

## **OPINION**

**The following article is the English translation of a contribution by Dr. Jan Holvast at the 1992 Annual Convention of FIFF (an German organisation of computer professionals for peace and social responsibility), in Burg Rothenfels/FRG, last November. The author is director of Stichting Waakzaamheid Persoonsregistratie in Amsterdam, a consumer oriented foundation in the field of privacy protection. He is also director of the centre for Privacy Research in Amsterdam.**

### **THE NETHERLANDS, AN OPEN DOOR IN A EUROPE WITHOUT BORDERS**

by Jan Holvast, Amsterdam

In the Netherlands, discussion on Europe without borders started in the mid 1980's with the Schengen Agreement between the Benelux-countries, France and Germany, in other words, much earlier than with the Maastricht treaty. The general feeling was that, as a consequence of a "too tolerant" climate in the past, the Netherlands would attract organised crime, drug related crime and political and economic refugees, once the borders opened. That is why two alternatives were discussed: staying tolerant and not accepting the agreement or becoming less tolerant and accepting it. In the end the choice was made for the second alternative.

Two measures were taken to fight the open border situation resulting from the Schengen process. Both affect citizens' life in an indirect and a more direct way. The first is the extended use of the tax number introduced in the mid 70's. The use of the number, at first used solely in the domain of tax registration, was extended to the field of social security in 1989 and later to the house rent allowances, pensions and the registration of students' financial support. Although in 1989 it was exactly prescribed in which situations the use of the so called SOFI (social-fiscal) number was allowed, the extension was accepted without much debate as a means for fighting crime and fraud.

The second measure, affecting citizens more directly, is the introduction of the obligation to identify oneself by using an identity card, issued by the municipality (passport or a special ID-card). This obligation ceased to exist after World War II, because for the Dutch people it was a symbol of authoritarian rule, unworthy of a democracy.

The newly developed ID is a quite simple card, although there are already plans for a more sophisticated "smart" card. The present cards contain the name, address, photo, a number of issue and the SOFI number. The introduction of the card is, once again, justified with the argument that an open society as the Dutch will need a new form of control after the opening of the borders (Schengen, Maas-tricht). It is expected that the parliament will accept the law, introducing the the obligation to identify oneself in numerous situations including, for instance, work space, football stadiums, public transport and banking. Moreover, foreigners can always be asked to identify themselves in front of public authorities.

While most politicians label the field of mandatory use of the card as "restricted", people tend to perceive the obligation as general in practice.

Furthermore, as a result of the increasing use of computer technology, privacy protection is at stake. Major infringements on privacy can be observed as a result of databank matching and the use of telematics (the combination of telecommunication services and computer technology). The political propaganda machinery is full at work in colorfully depicting the alleged scale of the problems of fraud, crime and, especially, illegal residents. According to opinion makers within politics and the media, these problems can only be solved by using information technology and databases, for instance by SOFI number based computer matching.

As a result, three direct effects of the Schengen and Maastricht process in respect to privacy and freedom can be seen:

1. From a permissive society in the past, the Netherlands are moving to a more repressive society in which control is increased.

2. From a trust based society we are moving to a society based on distrust. Everybody is seen as a potential defrauder, criminal or illegal alien. Quite obviously, coloured people will be the first to be submitted to increased control.

3. From a constitutional state, the Netherlands are developing towards a control state in which fundamental constitutional rights are reversed. The burden of proof will be reversed and the principle of self-incrimination will be accepted. Legal means will tend to be used as a tool for control. Ironically, even the Data Protection Act (DPA) is ever more likely to be used in that way. Instead of protecting the privacy of people it already now serves as a legitimisation of dubious practices. Matching data? It is allowed, since we have a DPA. Introducing numbers and ID-cards? It is allowed, since we have a DPA. Other laws too, intended to protect personal freedom, are changed in order to allow the use of information technology, without considering the effects on privacy and freedom.

A question often raised in the Netherlands is whether the Schengen and Maastricht process will end up in a "Fortress Europe" or whether, in the contrary, it will evolute into a new form of democracy.

Based on the experiences of the last few years, the first is more probable than the latter. It is all too obvious that the people in power are building an ivory tower - the control state.

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## **XENOPHOBIA AND NATIVISM - CAUSE OR EFFECT?**

By Eugene Sensenig, Salzburg

Throughout Europe the open door policies of the post World War II period have been eroded or radically transformed. On the national, bilateral and multilateral levels, migration experts and far sighted euro-technocrats are now slamming the door on asylum seekers and potential immigrants.

