

EUROPOL VIA INTERPOL: THE 'SWISS CONNECTION'

130 senior police officials from 40 European countries participated at Interpol's 22nd European conference, from 31 March to 2 April in Berne (Switzerland). The relationship between Interpol and the new policing bodies of the EC, as well as cooperation with the Eastern European countries were at the central items of the conference.

A Swiss proposal to link new European police bodies as closely as possible with Interpol were favourably commented by most participants. After the Swiss peoples No to membership in the European Economic Area (EEA) the chances for an early membership of this country with the EC are poorer. Swiss police experts now warn that the Alpine confederation's solo run will result in a security deficit for the country, if it is excluded from the arising "European security space".

Schengen, TREVI/K4, European Drug Unit, Europol... European police co-operation is developing at high speed. But frustrated Swiss police officials feel they have missed the train. They are excluded from participation in any of these new structures of European policing. For the time being they have to put up with good old Interpol. At Interpol's headquarters in Lyon, the alpine confederation still counts for much. With an impressive 35'000 contacts per year, Switzerland ranks fifth among the users of Interpol's information system. This is less astonishing than it might appear. The real "super-powers" in policing have, since long ago, set up their own contact-networks around the world. Interpol has a reputation of slow-working bureaucracy and with its 169 member states (from Albania to Zimbabwe)

it is not always considered as very reliable by police forces in highly developed countries.

In his opening address at the Berne conference, Lutz Krauskopf, Director of the Swiss Federal Office for Police Matters (FOP) deplored that the European police information flux was gradually flowing aside of Interpol and thus of Switzerland.

His proposal is to revalorise the National Coordination Bureaus by making them liaison stations with the new European policing bodies. The Swiss police director made no secret about his motive for the proposal, which is to obtain access for his country to the police co-operation structures of the EC, despite Switzerland's non-membership with the Community.

The response to the Swiss proposal seems to have been generally favourable. The Swedish police chief, Björn Erikson said it was a good idea to put all European police organisations "under one umbrella", and Hans-Ludwig Zachert, head of the German BKA (Federal Office of Criminal Investigation) also expressed support for the Swiss initiative: "International crime can be combatted only as an entirety and not subdivided into Interpol, the Schengen Agreement or Europol". Although criminal investigations in the framework of Schengen legally prevailed Interpol investigations this should not affect practice, Mr Zachert said and comforted his Swiss colleagues by promising that the BKA would treat Switzerland "not a bit less well than the others".

Yet, it is only in autumn Interpol's general assembly will decide definitively on the Swiss proposal. Misgivings about the initiative were dispelled by police chiefs at a press conference. Other European organisations had no scruples in exchanging sensitive information with Interpol, they said, and every state was free, after all, to select the information it handed out to this body.

According to its statutes, Interpol is prohibited from investigating politically motivated crimes. This has led to calls for a modification of the organisation's statutes as a condition for any Interpol participation in the combat against terrorism. The secretary general of Interpol, Raymond N. Kendall, brushed aside such scruples by lecturing the attendance of the press conference that terrorism was crime and that crime could be dealt with by Interpol without any change of statutes.

As for BKA chief Zachert, he views Interpol as the best instrument, now as before for combatting Eastern European criminality increasingly moving West at the roots.

The new and quite unexpected honeymoon between EC-police chiefs and Interpol might have other reasons, too. In the opinion of many police representatives the setting up of Europol is progressing too slowly. After criticism of the European Parliament regarding the lack of a legal base enabling democratic control of Europol (see CL No.13, p.9, Report on the setting up of Europol), they fear that the process will become even more laborious. Such hardship is not to be feared with Interpol. With over 50 international liaison officers roaming in its Lyon headquarters, it still offers a welcome opportunity, not least for all kinds of "informal" good turns out of reach of transparency and control

obsessed lawmakers.

Meanwhile the Swiss Committee "Stop the Snooping State" has harshly criticised the Swiss proposal for a "revitalisation" of Interpol: "By eluding all democratic rules the government wants to couple Switzerland to further wide ranging European surveillance structures such as Schengen and Europol... This is nothing else than a welcome evasion away from national political debate into international agreements. Questions pertaining to data protection, as well as elementary human rights eluded. Political accountability is delegated to administration, respectively the police and any control through the parliament and the public is faded out. So far the item is the exchange of data on criminal acts, but from this, the step leading to exchanging "soft" data via the various systems is small."

The committee calls on the parliament to resist this development by firmly insist on its right of participation and control.

Sources: Press release by the Swiss Federal Department of Justice and Police, 2.4.93; Der Bund, 3.4.93: Macht Interpol aus Schweizer Polizisten doch noch Eurocops?, by Martin Senn; Press release by the Committee "Stop the Snooping State", 2.4.93.

THE SWISS PROPOSAL FOR THE 'REVITALISATION' OF INTERPOL

If adopted, the Swiss proposal for closer links between Interpol and Europol could affect the future of policing in Europe far beyond the original motives of its creators. We therefore publish the integral text of the speech held by Professor Lutz Krauskopf, Director of the Swiss Federal Office for Police Matters, at the 22nd European Regional Conference in Berne, on 31 March:

TREVI/SCHENGEN/EUROPOL

Mister Chairman, Dear Colleagues,

The Swiss delegation attaches great importance to this item.

