically reinforced their coast guard. Smugglers reacted by raising their fares from fees corresponding to 800 Swiss francs to 1500-2000 Sfr. per person./s

sMoroccan opposition circles also link the massive border police operations to the local elections due for 16 October which have been marked by nation-wide intimidation campaigns of the regime./s

sAlexander Gschwind /s

s(The author lives in Madrid and works as a correspondent for several Swiss newspapers and the Swiss Public Broadcasting Corporation SRG)/s

sPLANNED AMMENDMENT OF SPANISH PENAL LAW THREATENS FREEDOM OF PRESS/s

sThe polemic around the planned revision of the Spanish penal code is continuing with undiminished intensity. Above all, the draft paragraphs on various forms of defamation and press offences triggered such a wave of protest that the bill is no longer expected to be voted within the current parliamentary period (until October 92)./s

s/s

sThe government of Prime Minister Felipe Gonzales publically admits that the main aim of the "muzzle" paragraphs is to stem evergrowing media criticism of its conduct and of spreading government related corruption./s

sIt is probably not a matter of pure coincidence that the ammendments were planned just after the newspapers "El Mundo" and "Diario 16" had caused enormous trouble for Mr. Gonzales' cabinet with their revelations on cronyism in the family of former Vice President Alfonso Guerra and on government and police involvment in the GAL death squadrons./s

sThe government appears eager to avoid similar trouble with the media in future by introducing fines ranging up to one million peseta and prison terms of up to two and a half years. The proposed sanctions have been condemned in strongworded resolutions by, among others, the PEN-Club and the International Press Institute. Several thousand journalists and media workers from all sectors of the Spanish media on their part signed a declaration for the defence of the freedom of press and opinion./s

sAlexander Gschwind/s

sPORTUGAL/s

sTHE EVERLASTING TRIAL OF A NATIONAL HERO/s

sOn April 25, 1974, Western Europe's most longlasting dictatorship, the fascist regime of Salazar and Gaetano in Portugal, was overthrown in an unbloody coup staged by a group

of democratic officers and soldiers organized in the 'Movimento dos Fuzças Armadas' (MFA, Movement of the Armed Forces). No blood was spilled in the the anti-fascist coup d'état hailed throughout the world as the "Carnation Revolution". The strategical mastermind behind the coup was a young and unknown army officer from the African colonies: Major Otelo Saraiva de Carvalho./s

sTen years later, in June 1984, Otelo, the hero of Portugal's liberation was arrested and accused of being the founder and leader of a "terrorist organization". In a longlasting trial, blurred by kafkaesque procedural irregularities, Otelo was finally sentenced to a 17 years prison term by the Portuguese Supreme Court. But in the wake of an international campaign of jurists organized by the European Committee for the Defence of Refugees and Immigrants, CEDRI, the Constitutional Court quashed the sentence on the grounds of grave procedural irregularities and ordered a re-trial. In May 1989, Otelo was freed, pending a new judgement, after almost five years of detention on remand. But his trial has continued ever since in a grotesque show-piece of juridico-political byzantinism. The, for the time being, last stage in this political trial unique in Western Europe was reached in May with the decision of the European Commission of Human Rights to admit a complaint filed by Otelo. The story of Otelo's trial is the story of how "anti-terrorist" legislation can be abused for the intimidation and criminalization of legitimate democratic opposition./s

sFrom the very beginning, the accusation against Otelo was based on a deliberately maintained confusion between two organisations:/s

sOne of them was known as the 'FP-25' (Fuzças Populares do 25 Abril). This clandestine group used an aggressive radical leftist vocabulary, but its true origins remain highly obscure. Since 1980, the FP-25 carried out a series of violent attacks ranging from robbery to murder. The appearance of the FP-25 coincided with a period of economic and social instability in Portugal, when harsh austerity measures imposed by the IMF gave rise to wide-spread popular discontent./s

sThe second, called the 'Global Project' (GP), could more accurately be described as a draft concept for a political strategy than as a structured, existing organization. The origins of the GP go back to 1977. At that time the young Portuguese democracy had already survived two coup attempts by the far right which had failed only thanks to the vigilance of the MFA and its strong popular support. But by 1977, extreme right wing circles including Salazarist landlords and businessmen who had fled the country in 1974 and whose land and factories had been taken over by worker and peasant cooperatives under the protection of the MFA, regained much of their influence without having to resort to a coup, thanks to far-reaching economic and political assistance from various Western governments and international business interests./s