The public debate on the reform of Germany's refugee legislation has forced one question more than any other to the forefront, i.e. are the current changes in Western Europe's immigration and refugee policy the product of nativist and neo-nazi violence, as many national governments maintain, or has the xenophobic and ultra-rightist violence witnessed in the last several years been instigated by the very federal and local officials who now claim they are only reacting to the voice of the people?

### **"Germany is open to the world"**

The recent pogroms in Germany sent shock waves around the world. The German federal government and the Social-Democratic opposition have claimed that the neo-nazi skinhead violence is only the tip of an iceberg of national discontent directly the product of the liberal refugee policy anchored in the West-German constitution. According to this interpretation, the upcoming highly restrictive constitutional reforms, which will limit the influx of immigrants and asylum seekers to a mere trickle, were introduced in order to stop the movement of the general population towards the rightist fringe. A recently passed policy reversal, narrowly accepted by a special Social-Democratic convention in November of 1992, was justified along the lines that in order to save Germany's tradition as "a country open to the world", paragraph 16 of the constitution had to be sacrificed. This paragraph is the linchpin of the country's refugee policy and simply states that "victims of political suppression shall enjoy asylum", no if's, and's, or but's about it.

A closer examination of Germany's refugee policy within the last years makes quite evident that not only has the government's refugee policy been anything but "open to the world", but that internationally, Germany has maneuvered itself into a situation where it has no other choice than to water down or fully eliminate paragraph 16 of its federal constitution.

### **Internationalisation of Immigration and Refugee Policy**

Beginning with the original TREVI (1975) and Schengen (1985) agreements, the process of internationalisation of West-European immigration and refugee policy has made limited but effective progress in tightening and coordinating the alien laws of the individual EC member states. Germany, as a driving force within both bodies, has at all times supported "Europeanisation" as a way of reducing the

impact of the unwanted immigration the country has faced as a so called EC "front state". The German green (land) and blue (sea) outer borders are the longest of any of the prosperous EC members.

In 1986 the EC Council set up the "Ad Hoc Group Immigration" to deal with the effects the four freedoms of the "Single Market" will have on the individual states and the often times disparate alien policies. Finally, the Dublin Convention on refugee policy (1990) and the Schengen Implementing Agreement (1990) have set up an alien policy "fast track", enabling those states willing to cooperate, to harmonise their immigration and refugee policy prior to a comprehensive EC agreement. Ireland, Great Britain and Denmark have, for different reasons, chosen to remain outside the Schengen body of states, often referred to as "Schengenland". Here again, Germany has played a leading role in forcing through the "fast track" concept, which will enable it to take the pressure off its northern, eastern, and southern green and blue borders.

### **"Finally we can profit from our centrally located position"**

Paragraph 16 was included in the West-German constitution as a symbol of retribution and gratitude, demonstrating that the Federal republic of Germany recognised its responsibility to make up for the damage done by the Third Reich in World War II and to show thanks towards those countries which had harboured German asylum seekers between the years 1933 and 1945. Paragraph 16 has, however, prevented Germany from fully benefiting from the Dublin and Schengen agreements. According to Dublin, so called "refugees in orbit", i.e. asylum seekers who travel through one or more safe countries in order to apply for asylum in a third or who apply for asylum in various safe countries must be returned to their country of origin or at least expelled from the single market area, once their claim has been rejected by the country defined responsible for considering the asylum application. Both demands were not only supported but also co-sponsored by the Federal Republic of Germany.

The Federal Republic of Germany has been tightening its immigration and refugee policy since the late 1970's. In 1975 the recruitment of "guest workers" was officially ended. To prevent the presumed abuse of the refugee status, entry visas were introduced for the citizens of Pakistan (1976), Afganistan, Ethiopia, Sri Lanka, Bangladesh, and Germany's NATO ally Turkey (all in 1980). Passenger carriers who allowed above mentioned nationals on board without an entry visa are fined and have to return these unwanted aliens free of charge. Between 1969 and 1980 the recognition rate of refugee applicants dropped from ca. 87% to ca. 19%. In 1986 the then Secretary of the Interior Zimmermann declared that the ruling Christian democratic parties (CDU and CSU) would center their alien policy discussion on a restriction of the asylum laws. This was followed by a broad anti-refugee campaign sponsored and carried out by federal, state, and local members and state officials of the Christian Democratic parties. The crescendo we are now experiencing in East-Germany began as early as the mid 1980's in the west, i.e. long before the reunification with Eastern Germany and the outburst of anti-foreigner violence.

