FRANCE

REFORM OF THE PENAL PROCEDURE: THE THORNY PATH TOWARDS FAIR TRIAL

Only weeks before parliamentary elections, one of the socialist government's major achievements, the reform of the code of penal procedure (Code de Procédure Pénale) entered into effect on 1 March. The reform has drawn vehement criticism from members of the judiciary, the police and even some lawyers who say it is inapplicable because of too complicated and costly procedures obstructing criminal prosecution.
Most lawyers and Human Rights organisations however view the law as a progress strengthening the principles of presumed innocence and the rights of defence.
Among other things the law sets an end to the almost unlimited discretionary power of the criminal investigation police (Police judiciaire) under the "garde à vue", an ill-famed form of police custody particular to France and restricts the powers of the investigative judge (juge d'instruction).

The ambiguous role of the "juge d'instruction"

In countries like Britain and the USA the penal procedure is based on the *accusational* principle: Two opposed parties (the defence and the prosecution) with (theoretically) equal rights take an active role in producing each the exonerating, respectively, the incriminating elements which will then be submitted to arbitration of the court. In contrast, the penal procedure in France, as in many other European countries, is *inquisitional* (procédure inquisitoire). The defendent is seen rather as a passive subject of a judiciary investigation led by an "independent and unremovable" judge, the *juge d'instruction* (investigative judge), who's task it is, to "establish the truth" by compiling both the elements incriminating and exonerating the suspect. Based essentially on the findings of his investigation the court will rule after hearing first the public prosecutor's opinion on the case and his demand for a sentence, and then the pleading of the defence.
According to the former penal procedure the investigative judge alone formally charges a suspect, decides on his detention on remand and other measures of privation of liberty pending the procedure, decides on habeas corpus complaints and leads the police investigation. Based on the findings of this investigation, the *commission rogatoire*, he then hears the person concerned and concludes his investigation by a statement of evidence summarising his findings. The public prosecutor states his assessment of the case and on the continuation of the procedure, but it is again the investigative judge who decides whether the case shall be dismissed or forwarded to the court for judgement.
Thus, the investigative judge has a dominating position within the entire procedure. The double role of the investigative judge has since long ago been a matter of debate in France. Indeed, by virtue of his office, the investigative judge is on the one hand an investigator carrying on the action of the police, o the other hand he is a member of the court with a jurisdictional role.
Although, in theory, their function consists in searching the truth in a spirit of impartiality and independence, investigative judges have traditionally tended to be more sensitive to the requirements of policing and public order than to the defence of individual liberties.

The "garde à vue"

The police can place a person under *garde à vue* for three reasons:
- He has been caught red-handed preparing, attempting to commit or committing an offence;
- The public prosecutor has ordered a police enquiry.
- A private person has filed a complaint.

A person can be held under this form of police custody for 48 hours (96 hours for drug and terrorism related crimes). During this period, the person is interrogated by the police without being presented to a judge or informed about the charges. According to the law in force until 28 February 1993, the person was denied both access to a lawyer and the right to inform family members or friends. Obviously, this period of total isolation was a deliberate

measure aimed at obtaining early confessions from suspects under considerable moral pressure.
As a recent report by a comittee of investigation of the Council of Europe confirms, intimidation, verbal and sometimes serious physical abuse by police officers seaking to extort a confession from a person under custody are frequent in France (see also CL.No.8, p.6). This is particularly disquieting considering that in practice the police record based on the interrogation at this very early stage of the procedure tends to strongly prejudice the opinion of the court. Judges usually give little consideration to later retractations of a confession made under the *garde à vue*.
After a maximum of 48/96 hours the person is presented to the public prosecutor. Based on the record of the interrogating police officer the prosecutor will choose among four options:
- the case is dismissed without further procedure;
- the facts are obvious. The person will be presented to a court within 24 hours for judgement.
- The facts are obvious, but there is no risk that the person will flee from justice and there is no threat to public security.
- The facts are obvious but necessitate further examination.
In this last case the person is presented to the investigative judge and formally presented with the charges.
According to the former procedure, after a *débat contradictoire* (contradictory consideration) with the accused, the defence lawyer and the public prosecutor pertaining only to the guarantees presented by the accused, the investigative judge decides, whether the person is to be set free pending the procedure, placed under some form of judiciary control (bail, confiscation of passport, etc.) or detained on remand.
Lawyers have since long ago denounced investigative judges for their discretionary use of detention on remand on very summary grounds and for other breaches of presumed innocence. The excessive number of prisoners on remand in France is often seen as a direct consequence of both the *garde à vue* and the institutional omnipotence of the investigative judge.

