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'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, comment and messages based essentially on the contributions of its readers.

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GERMANY

NEW LAW ON 'FIGHT AGAINST CRIME': INTELLIGENCE SERVICE TO COOPERATE WITH POLICE

On 21 September, The German Federal Parliament, the Bundestag, adopted a new Law on the Fight against Crime (*Verbrechensbekämpfungsgesetz*). Among other things, the legislation establishes a new role for the German foreign secret service, the *Bundesnachrichtendienst* (BND), restricts the right of the defence to present evidence to the court and extends provisions on "repenters" turned States' witnesses to "organised crime". The law is presented as a compromise between Christian Democrat "internal security" hardliners and Social Democrat and Liberal opponents, but many commentators agree that, by adopting the law, the parliament has opened the door wide to the further abolition of constitutional guarantees. The law will enter into effect on 1 December.

Combatting crime with the BND

Under the new law, the German foreign secret service, BND, may now communicate information on certain forms of serious crime, such as terrorism, arms and drug trafficking to the prosecuting authorities. Unlike the police, who are prohibited from investigating people not suspected of a crime, the Secret Service is not subjected to such legal restrictions and is equipped with sophisticated electronic and computerised equipment permitting the almost unlimited interception and analysis of international (including wireless) telecommunications.

To evaluate the mass of intercepted communications the BND makes use of computerised "filters" that sift all conversations for "key terms" - e.g. particular names, facts and objects.

Interior Minister Kanther's bill initially provided for the communication of all this information related to organised crime to the prosecution authorities and would have given the BND the right to actively participate in criminal investigations upon demand of the public prosecutor. In the "compromise" text adopted by parliament, the latter provision was dropped as a whole and the BND may hand out only fact- and object-related and not person-related intelligence to the police. In practice, it might, however, prove difficult to check whether these restrictions on police-secret service cooperation are being respected or not.

Repenters turned States' witnesses

The "repenter regulation" (*Kronzeugenregelung*) was introduced into the German code of penal procedure in the 1980s (see CL No.14, p 3). It allows for a massive reduction of sentences of "repenting" defendants turned States' witnesses. Until now, however, the use of the provision was limited to terrorist crimes. The new law on the fight against crime now makes the regulation applicable even to "organised crime". However, in view of the elasticity of this term, the judiciary is likely to make wide use of the scheme. Opponents of the regulation have claimed that the use of repenters, rather than improving criminal investigation, frequently leads to miscarriages of justice.

Restricted rights of the defendants

The new law contains a series of provisions restricting the rights of the defence:

- Accelerated procedures are allowed in the presence of "unequivocal evidence" and an expected sentence of at least 6 months imprisonment.
- In offences punishable with less than a year's imprisonment (i.e. the large majority of cases) the court is no longer bound to examine evidence upon request of the defence.
- The expulsion of young foreign offenders aged 16 - 21 is facilitated. A more sweeping regulation in the original draft, which would have extended this measure to youths under age 16, was dropped.

In promoting their "tough on crime" policies, the Christian Democrats made wide use of public concern about the rise of racist crimes. It is against this background that another facet of the new law must be seen: the penalty for denying the Holocaust has been increased from three to five years - a measure that has little relevance to the main measures of the new act.

Interior Minister Kanther's 'Offensive 2000'

On the very day of the adoption of the law on the fight against crime by parliament, the Interior Minister, Manfred Kanther, announced that he considered the law in its present form as an "indication of direction" and a first decisive step towards "changed methods in fighting against new phenomena of criminality". Brushing aside liberal concerns about a "Big Brother" society, the Interior Minister said that today's issue was no longer the protection of citizens against the "authoritarian state of the 19th century", but against a "parallel society of crime". Kanther welcomed the Social Democrats' decision to finally give up their "obstruction" against the government's push for increased internal security by accepting a compromise, but made it clear that he advocated the speedy introduction of all the controversial measures dropped within the compromise agreement by means of a "Law on the fight against crime No. 2". This would:

- legalise so-called "major eavesdropping" (*Grosser Lauschangriff*: i.e. the use of eavesdropping and other surveillance equipment *inside* private apartments; see CL No.20, pp.1-4);
- allow the confiscation of assets *presumed* to originate from criminal activity;
- establish a role for the German internal intelligence service, the *Bundesverfassungsschutz*, in combatting

crime.

The Ministry of the Interior has presented these measures and others in a document, "Offensive 2000", on "priorities in fighting international crime and in long term security concepts".

Sources: Süddeutsche Zeitung, 14.9.94, 20.9.94, 21.9.94.

Comments

Heribert Prantl writes in the *Süddeutsche Zeitung* (Munich):

"The intelligence service is a secret state power. It has at its disposal an enormous arsenal of intelligence-gathering weaponry: It can eavesdrop, snoop, recruit, go undercover and deceive, make use of bugs and directional microphones. In short, it may do everything the police may not. This is why, hitherto, the engagement of the intelligence service (or rather the intelligence services, as there are three of them in Germany) in fighting ordinary crime was taboo. The future law on the fight against crime which has just been negotiated as a compromise between the governing coalition and the SPD [Social Democratic Party], undermines this taboo.

"Had the CDU/CSU [Christian Democrats] alone had their say, things would have gone much further: under the initial proposals the BND [foreign secret service] was to become a genuine criminal investigation authority, responsible for criminal detection by screening inside Germany. The secret service was to be empowered to launch investigations attack against a multitude of citizens: in order to intercept a particular telephone call of a suspect, thousands of phone users were to be tapped and filtered. After lengthy negotiations, the SPD managed to stop this project.