We all know that, besides Interpol with its worldwide field of action, new organisations have been created during recent years within the frame of the European Community, in order to develop police cooperation. It is of course the right and even the duty of States to seek to improve methods of cooperation and it can be easily imagined that similar organisations will be created in other regions of our continent.

For some time now, many of the countries represented here today use Police Liaison Officers and it is a well known fact that today's police information is partly exchanged outside Interpol channels. The importance of NCBs [Interpol's National Coordination Bureaus] as such - indeed of the organisation as a whole - is therefore decreasing. Even worse than this rather hierarchical-theoretical consequence is the fact that Interpol-NBC's are becoming weaker and that several authorities are sometimes dealing with a same case, creating an increasing wastage of administrative work-power, and this in time of dwindling funds.

The former policy of the General Secretariat and of the Interpol organisation as such are possibly not altogether innocent to the fact that these new bodies are now appearing. They are also no doubt the consequence of the sphere of responsibility imposed on Interpol through its constitution. It was probably already too late when Interpol established the European Secretariat and the latter became fully operational - and this presumably only after its move to Lyon. This is mainly because many of the countries represented here today - including Switzerland - did not pay enough attention to the development of EUSEC [European Secretariat] and did not support it with sufficient manpower.

Although Switzerland is an outsider to the European Community and to Europol and other such organisations, we believe that the politically sanctioned new channels now used to improve cooperation - and which bypass Interpol - cannot be changed.

These questions have already been discussed by this conference in London in 1991 and in Rome the following year, when some of us wrongly believed that the clock would be turned back. This rather reactive and passive attitude will - in our opinion - be unsuccessful. The point is not that we want information about the status of these organisations, but that we seek an as close and efficient cooperation as possible.

Seen from the outside, we understand that the TREVI-memberstates and more so memberstates within the frame

of the Schengen-agreement and some concepts of EUROPOL are establishing an exchange of information and other actions along the well known lines of Central Offices.

We wonder if we - as members of Interpol - should not set the ball rolling. By that we mean that if countries - on a continental or regional level - want to create convenient Central Offices besides their NCB for international police cooperation, they should be allowed to do so.

They should be perfectly free to establish such Offices to deal with specific offenses or only for extending the field of cooperation.

However, it is essential that all these Offices should be as closely connected to their national Interpol NCB as possible, this in the interest of a smooth flow of information and so as to avoid double work and wasting energy.

As you can see from our comments, we go further than - for instance the recommendation which was adopted in Rome last year. We are of an opinion that this subject is worth being discussed closely and that - providing that other countries consider our idea as worthy of being examined - the EUSEC is asked to prepare a draft recommendation for the European Continental meeting at the next General Assembly in Aruba.

I thank you for your attention.

FRANCE

NEW FRENCH INTERIOR MINISTER: A CRUSADE AGAINST DRUGS, ILLEGAL IMMIGRATION AND URBAN VIOLENCE

Charles Pasqua, an old hardliner within the gaullist RPR-party, is the interior minister of the new French center-right government. He presented his view of the country's internal security situation at the council of ministers, on 14 April.

According to Mr. Pasqua, France is, since several years, confronted with increasing insecurity: "drug trafficking, illegal immigration and urban violence which are evermore linked to each other are its main components."

As a remedy, the Minister intends to extend police powers, put an end to "impunity" for recidivist youth delinquents, and provide for the effective execution of deportation measures against aliens.

In the beginning of April, Mr Pasqua had presented his new ministerial staff. Among them are Alain Robert, a former leader of the fascist groups "Occident" and "Ordre nouveau" who later joined the RPR after an intermezzo with Le Pen's "Front National", and professor Jean-Paul Séguéla, a physician known for his repressive stance on drug addiction.

Pasqua's policy statement comes against the background of four cases of police violence within less than two weeks. 3 youths had been shot and killed and one seriously wounded by police in separate incidents. All of them were unarmed.

Youths, immigrants and drug addicts as scapegoats

In his communication to the council of ministers Mr Pasqua notes that drugs have become "the public enemy No.1". Remedy must be taken at a European level, the Minister says with a passing shot at the liberal Dutch policy. "Drugs are at the heart of the phenomena of delinquency" and are at the bottom of half of the delicts ascertained in cities". But according to Erich Inciyan, a journalist at "Le Monde", this assertion is based on uncompleted evaluations and estimate figures.

Minors have a growing part in delinquency, the Minister states .

Indeed, within the last 20 years, delinquency increased faster among youths than among adults. In 1991, 101'631 youths between age 13 and 18 were incriminated. The summit was however reached in 1983, with 107'808 cases. More than three quarters of youth delinquency cases concern violation of property (72% relate to theft, 9% to vandalism). These figures somewhat repropportionate Mr Pasqua's assertion that "youths are at present responsible of more than a third of all delicts committed with violence". As a matter of fact, delictuous acts against persons

make up "only" 8% of youth delinquency.