The reform

The most important progress has probably been achieved in the domain of the *garde à vue*. Any person in police custody now has a right to receive the visit of a lawyer (During an adaption period beginning with 1 March a lawyer may visit a person in custody beginning with the 20th hour, but from 1 january 1994 even this limit will be abolished). Some lawyers deplore that the new provisions say nothing about a right of the lawyer to see the police records and that the lawyer still cannot be present at the police interrogation. Nonetheless, the mere fact that persons in custody can now immediately inform a family member, friend or lawyer on their situation and whereabouts, is very likely to have a moderating effect on the behaviour of police officers and to bring some moral comfort to detainees who know that they are no longer completely isolated from the outer world. The beneficial effect of the new law was immediatetly visible. In the first three weeks after the entry into effect of the new law on 1 March, in no case of *garde à vue* the length of police custody exceeded 19 hours. This reduction of the average length of police custody alone marks an important steps towards a better respect of the rights of the individual. It is well known that the most serious encroachments on human rights tend to occur in police custody, before the person concerned is presented to a judge.
The reform also transfers the power to decide on measures of privation of liberty from the investigative judge to another judge designed by the president of the court. Before formally charging a person (inculpation), the investigative judge now opens a procedure of examination (procédure de mise en examination), during which the person concerned is "neither witness nor acccused".
Both regulations were introduced against the background of mounting criticism against the omnipotence of the investigative judge and the non-respect of the principle of presumed innocence, but most observers believe that in practice their effect will be rather cosmetical and is likely to complicate and prolong procedures.
The reform further grants the defence immediate access to the records of the investigation, introduces a list of procedural defects leading to the dismissal of a case on the grounds of nullity, and last not least abolishes a traditional privilege of the members of the *Police judiciaire* (PJ: criminal investigation police), the *privilège de jurisdiction*. This is a sort of jurisdictional immunity protecting the officers of the PJ from criminal investigation. The immunity could only be lifted by decision of a court of cassation. The "privilège" proved to be of great benefit to many generations of French politicians suspected of some wrong-doing. Indeed, not only policemen are members of the PJ, but also all mayors and members of parliament...

A storm in a tea-cup

The entry into effect of the reform, only weeks before parliamentary elections, triggered a row. Solemn appeals,

calling for the immediate abrogation of the reform were addressed to the right-wing oppostion parties expected to win the elections.
All over France, investigative judges declared they would rather ask to be transferred to other duties than execute a law which was "inapplicable" and threatened to obstruct criminal investigation. Police officers claimed that the reform would jeopardise the combat against organised crime and introduce a "two speed" justice favouring Mafia criminals who could afford the best lawyers, available round the clock. Some lawyers said, the defence would be unable to benefit from formal improvments in the law because of inadequate remuneration.
"That is not all wrong, but everybody is well aware that this is not the crucial question", says Maître Henri Leclerc, vice-president of the French League of Human Rights and one of the country's most renowned lawyers. In Leclerc's opinion, "this reform is a judiciary progress. If the reform is as bad as some say, they will establish this not by obstructing it but by applicating it scrupulously and with intelligence. Only then one will see if, in order to improve justice, one will have to go further or set time back."
Three weeks after the entry into effect of the reform, Maître Leclerc's words seemed to have been heard even by the most angry investigative judges. At least, none of them has stepped back, the reform does not appear to be an issue of public interest any longer, and many observers doubt that the opposition, after its electoral victory, will really abrogate a law, which in the long run, might contribute to unburden an overcharged judiciary.

N.B.

Sources: Interview with Me Bernard Liebermann, lawyer; articles in Le Monde, February and March; Libération 8.3.93: Un progrès judiciaire, by Henri Leclerc; Neue Zürcher Zeitung, 21.1.93.

GERMANY

THE MAKING OF A "TERRORIST ASSOCIATION" - THE POLITICAL TRIAL OF THE WORKERS PARTY OF KURDISTAN

Since three and a half years, members of the Workers Party of Kurdistan, PKK, the largest armed resistance movement of the Kurds in Turkey, are on trial in Germany accused of "membership in a terrorist association". The trial described by the former Federal Prosecutor, Kurt Rebmann, as Germany's "biggest terrorist trial so far" is a chilling illustration of how "anti-terrorist" provisions can undermine fundamental rights of the accused and the defence and allow for the political criminalisation of entire minorities.
Yet, after five years of detention on remand for some of the accused and one of the most expensive procedures in post-war Germany, the Federal Office of Prosecution (Bundesanwaltschaft) seems farer away then ever from its goal to label the PKK as a terrorist organisation. The last remaining witness of the accusation, the "repenter" Ali Cetiner, has been granted the right to refuse testimony by the court on the grounds that he would risk self-incrimination.

Originally, 23 Kurds were accused in two procedures, in Düsseldorf and Celle. At present, a mere five are still on trial (4 in Düsseldorf, 1 in Celle). Against 8 Kurds the case has been dismissed, one accused was acquitted and 4 were sentenced for minor offences. All of the latter were freed on the day of the judgement as the prison terms did not exceed their detention on remand. Thus, after the conclusion of two thirds of the cases, nobody has been convicted according to para 129a [on "terrorist associations"] of the German penal code.

