

**EUROPE**

**TOWARDS THE CRIMINALISATION OF A PEOPLE? - THE EUROPEAN INTERIOR AND JUSTICE MINISTERS' CLAMP DOWN ON THE TURKISH KURDS**

**More than 700 Kurdish villages have been destroyed within recent months. Harassment of civilians including the routine use of torture and rape are common practice among the Turkish security forces. While the world's attention is focusing on Yugoslavia, little is said about state-sponsored terrorism and military operations amounting to ethnic cleansing in Turkey. Instead, European Interior and Justice Ministers, bowing to longstanding demands of Turkey's "Iron lady", Prime Minister Ciller, have opened the hunt against the PKK (the Workers' Party of Kurdistan) and its tens of thousands of sympathisers among the large Kurdish immigrant community in Western Europe. Germany and France have banned the PKK. Other countries are still hesitating about the "opportunity" of such a move. At the moment, only Belgium has unequivocally rejected Mrs. Ciller's demands. Here is an overview on the state of European "internal security" policies - as experienced by the Kurds.**

**Ban in Germany**

On 26 November, the German government imposed a ban on all activities of the PKK and a long row of Kurdish associations assessed as front or cover organisations of the PKK. The ban was officially justified as the governments response to a series of violent demonstrations and attacks of Kurds, mostly directed against Turkish installations in Germany. The last had occurred on 4 November. Kurds took the streets in 30 German cities. One Turk was killed In Munich, the Turkish Consulate was stormed, personal held as hostages, but finally released unharmed.

Similar demonstrations and attacks occurred the same day in France, the UK, and Switzerland. However, the PKK hastened to deny any involvement in what seemed to be a well co-ordinated operation. According to the PKK, the riots were no more than a spontaneous outbreak of protest among the Kurdish communities in Europe against the recent brutal escalation of Turkey's warfare against the Kurds.

Following the ban, German police immediately raided more than hundred localities and offices belonging to "suspect" Kurdish associations. Bankaccounts, postboxes, documents and other property were seized.

Yet, the result of the broad "anti-terrorist" operation was meager: Apart some knives and an old sword belongin to a Kurdish theatre-group, no arms were found, and, what is more, not a single person was arrested.

Interior Minister Manfred Kanther, a hardliner on internal security and public order, stressed that the widely publicised operation was a "signal against extremism in all its forms" and "the

State's answer to the escalation of terror and violence by foreign extremists".

Kanther publicly appealed to all "law-abiding" Kurds in Germany, to denounce fellow countrymen suspected of extorting their support for the PKK. Voluntary witnesses were promised particular witness-protection.

Both German and Swiss authorities have earlier encouraged, if not pressed, Kurdish immigrants to co-operate with the police in hunting PKK-activists - with little success.

The most obvious explanation for this lies in the strong emotional support among the Kurdish Community for the PKK's armed struggle against the Turkish regime. While many Kurds are critical about the PKK's ruthless warfare and lack of internal democracy, few would go as far as denouncing its activists to the police of their host country and thus, as they suspect - indirectly - to the Turkish security forces.

Indeed, to draw the line between PKK members, activists, and more or less committed sympathisers on the one hand - all terrorism-suspects according to the ban, and an assumed silent majority of "law-abiding" (i.e. anti-PKK) Kurds on the other, is an all but impossible task and paves the way for arbitrary practice of the prosecution authorities.

In Germany alone, the Kurdish community totals approx. 450,000 persons, whereof some 4000 are officially regarded as "members", and some 40,000 as "sympathisers".

As the PKK never has formally existed as an organisation in Western European countries, these figures are difficult to verify. However, the Kurds having some feelings of loyalty towards the main Kurdish resistance movement rather than towards the Turkish State are likely to form an overwhelming majority among the Kurdish immigrant-community in Western Europe. If they are not "sympathisers" of the PKK now, they might become such, if confronted with Turkish-European policies aiming at the criminalisation of Kurdish resistance.

While Mr. Kanther's clamp-down on the Kurds is likely to find strong support among an electorate with strong "law and order" and anti-foreigner sentiments, voices critical of the ban also can be heard.

PRO ASYL, a German association for the defense of the right of asylum, expressed concern about possible effects of the ban. A new wave of deportations and expulsions of Kurds to Turkey would endanger the lives not only of PKK-activists but also many other alleged sympathisers, PRO ASYL says. And the German Social-Democratic Party (SPD) fears the ban might lead to the public criminalisation of the entire Kurdish community in Germany.

### **Ban in France**

On 30 November, only four days after the German move, the French Interior Minister, Charles Pasqua, in his turn imposed a ban on the PKK and several other Kurdish organisations.

Already on 18 November, 111 Kurds were stopped by the police whereof 24 were deferred to an investigating judge [juge d'instruction]. One of the persons under investigation for membership with a "criminal association in relation with a terrorist operation" was detained on remand. A Kurdish women, known for having served as an interpreter for Kurdish politicians visiting Paris, was put under house-arrest, and interrogated under strong pressure by the French Secret Service, according to the Paris daily, *L'Humanité*.

Mr. Pasqua was anxious to point out, that his decision had nothing to do with recent events in Germany, but was a "direct consequence" of the Conference of European Interior Ministers on 19 November, in Athens. Mr. Pasqua stressed that while he had "some understanding" for the problems of the Kurds, the time had come to "act against terrorism". Yet, the PKK is not known

to have committed any act of terrorism on French soil.

Critics of the ban believe that it must be seen against the background of the French government's anxiousness not to endanger its economic relations with Turkey. Since 1990, France has concluded arms-deals worth a 550 million US-dollars, including i.a. the sale of French "Cougar" combat-helicopters.

### **Conference of EU-Ministers of Home Affairs and Justice divided**

The EU-Ministers of Home Affairs and Justice discussed the PKK-issue at their conference on the eve of the December-meeting of the European Council in Brussels. Ministers failed to reach agreement on a common line. While the major EU-countries, Germany and France pleaded for a EU-ban on the PKK, Belgium and the Netherlands opposed such a decision, the latter mainly on the grounds that a ban would be "counter-productive".

### **The Swiss dilemma**

The division among EU-countries brought the Swiss government - particularly anxious to show conformity with common EU-policies since the Swiss vote against membership with the EEA - on the horns of a dilemma.