However, the Interior Minister's remark that illegal immigration "has its part in delinquency and in the general degeneracy observed" and that "foreigners" were involved in "a third of all cases" of drug trafficking, forms the most disquieting part of his statement.

Once again, the member of a Western European government presents immigration as mainly a security issue, thus comforting the demagogical claims of anti-foreigner groups.

Firework of statistical figures serves as a smoke curtain

Pasqua points at the fact that in 1992 only 20% of all deportation orders (9'000 of a total 43'000) were actually carried out. As for the remaining 80%, the person concerned could not be found (43%), was undocumented, thus making deportation impossible, or could not be deported within the prescribed delay of 7 days, either because of lack of seats on flights or because of physical resistance to embarkation (20,5%). The average cost of a deportation measure was 30'000 French francs.

With regard to the deportation of undocumented persons it is noted that many deliberately destroy their travel documents in order to prevent being sent back to their country of origin. According to the Interior Minister the main problem with these cases lies in the refusal of their home countries to take them back.

Mr Pasqua designates these non-deportees who continue to reside in France as "irregulars" as the "growing ground of a new delinquency", and further points out at the "abuse of procedures" with respect to family reunification through marriages and accommodation certificates of convenience.

With respect to the non-execution of deportations, his figures are correct, but Pasqua falls into demagogy when naming laxist practices of the former socialist government as the principal cause. It is true that the number of deportation orders has tripled since 1990, while the number of actual deportations has remained quite steady within the last five years (1987: 6'951; 1992: 6'229). But this is very obviously due to a regulation introduced in 1991, according to which deportation orders are issued not only to persons under police custody or detainees, but also to free persons whose stay permit has expired. Many choose to go underground rather than being sent back to their home country.

The Minister's interpretation of statistical figures with the obvious aim to establish a link between crime and immigration is very objectionable in the light of closer examination. As a matter of fact, any alien staying in France without a regular permit, is per definitionem a delinquent by the mere fact that he breaches against French legislation on foreigners. Thus, of 128,000 foreigners incriminated in penal cases in 1990, 33'200 (17%) were incriminated merely for breach of the above legislation on entry and stay. The part of this type of delict in foreigner delinquency has significantly increased since France put a stop to immigration some 20 years ago. Leaving out of the account these infractions of foreigners legislation the part of foreigners in crime figures has remained about the same since 1976, with around 14%. Even this relatively high percentage does not permit linking delinquency to foreigners but rather indicates a correlation between delinquency and other factors. Among the foreigner population in France, young males are over-represented, foreigners are more likely to arouse police interest, they often live in a trying social and family context. Nothing indicates that delinquency is more common among foreigners as compared to French citizens living in similar conditions.

Repressive action instead of social solutions

While Mr Pasqua, probably in an effort to draw support from Mr Le Pen's electorate, went into colourful detail when depicting the allegedly catastrophic state of French internal security, he remained much more vague in presenting his policy of remedy.

Thus, he deplored that "action of the police forces has been made more difficult by the limits set to identity checks...the complexity of procedures...the reform of the code of penal procedure" and announced that he wants to provide the police with the legal means enabling them to efficiently carry out repressive action.

Heavier punishment of recidivist youth delinquents, the changing of those provisions of the reform of the penal procedure which impede efficiency of police investigations (see CL No.14, p.2), and modification of legislation pertaining to identity checks. Pressure within the new parliamentary majority is growing for a plain removal of all restrictions to random checks.

Identity checks, i.e. the right for the police to stop and eventually hold a person in order to control their identity, has been a frequent subject of heated debate in France since long ago. Critics have labeled such random checks as an encroachment on individual liberty paving the way for arbitrary, discriminatory and racist behaviour of the police and detention without grounds, and have advocated their simple abolition. This led to the introduction of some timid provisions, confirmed by restrictive jurisprudence, limiting the carrying out of random identity checks (see CL No.8,

p.6).

The re-introduction of unrestricted random identity checks on the grounds of "general insecurity", would quite obviously make easier the detection of illegal immigrants, but is also likely to result in increased police harassment of persons based on their physical appearance (non-whites, socially marginal people, youth).

Finally, Mr Pasqua denounces the manifest unwillingness of some of the immigration generating countries to take back undocumented deportees from France. The effectivity of deportation measures is to be increased not only by more frequent identity checks but also by exerting diplomatic and economical pressure on those countries - Algeria in particular - which refuse to "co-operate". Such a policy would be very much in line with similar action already introduced by the Spanish government (see CL No.10, p.1).

Mr Pasqua was the first member of the new French government to present his policy program. It remains to be seen, if, after the bellicose rumbling of her colleague, Mrs Simone Veil, named Minister of Social Affairs, will be able to come up with proposals for a more soft and constructive approach of the real problems at the root of crime and insecurity in France: rising unemployment and growing poverty.

In doing so, she could count on the support of Francois Mitterrand. After Mr. Pasqua's declarations, the President was quick in expressing his "numerous reservations".

N.B.

Sources: Le Figaro, 5.4.93, 15.4.93; Le Monde, 15.4.93, 16.4.93 (Contrôles d'identité: un débat symbolique, by Anne Chemin; Délinquance: un tableau alarmiste, by Erich Inciyan; Etrangers et violence: un raccourci discutable), Le Monde, 17.4.93.