"What remains is a still objectionable extension of the BND's field of activity. Since its creation, its task has been limited to providing information important for strategy foreign policy planning - in other words, to help secure the external security of Germany. Henceforth the BND's competence has been extended to cover information related to drug-related crime, currency counterfeiting and money laundering. For this purpose, the BND may switch on its "electronic vacuum cleaner": As soon as a certain key-word is mentioned in international telephone communications, the recording machine is automatically switched on. If indications of criminal offences emerge, they are handed over to the prosecuting authorities. (...) The fact remains: the secret service becomes a supplier of information to the prosecution, the collaboration and interlocking between police and secret service has started. The door, hitherto locked by law, between police and secret service has been opened. The crack opened by the new law on the fight against crime may appear insignificant, but, from now on, it will not be difficult to open the door wider. This is the big danger with the new law".

In the *Frankfurter Rundschau* Ferdos Forudstan notes that the new law has "abolished the right of defence lawyers to demand the examination of evidence" and he stresses that the "repenter regulation" permits organised criminals to "make deals between state and crime". Commenting on the approval of the "compromise" law by the SPD and the FDP (Liberal Party), he remarks that the FDP's concern for the State of Law appears to operate only "in times of relatively satisfactory economic statistics". As for the SPD, "civil rights and liberties are not in good hands" with this party. "Historically committed to a rigorous workers' socialism, traditionally a state-oriented party belonging to the authoritarian part of the left, [the SPD] has a long track record in helping undermine constitutional principles".

The best policy on crime, the author continues, is the fight against unemployment, poverty and a society that is drifting apart. Such understanding can be found in the programmes of the SPD, but in practice, the party is rather silent about its own proposals for long term solutions: "Out of a permanent fear of being defamed as a security risk by the CDU/CSU and of therefore not being elected, the comrades are striving ... to outdo the coalition [the government of Chancellor Helmut Kohl] in restricting fundamental liberties."

Sources: Süddeutsche Zeitung, 14.9.94; Frankfurter Rundschau, 22.9.94.

RACIST POLICE VIOLENCE ON THE RISE IN GERMANY

A disquieting series of serious police abuse in various states of Germany, mostly against foreigners, is raising concern about extremist right-wing infiltration of the German police forces. The recent resignation of the Interior Minister of Hamburg, Senator Werner Hackmann, is seen as an indication that politicians are losing control of the police.

Hamburg's Interior Minister Hackmann resigned in mid-September after a police officer brought a complaint about racist violence at a police station in the city. The officer asserted that foreigners were regularly verbally abused by policemen at the station. As soon as the victims reacted against such deliberate provocation, they were seriously beaten up. It also emerged that a superior at the station was a member of an extreme-right paramilitary "sports group". The police board reacted by transferring him to another task - state protection . . .

In January 1993, a Senegalese man, Dialle D., was hospitalised with serious injuries after being beaten up by two policemen. The officers were sentenced to a fine in an internal procedure and were not suspended from service. As for the victim, he is awaiting deportation

after ten years of residence in Germany.

In May, Oliver Ness, a journalist known for his anti-fascist positions was beaten and injured by police while covering an anti-Nazi protest rally.

Serious accusations of systematic and massive physical abuse have also been brought, among others, by Amnesty International, against special units of the Hamburg police, the so-called "E-shifts". These special intervention groups patrol "troubled" areas of the city.

In the space of four years, some 120 complaints, one for attempted homicide, have been brought against Hamburg policemen, but all cases were later dropped by the public prosecutor. Following Mr. Hackmann's resignation, embarrassing questions about a special relationship between police and the judiciary are now being openly raised by the media. The local newspaper, *Hamburger Morgenpost*, noted that extreme-right activities within the Hamburg police corps were well known since 1990 and wonders why, for four years, no action was taken by either the judiciary or the government. Ex-Senator Hackmann points to what he calls "a misconceived idea of camaraderie, an unfortunate corps mentality" within the police that prevented information on misconduct from leaking out. A representative of the federal organisation of "Critical Policemen" stressed that, in the police, "any one who expresses criticism, runs into problems".

Following the recent revelations, the Hamburg Interior Ministry was finally obliged to act. Approximately 120 cases of alleged police abuse are being re-examined, 27 police officers were suspended from service and an entire police platoon was dissolved in mid-September. But latest reports from the beginning of October say that, meanwhile, all 27 officers have been reinstated . . .

Hamburg no isolated case

In its 1994 Annual Report on Germany, Amnesty International notes a significant rise of reports on ill-treatment by police in 1993. The report expressly mentions a Hamburg police station.

During the summer, two policemen in Hannover hunted a 16 year old Kurd whom they had surprised while setting up posters in support of the Kurdish PKK guerillas late at night. The unarmed boy was shot and killed by one of the policemen. The police later claimed that the shot went off accidentally.

In September, the public prosecutor in Magdeburg charged a policeman with causing bodily injury while on duty. The officer is said to have kicked and beaten an Iraqi while arresting him. The incident occurred during anti-foreigner riots. The Magdeburg police have been accused with having denied the victims sufficient protection.

In Kiel, two policemen were charged with having beaten an Estonian with a leather belt in 1992.

In August 1994, a court in Leipzig sentenced four policemen. The main defendant, aged 24, was sentenced to three years and nine months imprisonment for ill-treatment of Vietnamese asylum seekers and a German.

In Hannoversch Münden (Lower Saxony), a 20 year old police trainee was put on a 4 months probation for having made the "Hitler salute".

In Giessen, a policeman was sentenced in April for having injured an Algerian asylum seeker.

