CIRCULAR LETTER NO. 24 MAY 1994

Editor: Nicholas Busch, Blomstervägen 7, S-791 33 Falun, Sweden
tel/fax: +46/23 26777, Email: nbusch@nn.apc.org

`Fortress Europe?'- Circular Letter is the organ of **Platform `Fortress Europe?'** and of the **GENEVA GROUP - Violence and Asylum in Europe**.
The `Platform' is an informal international network concerned with European harmonisation in the fields of internal security, policing, justice, data protection, immigration and asylum and its effects on fundamental rights and liberties. It is associated with the European Civic Forum.
The **GENEVA GROUP - Violence and Asylum in Europe** came into being in 1993 at a conference organised by the University of Geneva. The Group wishes to contribute to international multidisciplinary discussion on the right to asylum and its interaction with other developments in society.
The objective of the Circular Letter is to offer a forum for mutual information, analysis and critical debate among experts and laypeople, scholars and practitioners. The Circular Letter is published 10 times a year. It offers a selection of news, commentand messages based essentially on the contributions of its readers.

CONTENTS

EUROPE

NO AGREEMENT ON EIS AND EUROPOL CONVENTIONS IN SPITE OF INTENSIVE PREPARATORY WORK

Europol's first unit, the Europol Drug Unit (EDU) is already at work at the new headquarters in The Hague. Technical experts are engaged in feverish activity aimed at making the SIS (Schengen Information System) - which is designed to become an EIS (European Information System) - operational. However, until now, member states have failed to reach agreement on the conventions which are meant to legitimise the establishment of the system, intended to be the EU's common instrument of policing. Two Draft Conventions on Europol and the EIS from November 1993 now available to the Circular Letter, together with more recent comments by different governments involved, reveal the difficulty caused by trying to set of systems of police co-operation without prior legal harmonisation. The resulting piecemeal engineering and ad hoc patchwork is leading to a growing institutional and legal tangle. This situation is further accelerating the ongoing shift of power toward executive and administrative bodies acting outside effective legal and political control.

Draft Convention on the EIS

To a large extent, the draft convention is literally identical with the provisions of the Schengen Implementing Agreement's Title 6 establishing the SIS.

As for the SIS, the need for the EIS is justified in the preamble by the alleged need for compensatory measures in the fields of public order and security as a precondition of free movement of persons within the territory of the EU. It is explicitly stated that the EIS shall be based on the Schengen Information System.

However, unlike the Schengen Implementing Agreement, the draft does not make plain whether the term "foreigner" applies only to non-EC nationals (as in the Schengen Agreement) or if it includes EC nationals. The final definition of the term could have important effects regarding the rights of EU- citizens travelling to or staying in another EU member state.

Like the Schengen regulations on SIS, the draft names the protection of State security as one of the objectives of the EIS. Article 8 of the draft convention also adopts, word for word, the very questionable SIS provisions on the admissibility of "covert surveillance" of any person (including EU nationals) not only for the purpose of crime repression but also for the "prevention of threats to public security". So, on receiving a request from the authorities responsible for State security, the EIS may also be used for the covert surveillance of people, "if and when concrete indications allow the supposition that the information . . . is necessary for the prevention of a serious threat emanating from the subject or other threats to the internal or external security of the State" [All quotations from the draft Convention are non-authorised translations from French by the editor].

Article 10 regulates the access to the data stored in the EIS. Its wording does not unequivocally exclude intelligence services from access. The provision's point 4 seems to indicate that this decision is up to each Member State. Article 25 provides for the use of data stored in the EIS by, among others, "the services and authorities carrying out a task or fulfilling a function within the scope of the objectives [of the EIS]". The principle of a right of access for persons to their own data is stated in the draft, with important exceptions, however. Thus, information is automatically refused to any person under covert surveillance (Article 20).

Protection of personal data must meet the requirements of the Council of Europe's Convention on data protection. The Danish, Irish and British delegations have, however, expressed reservations on the applicability of these protection standards to non-automated data - that is, data held in manual rather than computerised systems.

As in the Schengen Implementing Treaty, an Executive Committee composed of a representative of each member state is put in charge of controlling the "general functioning" of the convention and of "seeing to the correct implementation of the
arrangements [of the Convention]". The Committee establishes its own procedural rules.

In the context of the Schengen agreement, such extraordinary law-making and law-interpreting powers of an "Executive Committee" - appointed exclusively by the governments - has drawn strong criticism from many quarters (see CL No.21, p.2). This does not appear to have deeply impressed the working group of senior officials (mostly the same who drew up the Schengen agreement!) drafting the EIS Convention.

Although the Convention will constitute an intergovernmental agreement according to international law -and not Community law - the present draft provides for a (limited) role for Community institutions in accordance with Title VI of the Maastricht Treaty on European Union (TEU): The European Commission may participate in the discussions of the Executive Committee and the working groups under its purview. The secretarial staff of the Committee is provided by the General Secretariat of the Council. No mention is, however, made in the draft of the Court of Justice of the European Union, although a jurisdictional role of the Court has been provided for in Title 6, Art. K.3(c) of the TEU and is being demanded by the Italian and Dutch delegations.

A "common declaration" in the draft states that the Convention can not enter into force as long as the EIS is not legally and technically operational in all Member States. This provision is likely to have been added to the draft in the light of persistent problems in making the SIS, the prototype of the future EIS, operational (see CL No.23, p.1).

For the time being, an early signature on the draft convention seems unlikely for various reasons:

- The realisation of the Convention on external borders is still blocked by the Spanish-British dispute over Gibraltar;
- Spain is advocating a broader convention covering not only the EIS, but also police and justice co-op eration as in the Schengen Implementing Agreement, while the other Member States seem to prefer a step by step approach with separate agreements in each particular field.
- There seems to be fundamental disagreement among the Member States on issues such as the role of the Executive Committee and its relations with the Council, the role of the Court of Justice, and the legal form of con ventions in general after Maastricht. The British, above all, are stub bornly resisting anything remotely suggestive of Com munity competence in the field of justice and inter nal affairs;
- So long as the serious technical problems with the SIS remain unsolved, no progress can be expected in setting up the EIS. Against this background, the insistent Greek demand for the full integration of the Greek alphabet into the EIS is unlikely to delight the techni cians, despite the somewhat optimistic assur ance from the Greek delegation that the technical problems resulting from their demand are "not serious considering the high pace of evolution in information technology".

Draft Convention on Europol

The idea of establishing a European police office originated with the Germans. In June 1991, Chan cellor Helmut Kohl presented a respective proposal at the Luxemburg European Council. Later, the objective of creating Europol was formally incorporated in the provisions of Title VI of the TEU on cooperation in the fields of Justice and Home Affairs. One of the areas named in Article K.1 as "matters of common interest is "police co-oper ation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of interna tional crime, including if necessary certain aspects of customs co-operation, in connection with the organisation of a Union wide system for exchanging information within a European police office (Europol)". After Maas tricht, work on setting up Europol was carried out along two lines:

1. An agreement concluded by the TREVI-ministers in Copenhagen in June 1993. The subse quent establishment of the drug unit, the first unit of Euro pol, was based merely on this purely tech nical-administrative inter-ministerial agreement.
2. Work on a Convention within in the frame work of Title VI of the TEU, legally estab lishing Europol.

Negotiations on the Convention are taking place under the auspices of the K.4 Committee by the "Europol Working Group" (formerly known as the TREVI "Ad hoc Group Europol") attached to the Steering Group on Security and Law Enfor cement, Police and Customs Co-operation. With the entry into force of the Maastricht Treaty on European Union, this "Steering Group III" has replaced the TREVI co-operation of senior officials in the above fields.

According to the provisional text of the draft Convention available to the CL (from 8 November 1993), the objective of Europol is to improve, within the framework of police co-operation, the effectiveness of competent author ities "for the purposes of preventing and combatting unlawful drug trafficking and other serious forms of inter national crime". It does not follow from the text whether co-operation within Euro pol will be strictly limited to law enforcement agencies, or whether it could also eventually include intelli gence services, and if so, to what extent.