The trials are based on the Federal Prosecutor's assumption that the accused were members of an alleged special branch within the PKK in charge of internal security and disciplin which had harrassed and - in some cases - even liquidated fellow countrymen suspected by the party leadership of beeing dissidents or spies.
There are, indeed, indications that the PKK - just as other resistance movements - tended to act quite ruthelessly against presumed "traitors", at least during a period.
More than 300'000 Kurds, many of them sympathisers of the PKK, live in Germany. Against this background and considering rising anti-foreigner sentiments in the country, the German prosecution authorities' and the medias'

pointing out at the PKK as possibly responsible for a number of punitive actions including murder could not fail to have a devastating effect on the situation of the Kurdish community in Germany as a whole. In the opinion of the PKK and some German political observers, the deliberate triggering of anti-refugee sentiments in the population by the criminalisation of an ethnic minority, together with Germany's desire to satisfy demands of its Turkish ally were in fact the central aim of the the trials in Düsseldorf and Celle.

According to German legal practice, para 129a is not appliccable to foreign organisations that do not have their seat in Germany. In a noted decision the German Federal Court (Bundesgerichtshof) earlier quashed a terrorism sentence against the ill-famed mainly German paramilitary nazi group "Wehrsportgruppe Hoffmann", because, as a precaution, the organisation had at short notice transferred its "seat" to another European country.
In the PKK case however, the Federal Prosecutor made use of his own fairly hypothetical assumption, according to which the PKK had set up a separate "disciplinary" branch in Germany called the "popular tribunal of Cologne", which thus was punishable according to German law. This legal trick did not prevent the accusation from extensively mentioning the PKK's "terrorist" activities in Turkey and to formally accuse two defendants of involvment in killings in Lebanon. In the view of the defence attorneys this is a breach of international law.

Turkey's role in the trial

From the very beginning of the PKK case, the German judiciary authorities sought assistance from Turkey. For obvious reasons, the Turkish regime is interested in obtaining the PKK's judicial criminalisation by a Western European country as a terrorist group. Through the Ankara office of Interpol, Turkey regularly provided information on the defendants. Many of the records originate from military governors in the Kurdish provinces and, in an obvious effort to support the Federal Prosecutor's theory on the existence of a special "German" branch of the PKK, they often conclude with the assertion that "he [the defendant] is a member of the popular tribunal of Cologne".
In the meantime, however, even the Prosecutor General was forced to admit that there is no objective evidence proving the existence of such a tribunal and this charge has been dropped by the accusation.

Little evidence for a big trial

Originally, the accusation in the PKK case was mainly based on the declarations of two witnesses of the prosecution. Both had presented themselves to the police in February 1988 asserting that they had barely escaped punishment by a "popular tribunal" of the PKK. But both later retreated after getting increasingly entangled under cross interrogation by the defence. One of the two refused testimony after 4 months of hearing, when he suddendly remembered that he was a relative of one of the accused. The vanishing of these two main witnesses led to a sensational turning in the trial with the dismissal of the case against 8 defendants who had before been presented as extremely dangerous terrorists justifying months of isolated detention on remand and the erection of a special high security court with shot proof glass cages at a cost of 7,5 million Deutsch Marks.

The "repenter" Ali Cetiner

The hasty retreat of its two main witnesses confronted the prosecution with a serious problem of lacking evidence that threatened to expose the then Prosecutor General Rebmann who had made the PKK case the trial of his career to public ridicule. A new witness had to be found at once, and it was found in the person of Ali Cetiner.
In the bill of indictment, Cetiner was only briefly mentioned as a possible suspect in a murder case, but was not among the accused.
Cetiner's story is interesting. After living in Germany for several years, he abruptly moved to Sweden in early 1988, where he at once obtained political asylum - an unusual privilege for Kurds in Sweden. It later surfaced that the Swedish intelligence, SÄPO, had encouraged Cetiner to change his residence by offering him immediate political asylum, free housing, income and permanent care by the police. As a matter of fact, the SÄPO too was in bad need of witnesses in its effort to prove PKK involvment in the murder of the late Prime Minister Olof Palme.
By some way, both Swedish and German intelligence seemed to have come to the same conclusion that Cetiner might be willing to cooperate in denouncing the PKK.
In Sweden, Cetiner, known there as "source A" at once took a leading role in the Palme murder investigation with ever more spectacular declarations on the PKK and alleged traces of Syrian and Iranian involvment in the Prime minister's assassination. But after some time, Cetiner's obviously flourishing phantasy only drew sarcastic

