

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.

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sEUROPEAN HARMONIZATION/s

sLONDON CONFERENCE ON CLOSER COORDINATION OF IMMIGRATION AND JUSTICE POLICIES WITHIN THE EC/s

sOn November 30, EC-Ministers in charge of immigration, justice and home affairs gathered for a two day conference. Little has leaked from the 'confidential' preparatory work for the conference, as well as from its considerations. /s

sWhile disagreement appears to be the main outcome with respect to harmonization of immigration, policing and internal security policies, the Minister's determination to further undermine one of the most important traditions of European democracies, the right of asylum, seems obvious./s

sIn the following, we present a critical synopsis of the meeting's considerations, based mainly on the documents relating the decisions taken by the Ministers, preparatory documents produced by the Ad hoc group 'Immigration', two critical synoptical up-dates by the British Immigration and Law Practitioners' Association (ILPA), as well as international press dispatches. However, as a result of the extraordinary amount of secrecy and lack of transparency surrounding decision making in the Community, we can not guarantee for the accuracy of the below./s

sTHE MEETING OF THE TWELVE MINISTERS OF IMMIGRATION/s

sSecrecy/s

sThe Ministers for Immigration of the 12 EC- Member States met inter-governmentally, i.e. **outside** the framework of the Community and Community competence to consider a number of 'resolutions', 'recommendations' and 'conclusions, to harmonize immigration and asylum policies in the Community./s

sGreat secrecy surrounded the meeting and the preparatory work for it. Apparently, except for the Netherlands, no national parliament was informed on the agenda of the conference despite the fact that principles agreed at the meeting are politically binding on the governments and must be implemented into national law and practice./s

sIt seems that arrangements for informing and consulting the European Parliament are under consideration. However, the Member State-governments will not defer consideration of the draft resolutions pending consultation or public debate./s

sAccordingly, it seems obvious that the executive branches of the Member States wish to continue to take major decisions on harmonization in secret. "As we know from EC wide decisions to impose visa requirements, when national Parliaments are presented with changes to the law based on agreements between the 12, parliaments usually accept the changes, as they are told that if they do not, their country will be "swamped" with immigrants seeking the "softest" state to gain admission to the EC." (ILPA up-date December 92)./s

sAs ILPA notes, "it is extraordinary that 12 democracies should all consider it acceptable to proceed towards harmonisation of an area of such tremendous importance as immigration and asylum law while excluding from the process all non-governmental interested parties, most parliamentarians and, in some Member States, coalition partners of government". (ILPA up-date 3.11.92)./s

sThe ministers' considerations on immigration/s

sNo definitive agreement seems to have been reached on two Resolutions with respect to employment and family reunion. However, nothing seems to indicate that Ministers failed to agree on those parts of the resolutions which had drawn strong protest by NGO's because of alleged violation of international conventions (on asylum, human rights, labour, and migrant workers). (see ILPA up-date 3.11.92 for details)./s

sThe Ministers approved a recommendation regarding practices to be followed by Member States on the expulsion of illegal residents. Among the main provisions are the following: A person being expelled should be expelled outside the territory of the Member States; the detention of persons liable to an expulsion order should be admitted; re-admission agreements should be conclude with third countries to facilitate documentation and return of their nationals./s

sA second recommendation on transit for the purpose of expulsion was also approved./s

sAsylum/s

sIn the area of asylum, Ministers reached agreement on three documents in respect to asylum and, in particular on guidelines for determining "manifestly unfounded" applications and accelerating the respective procedures./s

sInter alia, the Ministers approved the following considerations:/s

sMember States **must** introduce into their asylum laws the concept of a 'manifestly unfounded' application. They **may** introduce accelerated procedures for applications alleged to be manifestly unfounded or "operate admissibility procedures under which applications may be rejected very quickly on objective grounds". Initial decisions on "manifestly unfounded" applications must be reached within a month of application and appeal procedures may be abridged. However, applicants **should** be given the opportunity of a personal interview with a qualified official before a final decision is taken./s

sApplications are considered "manifestly unfounded" whenever the claim is based on deliberate deception **or** is an alleged "abuse of asylum procedures", whenever there exists a third host country (also outside the EC) to which the applicant can be sent back and whenever there is "clearly no substance to the applicant's claim to fear persecution in his own country"./s

sThis category includes: anyone whose fear of persecution is not based on a 1951 Refugee Convention ground; there is no indication that the person will be exposed to a fear of persecution; the applicant's story is "inconsistent", "contradictory" **or** "fundamentally improbable" and therefore "lacks credibility"; the applicant could **seek protection in another part of his or her own country and it would be "reasonable" to expect the applicant to go there**; there is "generally no serious risk of persecution" in the applicant's own country./s

sGuidelines for establishing a "safe country" according to the above definition can be found in the Conclusions on countries in which there is generally no serious risk of persecution. The stated purpose of the Conclusions is "to establish a harmonized approach to applications from countries which give rise to a high proportion of clearly unfounded applications". As pointed out by the ILPA, this purpose "depends on statistics of a clearly unfounded system as set out in the Resolution. However, as one of the reasons for an application to be clearly unfounded is because it comes from a country in which there is no serious risk of persecution, the logic is elliptical. Once a country is determined generally not to give rise to risk of serious persecution then a high proportion of applications will be alleged to be clearly unfounded which in turn will re-enforce the fact that it is a country which does not give rise to serious risks"./s

sThe Resolution on a harmonised approach to questions concerning host third countries applies not only to asylum seekers but also to refugees. The principle is that if there is any country outside the EC (other than the country of origin) to which the asylum seeker or refugee can be returned, EC states should do so./s

sMember States are to look for some third country to which to remove the person, before an asylum application is considered in its substance. If there is such a country "the application for refugee status **may** not be examined". In the English text, this is a **prohibition** on the