An annex lists the forms of crime to be dealt with by Europol. Other forms of crime may be added to the Convention by the European Council at the proposal of the Management Board of Euro pol.

It is not made explicit in the draft whether a form of crime must be liable to prosecution in all Member States in order to be included in activities of Europol. One proposal suggests that this should also be possible when a form of crime "can be subject to police investigation".

Article 3.1 of the draft Convention lists the tasks of Europol. Among other things, Europol shall request, analyse, develop and disseminate "information and intelligence" relating to areas of criminality defined in the Convention; facilitate national investigations by providing connections with information or investigations on the territory of other Member States; develop expertise in the investigative procedures and offer advice and support in investigations; provide "strategic intel - ligence" to assist and promote the efficient use of national operation resources and prepare general situation reports and crime analyses on the basis of information from the national units.

Article 3.2 says, that the Council may, within the limits of Article K.1.9 of the Maastricht Treaty, entrust Europol with additional tasks. It seems that no agreement has yet been reached on whether the Council must act unanimously or by a two thirds majority.

Europol shall further carry out tasks in the fields of police training, organisation and equip ment, prevention of crime, and technical and forensic police methods and investigative procedures.

Each member state will set up a national unit as its only point of contact with Europol. These national units shall of their own initiative supply Europol with "information and intelligence which may be of importance to carry out its tasks, respond to Europol's requests, and exploit and disseminate information and intelligence for the benefit of national agencies.

A series of provisions refer to the "automated processing system implemented by the Central Unit of Europol". As, strangely enough, no express mention of the EIS is made, it is not clear whether the draft Convention establishes another European police computer particular to Europol and outside the EIS. However that may be, the draft contains a series of provisions regarding data transfer and protection that are identical with the respective regulations in the draft Convention on EIS.

The communication of "soft" (i.e. unverified) data is authorised by the draft. A Member State "may supply information with the sole aim of receiving from the other [Member States] any information they hold that relates to the original communication".

Article 14 of the draft states that Europol "may communicate [data] to third countries and other international bodies and receive data from the said countries and bodies".

The rules for such contacts will be established by the Management Board and must be unanimously agreed. The wording of this provisions seems to indicate that Europol may enter into close co-operation with international organisations in the field (e.g. Interpol) and police authorities of non-member states merely by the decision of its Management Board.

The Management Board of Europol shall be composed of one representative from each member state and shall draw up its own rules of procedure. Its three-year work programme will be submitted to the Co-ordinating Committee established by Article K.4 of the TEU with a view to its adoption by the Council.

By contrast with the draft Convention on the EIS, Article 20 of the draft Convention on Europol provides for a role for the Court of Justice, whenever a Member State considers that another Member State has failed to fulfil an obligation in accordance with the Convention. Under the same conditions, the Europol Management Board may bring a matter before the Court of Justice.

The Court has sole jurisdiction to hear and determine disputes regarding the legality of decisions of the Management Board and can give preliminary rulings on the interpretation of the Convention as well as on the Management Board's decisions.

However, nothing is said in the draft about a right (in accordance with Community law) for individuals to address the Court.

At meeting in Brussels on 23 March, the Council of Ministers of Justice and Home Affairs called on all Member States to "show willingness to compromise" in a view to conclude work on the Convention in October. This indicates that there still is major disagreement among member states on both the role of Europol and the extent of its integration into Community structures.

Sources: Provisional text of the draft Convention on the establishment of EUROPOL, Presidency of the Council, Brussels, 8.11.93, 9757/93, restricted; Council of Ministers (JIA), Agenda of the Brussels meeting on 23.3.94, point 4; Projet de texte de la Convention créant un système d'information européen (EIS), the Council, Brussels, 10.11.93, 9925/93, restricted; Note de la délégation belge au Comité K.4 au sujet du Projet de Convertion créant un système d'information européen, undated; Position de la délégation grecque sur les réserves signalées dans le document 9925/93 CK4 7; Projet de Convention créant un système d'information européen (SIE), Communication of the Presidency of the Council to the K.4 Committee, Brussels, 12.1.94, 4077/94, restricted; Note de la délégation espagnole au sujet du Projet de Convention relative au Système d'information européen, Le Conseil, Bruxelles, 19.4.93, CIRC 3632/93; Communication à la presse sur la 1738e session du Conseil Justice et Affaires Intérieures Bruxelles, 23.3.94; Avis du Service juridique du Conseil au sujet du Projet de Convention portant création d'un Office européen de police (EUROPOL), Bruxelles, 19.3.93, 5527/93, confidentiel.

Comment

"(Legal) form is the twin sister of liberty, the sworn enemy of arbitrary rule".

These words, by the eminent German jurist Rudolph von Ihering, come to mind whenever I read the seldom available and mostly confidential documents emanating from one of the numerous bodies dealing with European co-operation in the fields of police, justice and internal security. Indeed, the only really long term constituency of interests perceivable in this field of European policy-making is the strong concern of the executive powers, i.e the ministers, senior officials, police and security experts involved, to work in secrecy, unmolested by any rules other than those agreed by themselves.

Lack of form, i.e the lack of unequivocal and binding legal and institutional frameworks drawn up in accordance with constitutional principles prevents transparency and paves the way for the arbitrary and high-handed rule of executive powers and politically non-accountable administrative bodies.

Lack of form has marked the EU member states' co-operation on police, justice and internal security since the very beginning, when the TREVI co-operation began in the mid 70s. Instead of seeking genuine harmonisation based on common European legislation drawn up by public debate and parliamentary proceedings, the governments of the Member States opted for the "easy" solution. It consisted in avoiding as much as possible both democratic debate and the necessity to seek political approval by taking a "pragmatic", administrative approach. Fundamental long term policy issues were deliberately not addressed, whenever it was considered that their discussion might give rise to opposition likely to slow down the process of unification. This risk was clearly reduced by taking one little step at a time within the framework of inter-governmental agreement rather than of Community legislation. As opposed to Community legislation, inter-governmental co- operation is largely confidential and takes place away from parliamentary or judicial scrutiny.

Whenever possible, common practice in any particular field was introduced by means of more or less informal technical-administrative guidelines and arrangements among the ministers and senior officials involved. Only if it became inevitable was a convention, i.e. a treaty according to international law, drawn up. Indeed, even conventions have become unpopular with governments, because, although they may be negotiated, drawn up and signed without any parliamentary participation, conventions cannot be implemented without prior approval of the national parliaments. The Maastricht Treaty on European Union has changed little in this regard. European co-operation in the fields of Justice and Home Affairs is still a matter of inter-govern mental agreement, although its Title VI theoretically provides for a Community role in certain domains.

The Byzantine legal and institutional tangle caused by an ever growing number of intergovernmental agreements (ranging from legally non-binding inter-ministerial "Recommendations" and "Conclusions" to Conventions) and a plethora of bodies ("Ad hoc working Groups", "Committees of Co-ordinators" and "Executive Committees", TREVI meetings, etc.) is no less of a mess, just be- cause Justice and Home Affairs co-operation has been declared a "matter of common interest" and has been given new names such as K.4 Committee, Steering Groups I-III, etc.

Maastricht has achieved no more than giving a formal appearance of legitimacy a posteriori to an inter-governmental practice based on secrecy, technocratic elitism, and contempt for elementary rules of democracy.

The draft Conventions both on Europol and the EIS are typical products of this mentality. As a rule, they lack the formal precision one might expect from legal texts. This is due both to incompatible national legal systems and fundamental political disagreement among EU member States creating a need for vagueness. As a consequence, the executive bodies established by the Conventions for their implementation (the Management Board for Europol and the Executive Committee for the EIS) are actually given strong legislative power. They will, by their practice and internal regulations, interpret and thereby shape the conventions according to their own objectives.