SPAIN

QUOTA SYSTEM FOR MIGRANT WORKERS

Only 2 percent of all people living in Spain are foreigners and this is how things shall remain according to the will of the government. Until recently, innumerable "poverty refugees" sought their way Europe through Spain.

An ordinance on immigration which entered into force in April is to set an end to this so far uncontrolled migratory flux.

Stay permits will be granted to non-EC foreigners according to a quota regulation. Each year a number of working permits shall be granted to new-comers, corresponding to the demands of the Spanish labour market. The quota set for this year comprises 20'000 work permits, half of which are destined for seasonal workers. It is expected that this temporary employment opportunity will be seized by North-Africans from the Maghreb-States, above all. The Spanish government intends to privilege applications from these "neighbouring Mediterranean countries". The declared aim is to "bridge over short-term bottle-necks in the home labour market".

In order to prevent "guest" workers from illegally remaining in the country, they must engage themselves to leave the Iberic peninsula immediately, once their short-term work permit has expired. Furthermore, the ordinance includes provisions engaging employers in "enabling the immigrants to return to their home country", i.e. enterprises are expected to co-operate with public authorities, if a seasonal worker should try to remain in the country illegally.

The workers unions have expressed mixed feelings about the quota regulation. On the one hand union officials called the measures of the government "a certain progress" against the background of an otherwise extremely restrictive foreigner policy of the ruling socialists. On the other hand they demand that immigrants already living in Spain without valid documents be at last granted work permits.

The employers' associations on their part praise the quota system. Despite high unemployment - every fifth Spaniard is on the dole - a lot of low wage and health endangering jobs are vacant. The North-African temporary "guest" workers are expected to fill this gap - with no hope to ever obtain a residence permit.

Source: Berliner Zeitung, 31.3.93

Comment:

In a preparatory report for the European Council in Maastricht, in December 1991, the Ad Hoc Group Immigration called for the introduction of the principle of "preference for the Community. This meant that employers should be obliged to recruit EC-work force, whenever possible. Recruiting of workforce from third (non-EC) countries should be admitted only, when no EC-workforce was available. This was very much in line with the demand by the European Roundtable of Industrialists (Reshaping Europe, September 1990) for a common immigration policy including "the provision of employment opportunities [for non-EC nationals] in Western Europe which would not require permanent migration (e.g. project-tied fixed term work, seasonal and cross-border employment)" and "the formulation of a legal, open-door, common European immigration policy, with a fixed or flexible annual quota of intakes (...)". Spain has lived up to these demands.

South Africa's apartheid system invented the "homelands", dummy states with black puppet "governments". The black "homeland" residents had the "right" to work, but not to live in South Africa. Thus, they provided a flexible cross-border workforce - at hand, when needed and sent back into their Bantustans, when the job was done. Unlike even the most miserable immigrants in the USA, they had no hope that their sacrifice would some day be honoured by a better life for their children at least.

Now, the "Fortress Europe" is creating its "homelands" in North Africa, this all but inexhaustible work force reservoir. Is the EC heading for apartheid on a continental level?

N.B.

GERMANY

POLICE BARRAGES ON MOTORWAYS TO COMPENSATE 'SECURITY DEFICIT'

German police is testing a new investigation method. Random blockades of motorways shall provide help in catching criminals.

A wide-scale operation of this sort took place on the Federal Motorway A 13 (Berlin-Forst) on a Sunday night, last month. The motorway was closed for several hours on a length of 20 kilometres and all exits were controlled. All cars and their passengers were checked. But the hoped for crushing blow against crime and organised car smuggling in particular did not take place. According to police, "several automobiles without licence were removed from traffick". Nonetheless, the police authorities of Cottbus intends to carry out more such operations in the months to come.

A week before the operation on the A 13, a similar random blockade had been carried out by the Bavarian police on a section of Federal Motorway A 9 (Munich-Nuremberg). Police directed motorists to a parking place, where everybody was checked. According to police, trucks unfit for traffick were intercepted, hashish was found and some searched for asylum seekers were arrested.

The motorway blockades have drawn some criticism, mainly because they they lead to traffick jams. But the the German Interior Minister Stoiber (CSU) justified the measure: "In particular the abolition of controls at the internal borders of the EC and our increasingly open borders towards the East make intensified compensatory measures a must".

Source: Berliner Zeitung, 31.3.93

SWEDEN

EC-POLICY ON PRIVACY AND SECRECY THREATENS NORDIC TRADITION OF FREEDOM OF INFORMA-

A Swedish constitutional law, the Freedom of Press Law (Tryckfrihetsförordning: FPL) stipulates the principle of everybody's right of free access to all records, files, documents and journals of government and public administration. This Principle of Public Access to Information (Offentlighetsprincipen: PAP) has its roots way back in the 18th century.

Today, this early nordic version of "Glasnost" appears to be seriously threatened in the context of Sweden's application for EC-membership. This prospect does, however not seem to disturb the political leadership of the country.

"In the interest of promoting a free exchange of views and universal enlightenment, every Swedish citizen shall have the right to have access to documents of the public administration" (FPL, Chapter 2, para 1).