examination of such an asylum application. Thus the provisions of the Dublin Convention would only apply if there is no country outside the EC to which the asylum applicant can be sent. Nonetheless a Member State **may** decide, for humanitarian reasons, not to remove an asylum applicant to the third country./s

sA host third country **must** meet the following criteria: the life or freedom of the asylum applicant/refugee must not be threatened; the applicant must not be exposed to torture or inhuman or degrading treatment; he/she must already have been granted protection by the country or had opportunity to seek protection or there is clear evidence of admissibility to this country./s

sAccording to the above conference documents the assessment both of a "safe country" of origin (generally no risk of serious persecution) and of a "third host country" is made individually by each Member States, based on a list of 'elements of assessment' agreed by the Ministers./s

sThese elements of assessment include:/s

s- The previous numbers of refugees and recognition rates (see above);/s

s- observance of human rights: **Formal** obligations undertaken by a country in adhering to international human rights instruments and in its domestic law and how **in practice** it meets those obligations. The readiness of the country concerned to allow monitoring by NGO's of their human rights observance./s

s- The existence of democratic institutions and the availability and effectiveness of legal avenues of protection and redress./s

s- Stability: an assessment must be made of the prospect for dramatic change in the immediate future.

/s

sIn other words, persecutees from countries determined as safe on the base of the individual assessment of the Member State concerned are kindly advised to remain in their own countries and seek protection or redress from their own authorities. /s

sN.B./s

s(See also in this CL: Opinion: 'Deregulation of legal and institutional frameworks - a handy tool for shifting power from legislative to executive bodies/s

sSources: /s

s1. Conference of the EC-Immigration Ministers in London, 30.11. - 1.12.92: Resolution on manifestly unfounded applications; Resolution on a harmonized approach to questions concerning host third countries; Conclusions on countries in which there is generally no serious risk of persecution; London Conference press release on the conclusions of the meeting of the Ministers responsible for Immigration. (documents available at PFE)/s

s2. ILPA-update, 3.11.92: Resolutions to be presented to the Immigration Ministers of the 12 Member States of the EC meeting inter-governmentally on 30th November and 1st December 1992; ILPA-update 7.12.92: Meeting of the EC Immigration Ministers on 30.11.92. (available at: ILPA (Immigration Law Practitioners' Association), 115 Old Street, London EC1V9JR; tel: +44/71/2501671, fax: +44/71/2533832./s

s3. The Independent, 1.12.92, International Herald Tribune, 2.12.92; Dagens Nyheter, 30.11.92./s

sEURO-SQUABBLE ON EUROPOL AND INTERNAL BORDER CONTROLS/s

sThe Ministers of Justice and Home Affairs of the 12 EC-Member States ended in disagreement. In respect to Europol, no agreement was reached on where to put its headquarters. The Ministers were split over whether Europol should have its headquarters in The Hague, Rome or a site near Strasbourg (see: CL No.9,p.1) and no agreement was reached on which countries should take over the permanent leadership of Europol./s

sThe Ministers also failed to agree on ending internal border controls on people before the end of 1993, let alone by January 1. The London meeting was the last chance for ministers to agree a compromise solution before the end of this year - deadline for the barrier-free Single European Market./s

sIn a last effort to reach a compromise, Mr. Martin Bangemann, EC internal market Commissioner, had proposed that all Member States should pledge to eliminate "systematic" internal border controls on people during 1993. But the British Minister of Home Affairs, Mr. Kenneth Clarke, who chaired the meeting said afterwards that no Member State could promise to lift all passport checks./s

sBritain, Denmark and Ireland are opposed to the abolition of border controls./s

sDutch diplomats complained that the UK should have pressed more for a positive outcome and Spanish officials expressed regret that their efforts to lift controls by the end of the year would now be undermined by delay (see also CL No.6,p.7; No.7,p.7; No.9,p.4)./s

sSources: International Herald Tribune, 2.12.92; Financial Times, 1.12.92./s

sTHE SETTING UP AND FUNCTIONING OF SCHENGEN II: REPORT OF A FRENCH SENATORIAL COMMITTEE/s

sIn a report made public on 2 December, Gérard Larcher, rapporteur of an 'investigative mission' of the French Senat, questions the effectiveness of so called compensatory measures in the field of internal security provided for by the Schengen II treaty and calls for both a "redefinition" of the strategy for open internal borders in Europe and for getting a renewed grip on measures ensuring the control of goods in the interest of the combat against all forms of illegal trafficking./s

sThe report expresses harsh criticism against two Schengen-Member States, the Netherlands and Luxembourg, accused of laxness in dealing with drugs related crime./s

sAfter the recent refusal of Britain, Ireland and Denmark to accept the abolition of passport controls at their EC borders the French report must be understood as a serious sign of growing opposition against the entry into effect in 1993 of the freedom of movement of persons and goods as stipulated by the Common Act on European Unity./s

sThe report describes drug trafficking by organized crime as "the big challenge for European democracies at the end of the 20th century". /s

s"At a time, where underground economy resulting from the totality of criminal trafficking stands for about 20% of the GNP of the economies united in the Schengen area, the states must react."/s

sThe report points out Germany, Greece, the Netherlands and Portugal for their practice of leaving mere use of illicit drugs unpunished and welcomes Spain's recent policy change with regard to drug use (Spain introduced a new law criminalizing drug abuse on 21.2.92)./s

sSenator Larcher, a member of the 'neo-gaullist' RPR, particularly admonishes the Netherlands and Luxembourg. Doesn't the cultivation of marijuana in Holland "now range in sixth position among hothouse growing, just after tomatoes?", Mr. Larcher asks, and "is it reasonable that Luxembourg which detains the absolute record for the number of deaths due to over-dose, maintains its banking secrecy?"/s

sFinally, the Senator points his finger at Morocco which he makes out as the "principal furnisher of cannabis raisin for Schengen-Europe" and tolerates "cannabis growing on 40'000 hectares in the Moroccan Rif, a cultivation covering almost one third of Europe's supplies"./s