comments from the Swedish media and the whole theory of Kurdish involvment in Palme's assassination crumbled in the wake of revelations indicating that Swedish intelligence circles together with Hans Holmér, the high ranking police officer then in charge of the Palme case had deliberately biased the investigation by focusing exclusively on the PKK trace.
"Source A" was no longer a useful reference in Sweden and in February 1989 he was extradited to Germany as a main suspect in the murder of a Kurd in Berlin in 1984.
The sudden rediscovery of Ali Cetiner by the German judiciary is remarkable in view of the fact that Cetiner seems to have drawn the interest of German police and security before his departure to Sweden. Indeed, in summer 1987 large scale police raids against presumed PKK-members in Germany were officially justified on the grounds of threats against the life of Cetiner.
Later, it came to light, that the Office of the Federal Prosecutor had appoached Cetiner in the late 80ies making him offers and guarantees including furnishing him with a new identity and a new life in a foreign country against his willingness to testify against the PKK.
After Cetiner's extradition to Germany, the representative of the Federal Prosecutor worked on the Berlin court trying Cetiner for murder in order to obtain a minimal sentence. Cetiner was found guilty and condemned to a five year prison term instead of a life-time sentence. This could happen thanks to the "repenter regulation" (Kronzeugenregelung), a provision which had just been introduced into the German code of penal procedure. The regulation allows for a massive reduction of sentences of repenters turned state witnesses. [The "repenter regulation" was recently prolonged by three years despite strong objections of the acting Minister of Justice, Mrs. Leuthäuser-Schnarrenberger. Together with many German jurists, the minister believes that the use of repenters, rather than improving criminal investigation, frequently leeds to miscarriage of justice.]
Ali Cetiner was set free after three years of imprisonment (2/3 of the sentence) and in the midst of his 10 months long interrogation as a witness at the Düsseldorf trial. However, just as in Sweden, he graduously got entangled into contradictions and manifest lies. Towards the end of the hearing, Cetiner ever more often pleaded his right to refuse self-incriminating testimony.

The "repenter" falls silent

Since, Cetiner has completely "vanished" from the PKK trials. In last December, the "repenter", now appearing as the only witness against the last remaining defendant at the second PKK trial in Celle, chose no longer to subject himself to increasingly unpleasant questions of the defence, by simply and suddenly falling silent. The defence vigourously protested against what it called an unadmissible restriction of the fundamental right of the defence to question the witnesses of the accusation. Yet, on 5 January 1993 the court formally conceded Cetiner the right to all out refuse testimony on the grounds that the repenter was suspected of having participated as a member of the PKK's European leadership in the persecution and punishment, including murder, of party dissidents. By giving further testimony the court said, he would be likely to produce evidence for his own terrorist activity and, moreover, expose himself to the risk of penal prosecution due to "false testimony or false insinuation".
In other words: Should Cetiner be further questioned it could come to light that he incriminated innocent co-defendants and that he himself might have carried out the crimes he is accusing others of.

Whose agent is Cetiner?

The stunning acknowledgment of the Celle court gives rise to a lot of questions which are likely to remain without answer after Cetiner's disappearance. They are raised in the German daily "Frankfurter Rundschau" by the reknowned journalist Eckart Spoo: Was Cetiner the principle responsible of the crimes on German soil the PKK is charged with? If so, on whose instruction was he acting? Was he already in contact with German intelligence at that time? Whose agent was Cetiner, when he moved to Sweden and at once benefitted from the protection of the SÄPO? How did German and Swedish intelligence cooperate?
As a matter of fact, Lothar Senge, a representative of the Federal Prosecutor admitted in Celle that he had contacted Swedish authorities through "a German agency", as he put it, while Cetiner was staying there and that he had "conversations" with the SÄPO. When questioned about the content of these talks and about contacts with German secret services, Mr. Senge refused to comment on the grounds that his office had not authorised him to testify on these subjects.

Can a "repenter" be a credible witness?

The final outcome of the trials in Düsseldorf and Celle now almost depends of the ruling judges' assessment of the credibility of witness Cetiner, who continuously changed his declarations in crucial points until the day he preferred to hold his tongue.
The psychiatric expertise on Cetiner, made at the occasion of his Berlin trial is not likely to be of great help to the increasingly cornered prosecution authorities. It describes the "repenter" as at the "limit of feable-mindedness", of "limited intelligence", "caught in claptrap". The psychiatrist further noted that Cetiner was a "weak person" unable of independant reflexion but good at "learning by heart" and "very suited as a victim of indoctrination".
What can be expected of such a witness?
In any case, 5 defendants further remain in detention on remand and an end to the trials is not in view.
However their outcome may be, their effect not only on German law and practice, but on German society as a whole is a devastating one.
For years, it has served as a justification for further undermining the rights of the accused and the defence, among others by the introduction of the "repenter regulation", it has held alive a hysteria of terrorism which was beginning to fade away and spectacularly linked the terrorism issue to the politically sensitive issues of foreigners and, in particular, refugees.
The encouraging aspect of this otherwise dark story is the role of the defence attorneys. They had to confront a massive public campaign led by the former Federal Prosecutor, Kurt Rebmann, depicting the PKK as Germany's "public ennemy number one". The Federal Office of Prosecution also tried to intimidate the defense itself by opening penal or court of honour procedures against every single defense attorney. But so far, the prosecution has not achieved its central aim - the formal, judicial criminalisation of an entire foreign resistence movement.

N.B.