Public opinion and Swiss media have shown more understanding for the situation of the Kurds in Turkey than other countries in recent years. Moreover, Switzerland, as opposed to Germany, has no tradition of banning organisations and lacks corresponding legislation. Yet, the main reason for the Swiss hesitations in following its big neighbours, France and Germany, is the wide-spread view among governmental and police circles, that a ban on the PKK would be ineffective, if not counter-productive. The Swiss Minister of Justice and Police, Arnold Koller, said that such a measure threatened to further push the PKK into illegality. This view drew strong support from the *Neue Zürcher Zeitung*, Switzerland's leading conservative daily, usually not known for liberal stands on internal security issues. Under the Rubric "Berne's dilemma with the Kurds" the newspaper writes i.a.:

"But what would a ban on the PKK help? The PKK does not only deal with acts of violence - the difference between reality and its revolutionary rethorics is still perceivable. This PKK would be pushed underground. So far, it has been fairly accessible [approachable? responsive?] and thus easier to control. With a ban, it would no longer be. Considering its internal disciplin and its high degree of organisation in Switzerland and elsewhere in Europe, it would surely pose a far bigger threat to public security, if forced to act from the underground.(...) There are reasons to believe that the PKK will be easier to keep within bounds with the sword of Damocles of a impending ban rather than by being actually banned and, as a consequence, having to be hunted by the few policemen speaking Kurdish."

The article also deals with the dilemma that could rise for the Swiss government, if the EU as a whole agreed on a ban on the PKK. Yet, even in this event, the *Neue Zürcher Zeitung* is sceptical about the usefulness for Switzerland to align. With Switzerland remaining the only Western European country tolerating the PKK, the latter "would have ever more interest in not putting at risk this last remaining space of legality".

After the French decision to align with the German hard-liners, the Swiss government came under strong pressure to impose a ban, but resisted - at the formal level at least. Instead, the government steered a middle-course. The police increased surveillance and administrative harassment of Kurds suspected of links with the PKK. A man widely regarded as a speaker

and representative of Kurdish immigrants in Switzerland was arrested and deported. 14 other Kurds were banned from entry.

The Swiss Social-Democratic Party which had earlier vehemently opposed a ban on the PKK rejected the government's half-way alignment as "unsatisfactory". While Switzerland was taking one-sided decisions against the Kurds, it was furnishing arms to Turkey. It would be wiser for the government to offer the country's services as a mediator in the Turkish-Kurdish conflict, instead, the Social-democrats said.

A Social-Democrat MPs warned of deporting representatives of the oppositional Kurdish intelligentsija. This would amount to leaving the field to violence.

Another MP pleaded against the use of police measures against suspect Kurds: "If concrete crimes occur, they should be prosecuted by the means of regular penal law".

### **Belgium resists**

The Belgian government has, so far, been most out-spoken in its opposition to criminalisation of the Kurds. In the wake of the NATO-summit in Brussels in early January, the Turkish Prime Minister, Mrs. Ciller, openly accused the Belgian government of supporting Kurdish terrorism and exacted a Belgian ban on the PKK. The Belgian Prime Minister Dehaene dryly rejected the claim, because, as he said, this was "not the best way for solving minority problems".

Indeed, Mrs. Ciller's firm opposal to grant any cultural rights to the Kurds is not popular in Belgium, where the Flamish people look back on hundred years of struggle for equal cultural rights.

The Belgian authorities also strikingly diverged from their European neighbours in their assessment of recent violent incidents involving Kurds. On 1 January, at the eve of the NATO summit, heavy street-fighting broke out in Brussels between Kurds and Turcs. Immediately, Turkey blamed the Kurds for the incident. But Interior Minister Tobbak hurried to their support: According to the police investigation, a fascist Turkish organisation, the "Grey Wolves", were alone responsible for the violent incidents, he said. The "Grey Wolves" are ill-famed for their close contacts with the Turkish military, the secret service MIT, and the embassies.

### **Policing instead of politics**

The Belgian revelations have given rise to new questions in France, Switzerland and Germany, about who really sparked off the "Kurdish" attacks that led to the ban of the PKK and to a further, maybe irreversable, step towards the criminalisation of an entire ethnic immigrant community in Western Europe.

However the answer may be - once again the advocates of "Fortress Europe" have gained ground: Repression, instead of conflict resolution - policing, instead of politics. The Kurdish immigrants, one should fear, are likely not to remain alone in suffering the consequences of this development. Once again, European governments are pouring oil into a smouldering conflict in a buffer-country in the fortress' backyard and creating a "terrorist" people in the heart of Europe.

N.B.

Sources: *Dagens Nyheter*, 27.11.93; *Neue Zürcher Zeitung*, 28/29.11.93, 1.12.93, 8.12.93, 3.12.93, 14.1.94; *Le Quotidien de Paris*, 22.11.93; *La Marseillaise*, 22.11.93; *L'Humanité*, 22.11.93; *Die WochenZeitung*, Nov.93; *Archipelago*, No 3/Dec.93. See also: CL No.14, p.3:

The making of a "terrorist association" - The political trial of the Workers' Party of Kurdistan"; CL No.20, p.1 (on German "internal security" policies).

## **DRAFT EVADERS FROM FORMER YUGOSLAVIA: REJECTED AT HOME AND ABROAD**

**While the international media are painting a picture of an uncivilised, barbaric, i.e fundamentally "un-European" people with a strange desire to kill each other, and while calls for stopping the war by the means of war, i.e. armed international intervention, are gaining in strength, little publicity is given to the tens of thousands of young and middle-aged men who try to avoid participation in a criminal war, by fleeing the country. At home, in the various parts of former Yugoslavia, these war resisters risk both court prosecution and informal forms of punishment and non-state persecution by paramilitary groups hunting "traitors" and "cowards". Abroad, those seeking protection in Western European countries often face deportation - back to a criminal war. The following article describes the fate that awaits them at home.**

The number of young men who left the country is estimated at about 100'000, for Serbia alone. 20-25'000 young Hungarians from Vojvodina (a part of Serbia) are in Hungary, and reports of the Red Cross and foreign immigration organisations indicate that 90-110,000 draft evaders from the FRY (Federal Republic of Yugoslavia: Serbia and Montenegro) have sought protection in Western Europe and North America. No estimates are available on the number of draft evaders from other Republics of former Yugoslavia.

What happens with draft evaders seeking protection in Europe?