In Berlin and Brandenburg, comprehensive investigations are under way against policemen suspected of having maltreated foreigners - mostly illegal Vietnamese cigarette dealers. Investigations are being conducted against no fewer than 50 Berlin policemen (see CL No. 21, p. 8).

Several officers in the Hannover region are accused of having beaten an Israeli student in late July so seriously that he needed hospital treatment. The victim said that he had politely asked the police men, who were having a party in a neighbouring apartment, to make less noise.

Sources: Süddeutsche Zeitung, 15.9.94; Frankfurter Rundschau, 15.9.94.

For more information, contact: BAG Kritischer PolizistInnen, Bernward Boden, Eugen-Sänger-Str. 18, D-50739 Cologne; Tel/Fax: +49/221 5994489

RACIST ATTACK AGAINST AFRICAN IN BERLIN

In mid-September, six skinheads pushed a 25 year old Ghanaian man from a running train after stabbing him. The victim lay on the railway embankment for over 10 hours before he was discovered by a train driver. The man suffered a fracture of the skull and his lower leg had to be amputated.

Although several travellers were in the car, when the attack occurred, nobody intervened or even informed the police. It is also unclear why the man, lying besides the track was not discovered earlier, although many trains passed.

The outraged foreigners' commissioner of Berlin asked at a press conference: "Why did the fellow travellers not inform the police at once? Why are we tolerating such crimes?"

Only after a public appeal did witnesses start to come forward. But according to the police, it will be difficult to find the culprits, "in view of the large number of skinheads" in Berlin.

Source: Frankfurter Rundschau, 24.9.94

EUROPE

DANISH BATTLE FOR TRANSPARENCY OF EU DECISION-MAKING

Denmark will appeal to the European Court in an effort to get support for its demand for more transparency within the EU. The Appeal is based on the "Guardian case".

Early this year, the British daily, the *Guardian*, submitted formal requests for records classified secret by the European Council in spite of earlier commitments of the Council to more "open" government. Though some of the documents were made available to the *Guardian*, the formal request was finally rejected by the COREPER, the Committee of permanent representatives at the Council (see CL No. 24, p.5).

Denmark is now seeking a decision by the European Court, that would legally bind the Council to act in compliance with its own Edinburgh declaration on transparency. The Danish (and Scandinavian) tradition of "open" government (see CL No.15, pp. 6 and 7) runs counter to a long standing practice of secrecy that distinguishes executive government in leading EU-Member States and is increasingly influencing decision making within the EU.

In order to obtain better control over Danish ministers participating in binding decisions of the EU Council of Ministers, the Danish parliament has set up the so-called "Market Committee". Danish ministers must report in detail to this powerful parliamentary committee and are bound to act according to its instructions in the EU Council.

The Market Committee has repeatedly caused irritation among EU circles because of its "time-consuming" and "complicated" decision-making; but national parliaments in a number of EU Member States are showing growing interest for this Danish solution to the problem of the lack of democratic and parliamentary accountability in the EU.

The Market Committee meets every Friday. All agenda proposals for the next meetings of the EU Council of Ministers are available to its members. Ministers are then called in one by one, extensively heard and instructed.

Before voting at the Council, the Ministers of the other 11 Member States must regularly await the Danish Minister's phone call to "his" Market Committee. Without the "green light" of the Committee, he cannot vote.

It has happened that Danish Ministers transgressed the limits of the mandate of the Market Committee, but according to Steen Gade, a member of the Committee, "they had a bad time afterwards".

Gade, an MP for the Socialist Left party, is an EU-opponent. Many of the party's voters want Denmark to leave the EU, but the party is trying to legitimise membership by battling hard for more transparency in EU decision making.

Source: Dagens Nyheter, 2.10.94

MEETING OF EU INTERIOR AND JUSTICE MINISTERS IN BERLIN

The setting up of Europol was once again at the centre of discussions at an "informal meeting" of EU Interior and Justice Ministers in Berlin, on 7 September. Yet, despite assertions by the German Interior Minister, Manfred Kanther, that Ministers had come close to agreement regarding the "most important aspects" of a new concept for the European police office, nothing indicates that the planned Convention on Europol will be ready for signature in October, as announced earlier.

Austria, as well as Finland, Sweden and Norway, which are expected to join the EU shortly, were represented at the meeting.

Interior Minister Kanther (Christian Democratic Union) strongly advocated an extended role for Europol. In future, its role should not be limited to merely the fight against drugs but should comprise the "whole range of organised crime", he said. Mr. Kanther made particular mention of internationally organised car theft, the smuggling of illegal immigrants and trafficking in nuclear materials.

The Minister, however, admitted that "no full agreement" was reached regarding Europol's eventual role in combatting terrorism.

Mr. Kanther once again repeated a long standing German demand for Europol to be given its own executive powers, transforming the office from a mere "data collection body" to an "intervention task force". According to Mr. Kanther, such a role is justified by the "increasing smuggling of nuclear materials", a problem that national police forces are unable to deal with by their own.

Ministers are further said to have agreed on the necessity to build in anti-theft devices in cars. The

ministers called for a regulation governing this "technical prevention" on Community level.

The issue of international migratory and refugee flows was discussed mainly under the aspect of "burden sharing". Mr. Kanther said it was a particular German concern to establish some form of common "crisis management" aimed at sharing the burden in the event of future massive influxes of refugees.

Source: Frankfurter Rundschau, 8.9.94

SWEDISH POLICE CHIEF NEW CHAIRMAN OF INTERPOL

The chief of Sweden's National Police Board, Björn Eriksson, was elected Chairman of Interpol by the 63rd General Assembly of this organisation in Rome, on 4 October. Eriksson succeeds Norman Inkster, a Canadian, in the office.