Sources: Interview with Hans-Eberhard Schultz, defense attorney at the Düsseldorf trial, by Jürgen Kräftner, Ulenspiegel No.217, 2.3.93, and No.218, 9.3.93; "Die Quelle A sprudelt auch in Celle nicht mehr", article by Eckart Spoo in Frankfurter Rundschau, 16.1.93; The trial of 20 Kurds in West Germany, doumentation by C.E.D.R.I. (C.P.2780, CH-4002 Basle), 1989.
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PORTUGAL

NEW FOREIGNER LAW PROVIDES FOR PROMPT DEPORTATION OF ILLEGAL RESIDENTS

According to the new foreigner law, any foreigner seized without a valid residence permit shall be deported by merely administrative decision of the immigration office, respectively the Interior ministry, within 48 hours. If the person concerned succeeds in appealing to a judge he/she will be detained for up to 40 days pending a decision.
The law entered into effect on 8 March. The final date for illegal immigrants from non-European countries to apply for residence in the framework of an amnesty decree expired on 5 March.

According to the new foreigner law entry is granted only to persons who have a valid employment contract, accommodation, complete travel documents, 30'000 escudos in cash and, if the persons claims to be a tourist, 6000 escudos per day of the planned stay. Anyone who brings an illegal alien into the country, or accomodates or employs such a person can be fined with up to several million escudos. [Organised smuggling of immigrants can be punished with up to 8 years imprisonment.]
Particular detention camps are to be set up for deportees. It seems however, that, for the time being, only one such camp is operating at Lissabon-Portela airport.

[With the new law, Portugal is bowing to pressure from the EC and, in particular the Schengen-countries who fear that with the abolition of internal border controls, non-EC citizens will poor into the Community via Portugal, because of the country's so far liberal immigration policy towards its former colonies.]

The new policy has already led to a human tragedy for tens of thousands of immigrants in Portugal. While ever more refugees from war-torn Angola, a former Portuguese colony, are arriving almost daily at Lissabon's airport, ten thousands of immigrants from former colonies in Brazil, Asia and Africa who have resided in the country for years are permanently exposed to the threat of internment and deportation.
That the introduction of the freedom of movement of persons within the European Common Market and the Schengen treaty would pose enormous problems to Portugal in particular, was foreseeable since long ago.
Despite its image as the "poorhouse of the old continent" Portugal traditionally was used as a first haven by the inhabitants of its former colonies in search of a better life, not least, because Portugal, besides common language and culture, offered them certain privileges, inexistent in other European states, regarding entry and naturalisation.
In line with the Spanish model, the Portuguese government decreed an amnesty a year ago. The decree set a transitional period for immigrants from the above former colonies within which they should regulate their status of residence.
Vehement protest from Brazil however delayed the enactment of such measures until last autumn. [Indeed, Brazil introduced retaliatory measures against Portuguese nationals on the grounds of a 1972 agreement with Portugal which grants privileged reciprocal conditions of entry and naturalisation to nationals of the two countries. Brasil is a traditional country of emigration for Portuguese, and there are some 10'000 Brazilians in Portugal without residence permit.
For the time being, the conflict has calmed down a bit, since both countries ordered their airlines to take on board only pasengers in possession of all necessary documents. Brazil further introduced a new law on 3 february 1993 under which Portuguese wishing to emigrate to Brazil will require proof of higher education and employment there. It is also believed that officials of the foreign ministries of Brazil and Portugal are no longer excluding the possibility of mutually introducing entry visas for the nationals of the other country.]

Despite the amnesty, authorities and relief organisations still estimate the number of illegal residents in Portugal at about 150'000 persons. Up till now, only 20% of them have reported for registration. Ignorance, lack of documents and fear of deportation have prevented many from taking this step.. As a matter of fact the amnesty decree threatens anyone unable to comply with the requirements set with deportation. Applicants for residence must prove that they have permanent accommodation, regular employment or another regular income and a clean criminal record.
These requirements to not fit with reality of life in the slums of Lissabon or Setubal and are resented as unsurmountable barriers by the concerned.

The scope of the tragedy became apparent only short before the expiration of the amnesty and has lead to public turmoil in Portugal.
Once again, the Portuguese are confronted with the question of conscience whether they are more closely connected to their own history or to the "monster of Brussels". "Where do we come from, and where do we want to go?", a leading daily entitled its polemic comment. "Until recently we were the last European country with hunger and illiteracy. Now we shall become the first too in very officially introducing concentration camps".

Alexander Gschwind, Madrid

(Completed with information from Migration Newssheet, No.120/93-03 and Berliner Zeitung, 10.3.93)

EX-YUGOSLAVIA

PRESSURE ON NON-SERBS IN VOJVODINA: THE CASE OF HRTKOVCI

The Humanitarian Law Fund, a Belgrade based NGO that collects information on crimes committed during the war on the territory of former Yugoslavia, has published a report on the case of Hrtkovci, a village in the Serbian province of Vojvodina. Serbian nationalists are stepping up harassment of members of non-Serb minorities and Serbian citizens acting against discrimination. According to the NGO, the recent developments in Hrtkovci are characteristic for the situation throughout Serbia. Nonetheless, the report

seems to contradict allegations by Western media of widespread and outright atrocities committed by Serbs in their strive for "ethnic cleansing".