Dr. Bozidar Jaksic, a teacher at the Institute for Philosophy and Social Theory at the University of Belgrade, answers as follows: "The odyssey of the young deserters does not end with the half-legal crossing of the state border, but begins with it. Most European governments consider these young men as trespassers and require from them to prove their desertion by an official written document or the sentence of a court martial, which is a flagrant non-sense. While the official Europe issues numerous resolutions, declarations and severe warnings to urge the peaceful solution of the Balkan crisis, at the same time it pushes these young men back towards the maelstrom of war."

Momcilo Grubac and Tibor Varady, both professors of law and former ministers in the government of Milan Panic, have published a very comprehensive statement on the possible legal consequences awaiting those Yugoslav citizens who avoided participation in the armed conflicts by going abroad and staying abroad. The statement clearly contradicts assertions by various European governments, according to which there is no risk for "excessive" punishment of deserters and draft evaders sent back to the FRY.

The provision most relevant with regard to this category of evaders, who have left the country in order to avoid military service, is article 214/3 of the penal code of the FRY: If a conscript leaves the country, or stays abroad in order to avoid military service or military exercises in times of peace, the minimum punishment is one year, while the maximum is ten years of prison.

In a period of state of war or immediate danger of war, the punishments for the same offences

are far more severe, with a minimum of 5 years, and a maximum of 20 years of prison. The penal code provides for the same punishment of persons inciting conscripts to avoid service. Yugoslav authorities have constantly qualified the period between October 18, 1991 and May 22, 1992 as a period of "immediate danger of war". This means that the more severe sanctions of the penal code apply to draft evaders outside the country under the above period.

The perpetrator of the offences described in article 214/3 can be any Yugoslav citizen subject to military duty. Citizens are subject to military duty until the age of 55 (privates and junior officers), respectively 60 (officers). There is no upper age limit for the offence of "instigation" which thus theoretically provides for the prosecution of peace activists as well as family members and friends of draft evaders.

Personal service of the draft call is **not** a necessary prerequisite to the offence of disobeying it. Criminal responsibility may be established if there is other evidence showing that the conscript was aware that a personal call was sent to him, or that a general call included him. Intent to disobey a draft call can i.a. also be inferred from the mere circumstance that the conscript - without being actually called - left the country or extended his stay abroad at times of mass mobilisations, state of war or "immediate danger of war".

The jurisdiction lies with the military courts. The limitation for starting prosecution is 10 years in times of peace, and 25 years, if committed during a state of war or "immediate danger". The running of this limitation period will be interrupted if no prosecution is possible against the offender - for instance, when the offender is abroad.

The authors of the statement point out that there are no complete data on the number of people against whom criminal charges have actually been brought. Some data were made available by the military authorities at a time when the then Yugoslav Federal Government under Prime Minister Milan Panic proposed an act of amnesty for draft evaders.

According to these data, between January 1, 1991 and July 1, 1992, criminal proceedings were initiated against 9245 persons. However, the majority of the charges were not formally processed by the date of the report (July 1, 1992).

In the assessment of the professors Grubac and Varady, the number of persons against whom criminal proceedings have been started was between 15,000 and 20'000 in November 1993. Convictions were so far rendered on the ground of the "milder" subsections of article 214, rather than on the ground of its subsection 3 dealing with conscripts who are out of the country. A draft act on general amnesty for deserters and draft evaders proposed by the Ministry of Justice (then headed by by professor Varady) in July 1992, has never been voted by the Federal Parliament. Although it is still pending, the Draft Act is very unlikely to be adopted in a foreseeable future.

Based on this, the two authors of the statement conclude that

"those who took refuge in foreign countries in order to avoid participation in armed conflicts remain in serious peril. (...) It is true, of course, that all offenders cannot and will not be prosecuted. There is no way to tell, however, who will, and who will not be charged. The playground for possible considerations in choosing the prospective defendants is wide; mere chance will probably keep playing a role as well. Thousands have been prosecuted, and further thousands will in all probability be prosecuted in the future. It is clear that nobody will be safe until the adoption of an act of amnesty."

N.B.

Sources: AIM - Alternative Information Network, report 11/29.12.93, in English; "The youth between the war and peace - the case of the former Yugoslavia", by Dr. Bozidar Jaksic, University of Belgrade, 13 p., in English; Statement by Professor Momcilo Grubac and Professor Tibor Varady, Novi Sad, 18.11.93, 9 p., in English.

## SCANDINAVIA

### SWEDISH DATA-PROTECTION OFFICE AGAINST ELECTRONIC SURVEILLANCE OF CRIMINALS

***Datainspektionen*, the Swedish office for data-protection (DI) has expressed strong criticism against the government's decision to introduce electronic surveillance of criminals on a test base (see CL No.21, p.12) and warns of a "Big brother society".**

In the opinion of DI's Director general, Anitha Bondestam, "this is the first step towards controlling people in their home. Once the first step taken, it is difficult to return. And it is just as difficult not to go further if one finds some convenient reason to do so."

According to the government's plans, prison ward authorities can decide whether persons sentenced to not more than 2 months of imprisonment may serve their sentence in prison or at home with an "electronic leash" attached to a foot or an arm and eventually even with cameras placed in their apartments. The latter solution requires that the persons concerned have a home. There, they will be under a central computer's control round the clock. The computer is said to be capable of controlling whether a person under surveillance is respecting the ban on alcohol or not.

The main reason for the government's intention to introduce electronic surveillance as an alternative to imprisonment is likely to be a matter of economy.

Due to a general trend in Sweden towards higher more frequent prison sentences prisons are crowded. Electronic surveillance is cheaper than building new prisons. But DI argues fears that, by introducing electronic surveillance, the legislator will take a step towards undermining the general respect for every person's right to a protected and private sphere - at least at home.

DI further points out that it is not only the sentenced person's integrity which is at stake. Electronic surveillance devices can register everything happening in a surveiltee's home and thus affect family members and other third persons.

DI therefore demands that rights as fundamental as privacy and personal integrity should not be sacrificed to efficiency and economy.

Sources: *Dagens Nyheter*, 19.1.94; our sources.