Generations of Swedish powerholders have tried to gradually sap this constitutional base of the PAP which enabled a disturbing public control of their activities. On a formal level, they have almost succeeded.

Gradually, a number of provisions allowing for secrecy under certain conditions were included into the Freedom of Press Law.

Thus, secrecy may be imposed, among other things, in the interest of the country's security or its relations with another state or an international organisation, the prevention of or the combat against crime, general economical interests, and the protection of the personal or economical situation of individuals.

Obviously, such "elastic" provisions allow for extensive interpretation. However, any exception to the PAP must be stated with precision in a particular law. At present most of them can be found in the Secrecy Act (sekretesslag).

Yet, the PAP is a traditional freedom so deeply rooted in Swedish society, that it almost has the character of a common law. It has so much become a part of the nordic way of life that it can hardly be rooted out by mere legislative manoeuvres.

This is illustrated by the current heated debate on the future of the PAP triggered by the Swedish government's application for EC-membership.

Indeed, the Swedish conception of transparency and public control collides with two continental-European traditions: governmental secrecy and protection of privacy.

As Anders R. Ohlson, a leading Swedish journalist, writes in Dagens Nyheter: "In Sweden, the doors to politicians and bureaucrats are expected to stand open. Power shall be exercised publicly, with general insight into decisions and into the findings they are based upon, in order that the powerholders can gain and keep the trust of the citizens. In the EC and the EC-states, in contrary, the doors are mostly shut. There, nobody has the right to read documents of the authorities. Civil servants who give hints to massmedia on power abuse or corruption, take great risks; only few EC-memberstates have a proper protection of informants."

Some examples might best illustrate how the PAP affects daily life in Sweden:

Any citizen may read the correspondence of the Prime Minister or any other member of the government. And more, he must be granted access to governmental journals and diaries where documents are listed.

In the same manner, any citizen has access to information collected by public administration (statistical figures, fact-finding investigations, all stages of the procedure of legislation, etc.).

While average citizens seldom make use of these rights, journalists, politicians and researchers do it all the more. Just imagine a journalist of some London tabloid sticking his nose in the morning mail on John Major's desk, and you will understand that Sweden is an Eldorado for investigating journalists.

Or imagine a German immigration lawyer requesting the asylum agency to hand him out all fact-information on the grounds of which they turned over an application of an asylum seeker.

But the PAP does not stop there.

Every resident of Sweden is registered under his so-called "personal number" (consisting of the date of birth, followed by four digits). Most personal data collected by public administration are registered under this personal number.

Any third person will obtain information on your name and address, your employer, your taxed income, your ownership of a car or estate, the housing allocations you receive, and, to a certain extent, your court records.

The third person snooping on you in such a way, will obtain all this information without giving his name, let be a reason. If he wishes to complete his overview with your portrait, he will just have to walk to the police station and order a copy of your passport photograph.

Once again, a wonderland for journalist Svensson investigating on managing director X, bankrobber Y, or Z,

member of parliament. A warrant also for thousands of Mr Gustavsons wishing to know if their neighbour Mrs. Karlsson might have been granted some unjustified privilege with respect to her building permit and if her life style is in keeping with her income.

No doubt, the PAP benefits the rule of law and democracy. With transparency, anybody can control the authorities. State bureaucracy works with the curtains drawn wide open. Public administration collects an extraordinary mass of information in all domains. General access to this information favours general learning and power.

Many Swedish powerholders have experienced these effects of PAP. Thus, alone in the 80ies, no less than three Ministers of Justice were forced to step down because of the mass medias' publication of compromising governmental documents.

But in practice, the PAP's value lies in its preventive effect against secret administration and corruption.

On the other hand this tradition sometimes conflicts with most of the European civil liberties movements' demand for every citizen's right of disposal of his personal data.

In the current debate in Sweden this argument is frequently used by circles opposed to governmental transparency as stated by the PAP. They hope that EC-membership will result in a deadly blow for the principle. A lot of Swedish powerholders and bureaucrats are likely to seize the occasion of getting rid of the PAP under the pretext of "inevitable" harmonisation. In these circles, the main question discussed is, whether the strived for abolition of the PAP will necessitate an amendment of constitutional law or not. In an investigation on the effects of EC-membership ordered by the government, Olof Ruin, a professor of political science, comes to the conclusion that the requirements of Community law (including secrecregulations) can, properly speaking, be met without an ammendment of present Swedish constitutional law. Mr Ruin seems to bet on an extensive interpretation of the provisions regulating exceptions from the PAP.

Indeed, the mere provision permitting the imposal of secrecy in the interest of "relations with another state or an international organisation" provides a large space of manoeuvre for introducing secrecy in wide domains of national public administration involved in some form of data exchange with the EC or an EC-memberstate.

The following story shows that some EC-countries are likely to press for such change of Swedish information practice:

A German journalist visited the customs authorities in Stockholm with the intention to hopefully bribe a customs official into showing him some document relating to the Swedish armement firm Bofors' arms smuggling affairs with Iran and its ramifications in Germany. The Swedish customs officer took note of the journalist's desire, asked him to wait a moment and soon came back with several pounds of revealing documents from the custom authorities' archives which he politely handed over to the astonished German. The article based on these records includes an interview with a scandalised public prosecutor in Mainz: "Sweden must impose secrecy on everything and should adapt to European legislation. In the event of Swedish EC-membership, Swedish law must absolutely be harmonised with the rest of Europe."

