CIRCULAR LETTER NO. 29 NOVEMBER 1994

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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, poli cing, 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.
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EUROPOL, INDIVIDUAL RIGHTS AND DEMOCRATIC CONTROL

In the following, Michael Spencer comments on the most recent available draft for the Europol Convention, of 10 October.

The author is European consultant for 'Liberty', the British National Council for Civil Liberties and belongs to a European Monitoring Group set up by the British section of the International Commission of Jurists. He is currently working on a book on civil liberties in the EU.

Introduction

The possible involvement of the European Court of Justice (ECJ) has been among the main points of disagreement between the member states. France and the UK were reported as opposing such involvement because it would imply the authority of European Union institutions over an intergovernmental agreement.

It now appears that, as a result of unprecedented concessions by the German presidency of the Council, these differences may be resolved. Nevertheless, the present draft is not likely to be signed by the Netherlands. Indeed, the Dutch parliament appears to be fundamentally opposed to any Convention text not providing for satisfactory parliamentary and judicial control. It is further believed that France is deliberately delaying work on the convention for reasons of its own. As a result, it is unlikely that agreement on a final text will be reached at the next meeting of the ministers of justice and home affairs of the EU-member states, on 30 November.

The concessions made in order to overcome mainly British opposition to any involvement of the ECJ would leave citizens of the UK in particular with a level of legal protection inferior to that guaranteed to those of other member states. This concern is compounded by defects in the convention which leave all individuals liable to potential abuse of their individual rights through the wrongful or erroneous use of their personal data, or misapplication of unreliable intelligence stored in Europol's files. The safeguards laid down seem likely to prove inadequate in practice.

At another level the convention is also highly unsatisfactory. There is no mechanism whatever for control or monitoring by national parliaments, and no guarantee that Europol's power (already wide under the proposed convention) will not be extended in the future to cover operational matters. National sovereignty, which in matters of criminal justice has always been jealously guarded by member states, will inevitably be compromised if the convention goes through in its present form. Parliaments will also be powerless to change the rules incorporated in the convention which apportion the annual budget between member states.

Background

The idea of a "European FBI" with investigative powers was raised in the late 1980s and adopted with particular fervour by Germany's Chancellor Kohl. The response from other member states was mixed, with some of them determined to accept nothing more than a passive information exchange system of the kind operated by Interpol; indeed some (especially France which hosts the headquarters of Interpol) preferred the idea of expanding the activities of Interpol within Europe. Nevertheless, the June 1991 meeting of the European Council agreed in principle to incorporate the basic idea into the Maastricht Treaty on European Union (TEU). Article K.1 (9) duly refers to "the organisation of a Union-wide system for exchanging information within a European Police Office (Europol)". The wording appears carefully chosen not to restrict Europol to that task alone, and the Council's Legal Service gave confidential advice that it would be legally possible to assign operational duties to Europol.[1]

The European parliament approved of the idea of ultimatively giving Europol such powers, but insisted that its creation and control should be entirely within the scope of Community Law.[2] To this end it called for the Commission to submit a proposal for setting up Europol under the all-purpose Article 235 EC. This demand was ruled out of order by the Council's legal advisers, and preparatory work went ahead in secret under the direction of the intergovernmental Trevi group.

Although the TEU did not come into force until November 1993, a nucleus for Europol had already emerged in April of that year in the form of the European Drugs Unit (EDU). At the end of November 1993 it was finally agreed, after intense competition between member states, to base Europol (incorporating the EDU) in The Hague. In the absence of a convention ratified by member states it still lacked a legal existence. Jürgen Storbeck, formerly of the BKA (federal office of criminal investigation) was officially confirmed by the Justice and Home Affairs Council as "coordinator" of the EDU in June 1994, with a budget of 3.7 million ECU to start work in 1995.[3] Well before this he had talked openly to a Swiss newspaper of his belief that even before a convention was set up, Europol should expand its activities "pragmatically" beyond its official remit of working on drug trafficking.[4]

Current status of the draft convention

The first draft was produced in November 1993 [5], and later released with no publicity whatever to the parliaments of some at least of the member states for scrutiny (though not for open debate and approval). It attracted surprisingly little attention even within these bodies, and only reached the public domain in the middle of 1994.[6]

Other more detailed drafts leaked out later in the year; their existence was officially made known to a few bodies such as the Dutch parliament, whose ministers are obliged under national law to obtain approval before agreeing to the final draft of a convention affecting the rights of citizens. It was clear throughout that the German

government, which held the presidency of the Council in the second half of 1994, was extremely keen to get agreement during its term of office. There were, however, strong differences of opinion between member states that made this difficult to achieve, and negotiations continued over several months. The comments that follow are based on a German text (not a final draft, which remains to be agreed) produced in October 1994.[7]

Elastic definition of broad objectives

The objective of Europol is broadly stated in Article 2(1) as that of aiding member states in preventing and combatting "terrorism, drug trafficking and other serious forms of international crime" - a far cry from the limited role of the EDU. Terrorism had been a particular preoccupation of the Spanish government. However, continuing differences over whether to make this a priority and what else to classify as "serious international crime" led to a compromise under which Europol's primary tasks are stated in the main text, and other possible options are listed in an annex to the convention. Article 2(2) lists the main targets as

- drug trafficking,
- crimes connected with nuclear and radioactive substances,
- smuggling of illegal migrants,
- motor vehicle crimes such as illegal sale in other states and theft of cargo, and
- associated money laundering operations.

The annex lists a further 22 items, any of which the Council may add to the list on a unanimous vote. The first is "terrorism", and 19 other types of crime are grouped under three headings:

- *Crimes against life, bodily integrity and freedom:* homicide, grievous bodily harm, abduction and hostage-taking, illegal traffic in human organs, profiting from prostitution.
- *Crimes against the interests of the state:* illegal traffic in arms, ammunition and explosives; illegal technology transfer, traffic in human beings, arranging illegal labour, forging official documents, crimes against the environment, illegal traffic in works of art and antiques.
- *Crimes against property:* rackets and extortion; counterfeiting of money, cheques and securities and their dissemination; credit card crimes, product privacy, investment fraud, computer crime, international fraud as defined in Article K.1(5) TEU.

The final two items, which can be associated with any of the above crimes, are "illegal money laundering" and "membership of a criminal organisation".

A blank cheque for the Council

This comprehensive catalogue will give the Council a free hand to direct Europol in almost any direction. The items involving illegal labour and document forgery, like the reference in the main text to "smuggling in" people, are clearly designed to allow the involvement of Europol in matters relating to immigration. While the agencies implementing the external frontiers convention will use the European Information System to deal with the exclusion of unwanted immigrants, Europol will be able to target those who are suspected of helping them to slip through the net or obtain work after they arrive.