sWhat makes things worse, the Senator says, is that neither the Schengen Information System (SIS) nor the Customs Information System (CIS) will be ready for operation on 1 January 1993, the date on which the abolition of internal border controls in the Schengen area was to come into effect. "None of the other compensatory measures appear to be operational either", it is stated in the report, with particular mention of the current, particularly laborious preparations for

setting up Europol"./s

sThe French Home Affairs Minister's announcement that the entry into force of the Schengen Agreement was to be postponed to some time in 1993, "probably in the first half of the year" does not appear to comfort the senator: "The weakness of the concept [of compensatory action within Schengen II - NB] can not be repaired by merely postponing the entry into force of the Schengen Agreement"./s

sN.B./s

sSource. Le Monde, 3.12.92/s

sGREECE SIGNS SCHENGEN AGREEMENT/s

sGreece signed the Schengen Agreement on 6 November 1992 and thus became the ninth member of the Agreement. The treaty was initially supposed to come into effect on 1 January 92, but not all of the Member States have ratified it and political, organizational and technical problems have delayed the introduction of security and border control measures common to all Schengen States as stipulated in the agreement./s

sSource: ESMV, List of events 10, November 92,/s

s/s

sGERMANY AND BULGARIA TO COOPERATE ON RETURN OF REFUSED ASYLUM SEEKERS/s

sGermany and Bulgaria signed an agreement on cooperation concerning the return of refused asylum seekers. The agreement aims also at reducing the number of asylum seekers from Bulgaria. It is comparable to an earlier agreement Germany recently signed with Rumania. Germany offered 28 million DM for obtaining this agreement./s

sSource: ESMV, List of events 10, November 92/s

sEUROPEAN ECONOMIC AREA (EEA): TRADE UNIONS SPEAK OUT FOR MIGRANT WORKERS' RIGHTS/s

sThe Central-Alpine trade union standing group "Arge Alp der Gewerkschaften/Arge Alp dei Sindacati" unanimously passed a migrants' rights declaration at its 9th annual convention in Milan in October. The "Arge Alp" union group is made up of the regional trade union federations in Bavaria (Munich), Baden-Wuerttemberg (Stuttgart), Salzburg (Salzburg), Tirol (Innsbruck), Vorarlberg (Bregenz), Graubunden (Chur), Ticino (Lugano), South Tirol (Bolzano), Trentino (Trent), and Lombardia (Milan). It is one of the best functioning sub-organizations of the European Trade Union Federation. By uniting trade unions from Germany, Austria, Switzerland and Italy the "Arge Alp" straddles the EFTA and EC economic blocs and can therefore be seen as a predecessor of the European Economic Area (EEA) which, before the rejection of the treaty by the Swiss people was thought to take effect the beginning of 1993./s

sThe declaration titled "Living and Working with Migrants in the Alpine Region" goes much further than similar statements of intent published by the European Economic and Social Committee (CES) in 1991. Both the German and Austrian trade union federations are integrated into "Social Partnership" set-ups in their respective countries./s

sThe declaration includes the following:/s

s"The Trade Union Standing Group intends to achieve legal equality for non-EEA employees, particularly in the areas of work, social affairs, and collective bargaining, while at the same time guarding their general interests on the shop floor and in society as a whole. This includes:/s

s- active and passive voting rights during shop steward and general trade union elections./s

s- voting rights for all non-national employees during local and city elections (after a certain period of residency)./s

s- creation of local and regional immigrants councils./s

s- support for the establishment of a network of immigrants representatives and immigrants advisors made up of trade union members within the region."/s

s

/s

sThe "Arge Alp" declaration also includes steps towards fighting illegal employment and xenophobia./s

sEugene Sensenig/s

sDocument available in German: Arge AusländerInnenwahlrecht, Muehlbacherhofweg 5/7, A-5020 Salzburg, Tel: +43/662/881145, Fax: /87090019/s

sBULGARIA/s

sBULGARIAN HELSINKI COMMITTEE ON HUMAN RIGHTS IN BULGARIA/s

sThe Bulgarian Helsinki Committee has published a report (13 October 1992) on the development of the human rights situation in this country after the parliamentary and municipal elections of October 1991, which had brought the first non-communist government to power. The report was sent to PFE by the Bulgarian Helsinki Committee's secretary, Krassimir Kranev. /s

sIn the following, we publish a synopsis of the report./s

sBackground/s

sThe elections held in Oktober 1991 were won by the Union of Democratic Forces (UDF), which detains 45.8 percents of the seats in the present parliament. The former Communist, now Bulgarian Socialist Party (BSP), which controlled the first post-Communist constituent parliament, gained 44.2 percent of the seats. The third political formation in Bulgarian politics, the Movement for Rights and Freedoms (MRF), a political organization made up largely of Bulgarian Turks, Muslim Bulgarians (Pomaks) and gypsies, won 10% of the seats. The new UDF government relies on MRF support for a majority in Parliament, facing BSP opposition./s

sUnder UDF government a number of human rights instruments were signed and ratified, among which the Optional Protocol to the International Covenant on Civil and Political Rights authorizing the filing of complaints by individuals, the 1951 Geneva Convention on Refugees and protocol, the European Convention on Human Rights and its Optional Protocol No.1. Bulgaria also recognizes the competence of the European Commission on Human Rights to consider individual complaints and accepts compulsory jurisdiction of the European Court for Human Rights./s

sProgress was made on a number of practical problems, in particular relating to the rights of Bulgarian Turks. However, a number of serious human rights problems continue to exist in Bulgaria. In certain areas the situation has even **deteriorated** as compared to the pre-election period. The negative tendencies are the result of both the passivity of the government in cases of human rights violations, that continue to exist, and new policies which have contributed to additional situations of noncompliance with international norms./s

s1. Minority rights/s

sThe minority rights record of the country (especially with regard to the Bulgarian Turks) has improved./s

sOptional Turkish language education has been introduce in public schools. A significant number of MRF members were elected in local administrative bodies, including 27 municipal mayors and 650 town and village mayors. Kurdzhaly, the main city in the region most densely populated by ethnic Turks elected a Turkish mayor. The circulation of minority literature (including newspapers) increased, programs in Turkish are under preparation at public radio and TV. Action has been taken on the critical question of the restauration of property of the