It is well known that the British government is opposed to Europol having its own operational powers, whereas the German government is advocating a European FBI, a common European police force with a right to carry out its own operations in all Member States.

While - for the time being - limiting Europol to a body of ex-change of information and experience, the draft Convention already provides for the gradual extension of its tasks by decision of the Council.

The list of "forms of crimes" to be dealt with by Europol includes the association de malfaiteurs (criminal organisation), despite the fact that in some Member States there is no legislation on this form of crime. Moreover, the list can be extended at any time by decision of the Management Board.

Not the Convention but the Management Board defines the form and extent of Europol's co-operation with international and third country agencies of policing.

Which forms of crimes will Europol deal with? Will Europol, sooner or later, have operational powers? Are Europol and EIS mere law enforcement instruments or will they also serve intelligence purposes, thus blurring the line between police and secret service responsibilities? In how far are they part of Community structures? Will there be some form of parliamentary and judicial scrutiny? What will their relationship be to future agreements in the fields of Justice and Home Affairs co-operation such as judicial and customs co-operation, immigration policy, and state security?

The elastic provisions of the draft Conventions are silent on these and many other however crucial questions. Instead, they give discretionary power to executive bodies to shape the law later - once the parliaments of the member states, by ratifying the Conventions, have renounced their right of say.

Will parliaments approve what amounts to their own emasculation?

They might not even be asked to do so. Indeed, it is believed that the governments of some member states, among them France, are questioning whether it is politic to formulate conventions, because of the minimal democratic scrutiny and publicity their ratification implies. They would prefer to establish Europol and other structures of police and internal security co-operation by mere inter-ministerial technical-administrative agreements not subject to any parliamentary approval.

Von Ihering was right: Form is the twin sister of liberty, the sworn enemy of arbitrary rule.

N.B.

THE EU'S CODE ON PUBLIC ACCESS TO INFORMATION: TRANSPARENCY THEY SAY, SECRECY THEY MEAN

Greater public access to information was set as a goal of the Maastricht Treaty (TEU) and confirmed by the European Council summit at Copenhagen in June 93. The European Union, it seemed, was moving towards a US-style Freedom of Information policy. "Transparency" became a watchword of EU progress. Less than a year later, an application of the British daily newspaper, the Guardian for papers under the code of public access has been turned down. The EU's Maastricht commitment to "open" government is exposed as a sham.

Last December, the Council adopted a proposal for an internal "code of conduct", prepared by the Coordinators' Group of senior officials now known as the K.4 Committee (under the purview of the Council of Justice and Interior Ministers). Initially, the proposal emerged from the Maastricht Declaration on "The right of access to information". Yet, while it solemnly states the "general principle" that the public will be given "the widest possible access to documents held by the Commission and the Council", the "code of conduct" is more of a European copy of the ill-famed British Official Secrets Act (see CL No.8, p.3).

Indeed, it included a long list of reasons for refusing disclosure - including the need to protect public security, monetary stability, industrial secrecy and personal privacy. It also said that the author of any document could determine its confidentiality, thereby assuring Member States with a tradition of secretive government that their information would not leak out through the EU. Moreover, a sweeping catch-all provision was inserted upon pressure from Britain and Germany, allowing the EU to "refuse access in order to protect the institution's interest in the confidentiality of its proceedings".

Early this year, the British bulletin Statewatch published excerpts of another proposal further detailing secrecy measures in the fields of foreign, justice, internal affairs and immigration.

The proposal aims at ensuring that no documents on foreign policy, policing or immigration are released before all 12 governments are collectively committed to specific policies. The ban is likely to effectively put these policy fields outside the reach of national legislatures and the European Parliament.

In early February, shortly after the "code of conduct"

entered into force, the Guardian submitted formal requests for three batches of papers covering meetings of the Council, in an attempt to establish how the confidentiality rule would be interpreted in practice.

The requested documents included summaries of ambassadorial negotiations (COREPER activities) which preceded ministerial discussions, Council minutes and voting attendance records. Most of this information had hitherto been restricted.

The General Secretariat of the Council sent all requested documents regarding a meeting of the Social Affairs Council, but refused others covering a meeting of the Justice and Internal Affairs Council in November, "since they directly refer to the deliberations of the Council and cannot, under its rules of procedure, be disclosed".

The Guardian submitted a formal appeal against the refusal to supply the material regarding justice and internal affairs on the grounds that these documents "apparently had exactly the same status as some of those which you were able to make available".

On April 13, COREPER 1 agreed with this logic by approving a letter rejecting the appeal. Both sets of documents should have been withheld, because they referred directly to the deliberations of the Council, it said in the letter. The earlier decision to make the social affairs material available to the Guardian was described as "an administrative error" due to "the novelty of the procedure". COREPER is the Committee of permanent representatives (Senior diplomats and civil servants) of the 12 EU-Member States. COREPER is in charge of negotiations preceding ministerial discussions, the agenda of Council meetings, and the preparation of documents to be submitted to the Council for approval.

The COREPER's letter of rejection appeared as an "A-point" on the agenda of the meeting of the foreign affairs Council in Luxembourg on 19 April.

A-point proposals are usually formally nodded though by the ministers without discussion. But the Danes refused to approve the COREPER-letter. Danish ministers demanded a full debate about the EU's approach to open government before any such lapse into former habits of secrecy could be considered.

Earlier, the Dutch Minister for European Affairs had tried to protect the principle of public access without putting the Guardian's application into the limbo of a non-decision. He agreed to let the Council's letter of rejection be sent on condition that a Dutch protest was entered into the minutes.

The Danish block left EU legal experts in some confusion about the lawfulness of the Council's position, however. The Guardian's application will be deemed to have been refused because the Council has failed to reply within the month which
is allowed under the code.

Theodore Pangalos, the Greek minister for European Affairs who chaired the meeting, promised he would present a written explanation shortly. "I think it is a strange outcome," he said.

"Those who spoke up for the Guardian believed in transparency, but the result means there is no transparency. I don't know if this is what you call a sophism."

The Dutch minute complained that there had been no effort to weigh the question of confidentiality against the principle of openness. "Should such a weighing of interests in fact have taken place, the applicant ought to have been informed of this in a reasoned manner," it said.

The Netherlands are also opposed to the EU code on public access to information as far too restrictive and have brought the case to the Court of Justice. In the view of Piet Dankert, the Dutch European Affairs Minister the new secrecy code is "worse than behaviour of NATO at the height of the Cold War".

Senior officials of the Council secretariat seem to be drawing their own conclusions from the incident. It is believed that they are now considering a new set of rules which would allow them to doctor documents before they are released to remove all trace of arguments between member states. "The truth is that ministers hate the idea of anything emerging", an EU diplomat said to the Guardian.

The TEU put EU justice, foreign, security and immigration outside reach of national legislatures and the European Parliament. The obvious attempts of most ministers and senior officials (i.e. the executive power) to introduce blanket secrecy
on the basis of mere administrative regulations drawn up by themselves has smothered hopes of more accountability.

In private, EU diplomats have conceded that the secrecy debate might undermine the campaign in support of EU membership in Norway, Sweden and Finland. The Nordic countries have a strong tradition of freedom of information (see CL No.15, p.6) and opponents to EU membership have long been arguing that EU membership would bring an end to open government. So far, however, the Guardian incident has not given rise to much public debate in Scandinavia for the simple reason that the story has been given little publicity there. As a matter of fact, practically all major media in the Nordic countries are in support of membership. As for the governments and public authorities, they have never been fond of what they tend to consider as their people's mania of transparency. Should the European secrecy debate itself have become a matter of secrecy?

Sources: Statewatch Vol.3 No.6, 1993; Vol.4 No.1, 1994 (available at: Statewatch, PO Box 1516, London N16 0EW, UK); The Guardian, 18.4.94, 19.4.94; 20.4.94; The Independent, 8.2.94; COREPER, Rapport au Conseil: Accès du public aux documents du Conseil et de la Commission, projet de Code de conduite, Bruxelles, 4.11.93, 9678/1/93, restreint.