The rest of the convention deals in detail with many other aspects of Europol such as its basic structure, the automated information system (Europol's own system, not identical with the EIS) and what it may contain, data protection, personnel and administrative control, confidentiality, parliamentary control, financial regulation, establishment in The Hague, judicial control, immunity from prosecution for its employees, relations with other organisations and third countries, modification of the convention, and reserves (opt-outs) by member states. Only the more important or controversial points will be discussed here.

Europol's information system: facts and intelligence

Article 1 lays down that Europol and its computer system will be connected to national units run by a single agency in each member state (a subject of fierce competition between the police and security forces of certain countries). Under Article 3, Europol is to facilitate information exchange between member states and is also to collect, collate and analyse both factual information and intelligence. This is to be shared with the national units to keep them informed of links established between punishable acts. Europol will also help national units with research, "strategic intelligence", training and general support for their investigations. In return, national units are to supply all necessary information to Europol.

Article 5 specifies that each national unit can appoint liaison officers to work at Europol headquarters. They will have access to data from Europol's information system that concern their country of origin, and can transmit both personal data and intelligence to their national units; they thus provide a channel of communication that is less restricted than the automated system.

Articles 5a, 6 and 7 describe what information can be held by Europol. Its computerised information system, which can be supplied with data and interrogated directly by national units, will contain basic personal data on suspects, persons already liable to imprisonment, and those "for whom certain facts justify the presumption that they will commit crimes". Other data will relate to the facts of their alleged offences.

Under Article 10, Europol will also maintain its own data bank (not necessarily computerised, and not automatically accessible by national units) for intelligence and analysis. This will contain data on persons other than those described above: potential witnesses, possible future victims, contacts and companions of suspects, informers and other sources of information. There will be an index system containing key words for looking up

information in the analysis files, and the data (but not the analysis) will be accessible to national liaison officers. Information can be requested from other inter-state and supranational organisations (including Interpol) and from non-EU states; automatic information exchange with their computerised systems will also be allowed where this is covered by other agreements (Articles 10(4) and 16).

Hard times ahead for data protection commissioners

Detailed rules are laid down in various articles to order compliance with standards of data protection based on the 1981 Council of Europe convention on data protection; national units and Europol are responsible for applying these rules to the data that they themselves collect or transmit. The Council of Europe's Recommendation R (87) 15 on personal data held by the police is to be 'taken into account'. Shared data are supposed to be utilised only by national units, nut "other national authorities" may do so with the agreement of the originating national unit (Article 15(3)). Supervision of data protection is divided between national authorities (which have the power under Article 21 to inspect the offices and documents of their country's liaison officers) and a joint authority (Article 22), made up of two representatives of each national authority; this has the task of monitoring Europol's own adherence to the rules.

Individuals who have cause for complaint about the use of their personal data have various rights. Under Article 17 they can ask for details of the data held about them, though this is subject to the usual exceptions for subject access to police data. Where access is refused, the joint data protection authority can be asked to check the data on the person's behalf but may not be allowed to reveal the contents to the applicant. Article 35 offers a limited right of compensation (no more than 100,000 ECU) for financial loss or "serious violation of personal rights". Claims have to be against the national unit under national law; if the harm to an individual arose in another state, the latter is obliged to reimburse that of the complainant. Europol may not (as in earlier drafts) be directly claimed against for the consequences of its own mistakes.

All power to the executive?

Article 25 lists the functions of a Management Board comprising one representative of each member state. The Commission of the EC can attend but has no voting rights, and the Board "can decide to meet in its absence" (implying its possible exclusion). The Council retains control over all major decisions, and is given the power to decide various matters (usually by unanimity) relating to rules of procedure and data protection that are not detailed in the convention. The servants of Europol may be subject to security vetting (Article 28) and have a lifelong duty of confidentiality (Article 29); they may not give evidence to an extrajudicial enquiry without permission from Europol's Director. Under Article 38 they will have privileges and immunities that remain to be specified in a later protocol to the convention. An earlier proposal to give them the blanket immunity from prosecution accorded to all EU employees (a little known feature of a protocol to the Brussels Treaty of 1965) was evidently thought too sweeping to apply to police officers.

The European Parliament may ask questions...

Article 31 defines a very limited procedure for keeping the European Parliament informed and listening to its views, without giving it any real control over Europol. The Council's Legal Service had advised that to do any less than this would constitute a clear violation of Article K.6 TEU. The article therefore promises that the President of the Council will give an annual but confidential report to the Parliament, accept questions from it, inform it in advance of major decisions and "bear in mind" what it has to say. Since Article K.6 TEU makes no mention of consulting national parliaments, they are simply assured in Article 31(6) that the rights of national parliaments "remain untouched".

Article 33 leaves open some alternatives (to be resolved in the final draft) for the auditing of Europol's accounts. The obvious course of using the EC's court of Auditors is one option, but this has been strongly resisted by France and the UK on the grounds that it would imply Community competence over Europol. The second option is the creation of a joint board of examination, drawn in rotation from the auditing authorities of three member states at a time.

Judicial control: continuing disagreement

Article 37 concerns judicial control, another source of continuing disagreement between negotiating states. For disputes between member states or between a state and Europol over application of the convention there are currently three alternatives: jurisdiction by the European Court of Justice (ECJ), jurisdiction by a court of arbitration headed by the President of the ECJ (or his representative) with two other suitable persons chosen by the Council, or settlement within the Council with a two-thirds majority vote as last resort. For other disputes between Europol and member states or between Europol and its employees there are different sets of alternatives, again leaving open whether judicial institutions of the Union are involved or not.

For claims by individuals that any of their rights relating to personal data have been infringed by Europol or another member state, Article 37(2) prescribes only one course: to take a case under national law against the national Europol unit before a national court or competent tribunal. If there then arises a question of interpretation of the convention, the court or tribunal may ask the European Court of Justice for a preliminary ruling which may in some circumstances be binding.

Extraordinary clause: 'Opting out' of judicial control

Here, one might think, would be the point at which governments resisting ECJ competence would have to concede the principle involved, after which it would be impossible for them to oppose a similar provision in other conventions. However, the draft includes an extraordinary concession to their position: an option in Article 41 that on acceding to the convention, any state may decline to be bound on this point and this point alone. The reservation, which can later be withdrawn, lasts initially for three years but can then be unilaterally renewed. Citizens of such a state will thus be left to the vagaries of their national courts in the interpretation of an international convention which is not incorporated into domestic law, and whose detailed provisions have never previously been tested. The insertion of the reservation clause can only be attributed to the desperation of the German presidency faced with the prospect of not seeing its favourite project come to fruition during its term of office.