sThe workers unions faced with the abolition of the achievements brought about by the Carnation Revolution, responded with mass strikes. /s

sAt the peak of political and social tension, a group of right-wing army officers met the then President Ramalho Eanes offering him their "services" with a view to restoring a "strong-handed" regime to power./s

sMario Soares, at that time head of the Portuguese Socialist Party, delivered an alarming speech to parliament warning of a possible fascist coup and stating that all conditions for such a coup were now present./s

sIn this situation, Otelo de Carvalho, who had been stripped of all positions of influence in the army but who remained a highly popular figure as the "father of Portuguese democracy", developed the idea of the 'Global Project' aimed at organizing a broadly based popular resistance movement capable of countering by all possible means, including armed struggle, in the event of a fascist coup./s

sOtelo's plan envisaged the setting up of two elements within the GP:/s

sa) An overt political anti-fascist mass-organization/s

sb) A covert organization prepared for armed resistance in the event of a fascist coup./s

sIn fact, the GP was only put into practice in a very restricted form: Otelo's efforts to create a mass-organization of popular unity led only to the constitution of the FUP, a small leftist party which never gained any electoral importance./s

sAs for the "covert wing" of the GP, it never got beyond an embryonic stage. At the end of the 70's, the threat of a fascist coup had vanished and with it the only condition which, in Otelo's view would have justified recourse to violent action./s

sNonetheless the judgements against Otelo and other members of his party, the FUP, are all based on the assertion that the 'FP-25' were no less than the covert, armed wing of the GP./s

sInternal security legislation provides the instrument for Otelo's trial/s

sThe trial of Otelo and his co-defendants would not have been possible without the previous introduction of an impressive arsenal of "internal security" legislation./s

sIn 1982 the government used the pretext of a number of violent attacks attributed to extreme left-wing groups to create the DCCB, an anti-terrorist unit within the criminal investigation police. It also introduced two new articles into the penal code: Article 288 on "terrorist organizations" which allows for the punishment of a "member of a terrorist association" with up to 20 years imprisonment, and Article 287/4 providing for the use of "repenters" as witnesses. Based on this provision, offenders who are ready to cooperate with the judicial authorities can give testimony against their co-defendants and thereby receive reductions of their sentences or even acquittal. /s

sIn 1984 the "Internal Security Law" was approved by parliament. The law included provisions allowing for:/s

s- the creation of a secret intelligence service to replace Salazar's ill-famed PIDE, dissolved after the "Carnation Revolution";/s

s- restrictions to the freedom of movement, residence and assembly;/s

s- telephone tapping, surveillance of mail and house searches without a judge's warrant;/s

s- preventive detention of persons suspected of preparing a crime;/s

s- the obligation for all officials and employees in the public sector and state-owned enterprises to collaborate with the security forces;/s

s- the establishment of a central computerized data bank, accessible to all security forces;/s

s- the use of the army and police to maintain "normal services" in the event of strikes;/s

s- the creation of a permanent crisis staff made up of representatives of the government, the judiciary, the army and police as well as of the security services;/s

s- collaboration with international bodies (such as NATO) and the secret services of foreign countries with the aim of maintaining "internal security".

/s

sMany of these innovations introduced in the name of "internal security" were used for the first time in the Otelo case./s

sWhat is a "terrorist association"?/s

sThe arbitrary interpretation of the "elastic" article 288 on terrorist organizations however provided the main premise for the trial. Indeed, according to the provision, a conviction does not require any evidence of involvement of the person concerned in a materialized particular crime. Moreover, in their motivation of the verdicts, none of the courts ever answered the question, albeit a vital one in the establishment of the facts: When was the terrorist organization founded and from which moment on (by which concrete behaviour) is one considered to be a member and when does one cease to be considered as such? Nowhere is the extent of the alleged

terrorist association defined. No indication is given on what deeds or activities the defendants are supposed to have carried out to be considered as members of the organization. By avoiding a clear definition of the extent of the alleged terrorist organization and by using a concept of "guilt by contact" the courts succeeded in blurring the lines between very different groups and organizations by presenting them as being part of one and the same "plot", the "Global Project". By engaging in such acrobatics the judges of the first ruling court managed to declare: "It must be made clear that in the [covert armed wing of the GP] there were two factions, one radical, the other moderate, also known as the 'Otelo wing' and opposed to violent crimes against people because they were contrary to the spirit of the Global Project."/s