### BRITISH COURT: SWEDEN NO "SAFE COUNTRY" FOR ASYLUM SEEKERS

**A London immigration court has found that Swedish refugee policies with regard to Kosovo-Albanians might not comply with the 1951 Geneva Convention on Refugees and has therefore decided to demand the British Minister of Home Affairs to further inquire whether Sweden can be considered as a "safe third country", to which rejected asylum seekers can be returned.**

The sensational court decision concerns two young men from Kosovo (a part of Serbia) who stayed in Sweden for about a year, after evading military service in the Serb-dominated army of the new Federal Republic of Yugoslavia.

When the two understood that they had almost no chance to obtain protection in Sweden (Kosovo-Albanians refugees: see CL No.19, p.3, CL, CL No.20, p.8), they decided to flee to Britain.

They arrived at Heathrow airport in August 1993. When immigration officers discovered that they carried false passports, they applied for asylum in the UK on the grounds that they had been denied a fair procedure in Sweden.

After a summary inquiry on Swedish immigration law the British Home secretary stated that there was no reason to believe that the two men were denied an examination of their application according to two Convention standards in Sweden. The Home Secretary's decision was based on the fact that Sweden is a signatory of the 1951 Geneva Convention.

Accordingly, the British immigration authorities decided that the two men be returned to Sweden and await a final decision on their applications there.

After that, the two appealed against the decision at an immigration court.

The ruling judge rejected the handling of the case by the Ministry of Home Affairs. In the grounds for the decision the judge finds that the defence has presented evidence that Swedish authorities are deporting up to 1600 Kosovo-Albanians per month back to their home country and that applications of asylum seekers are handled with great speed and within a very summary routine procedure.

Thus the judge found that he was not convinced that the Home secretary was "completely right" when claiming that Sweden was a safe third country.

The judge was of the opinion that the Home Secretary had lacked the opportunity to study the methods and principles Sweden applies in examining asylum applications.

In the meantime, the two men have been freed pending a final decision in Britain on whether they may apply for asylum in the UK or shall be returned to Sweden.

The British immigration court's decision has caused some irritation in Sweden, where the Minister of Immigration, Ms. Birgit Friggebo was in a hurry to point out that Sweden had nothing to fear from a British examination of its asylum practice.

Sources: *Dagens Nyheter*, 14.1.94; Michael Williams/FARR (National co-ordination of refugee groups and asylum committees).

### **Comment**

The British verdict on Swedish asylum policies is not without irony. No matter how well founded the court decision may be - and well founded it is, it is a well-known fact that little Sweden has received more than 100'000 asylum seekers from former Yugoslavia (many of whom however are likely not to obtain refugee status and to be returned sooner or later), while Great Britain

has granted entry to less than 10'000.

N.B.

## **TEMPORARY PROTECTION NO SOLUTION FOR REFUGEES, FORMER MINISTER SAYS**

**For some time, Sweden has been considering the introduction of a new refugee policy basically aiming at replacing - to as far an extent as possible - the traditional refugee status embodying the refugees right to permanent residence in the receiving country by a status of temporary protection (see CL No.7, p.5). The Social-Democrat Party is in support of such a policy, but a prominent member, Georg Andersson, a former minister of immigration, questions his party's line.**

The Swedish debate on temporary protection has met widespread interest among European governments eager to curb down immigration, and in practice, the policy is already applied throughout Western Europe in the context of massive refugee fluxes from former Yugoslavia. But Georg Andersson is worried about the effects of a policy aiming at reducing the number of refugees benefiting from permanent residence permits.

In his view, this will lead to legal and social insecurity for the refugees who will never be sure that their temporary permit will be renewed. Efforts to ease refugees' access to meaningful activities (language training and a smooth integration into the labour market) are likely to be jeopardised.

Andersson stresses that the assumption that many refugees might soon be able to return back to their home country has all too often proven to be wishful thinking.

Andersson further expresses criticism about the asylum policy of the conservative government of Carl Bildt. Commenting the recent police raid against a covent (see CL No.21, p.8), he said: "How can one [the government] complain about the police searching for refugees, when one at the same time increases the police's resources for precisely hunting hidden refugees by 100 million crowns? This money should have been used for humanitarian tasks instead".

The former Minister also questions public statements by Prime Minister Bildt, indirectly linking refugees with organised crime by stressing the organised character of refugee trafficking. "It is naive and cynical to believe that flight needs no organisation", Andersson said. As for Swedens donation of coast-guard vessels to the Baltic countries, he remarked: "We are talking about gifts, but not openly about the fact that they are to be used for keeping away refugees from our borders".

Sources: *Dagens Nyheter*, 27.11.93; our sources.

## **GERMANY PUTS THROUGH INCREASED BORDER CONTROLS BY SCANDINAVIAN COUNTRIES**

**Germany is irritated about the increasing number of illegal immigrants entering the country from Scandinavia. German authorities have set a time limit for Denmark to**

**introduce increased entry-controls on travellers from Sweden until 24 January and announced sanctions against Scandinavian bus and ferry companies transporting insufficiently documented foreigners.**

Within the last few months, German border police intercepted more than 500 illegal immigrants at its borders with Scandinavia. Most of them were Kosovo-Albanian refugees rejected in Sweden and trying to make their way via Denmark to Germany to escape deportation. For the time being, Germany does not send back Albanians to Kosovo. Until now, Denmark sent back the Kosovo Albanians turned away at the German border to Sweden, from where they were deported back to former Yugoslavia. According to the Swedish police, some 10-15 refugees a day are sent back to the Swedish port of Malmö, in this way.

The Danish government is expected to comply with the German demand by engaging several hundred additional police at its ferry-ports in Helsingör and Copenhagen, the main ports of entry for travellers from Sweden.

According to the EU's policy, the Danish border with Sweden is considered as a "common external border" requiring increased control, but this conflicts with Denmark's obligations as a member of the Nordic Passport Union. According to this treaty travellers do not have to show their passport when crossing borders inside Scandinavia. The Danish government now stresses that the planned increased control is provided for by a clause in the treaty of the Nordic Union that permits random checks. A speaker of the Danish ministry of Justice has affirmed that the new practice does not imply a requirement for "Nordic citizens" to show their passport. "You just have to show that you have a right to enter Denmark", he said, and stressed that speaking Swedish was enough a proof.

However, the increased checks are likely to lead to massive discrimination of persons with a non-Nordic appearance.

Germany has set a similar dead-line to Swedish ferry companies serving German ports. From January 24, companies transporting illegal immigrants will not only have to pay the travel back but also be fined with up to 150,000 swedish crowns per person.