Paragraph 16 of the constitution is the last hurdle now preventing Germany from fully closing its borders to all unwanted aliens. The provision does not allow Germany to draw full benefit from the Dublin Agreement because "refugees in orbit" are formally protected by their constitutional right to asylum once within the country. Schengen ratification has been blocked for the same reason. In Maastricht (1991) the EC handed over responsibility for the future harmonisation and "Europeanisation" of alien policy to the "Ad Hoc Group Immigration". Great Britain, Denmark and Germany have blocked significant progress in the "Ad Hoc Group" up until now.

The demise of paragraph 16 was therefore more than overdue. Because this aspect of the German constitution is not only of political but also cultural significance, its "reform", i.e. elimination had to be carefully orchestrated. The wave of nativist and xenophobic violence was a welcome excuse, at the least. To which extent local, state, and even federal officials were actually involved in the instigation or escalation of the pogroms of 1991 and 1992 can not now be ascertained. Claims by various refugee and immigrant rights groups that this is indeed the case must remain what they are, unproven, i.e. unproveable claims.

The government - opposition (CDU/CSU/FDP/SPD) compromise reform of paragraph 16 has two central aspects. In the future not all "victims of political suppression shall enjoy asylum" but only those covered by the Geneva Convention, which is the basis of refugee policy in the other Schengen member states. German authorities are on the point to complete a list of all those countries considered democratic and whose nationals shall therefore automatically be excluded from refugee status. Secondly, all those countries bordering on Germany have been declared "safe countries", including the EFTA countries

Austria and Switzerland as well as reform countries Poland and Czechia. The latter two countries will be paid to take back unwanted aliens. There is now, for all practical purposes, no way to legally enter Germany other than by air or sea. The existing visa stipulations prevent most Third World and many former East Bloc nationals from using this form of transportation. Now situated per definition within the centre of "democratic" Europe, Germany hopes to solve its immigration and refugee problems with the stroke of a pen.

Xenophobia and nativism have played a central role in allowing the German government to realise, on the international level, policies which they previously introduced at home. The mass marches and "chains of light" now common in the country are most certainly honestly intended by their organisers. They should not, however, be abused in order to cover up the fact that most of the damage has already been done.

Sources: Der Spiegel; International Herald Tribune; Klaus-Peter Nanz, "Der dritte Pfeiler der Europäischen Union", in: Integration (3/1992). pp.126-140.

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## **EASTERN EUROPE**

### **SOLDIERS AGAINST REFUGEES IN CZECHIA?**

In the event of a massive influx of refugees viewed as "economic" from Eastern Europe, the Czech government will send military units to its common borders with Slovakia in order to prevent illegal entries. This was announced by the Czech Minister of Defence, Antonin Baudys.

According to official sources, more than 150'000 migrants were staying illegally in former Czechoslovakia last autumn. Most of them came from the former Soviet Union and viewed Poland, Czechia and Slovakia as mere intermediate stations on their journey to the West.

Defence Minister Baudys further announced Czechia's intention to build up a professional army.

Source: Die Presse, 5/6.1.93

### **AUSTRO-SLOVENIAN AGREEMENT ON DEPORTATION OF MIGRANTS**

The Austrian Minister of the Interior, Franz Löschnak and the depute Minister of the Interior of Slovenia, Bogoj Brvar have signed an agreement on the deportation of unwanted migrants at a meeting in Vienna, in December 1992.

The bi-lateral agreement regulates the conditions of entry for citizens of the two states and the transfer of aliens from third countries who have entered one of the two countries illegally or are denied the right to stay.

Die Presse, 4.12.92

### **CONFERENCE ON REFUGEE POLICIES IN BUDAPEST**

The Council of Europe will deal with the refugee issue at a conference in Budapest, in February. The conference is expected to adopt a treaty regulating the sending and taking back of "illegal economic refugees". In Budapest there is rising concern about the prospect of tens of thousands of Russians getting stuck in Hungary, one of the more prosperous countries of Eastern Europe, on their way to the West.