Lack of any meaningful democratic control

This is perhaps the most surprising defect of a convention which shows other signs of having been rushed through without due consideration of the implications for individuals. The lack of any meaningful democratic control is, of course, a danger in this as in all intergovernmental agreements going through under Title VI of the TEU. There are also far too many items left for later decision by the Council, and in all but one case (the protocol on privileges and immunities) there will be no need for even token approval by national parliaments.

The provisions on data protection are comprehensive in theory, but fatally undermined by the difficulty that is likely to arise in enforcing them. This is inevitable in view of the scope of Europol's remit. Under Article 14 it may use personal data supplied by non-EU countries, and Europol is responsible for ensuring that the data were collected and transmitted according to the high standards of data protection laid down in the convention. This seems an impossible task when one considers the total absence of data protection in many non-EU states. A comparable problem arises under Article 16: Europol may transmit personal data to non-EU states after seeking assurances on data protection from the recipients and assessing their value "taking account of all the circumstances". The pressure to exchange data with such countries in the interest of mutual assistance might well in practice outweigh considerations of strict data protection. This is precisely why (among other reasons) Interpol, with its range of subscribing states, was not considered to be a suitable vehicle for the development of European police cooperation.

Extension of Europol's power: who decides?

An even more serious question that is left unresolved by the convention is the possible extension of Europol's powers at some time in the future to a more operational role. The trend has already been set by allowing Europol, on its own initiative, to collect and analyse data from everywhere in the world. A logical development would be the power to send investigating officers to member states and non-EU countries; within member states they could also be given powers of arrest, in a manner already introduced in the Schengen convention for "hot pursuit" across internal frontiers by national police officers. The convention rules none of this out, though presumably a protocol of amendment would have to be brought in to legitimate it. The pressure on member states to approve this might prove to be irresistible.

Had an organisation like this been set up in any one member state, it would presumably have been the subject of a detailed bill presented to the country's parliament. This would have required lengthy debates and committee hearings before it was approved. It remains deeply disturbing that in the present case the matter may be agreed in secret between the executives of the member states, with very little chance for their legislatures to influence the outcome.

Michael Spencer

Notes:
1. Advice from the legal Service of the Council, 5527/93 (19.3.93).
2. Committee on Civil Liberties and Internal Affairs (rapp: L. van Outrive), Report on the setting up of Europol, A3-0383/92 (European Parliament, 1992).
3. **The Week in Europe** (European Commission, London), 23.7.94).
4. CL No.21, p.5)
5. Communication 9757/93 from the Presidency to the Steering Group II of the K4 Committee.
6. CL No.24, p.1; **Statewatch**, May-June 1994.
7. Draft Convention on Europol, 10.10.94 (in German), confidential; available from 'Fortress Europe?'- CL.

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GERMANY

GERMAN DATA PROTECTION COMMISSIONERS ON EUROPOL DRAFT CONVENTION

The Conference of German Data Protection Commissioners is unhappy with regulations in the draft convention on Europol pertaining to the processing of personal data.

At a meeting of the Conference of the Data Protection Commissioners in Potsdam, on 26/27 September, the Commissioners both at the federal and *Länder* (constituent state) level examined the regulations in the Europol draft convention concerning data protection.

In a decision adopted by the Conference it says i.a.: "The regulations pertaining to person-related data processing must be precise and in compliance with the principle of proportionality. For example, the competences provided for in the existing drafts for the Europe wide storage of non-involved persons does not comply with these requirements."

In the statement, the Commissioners further demand that, in compiance with the German constitution, the responsibility for data processing must continue to lie with the *Länder*, whenever data have been stored by their police authorities. This does, however not pertain to the competence of the BKA (Federal office of criminal investigation) as the national instance of Europol.

Separation of police and intelligence services

In another decision commenting the new German law on the combat against crime (*Verbrechensbekämpfungsgesetz* (see CL No.28, p.1), the Conference of data protection commissioners emphasises that the "informational power of secret services and the executive powers of the police must remain strictly separated. The Data Protection Commissioners of the Federal Republic and the Länder are concerned about developments that threaten to further blur the clear separation line between intelligence services and police authorities. This pertains, above all, to the engagement of the *Bundesnachrichtendienst* (BND: Foreign Intelligence service) under the law on the combat against crime."

The commissioners further demand that in implementing the new law that allows the BND to tap international telecommunications for the purpose of gathering information on organised crime, it must be guaranteed that no information is collected that is not comprised in the tasks of the BND.

Source: Konferenz der Datenschutzbeauftragten des Bundes und der Länder, 48. Sitzung, 26/27.9.94, Potsdam: Datenschutzrechtliche Anforderungen an ein Übereinkommen der Mitgliedstaaten der Europäischen Union über die Einrichtung eines europäischen Polizeiamtes (Europol), Beschluss; Art. 12 Verbrechensbekämpfungsgesetz - zur Trennung von Polizei- und Nachrichtendiensten, Beschluss.

GERMAN GOVERNMENT VAGUE ON TRANSPARENCY WITHIN THE EU

The answers of the German government to questions in parliament on its attitude on secrecy within the EU are evasive. This indicates that Germany is unlikely to support Dutch and Danish demands for more transparency within the EU.

Gerd Poppe, an MP for *Bündnis 90/Die Grünen*, (Green group), wanted to know, among other things, how the government had voted in the European Council on the various draft directives regarding public access to documents of the Commission and the Council (namely the 'Code of Conduct' of 6 December 1993). In order to make things sure, the MP detailed his question: "Should the Federal Government refuse to answer to question 1: What are the motives?"

In its answer, Ursula Seiler-Albring, State Secretary of Foreign Affairs stressed that the German government was in support of increased transparency, in accordance, however, with the (restrictive) regulations provided by the Code of Conduct and the implementing regulations adopted by the Council on 20.12.93. "As a principle, [these regulations] are applicable only to decisions adopted after their entry into force. A retro-active application is not provided for. The surrender of the complete list documenting the voting attitudes of Germany or other member states concerning the 595 directives adopted since 1989 is therefore not possible".

The answer to Gerd Poppe's supplementary question was laconic: "The Federal Government has already answered question 1; thus, an answer to this question is not necessary; the Government refers to its answer to question 1."

Instead of entering into further detailed questions about the access of the German and the European Parliament to Council and Commission documents, the State Secretary solemnly affirmed that the government "informed" the parliament on a "regular and comprehensive" base. As for the European Parliament, the German ministers of justice and the Interior "informed its competent committees on all aspects in the domain of cooperation on Justice and Home Affairs on 15 September 1994".