sWhile the indictment charges the defendants collectively with specific violent crimes attributed to the 'FP-25', the judgements do not maintain this view. Thus the court of first instance only mentions "some defendants" who carried out violent acts "from time to time" and "in the orbit" of the Global Project. Neither Otelo, nor one single of his party friends were among them./s

sProcedural flaws/s

sThe whole trial was furthermore marked by a number of procedural flaws:/s

sThe Portuguese Penal Procedure Code lacks any obligation for the courts to motivate convictions. In other words, no detailed assessment of the evidence on which the courts findings are based is made in the judgement. This makes the material examination of the facts which have motivated a condemnation impossible. Thus, in later appeals a verdict can only be examined in the terms of the correct application of law./s

sThis legal defect of the Portuguese penal procedure later motivated the Constitutional Court's decision to quash the judgements on the grounds of a breach against the principle of a "double degree of jurisdiction" guaranteed by the Constitution./s

sBut another defect of the Portuguese penal procedure might prove to have even more decisive effects on the final outcome of the Otelo case./s

sIt is the quite unique institution of the "pronuncia". According to the Portuguese penal procedure, a contradictory investigation is first led by an investigating judge. Based on its findings the prosecution produces the bill of indictment which is then presented to a member of the ruling court (in the case of Otelo to the president of the court) who issues the "despacho da pronuncia" which contains the decision on whether to institute a trial or not. By taking this decision on the probability of guilt of the defendant(s) the judge of the pronuncia forms his first own opinion on the probable outcome of the procedure, and this exclusively on the base of the accusation./s

sFrom the beginning of the procedure, the defence attorneys of Otelo claimed that the institution of the "pronuncia" as such breached against the guarantee of an "impartial tribunal" as stipulated in article 6.1 of the European Convention on Human Rights. Indeed, the strict separation of the roles of the accusation and the ruling judge thus risks to be blurred. Before the opening of the trial, a judge member of the ruling court is likely to gain an "intimate personal conviction" which he will be tempted to prove by all means. Incidentally, in the new Penal Procedure Code which came into affect after the Otelo case, the pronuncia as a strange mixture between indictment and "pre-verdict" has been abolished./s

sThe decision by the European Commission of Human Rights to admit the complaint filed by Otelo's lawyers Romeu Frances (Lisbon) and Me Henri Leclerc, vice-president of the French League of Human Rights (Paris), is based on the Commissions doubt whether the judge in charge of instituting the main procedure can at the same time be part of the ruling court./s

sThe Commission names the fact that the European Court of Human Rights has repeatedly stated that the impartiality of a judge must be assessed not only on the basis of an "objective approach" aiming at finding out whether the magistrate concerned offered sufficient guarantees excluding any legitimate doubt regarding his impartiality, but also on the basis of a "subjective approach" trying to determine what intimate conviction a particular judge concerned had gained./s

sAs a result, the European Court will now have to pronounce itself on the question whether the judge who presided the ruling court in Otelo's case offered sufficient guarantees excluding "legitimate doubts with regard to his impartiality"./s

sIn the mean time the judicial tragicomedy is going on in Portugal as if nothing had happened. In what must be seen as an extraordinary affront against the Constitutional Court, the Portuguese judiciary did, it is true, comply with the court's order to open a new procedure, but ostensibly ignored all its requirements regarding the elimination of the procedural defects which had led to the annulment of the first procedure. Thus, in the second round, Otelo was once again sentenced, first, by a criminal court of Lisbon, then by the court of appeal and finally by the Supreme Court to about the same term of imprisonment as in the first round. Considering this vicious circle created by a judicial system running amuck the only hope for an end to the Otelo case lies with an early ruling of the European Court. Sole consolation for the victims: Despite the confirmation of the sentences Otelo and his co-defendants are all free.../s

sNicholas Busch/s

sSources: C.E.D.R.I., The trial against Otelo Saraiva de Carvalho - a synopsis of the case, July 1987 and up-dates November 1988, February 1989, April 1989; European Commission of Human Rights, Décision finale sur la recevabilité de la requête No 15651/89, 19.5.92./s

sFor further information contact: Me Henri Leclerc, 52, Bd. d'Ornano, F-75018 Paris/s