## **Comment**

### **A TIME-BOMB IN THE FORTRESS' BACKYARD**

Slovenia agrees to take back unwanted migrants from Austria, Hungary fears to be left on the shelf with a tide of Russians going west, Czechia is determined to fend off unwanted asylum seekers by sending the

army to its new Eastern border, leaving it up to the unloved Slovakian brother to tackle the problem. These hasty moves are all an expression of one and the same concern: They feel pressed to demonstrate their willingness and ability to comply with the demand of the rich neighbours in the West that they help tighten the walls of "Fortress Europe", as a precondition for any western assistance. This is achieved by the zealous endeavour shown in concluding a plethora of bi-lateral agreements with the Western neighbours, which all amount to the same thing: the poor Eastern European countries engage to take back from the rich western European countries the evergrowing number of unwanted migrants who happen to pass through their countries on their journey to the West. These agreements result in the need for the young eastern democracies to rearm their police and military structures at heavy costs. The effects of this policy might soon prove to be disastrous not only for the fragile democracies in the East and Southeast, but as well for stability and peace in the whole of Europe. Western Europe is acting like the house owner who discovers a time-bomb filled with toxic gas in his home and castle and, instead of disarming it, throws it over his neighbour's fence, hoping that gas respects fences...

## **EXPULSION AND ASYLUM: THE SITUATION OF KOSOVO-ALBANIANS**

**A delegation of the Swiss catholic charity, CARITAS-Switzerland visited Kosovo last November. The delegation gathered information on the human rights situation in Kosovo and its effects on refugee fluxes. The findings of the delegation have been published in a report. In its conclusions, CARITAS calls for drastic changes in Swiss asylum practice with regard to Kosovo-refugees. Switzerland is however not the only European country leading a restrictive asylum policy against Kosovo-Albanians. We therefore publish a synopsis of the report.**

### **Kosovo-refugees in Switzerland**

In 1991, Kosovo-Albanians formed the largest group of formal asylum seekers among refugees from former Yugoslavia in Switzerland. Refugees fleeing the civil war in the embattled regions of Bosnia and Hercegovina were accepted on a provisional base outside regular asylum procedures.

The recognition-quota for asylum seekers from Kosovo is unknown. It was at 1,8% for all asylum seekers from ex-Yugoslavia in 1991 (more than 14'000 applications). Asylum seekers from Kosovo are usually deported after the rejection of their application. As deportations directly to Kosovo are impossible as a result of the UN's sanctions against Serbia/Montenegro, they are carried out via a third country, mostly Macedonia.

Deserters from the federal army of "rest"-Yugoslavia are accepted provisionally on condition however that they bring evidence for their desertion.

### **Political asylum for deserters?**

The report names fear of being drafted by the "rest"-Yugoslavian federal army as the main reason for young Albanians, to flee Kosovo.

All men aged from 18 to 27 are drafted. In the event of "increased political tension" men aged between 16 and 60 may also be drafted.

Since recently, even parents of men refusing to obey a draft order are fined with up to 90'000 dinars.

As opposed to the practice of Swiss asylum authorities, deserters often have no possibility to prove that they have been drafted.

A liberal interpretation of the refugee status would allow for granting political asylum to deserters from ex-Yugoslavia. Thus, the UNHCR's office in Bonn contends that an applicant's claim must be considered not only in case of the risk of disproportional punishment on political grounds, but as well in cases where the concerned "does not wish to participate in actions violating international law and can not by other means... effectively evade participation in such war crimes." The UNHCR concludes that "it is therefore unreasonable not to grant international legal protection from refoulement to a person trying to avoid such violations of international law by fleeing."

### **The judiciary in Kosovo**

The Serbian judiciary in Kosovo exposes the Albanian population to deliberate discrimination in all domains.

Since 1981 about 2000 Albanians have been sentenced to long term imprisonment for political delicts according to Serb and Yugoslav penal law.

In terms of figures however, the use of accelerated procedures based on the "Law of Petty Offence" is more revealing. According to this law, anybody found guilty of disturbing "public calm and order" or of offending "patriotic and socialist sentiments of the citizens" can be punished with up to 60 days imprisonment. In practice, judges usually order immediate imprisonment.

From 1981 - 1991 between 20'000 and 30'000 Albanians have been sentenced according to this pattern for "subversive behaviour" of all sorts, including attending classes in an "illegal" (Albanian) school or seeking treatment within the "alternative (Albanian) health system".

According to concurring information gathered by the delegation, all members of the Albanian community are exposed to the risk of prosecution based on the Law of Petty Offence.