The evasiveness of the German government is all the more significant against the background of a case brought to the European Court of Justice (ECJ) by the British newspaper, *The Guardian*.

The *Guardian's* case was lodged with the court in May, following the Council's refusal to release documents requested by the newspaper.

The Council has asked the ECJ to reject the *Guardian* case on the grounds that the repeated declarations by the EU Prime Ministers at summit meetings for more "openness" were no more than "policy orientations" and

had no binding effect. The Council further maintains that it cannot make minutes and preparatory documents available because they would reveal the position of different governments who would feel compromised if their views were known.

By choosing not to comment on neither the *Guardian* case nor the Dutch government's complaint before the ECJ against the 'Code of conduct' (ECJ case C58/94), despite express reference to both cases in Gerd Poppe's interpellation, the German government has lifted secrecy around one topic at least: its obvious lack enthusiasm for more transparency.

Sources: Interpellation Gerd Poppe, Gruppe Bündnis 90/Die Grünen, Deutscher Bundestag, ref 12/8533, 21.9.94; Answer by State Secretary Ursula Seiler-Albring, ref. 12/8569, 11.10.94; **Statewatch**, vol.4 no.5, September-October 94; see also CL No.24, p.5.

SCANDINAVIA

NORDIC POLICE FEDERATION UNEASY ABOUT EUROPOL

The Federation of Nordic police unions, NPF, is concerned about the development of Europol. As a general rule, police and internal security cooperation within the EU is carried on mainly by senior officials outside sufficient political debate and accountability, it says in a statement of the organisation.

Scandinavian policemen appear to have little understanding for the inclination to secrecy among EU-member state governments.

Nordiska Polisförbundet (NPF), the Nordic Police Federation, is made up of police unions and associations in Sweden, Denmark, Finland, Norway and Iceland.

Referring to European police cooperation, NPF states: "A common observation in the Nordic countries concerned is that this work is carried on mainly on a civil servant level without sufficient political debate and discussion. NPF notes this with disquiet and urges for political commitment in these important issues".

"So called low-intensity threats - terrorism, drug trafficking, economic crime and other forms of organised crime - have gained in security-political significance. At the same time, the traditional military scenario of threats has changed. There are therefore reasons to believe that police will gradually obtain an ever increasing role as a symbol for the security and control interests of the states".

"NPF supports increased police cooperation. However, cooperation has to take place under politically accepted forms and must be based on the national police's sovereignty on its own territory".

NPF also point at the "differences among various European police forces as well as among the judicial and penal law systems. Several EU-member states, for instance, have police organisations that actually are military structures. There are strong variations too regarding police powers, means of coercion in penal law and policemen's qualification and training. Against this background we are disquieted about what long term effects increased police cooperation might have on what we define as a Nordic police role".

Exaggerated 'compensatory measures' threat to open society

The abolition of internal border controls will not lead to dramatic changes, NPF stresses.
"In the North, long and vast borderlines have always compromised an overall border control. Moreover, the Nordic countries are open societies with a deliberately low level of control".

NPF is supportive of all efforts to develop effective alternatives to present border controls but believes that this work should be pursued "with circumspection rather than hurriedly". The statement notes a certain trend in Europe that "compensatory measures tend to become more rigid than earlier."

"While border controls are a general form of control accepted by citizens, it is, for the time being, unknown how the public views control measures of a corresponding type carried out inside the borders of a country".

No enthusiasm for Schengen and Europol

NPF is opposed to "foreign - national or supra-national - police bodies being given operational power in the Nordic countries". This statement clearly hints at the Schengen provisions allowing cross-border police operations and at the - mainly German - strive for a Europol with operational powers. NPF "calls on the Nordic governments to reject any idea of extending Europol's competencies and present role as an organ of information and intelligence to a supra-national police organisation with operational activities and with powers over the whole territory of the EU".

On the whole, Nordic policemen appear to show little enthusiasm for Europol, as the following comments show:
"The creation of EDU/Europol in 1991 was not preceded by any closer examination neither of the real need for a European police organisation nor on what precise role and task such an organisation shall have. Nor have any thoughts been given to questions of fundamental importance about the principles and forms of democratic steering and control. NPF assumes that the convention that is now being drawn up clarify these questions".

European secrecy versus Scandinavian transparency
The Scandinavian police unions have, however, not been able to examine the draft convention on Europol. "We have not got hold of the draft convention yet", says Gunnar Andersson, the Swedish secretary of NPF. "We do not obtain our information from official sources, we get it from Swedish and foreign contact persons".

Thus, although Swedish senior officials and politicians are already participating as observers in the EU's police cooperation at all levels, this work is still kept secret from the Swedish police union.

Sören Clerton is the Swedish National Police Board's representative in the K4-sub-group responsible of the setting up of Europol. He has, of course, a copy of the draft convention. Despite far reaching "freedom of information" provisions in the Swedish constitution providing for broad public access to official documents (see CL No.15, p.6), Mr. Clerton does not hand out copies of the draft. The official is acting in compliance with the Swedish "secrecy law" that list the few exceptions to the principle of general public access. Among other things, documents may be kept secret for 40 years, whenever it "is not certain that the information can be released without this interfering with Sweden's international relations or harming the country in another way". Ever since the country's political leadership intensified its cooperation with the EC/EU in the late 80s, this particular provision of the secrecy law has been used extensively.

On one issue - cross-border police operations, however, the national police authorities and the police union seem to agree. "That foreign police should be allowed, for instance, to pursue a criminal across the Swedish border and act hear - so called hot pursuit - that's psychologically sensitive", Sören Clerton admits. "We are close to the Danish view that the country's own police should handle such matters". According to Clerton, the idea of an operational Europol-force was "dropped from the agenda since over a year".

Birgitta Öjersson (freelance journalist)

Source: Nordiska Polisförbundet: Statement following the NPF's conference "Europe: a chance or a risk?", 30/31.8.94

SWEDISH POLICE PREPARED FOR EU-COOPERATION

As early as 1988, the Swedish Police began preparing for an eventual membership with the EU. Among other things, the National Police Board, RPS (Rikspolisstyrelse) was charged with taking preparatory measures including the setting up of a national criminal intelligence service in view of a Swedish participation in Europol.

"The creation of criminal intelligence structures is probably among the most important compensatory measures in view of the abolition of internal borders", says Christer Ekberg, the head of the International Secretariat of the RPS.

Additional measures on the National Police Board's list of charges comprise the planned increase of the number of liaison officers and such items as international information exchange and methods of policing.

The RPS also appears to advocate Swedish membership with the Schengen group.