Last summer, the village of Hrtkovci was the scene of numerous violations of the private safety and the right to property of non-Serbian citizens by Serbian nationalists. Bowing to complaints of village residents and mounting criticism from civil rights groups and the independent media, the authorities of the Federal Republic of Yugoslavia and of the Republic of Serbia finally responded with the following measures:
- Judicial procedures were opened against two Serbian ringleaders, Ostoja Sibincic and Rade Cakmak, both accused of harassing non-Serbian citizens and inciting others to do the same;
- Serbian refugees who forcefully entered the homes of local Croatians were evicted;
- Police protection for non-Serbs was increased;
- The forced Serbian renaming of the village to Srbislavci was declared unlawful;
- The Deputy Minister of the Interior of the Federal Republic of Yugoslavia, Mihalj Kertes, was forced to resign, allegedly because of his role in "ethnical cleansing" operations in Vojvodina.
These measures led to a temporary relaxation of inter-ethnical relations during autumn 1992. Nonetheless, 350 families of Croatian origin, accompanied by their Serbian and Hungarian family members, left the village at that time.

A court decision to release the two Serbian agitators Sibincic and Cakmak and the December elections won by the Serbian nationalists put an early end to this period of relative calm. The two ringleaders, together with Serbian refugees, resumed their agitation against both non-Serbs and Serbian village residents known for their equal rights standpoint.
These people are constantly threatened. At its meetings, an extremist Serbian group, the so-called "Assembly of the Local Community Srbislavci", draws lists of "non-fitting" citizens who are to be pressed to leave. Croat professionals and Serbian human rights activists loose their jobs. In one case, Ostoja Sibincic personally called on the post administration to fire the non-Serbian postman in Hrtkovci and replace him by a Serbian refugee from West Slavonija.
Posters announcing a dead-line for "evacuation" are publicly posted. People have been threatened in streets with knifes, others are hit by stones, bombs have exploded in front of homes. Some "non-fitting" residents were told to abandon their homes on the grounds that an orthodox church was to be built on the site.
Prominent opponents of Serbian nationalism, among them Members of Parliament, frequently receive death threats.
The "Local Assembly" has taken control over the distribution of humanitarian aid to refugees. Refugees loyal to the group are privileged, male Serbian refugees from Croatia, who did not take part in the war are denied assistance.
The group organised around the two local agitators Sibincic and Cakmak has forcefully squatted 168 homes of Croats now residing in Western Europe.
Sibincic and Cakmak have organized their followers into groups prepared to resist by force any attempt by the authorities to prevent "expropriation" actions and judiciary authorities are reluctant to enforce the law, because of possible "grave consequences".
The report underlines that developments as in Hrtkovci are common throughout Serbia. According to the Humanitarian Law Fund, more than 10'000 people received threats by phone or anonymous letters, alone in Belgrade and more than 1'000 people moved from the city because of pressure from unidentified militant groups.

After the December elections, the report concludes, both institutional and non-institutional pressure against members of ethnic minorities, religious groups, political organisations and even of certain professions has significantly increased.

Condensed from: The case of Hrtkovki, 12.2.93, report by Natasa Kandic, Executive Director of the Humanitarian Law Fund, Belgrade.
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NORWAY

MASS DEPORTATIONS OF KOSOVO-ALBANIANS

The Norwegian government has decided to deport 1200 Kosovo-Albanians whose application for asylum has been turned down. So far, due to the unstable situation in Kosovo, asylum seekers from this region were allowed to stay in Norway on a temporary base, even when their applications were turned down.

The policy change was was decided despite several international reports of frequent human rights violations in the Serbian-ruled province of Kosovo (see CL.No.12, p.2). The decision drew protests all over Norway. Marches were held all over the country. 14 Kosovo-Albanians sought shelter in a church i Tromsö and went on hunger-strike. While the hunger strike was supported by most of Norway's bishops the Office of Immigration threatened to stop weekly payments to all Kosovo-Albanians refusing to return to their reception centres.
Norwegian human rights activists have begun hiding Kosovo-Albanian families threatened with deportation.
The government, however, stands firm on its decision, and officials of the Ministry of Justice recently met police chiefs from southern Norway to plan "Operation Kosovo" aimed at the prompt execution of the government's mass deportation order.
A recent opinion poll shows that 60% of the interviewed support the churchs' initiative to grant sanctuary to would-be deportees and that 52% disagreed with the government's plan to deport Kosovo-Albanians.