K.4 COMMITTEE ON THE INTERCEPTION OF PERSONAL SATELLITE COMMUNICATION

A working group "ENFOPOL" under the K.4 Committee has submitted a draft recommendation aiming at enabling the interception of personal telecommunications using satellites to the Council of Minister of Justice and Home Affairs at Brussels, on 23 March .

In 1993, the then Belgian presidency of the Council mentioned the interception of communications in its programme of priority action under the rubric "Other action deserving particular attention". The programme namely stated the need for a study of both the legal and judicial aspects of interception and of the technical aspects in the context of advanced tech - nology.

In 1993 the Council of Ministers responsible for telecommunications adopted a resolution on the introduction of Personal Satellite Communica tion Services (PSCS) in the European Community.

According to the draft recommendation, "the global dimensions of PSCS and the related techni cal frameworks are of major importance to Euro pean telecommunication policies and practices" and it states that "while respecting the provisions of the European Convention on human rights, the Member States of the Union value the legally authorized interception of communications for the protection of national interests, in particular in relation to national security and the investigation of serious and organised crime".

Technical developments in telecommunica tions threaten to jeopardise the execution of these "interception powers in accordance with the res pective national laws by the competent national authorities". The draft therefore recom mends that:

- In the development and standardization of telec ommunications, early consideration should be given to the integration of technical facilities for the interception of tele communications;
- In all future discussions, the necessary ex pertise in relation to the technical, judi cial and legal aspects of interception of telecommunication is assured;
- In addition to the priorities already expressed by the Council and the work already under taken, in particular in the area of GSM [the Global System for Mobile Communica tion], a study be made of the differ ent technical PSCS interception possibilities, defining, if necessary, the action to be taken to counter the problems that have come apparent.

At its Brussels meeting on 23 March, the Council (Justice and Home Affairs) decided that work on the draft should be continued with a view to reach final agreement on a recommendation when Ger many holds the presidency of the Council.

Sources: Draft Recommendation of the Council concerning the legally authorized interception of telecommunications, European Union, Report to the Council (Justice and Home affairs); Brussels, 4.3.94, 5373/94, restricted; Working agenda of the Council of Ministers of Justice and Home Affairs at Brussels, 23.3.94, Point 6.

Comment

Concern about the difficulties in tapping conver sations via GSM arose first in Germany (see CL No.13, p.6). The current invulnerability of digital communication networks with regard to telephone tapping constitutes a breach of the German net - work licence under which interception must be possible for authorities at any time. German intel ligence too expressed concern, as the GSM is putting their world-wide eavesdropping activities at risk.

As the mention of the "protection of national interests" and "national security" in the recommen dation indicates, similar interests of secret services in other EU member State are likely to have played a role in this attempt to take com mon action.

N.B.

HARMONISATION OF EUROPEAN ASYLUM POLICIES: THE YUGOSLAV EXAMPLE

Western European states are ever more reluctant to grant asylum in accordance with the 1951 Geneva Con vention on Refugees. The number of refugees from former Yugoslavia who have been granted permanent stay permit by host states is insignificant. Instead, refugees are received on the basis of "temporary protection" schemes. This practice is effectively undermining one of the fundamental guarantees of the Geneva Convention.

This is one of the preliminary conclusions of a report published by the European Civic Forum on the situ ation of ex-Yugoslav refugees in 9 Western Euro pean Countries.

The report is based on an inquiry that is being led by the 'Fortress Europe?'- Circu lar Letter. Its findings must be considered as preliminary, as they are based on incomplete and partly non-veri fied information. For the time being, the inquiry includes the following countries: France, Ger many, Great Britain, Spain, Denmark, Sweden, Norway, Austria, Switzerland. The inquiry is to be continued in view of the publica tion of an updated version of the report that will hopefully cover further Western European countries.

Preliminary conclusions

1. In all host countries examined - with Sweden as the only exception - the number of ex-Yugoslav refugees who have been granted permanent protection according to the refugee status of the Geneva Convention or another form of perma nent residence permit is insignificant in proportion to the total number of ex-Yugoslav asylum seekers currently staying on their territories.
This constitutes a drastic deterioration of Euro pean asylum practice. Only five years ago, it would have been inconceivable to refuse refugee status to nearly all refugees from a conflict that is taking place in the heart of Europe.

2. Thanks to the introduction on the concept of "temporary protection", the governments con cerned have actually disabled the Geneva Convention without giving rise to much public criticism. Meanwhile, it is becoming clear that provisional reception offers no guarantee for the refugees concerned against premature repatriation and that it forces them into a situation of permanent uncertainty and legal insecurity. Thus, in the last analy sis, refugees are artificially maintained in a psychological situation very much like the situ ation they have fled. Combined with the concept of "temporary protection", the ever more widespread application of the "safe country of origin" and the "third safe country" principles have further increased legal insecurity.

3. The technical-administrative barriers intro duced mostly since summer 1993 by the Western European states in order to keep away unwanted refugees from former Yugoslavia are having the desired effect: Meanwhile, it has become all but impossible for would-be refugees, to seek protec tion - even on a temporary basis - in Western European countries. The escape routes are effec tively blocked.

4. Regarding the treatment of deserters and other categories of draft resisters, no state (with the exception of France in certain particular cases) considers this form of resistance against war as relevant in determining refugee status according to the Geneva Convention. This is a further example for the contempt shown by Western European states for the obligations of the Geneva Convention and the guidelines and recommendations set up by the UNHCR, the international body charged with supervising the Convention's implementation by the signatory states. At best, draft resisters may benefit of temporary protection, on condition, however, that they can produce written evidence. In the last analysis, this restriction too is absurd. Indeed, any male refugee from former Yugoslavia at an age liable for military service - drafted or not - is threatened with forcible recruit ment in case of repatriation. Even when the recruiting army is not engaged in combat at the moment of repatriation (which is often difficult to establish with certain ty), the eventuality of renewed involvement of the army concerned in the war must be taken into account, considering the complexity of the conflict.

The proceeding current in all host countries is to refer to formally valid legislation and penal procedures in home countries in rejecting asylum applications of draft resisters. This approach reveals the formalistic and unrealistic approach of the phenomenon of war resistance by the Western European states. It is well known, indeed, that in all republics of the former Yugoslavia draft resisters are threatened also with "informal" punish ment - e.g. by being sent to particularly dangerous sectors of the front, by de facto bans excluding them from jobs and harassment of family mem bers. This aspect of persecution tolerated if not encouraged by the governments in the states of origin is regularly ignored in asylum procedures.

This plainly shows Western European states' profound unwillingness to give some legitimacy to the act of draft resistance - even in a war unanimously condemned by the international commun ity.

Western European governments' main concern seems to be to avoid setting any precedent in this field that might be turned against themselves some day.

Source: Harmonisierung der europäischen Asylpolitik: Das Beispiel der Jugoslawien-Flüchtlinge, European Civic Forum, April 1993, 19 p., in German. Available at: Forum Civique Européen, B.P.42, F-04300 Forcalquier (France).

AUSTRIA

AUSTRIA NO "SAFE THIRD COUNTRY", UNHCR SAYS

At the request of the German Federal Constitutional Court (Bundesverfassungsgericht), the United Nations High Commissioner for Refugees (UNHCR) presented a statement regarding asylum procedures in Austria. It follows from the statement that Austria no longer can be considered as a "safe third country" to which asylum seekers can be turned back without prior examination in each particular case.