The number of Swedish liaison officers will increase significantly as a result of EU-membership. At present, liaison officers are already stationed in Athens, The Hague, and Lisbon. More liaison officers will also be detached to Eastern and Central Europe. For the time being, the Swedish police has representatives in Tallinn, Riga, Moscow, Warsaw and Budapest. The strong focus on Eastern Europe represents an attempt to adapt to the development of drug related and other international crime, Ekberg says.

Source: Svensk Polis, No.8-9, September 94

NEW SWEDISH MINISTER OF IMMIGRATION TOUGH ON ASYLUM

Leif Blomberg, the minister of immigration in the new social-democrat government of Ingvar Carlsson has no intention to liberalise the country's asylum policy, despite strong criticism of the immigration authorities' current asylum practice by numerous humanitarian organisations.

Leif Blomberg, formerly the popular head of the mighty union of metallworkers, advocates the introduction of a

series of measures aiming at reducing immigration to Sweden:
- The setting up of branch offices of the immigration authorities (Statens Invandrarverk: SIV) at the borders, thereby enab-ling for the speedy rejection and immediate deportation of asylum seekers with "unsufficient grounds" upon entry;
- The introduction of an annual quota limiting the number of immigrants on non-refugee grounds;
- Compulsory finger-printing for all asylum seekers for facilitating the detection of applications made under false identity;
- An examination of the Aliens Appeal Board's (Utlänningsnämnden) proceedings.
- The development of "assistance projects allowing refugees to remain in a country close to their home country".

Mr. Blomberg has emphasised that the above measures are not intended at restricting the right of asylum: "Out of the social democrats conception of solidarity we are defending the right of asylum for those who really need protection."

Critics, however, are pointing at the Swedish immigration authorities' ever more restrictive interpretation of the Geneva Convention on refugees and the rapid harmonisation of the formerly liberal Swedish asylum policies with lower EU-standards in recent years.

As an example, Sweden largely aligned to policy recommendations of the European Council in Copenhagen in May 1993 on the strict application of the "safe third country" and the introduction of stringent visa obligations. As a result, since summer 1993 it has become all but impossible for refugees from former Yugoslavia to seek protection in Sweden.

In recent months, the almost demonstrative hard-handedness of the immigration authorities in a number of deportation cases has lead to disagreement even within SIV. Thus, the chief jurist and deputy director of SIV, P.-E. Nilsson, authorised an Iraqi asylum seeker deported to Jordan after his application was turned down to return to Sweden. Mr. Nilsson overturned SIV's negative decision in compliance with an assessment of the UNHCR that Jordan could not be considered a "safe country" for Iraqi persecutees. Shortly later, the chief of SIV, Mrs. Berit Rollén, withdrew Mr. Nilsson his competence to review decisions of SIV which ammounted to sacking her deputy without notice. Mrs. Rollén's unusually harsh action against her deputy, who is a widely respected senior official and jurist immediately drew a storm of protest. In October, FARR, amidst ever more insisting calls on the government for her dismissal, Mrs. Rollén announced her decision to resign by the end of the year.

Only shortly later, the decision of the immigration authorities to send back a muslim deserter from the Serbian forces to Serbia ended in a major political row. Various groups of the European Parliament called on the Swedish government to stop the deportation. A note of the Liberal Group in the EP calls the dpeortation order "a deplorable case, where the relevant authorities of a candidate for membership pf the European Union seem intent on violating the most elementary conceptions of justice... This case is not only of great importance to those immediately concerned, it is also symbolic of whether the European parliament's and the European Union's protestations about human rights and about the conflicts in former Yugoslavia are to be taken seriously and about whether membership, potential or actual, of the European Union involves obligations to the most basic concepts of justice and morality".

The action of the MEPs, less than two weeks before the Swedish referendum vote on EU-membership is likely to embarrass Prime Minister Carlsson's new social-democrat government.

Sources: Swedish press; European Parliament; FARR (Swedish Forum for Asylum Seekers and refugees).
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SWITZERLAND

RWANDESE WAR CRIMINAL IN SWITZERLAND: SENIOR IMMIGRATION OFFICIAL DISMISSED

In the Rwandese civil war, the radio station *Milles Collines* played a central role in instigating the well-planned operation of genocide resulting in the death of an estimated 1 million Tutsi people.

Nevertheless, Félicien Kabuga, the main shareholder and founder of the station found temporary refuge in Switzerland. The head of the Swiss Federal Foreigners Office, Alexandre Hunziker has now been pensioned off.

The whole story began, when Kabuga's sister who is married with a Hutu secret service man, then a senior diplomat of the Rwandese embassy in Berne, personally approached Mr. Hunziker, a "personal acquaintance" of her husband, with an entry visa request on behalf of Félicien Kabuga.

At that time, Kabuga was hunted as a war criminal in a number of countries and his name appeared on a list of undesirable persons of the Swiss Federal Department of Foreign Affairs.

The head of the Federal Foreigners Office, how-

ever, did not bother about repeated and pressing interventions of the foreign department and on 22 July, Kabuga entered Switzerland with a valid visa.

The Kabuga case soon became a scandal, drawing international protests and strong calls for the arrest of the war criminal.

Yet, Mr. Hunziker did not drop his "personal acquaintance". Instead of being arrested (as suggested, among others, by the Swiss Minister of Foreign Affairs), Félicien Kabuga was merely ordered out of the country. On 18 August, he discreetly left Switzerland - as a free man.

Bowing to mounting public protest, the government finally ordered an administrative investigation against Mr. Hunziker.

On November 9, the judge charged with the investigation presented his findings. According to the Minister of Justice and Police, Alexandre Hunziker has committed "irregularities and mistakes", but no violation of penal law or morality. The report is, however not available to the public.

Officially, the Director of the Immigration Board, aged 57, is going into "early retirement" for "health reasons". In practice, however, nobody questions that Mr. Hunziker's hasty departure amounts to summary dismissal.

Sources: Journal de Genève, 24.8.94; Le Nouveau Quotidien, 10.11.94.

Comment

The Director of the Federal Foreigners Office, Alexandre Hunziker, has patronised one of the prime organisers of the maybe most monstrous massacres of our time. He made possible his flight to Switzerland and, subsequently, his flight from justice.

Who is Mr. Alexandre Hunziker? Did he love "coloured people" and the "Third World" so much that he would protect even a Rwandese criminal against humanity?

Another fact speaks against such an explanation. Indeed, in 1985, Mr. Hunziker explained his thesis, that the integration of asylum seekers from the "Third world" was impossible, as follows: "These people don't have our colour, do not profess our traditional religions, do not abide to our habits and customs".