Source: SAMORA Newsletter No.2, February,1993 (based on articles in Aftenposten, 9.2.93, Nordlys, 13.2.93, Dagbladet, 18.2, Vårt Land, 22.2.93, and others)

INCREASED USE OF CUSTODY AGAINST UNDOCUMENTED ALIENS

It has become a common practice in Oslo that foreigners are being kept in custody for months on the mere ground that they lack sufficient ID-documents.
The persons concerned - many of whom are asylum seekers - are held in a guarded building near Oslo's Fornebu airport. The building is situated only 200 meters from the airport which makes it suitable for keeping asylum seekers in custody while the police are waiting for a final deportation order.
The internment centre is guarded by a private security company who lets dogs run between the house and the barbed wire fence surrounding the area.

Source: SAMORA Newsletter No.2, February 1993 (based on Aftenposten, 6.2.93).
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EUROPEAN HARMONISATION

SIX EASTERN CENTRAL EUROPEAN STATES TO COOPERATE ON MIGRATION POLICY IN VIEW OF RESTRICTIVE GERMAN ASYLUM PRACTICE

The Interior Ministers of Austria, Poland, Hungary, Slovenia, Slovakia and Czechia met behind closed doors at a conference on 16 March, in Prag.
At the meeting, the ministers continued discussions on asylum and illegal immigration initiated at a conference in Budapest, in February, attended by 33 European countries (see CL No.13, p.1). Germany was not invited to the Prag meeting, in order to prevent any form of "political pressure", as Jan Ruml, the Czechian Minister of Home Affairs said.

In the words of the speaker of the Czechian Interior Ministry, the geographic situation of Central Europe's eastern states requires common solutions.

Among others, it was to be considered at the Prag meeting, if the effects of an expected further restriction of German asylum legislation should be dealt with rather by the conclusion of bi-lateral agreements with Germany or by a multi-lateral convention.
One of the main issues is the return of rejected asylum seekers who entered Germany via one of the states present at the Prag meeting.
According to the "asylum compromise" reached in Germany between the coalition government in Bonn and the opposition social-democrats last December, in future, countries as Poland, Czechia, Austria and Switzerland will be considered as "safe countries". As a result, Germany will no longer grant access to asylum seekers entering its territory from one of the above states.
Germany's eastern neighbour countries now fear they face a "jam" of asylum seekers that they will be unable to cope with. Some 50'000 "illegal immigrants" are staying in the Republic of Czechia alone.
According to press reports in Prag, the Czechian government is already planning the reintroduction of the visa-obligation for nationals of some Eastern European countries.

In Prag, the ministers however failed to reach agreement on the drafting of a common multi-lateral convention which would have strengthened the position of the six countries at negociations with Germany. No agreement either was reached on common visa-obligations for the main "refugee generating" countries.
The six countries will now seek to reach separate bi-lateral agreements with Germany. Such proceedings involve the risk of one state playing off against the other. Observers fear that, after the failure of the Prag meeting there is now increased risk for conflicts among the six countries. The failure to achieve a common visa-policy has already resulted in some irritation. Hungary is reproached with jeopardising the aims of the conference because of its refusal to introduce the visa-obligation for nationals from Romania. Hungary objects to such a measure which would run counter to its determination not to cut ties with some 2 million ethnic Hungarians living in Romania.

Source: Süddeutsche Zeitung, 17.3.93, 18.3.93

BALTIC STATES AND SCANDINAVIA

COOPERATION OF BALTIC SEA-STATES AGAINST IMMIGRANTS AND DRUG TRAFFICKERS

The states adjacent to the Baltic sea desire to extend their cooperation in the framework of the Baltic sea council. The foreign ministers of the ten countries, Russia, Estonia, Lithuania, Lattvia, Poland, Germany, Denmark, Sweden, Norway and Finnland have agreed upon "concrete projects" for preventing "illegal migratory fluxes" and increased drug trafficking in the Baltic region.

Source: Süddeutsche Zeitung, 18.3.93

ANTI-MAFIA COOPERATION

After our brief note on anti-Mafia cooperation within the EC in CL No.13 (p.2), we received the following complementary information from Lynne Turnbull, Research Team on Police, Crime & Justice in Europe at the University of Leicester's Centre for the Study of Public Order.

The TREVI-network established an Ad Hoc Group Crime (AHG), at a meeting of justice ministers on 18 September 1992. This initiative was the result of a request by Italy for help following the murders of Judge Falcone and Borsellini (who were investigating the Mafia).
Several meetings have been held since. The personnel of the AHG are TREVI officials (high ranking members of their respective organisations). The AHG is charged with reporting back to Ministers of Justice (and not the TREVI working groups). It is a temporary group at the moment. It has four aims:
1. To identify the nature and structure of the Mafia and other organised crime groups in the EC.

2. Assess the threat of organised crime in Europe.
3. Assess action already taking place in this field.
4. Set out cooperative mechanisms to enable countries to work together on this.