Sources: Erik Göthe: Offentlighetsprincipen i grundlagerna (The principle of public access to government documents), part 1 (published in Tidskrift för Folkets Rättigheter, Stockholm, No.1/93, and part 2 (unpublished); Anders R. Ohlson: Hugg i ryggen på "tredje man" (Stab in the back of the "third man"), in Dagens Nyheter, 25.1.93; Per Gröndahl: Vill du höra en hemlis?, in Tidskrift för Folkets Rättigheter, No.1/93; Dagens Nyheter, 4.2.93, 26.2.93, 27.2.93.

Legal texts: Regeringsformen (Swedish Constitution) Chapt.2: para 1/6, 12 and 13; Tryckfrihetsförordningen (Constitutional law on the freedom of the press), 1949, SFS 1991: 1500; Sekretesslag (Secrecy law), 1980, SFS 1989: 713.

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OPINION

European harmonisation of Law often tends to result in mutual adaption of national legislation on the lowest common denominator of rights and freedoms. This would not have to be so, if there was a real European information exchange and public debate about good legal traditions to be found in each country. This would be a first step towards European law-making on the highest common denominator and this is

Why the Swedish tradition of freedom of press deserves Europe-wide attention.

The following contribution is based on a paper written in 1989 as part of a discussion among authors in Leningrad about the new Press Law and was published in Jekaterinenburg. The author, Erik Göthe, is a Stockholm based jurist and expert on press law. He slightly abridged the original text and added a section on the implications of a Swedish EC-membership on the freedom of press.

THE SWEDISH TRADITION OF FREEDOM OF PRESS

by Erik Göthe

"I have not here concerned myself with whatever a dignitary of the state has done or wants to do, but only with the evil he is able to do, with the support of the laws, if he wants to do it. And that is not at all how the laws of a free people should be constituted."

With these words one of the fathers of the Swedish Freedom of press, Anders Nordencrantz, ended his explanation of the decisive law-technical aspect of Sweden's first law protecting the freedom of press. I think one should look upon legislation in this delicate area the way Nordencrantz did.

In 1766 this unique legislation was adopted by the Swedish parliament, a quarter of a century before the proclamation of the freedom of the press by the French revolutionaries.

The Swedish tradition of freedom of press, with detailed rules of law specifying its character, is unique. In most countries, also where freedom of the press is an established judicial practice, it is quite often vaguely based in the legislation. That may create difficulties for the citizens to uphold the freedom when it is really needed.

The Freedom of the Press Act of 1766 was truly democratic, although Sweden at the time was really a backward, poor, economically and nationally bankrupt kingdom, with no general right to vote and no essential liberties at all for ordinary people. The kingdom was ruled by either of two political parties of aristocrats by birth, "the Hats" and "the Caps", parties which were originally founded and all along financed by France and Russia, (although Great Britain was actually paying the Russian bribes).

This may seem amazing. Looking more into historical details of the Swedish 1760s, however, one can distinguish an anti-aristocratic opposition within both parties. This opposition was backed by members of the up-coming trade bourgeoisie as well as by lower officers and other officials and by the broad masses of the people. As for the latter, one should stress that the peasants of Sweden since long played an active, sometimes combative role in furthering their interests, also through parliament. This intricate political situation finally led to the abolishment of the system of secrecy and censorship in state affairs.

The new "Freedom of Printing Act", as it was called literally translated, since any printed matter was included in the legal protection, had the status of a constitution: amendments could be made only with two identical decisions in parliament with elections inbetween.

The new freedom was immediately used. The 1760ies saw a flood of pamphlets dealing with urgent economical and political issues and - mostly - other rather frivolous or scandalous subjects. "The rascal years of the freedom of press" this decade has been called. Those who were in favour of the new freedom apprehended it merely as a decision to put an end to censorship and to protocol secrecy in parliament. And, from the rascal point of view, freedom of printing ought to be an absolute, unlimited freedom. Under the circumstances, this was understandable, although an absolute freedom is theoretically absurd and quite soon proved fatal to the freedom itself.

The abolishment of censorship was, however, only the first and less important step. The censorship had already become helpless and awkward anyhow. The last censor of Sweden, Niklas von Oelreich, was a political weathercock who eventually had become a nuisance to the authorities by openly mocking the system and letting through pamphlets for grim humorous reasons or bribes.

In the history of Sweden the final, decisive point for the survival of the freedom of the press was formulated in 1809. This was after the violent downfall of Gustavian political reaction which was directed against freedom of printing and all sorts of influence from the french revolution. It is still in main the portal paragraph of the current Freedom of Printing Act of 1949 and it reads:

"Freedom of printing means the right of every Swedish national, without any hindrance raised beforehand by an authority or other public body, to publish any written matter, thereafter not to be prosecuted on account of the contents of such publication otherwise than before a legal court, or to be punished therefore in any case other than such where the contents are in contravention of the express terms of law, enacted in order to preserve general order without suppressing general information."