The statement addresses Austria's very restrictive interpretation of the third country principle. Only refugees who have travelled to Austria directly from their country of origin are granted access to an asylum procedure complying with an "international minimum standard", the UNHCR says. According to the Austrian definition of direct entry, third country regulations apply to any person transiting through a neighbouring country, including Hungary, which has joined the Geneva Convention on Refugees with geographic reservations. Travel by air is considered a direct only if the asylum seeker had no opportunity to apply for asylum while landing in another country en route. The UNHCR notes that the question of whether an asylum seeker has objectively been granted pro tection in the transit country concerned or if he can still seek this

protection in the event of being sent back by Austria, is not being properly examined.

The statement also underlines the fact that appeals against the rejection of an asylum application do not put any stay on a deportation order whenever "The execution of the measure is strongly required in the interest . . . of the common good and because of imminent danger". This catch-all provision is widely used to deny asylum seekers a provisional stay permit pending a decision on their appeal.

There is no sufficient examination of the question of whether the deportation of a rejected asylum seeker is in compliance with the prohi-bition of *refoulement* as stipulated by Article 3 of the European Convention on Human Rights and Article 3 of the UN Convention on torture.

As a result of the entry into force of new asylum legislation in June 1992, the number of asylum applications in Austria has drastically decreased. Between 1991 and 1993 the number of asylum application dropped from 16,238 to 4,744.

The UNHCR has expressed concern with the Austrian authorities regarding the above legislation and practice, as far as . . . it is not in compliance with international asylum law standards".

In conclusion, the UNHCR "recommends giving due consideration in each individual case to the problems described above prior to any decision of German authorities on a deportation back to Austria as a third country".

Source: Voraussetzungen und Bedingungen des Asylverfahrens in Österreich, UNHCR, 28.1.94

SWEDEN

SWEDEN TO GRANT PERMANENT RESI-DENCE PERMITS TO 20,000 ASYLUM SEEKERS

The Swedish government has decided to make families with children who have applied for asylum in the country before 1 January 1993 eligible for permanent residence permit on humanitarian grounds. The measure is limited to families with children under 18 on 1 January 1993 but is applicable regardless of the origin of the applicants.

Already in June 1993, the government decided to grant asylum on humanitarian grounds to 40,000 Bosnians staying in the country. The new amnesty measure is expected to benefit some 20,000 asylum seekers, most of whom are Kosovo-Albanians.

The government took the decision on initiative of Birgit Friggebo, the minister responsible for immigration, in the wake of growing public protest against an ever more restrictive asylum practice and in particular the mass deportation of Kosovo - Albanians (see CL No.19, p.3).

By implementing the two above governmen-tal decisions, Sweden is likely to grant permanent protection to a larger number of refugees from former Yugoslavia than all other Western European countries together. Indeed, most other countries have received the war refugees on a merely temporary basis and are already beginning to send back refugees to parts of former Yugoslavia deemed "safe".

Thus, Germany whose reception of approximately 400,000 asylum seekers from Yugoslavia has been widely publicised as an example of generous asylum practice, is now making concrete plans to send back refugees tolerated under the "temporary protection" scheme to Croatia and the Federal Republic of Yugoslavia and, at a later stage, to Bosnia.

Against this background, the Swedish move must be warmly welcomed. At the same time, however, the amnesty measures will not have any effect on general asylum law and practice. On the contrary, a recent government-sponsored expert report indicates that, as in the rest of Europe, Swedish authorities' interpretation of asylum law is becoming ever more restrictive.

Moreover, in Sweden too, there are strong calls for an asylum practice more closely linked with (restrictive) immigration policy objectives. In a memorandum on "A future policy for persons in need of protection" to the Swedish parliament, the Committee on immigrants and refugees argues against permanent residence permits as a necessary and desirable element of protection.

By enabling limited groups of asylum seekers to stay in Sweden on the basis of a one-off government amnesty rather than of a fair asylum procedure establishing their claim of persecution, the Swedish government has avoided addressing the fundamental issue of protecting the right of asylum. More than ever, asylum is becoming a matter of governmental discretion.

N.B.

Sources: Press release of the Department of cultural affairs (responsible of immigration) and information to parliament, 14.4.14 (in Swedish); Press release of the Dept. of cultural affairs on the expert inquiry on asylum practice (Professor Göran Melander/Chief justice Lena Berke), 6.4.94 (in Swedish); Pro memoria "A future policy for people in need of protection", Immigrant and Refugee Committee, Björn Hammarberg/Britta Ornbrant, 29.3.94. (in Swedish).

OPINION

COMPUTERISED RESOURCE MANAGEMENT SYSTEMS: THE END OF PRIVACY?

In Germany and other highly industrialised countries, new legislation in health care, public welfare and immigration law has introduce Computerised Resource Management Systems (CRMS). Such systems are presently planned in more and more fields, either by the central state, or by local government, e.g. in road traffic or in garbage collection. We are facing a new level of registration of personal conduct and in social control, Jan Kuhlmann, an "informatics and society" researcher at Bremen University suggests.

In his novel The Castle, Franz Kafka has described man as a small gear in the machinery of power. According to sociologist Max Weber, the purpose of bureaucracies is to be machine-like in their behaviour.

Today, people are standardised objects in traffic control, taxation or banking systems. Most of us have experienced powerlessness facing the wheels of bureaucracy or computer programs which do not provide for our special case. It is this "mechanisation" of all fields of life that is currently reaching a new level.

In computerised risk and resource management systems, the old antagonism between bureaucrats and citizens ceases to exist. Bureaucracy penetrates daily life, so that a citizen using
his plastic card bearing a computer chip becomes a part of the administrative machinery himself. There is no supervision in the Orwellian sense, for there are no supervisors - a development that the French philosophers Foucault and Deleuze have described as the shift from a society of discipline to a society of control.

Computerised Resource Management Systems (CRMS)

The example of social welfare and the "fight against the abuse of benefits" illustrates how CRM systems are introduced and how they work. The first step towards resource management is the definition of a crisis - in this case, the crisis of public finance, allegedly caused by abuse of social benefits. The crisis justifies the submission of an entire field of society to a regime of rationing (the rationing field). All persons in the field can cause damage through "irresponsible behaviour", for instance by wasting resources, and are therefore considered as potential risk factors. As a consequence, the conduct of people within the rationing field is controlled automatically and inevitably, in order to bring about the desired "good behaviour" by incentives and sanctions.

The "solidarity pact", a law package agreed upon by German government and opposition in 1993, provides for the detection of all beneficiaries of public welfare who have not declared their income or people who live with them. With this in view the already existing control system of the social insurance has been extended with the help of the local offices for social assistance.

The new comprehensive scheme now enables periodic nation-wide electronic matching of data on both the income of all employees covered by the social insurance system and on recipients of pensions, unemployment benefits, as well as sick benefits and social assistance. This amounts to an airtight control covering 85 per cent of Germany's working population.
Social assistance offices are permitted to carry out electronic checks of the lifestyle of those receiving social assistance. They now have full access to the databases of:

- Municipal enterprises (enabling them to control beneficiaries' expenses for electricity, heating and refuse);
- The vehicle licensing registers;
- Municipal housing associations (control of tenants and rent amounts).

Suspected abuse can mean the withdrawal of benefits and punishment. Beyond this, the public welfare CRMS collects the information for optimising sanctions, rewards and other action of public administration to those who are subject to rationing.
It is an important aspect of such a control system, that opposition against appears as morally illegitimate. Anybody abusing social benefits is a sponger and breaking the law. Indeed, according to the CRM system's logic, the victim is always doing wrong. Calls for data protection therefore appear as morally unjustified and criticism of the system becomes nearly impossible.

CRMS in the fields of pregnancy, birth and health care

A comprehensive resource management system is currently being introduced to track pregnancy and birth. In future, the quantity and the quality of human reproduction will be controlled and secured by the means of three interconnected

elements:
- The Federal Constitutional Court's [Bundesverfassungsgerichtshof] 1993 "protection concept" against abortion;
- Electronic data banks for monitoring congenital defects;
- The health chip-card issued by health insurance companies and physicians' associations.