Bulgarian Turks./s

sMoreover, cultural organizations of Turks, Armenians, Gypsies, Jews and Karakachani can now function freely./s

sDespite such progress, serious minority right problems remain:/s

sBan on parties:/s

sThe new Constitution limits the right of association and applies discriminatory standards banning parties formed on an "ethnic, racial or religious basis" (Art.11,

4). It also bans the political activity of "citizens associations", including trade unions (Art.12,

2). On the basis of Art.11,

4 the Democratic Roma Union (one of the Gypsy organizations), as well as UMO, the organization of Macedonians) were denied a political status before the October elections. Using the same provision, a group of deputies attacked the constitutionality of the MRF, but a non-verdict decision by the Constitutional Court resulted in the maintenance of the status quo. It did not preclude the participation of the MRF in the political process and the election of its deputies remained unhampered, but the decision does not reaffirm the political rights of the MRF under the Constitution and thus leaves the problem of minority rights unresolved. In its non-verdict decision the Constitutional Court introduced the idea that the "basis" of a party, falling under the restriction of Art.11,

4, is determined not only by its membership, but also by its voters - a position which opens a possibility for arbitrary decisions of the courts and empowers official institutions to interfere in the right to choose beyond the framework of the constitutionally guaranteed secret ballot./s

sDiscrimination against Gypsies:/s

sThere have been a number of discriminatory actions, especially in the sphere of labor relations. Complaints of discrimination in hiring and dismissing are particularly widespread among Gypsies./s

sAccording to certain estimates, about 70-80% of Gypsies of working age are presently unemployed. Indeed, Gypsies tend to be among the first employees discriminated against because of ethnic prejudice./s

sComplaints were also registered against the segregation of the school system. It is a common practice to establish special "Gypsy schools" in areas populated by Gypsies, while placing "Bulgarian" children of the same area in separate schools which deny access to Gypsy children./s

sThe treatment of Gypsies is presently the number one minority problem in Bulgaria. Massive unemployment, coupled with severe economic and social problems they already face forces many Gypsies towards criminal activities. A long-standing ethnic bias against Gypsies is frequently expressed in the media. A number of

dramatic clashes occurred between the police forces and local Gypsy communities. The heaviest clashes took place in Haskovo, Pazardjik and Plovdiv (see CL No.8,p.5)./s

sMacedonians:/s

sWhile the Traditional Macedonian Organization (TMO) representing the moderate part of the Macedonian movement was registered, the United Macedonian Organization (UMO) was refused registration as a private association before the October elections, because its goals were considered to be "separatist" and in violation of the constitutional prohibition against groups and actions promoting ethnic and religious conflicts. Peaceful rallies of the organization were dispersed by police with the participation of the Prosecutor General of the Republic, Mr. Tatarchev, in person./s

s2. Discrimination based on political opinion/s

sAfter the elections of October 91 the government undertook a purge of the "former rulers" at all levels of administrative and economic hierarchy (see CL.No.8,p.4). The mechanisms of the purge were diverse.. There were many direct discharges on the grounds of "lack of qualification", "trade union demands due to a bureaucratic attitude to the needs of workers" or "partial liquidation of the enterprise". There were also instances of blackmail to force resignations, including those demanded by specially organized mass protests. The Bulgarian Foreign Ministry for instance fired more than 200 because of there alleged connections with different structures of the former regime./s

sIn August 1992, the Defence Minister Staliiski issued an order revoking recognition of higher education of all army officers who had completed less than four years of military school. Their appointments or promotions were banned. The obvious goal was to remove the older generation of officers considered to be sympathisers of the BSP. This practice is currently recognized publicly by all political forces./s

sDespite protests voiced by the BSP, the use of job terminations based on political views and past political affiliations is common. Former communists and sometimes also sympathizers of other, smaller but non-governmental parties, were removed from office, as well as people with no party affiliation whose political views were not approved./s

s"Decommunization" is carried out in a more consistent manner by the introduction of special legal provisions./s

sThe first such provision was included in the Banks and Lending Act in March 92: Persons who in the last fifteen years have been elected to the bodies of the former Bulgarian Communist Party and some satellite organizations above municipal level, as well

as employees of state security, salaried and unsalaried, are banned from managing bodies of any bank. **No procedure was established to verify disqualification, nor was there any possibility of appealing against the disqualification ruling.** The Constitutional Court however declared this provision unconstitutional and in breach of non-discrimination standards including those of the ILO Convention ratified by Bulgaria. /s

sThis has not prevented the parliament from further introducing or considering similar provisions in legislation on pension (reduced or minimum pensions for persons having served in high-level positions of the former Communist Party) and five further "decommunization" bills barring persons considered to be closely associated with the former regime from positions in science, education, state and municipal enterprises./s

sOne bill envisages restrictions including involvement in any type of private activity (including nonprofit organizations) for persons such as paid secretaries of the former Communist Party above the municipal level and other former party officials./s

sAccording to the Bulgarian Constitutional Court, this type of legislation is in breach of international conventions, in particular with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. /s

sIndeed, the "decommunization" bills discussed are applying what amounts to a **criminal penalty on a collective basis**, without the due process protection afforded to accused criminals. Establishment of collective guilt also permits retroactive punishment, while ignoring the presumption of innocence./s