sAMNESTY FOR ILLEGAL IMMIGRANTS IN PORTUGAL/s

sImmigrants residing illegally in Portugal - among them some 80'000 low wage workers from the former African colonies - are granted a period of four months for regularizing their status of residence. The amnesty law comes in the context of the Schengen agreement. It might also contribute to better integration of black people into the Portuguese society./s

sIn the framework of a law which came into force on October 13, 1992, non-EC immigrants who have stayed in the country for more than six months and earn their living are granted residence permit. This non-recurring action is to benefit above all the ten thousands of Africans immigrated from Portugal's former colonies. Most of them live under miserable conditions./s

sThe measure is related to the planned introduction of the free movement of persons within the EC and the accompanying enforcement of more restrictive entry controls at the external common borders of the Community, as well as closer police cooperation among the EC member states provided for by the Schengen Agreement./s

sCheap labor from former colonies/s

sNobody knows exactly how many illegal immigrants live in Portugal, but both the government and foreigners associations estimate their number at about 100'000. The by far largest number comes from the former Portuguese colonies in Africa which gained independence after the the downfall of the fascist dictatorship in Portugal in 1974. The new law constitutes a de facto amnesty for this group. Because of Portugal's close relations with its five former colonies it provides for a privileged treatment of applications made by nationals of the above countries: Anybody having entered into the country before mid 1986 can legalize his residence status without a producing a work certificate. According to to the African immigrants organizations, this is the hitch to the regulation. They point out that most of the Africans came to Portugal after the big construction boom in the late 1980's. As most of them work as clandestines they lack the necessary certificates enabling them to prove an income./s

sMost of the illegal African immigrants live in downright slums located mostly on the fringe of Lisbon. As they are officially inexistent they have no right to public assistance or support by the the social services and lack accident and health insurances. As most of the male immigrants work in the construction industry, where industrial accidents are frequent, this is a particularly weighty problem./s

sObviously, the government has previously tolerated, if not encouraged the presence of illegal

African workforce. In Couva de Moura for instance, one of the immigrant slums built illegally on private ground by squatters the local authorities installed water supplies and a system of canalisation. Obviously, they are well aware that Lisbon and its suburbs lack ten thousands of apartments. Most of the men in Couva work in the construction sector, while women work as scrubwomen./s

sMany Africans seem to be frightened by the prospect of announcing themselves to the authorities as provided for by the law. Tragic stories of deportations resulting in the separation of families are circulating in the slums./s

sBlacks as a marginal group/s

sIn an introduction to the "amnesty" law the government stresses that the reigning situation constitutes an affront against the rule of law, not least because of the thereby increased marginalization of the social group concerned. The government must however be well aware of the fact that the country's flourishing construction industry would have been hopelessly lost without the cheap illegal workforce of the Africans./s

sThe latter have gradually taken the place of those Portuguese seeking for better payed work in other European countries. Recently however, the border police have begun to intensify surveillance of the coast and the ports in compliance with the EC's external border control regulations./s

sIn the opinion of the immigrant organizations the "amnesty" law is no more than a first step towards the legal and social integration mentioned by the government. They call for an improvement of the access of disadvantaged groups to education and for the right of all foreigners to vote on a local level. They have also expressed concern that, in absence of true efforts towards integration, the first signs of an economical crisis would inevitably lead to the outburst of social tension and racism./s

sSource: Paraphrased from Neue Zürcher Zeitung, 16.10.92/s

sSWITZERLAND/s

sPARLIAMENTARY REPORT REVEALS: NO END TO UNBRIDLED TELEPHONE TAPPING/s

sIn spite of massive protests and parliamentary action the Office of the Federal Prosecutor General (Bundesanwaltschaft), the Federal Military Department (Eidgenössisches Militärdepartement) and the Cantons (constituent states of the Swiss Confederation) have maintained their practice of telephone tapping, sometimes in clear breach of law. Moreover there is strong evidence that telephones of MP's and federal officials working in the "Bundeshaus" (House of the Confederation: the building which houses the two-chamber parliament and important government activities) are equally tapped - among others by foreign services./s

sThese are some of the conclusions to be drawn from a still unpublished interim report of a working group of the a parliamentary control committee (Geschäftsprüfungskommission). /s

s/s

sThe findings of the committee are likely to cause new uproar among a public opinion already scandalized by earlier revelations on the unbridled snooping and spying activities of Swiss authorities (see CL No.6, p.1)./s