Although Mr. Eriksson will be Interpol's chair-man for a two year term, he does not intend to quit his job as a chief of the Swedish national police.

Eriksson said that, as chairman, he had a chance to influence Interpol's agenda. "Interpol is the second largest organisation in the world, after the United Nations", he emphasised. "With 176 member states we can reach virtually every place on the globe with arrest requests or help with identification".

According to Eriksson, the development of international crime has increased the need for closer police co-operation beyond the borders.

Beyond Interpol's mere message-exchanging function, the new president intends to develop the organisation's capacities for analysing the development and the structures of crime. "We have started analysing phenomena such as the Russian mafia, the Italian mafia, motorcycle gangs and child pornography rackets. Here in Rome we have had extended discussion about how to deal with environmental crimes."

Eriksson also wishes to improve Interpol's ability to assist "colleagues in Africa, Asia and Latin America".

This year's Interpol congress called on member states to commit themselves to track down war criminals from former Yugoslavia. It was also decided that member countries should be required to include information on human rights in police training.

The assembly further decided to co-operate more closely with Europol.

Source: Dagens Nyheter, 5.10.94.

INTERNATIONAL LABOUR ORGANIZATION ON PRIVACY IN WORK PLACE

Workers in industrialised countries are steadily losing privacy in the workplace as technological advances allow employers to monitor nearly every facet of time on the job, a new report by the International Labour Organization (ILO) says.

American workers are among those facing the greatest loss of privacy from the use of computers, cameras, listening devices, telephones and other instruments to monitor employee behaviour in 19 industrialised nations, according to a three-volume ILO study, **Conditions of Work Digest: Workers' Privacy**. One US survey suggests that as many as 80 per cent of employees in telecommunications, insurance and banking are subject to telephone or computer-based monitoring. Similar developments are taking place in European countries.

The move to increase international privacy protection is gaining ground. Workplace abuses in Italy, Norway and Sweden led to special restrictions on video and audio surveillance of workers. In Austria, Belgium, Germany, the Netherlands and Sweden, the use of technical devices to monitor employee behaviour and performances requires prior agreement or consultation. In France, concerns over company inquiries during recruitment led to the strengthening of the labour code to protect a job candidate's right to privacy.

"Workers' rights to privacy should be treated as a fundamental human rights issue, but the new technology can pose dangers to privacy, even as it is improving all our lives", says Michelle Jankanish, co-author of the ILO study. "It doesn't matter whether you work in a factory, in an office or as a highly paid engineer or professional - you are very likely under observation, with or without your permission, in some way by computers or machines controlled by your boss".

Companies like to engage in such monitoring, even though many admit that the practice elicits little or no useful information. Yet monitoring is likely to indirectly influence employees' behaviour. An employee's awareness of being under surveillance is likely to have an intimidating effect and to lead to self-censorship.

A study in the Netherlands demonstrates how rapidly technology is being used to monitor workers. 88 per cent of all electronic monitoring systems were installed after 1980, 57 per cent after 1985.

Workers in all countries have expressed considerable concern about employer access to electronic mail. The use of electronic mail has grown dramatically, especially in the United States, from just a few hundred

thousand in the mid-1980s to 10 million in 1990 and millions more by 1994.

The Electronic Mail Association in the U.S.A. takes the position that electronic mail is no different from desk drawers, office doors or other personal space in the workplace in terms of privacy, and should be treated with the same concern, but many companies take a different view.

ILO calls the problem a "chemistry of intrusion", a combination of threats to informational privacy, increasing encroachments on physical privacy and increased physical surveillance.

In the words of the Privacy Commissioner of Canada, "with each new form of surveillance, we become less like individuals and more like automatons, monitored for defects and aberrant behaviour that will consign us to the reject pile or mark us for 'corrective' measures".

Concerns of employees

The major objections by worker organisations to obtrusive computer monitoring in the workplace include:

- Their use is a violation of basic human rights and dignity, and is often carried out without adequate consideration for such interests.
- Computer data banks and telephone and video monitoring make prying into the private lives of workers easier and more difficult to detect than ever before.
- Monitoring and surveillance give employees the feeling that they are not to be trusted.
- Such practices can be used to discriminate or retaliate against workers, which may be difficult for workers to discover.
- Monitoring and surveillance involve both issues of exercising control over workers and control over data relating to specific workers.

The report offers many examples of the misuse or abuse of employer surveillance.

In Switzerland in 1989, employees of a watch company successfully challenged the installation of surveillance cameras in different areas of the workplace for the stated purpose of controlling the functioning of automatic machine devices. Under Swiss law, respect for the "personality right" of the worker is to be protected. The workers established that the cameras could also subject them to continuous monitoring. Under the facts of the case, the court found for the workers, stating that the employer failed to establish a over-riding interest to justify control.

A common argument made on behalf of limiting employer monitoring and surveillance practices in the workplace is that employers should not be able to engage in practices that, if carried out by a law enforcement agency, would require special authorization, be subject to restrictions, or possibly be prohibited altogether.

The American Civil Liberties Union (ACLU) stated that "even criminals have more privacy than employees. If the FBI wants to tap the telephone of someone who is spying against the country, they must get a court order . . . Only the workplace can surveillance be conducted without safeguards".

A US study on electronic monitoring and job stress confirmed earlier studies that implicated electronic monitoring as a major stress factor in the workplace, which is linked in part to the sense of powerlessness that monitored employees feel.