Imprisonment under the Law of Petty Offence is often used by the judiciary and the police to press detainees into confessing serious political or other crimes.

Thus, these accelerated petty offence procedures open the door to systematic inhuman treatment.

In practice, the right of defense is all but non-existent. Detainees are often denied access to paper, pencil and telephone.

Since 1990, courts are almost exclusively manned by Serb judges.

The rights of the lawyers are systematically and massively infringed upon, based on an extensive interpretation of the penal procedure code of the Republic of Yugoslavia referring to "Threat against state security".

Lawyers are permanently exposed to harassment and inhuman treatment. In November 1991, lawyer Mikel Marku was beaten to death in a police station.

### **The problems of labour and social protection**

800'000 of the two million Albanians in Kosovo, are at working age. More than half of them have however left the country.

About 250'000 of the remaining Albanians at working age in Kosovo are members of the Albanian workers union, BSPK. Until September 1992, more than 100'000 of these union's members had been dismissed. Further 42'000 have never had any employment.

As the large majority of the Albanian population is concerned by the current discriminatory dismissal policy of Serbia, the social situation in Kosovo is catastrophic. More than half a million Albanians live without any public assistance, let alone a salary. Whereas unemployed Serbs receive assistance, Albanians do not. The BSPK labels this as "ethnic cleansing".

All Albanians working in the health system have been dismissed. Health insurance is linked to employment.

Moreover, Albanians generally lack confidence for Serbian medical staffs.

The fact that even the Red Cross of Kosovo at present has an exclusively Serbian staff is another indicator for the scale of ethnic cleansing in the health sector.

Albanians are barred from higher education, as they refuse the Serbian education programme. But many students attend "illegal" schools set up by unemployed Albanian school and university teachers.

### **Discrimination**

The report names a long line of Serbian governmental programmes and laws aiming both at the discrimination of Albanians and the strengthening of Serbian presence in Kosovo. Among these measures are programmes for the economical development of Serbian settlements, housing construction for Serbs, public credit facilities for the purchase of real estate by Serbs, etc.

In the opinion of CARITAS, the mere promulgation of such laws must be qualified as a policy of Apartheid.

### **Effects on asylum practice**

As a result of the findings above, CARITAS holds that Albanians fleeing from Kosovo must generally be considered as "violence refugees". According to Swiss law, refugees of this category can stay on a provisional basis. But on an international law level they are insufficiently protected from deportation back to their country of origin.

With regard to Kosovo, we are confronted with a package of politically and ethnically motivated measures

which violate fundamental rights to an extent amounting to the annihilation of the existence of the subjugated ethnic group.

It is stressed in the report that according to UNHCR-standards, such circumstances fall under the definition of the refugee status of the 1951 Geneva Convention.

In the view of CARITAS, the general human rights situation in Kosovo must be fully taken into account, when considering the subjective claim of persecution expressed of Kosovo-Albanian asylum seekers.

### **Deportation of rejected asylum seekers to Macedonia and Kosovo**

Due to the current UN-sanctions against "rest"-Yugoslavia, deportations back to Kosovo are currently impossible. This has led the Swiss authorities to deport rejected Kosovo-Albanian asylum seekers to Macedonia. This practice draws the following remarks from CARITAS:

The practice of the Swiss authorities is problematic with regard to international law. Macedonia is de facto an independent state. The de iure recognition by the international community was delayed only by Greek opposition. Thus, Switzerland actually deports rejected asylum seekers to a third country. This practice amounts to a circumvention of UN-sanctions against "rest"-Yugoslavia. It is politically mistaken as well, because it contributes to creating a new refugee problem in a third country which already has to cope with a large number of refugees together with a languishing economy. Moreover a minority conflict already exists in Macedonia. Albanians constitute between 25 and 40 percent of the population, according to the different sources. Tension is mounting against Albanians. As late as November 1992 it resulted in the first violent riots resulting in the death of five persons. Since then, harassment of the Albanian minority by security forces has increased. Obviously, the deportation of further Albanians to Macedonia can only aggravate this development.

According to the new Macedonian citizenship law, any person who is not born in Macedonia or has not resided in the country for at least 15 years is considered as a foreigner. Albanians deported to Macedonia are therefore subject to foreigner legislation. They are granted entry and may stay for a maximum three months, if they have sufficient ID-documents. They are denied both the right to work and any form of public assistance. After three months they can be deported by force.