The German authorities' "advice" to Swedish ferry companies on how to ensure increased checks without producing annoying delays for travellers is unambiguous:

At Swedish ports, cars boarding the ferries shall be split up in two separate lines on the car deck: a "cream-line" for Nordic looking passengers and a "suspect line" for passengers who, due to their appearance or language, do not seem to belong to an EU-country. Upon arrival at the German ports, the police then will let the "cream-line" pass the border check first, in order to concentrate on the "suspect line", leaving the ferry last.

Swedish shipping companies are opposed to the German demands. Ferry personal cannot be required to carry out police functions, they say, and the two-lines system proposed by the German police is technically impracticable and would lead to unacceptable discrimination of passengers with a "non-European" appearance. But German authorities say the practice is in accordance with German legislation on foreigners. German border police officers will be sent to the Swedish port of Trelleborg in order to instruct Swedish ferry personal on German entry regulations.

Source: *Dagens Nyheter*, 18.1.94

## **GERMANY**

### **MASSIVE DECREASE OF ASYLUM APPLICATIONS**

322,842 asylum seekers entered Germany in 1993. This is still an impressive figure. However, the new asylum law in force since 1 July has led to a massive decrease of asylum applications in the second half of 1993. While 250,736 asylum applications were filed in the second part of 1992, their number for the same period in 1993 was only 98,500. This is a decrease by 60,7%. The new regulations on safe third countries and countries of origin, as well as a bi-lateral agreement with Romania on the return of rejected asylum seekers proved to be particularly efficient in curbing down unwanted immigration.

German authorities also point at increased efficiency in handling asylum applications. In 1993, the number of decision has doubled as compared with 1992.

The chance of obtaining asylum in Germany is minimal even for those refugees who manage to have their application considered. Of a total of 513,561 decisions, only 16,396, i.e. 3,2% were favourable.

Source: *Neue Zürcher Zeitung*, 7.1.94. See also in this issue, Opinion: article by Felix Schneider.

#### **Comment**

It remains to be seen, whether the de facto abolition of the right of asylum by the new German asylum law will have the dissuasive effect hoped for by the authorities. As a matter of fact, illegal entries have begun to increase sharply, since the introduction of the new stringent regulations. In 1993, police intercepted more than 50'000 illegal immigrants. This is approx. a quarter more than in 1992, but the number of persons who succeeded in entering Germany illegally is likely to be far higher.

Thus, the new German (and European) anti-asylum policy, while certainly achieving more control, more repression and more discrimination, is likely to fail, as far as its stated objective - a stop on "uncontrolled migration fluxes" - is concerned.

Thus, the decision-makers responsible of asylum and immigration are placing a time-bomb in the midst of our societies: the number of legally inexistent people, nonetheless living their lives among us, will grow, as long as the reasons forcing people to leave their countries of origin continue to exist. By denying these de facto existing immigrants any form of legal status, we are institutionalising exclusion. Exclusion, sooner or later, ends up in outbreaks of violence neither police nor Mr. Schäuble's internal security soldiers army will be able to stop.

N.B.

### **INTERNAL SECURITY TASKS FOR THE GERMAN ARMY?**

**Considerations of the German Interior Minister, Wolfgang Schäuble, CDU, about a possible role of the army in combating internal security threats are drawing angry**

**reactions all over the country. In the opinion of Mr. Schäuble, the boundaries between internal and external security are becoming blurred in an age marked by "global migration fluxes" and "international terrorism".**

In his reflexion paper, sent to all MPs of the CDU (Christian Democratic Union) and the Bavarian CSU (Christian Social Union), the Interior Minister suggested that the *Bundeswehr*, Germany's federal armed forces, should consider making themselves available for security tasks also within the country, under certain strictly defined circumstances.

Schäuble's "loud thinking" immediately prompted massive protests by politicians of the opposition parties. The Minister of Justice, Mrs. Leutheusser-Schnarrenberger, a member of the liberal FDP, the junior partner in Chancellor Kohl's coalition government, was unequivocal in her rejection of the Interior Minister's move. Schäuble's idea of engaging soldiers for the protection of Germany's eastern borders against uncontrolled east-west migration fluxes was "grist to the mill of right-wing extremists", she said.

Earlier, the Ministry of Defence had rejected similar initiatives by the Interior Minister suggesting the use of soldiers equipped with Infrared-devices at Germany's eastern borders. Not either in the media did Schäuble's suggestions find any support. The conservative pro-governmental daily, *Frankfurter Allgemeine Zeitung*, wondered, whether the doubtfulness within the *Bundeswehr* about its continued sense in the post-cold war era had already reached such an extent that one had to come up with ideas such as Schäuble's in order to justify its financial needs.

The liberal *Frankfurter Rundschau* reminded its readers of the lessons from the Nazi state and accused Mr. Schäuble of undermining a fundamental principle of freedom and democracy by seeking to blur the lines between the different roles of the army and the police. The Munich based *Süddeutsche Zeitung* in its turn advised the *Bundeswehr* to resist the Interior Minister's "populistic reasoning".

Source: *Neue Zürcher Zeitung*, 24.12.93

## **BAD KLEINEN: INVESTIGATION ON THE DEATH OF WOLFGANG GRAMS CLOSED**

**The public prosecutor has closed the investigation against two men of the anti-terrorist unit GSG-9, suspected of having executed the alleged 'RAF'-terrorist Wolfgang Grams. Grams died in a shoot-out with strong police forces in the East German town of Bad Kleinen, last June (see CL No.17, p.1; No.21, p.10).**

According to the conclusions of the investigation, Grams deliberately killed himself with his own weapon on June 27. The prosecutor's findings are based on an legal-medical and technical expertise of the police in Zurich (Switzerland), as well as "trustworthy witnesses". The declarations of two witnesses of the shoot-out according to which Grams was shot in cold blood by two police officers were full of gaps, contradictory and unconvulsive, the prosecutor said.

The parents of Grams intend to appeal against the closure of the investigation. Their lawyer, Andreas Gross, has hitherto been refused access to the records. He does not accept the prosecutor's version that the stunning flow of contradictory statements and explanations produced by the authorities regarding the incident at Bad Kleinen are merely due to "a certain

giddiness", "considerable breaches of memory", and "mistakes" of the anti-terrorist elite force involved in the shoot-out. The destruction and disappearance of crucial evidence is not a matter of mere blunders during the investigation, Gross contends, but rather the successful attempt to blur the investigation. The Federal Office of Criminal Investigation (BKA) publicly admitted no less than 17 "mistakes" in the Bad Kleinen investigation.