This birth control system's rationing field covers all pregnant women and mothers of infants. The 1993 decision of the Constitutional Court on abortion establishes an obligation for the state to realise a "protection concept for unborn life". Each woman who wants a legal abortion must consult a pregnancy advice bureau first. The pregnancy advisors must include all persons in their "protection activity" who "can influence the woman's will in presence of a pregnancy conflict". This group of persons includes not only the father of the unborn child and the parents of an expectant woman who is below the age of majority, but also landlords and employers.

Thus, not only the woman's body becomes a state-controlled environment of the foetus, but control is extended to her wider social environment.

Permanent efficiency control of the protection concept is to be ensured by control of records to be kept by the pregnancy advisors. These records include anonymous information obtained from "consulted third persons".

Moreover, according to the Constitutional Court, the State must make sure that the data necessary for assessing the effect of the law is systematically collected and evaluated. This requires "reliable statistics" on the extent of abortion.

On the other hand, the Constitutional Court states that abortion in order to prevent the birth of a handicapped child is legal, when its life is considered "unbearable" for its social environment. Before each abortion, a physician is obliged to give advice to the pregnant woman.

Towards comprehensive control of embryo quality

The scientific advisory board of the German Federal Chamber of Physicians recommends the comprehensive data storage enabling the detection of "risk factors" among parents that could be related to "malformations" of babies.

Professor Gerhard Wendt, director of a Marburg advisory centre on human genetics, is outspoken on the central aim of such data collection: "If the birth of children with significant hereditary deformities can be prevented, the annual costs of medical and therapeutic assistance, including `reintegration' of handicapped persons will be significantly diminished (. . .)".

The paediatric clinic of Mainz University has already set up a data bank for prenatal control. The data are based on an inquiry form including questions about the parents' race, their work, and their consumption of medicine, alcohol, drugs and tobacco - all considered "risk factors" that should be stored in computers, according to the Mainz human geneticians. The catalogue of infirmities stored in the data bank comprises all congenital diseases (including those that can only be detected by genetic screening) and "minor malformations" such as dimples and eyebrows that meet in the middle. The purpose is to statistically link the parents' "risk factors" to "malformations" of children. The results of this research are to be used by physicians for advice to mothers on whether they should have an abortion or not.

The health chip-card

Since the end of 1993, all members of the compulsory health insurances are equipped with a health insurance chip-card. For the time being, the cards contain only insurance related and non-medical data.

In the doctor's office, this information is linked with information about the patient's diagnoses and treatments. The complete datasets are transferred to physicians' organisations and health insurance companies where they are electronically stored. If a pregnant woman wants to get maternity leave, she must produce a physician's confirmation of pregnancy as early as possible. The maternity information is automatically transmitted to the institutions. They will now control if the woman undergoes all the regular medical prevention checkups scheduled in the "mother passport". If the mother fails to comply, she will be asked to explain her behaviour by her doctor and by the health insurance.

The checkups comprise ultrasonic and amniotic fluid examinations to control the embryo's quality. Doctors ask pregnant women for "risk factors" in her and in the expectant father's life. In cases of "risk", "genetic information" about the embryo may be assessed. This provides information for the woman's decision if she wants to have a child.

When the child has been born, its regular routine examinations have to be certified in a "child passport". Doctors compare growth and development of each child with nominal values defined by statistical medical research. A deviation from these values is a risk factor that is noted in the passport and reported to the institutions. It is planned to attribute the results of an embryo's and child's examinations permanently to each person in a smart card containing its health information. Such information may indicate what school is best to attend, what job best to aim for, and if or with whom it would be best to generate new children.

Employment

In the last four years, paid work has gradually become rationed. Each workplace must be state registered, in order to control whether it is occupied by an entitled person.

Employers can now communicate all employments, even insignificant part-time jobs, to the social insurance organisations on machine-readable forms or via electronic data transfer. These notices are automatically checked against the labour and tax authorities' databases. This system, however, does not work for

persons who are not registered with the social insurance. This group is now to be detected with harsh methods of control. Henceforth, Labour Offices and Customs may cordon off factories or construction sites and order all persons present to show their papers. Their personal data can then be matched with the social insurance register by direct elec tronic link. Thus Customs are entrusted with the new role of a "social police" hunting clandestine workers.

Residence and employment of aliens

In their notices to the social insurances employers must also mention the nationality of employees. Any foreign employee needs a work permit by the labour Office. Work permits too are electronically administrated. According to a recent regulation, a work permit may be granted or prolonged only if no German or privileged foreigner (e.g. an EU citizen) can be found for the job.

According to the new 1990 foreigner law, tempor ary residence permits are to become the rule. Immigrants, mainly from Eastern Europe, will be brought to Germany according to a "rota tion" scheme. Each person may stay in Germany for two years maximum following which he or she will be barred from entry for a period at least as long. This regulation seeks to prevent social inte gration of "guest workers", and the emergence of an "under-ground society" of illegal immigrants.

Without computerised administration it would be all but impossible to keep control of this rotation system that provides for a flexible alloca tion of the foreign work force. The system enables the authorities to replace "insubordinate" foreign workers at the next rotation.

The pilot studies with a new system of auto mated border control by electronic matching of the "biometrical data" of travellers at Frankfurt airport should be seen in the same context (see CL No. 17, p 4).

Moreover, the fingerprints of all asylum-see kers are already being stored in a computer of the Federal Office of Criminal Investigation, the BKA, in order to prevent deported aliens from staying in or entering the country with a false identity.

In the long term, it is planned to take finger- prints from all travellers coming from certain countries upon entry. Persons suspected of work ing illegally can be submitted to criminal identification. In a near future, it will become possible to match their fingerprints with those taken from travellers upon entry and asylum-seekers. Thus, organisations that deal with social insurance and registers of foreigners will have achieved total control over the conditions of residence of foreigners.

Health care

The 1989 "health reform" law and the 1992 "health structure" law introduced a complete electronic system of control and rationing of medical treatment.

The laws provide for the computerised pro cessing of the accounting between health insurance organisations and all providers of medical care. Physicians, pharmacies, hospitals, physiotherapists, etc must account for all their services on machine-readable forms or by data processing. Invoices that can not be read by computer will no longer be paid.

The service provided - and the diagnosis made - are stored in the computers of the insurance organisations and can thus be processed by refer ence to the patients, the pre scribing physicians and the furnishers of medical services. This data exchange aims at controlling the medical treatment provided.

The data are matched with average values or standard amounts agreed by the panel doctors' associations and the insurance companies.

The control includes diagnoses, treatments, prescriptions, certificates of sick leave, etc. A doctor prescribing "too many" hearing aids or drugs, taking "too much" time for a patient, or certifying "too long" sick leaves may by sanctioned by having his or her payment reduced.

The "International Classification of Diseases" of the World Health Organisation serves as the pattern for accountancy and for efficiency control. Thus doctors must categorise their patients' health problems according to this cata logue for data processing by the panel doctors' associations and the insurance organisations. The patient thus is reduced to one of the "treatment cases" provided for by the catalogue. In a later step, doctors and hospitals are to be remunerated accor ding to a diagnosis-related lump sum system. At that stage, there will be norm settings, e.g. for the number of influenza cases or rheumatic affections a doctor may diagnose per quarter.

State health insurance organisations and doctors' associations plan to store medical infor mation, for example risk factors or long term treatments, on a health chip card. The card is to be used for health education and prevention of illness, by making it possible to control whether the insured submit themselves to regular preventive health examin ation or if they engage in sporting activities, all of which will make them eligible for premium reductions.

Traffic

Tolls are soon to be imposed for the use of German motorways. In test experiments, monitoring units at bridges and interchanges exchange data by microwave with chip-cards placed on the instru ment panel of passing cars.

A programme of tests in the European Union, DRIVE research, is already going further: With the same microwave system security experts hope soon to be able to intercept car thieves and drivers without licences. Public trans portation, presently introducing its own chip cards, could be intro duced into one system of personal mobility man agement.