They have the theoretical possibility to apply for asylum, but in practice, Macedonia, very much in line with Schengen policies, rejects such claims on the grounds that the asylum seeker concerned has already had access to an asylum procedure in a third country.

According to the regional office of UNHCR in Skopje, deportations of Albanians under police escort directly from Skopje airport to the Serbian border do occur. In such cases, the deportees are handed over directly to the Serbian authorities.

According to the Macedonian Ministry of Home Affairs, a special agreement has been reached with Sweden, providing for the routine transfer of Albanian asylum seekers deported from Sweden to the Serbian border. The costs for the transport and the police escort are paid by Sweden. The Ministry of Home Affairs intends to reach such bilateral agreements with further Western European countries.

It is obvious, that such practices expose the refugees concerned to increased risk. The mere fact of having applied for asylum abroad is punishable according to Yugoslavian and Serbian criminal law ("Insult of the state").

As a conclusion, Macedonia can not be considered as a "safe host country".

### **The UNHCR in Kosovo**

In a particular chapter on the activity of international organisation in Kosovo, mention is made in the report of a program of the UNHCR aiming at resettling thousand displaced Serbs from Bosnia... in Kosovo!

### **Conclusions**

CARITAS draws the following conclusions from its findings:

- The present, very low recognition quota for Albanian asylum seekers from Kosovo in Switzerland [and most other European countries] can not be justified, considering the extent of generalised political persecution in Kosovo.
- Asylum applications of conscientious objectors and deserters must be seriously considered.
- All Albanians whose asylum application has been rejected should automatically be considered as "violence refugees" and should thus benefit from a provisional right to stay in the host country.

- Deportations to Macedonia are questionable with regard to international law, and politically mistaken. They bring about incalculable risks for the deportees concerned.

Source: Vertreibung und Asyl - Reise einer Delegation der Caritas Schweiz in den Kosovo/BR Jugoslawien und Mazedonien vom 16. - 20. November 1992, Bericht.

24 pages, German.

Available at: Caritas Schweiz, Postfach, CH-6002 Luzern. Tel: +41/41 522222, Fax: +41/41 512064.

## **PORTUGAL**

### **PORTUGAL REFRAINS FROM SIGNING BILATERAL AGREEMENT ON "HOT PURSUIT" WITH SPAIN**

**In a last minute decision, Portugal has refrained from signing a protocol with Spain on the right for the respective police forces of the two countries to cross the common borders in the event of "hot pursuit". The protocol was meant to enter into effect on 1 January 1993 and was is the first in a series of treaties aiming at the earliest possible implementation of the Schengen II Agreement at least on a bilateral level.**

Agreement on the protocol had been reached last year at the conference of Iberian Ministers of Home Affairs in Evora. Spain and Portugal had conceded the right to their respective police forces to operate within up to 50 kilometres and for two hours at most on the territory of the neighbour state, when pursuing persons taken red-handed while carrying out a criminal act related to drugs, terrorism or serious traffic delinquency.

After months of hesitation, the Portuguese president, Mario Soares, finally refused to sign the protocol on the grounds that, as opposed to other arrangements in the framework of the Schengen agreement, it had not been submitted to the parliament. This fact nurtured growing doubts of the president regarding the legality of the protocol, which he now wishes to submit to his staff of legal advisors for closer examination. Mr. Soares's last minute back-down has drawn the ire of the government of Prime Minister Cavaco Silva.

The delay angered government circles all the more as, in the teeth of mounting resistance of other signatory states, they had moved heaven and earth in order to implement the Schengen Agreement, on a bilateral Iberian level at least, at the planned date on 1 January 1993.

Indeed, both checks of goods and persons had already been abolished at different crossing points on the Portuguese-Spanish border at that date, despite the fact that the free movement of persons among the other Schengen member states is unlikely to become reality before next summer at the earliest.