Source: Police, Crime & Justice, CSPO, University of Leicester, 6, Salisbury Road, Leicester LE1 7QR, UK, Tel: +44/533 523942, Fax:+44/533 523944

PUBLICATIONS AND DOCUMENTS

An outsider looking in, an insider looking out: Irish and EC asylum policy, paper presented at an IEA/Trócaire seminar on 5 March 1993, by Andy Storey. 34 p., available at: Trócaire, 169 Booterstown Av.,Co. Dublin, Ireland.
The paper deals with the following questions: what would Irish asylum policy be if Ireland was not an EC member, and what difference has Ireland's membership made to overall EC policy? The author outlines some of the background to current EC and Irish asylum policy and concludes with a discussion of what policies Ireland, operating within EC rules, could unilaterally implement in this area, and what policies Ireland could press to have adopted at EC level.

The CSCE and the protection of the rights of migrants, refugees and minorities, by Urban Gibson and Jan Niessen, Churches Committee for Migrants in Europe (CCME), Briefing Paper No.11, March 1993, 24 p.; CCME, 174, rue Joseph II, B-1040 Brussels, Tel:+32/2 2302011, Fax:+32/2 2311413.
Although it is a well known fact that the cooperation between the participating states in the field of human rights was one of the major issues in the CSCE process (Helsinki Conference on Security and Cooperation in Europe), it is less known to what extent this cooperation includes the protection of the rights of migrant workers, refugees and minorities. Equally, these groups are often unaware of the possible protection the CSCE can offer them.
This briefing paper gives an introduction to the CSCE and its role in protecting the rights of these groups. The first chapter is a general introduction to the Helsinki process. It gives an insight into the origin, working principles and supervisory mechanisms of the CSCE. In the second chapter the relevant and most important paragraphs of the Helsinki Agreements for the issues addressed in this paper are presented. In the third chapter some conclusions are drawn as to the significance of the CSCE process as a forum for intergovernmental cooperation alongside other international organisations and institutions.

The impact of Western European border policies on the control of "refugees" in Eastern and Central Europe, by Mike King, January 1993, published in New Community 19(2): p.183-199. Mike King is Lecturer in Public Order at the CSPO, University of Leicester.
Much of the contemporary debate on Western European exclusionary border policies focuses on the nature of that exclusion, rather than the impact such policies are likely to have on border controls of other migrant receiving or producing states. This article addresses some of the issues of Western European border control harmonisation in the context of Eastern and Central Europe, and Hungary in particular. It suggests that the concept of "Fortress Europe" needs some refinement as harmonisation of controls is progressively taking place on different levels, from the Schengen group of "inner-Europe", to the EEA "greater inner-Europe", with perhaps the Visegràd group waiting in the wings. What is clear is that the present policies and exclusionary practices, on whatever level, directed against "refugees", are primarily framed within a notion of threat and necessary compensation for potential freedoms. So long as this persists, policies of control will per se outweigh prevention. What we have in Eastern and Central Europe in terms of immediate impact of policies from the West is a shifting of the border Eastwards.

Towards federalism? Policing the borders of a "new" Europe, by Mike King, 25 p., Discussion Papers in federal Studies, CSPO, Department of Politics, University of Leicester, The Friars, 154 Upper New Walk, Leicester LE1 7QA, UK. Tel:+44/533 522489, Fax:+44/533 523944.
The paper concentrates especially on change within European Border Control policies and police cooperation. On the one hand the author suggests that there are signs of increasing convergence between forms of policing in Europe as a whole and more specifically, an increasing trend towards policing system cooperation and integration, both horizontally and vertically. This is taking place together with a corresponding formalisation of the informal, in terms of practices which have been established already through bi- and multi-lateral cross-border control and

police cooperation agreements between countries. On the other hand, there is a trend towards the "layering" of exclusionary borders, from the internal to the external "buffer zones". Further, we posit an enhancement in the form of control involving networking, pro-active policing and intensification of penetration. These trends can only be understood in the context of being "necessary compensatory measures" to counteract an all-embracing notion of threat arising from an amalgam of terrorism, organised crime, drugs, clandestine immigration and asylum. The author questions the reality of that threat.

Commentaire des résolutions et conclusions adoptées par le Conseil Européen d'Edimbourg sur les pays où il n'existe pas de risques sérieux de pérsecution, les pays tiers d'accueil et les demandes d'asile manifestement infondées, by Professor Francois Julien-Laferrière, Faculty of Law, University of Limoges, France, 10 p., French, publ. in Documentation-Réfugiés, No 205-206, 17.12.92/5.1.93.
The author critically comments the conclusions of the London conference of EC-Immigration Ministers on 30 November 1992 in the field of asylum policy, as adopted by the European Council of Edinburg. He suggests that these principles express the way of thinking of the various European governments with regard to asylum and mostly but transcribe into written documents practices that have already been introduced by police and political authorities without a legal basis.
Although the resolutions, conclusions and recommendations adopted in London and Edinburg do not provide a legal basis for the decisions that will be taken in carrying out the rules they set out, their moral and political impact is obvious, not least because they have been endorsed by both the EC-immigration ministers and the EC-heads of the states. This can but comfort public administrations throughout Europe in pursuing the policies they established in the last years.

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