The Federal Office of Foreigners has created the concepts of "neighbouring countries" and "remote countries" (in 1964), as well as the ill-famed "three circles model" [with Third world countries forming the "outer-circle" subjected to the most restrictive application of foreigner law] (in 1991). This resulted in a discriminatory hierarchy of the "elastic" asylum and immigration laws, implemented by a ruthless bureaucracy. No massacres, no mass graves. Only an autocratic No. No to temporary residence, no to work permits, no to asylum applications, and, sometimes, no to the right to life...

The Federal Foreigners Office is attached to the Justice and Police Ministry. For years, Mr. Hunziker played a crucial role in turning Swiss immigration policies into a matter of mere policing. He was a merciless administrator with his own interpretation of the law. His principle victims were thousands of needy "guest workers" and war refugees, guilty of having neither a secret bank account nor diplomatic acquaintances in the founding country of the Red Cross.

In spite of apparent incoherence, there is a strange continuity in the action of bureaucrats of Mr. Hunziker's sort: applied philosophy of the relations between human beings and societies.

Should the advance of an absurd philosophy that tramples underfoot all equity and justice not be enough to wake us up? Or have we lost our memories of the past?

Marie-Claire Caloz-Tschopp

AUSTRIA

HIGHEST COURT ON RIGHT OF ASYLUM FOR DESERTERS

The rejection of the asylum application of a Kosovo-Albanian deserter by the Austrian Ministry of the Interior was unlawful, the Highest Austrian administrative Court found in a decision published in early October. In certain cases, desertion can be a ground for asylum, the judges considered.

The Interior Ministry now warns that 24 million refugees from former Yugoslavia will have a right to asylum in Austria, if this jurisdiction is maintained.

Hitherto, the Austrian immigration authorities have regularly held that, as a general rule, desertion is no ground for recognition as a refugee. As a result, many deserters from former Yugoslavia were threatened with deportation or actually deported back to their home country.

The Highest Court does evidently not share this view. In the above decision it says, that asylum must be granted when the call-up to military service is based on

motives of ethnical, political or religious oppression.

The decision originated in the complaint of a young Albanian deserter from the Serb-controlled province of Kosovo. The man had refused to comply with a draft order fro the military authorities in Vukovar because, as a member of the Albanian minority, he did not want to fight with the Serbs against the Croats. He claimed that, in the event of his deportation to Serbia, he was threatened with several years imprisonment and maybe the death penalty.

The Highest Administrative Court, inter alia holds: "By considering the non-compliance with the draft exclusively from a point of view of violation of civic obligations, the authority [Ministry of the Interior] failed to appreciate the correlation between draft order and affiliation to the Albanian nationality in Kosovo oppressed by the Serbs".

In what amounts to a serious blame, the court holds that the immigration authorities "omitted to conduct he necessary enquiries on the practice pursued by the authorities in the [deserter's] home country pertaining to the draft of the Albanian minority as compared with other ethnic groups".

Commenting the decision, Theresija Stoisits, a Green MP, said: "The authority will have to become familiar with the fact that one has to deal with asylum applications instead of merely preventing them".

The Ministry of the Interior reacted by both playing down the jurisdictional signifi-cance of the decision and emphasising the judiciary's responsibility for possible effects of the ruling. If the decision prejudices future jurisdiction, Austria is threatened with a new massive influx of refugees, a senior official at the Ministry warned: "Consequently, 24 million people from former Yugoslavia and 1.7 million Kosovo-Albanians are potentially entitled to asylum."

Sources: Ulenspiegel, No.292, 27.10.94; Kurier, 2.10.94.

Comment
For the time being, no European state has recognised desertion from armed forces in former Yugoslavia as a ground for granting refugee status under the Geneva Convention.

France has so far been the only state that formally considers desertion claims in asylum applications on condition, however, that the deserter belongs to an ethnic minority within the drafting army.

The Austrian decision could lead to the introduction of a similar practice in Austria. It does clearly not imply a recognition of desertion as a such as a ground for asylum.

N.B.

OPINION

Are evermore powerful state organs of policing and "security" threatening fundamental liberties? Are we witnessing the gradual transformation of constitutional democracies into "executive states"? Are we heading for an era of "plebiscited caesarism" relying on a media machinery of perception management, as the rise of Berlusconi in Italy seems to indicate?

The following contribution addresses these questions from a German point of view. It is an abridged translation of a speech given by professor Jürgen Seifert at a seminary on "internal security" organised by the German Green party in Munich, on 16 September. The author is a professor emeritus of law and political sciences and teaches at the University of Hannover. Professor Seifert is widely known in Germany for his publications on state of emergency legislation, the development of the constitution and the problems of secret services and police.

THE EROSION OF DEMOCRACY THROUGH THE PREDOMINANCE OF THE EXECUTIVE

A security state without liberty for the citizens ends in generalised crime just as a polity with liberty, but incapable of offering its citizens public security. Security is a basic need of mankind. This is documented by the constitutions of modern states.

People want both security and liberty. When the security framework becomes too tight, young people, above all, break out in search of liberty. On the other hand those who have experienced the insecurity that tends to accompany liberty, often long for a protective safety net.

Thus, the issue is about how to combine liberty and security. At every stage of political-societal development the equilibrium between liberty and security must be set anew.

In German history, security always tended to

prevail liberty. Indeed, the term 'liberty' referred to the freedom of the nation rather than to individual liberty. The Nazi song *"Nur der Freiheit gehört unser Leben"* (Our life is dedicated to freedom) had nothing to do with individual liberties, but was a hymn to "national" liberty based on the serfdom of all others. Only since 1945 did individual liberties gain some significance.

Yet, the relation between liberty and security is an ambivalent one. This ambivalence is deeply rooted in every one of us and this is precisely why the term "security" is often used in political campaigning. Our longing for "security" is being instrumentalised and exploited by certain politicians. They know all too well that in our country "security" is higher rated than the freedom of the individual. This is why the monstrous term "internal security" created as a pendant to the "internal state of emergency" by a Social-Democrat [during the campaign for the introduction of an emergency law in Germany in the 60s] was never really questioned. Yet, who, after all, can pretend to be able to achieve this "internal security" - i.e. actually security inside ourselves? If we give it just a brief thought, we will understand that no police or other organ of the state can create "internal security". It would already be a major achievement if the police were capable of ensuring some form of "public security".

Both Chancellor Kohl's Christian-Democrats (CDU/CSU) and the social-democrat opposition (SPD) are promising "internal security", thereby suggesting that an effective "combat against crime" is possible, provided all "necessary measures" are taken. Yet the mere term "combat against crime" (just as the term "internal security") gives the impression that crime can be eliminated like vermin, merely by providing the police with additional powers. Such conceptions actually derive from the fundamentally conservative Utopia of a crime-free society, a clean and cosy "brave new world".