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## **GERMANY**

### **COVERT INVESTIGATORS INFILTRATE LEFTIST GROUPS IN BADEN-WÜRTTEMBERG**

**German prosecution authorities are facing growing criticism for their peculiar lack of initiative in combatting violent racist crimes against foreigners. Recent revelations in the Land of Baden-Württemberg are a further indication, that criminal investigation offices have other priorities: harmless non-conformist grassroot groups in the university towns of Freiburg and Tübingen were infiltrated at great expenses by covert agents of the Baden-Württemberg Landeskriminalamt (LKA: the Land's office of criminal investigation). For more than a year, the covert agents spied on**



**groups and individuals not suspected of any crime. The operation was justified on the grounds of dismantling the alleged remains of the "Red Army Fraction" (RAF: the former Baader-Meinhoff group).**

The operation was uncovered in Juli 1992 in Tübingen, when one of two covert agents spying on such groups as the Nicaragua-group of the protestant student organisation "Evangelische Studentengemeinde", and an "action alliance" against the economic world summit meeting in Munich and a deportation camp for rejected asylum seekers in Baden-Württemberg, "cracked" and revealed his true activity to his left wing girl friend, whom he had got with child.

The LKA had provided the two agents with complete false identities, including detailed biographies and genuine jobs in an institution assisting physically handicapped persons. The agents gradually gained the confidence of the groups concerned by participating as modest and always helpful activists in their activities and by building up intimate friendships with some of their members. Thus, they developed a network of working contacts and personal relations that gradually covered the whole range of the non-party left spectrum of Tübingen, which enabled them to provide detailed weekly information to the LKA not only on the current activities of the groups concerned and their links with other groups, but also on the private life of many of their members.

In an effort to justify the LKA operation, the Land's Interior Minister, Mr. Birzele (SPD) contended that the groups concerned had never been a target, but that the investigation was from the very beginning limited to specifically selected "target persons". In order to get access to these "target persons" the covert agents had first tried to gain the confidence of "contact persons" who were not themselves suspected. According to the LKA, there are "factual indications, that certain persons ... have contacts with imprisoned terrorist criminals in Germany and abroad and that these activities and contacts presumably serve the building up demanded by the RAF of an 'anti-imperialist front in Western Europe'".

A number of individuals in Tübingen actually do have contacts with RAF-detainees, but they label the LKA's allegations as "demagogical", arguing that they have always publicly declared themselves for such contacts with prisoners and that police had censored all the mail of the detainees and had been present at all visits. Thus, it was a mystery, what more the LKA could hope to reveal by using intelligence means with regard to the particular issue of RAF.

The Interior Minister further claimed that the covert operation had been decided at a conference of the interior ministers of the German Länder after the assassination of Mr. Rohwedder, a high-ranking federal official.

Speakers of the targeted groups, however, point at the fact that Mr. Rohwedder was well and alive in February 1991, when the agents began their mission.

In their view, the Tübingen case is just one more example for the systematic use of propagandistic terms as "leftist-extremist-terrorist scene", "the orbit of terrorism", and "sympathisers". They all aim at justifying in front of public opinion ever more unrestricted police control of criminally non-suspect citizens.

The differentiation between "target persons" and "contact persons" is seen by the groups concerned as a deliberate deception of public opinion: To begin with, some individuals arbitrarily are declared "target persons" in order to allow the penetration by intelligence services of their whole sphere of human relations and political contacts. Thus, in a second stage, all people living and working in this "social environment", themselves become a target of the investigation or its findings.

In his book "The Anti-Terrorism System" the German lawyer and police expert Rolf Gössner characterises the logic of this process as follows: "the focal point of the new structural development in the domain of security policy is not judicial judgement or conviction, but the penetration by executive bodies of the state of militant resistance circles and their forefronts and orbits. The main objective with this is social diagnosis and 'crisis prevention', the setting up of operative access by the means and methods of secret policing..."

Some 80 persons in Tübingen have meanwhile demanded insight into their personal files at the LKA. The demand was refused immediately by the Minister of the Interior.

When launched in February 1991, the covert operation lacked any legal base. But recently, in the wake of new federal legislation pertaining to "organised crime" and police-intelligence cooperation (see CL No.4 p.3) a new police law has been introduced in Baden-Württemberg permitting the unrestricted and proactive use of intelligence methods (audio- and video surveillance and covert agents) even against non-suspect third persons. "Operation Tübingen" is thus legalised post eventum.

Sources: Infobüro Tübingen: Innenminister Birzele lügt und vertuscht - Staatsschutzagenten in der Tübinger Linken, in Gläsernes Rathaus 9/92; Verdeckte Ermittler in Tübingen, paper by Nicaragua Arbeitskreis der Evangelischen StudentInnenengemeinde and others, December 1992; Das Anti-Terror-System - Politische Justiz im präventiven Sicherheitsstaat, by Rolf Gössner, VSA-Verlag, Hamburg 1991.