s3. Freedom of religion/s

sFreedom of thought, conscience and religion is guaranteed by the new Bulgarian Constitution. But the 1949 Religious Law governing religious affairs has not been changed. It gives broad possibilities for governmental interference with religious affairs, in particular through provisions for mandatory registration of the religions with a special Office of Religious Affairs which is part of the executive branch. The office is empowered to refuse registration without judicial review, to dismiss religious officials, to ban the distribution of religious literature and to prohibit communication with religious groups abroad./s

sUsing regulations of this law the new government removed a number of clergymen in different religions from their positions./s

sMeanwhile the attack against the old leadership of the Eastern Orthodox Church and the Muslim religion by private groups, supposedly inspired by the Government, continued. In March 92, a pro-

government group occupied the building of the Chief Mufti with the active help of the police. Similar "street action" was undertaken against members of the orthodox church. These actions were inspired by a letter of the General Prosecutor, Mr. Tatarchev, urging the police to assist what he later called the "decommunization of the Bulgarian Church"./s

sBulgaria's President Zhelev opposed these actions and asked the Constitutional Court to make a binding interpretation of the provisions of the Constitution on freedom of religion and, in an interview, declared the very existence of an Office of Religious Affairs "unacceptable". In its following decision the Constitutional Court declared state intervention in the inner organizational life of religions unwarranted and a number of provisions of the Religious law unconstitutional. However the decision fails to consider the questions of mandatory registration and of the very existence of the Office of Religious Affairs and thus does not settle the problems raised by recent actions of the government in seeking to control religious leaderships in the country./s

s4. Problems of the judicial and Criminal Justice Systems/s

sAmong the first actions taken by parliament after the October 92 elections was the amendment of the Law on the Supreme Judicial Council, the body authorized under the new Constitution to appoint, promote, release from office and lift the immunity of judges, prosecutors and examining magistrates. The amendments resulted in the creation of a new Supreme Judicial Council with a large pro-government majority. The new Council immediately started a purge of the judiciary. The purge aimed not only at persons connected with the former totalitarian regime, but also at magistrates "unpopular" with the new government for having upheld the principle of the independence of justice. In one case, Prosecutor General Tatarchev obtained the dismissal of Tatiana Doncheva, a Sofia prosecutor, officially because of "lack of professional qualities and morals". As a matter of fact, Mrs. Doncheva had drawn the government's ire with an article in a law magazine criticizing the use of political standards in the removal of magistrates./s

sTrials of leading representatives of the former regime:/s

sThe expressed wish to punish former government officials for their participation in violations of human rights is welcomed as a positive development by the Bulgarian Helsinki Committee. But it suspects that in some cases nothing more than political motives stay behind the charges./s

sIn one case, Andrei Lukanov, the former Deputy Prime Minister in the last Communist government and later Prime minister of the first BSP government after the free elections of June 1990, was deprived of his immunity as a deputy, arrested and accused with

charges which were widely believed to be politically motivated. Charges include "abuse" of public funds for Third World countries during the Communist rule. No evidence was shown that Mr. Lukanov has taken some personal advantage or that he acted outside the framework of a government institution. The parliament decided on deprivation of immunity without any serious consideration of the accusations and Mr. Lukanov was detained on remand without any evidence that he is going to escape from justice or to commit some crime./s

sCapital punishment:/s

sInfluential deputies of the pro-governmental majority in parliament have proposed the lifting of a moratorium on capital punishment. The moratorium had been introduced by the former parliament in July 1990, immediately after the first free elections after 45 years of communist rule. The motive for the new proposal for abolishing what is no more than a temporary suspension of executions was "the growing rate of crime in the country", which according to the authors of the proposal was encouraged by what they called the "communist mafia"./s

sA draft law provides for amnesty for those sentenced by the "people's Court - a special tribunal created in 1944 to judge war criminals and crimes against humanity perpetrated under the fascist regime in the beginning of the 1940s. /s

sThe submitted draft has to a great extent a symbolic meaning. Under certain conditions it could be interpreted as a willingness to grant amnesty to persons guilty of war crimes and crimes against humanity./s

s5. Freedom of expression and information/s

sFreedom of press and other media is guaranteed by the new Constitution./s

sSince, there have been no seizures or restrictions of any publications, although some of them are very aggressive. Only in one case was there an attempt, by the way of an administrative order (refusal to print the paper on the state-owned printing press), to stop the publication of a newspaper./s

sWith respect to the radio and television media however, the government seems willing to gain total control over programs after a period of genuine pluralism during 1990 and 1991. /s

sThe staffs of the small number of programs dissenting from basic governmental policy are often threatened with banning from the air and the government continues to exercise control over allocating broadcasting frequencies and access. There is a widespread belief that this control affects the program content./s

sSource: Report on Human Rights in Bulgaria after the October 1991 elections, 15 pages, Bulgarian Helsinki Committee, 13.10.92 (available at PFE, Nicholas Busch)/s

sContact: Bulgarian Helsinki Committee: Pravda Spassova (Chairperson), Georgi Abramov str. 122, Entr.A, Apt 23, 1404-Sofia, Bulgaria, tel: +359/2/595495, or: Krassimir Kanev (secretary), Zh.K. "Nadezhda", bl. 636-B, ap. 85, 1231-Sofia, Bulgaria./s

sUNITED KINGDOM/s

sNEW COMPUTERISED CUSTOMS INTELLIGENCE SYSTEM/s

sA new customs intelligence system was launched at London - Heathrow airport at the end of October. The computerised system is designed to allow Customs officers throughout the European Community to exchange intelligence information directly with each other about their enforcement work. It is the first Community-wide system, and by the end of next year will link 300 terminals across the member states of the Community./s

sThe following is taken from a press release issued by HM Customs & Excise, 29 Oktober 1992:/s

sThe Paymaster General [archaic British government position - JJ] Sir John Cope MP, formally launched the system at Heathrow airport on 28 October./s