The aim of controlling traffic flows by a CRMS will require a person-related control of every traffic movement. The system is likely to be accepted by the public if it can be presented as a means of ecological and social traffic system

management benefiting both environment and efficiency.

Disposal
A growing number of municipalities, among them the city of Bremen, are introducing person-related refuse- accounting systems. Dustbins are equipped with machine-readable codes and refuse lorries are equipped with a device for reading and storing the data. Thus users shall be charged only for the dustbins actually emptied. Households with low refuse production can be rewarded. However, all this requires the storage of person-related data and social authorities have the right to call these data in order to check how many persons are living in a house.

Orwell or Huxley?
In the main, these developments are about allocating resources according to peoples' ability to pay. Those who can afford it will benefit from top quality health care, may drive large cars and produce mountains of refuse. The have-nots, by contrast, should avoid producing refuse and had better stay at home. Control and exclusion can not be separated.

What we have described is already existing reality or - where the health chip-card and traffic management are concerned - being concretely planned or tested. But the examples could be multiplied further.

Additional CRMS are used for administering, for example, agricultural areas, university places, and organ donors.

The utopia of the chip-card society is that every person will have his or her own "Total Card". It will serve as a credit card, ID-document and health card. As a credit card, the Total Card will contain account - and customer numbers and can be used for everything costing money. If the number of the card is not registered with the system or if there is no money in the account, the barrier will remain down - otherwise the price will be deducted from the account. As an ID card, the Total Card will confirm your finger print, your personal data and qualifications and permits such as citizenship, employment and drivers' licence. It allows you access to a state territory, an industrial site, a particular sector of a building, a computer terminal or the ignition switch of a car - so long as you have the correct matching finger and the necessary authorization. As a health card, the Total Card will carry details of your insurance class, your individual risk factors and all treatments carried out. The Total Card will of course be voluntary. Nobody will be forced to apply for it, if he or she is not interested in the social facilities it offers.

Warnings against the "transparent citizen" or the "snooping state" appear incongruous to me. The issue is not about allowing Big Brother access to confidential information. Although this is possible, it certainly is not the objective. The principle is personal control combined with indifference towards the controlled person, supervision without supervisors.

Thus, is it Brave New World rather than 1984? Indeed, Huxley fits better, but the Real New World lacks the stable equilibrium of regulation.

The solutions offered by the Computerised Resource Management Systems are fake solutions. They lead to the disappearance of the perception of problems, not to the disappearance of the problems themselves. As long as there is no immigration management system, the impoverishment of the world and the existing potential of crisis is visible. The intended management does away with the unwanted immigrants, not with impoverishment or, for instance, environmental destruction. This will contribute to a feeling among people that their small world and their individual perspective is secured again and that they can go on as before.

Prospects for dissidence
With a CRMS once installed, data processing and resource management as such are no longer questioned by political parties and mass media. The issue is then merely a technical and complex one, a matter for experts who do not engage in well-informed public debate.

It is open to question whether those whose rights are being fully automatically restricted will resist in an organised way.
Alliances are formed when a common interest become visible. But CRM systems make common interests invisible, as they create a fiction of individual treatment for every person. Everyone's attention is drawn to their own behaviour instead to the social relations created.

Groups and organisations in favour of data protection are confronted with two problems in dealing with the rise of CRM systems: They have lost both their political basis, the Social Democrats and the Greens, and their alternatives, the reform utopias of the 1970s.

Some of the strongest supporters of the introduction of CRM systems can be found among Social Democrats, union people and Greens. The systems for controlling labour and health were demanded by the Social Democrat Party (SPD) and the unions, as a means to combat "illicit work", as well as doctors' and the pharmaceutical industry's "self service" mentality. Even the combat of "abuse" of social assistance benefits, i.e. the control of social security claimants were supported by the SPD.
The Greens in their turn advocate person-related control of traffic and refuse.

Whenever public data protection authorities dare to question the respective expansion of data processing, they find themselves falling between all stools. Indeed, questioning the complete problem solution concepts of electronic ration systems requires that they present just as complete and viable alternatives: radical working time reductions rather than control of illicit work; basic security for all rather than social control; lump sum remuneration for doctors rather than controlled and rationed allocation of health services; development of public transport rather than traffic control; recyclable packaging material rather than refuse control.

All this belongs to the past - and has ended on the rubbish heap of failed utopias.

Yet the prospects of data protection and the struggle against a model of society based on total control depends of whether we succeed in lending credibility to such fundamental structural reforms as an alternative to control systems.

Data protection must become a matter of politics. We must understand that in many fields, data protection and social policies can no longer be separated.

Jan Kuhlmann

This contribution is an abridged and edited translation of *Bürger auf Karten - Totalerfassung durch sozialökologische Rationierung*, an article by Jan Kuhlmann in *Blätter für deutsche und internationale Politik* 11/93.
Contact: Jan Kuhlmann, Institut für Informations- und Kommunikationsökologie e.V., Fachgruppe Datenschutz, c/o Universität Bremen, FB Mathemathik/Informatik, Bibliotheksstrasse 1, D-2800 Bremen; Tel: +49/421 2182833, Fax: +49/421 2183308.

EVENTS

"THE USE AND ABUSE OF POWER: BEYOND CONTROL?" - XXII annual conference of the European Group for the Study of Deviance and Social Control. August 25-28, 1994 at Democritus University of Thrace, Komotini, Thrace, Greece.

The concept of power and its analysis is not new in social science. However, recent transformations in the world order demand that we reassess the meaning and the acceptability of power. New forms of social "order" require new forms and legitimations of power, and we are interested in exploring these.

Hence, this year's conference will focus on power, its exercise and control. Contributions will there fore be welcomed in the following broad areas:

- The concept of power, its definitions, origins, forms, its ocations, visibility, images and representations.
- The use of power, justifications, abuses, agencies, distribution, degree, traditional checks and balances.
- Challenges to power, strategies for limitation, control, redistribution of power and empowerment.

Papers are particularly welcome on the following specific themes: Concentrations and operations of econ omic power at the national and international level; New definitions of crime; Crimes of the powerful; Political and judicial corruption; Issues of national identities, ethnicity and migration; Categorisation, marginalisation and exclusion - the role of professionals and their discourses; Gender perspectives; Primacy of economic rationality in education, welfare, crime control and other social institutions and services; Law and order in legitimising the transformation/distortion of legal principles.

The conference is organised in co-operation with the Laboratory of Criminological Sciences, Thrace.

For further information or booking, please contact: Karen Leander, Tjurbergsgatan 27, S-118 56 Stockholm; Tel: +46/8 6445135 or 6290568, Fax: +46/8 289500.

REALITÄT UND UTOPIEN DER INFORMATIK (Reality and utopias in computer sciences) - 10th annual conference of the Forum InformatikerInnen für Frieden und gesellschaftliche Verantwortung (FIFF), 7 - 9 October 1994, Bremen University, Bremen, Germany.

The FIFF is a German organisation of critical computer scientists founded in 1984, with its origins in the German peace movement.

The conference will focus on the following items:

- Which utopias and vision have decisively influenced and are influencing the development of information technology in the domains of work, daily life, state and environment?
- What has happened to the fears and hopes attached to information technologies ten years ago?
- Which risks and chances does the future development of information technology comprise?

At the conference, workshops will deal with issues such as: "Information technology as a means of (in)security"; Information technologies in medicine: the risk factor man; Computer sciences and responsibility, and many more. The conference language is German.

For further information, please contact: FIFF Bremen; Hans-Jörg Kreowski, Universität Bremen; FB 3 - Informatik, Postfach 330440, D-28334 Bremen; Tel: +49/421 2182956; Fax: +49/421 2184233.