I proceed from the assumption that security policy without social policy is deemed to failure. In this piece, I will, however not enter further into the important issue of social policies as a means of ensuring public security. Instead, I would like to concentrate on the following questions:

- Which objectives is the Christian-Democrat Union (CDU/CSU) pursuing with its campaigns on security?
- How can such campaigns be countered?
- How can the present political and societal imbalance between the executive power and the opposition be set right?

The structure and function of security campaigns

The CDU/CSU's security campaign is shaped to a large extent according to the special interests of the German security apparatuses. We are talking about the BKA (Federal Office of Criminal Investigation), The BVS (internal secret service) and the BND (foreign intelligence service).

In the "Cold War" and the years of con-frontation with the phenomenon of terrorism these three organisations succeeded in putting through their gradual enlargement. Compared with the police authorities of the *länder* this growth was totally disproportionate.

With the end of the cold war and the debacle of terrorism in Germany, it would have been logic to considerably reduce the budget and the personnel of this security apparatus. Yet, all three organisations succeeded in presenting themselves as indispensable instruments for "combating organised crime". In doing so, they all made extensive use of their long-standing policy of influencing the mass-media and their easy access to public funding.

The old "enemy" notions of the cold war era have been replaced by the new label of "(international) organised crime". Undeniably, new forms of serious criminality and concerted organisation of crimes do exist. This is a consequence of a more open world market and increased opportunities for making money in Germany. But this criminality can not be coped with by merely replacing the traditional term of concerted perpetration of a crime with a new term.

Almost a third of the German penal code now comprises "organised crime". The term has a specific function. While it clearly does not contribute to coping with crime, it does result in a "de-differentiated" perception of the complex and varied phenomenon of criminality. Thereby it becomes possible to use the blanket term "organised crime" as an enemy label. An enemy label is something else than an enemy or a threat. It is a picture, a perception introduced between us and the other (i.e. the problem): This picture reduces everything to a situation of "it's me or you", black or white, good or bad. The "enemy" is on one side, "we" are on the other. The "we" sentiment arises, because everybody fears to be afflicted.

The de-differentiation achieved by the use of the enemy label prevents a social-political problem from being analyzed with a view to find a reasonable solution.

Our own part in the problem is denied and projected on a scapegoat. Thus, by using the enemy label of "organised crime" one represses the fact that, for instance, both gamble and ruthless profiteering are fundamentally inherent to capitalism. As a matter of fact, the term "organised crime" builds on the picture of a "decent capitalism". The dark sides of capitalism are projected on the enemy label "organised crime", just as they once were projected on "international Jewry".

Enemy labels were developed as an element of psychological warfare. Enemy labels contribute to reducing political debate to substitute warfare. The "War on Drugs" in the USA is serving as a model for the German campaign on the "combat against organised crime". It is no accident, when the whole arsenal of military terminology together with the fascination for advanced technology is taken over in this substitute warfare.

The enemy label "organised crime" is useful:

- The BKA is using it as a justification for demanding extensive powers to carry out eavesdropping comparable only to secret service operations and for extending criminal investigation to a stage prior to material

suspicion.
- The BVS believes it can prevent the otherwise inevitable cuts in personnel by seeking to be entrusted, alongside the police, with the pro-active surveillance of "organised crime".
- The BND has used "organised crime" as an instrument for constitutionally legitimising *a posteriori* its practice since long ago of "electronic intelligence". Until recently, this activity was carried out in secret. The new law on the combat against organised crime now expressly allows the BND to electronically "filter" international telecommunications from and to Germany See CL No.28, p.1). Thereby, the hitherto existing strict prohibition for the BND to carry out activities inside the country is being undermined. As for the separation of roles between the secret services and criminal prosecution, it is *de facto* abolished.

In all three cases the issue is about the restric-tion of fundamental rights that is not possible without amendments of the constitution and that affect its very essence. Besides, it can be doubted whether the enormous organisations above actually are capable of stemming modern forms of serious crime.
- There is no cost and benefit analysis. Nobody is, for instance, asking about the costs of extensive eavesdropping. Nobody is asking how the technical equipment of regular *länder*-police could be improved, if one would renounce expensive electronic surveillance of wireless telecommunications.
- On the part of the ruling CDU/CSU no discussion is taking place of the question how the requested massive competencies affect the very constitutional foundations of the Federal Republic of Germany. In Bavaria, the Data Protection Commissioner commented the competence for the BVS in matters related with "organised crime" as follows: "This amounts to the almost boundless launching of the big eavesdropping attack against totally innocent persons" (see CL No.20, p.1).

How to confront campaigns
We will not deny that the CSU/CDU, with its campaign on internal security, is also striving for stemming serious and mass-criminality. But legitimising new executive powers, enlarging federal apparatuses of policing and, last not least, the purpose of harming the political adversaries are just as important objectives. For years, the Christian Democrats have won elections with such campaigns.

If the assessment above is correct, one will not be able to cope with this playing on peoples' security concerns by making concessions. Instead, one must
1. lay bare the pattern of argumentation and denounce the methods, i.e the use of enemy notions and the exploitation of fears;
2. trace back the call for ever more executive powers to the so-called security-apparatuses' special interests, demand a cost-benefit analysis and clear proof that the executive competencies called for actually do allow for more successfully dealing with criminality; and finally
3. show capable of wresting political compromise from the CSU/CDU and forcing it to renounce this sort of campaign-waging and friend and foe reasoning.

Unfortunately, the SPD chose another way: it tried to meet the CDU/CSU's campaign on security with its own campaign. The result was that the Social-Democrats, out of fear of jeopardising their electoral chances, bowed to the premises of the Christian-Democrats on crucial issues. It was no accident, when the Interior Minister, Manfred Kanther, immediately called for an additional law, as soon as the first bill on the combat against crime was adopted.

Even those who believe that they can confront the campaigns described above by way of a normative project for a civil society or with appeals for tolerance and compromise, are ill-prepared. The majority of social-democrat politicians who are now accepting the dictate of the CDU/CSU, presume that they nevertheless might succeed in reaching an acceptable compromise on a definitive regulation. They have unlearned to confront the subjugation-aimed peremptoriness of the political adversary. Yet, as long as one party refuses dialogue and compromise and instead tries to set facts and to weaken the political adversary, appeals for democratic conduct are meaningless. In such a situation, one must uncover the authoritarian pattern as a such and wrest openness to dialogue and compromise from the opponent.
Therefore, I believe that it is necessary to
- meet authoritarian peremptoriness with concrete resoluteness with a view to force the counterparts willingness to compromise and to establish a culture of political controversy. Wolfgang Ullmann calls this teaching people "round-table capacity". In other words, what we have to do, is to refuse the very premises set by the CDU/CSU with a view to re-create the equilibrium between liberty and security by way of controversy on particular issues.