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## **COMPUTER PROFESSIONALS AGAINST "FORTRESS EUROPE"**

**Approximately hundred computer professionals discussed the effects of European harmonisation on their profession at the annual meeting of FIFF, a German organisation of computer professionals showing concern for peace and social responsibility, last November, in Burg Rothenfels, FRG. The meeting was held under the title: Europe - fortress or democracy?**

**The considerations of professionals dealing with the problem of data processing in their daily work, deserves inter-disciplinary attention.**

The participants in particular discussed the increasing role of computerised data processing within such domains as external security policies and armement, internal security and police cooperation, environment policies, and the health and social security systems.

FIFF is extremely preoccupied with the increasing control over European citizens resulting from a rapidly growing electronic information exchange within the EEA. The computer professionals view this development as particularly disquieting, because of the systematic lack of transparency of decision-making in the Community.

The complexity of the legal framework of European harmonisation within and outside the EC increasingly obstructs democratic control of processes and institutions by the citizens. "Pro-active" surveillance is a threat to privacy and civil liberties no longer limited to policing, but also in such areas as health and social security policies.

This was demonstrated in a particular workshop on the role of general computerised registration of personal health and social data in setting up a system of behaviour control (see in this CL: Opinion: The Netherlands - an open door in a Europe without borders; and: Publications and Documents).

Among the important results of the meeting was a projected deepening of cooperation on the European level. The flow of information between organisations critical of the above developments is to be improved, laying the bases for a more active role in the process of decision making. In particular, closer cooperation is planned between FIFF and PFE.

Contact: FIFF (Forum InformatikerInnen für Frieden und gesellschaftliche Verantwortung), Dagmar Boedicker, Daiserstr. 45, D-8000 München 70, Tel:+49/89 7256547

Dear Jolyon,

Here is the sequence of the content of CL No.12. You will have to add some main rubrics, missing on the files I sent you and change rubrics according to the corrections you have made, for the table of contents on p.1.

Asylum and migration:

- Soldiers agaisnt refugees in Czechia? p.
- Austro-Slovenian agreement on deportation of migrants p.
- Conference on refugee policies in Budapest p.
- Comment: A time-bomb in the fortress' backyard p.
- Expulsion and asylum: The situation of Kosovo-Albanians p.

Germany:

- Covert investigators infiltrate leftist groups in Baden-Württemberg p.
- Computer professionals against "Fortress Europe" p.

Portugal:

- Portugal refrains from signing bilateral agreement on "hot pursuit" with Spain p.

Opinion:

- The Netherlands, an open door in a Europe without borders p.
- Xenophobia and nativism - cause or effect? p.

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Calendar of events p.

After Calendar of events, please add:

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PORTUGAL

PORTUGAL REFRAINS FROM SIGNING BILATERAL AGREEMENT ON "HOT PURSUIT" WITH SPAIN

**In a last minute decision, Portugal has refrained from signing a protocol with Spain on the right for the respective police forces of the two countries to cross the common borders in the event of "hot pursuit". The protocol was meant to enter into effect on 1 January 1993 and was is the first in a series of treaties aiming at the earliest possible implementation of the Schengen II Agreement at least on a bilateral level.**

Agreement on the protocol had been reached last year at the conference of Iberian Ministers of Home Affairs in Evora. Spain and Portugal had conceded the right to their respective police forces to operate within up to 50 kilometres and for two hours at most on the territory of the neighbour state, when pursuing persons taken read-handed while carrying out a criminal act related to drugs, terrorism or serious traffic delinquency.

After months of hesitation, the Portuguese president, Mario Soares, finally refused to sign the protocol on the grounds that, as opposed to other arrangements in the framework of the Schengen agreement, it had not been submitted to the parliament. This fact nurtured growing doubts of the president regarding the legality of the protocol, which he now wishes to submit to his staff of legal advisors for closer examination. Mr. Soares's last minute back-down has drawn the ire of the government of Prime Minister Cavaco Silva.

The delay angered government circles all the more as, in the teeth of mounting resistance of other signatory states, they had moved heaven and earth in order to implement the Schengen Agreement, on a bilateral Iberian level at least, at the planned date on 1 January 1993.

Indeed, both checks of goods and persons had already been abolished at different crossing points on the Portuguese-Spanish border at that date, despite the fact that the free movement of persons among the other Schengen member states is unlikely to become reality before next summer at the earliest.

Alexander Gschwind

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