sThe parliamentary working group examined about a dozen of records involving telephone tapping. The five MP's were virtually dazzled when they discovered that, among other things, a journalist's phone had been systematically tapped only because the investigators hoped to uncover his informer, whom they suspected to be a federal official. Obviously the parliamentary working group rated this serious encroachment on the privacy of the person concerned as "unreasonable"./s

sThe example stands for many similar cases. The problematic question of determining the requirement of "efficiency" as opposed by the limits set by the principle of "appropriate action" was at the center of the working group's reflexions. In how far is telephone tapping necessary for the success of a particular criminal investigation? Which is the relation between "expenditure and returns". According to the parliamentary working group the officials of the administrations concerned bluntly refused to discuss the matter. "Probably nobody there was ever interested in this issue at all", says a member of the group. Moreover the parliamentary group complained about "active obstruction" by high ranking officials of the office of the federal prosecutor general./s

sAccording to the findings of the working group, the Federal Office of Prosecution and the defence department order between 40 and 80 long term telephone tapings per year. The figure is much higher, when tapings ordered by investigative authorities of the Cantons are included. The working group made out the most unbridled tapping practices in the Canton of Geneva, well known for its role as an international diplomatic and business turntable./s

sThe parliamentary group particularly expresses astonishment about the fact that telephone tapping is often ordered in cases involving relatively minor delinquency while major cases of drug related and organized crime do not seem to attract particular interest of criminal investigators./s

sThe MP's further are critical about the fact that the individuals concerned are seldom informed afterwards that their phone has been tapped, although this has been explicitly required by the Swiss Federal Court (Bundesgericht). Moreover, this illegal practice had been sharply denounced in the wake of the "Kopp scandal" by a special parliamentary committee (PUK) in November 1989, obviously without success (see CL No.6, p.1)/s

sThe present working group has therefore once again called on the Minister of Justice and Police, Mr. Arnold Koller, to take the necessary remedial measures. /s

sWhen leading its inquiry the parliamentary working group accidentally stumbled over a particularly sensitive matter. Wherever telephone exchanges are used, i.e. for instance in most private enterprises and at the Parliament building, telephone conversations can be tapped with relatively modest technical means by superiors or other curious persons. "We have established that we are dealing with a legal vacuum", says MP Rolf Engler, a member of the parliamentary committee./s

sThere is strong evidence indicating that telephone tapping is a current practice in the "House of the Confederation". A telecommunications technician declared that he had recently met "mysterious and unsurmountable obstacles" when trying to set up new lines in the building: "We have only one explanation - that another agency must be interconnected in some way."/s

sMembers of Parliament have in recent years expressed concern about possible tapping of the phone booths in the parliament's corridors reserved for the MP's. Indeed, some strange technical incidents happened. Several MP's trying to ring various persons or firms were connected to - the American Embassy./s

sThe telecommunication board refused to comment such incidents. With reference to a "directive of the Federal Office of Prosecution" and "certain incidents" the board said it will answer technical questions in writing only./s

sParaphrased from SonntagsZeitung (Zurich), 27.9.92, p.3, Telephonüberwachung: Der Wildwuchs wuchert weiter, by Catherine Duttweiler/s

sSWISS COURT CONFIRMS RIGHT TO RESISTANCE AGAINST DEPORTATION OF PERSECUTEES /s

sIn 1991 nine members of a local asylum defence committee in the Canton of Obwalden actively tried to resist the police in arresting and deporting a group of turkish-kurdish refugees whose asylum applications had been rejected. In Summer 1991 one of the members of the committee, Margrit Spichtig-Nann, a school teacher was sentenced to five weeks of imprisonment and a fine of 2000 Swiss francs by the local penal court for

assisting a person in seeking illegal residence./s

sThis judgement was recently reversed by the same court in other composition after an appeal by Mrs. Spichtig. /s

s/s

sThe court admitted exonerating evidence produced by the teacher showing that she had good reasons to assume that the Kurdish refugees concerned would be exposed to grave danger if deported to Turkey and that she thus had the right to resist the authorities in carrying out the deportation. As mere putative necessity (the subjective assumption of the privilege of necessity) results in impunity the judges did not go into the question if the deportation measure ordered by the Federal Department of Justice and Police was objectively justified or not./s