I am talking about a culture of political contro-versy because I want to emphasise that such a culture implies something else than enmity and that one over and over has to wrest this political culture (in short: "round-table capacity") from the eventuality of enmity.

The political-societal imbalance between executive and opposition
A lot of the problem is due to the SPD's conduct in the *Bundestag* (Federal Parliament). As representatives of the main opposition group, many social-democrat MPs incline to a real-political conception of loyalty and responsibility towards the state that brings them closer to the governing CDU/CSU than to the Greens whom they tend to consider as naive utopists. They do not understand that the only chance for an opposition party to

gain a majority lies in being perceived as an alternative by the voters. Yet, hitherto, the Social-Democrats have proven incapable of imposing their own issues on the governing coalition of Chancellor Kohl. Due to their inability to draw up a counter-proposition to the government's bill on the "combat against crime", the *länder* governed by the SPD finally had to give in much more than necessary.

This is, however, not only due to personal behaviour of some politicians, but just as much to the fact that the imbalance between the hard benches of opposition and the power inherent to the position of government has gradually increased.

Moreover, a significant change has occurred that many have not even become aware of yet. For decades both the SPD and the Greens drew benefit from social grass-rout movements, by considering their demands and thereby giving the impression that they were implementing popular demands within the limits of political common sense. Yet, when these social movements waned, the two parties lost much of their impetus.

This is all the worse, as the adversary, i.e. the CDU/CSU has learned in more than two decades how to stage campaigns in the mass-media with the help of scientific methods and specific means of influencing journalists. These campaigns could actually be viewed as the conservative equivalent to the mostly progressive social grass-rout movements.

We must take notice of the fact that, today, such media campaigns are essentially staged through the exploitation of executive positions. With respect to such "staging" the executive has always, and not only in Germany, out-classed opposition. Indeed, the detention of power is always rewarded. What is new is, for the first, the extent to which executive action can actually set facts for the media, and, for the second, the manner in which a specific perception of reality is generated by the media loyal to the executive. We are dealing with what the Americans call "perception management".

The BND has produced facts at a cost of millions of marks and these facts have played their role in the "security" campaign of the CDU/CSU. These moves of the executive do not merely aim at exerting pressure on the opposition. They are, at the same time, important elements in attempts to mobilise a specific sector of the electorate. It would be worth examination whether parties in favour of emancipation can simply adopt this particular style of campaigning without losing credibility. The failure of the SPD in the election of the European Parliament could be an indication of this. The SPD based its campaign on the slogan "Security instead of fear". Among other things, the alleged security threat was illustrated with particularly unfortunate posters warning against the "Mafia-threat".

I would like to emphasise that security campaigns are staged not only by the government, political parties and the media. The present position of power of the bodies in charge of security enables them to stage such campaigns by their own. Partly, they also do this in order to affirm their position against competing rival bodies. Thus, for instance the BKA and the BVS are fiercely rivalling each other in their endeavour to obtain an increased role in combatting "organised crime".

The traditionally secretive security apparatuses are benefitting of considerable free play:

1. They dispose of privileged means of influencing the media. Their officials usually get a better hearing from the media than politicians or members of civil liberties groups.
2. They can "hire" journalists by various ways. It is well known that a number of journalists were "rewarded" for years for their services by the BND. In the wake of the "Bad-Kleinen" affair (see CL No.17, p.1; No 21, p.10; No.22, p.8), the BKA literally fed one particular journalist, Dagobert Lindlau, with "internal" information to such an extent that Mr. Lindlau practically acted as a press officer for the BKA.
3. They have the power to withhold information on certain facts or to chose the best timing for releasing it. For 15 years, the BND and the Federal Government kept silence on the several million marks project of "electronic outer-space surveillance". They also withheld the fact that all telephone calls made from a foreign country to Germany are electronically filtered and may thus be subject to tapping (see CL No.13, p.6, No.28, p.1). Only when the BND demanded an extension of its competence to the domain of "organised crime" did it go public with its long-standing practice: the service widely publicised "accidental findings" related to crime that it should not even have registered under legislation in force.
4. They can themselves create facts of interest for the media by cleverly timing and spectacularly staging operations, sometimes by engaging under-cover agents and infor-mers. For example, a number of people were arrested in autumn 1994 for alleged involvement in smuggling of nuclear materials. There is some evidnece indicating that the arrests were carried out with the help of under-cover agents. Was it a mere incident that the spectacular and media-oriented operation occurred only weeks before a conference on security scheduled long before by the executive and the decision of the parliamentary mediation committee on the bill on the combat against crime?

The secretly operating executive bodies are not only used as instruments for realising party-political interests. They have become separate powers safeguarding their very own interests and running their own policies. The memoirs of some of the former heads of the services concerned - Gehlen, Nollau, Wessel, Hochem, and others - clearly confirm the above.

With the new powers obtained or sought by the BND, the BKA and the BVS, the three "security" bodies have become a threat to the pre-conditions of democracy, the protection of which they originally were conceived for.

There is no pat solution for coping with this situation, but it certainly is important to at least take notice of the problem and not to accept it as a premise of

nature.

The struggle for the pre-conditions of democracy

Democracy never comes to being by itself. Not either does it suffice to want "more democracy". In the presence of campaigns organised with the sophisticated means of psychological warfare and a perception of reality shaped by the media we actually have to begin with re-creating some fundamental pre-conditions of democracy.

The reality of this society is a such that it won't do to rely merely on civic action groups and grass-rout democracy - however important both may be. In my view, even the "anti-fascist" militantism (against skinheads and nazi groups) are slightly pathetic. As a matter of fact, the real threat to democracy does not emanate from the various sects of the extreme right, but rather from the very centre of society, from power holders who confound democracy with caesarism based on personal plebiscites; who try to eliminate opposition by means of campaigns and enemy labels, and who more and more regard constitutional rule as a mere garnish of an authoriarian "executive state".

In the debate on so-called "internal security" we need to propose an alternative to the gradual transformation of social and constitutional democracy into a "state of order" dominated by the executive.

If this is true, the conclusion must be: We will hardly succeed to "re-balance" liberty and security without struggling for the pre-conditions of democracy and without the capacity to again and again establish the basic rules of political controversy.

Jürgen Seifert