Legal frameworks, policies and practice on Workplace privacy in European countries

Austria: There is no specific legislation on workers' privacy in general, or on monitoring and surveillance in the workplace.

Belgium: There is no general right to privacy mentioned in the Constitution, and its provisions are considered to be too imprecise to deduce such a right from them. It does provide for the inviolability of the home and secrecy of letters.

Denmark: The Constitution contains the basic legal provisions respecting the inviolability of private homes and personal privacy related to the confidentiality of papers, postal, telegraph and telephone matters. Though there is no specific law on monitoring surveillance at the workplace, several laws do restrain employers.

Finland: The Constitution Act contains basic provisions respecting the inviolability of private homes and the "secrecy of postal, telegraphic and telephone communications", unless exceptions are provided for by law. Several laws exist that restrict employers from engaging in monitoring and surveillance at the workplace.

France: There is an explicit right to privacy mentioned in the Constitution. The Labour Code is the most important law to protect the workers from unjustified intrusions on individual rights (including privacy interests).

Germany: There is no explicit right to privacy in the German Constitution, though the Constitutional Court issued a landmark decision in 1983 in which it declare a right to "informational self-determination".

Italy: Several articles in the Italian Constitution protect workers on monitoring and surveillance. For example, Article 15 guarantees freedom and secrecy of correspondence and of all other forms of communication, while Article 13 forbids detaining, inspecting or searching a person or limiting in other ways his/her personal freedom.

Netherlands: Article 8 of the Council of Europe 1950 Convention for the Protection of Human Rights and Fundamental Freedoms has been incorporated into the Dutch Constitution. In addition, a number of fundamental rights to privacy were included in the revised Constitution of 1993.

Norway: The Constitution of Norway prohibits the searching of a person's private home, except in criminal

cases, but does not refer to the right of private life per se. Though there are no specific statutory provisions on monitoring and surveillance at the workplace, several laws have an impact on or restrict the ability of employers to monitor employees.

Portugal: The Constitution of 1976 grants privacy rights to all persons. In addition, Article 35 explicitly regulates the use of data processing, granting citizens the "right of access to the data contained in automated data records and files concerning them".

Spain: Article 18 of the Spanish Constitution guarantees "the right of honour, personal and family privacy and identity" and the "secrecy of communications, particularly postal, telegraphic and telephone communications", except by judicial order.

Sweden: Debate exists over the applicability of constitutional principles on privacy to the private sector. Several laws affect or restrict the ability of employers to monitor employees.

Switzerland: There are no specific provisions on privacy of workers. Some legal commentators, however, have set out the framework of protecting workers' privacy through applications of principles protecting the "personality" rights of individuals. This right, however, is limited by the employment contract.

United Kingdom: There is no constitutional or statutory right of privacy in the UK as such. The Data Protection Act of 1984 does, however, introduce certain guarantees of employee privacy for data collected in the employment context, which are stored on computer.

Source: ILO Press Release, Washington, 1.8.94. Contact: Marshall Hoffman, ILO, Washington Office, 1828 L Street, NW, Washington DC 20036; tel: +1/7038202244.

OPINION

FORMER YUGOSLAVIA: CONTEMPORARY REFUGEE-REGIMES AND THE POST COLD WAR ORDER

by Carl-Ulrik Schierup, Associate Professor at the Department of Sociology, University of Umeå, Sweden

Ex-Yugoslavia has become one of the testing grounds for new models aiming at "internalising" refugee situations to the regions of conflict. This general strategy of the post cold war global order is currently finding its rationalisation in public claims for allegedly more farsighted and rational solutions to the refugee problems of the world. Emanating conceptions of "temporary protection" in a number of European refugee-receiving countries have developed in conjunction with the Yugoslavian crisis and in particular with the challenges represented by the war in Bosnia and Hercegovina. The same is true for organised strategies to establish refugee centres in proxy areas (for Bosnian Moslems in Croatia, for example) or so-called "safe havens" in the midst of the zones of armed struggle.

If this reorientation is to represent more than short-sighted "strategies of cost reduction" (Suhrke), however, then schemes for resettlement and reintegration of displaced persons must be based on comprehensive and long term plans for conflict resolution and on broad regional socio-economic development strategies attempting to tackle the basic causes of the refugee flows. In global perspective "ethnic cleansing" in the Balkans represents only one among series of consecutive political upheavals giving rise to forced migrations, since the end of the second World War. Each of these have been marked by specific combinations of "internal" and "external" political-economic causes. Intervening refugee regimes have given shape to their particular character and modelled their particular socio-political consequences. But while the 1970s were marked by vigilant discussion about alleged basic economic *cum* political "root causes" behind flight and exile, the post cold war 1990s' debates appear almost entirely to have left this type of general perspective. It has given way to an almost universal preoccupation with "human rights", most often defined in a narrow legalistic *cum* moralistic sense.

A onesided moral or legalistic perspective may, however, if at the expense of careful analysis of internal as well as external political and economic causes, have fatal consequences. This is reflected in a series of short sighted and often contradictory international interventions on the contemporary Balkan stage of conflict.

Ethnic cleansing is the indicator of deep dilemmas in the ex-Yugoslavian region connected with dismal processes of "balkanisation"; a term belonging to political science, which stems from the time of the Balkan wars in the beginning of this century and the break up of the multinational Habsburg and Ottoman empires. Like yesterday's, today's neo-balkanisation theatre is, however, run by global as well as local actors. The desolate political condition of a new-old Balkanism has developed in the complex intersection of local systems of government in the Yugoslavian region with global economic and political systems of power.