sNevertheless the quite spectacular acquittal further erodes the credibility of the authorities in charge of asylum. "[With the above decision] justice indirectly assumes a right of all Swiss to resistance whenever they are convinced that they have to oppose a negative asylum decision in order to save the lives of endangered people", the lawyer of Margrit Spichtig says./s

sParaphrased from WochenZeitung, Zurich, 16.10.92, Ermutigung zur Gegenwehr, by Beat Leuthardt/s

sCROATIA/s

sPRESIDENT TUDJMAN'S CRACKDOWN ON THE FREEDOM OF PRESS/s

sConveniently ignored by European governments focusing their ire on Serbia, Croatia's President Franjo Tudjman is quietly enforcing his authoritarian rule. One of his main objectives, right now, seems to be to reinstate government hegemony over the press after a promising but short period of pluralism. Within the last three months six leading independent and critical newspapers either disappeared or were brought under state control./s

sThe crackdown began in August with governmental harassment against the weekly "Novi Danas", formerly "Danas", a longstanding publication known as a pacemaker for democratic and critical journalism already under the former communist rule. A year ago the state-owned printing shop simply refused to print the weekly - allegedly because of its debts. The printing shop however continued to print other Croatia press publications with much higher debt burdens but less critical of the government. In June 92, "Danas" was shut down by its publisher, the state-owned "Vjesnik". The entire editorial staff was fired. But a private investor, Emil Tedeschi assured the reappearance of the weekly under the name of "Novi Danas". Yet, only days before the parliamentary elections on 2 August, "Vjesnik" which controls most of Croatia's distribution network refused to sell the weekly at its newsstands. As a result only six of a total of 300 newsstands in the capital Zagreb offered the magazine. Emil Tedeschi stopped the publication of "Novi Danas" after only five issues "for economical reasons". The weekly's chief editor, Mladen Maloca, commented "Vjesnik's" deadly blow: "This is an unprecedented act of discrimination and a black spot on the image of Croatian democracy."/s

sOnly one newspaper, "Slobodna Dalmacija", Croatia's second largest daily edited in the town of Split, had the courage to publish the letter of protest of the president of the Croatian Union of Journalists to the Prime Minister. /s

sOne month later, in the beginning of October, "Slobodna Dalmacija" itself became the most prominent victim of Tudjman's crusade against independent journalism. The well-running newspaper was put under state management by government ordinance. "Please inform the chief editor that any comment following the appointment of the new board of management is prohibited in our newspaper", it said in a directive sent by the government to the new director of publication. With this measure one of the last remaining critical voices in Croatia has been silenced./s

sSimilar action had earlier been taken against less known newspapers, among them "Glas Slavonie" in Ossiek and "Novi List" in Rijeka./s

sFormally, the governmental take-overs of the independent newspapers is carried out on the basis of the law on privatization. The law sets a term within which enterprises must be privatized. According to the government, the press publications which have been put under state management failed to comply with the time set. Officially, the role of the state management board is limited to assuring the rapid privatization of the enterprises concerned./s

sYet, critics point out that some of the publications concerned are indeed privatized. Thus, "Slobodna Dalmacija", formerly a self-managed workers cooperative according to the legislation under socialist rule had become a limited company owned entirely by its employees. The government replies with the reproach of unfair competition, arguing that the company failed to offer shares to the public. It further claims that the state management boards imposed on the newspapers will not encroach on the freedom of the editorial staffs, their only role being to assure the transfer to private ownership./s

sReality is, however, different. As experience shows, journalists in the state controlled newspapers no longer dare to write freely, as they know that the transitional period before privatization is used to make out the "illoyal" elements in the editorial staffs to be removed by the future pro-governmental owners./s

sAs a prominent critic of the government who wished not to be named explained for the Circular Letter, "people in former Yugoslavia have a longlasting experience of totalitarianism. They tend to be afraid and bow to pressure."/s

sOn 8 October, 1992, in the maybe last issue of "Slobodna Dalmacije" as an independent and critical newspaper, some of the leading Croatian intellectuals, among them Lino Veljak of the new United Socialist Party, Nikola Viscovic, an independent professor of law at the University of Split, and Slavko Goldstein (Social-Liberal Party) denounced the government's move and warned against the reintroduction of a totalitarian information monopoly under inversed premises. /s

sNicholas Busch/s

sSources: Slobodna Dalmacija (Split), 8.10.92; Daily Telegraph (London), 12.8.92; Wiener Zeitung (Vienna), 11.9.92, Profil (Vienna), 12.10.92; own sources./s