This definition contains several important elements:

It includes all citizens, irrespectively of political opinion, and it excludes hindrance prior to publishing.

This is not only an absence of censorship. It is a concrete guarantee that a book or a newspaper must be issued before the authorities take any measures.

Prosecution may take place, but only for crimes specially described in the Act itself. For a book only the author and for periodicals only the person who is formally responsible may be prosecuted. Inquiries for an author of a book who is unknown but for his pseudonyme, may not be investigated or even asked for by the authorities, not even before court. In short, the authorities shall take their hands off the editor's office. No excuse should be accepted for the control beforehand of what is going to be printed and the principle can bear no exceptions without loosing comprehension among the people and thus being hurt and lost.

Crimes can be prosecuted, though. The offences through printed expressions are listed in a special chapter of the Act and no other offences can be prosecuted.

Every prosecuted expression is judged separately by an elected jury of laymen. The procedure is biased in favour of the accused: If the expression is acquitted by the jury, the judges are not allowed to convict it, but if the jury convicts, the judges can all the same acquit.

Of course, punishment must stand in reasonable proportion to the offence. "Pilfering shall in no case be punished as rebellion," Nordencrantz said in the parliament in 1765.

The rules have not always been in accordance with his word. Also, the ruling circles in Sweden have from time to time introduced or tried to introduce amendments that undermine the principal idea of freedom of printing or even sought formally to redefine the freedom of the press. That was the case for instance in the early 19th century, under pressure from the bastion of political reaction of that time, namely tsarist Russia. That was also the case in the early 1940ies, when Germany's first demand for "total neutrality" was met by the Swedish government and parliament with an unconstitutional transportation control of antifascist newspapers and even with a formal censorship legislation.

Even today the fundamental definition of Swedish freedom of printing is far from undisputed. As late as in the 1970ies a journalist, an author and a civil servant - without formal responsibility according to the above mentioned fundamental definition - were arrested and sent to jail on account of the contents of a publication. They had revealed the existence of a secret service organisation [the "IB"] which was unknown to the parliament and even to some members of the government. Civil servants within this organisation had even committed some major crimes. A new legislation took place afterwards accordingly, making black holes in the legal guarantees of today.

Freedom of printing can not be upheld without a vigilant public opinion among the ordinary people. That is the general experience of Swedish history in this field. True freedom of the press is the right to criticise the authorities, and dignataries of the state are not, not in any type of society, at ease with criticism. For that simple reason it is wise to postulate that they are constantly tempted to undermine the freedom of the press. A good press law should be written accordingly, with clearcut principles, understandable to all. One must bear in mind that a press law remains an artificial construction, which must be at hand when needed but which falls apart if left to persons in power.

As I see it, creating public opinion through the printed words on paper is not obsolete, in spite of new powerful media. In the Western world, printing your own material is becoming increasingly cheap and handy with modern technique. It can be the property of every citizen, which talking on television never can. Once the freedom of printing is well guaranteed and practiced, all the other rights and liberties can easily be defended or regained.

What will remain of this tradition after Sweden's planned entry into the European Union?

In the wake of the Swedish application for EC membership, a wide debate in the Swedish press lately has questioned the government's tacit acceptance of EC standards of secrecy in state affairs, fearing Sweden will have no "opt out" in favour of its traditions. In professional law publications, though, authors have made no mention of any such opt out possibilities.

To my knowledge, also various principles related to the Swedish freedom of the press are obviously in the risk zone, since the Maastricht Treaty widely opens the scope of EC-legislation to practically all political sectors:

- Pre-censorship in the traditional sense does not exist in Europe, but the concept of "hindrances created beforehand", i.e. interference from the authorities in order to influence the content of printed material - which in principle is forbidden in Sweden's Freedom of the Press Act since 1809 - seems to be present to a greater or lesser extent in all larger European countries.

- The confiscation rules approximate the Swedish standard. But here Germany is an exception, where confiscation may take place at any point in time.

- The principle of individual responsibility for printed material exists in many countries, but hardly in the true sense in Germany or Great-Britain.

- Source protection is non-existent in Switzerland and Great Britain.

- Germany, Great-Britain and Switzerland completely lack protection for the procurement of information for the press. (France and Italy lack formal protection but the principle nevertheless is considered operative).

- The principle of free access in respect of public documents does not exist outside the Nordic countries and Italy.

The right to insight into activities of the public administration is very limited in almost all European countries, whilst in Sweden, the authorities are obliged to assist - and respect the anonymity of - anyone who requests information.

The application of secrecy is however nowadays very extensive.

- Several European countries have had scandalous cases in the latest decades concerning the freedom of speech: the Spiegel case in Germany, the IB case in Sweden, the Faurisson case. In France and Germany, challenging "state truths" about Third reich history is punishable - a real dinosaur.

Freedom of speech is not at all undisputed.

It is apparent that Sweden, in spite of disquieting defects in the guarantees for freedom of press, compares favourably to other Western European countries, firstly through its particularly unique constitutional regulation. The process of freedom of the press is rather circumscribed in bias of the defendant. Keeping the affairs of state in the dark is not possible to the same extent as in Great Britain, France and Germany.