The latter are reflected in incapacitating debt traps, international super-austerity measures, misplaced forms of political intervention (as well as non-intervention) and the replication of old imperial projects. In a situation marked by intense external pressure, where no penetrating domestic reforms and a necessary transformation of a staggering real socialist system of government and resource-management were given a fair chance to solidify, the results became social disintegration, political chaos and internal war. At this point armed violence has itself come to act as an increasingly autonomous factor generating further economic disintegration,

arid poverty and new sources of conflict. A necessary implication is a fundamental change of policy, from within, but also from without.

Violence and state disintegration

One of the most common forms of refugee-producing violence in the new post cold war era has become "a reversal of the state formation process which", under the auspices of one or the other of two opposed superpowers, "had earlier been a source of conflict" (Suhrke). We may today, in contrast, speak of "*state disintegration*" or an "implosion" of social conflicts, writes Astri Suhrke, as a major contemporary political feature and a new essential constituent of North-South and West-East relationships. We find a variety of regionally distinct manifestations of this actually or potentially refugee generating disintegration process in different parts of the globe: in Africa, in Latin America and in the post-communist world of the former Soviet Union, Eastern-Central Europe and on the Balkans. We are apparently dealing with a phenomenon contingent of global changes in the post cold war era. At the same time it is evident that these global trends articulate with a range of regionally and system specific conditions.

In an attempt to explain the dynamics of an ever expanding cycle of ethnic cleansing in today's ex-Yugoslavia Mary Kaldor (1993) contrasts today's ethno-nationalist movements with those of the 1930s. "The new nationalism is decentralising and fragmentative in contrast to earlier nationalisms which were unifying and centralising", argues Kaldor.

The current armed clashes between different Moslem factions in Bosnia-Herzegovina illustrates very well the segmentary character of the new nationalisms, which Kaldor speaks about. Similar tendencies appear to be imminent also in Croatia and Rump Yugoslavia and may well come to represent a second phase of warfare and fragmentation extending to other parts of the territory of former Yugoslavia.

The seemingly unbounded nature of current "ethnic cleansing" cannot be explained with reference to an elaborate and relatively coherent ideological system as for example in Nazism. It has to do rather with the particular character of the new nationalism, which, Kaldor argues, could best be identified as "a primitive grasp for power" based on an anarchic "war economy", - "a social formation dependent on continuous violence". Not a war economy in the traditional sense of sustaining strong states, she continues, but rather to "sustain a loose coalition of petty criminals, ex-soldiers, and power-hungry anonymous politicians all of whom are bound together" under the token of ethno-nationalism, "in a shared complicity for war crimes and a shared interest in reproducing the sources of power and wealth".

A global shift of power

Kaldor describes conspicuous attributes of the new post cold war regimes on the Balkans and elsewhere. Yet, her reception of contemporary ethnic nationalism hardly takes us far beyond the level of moral condemnation and the distanced and spurious intellectual interpretations dominating Western receptions of the post-communist crisis in general. Global political and economic power relationships, and thus the West itself, remain in intellectual brackets in relation to the stages of ethnic warfare and ethnic cleansing. An analysis of the forces of disintegration at play entirely in terms of an alleged moral "Nihilism" of the new "ethnic nationalism" - reducing its ideological content to a question of "identity" - leaves out a necessary discussion on the fragmentation of multiethnic states like Yugoslavia and the former Soviet Union in historical-structural and political-economic terms. In effect, it eaves us even with a rather shallow understanding of the apparent present inability of the new successor states to solidify.

In order to formulate a more inclusive perspective on contemporary ethnic nationalism and ethnic cleansing it would be worthwhile to spotlight some recent propositions of the Swedish economist, Kenneth Hermele (1993) who argues that increasing difficulties in establishing meaningful distinctions between a range of categories of refugees, is due to the fact that they all flee from the consequences and effects of a certain policy. We can observe a central and increasing role of the West in producing refugee fluxes during the 1980s and 1990s; a development closely linked to the debt crisis, which resulted in a shift of power towards the creditors.

This logic, being a latent tendency globally, has been particularly evident in Africa. Here, at the same time as the existing governments lost the international guarantees, they earlier had, as important pawns of the Cold War, "slow negative growth" has, during the 1980s "strained the capacities of states to provide even a rudimentary framework to support the functioning of civil society and made ethnic compromise more difficult" (Suhrke 1993).

But it has even come to increasingly comply to the situation in a debt ridden Yugoslavia, where Western creditors' enforcement of super-austerity programmes during the 1980s (as part of a general strategy of exporting the economic crisis to the periphery) was to function as one of the most important factors for delegitimising attempts of important elite factions at the central federal level to implement a policy of economic reform. What is happening today on the Balkans, in Eastern Europe and the former Soviet Union is, quoting Hobsbawm (1993), "the sudden imposition of a theological dogma as unrealistic as the attempt to construct socialism by central command in a single country". Not that their economics did not need reform. But "the consequences of plunging them into the free market from one day to the next have ranged from the tragic to the fatal", asserts Hobsbawm.

In multi-ethnic Yugoslavia the results were truly fatal. This holds true, even though market economic reforms did not come "over night", and even though the country was the best prepared for a far-sighted reform

policy among all the countries of real socialism.

The 1980s became dominated by the uncompromising imperatives of a series of super-austerity measures forced upon Yugoslavian federal governments by western powers, the IMF and the World bank. The federal reformers of ex-Yugoslavia could hardly, in a foreseeable future, offer the majority of the population much more than increasing unemployment and the gloomy marginalisation as "new helots" (Cohen 1987) of an increasingly unequal international division of labour. When the last Yugoslavian premier, Ante Markovic (1989-91), abruptly turned off the safety-valve of hyper-inflation, an explosive crisis of legitimacy ensued, which blew the federation into pieces. The ensuing vacuum was filled by the hegemony of nationalist populists promising welfare for "all of our nation", but at the inevitable expense of ethnic Others.