sLetters of protest against the Croatian government's crackdown on the freedom of information should be addressed to: Mr. Franjo Tudjman, President of the republic of Croatia, 41000 Zagreb, Croatia. /s

sEUROPE/s

sINTELLIGENCE COOPERATION: THE GERMAN-RUSSIAN AGREEMENT AND ITS EUROPEAN IMPLICATIONS/s

sAccording to off the record information from German government officials Germany has reached agreement with the Republic of Russia on intelligence cooperation, in particular in the fields of the combat against terrorism and international drug trafficking and international "organized crime". Liaison offices of the intelligence services have been set up in the embassies of the two countries in Bonn, respectively Moscow./s

sThe surprising agreement constitutes the most recent example for the ongoing gradual extension of police and intelligence cooperation based on bilateral intergovernmental agreements rather than Community legislation./s

s/s

sThe secretary of state in charge of coordinating the various German intelligence services, Mr. Schmidbauer, obtained the agreement "some time ago". The agreement also includes the combat against the illegal transfer of technology. /s

sUnder the keyword "combat against terrorism" the German side hopes to receive information and documents on the remains of the "Red Army Faction" (Baader-Meinhoff group) and its alleged links with the former East German state security service, the Stasi./s

sOn their part, the Russians declared that they were to cease "aggressive intelligence" on German soil in the near future./s

sSource: Neue Zürcher Zeitung, 3.10.92/s

sComment/s

sThe German-Russian agreement is further evidence for the efforts of European police and intelligence circles to set up efficient structures of cooperation as soon as possible, without waiting for the lengthy legal and institutional harmonization in the framework of the European Community which alone would provide democratic and constitutional legitimacy for a common European policy of policing and intelligence./s

sGerman security experts have since long ago favored "pragmatical" and "ad hoc" tactics in realizing their dream of a common European space of policing and intelligence. The main line seems to be: "Just introduce a practice and don't worry. Sooner or later, it will be legalized."/s

sIn this view, any bi- or multilateral agreement in the sphere of internal security is seen as a step in the right direction. As the "security expert" and former president of the police of the German Land of Baden-Württemberg, Alfred Stümper puts it: "No need to fear separate or 'island' solutions. Whenever one can place a foot somewhere, one should do it."/s

sThe German Federal Office of Criminal Investigation (BKA) has obviously lived up to this advice. The setting up of a liaison office in Moscow is only the most recent achievement. On the base of bilateral agreements the BKA has earlier sent security liaison officers to various EC States and to non-EC countries such as Turkey, Brazil and Argentina (all of whom are known for bad human rights records)./s

sOther European governments have followed the German example. Thus, Sweden has stationed "police attachés" in three Arab countries (among them Syria) and intends to delegate officers to Estonia and Portugal (see CL No.9, p.3) and Spain has deployed Guardia Civil officers in Morocco (see article in this CL)./s

sThe lack of a common democratic institutional framework for the development of a European policy in areas such as justice, crime prevention, police and state security not only threatens to lead to the boundless spreading of the most various forms of "ad hoc", i.e. uncontrollable, policing practices but also further undermines a vital safeguard of constitutional democracy - the strict separation of police and intelligence activities. /s

sAs a matter of fact, a number of states are gradually introducing new legislation and practices encroaching on this separation of roles under the popular pretext of combatting terrorism, drug related and "organized" crime (see CL.No.4, p.3; CL No.6, p.8). Only few seem to be aware of the fact that such pro-active policing policies pose a deadly threat to fundamental civil rights./s

sNicholas Busch /s

sOPINION/s

sDIVIDE AND CONQUER - Social Policy and the Division of Labor in the Upcoming European Economic Area (EEA)/s

sby Eugene Sensenig/s

s/s

sMuch has been said about the role Schengen and TREVI will play in Fortress Europe. The policing of the external borders and internal labor markets of the European Community will indeed endanger the already precarious situation of EC non-nationals in the coming years. Little attention has been paid, however, to the effect the social policy scenarios now being debated within the EC organizations will have on the position of third country nationals within the Single Market. The following brief overview will deal with the impact that the proposed division of the foreign labor force will have on the rights of migrants now legally residing within the EC, as well as on those hoping to immigrate here in the future./s