- And the much debated principle of free public access is applicable which is not unique but less prevalent. Here the constitutional protection of the principle of free public access, with specifications on the extent of secrecy, was in force up until 1937, after which time secrecy was defined in regular legislation and lost its more specified constitutional guarantees. The more cause to be alert to the influence of the press traditions of large countries on Swedish freedom in the planned European Union.

DOCUMENTS AND PUBLICATIONS

European Commission of Human Rights:

- **Decision as to the admissibility of Application No. 20809/92 by X. against Sweden, 15.2.93;** available at PFE.

X. is a Peruvian citizen and member of the the "civil" branch of "Sendero Luminoso". After detention including heavy torture he left Peru and applied for asylum in Sweden. His application was turned down by the Swedish government on the grounds that he had "worked for an organisation which, according to what is known, is responsible for several grave acts of cruelty in Peru. Even if [X.] has not participated in any such activities, he has still worked for an organisation whose methods must be considered to fall within the scope of Article 1 F of the 1951 Convention relating to the Status of Refugees which deals with cases where the Convention's protection does not apply." As a consequence the government ordered the expulsion of X. A new application to the Immigration

Board was equally turned down.

In his application to the European Commission of Human Rights the applicant maintained that his expulsion to Peru would violate Art. 3 of the European Convention on Human Rights. The Commission rejected the application on the grounds that a "mere possibility of ill-treatment contrary to Article 3 is not in itself sufficient in this context" and that X. had failed to substantiate his claim that he would be exposed to a "real risk" in case of his expulsion. (With regard to Peruvian refugees in Sweden, see CL No.9, p.3).

- Decision as to the admissibility of Application No. 20547/92 by Y. and Others against Sweden, 15.2.93; available at PFE.

Rejection of the application of Y. and others, Peruvian citizens, on similar grounds. Y. is the son of a well-known dissident killed a massacre of prisoners by Peruvian police in 1986. Y. and his wife were active members of the "Committee of relatives of Political Prisoners" accused by the Peruvian government of "having contacts" with Sendero Luminoso, an allegation refuted by the applicants. Y. also claimed that he had been repeatedly detained and tortured, a claim supported by medical and psychiatric certificates.

In its considerations the Commission stated, among other things, that "while the applicants' allegation that the first applicant has previously been subjected to treatment contrary to article 3 [torture] has found some support in certain evidence... this in itself does not suffice to conclude that he would now face a real risk of again being submitted to such treatment should the applicants be returned to Peru."

Draft recommendation by the Working Party for the development of proposals for implementing recommendations prepared by the Berlin Conference to prevent uncontrolled migration (Berlin Group); 3rd Session, Bonn, 12/13.1.93 (Doc III/9, english); available at PFE.

Recommendations of the Conference to Prevent Uncontrolled Migration, Budapest, 15/16.2.93 (PE 203.656/Ann.); available at PFE.

Recommendation regarding practices followed by Member States on expulsion, by the Ministers responsible for immigration, meeting in London on 30.11/1.12.92 (10579/92 IMMIG 2); available at PFE.

Chapters: General policy; Restrictions on personal liberty; Documentation; Re-admission agreements; Prosecution of facilitators of illegal entrants and those who harbour people who have entered or remained unlawfully, and action against those who employ illegal entrants; Confiscation of modes of transport used by those who facilitate illegal entrants; Transit during the course of expulsion; Escorts; Selection, training and equipment of those involved in expulsion; Exchange of information. (with regard to the London Conference, see also CL No.11, pp.1-3 and p.10).

Ad hoc Group Immigration: Harmonisation of national policies on admission for employment, Draft resolution adopted by Immigration Ministers of Member States of the EC meeting inter-governmentally on 30.11./1.12 (London). SN 3611/92 WGI 1165, Brussels, 24.7.92; confidential.

No definitive agreement was reached on this subject in London.

EVENTS

Bürgerforum Paulskirche 1993 - Wohin treibt die Bundesrepublik Deutschland?

The Forum is to be held in Frankfurt on 19 June 1993. Some of the supporting groups and organisations are: Gustav-Heinemann Foundation, Neue Richtervereinigung (an association of judges), Frankfurter Aufruf, Heinrich Böll-Stiftung, Greenpeace, RAV (Republican Association of Lawyers), Pax Christi, Kritische Polizist-Innen (Critical police), Pro Asyl, Humanistische Union and Starfverteidigervereinigungen (German association of trial lawyers).

The idea to hold this Forum arose against the background of disquieting changes of the political social and cultural climate in Germany, within the last year (racist violence, a debate on legislation and constitutional amendments to the detriment of fundamental rights and liberties on the one hand, massive protest in defence of the victims of a

misguided immigration and industrial policy on the other).

The organisers are concerned by "fatal dynamics" with a bent towards authoritarian government and rightist populism and call for aen effort to overcome these "liberticide tendencies".

No definitive program for the event has yet been published, but the Forum will focus on subjects in the fields of ecology, migration, asylum, civil liberties and "internal security", the universality human rights and the "New World Order", and military out-of-area engagements of Germany.

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