Although the findings of the prosecutor's investigation free the security forces of the accusation of having virtually executed Grams, the image of the GSG-9 is likely to have suffered a lasting blow. Indeed, none of the elite-officers, all of whom are well trained in arrest of suspects and securing of evidence, claims to have seen Grams commit suicide - nor does any of the civilian witnesses.

Source: *Die WochenZeitung*, 21.1.94.

### **Comment**

Half a year after the events at Bad Kleinen, the findings of the public prosecutor's office have put a formal end - for the time being - to a scandal that once threatened to turn into a serious "state crisis", as the German weekly *Der Spiegel* warned. Bad Kleinen led to the resignation of two leading figures of German "internal security" policies - Interior Minister, Rudolf Seiters, and the Federal Prosecutor General, Alexander von Stahl. Yet, it failed in producing the sort of public indignation and uproar that entailed the purge of a system of government based on plotting, secrecy, and corruption in Italy.

Once again, Germany has missed a chance to submit its omnipotent police apparatus to long due "democratic screening". Thus, continued rise of the German "Security state" seems irresistible.

N.B.

## **OPINION**

### **ADMINISTRATIVE BARRIERS, HUMILIATION AND HARASSMENT: THE GERMAN SOLUTION OF THE REFUGEE-PROBLEM**

**Just half a year ago, a new asylum legislation entered into effect in Germany. Since, the number of asylum seekers has diminished by more than half. This "success" is due both to a series of bilateral treaties, all focusing on the itinerary of refugees rather than their claim of persecution, and to massive deterrence. The following assessment of the German success story is by Felix Schneider, a Frankfurt based teacher and journalist. It was first published in the Swiss weekly *Die WochenZeitung*.**

In order to perceive, how the scanty remainders of the system of protection for asylum seekers are collapsing, one should first recall the minimum standards of international refugee law:

- The principle of "non-refoulement" (it implies that nobody may be returned to a country, where his physical integrity, life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion), and the prohibition of deportations to third countries which do not respect the "non-refoulement" principle;
- A fair, individual examination of every asylum application by a competent authority;
- A right of appeal against the rejection of an application at at least a second independent instance;
- A right of temporary residence in the country of application pending a final decision on the claim.

The crucial initiative in giving up these minimal rules of protection was taken by the Federal Republic of Germany. After the breakdown of the Soviet Union, Germany, if only because of its geographical position, its power and its attractiveness for refugees, was bound to play a key role in forming European refugee policy. On the level of home politics, refugees were made the scape-goats for the numerous problems haunting the country in its historically new situation. Against the background of burning reception centres for asylum seekers and murderous attacks against "foreigners", a national coalition of all major parties gradually agreed upon meeting growing anger among the population by taking a materially and symbolically far-reaching decision - the first constitutional amendment in reunited Germany which paved the way for the mutilation of the right of asylum.

The concepts of the so-called safe third countries and safe countries of origin combined with summary fast-track procedures are at the core of both the constitutional amendment and a jumble of regulations which were put into force or amended in the second part of 1993.

Since that time, the crucial factor determining the outcome of asylum procedures is no longer the reason of flight, but the itinerary.

The abstraction from the concrete, individual story of a refugee in favour of administrative and inter-governmental arrangements is characteristic of the new German asylum law. That this resulted in a great many restriction of the judiciary which - irrespective of particular judges' or lawyers' intentions - hitherto often turned out to support the cause of refugees, simply because it dealt with concrete individual cases.

### **Safe third countries**

The German legislator has set up a category of third countries automatically considered as "safe". It comprises all EC-states and all states which, according to Germany's own assessment comply with the 1951 Geneva Convention on Refugees and the European Convention on Human Rights, and thus i.a. all states neighbouring the Federal Republic of Germany. Any asylum seeker entering Germany via such a "safe country", is immediately sent back without access further examination and irrespective of his claim of persecution. The law provides no legal remedy with suspensive effect against such fast-track rejections.

Ever since the introduction of this regulation on 1 July 1993, refugees have made bitter experiences with the alleged safety of third countries. Thus, Germany for instance routinely returns rejected asylum seekers to the "safe country" Czechia. Yet, in Czechia, asylum applications must be filed at the first entry. Thus, returnees from Germany have no right to apply for asylum. Neither Poland nor Czechia dispose of the personal, logistical or judicial

base for coping with a larger number of asylum procedures.

Some of Germany's neighbour-states have already reacted to the new German practice by in their turn concluding return agreements with their respective neighbours: Poland with Bulgaria, Slovakia, Czechia, Austria, Romania and the Ukraine; Slovakia with Czechia, Poland, Romania and the Ukraine.

### **Rude proceedings at airports**

90% of asylum seekers travel to Germany by land. Yet, since the introduction of the "safe country" regulations, their chance to have their application at least examined, is practically nil. Refugees who can afford the necessary costs, time and travel organisation therefore now enter Germany by plane. Accordingly, authorities are concentrating the bulk of deterrance on international airports.

The refugee trying to board a flight to Germany, will often bump into officers of the *Bundesgrenzschutz* (BGS: the German border protection forces) already at the airport of departure, where they act as "advisors of the airline-companies".

According to the BGS' own reports, such officers are on duty in cities such as Moscow, Manila, Singapore, Kuala Lumpur, New Delhi, Istanbul, Riga and Lagos. During "refugee-suspect" flights, passport checks sometimes even occur during the flight. Upon arrival in Frankfurt international airport, suspect planes are parked far away from the gates. BGS-officers board the isolated plane and carry out their "forefield-control". The officers' behaviour against suspect passengers is often rude, threatening and humiliating. Yet it is to them, an asylum seeker must present his application the first time.