DOCUMENTS AND PUBLICATIONS

European Parliament:

- Report on the Commission proposal for a Council regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, 29.3.94, A3-0193/94, Committee on Civil Liberties and Internal Affairs, rapp: François Froment-Meurice. Adopted by the EP on 21.4.94.
The report calls for a series of ammendments of the Commission proposal regarding a visa obligation for a common list of countries. Among other things, the EP demands that the list of countries subjected to visa obligation must be established on the basis of "objective and publicly stated" criteria justifying why a country is on the list. Moreover, no third country whose nationals do not, at present, require a visa for entry to a Member State should be on the list.

- Report on the communication of the Commission containing a proposal for a decision, based on Article K.3 of the TEU establishing a Convention on the crossing of the external frontiers of the Member States , 29.3.94, A3-0190/94, Committee on Civil Liberties and Internal Affairs, rapp: Christopher Beazley. Adopted on 21.4.94.
The report calls for, inter alia:
- A more important role of the EP both in the application and the interpretation of the future convention on external borders
- The right for the EP to bring disputes regarding the implementation of the convention to the Court of Justice;
- The suppression of sanctions against carriers transporting passengers from third countries without valid travel documents;
- A greater protection concerning the exchange of personal data.

Council of Europe - Parliamentary Assembly:

- Report on the right of asylum, 23.3.94, Doc.7052, rapp: Hans-Göran Franck.
After recalling that the Council of Europe has always asked its members to treat refugees and asylum seekers in a "particularly liberal and humanitarian spirit", in full respect of the principle of *non-refoulement*, the report stresses that "recent developments in the field of asylum policy in many member states have put this practice into question". As a consequence, the report calls for "common action" to ensure "fairness to all persons in need of protection, and to reduce friction over sharing asylum responsibilities between its member states by initiating collective European co-operation. Among the concrete measures proposed are:
- the creation of a European Refugee Commission in charge of co-ordinating asylum procedures between Member States;
- the appointment of a European High Commissioner for refugees in close co-operation with the UNHCR;
- the creation of a fund to assist countries confronted with mass-arrivals of refugees.
The Assembly further calls for action to prevent people being forced to leave their country of origin.

- Report on the situation of asylum seekers whose applications have been rejected , 21.3.93, Doc. 7044, rapp: Flückiger.
The situation of rejected asylum seekers, whose numbers are constantly rising, is one of increasing concern. The report looks at the situation of those who refuse to return to their country of origin and consequently find themselves in a precarious position. It proposes that conditions should be established for the successful social and economic re-integration of rejected asylum seekers in their countries of origin, notably through bilateral and multilateral co-operation programmes. Moreover, member states' asylum policies should be harmonised in consultation with the UNHCR.

Asyl/"Innere Sicherheit" - Drogen, "Organisierte Kriminalität", "Extremismus" (Asylum/"Internal security" - Drugs, "organised crime", "extremism", in German, by Beat Leuthardt, publ. by Rotpunktverlag.
A comprehensive book notably on the Swiss and the German role in building "Fortress Europe". The abolition of internal border controls is being "compensated" by a policy of "European Apartheid" and broad surveillance inside the fortress, the author, a Swiss jurist and journalist, suggests. The book contains a lot of evidence from Germany and Switzerland, but also from all other European countries from Ireland to the Ukraina, and from Sweden to Greece, illustrating the above tendencies. It is particularly this focus on the concrete effects of the "Fortress" policies on the lives of both European nationals and foreigners that makes this book a valuable contribution to a sometimes all too academic debate in the field.
Available at: Flüchtlingsinformation, Postfach 6175, CH-3001 Bern. Price: sfr.43.- (without postage).

Forced out: illegal evictions continue with impunity in Croatia, Report by the International Helsinki Federation for Human Rights (IHF), March 1994, 25 p., in English.
This report is about forced, illegal evictions of people (of mostly non-Croat origin) from their homes in Croatia (see CL No.23, p.9). Evictions are carried out by military police or unidentified uniformed people. The evictions are often accompanied of massive threats and violence. At least one person has been killed. Several people told the IHF that they had been threatened at their work place and in some instances had been dismissed. IHF notes that evicitons are regularly taking place without interference of Croatian law enforcement authorities and that local human rights groups and lawyers often feel great risk in taking up eviction cases. One attorney in Split told the IHF: "Most of these cases involve victims who are of non-Croat origin and many of them are ethnic Serbs. I have defended the rights of these people in some cases and the result was

severe threats against both me, my colleagues and my family. I simply do not have the courage to take such cases anymore although I feel for the victims. Several lawyers have had their offices bombed, I'm sorry, but I'm afraid".
The situation above "raises serious concerns about the Croatian government's actual commitment to the rule of law and to human rights", the IHF says and , i.a., alls for action by the CSCE.
Available at: International Helsinki Federation for Human Rights, Rummelhardtgasse 2/18, A-1090 Vienna, Tel: +43/1 4027387, Fax: +43/1 4087444.

The Humanitarian Law Fund:

Spotlight Report No.10 on judicial practice in Beli Manastir, UNPA, Sector East, Belgrade, 1.3.94.
Following descriptions of several individual cases of police and judicial abuse, the report concludes that "state agencies arbitrarily arrested and kept people under detention without reason and with the sole view of forcing them and other individuals of non-Serbian origin to leave the territory controlled by the Krajina Serbs. Even though the Court found the accused not guilty, the court-room did make its contribution to the "ethnic cleansing".

Spotlight Report No.11 on police repression in Sanjak, Belgrade, 23.3.1994.
The report maps out mass arrests, beetings and the summary punishment of people of Muslim nationality following clashes between supporters of the Prishtina and Novi Pazar football clubs in October 1993.
Both reports available at: The Humanitarian Law Fund, Terazije 6/III, 11000 Belgrade, FRY, Tel: +38/11 658430, Fax: +38/11 646341.
email HLF_BG@ZAMIR-BG.ZTN.ZER.DE.

Contributors to CL No.24: Michael Spencer, Jolyon Jenkins (London), Lode van Outrive (Leuven), Christian Pillwein, Beat Leuthardt (Basel), Jan Kuhlmann (Bremen), Michael Williams (Hedemora, S), Nicholas Busch (Falun).

SUBSCRIPTION INFORMATION

A subscription period covers 10 issues of the Circular Letter.
Individual and voluntary associations: 100 Swedish crowns/ £10/ 25 Swiss francs/ 27 DM/ 190 Austrian Schilling/ 600 Belgian Francs/ 13 US$.
Institutions: 300 sek/ £30/ 75 sfr/ 80 DM/ 570 öS/ 1800 bfr/ 40 US$.
Subscription is free for individuals and voluntary associations in Eastern Europe and the former Soviet Union
UK and US subscribers: Please send an international bank cheque payable to Nicholas Busch, Blomstervägen 7, S-791 33 Falun (Sweden). Private cheques are not accepted.
Other countries: Please pay to Nicholas Busch, Postgiro konto 637 57 41-3, Stockholm or by postal order.
Do not forget to specify the purpose of your payment by indicating "CL-SUBSCRIPTION" and communicate your complete post address!

SPONSORS:

The Circular Letter is published with the assistance of grants from:

European Civic Forum/C.E.D.R.I.
Postfach 2780, CH-4002 Basel
Tel: +41/61 3826619 Fax: +41/61 3826620

Geneva Group - Violence and Asylum in Europe
(Groupe de Genève - Violence et Droit d'Asile en Europe)
Université de Genève, Faculté de Psychologie et des Sciences de l'Education, Marie-Claire Caloz-Tschopp et Axel Clévenot, 9 route de Drize,

CH-1227 Carouge-Genève
Tel: +41/22 7057111 Fax: +41/22 3428924

'Fortress Europe?'- Circular Letter
Utgivare: N. Busch, Blomsterv. 7, 791 33 Falun; Tryck: Lands-tinget Dalarna, Service Gruppen, Parkgatan 1B, 791 30 Falun
ISSN 1104-7976