The fragmentation of a social compact

The reign of a militant post cold war ethno-nationalism emanated as the last distorted cycle of a form of authoritarian-etatist political mass mobilisation upon which the legitimacy of Yugoslavian post Second World War real socialism was built (Schierup 1991).

Its basis was a specific type of consensus politics (Schierup 1990). It could be seen as a less sophisticated real-socialist counterpart to Roosevelt's "New Deal" and the grand 20th century compromises between capital and labour in the core industrial states of Europe. It expressed a coalition between unequal partners, within the framework of which the patron (the elite) "protected" the "working class" or the "people" by guaranteeing full employment, a minimal basic income and extended state sponsored programmes of social welfare. "The protected" would, in turn, guarantee the political legitimacy of the elite.

This consensus politics represented originally a *transethnic* political compact. It was linked with a complex strategy to lift the Yugoslavian community of nations beyond the grip of internal forces of fragmentation and underdevelopment as well as with efforts to liberate the region from a crippling position within those days' unequal international division of labour. Since 1945 this consensus was repeatedly revived, reformed and transformed. This took, not least during the 1970s, dramatic forms marked by a stubborn "conservative-orthodox" reaction. This reaction was mounted against Yugoslavia's first sweeping federal (1960s) economic reform programme and a jeopardising attempt to enter the international division of labour on liberal market economic terms (Schierup 1990).

It remained (in fashion akin to what we can observe in the region of the former Soviet Union today) entrenched in the local strongholds of local state-elites within the individual republics. A number of mutually competing national-bolshevistic state-bureaucracies opted for a fragmented integration of Yugoslavia's individual units into world capitalism on unilateral terms of financial and technological dependency. They came to occupy a position reminiscent of that of "comprador bourgeoisies" in, for example, middle America and the less powerful states of South America. But, combined with a successive revival of old "buried" national projects, popular legitimacy and political power remained dependent upon extended welfare programmes and commitment to working class protection.

The economic basis for a reworked leftist national-populist consensus in the single republics should, essentially, come to be foreign loans taken up on a conflated global petrodollar market. This was combined with large scale remittances from Yugoslavia's numerous migrant workers. Later (during the 1980s) their role was, increasingly, taken over by a hazardous policy of hyper-inflation. A mounting contradiction, consisting in the apparent impossibility of reconciling locally established vehicles for mass political and ideological integration with increasingly uncompromising imperatives of global economic *cum* political embraces, reached a critical breaking point in the post cold war 1990s. It led to economic collapse and uncontrollable political eruptions. It spawned - as the latest cycle of populist legitimisation politics - militant ethno-nationalism and ethnic cleansing; a grim populist reaction following upon a havocked liberal reform policy and the harsh international super-austerity measures of the 1980s. Civil war became the final source of legitimacy left for local state elites and the last political outlet for increasingly impoverished populations void of apparent alternatives.

Perspectives for the new international refugee-regime

The perspectives for the new refugee regime set up on the ruins of Yugoslavia' multiethnic community of nations in the post cold war era are dependent upon a solution to the central dilemmas of this unlucky part of Europe. Distinctive for a chaotic present and determinant for an uncertain future is that the dominant political powers of Europe represent not only indispensable parties to a solution, but an integrated part of the problem.

An inglorious "scramble for the Balkans" between the Central and Western European powers, Turkey, the United States and Russia will provide no basis for a projected policy of peaceful resettlement and reintegration of refugees. The basic strategy of the post cold war refugee regime, presently based on so-called "conflict resolution" provided by the "international community" and the extended provision of humanitarian aid, is apt to fail in a situation where the representatives of "the international community" are essentially themselves parties to the conflicts. Rather it will mean a situation where proliferating numbers of "internalised" refugees themselves will become an increasingly extremist party to a never ending spiral of ethno-national violence. "Safe havens" will develop into "Gaza strips". But also the artificial ghettos, about to be created in the receiving states of Europe based on a dubious conception of "temporary protection", will come to form ideal breeding grounds for so-called "fundamentalisation" and continuous "terrorism". Thus a second cycle of forced exodus and hideous return will be closed in an ex-Yugoslavia, where much of the extremism and ferocity of contemporary ethnic nationalism is

being carried forward (in Serbia as well as in Croatia) by the sons and daughters of post World War political refugees and labour migrants; the products of revanchist diasporas based in Europe and overseas.

The Yugoslavian crisis has, more than anything else, revealed the precarious political configuration of the united Europe, but even of its individual member states, divided as they are between political forces favouring a continued European integration and those pressing for the reassertion of individual national interests.

But it is even, above all, the strength of a self-assertive nationalism, and not the federal bodies of the community, that has propelled the kind of closure which we call "Fortress Europe". This has manifested itself in the new post cold war refugee regimes' policies of *containment*. These policies do not only mean measures to prevent refugees from crossing borders. They are designed to fundamentally reduce the rights of asylum seekers and refugees; to obstruct them from achieving significant political, economic or legal empowerment, once they have arrived. Measures to reduce the right to work, access to education and welfare benefits, and guarantees for family reunion are introduced in state after state. The European response acts to make asylum seekers and refugees third-class citizens. It marks substantial cuts in the humanitarian principles of the 1951 Geneva Convention. All of these trends are propelled, not only by new fascist or extreme populist movements, but by an intolerant ethnicist imagery of the media and a broad section of the political spectrum. The paradox is, writes Gorana Flaker (1993), that refugees exposed to ethnic cleansing in ex-Yugoslavia "come seeking safety but instead are exposed to other forms of violence".