An interpreter working for the BGS in Hamburg sarcastically talks about a new auditory defect among border protection officers, who no longer are able to hear the word "asylum". Thus refugees simply stay on the plane. Should a refugee nonetheless succeed in convincing a BGS-officer about his distress, this will only mark the beginning of the procedure prior to the procedure, i.e. the battle for mere entry, the battle for the grace of being accommodated under miserable conditions and to pursue an asylum procedure with an uncertain end. Persons lacking a valid travel document or coming from a country classified as a "safe country of origin" (at the moment: Bulgaria, Gambia, Ghana, Poland, Romania, Senegal, Slovakia, Czechia, Hungary) are denied entry at once. Instead, they are detained in a highly guarded prison-like building on the airport area. Within the very next days he will be interrogated: Refugee, beware! Tell everything, even the most intimate details of torture. Because you will have no more occasion to complete your story later - in front of a court, for instance. Such is the new regulation called the "preclusion provision" in German bureaucratic language. Within three days the Federal Office for Refugees will make a decision. Three days later, the asylum seeker's lawyer must have appealed the decision with an administrative court. The judges will make their decision within 14 days.

Considering these circumstances - who can manage to get excited about regular searches on refugees, about their routine submission to criminal identification, about the the sheerly unrestrained electronic storage of their personal data?

Who will put through the demand for the protection of Croatians from deportation? Who will protect Kurds from being returned to Turkey? Who is still able to notice that, since 1 November a new law effectively excludes a considerable number of refugees from social security, an institution once set up in order to assure every person's right to a life in human dignity, in the words of the legislator.

Indeed, refugees are the first group of persons who are being excluded from the constitutional guarantee of human dignity. No need then to underline that, meanwhile, the very last public servant around the country - if he is not a deliberate supporter of refugees (such officials exist too) - has grasped what he is expected to do: chicane refugees - within and beyond the boundaries of law.

Felix Schneider

Contact: Felix Schneider, Schubert Str. 26, Frankfurt a.M., FRG, Tel: +49/69 745526

## MESSAGES

### INQUIRY ON THE SITUATION OF REFUGEES FROM FORMER YUGOSLAVIA IN EUROPE

In December 1993, the **EUROPEAN CIVIC FORUM** launched a campaign in 16 Western European states in support of deserters and draft resisters from all parts of former Yugoslavia (see CL No.21, p.4).

The terms "deserters and "draft resisters" used in the campaign comprise **all men who, due to conscientious objection**, do not wish to take part in nationalist wars which have been unequivocally condemned by the international community (i.e. not only soldiers having deserted from their units and draft evaders).

In connexion with this campaign, I am trying to gather information on the situation of refugees from former Yugoslavia seeking protection in the EU-member states and Austria, Norway, Sweden and Switzerland.

I would be very grateful if you could help me with this inquiry by answering the following questions on the situation in your country and sending me any documents available on the policies of the above countries regarding "deserters" (as defined above) from former Yugoslavia:

1. Number of persons from former Yugoslavia who have been granted political asylum, or permanent residence permit on humanitarian grounds?
2. Number of persons from former Yugoslavia who have been granted temporary protection?
3. Number of asylum seekers from former Yugoslavia waiting for a final decision on their application?
4. Percentage of asylum applications from former Yugoslavia turned down?
5. Main republics/regions of origin or ethnic groups of Yugoslavs seeking protection in your country?
6. Are there administrative barriers preventing persons from Yugoslavia seeking protection from entering into the territory of your country legally (Visa obligation, summary rejection of applications at frontiers and airports, strict application of the "safe country" or "safe third country" principles, etc.)?

7. How does the republic/region of origin or ethnic group of Yugoslavs seeking protection in your country affect their chances to obtain protection?
8. Estimate number of Yugoslav persons staying illegally in your country?  
(If you are unable to name an estimate figure: Do you believe, according to your own observations and information, that their number is significant?)
9. Are deportation orders against rejected asylum seekers carried out effectively?  
If not, why not?
10. Is there any preferential treatment of asylum seekers claiming that they have fled their country due to desertion, conscientious objection or general refusal to take part in the war?  
Does the republic/region of origin or membership of an ethnic group of asylum seekers belonging to this category carry special weight, when their application is considered (e.g. conscientious objectors from Kosovo as compared with objectors from Bosnia)?
11. Do deserters and draft evaders (here in the strict meaning of the terms) have to present material evidence for their claim(burden of proof)?
12. Are you aware of cases where asylum applications of persons belonging to the category named under question No. 10 were rejected?  
Are you aware of deportations or imminent deportations of persons of the above category?
13. Are you aware of particular cases where asylum seekers belonging to the above category had their application turned down/were deported, despite strong evidence that their claim was justified?  
If yes, please briefly describe the case(s).
14. Do you know about deportees belonging to the category named under question No.10 and having been punished by state authorities or non governmental warring factions after having been sent back by the authorities of your country?  
If yes, please briefly describe the case(s).
15. Summary description of and your remarks on your country's asylum practice regarding refugees from former Yugoslavia.

Please send your answers in English, German, French, or a Scandinavian language to:  
Nicholas Busch, Blomsterv.7, S-791 33 Falun, Tel/Fax: +46/23 26777.

## **NETWORK ON "VIOLENCE AND THE RIGHT OF ASYLUM IN EUROPE"**

70 participants from 30 countries decided the creation of an network of reflexion on "Violence and the right of asylum in Europe", at an international symposium at the University of Geneva, on 23-25 September, 1993.

The purpose of the network gathering academics from various disciplines and practitioners (lawyers, social workers, psychologists, human rights activists...) is to promote interdisciplinary collective reflexion **on and in connection with** the right of asylum. "The right of asylum is an issue as a such, but it is also a field where transformations of our societies and new forms of exclusion can be observed at an early stage", it says in a presentation of the objectives of the network. A declaration adopted at the symposium underlines the fact the development, resp. degradation of the right of asylum in Europe is closely connected to some of the most urgent global problems and therefore is more than a mere matter of legal standards and human

rights. A merely humanitarian approach ignores the dimensions of the problem. Thus, the declaration underlines the "need to ask oneself about the causes of forced population movements from South to North and to determine the responsibilities of the countries of the North in the deterioration of the economic situation of the countries of the South" and stresses that "the situation of asylum-seekers and the precariousness of migrant workers' status are not unconnected with, or dissimilar to, the situation of the unemployed, elderly and homeless in the countries of the North. Whereas these categories of the population are sometimes set against migrant workers or asylum-seekers, the reasons why they should show solidarity with each other ought to be emphasised more". "There are rich people in the poor countries and poor people in the rich countries", the declaration continues, "but whereas the rich have established a borderless transnational society among themselves, the division of State territories isolates the poor from each other and tends to convince them of the unique and specific character of their situation".