sThe EEA and the EC Single Market will presumably both take affect as of January 1, 1993. Whereas immigration and refugee policy will remain under the auspices of the various multilateral agreements already discussed at length in this newsletter (Dublin, Schengen, TREVI, Berlin and Vienna groups, etc.), social policy must be harmonized within the EEA, with one exception, by the end of this year. Switzerland has been allowed, considering the fact that over 80% of its ca. 1 Million non-nationals are EEA citizens, to gradually comply to community rules within the next five years. Existing EC migration policy will become EEA policy. Those changes recently agreed upon during the Maastricht Summit are not binding within the EFTA states, who have reserved the right to opt out of any future European Community or European Union proposal not considered compatible with their respective national migration policy agendas./s

sThe Three Sphere Concept/s

sThe EEC has, as of the mid 1960's, attempted to eliminate all discrimination against Community citizens working in other member states. With the implementation of the Single Market, all EC citizens, including students, the retired, and the unemployed, will be covered by this non-discrimination policy. The EEA has extended this protection against discrimination to the citizens of the seven EFTA countries Austria, Iceland, Finland, Lichtenstein, Norway, Sweden, and Switzerland. The citizens of the 19 EEA states make up the privileged central sphere of migrant workers now residing in the European Economic Area./s

sThe second or outer migrant labor sphere is now mainly made up of nationals of the Mediterranean basin states, such as Algeria, ex-Yugoslavia, and Turkey. This group, numbering over 12 million, immigrated during the 1960's, 70's, and 80's. The EC Commission, the Economic and Social Committee (CES), and the EC "ad hoc Group Immigration" all consider this non-national outer sphere to be of utmost economic importance. According to the CES documents 560/91 and 1122/91, dating from April 24, 1991 and September 26, 1991 respectively, the improvement of the status of migrant workers from third countries is a prerequisite to the stabilization of the internal labor market of the Community. As early as 1985 the Commission also proposed the gradual harmonization of EC policy toward non-nationals and their gradual assimilation into the Community. This process should include, according to the Commission and CES, broad non-discrimination protection for third country nationals, allowing them to move and settle freely within the EC, and presumably the EEA as well. On October 23, 1991, the Commission again emphasized its longterm non-discrimination goal in document "SEK(91)1855 endg.". The European Parliament has also demanded far reaching improvements and protection against discrimination for third country nationals./s

sThe proposed improvements for non-nationals, though now blocked by the EC-Council, would enable those migrants now legally residing in the EEA, to consolidate their present hard earned economic and social status within the coming years. The ulterior motivation for this ostensibly high-minded policy of non-discrimination of third country nationals becomes evident, however, after considering the far reaching social and security policy proposals the "ad hoc Group Immigration" (ad hoc group) has submitted to the Maastricht Summit (SN 4038/91) on December 3, 1991. According to the ad hoc group, the EC, and thereby presumably the EEA as well, should clearly differentiate between the outer sphere of legal third country "migrants" already present in the EC and those potential "immigrants" and "asylum seekers" yet to arrive. Through the use of non-discrimination policies, the ad hoc group hopes to fully integrate the outer sphere of non-national migrants. Social assimilation should, according to this plan, go hand-in-hand with beefed up border controls and cooperation with the countries of origin, encouraging them to repatriate those illegal immigrants caught by the police forces of the EC member states as well as those asylum seekers turned down by a harmonized EC refugee board./s

sThe Poor versus the Poorest/s

sThe long term proposals of the Commission, CES, and ad hoc group will divide the foreign labor market into three segments or spheres, i.e. EC migrants, third country migrants, and potential immigrants and asylum seekers. If the present trend towards EC harmonization

continues (despite the growing opposition to Maastricht, this can be assumed to be the case) spheres one and two will be intergrated by the end of the decade. Assuming that a large percentage of those EC migrants now abroad are located at the lower end of the income ladder, the social and cultural assimilation of both migrant spheres could be facilitated by confronting them with a common threat, i.e. potential newcomers from Eastern Europe and the non-Community countries of the Mediterranean basin. At the moment, this seems to be the policy most favored by the trade unions, Social democrats, and a large section of the Greens. Under the guise of multi-culturalism, the longsighted policy makers within the EC hope to incorporate the "guest-workers" into the social policies of Fortress Europe, thereby elevating them to helper's helpers in a common cause./s

sConsidering the current lack of a feasible alternative, this concept will most likely succeed./s

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