One may, at present, only speculate concerning the long term effects of this discriminatory regime on the refugees themselves and on their Balkan lands of origin. But their exposed situation in the so-called "host" countries is hardly likely to function as a proficient school for learning "democracy" and inter-ethnic tolerance and co-operation. Rather it may generate revanchism together with ethnic absolutism and exclusivism. Hereby the "Fortress Europe" syndrome will, on the Balkans, act to further perpetuate the evil historical circle of ethno-national violence to which old politically marginalised diasporas from the Yugoslavian region have already amply contributed. Hence, political stabilisation on the Balkans will, in more than one sense, be contingent upon a "debalkanisation" of Europe in general. This is the juncture from where any proficient politics for the integration of displaced populations must set out.

A complete list of references mentioned in this piece, as well as a more comprehensive version of the above article, **The Logics of Balkanism - Ethnic cleansing, state disintegration and the ex-Yugoslavian refugee question**, (June 1994, 14 p.) can be ordered from the author.

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MESSAGE

URGENT APPEAL ON BEHALF OF CROATIAN JOURNALIST

AIM, the alternative information network established by independent journalists from all parts of former Yugoslavia, has sent us the following urgent appeal.

On 29 August 1994, Drago Hedl, AIM's correspondent in Osijek, sent an open letter to Branimir Glavas, the Prefect of the Osijek-Baranja district in Croatia, to protest against threats made by Glavas against his life. Mr. Hedl has for many years been a thorn in the flesh of the local HDZ [the party of President Franjo Tudjman] authorities led by one of the most infamous hardliners in the party, known as the Sheriff of Osijek".

Drago Hedl was born in Osijek in 1950, studied literature and first worked as an editor of the literary magazine *Revija*, from 1974 - 81. He then joined the Osijek regional newspaper, *Glas Savonije* (Voice of Slavonia), later becoming its editor-in-chief from 1985 to 1991. He succeeded in achieving the highest circulation figures in the paper's 48 year history and turned it into "perhaps the finest regional paper in the Republic" (Misha Glenny) with a strongly independent editorial policy.

As tensions rose in Slavonia in Spring 1991, the authorities, led by Glavas, took over control of the paper by imposing on it a new management board - with Glavas as its head. They even obliged Mr. Hedl to publish an advertisement calling on readers to boycott his own paper. This, however, only led to an increase in circulation. Drago Hedl and his staff faced death threats; Hedl was briefly drafted into the army; and finally the Prefect Glavas burst into his office accompanied by ten armed soldiers and expelled the staff from the building.

Drago Hedl then went on to work as Osijek correspondent for the then independent Split newspaper, *Slobodna Dalmacija*, from September 1991 to December 1993. When the HDZ authorities took control over *Slobodna Dalmacija* by imposing a new management board, Hedl started to work for the independent weekly, *Feral Tribune*. He also writes for other independent papers in Croatia (*Arkzin*, *Novi List*, *Start nove generacije*, and the recently launched, Osijek based, *Bumerang*) and is correspondent for AIM and the London based *War Report*.

As Mark Thompson stresses in his book, *Forging War* (published by *Article 19*), the Croatian authorities continue to keep a tight grip on the media.

"Means of controlling and disciplining the media have included:

(...)

- using government-controlled media to attack, slander and demoralise journalists and media outside government control,
- instigating or tolerating paramilitary means to intimidate journalists and gain control of the media."

In July 1994, the government increased pressure on the highly respected *Feral Tribune* by removing a sales tax exemption which is given to all newspapers except for pornographic magazines. By doing so, Zagreb sought to equate the *FT* with an extreme nationalist and anti-semitic paper, *Hrvatski Vjesnik*.

On 26 July 1994, the southern Austrian regional paper, *Kleine Zeitung*, reported on this affair under the headline, "Sales tax for extreme newspapers", simply repeating Zagreb's version. It even went as far as to give the names of Drago Hedl and two other well-known independent journalists, accusing them of having been loyal to the former communist regime. This article was then translated by the official Croatian news agency, HINA, and distributed to the entire press, including the journalists' names.

In August 1994, Branimir Glavas sent verbal threats to Mr. Hedl via a deputy from Osijek in the Croatian parliament, warning him that he will "crush and reduce him to ashes and dust" and calling on him to "move to Istria because that is where you belong". On 29 August, Drago Hedl wrote an open letter to Glavas in protest. This was published by *Feral Tribune*, *Novi List* and the AIM network.

Glavas replied early in September with an extraordinary long letter which was also published by *Feral Tribune*. He at no stage denies making threats. The letter is above all remarkable for the language and "literary" style used by someone who is after all the prefect of a region and the official representative of the authorities in Zagreb.

AIM is convinced that these threats should be taken seriously, especially when they come from a man like Glavas.

We therefore call on you to write to the Croatian Prime Minister, Nikica Valentic, and warn him that you are closely following this affair and that you hold the government responsible for Drago hedl's security.

The International Federation of Journalists (IFJ) has already protested in an open letter. Branimir Glavas responded through the Croatian press. He claims that Croatia is a democratic country despite journalists like Hedl who are trying to prove the opposite.

Address your protest to:

**The Prime Minister, Mr. Nikica Valentic
Zagreb (Croatia)
Fax: +385/41 432041**

For more information, contact: AIM, 13 rue Gazan, F-75014 Paris; Tel: +33/1 45898949; Fax: +33/1 45809940.

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