Among the sponsors of the new network are: Victor Daniel Bomilla, author and counselor of the Indian movement in Colombia; Jean-Pierre Hocke, former UN-High Commissioner for Refugees; Francis Rigaux, former professor of international law; Lode van Outrive, MEP, professor of law and president of the European Parliament's Committee on Civil Liberties and Internal Affairs.

The network has decided to make use of the 'Fortress Europe?' - Circular Letter as its organ of publication.

For further information, please contact the co-ordinator of the network:

Marie-Claire Caloz-Tschopp, University of Geneva, FPSE, 9 Route de Drize, CH-1227 Carouge-Genève, Switzerland; Tel: +41/22 7057111, Fax:+41/22 3428924 (work); home: Tel/Fax: +41/21 6526443.

## **DOCUMENTS AND PUBLICATIONS**

**From Autonomy to Colonization: Human Rights in Kosovo 1989-1993**, November 1993, Vienna. Report by the International Helsinki Federation for Human Rights (IHF), 83 p. The report i.a. contains chapters on the historical and political background of the present situation; the purge of Kosovo's trade, industry and administration; the collapse of the medical care system; the destruction of the ethnic Albanian education system, sciences and arts; the Albanian-language media and publishing in Kosovo; the freedom of association; police and justice; the militarisation of Kosovo; other means of segregation and discrimination. In its conclusions and recommendations the IHF urges the UN General Assembly to address the government of the Federal Republic of Yugoslavia's expulsion of the CSCE mission of long duration and its prevention of an international human rights monitoring presence in Kosovo. Available at: International Helsinki Federation for Human Rights, Rummelhardtgasse 2/18, A-1090 Vienna. Tel: +43/1 4027387, Fax: +43/1 4087444.

**The exchange of population: The Vojvodina Croats for the Serbs from Croatia**, Spotlight Report No.8, 1.12.1993, 20 p., by the HUMANITARIAN LAW FUND, Belgrade.

The report describes the policy of population exchange by the example the village of Hrtkovci and other municipalities in Vojvodina. In its based on interviews with local inhabitants and information published by the newspapers Politika, Borba, NIN, and Vreme.

Available at: Humanitarian law Fund, Terazije 6/III, 11000 Belgrade, FRY; Tel: +38/11 658430, Fax: +38/11 646341.

**Police Co-operation in Europe: An Investigation**, Centre for the Study of Public Order (CSPO), University of Leicester, November 1993, 351 p.

Probably the most comprehensive study of the subject available at present. An essential reference book for everyone interested in the process of harmonisation in the field of policing. The book consists of seven main parts on: Europe without frontiers: the policing issue; Macro level structures for police-co-operation; Crime, border controls and immigration; police forces in the European Union; Communications and information exchange; Police co-operation in Europe: towards the future; and Meso-level groups, agreements and networks.

The final chapter includes detailed analysis of the **lack of accountability** of the new structures of policing, and the concern about their impact on human rights and on the legitimacy of the police and consequent public confidence and trust.

The book is available from: Sheridan Morris, CSPO, University of Leicester, 6 Salisbury Rd, Leicester 7QR, UK; Fax: +44/533 523944. Price £47.50 including p&p in Europe.

**"Sin Fronteras"**, monthly magazine (in Spanish) published by COMRADE (Committee for the Defence of Refugees, Asylum-seekers and Immigrants in Spain). Available at: SIN FRONTERAS, Apartado postal 8564, E-28080 Madrid.

**Immigration and Citizenship in the European Union**, by Ann Dummett and Jan Niessen, publ. by the Churches' Commission for Migrants in Europe, CCME Briefing Paper No.14, 27 p. This paper deals with the Maastricht Treaty's implications for immigration, citizenship and community relations. Readers will find extracts from relevant texts, with some explanation and commentary. In their concluding remarks the authors note, i.a.: "The machinery now in place to deal with immigration is almost unbelievably complicated. The Maastricht Treaty, together with other recent international agreements, has created a situation in which there will be numerous different classes of persons, governed by rules cutting across categories.... The treaty on European Union is supposed to mark a new stage in the process of creating an ever closer union among the peoples of Europe, where decisions are taken as closely as possible to the citizens. Yet.... migration policy and asylum policy are effectively left in the hands of executive authorities on whom there is no control at European level...[The] Maastricht summit produced no proposals for Community-wide anti-discrimination legislation. But measures to ensure quality of treatment for all residents are urgently needed. Without them, and whatever new policies on entry are developed, we face the prospect of a permanent underclass in the European Union."

Available at: Churches Commission for Migrants in Europe (CCME), 174 rue Joseph II, B-1040 Brussels; Tel: +32/2 2302011, Fax: +32/2 2311413. Price £5/DM 12/ECU 6.

## EVENTS

**"War Drums and peace Talks - The New Age of Militarism"**. International conference on Saturday 5 - Sunday 6 March 1994, at Wembley Conference Centre, London.

The conference will bring together journalists, economists, human rights activists and others from across the globe. There will be a wide range of workshops and plenaries addressing issues such as the following:

- What is behind the peace process?
- The media and war
- What are the roots of ethnic conflict?
- Race and nation in the 90s
- The rewriting of history
- Military strategy in the new World Order.

Speakers include: Baffour Ankomah, assistant editor of *New African*; James Petras, Professor of Sociology, State University of New York at Binghamton, member of the Bertrand Russell Tribunal against repression in Latin America; Joan Phillips, journalist, writer and presenter of *Journalists at War*, a documentary for Channel 4 about media coverage of the war in former Yugoslavia; and, Barbara Trent, Oscar-winning director of *The Panama Deception*, a documentary about the US invasion of Panama.

For further information, contact: Amanda Macintosh, Tel: +44/71 2789908, or write to: CAM, 92 Cromer Street, London WC1H 8DD.

**"East, West, South and Human Rights Protection"**. International workshop in Prague (Czechia) in March 1994, organised by the North-South Centre of the Council of Europe. Contact: North-South Centre, Avenida da Liberdade 229-4, P-1200 Lisboa, Portugal; Tel: +351/1 522903, Fax: +351/1 42238623.

**"Refugees in the New Europe"**. Seminar in London on March 3, 1994. Themes: race relations and xenophobia in Europe. Organised by the British Refugee Council. Contact: Jill Rutter, BRC, Bondway House, 3/9 Bondway, GB-London SW8 1SJ; Tel: +44/71 5826922, Fax: +44/71 5829929.

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