sSpeaking at the launch, the Paymaster General...said that efforts to combat [drug smuggling and fraud] would be maintained and enhanced where necessary. The Customs Information System was part of the enhanced effort - a powerful new tool available to Customs officers in the frontline against international crime. It will be fast, easy to use, and therefore very practical./s

sIn a "background note to editors", the press release gives more details:/s

s"The Customs Information System (CIS) is designed to provide a fast, easy and efficient way of exchanging information amongst the customs services of the Community. It is based on the Systems Customs Enforcement Network (SCENT), but is a significant enhancement upon it. Some 55 terminals will be in place across the Community by the end of next year, with this number yet to increase to around 300 by the end of next year. The UK will have 25 terminals stationed across the country./s

s"The CIS makes messaging more user-friendly by use of a series of pre-set screen formats, which are displayed in the language of the local user. Standard messages, such as 'stop-and-search' are numerically

coded, so avoiding language barriers when passing information between Member States. /s

s"The system is designed to pass information in five main categories: 'persons', 'method of transport', 'commodities' and 'trends'. For each category there is a standard screen format for basic information with space on the screen to add specific requests, or other details. A further innovation is a bulletin board, for sharing news and offering or requesting expertise./s

s"Phase II of the system will see the addition of a dedicated CIS database in October 1993. Once established, this is expected to provide a valuable source of intelligence for investigators, who will be able to study reliably collated information on smuggling trends across the Community, as well as seeking details on individual cases./s

s"Storage of personal details on a database means that Phase II needs a legal base with full data protection provisions before it can become operational. An inter-governmental convention is being negotiated to provide comprehensive data protection provisions, and the relevant Community regulation is being amended in parallel to cover those areas which fall within Community competence (such as Common Agricultural Policy fraud)./s

s"Only Customs Services and certain closely related agencies in some member states will have access to the CIS. There are currently no plans to link the CIS with other national information systems./s

sComment/s

sSCENT, and the newer CIS, are less well known aspects of EC computerized data exchange - certainly by comparison with the Schengen Information System. There has been little or no public discussion of the role of these systems. The "intergovernmental convention on data protection" referred to has received no publicity, and it will be interesting to see what it contains, given that some EC states still have no domestic data protection law. The EC draft directive on data protection does not cover most areas of Customs activity, since law enforcement falls outside the provisions of the Treaty of Rome. The reassurances about data protection are worth less than may appear at first sight - the UK's own interpretation of the Council of Europe Convention on Data Protection effectively exempts all law enforcement activities, so that there are no real rights of subject access or of independent scrutiny. Applied to SCENT and CIS, UK law would be worthless as a protection for the rights of the individual./s

sJolyon Jenkins/s

sASYLUM BILL AND BOSNIAN REFUGEES/s

sThe asylum bill, the first version of which was lost because of the general election in April, has been reintroduced in parliament, and is certain to become law. It is not significantly different from the original. A new provision has been added, which removes the right of appeal for visitors refused entry to the UK. In practice, the right was of limited use, since the vast majority of applicants were obliged to leave the UK before they could lodge their appeal./s

sThe main elements of the bill will be familiar to readers of the CL, since they mirror closely legislative provisions in the rest of Europe:/s

s- Asylum seekers will be fingerprinted./s

s- Asylum seekers must lodge their claim within 48 hours of arrival./s

s- Appeal rights are reduced./s

s- There will be a special "fast track" removing those asylum seekers whose claims are "manifestly unfounded".

/s

sInterestingly, the bill enshrines in UK law the 1951 Convention on Refugees. This is presumably because the British government is increasingly confident that as a result of ever more restrictive interpretation of the Convention by the EC-Member States few would-be refugees would have a valid claim./s

sCertainly, this is an argument regularly being used by the government in refusing to offer asylum to the victims of the war in Bosnia - it is claimed that such people are not "refugees" under the Convention, but merely fleeing from a civil war, or "seeking a better life in the west"./s

sAt the time the first bill was introduced last year, a major part of its rationale was that the numbers of asylum seekers arriving per month had doubled from the previous year. Now, the number has returned to its previous level, but this is something that ministers are less anxious to publicise./s

sJolyon Jenkins/s

sAUSTRIA/s

sNO DATA PROTECTION REQUIREMENTS FOR LIST-BROKERS?/s

sIn a draft proposal for new trade regulations a committee of the Austrian Parliament legalizes list-broking with regard to personal data of buyers and prospective customers without permission of the persons concerned. Once the regulations enter into effect, any customer of a firm will face the fact that a vast number of enterprises will do business with his data and interests without his approval./s

sThe draft proposal was adopted by the committee on 10

November 92 and is certain to be voted by parliament, despite the massive protest of data-protection experts./s

sOffers disguised as invoices, "immediate winnings" which later reveal themselves as orders, misleading advertising practices... Direct-mail activities are becoming ever less transparent. A growing number of people see "individual" computer-produced letters as an interference in their privacy./s

sIn a widely remarked decision (90/12/0267) the Administrative Court (Verwaltungsgerichtshof) stated in February 1992 that many list broking activities were in breach of data protection legislation./s

sThe ruling did not remain without effect: However, instead of reorganizing their advertising activities on a legal base along the lines of the court decision, the list broking firms launched a counter-attack by demanding for the very abolition of the respective provisions in the data protection law./s

sObviously, intense lobbying had the desired effect on parliament./s

sEarlier experience of ARGE DATEN, an Austrian NGO striving for better protection of personal data, shows that list brokers do not bother a lot about data protection rights. The lifting of control of data-broking is likely to be seen as a passport to even more insolent advertising and marketing campaigns. /s

sUncontrolled data exchange of this kind must be seen as a massive encroachment on privacy. Consumer desires of perfectly private character all of a sudden become the target of dubious data haggling./s

sOthmar Brigar, ARGE DATEN/s

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sOPINION/s

s'DEREGULATION' OF LEGAL AND INSTITUTIONAL FRAMEWORKS - A HANDY TOOL FOR SHIFTING POWER FROM LEGISLATIVE TO EXECUTIVE BODIES/s

sNeo-liberal concepts earlier applied to free market-economy, now appear to spread into our political systems./s

sThe gradual 'deregulation' of institutional and legal frameworks by European executive branches of government in order to circumvent public debate and democratic control has been an important phenomenon closely linked to the process of European harmonization. A first step towards deregulation was made when EC-governments chose to harmonize their asylum, immigration and internal security policies within the framework of **intergovernmental agreements** rather than within the institutions of the Community (e.g. Schengen agreement, Dublin-Convention). By doing so, they managed to avoid transparency and escape democratic control both by Community bodies as the European Parliament or the European Court, and national parliaments whose role was reduced to the mere ratification of conventions post eventum./s

sNow, we are experiencing the next step in governmental deregulation attempts:/s

sAs the ILPA very accurately remarks in commenting on the London Conference, "[the] Ministers do not intend to make a further effort to produce conventions in respect of the immigration and asylum matters. In view of the singular lack of success in getting the Dublin Convention ratified or the External Borders Convention finalised, the Member State governments have moved away from this format."/s

sIndeed, the governments and administrations of the Member States appear to be in search of frameworks even more effective than the instrument of intergovernmental agreements in order to ensure smooth implementation of common political aims, undisturbed by what they seem to consider as childish obstruction by their respective legislative branches (parliaments), the judiciary and - public opinion. Thus, in London Ministers have moved to a new format: The documents produced for the London Conference were entitled, variously, 'Resolutions', 'Conclusions' and 'Recommendations'. Rather than aiming at some form of harmonization based on common institutional, legal and procedural frameworks, these formats (which are not legally binding as such) simply require Ministers to bring their national practice into conformity with the principles set out therein by a specified date. In other words, the Ministers, having reached agreement on common policy aims, pledge to implement these policies in their respective states, but instead of being bound by common, formal institutional frameworks which tend to give rise to the problems above, they are free to enforce these policies "individually", each in his respective Member State, and using the national legal and institutional frameworks which are most likely to elude disturbing interference of would-be opponents./s

sJust about a year ago, the Ad Hoc Group 'Immigration' stated the following in a confidential document on the harmonization of asylum law, produced for the Maastricht Summit:/s

s "If, in striving for harmonization of asylum law, one lays too much weight on the uniformisation of procedures for the Twelve, the process of harmonization is likely to be slowed down, very simply because of the complexity of the problem. Indeed the status of more or less independent administrative bodies, as well as the role of the national judiciary in respect to the asylum procedure are questions affecting fundamental aspects of the organisation of the state. /s

s This does in no way mean that nothing should be done for trying to harmonize the formal aspect of a law in the sphere of asylum. It would certainly be desirable to convene on the length of the examination of applications on the setting up of a uniforme procedure of priority with respect to the handling of manifestly unfounded applications, etc. /s

s In the short term, it would however be advisable to give priority to the work aiming at the harmonization of the basic rules governing asylum law (règles de fond du droit en matière d'asile). If one thus can obtain tangible results, one will at least make sure that the outcome of the procedure will be the same every where, no matter how the procedure is organized in the various states." [Ad Hoc Group 'Immigration', 5.11.91, SN 3775/91 WGI 897 AS 96, translated from French by the author].

/s

sIn the aftermath of the London Conference of November 30, 1992, the true meaning of these Ad hoc reflections should become more clear: avoid common institutional and legal frameworks. Define your common political objectives and get them through by deft use of the national instruments of government you control best./s

sDeregulate and rule by ad hoc-directives, administrative fait-accomplis and "informal" (read: confidential) European ministerial camaraderie. /s

sThis seems to be the new motto of national and European executive branches of government./s

sTo return to the London Conference of Immigration Ministers: According to the ILPA, "it is assumed" that recommendations and conclusions have "less force than resolutions". The ILPA expresses doubts on the effectiveness of the above formats, considering "the difficulty which the Commission and the European Court of Justice have in forcing Member States to bring their national laws in conformity with legally binding Community law". Although this is true with regard to issues where the governments of the Member States have conflicting interests, it can be doubted that harmonized effectiveness will be hampered in a domain as asylum, unanimously seen as a national burden by all Member State governments./s

sFurther, by following the precious advice of the Ad Hoc Group, Member State governments will be less hampered by the limits imposed by "binding" common institutional and legal frameworks. On a national level, one can make out a growing tendency in recent years, to shift the genuine content of law away from legislation to ordinances, executive regulations and administrative directives, leaving the interpretation and eventual practice-oriented "adaption" of law to the discretion of the government. This trend towards a power shift from the legislative to the executive branch has been increased by a regrettable inclination among parliaments to accept ever more 'elastic' bills which open the door for extensive governmental interpretation./s

sTerms as "manifestly unfounded", "**generally no serious** risk of persecution" and many more to be found in a growing number of national asylum laws reveal such elastic legislation and should be rejected as unacceptable in any state governed by law. They leave the door wide open to arbitrary and discriminatory practices and government beyond control. /s

sThe guidelines agreed by the 12 Immigration Ministers in London for determining "manifestly unfounded" applications, "safe" countries ("generally no risk of serious persecution) and "third host countries" are telling:/s

sFirst, a list of very restrictive guidelines (based on the proposals contained in the Ad Hoc Group's confidential preparatory documents) is agreed upon (e.g. the formal compliance with international standards of human rights and democracy; the obligation for a refugee, to seek protection in a neighbouring region, before seeking asylum in an EC-State, etc.)/s

sSecond, probably as a reaction to vehement criticism from Human Rights NGO's following the leaking of the Ad Hoc Group's proposals, the Ministers add some more "soft" elements of assessment, thus making the list fairly contradictory and vague./s

sThird, it is left to the individual discretion of each Member State, to make

its own assessment of the elements of assessment in order to establish its national practice with regard to "manifestly unfounded" applications, third host countries and "safe" countries./s

sNo need to say that such can but lead to "informal" governmental harmonization outside any common institutional framework and, obviously, based on the lowest common denominator of civil and human rights./s

sThe development of European harmonization policies - not only in the field of asylum - will soon show, if the above is a too pessimistic and negative assumption of things to come./s

sNicholas Busch/s

sPUBLICATIONS AND DOCUMENTS/s

sEuropean Asylum Policy: A Fortress Under Construction, Suzanne Egan and Andy Storey, Trócaire Development Review, Dublin, 1992, pp.49-65. This article examines trends in the flows of migrants and refugees into Western Europe and the increasingly restrictive response adopted by both national governments and intergovernmental institutions. The main elements of present asylum policies, and proposals for future changes in those policies, are outlined and critiqued, in particular the implications, both positive and negative, of the Maastricht Treaty. Some recommendations are made regarding the evolution of future policy./s

sAvailable at: Trócaire, 169 Booterstown Av., Co. Dublin, Ireland; Fax: +353/1/2883577./s

sA historical critical overview of European inter-governmental cooperation on matters of immigration, asylum, and internal security, Massimo Pastore, July 1992, Istituto die Scienze medico forensi, University of Turin, Italy./s

s"Boundary" conflicts around and inside the European Community, Massimo Pastore, Istituto die Scienze Medico Forensi, University of Turin. Paper presented to the 20th Annual Conference of the European Group for the Study of Deviance and Control (Padova, 3-6.9.92) on: European Union, internal market and the need to re-define external and internal boundaries in Europe; The new perspective of a shared responsibility for controlling the external borders and its implications for immigration and asylum; The re-definition of external boundaries: where will the new border-line be traced out?; Re-defining Euro-citizens and Euro-aliens; Security problems and "boundary crisis" ./s

sEuropean toolshops for tyrants - the role of a reconstituted police industrial complex, Steve Wright, The Omega Foundation, 13 Patton Street, Manchester M1 2BA, UK. Paper prepared for the 20th Conference of the European Group for the Study of Deviance and Social Control (Padova, 3-6.9.92). In the wake of European unification new forms of "electronic" control and policing are being developed. New police technologies are increasing efficiency and range of action of the police. The author reveals the influence of multi-national industrial complexes dealing with security technology on policing in Europe. The revelations are based mainly on the author's incognito visits to exhibitions of police and security technology around the world./s

sSocial Kritik, Danish magazine for social analysis and debate, No. 22/23, November 1992, Nansensgade 66 kld., DK-1366 Copenhagen K.; Main theme in this issue is Policing in Europe (editor: Ida Koch). Contributions by Ida Koch, Øjvind Larsen, Massimo Pastore, Kiki Morén, Nicholas Busch, Steve Wright, Jørgen Jepsen, Peter Blume, Morten Kjaerum, Christian Horst and Benny Lihme. Language: Danish./s

sTelephone tapping in the Swiss Confederation (Telephonueberwachung im Bund), report of a Committee of the Swiss Parliament, 9.11.92. Language: German. A complete version (37 pages) and a condensed version (13 pages) are available at PFE./s

sAd Hoc Group 'Immigration': Report by the sub-group 'Asylum' on organizational and technical problems and options in setting up EURODAC, the electronic fingerprint-data bank. Brussels, 21 August 1992, SN/2833/1/92 WGI 1133. The report is 'confidential', of course. Guess who might have a copy of the (German) text and don't hesitate to contact this person. Confidentiality guaranteed./s

sEuropean Parliament, Committee on Civil Liberties and Internal Affairs:/s

s- Report on the abolition of controls at internal borders and free movement of persons within the European Community, A3-0284/92, Rapporteur: Tsimas. Resolution adopted by the EP on 13.11.92. The resolution stresses the obligation for all EC-Member States to lift internal border controls for all citizens (including third country nationals) and calls on the Commission to take action against any state not complying with the respective obligations contained in the EEC Treaty. At the same time it advocates the creation of a "European Coast Guard" to combat clandestine immigration and drug trafficking./s

s- Report on European immigration policy, A3-0280/92, Rapporteur: van den Brinck. Resolution adopted by the EP on 18.11.92. Among others, the resolution calls for the transfer of the domains of legal and illegal immigration to the Community institutions, for the right of non-EC nationals (regular residents) to move freely within all Member States of the European Economic Area and to benefit from the protection offered by Community law. The right to family reunification shall be granted to the spouse and children under 18 of EC-workers with regularized residence. /s

s- Report on the harmonization within the European Communities of asylum law and policies, A3-0337/92/PART A & B, Rapporteur: Cooney. Resolution adopted by the EP on 18.11.92. The report criticizes that asylum seekers' chances for a fair hearing of their claims are jeopardized by a growing number of dissuasive regulations and practices. Accordingly, the resolution calls for the guarantee of a number of common standards with respect to the rights of asylum seekers (i.a. unfettered access to the territory and automatic access to the asylum procedure, fair hearing, free legal assistance and access to an appeal procedure with a court. It further calls for an international court to be entrusted with the interpretation of asylum legislation in the Member States which should be compulsory./s

s- Second Report on the entry into force of the Schengen Agreements, A3-0336/92, Rapporteur: van Ouirve. Resolution adopted by the EP on 19.11.92. The resolution calls for more control, by the national parliaments and the Community institutions on the implementation of the Schengen II Agreement. The necessity for international judicial control by the European Court of Justice is once more stressed and the Commission is urged to submit proposals for the amendment of a number of provisions in the agreement which have been subject to constant criticism by the EP.

/s

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