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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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EUROPOL

HOUSE OF LORDS' SELECT COMMITTEE ON EUROPOL

The Select Committee on the European Communities (SC) of the British House of Lords has presented a report on the Draft Convention on Europol. The report is based on comprehensive oral and written evidence presented by the British Home Office, UK institutions and organisations in the field of policing, intelligence and Customs, data protection authorities, as well as researchers and non-governmental organisations concerned with human rights and civil liberties.

The British House of Lords is, so far, the only parliamentary body within the EU to have conducted a thorough public enquiry on Europol before the conclusion of negotiations on a final draft Convention by the EU Council of Justice and Home Affairs (JHA Council). It is to be hoped that this example of regaining a minimum of parliamentary control in the field of EU police co-operation will be followed by parliaments in other EU member states. The following is a summary of the Select Committee's opinion.

While strongly supporting the development of closer cooperation in law enforcement within the EU, the SC emphasises that "[the] powers to develop and share information and intelligence among the police authorities of fifteen Member States do . . . present great dangers for individuals".

In the opinion of the SC "it is essential that Europol should be established on a firm legal basis and made publicly accountable for its policies and actions".

The fact that in the absence of agreement on a Europol Convention the EDU, which forms the nucleus of Europol, has been set to work and the scope of its activities been "greatly extended" on the mere basis of legally non-binding agreements among ministers has led to an "unsatisfactory situation [that] will inevitably continue for some time", the Lords note; and they emphasise that EDU/Europol's current activities "are not subject to any common rules on data protection" and that "it is uncertain whether an individual who suffered damage would have any remedy".

Involvement of parliaments essential

The SC stresses that its enquiry has "shown once again how important it is that national parliaments if they are to be responsible for the democratic supervision of measures adopted under the Justice and Home Affairs pillar [Third pillar of the Maastricht Treaty] should be able to consider drafts at a time when they can make a constructive input. To do so at the stage of ratification is not an adequate substitute since they then only can reject or endorse the measure".

Europol no European FBI

The SC welcomes the fact that the draft Convention does not give Europol its own operational powers and stresses that such powers for Europol "may never be appropriate, at least in the absence of substantive European criminal law". The SC implicitly rebuffs German drives towards a "European FBI": "It is not valid to make a comparison with the United States of America. There the existence of federal offences makes it necessary to have a Federal Bureau of Investigation with direct powers to enforce federal laws".

No role for Europol in criminal proceedings

The SC also rejects suggestions that Europol could assist in securing attendance of witnesses or provision of evidence in criminal proceedings in other member states. "It seems undesirable to use Europol in this way since it would confuse exchange of police information with exchange of information in the context of criminal proceedings", the Committee stresses.

Europol's remit

Regarding the remit of Europol, the SC notes that "the crimes within the initial competence [such as car theft and "nuclear trafficking"] reflect preoccupations of several member states and appear on the list not because they are the most serious offenses but because they are particularly transnational in character". However, the Lords see no reason to object to the list of crimes and of their description in the draft Convention, provided that the remit of Europol is extended "in a controlled way" with "adequate safeguards in place".

Data subject access: inadequate provisions

With respect to data protection the SC notes that the draft Convention only requires member states' national legislation to "take account" of the Council of Europe Recommendation (No. R(87)15) on the Use of Personal data in the Police Sector.

Europol itself is required only to "take account of

the principles of the Council of Europe Convention" [for the Protection of Individuals with regard to Automatic Processing of personal Data of 28 January 1981]. "We believe that such a provision is inadequate and that Europol should be made subject to a requirement under the terms of its own Convention to comply with all appropriate obligations in the Council of Europe Convention", the report says.

The draft Convention requires Europol to grant data subjects access to information concerning them "only if the effort in providing this is not disproportionate to the interest in the information stated by the data subject". The Lords' comment on this very elastic provision is not without humour: "We find this exception surprising given what we were told on the facility for instant response which Europol is to provide, and it allows too much discretion". Consequently, the SC demands "some clarification of this power to withhold". The SC also finds the three month period within which Europol must take a decision on data subjects' applications for information "unnecessarily long given that speed of response is to be a key feature of Europol".

As for the exception in the draft Convention to the principle of data subjects' access to information "for the proper performance of Europol's tasks", the Lords find it "unnecessarily wide".

Data exchange by Europol with third parties

The SC is of the opinion that the draft Convention places "reasonable limits on exchange of data by Europol with third parties such as non-Member States and Interpol". This view is, however, not shared by several of the witnesses heard by the Committee.

Accountability

The SC is of the opinion "that general accountability of Europol for its policies and methods of operation will be important in building public confidence in a body which is to be given formidable powers to acquire and manipulate secret and highly sensitive information" and therefore demands to "see in draft the important provisions which the Council must adopt following the entry into force of the Convention before Europol can become fully operational". However, the SC is satisfied with the provisions having respect to informing and consulting the European Parliament.

As opposed to the British government, who has so far opposed any role of EU-bodies within the framework of Europol, the SC is "not convinced that there are sound arguments for excluding the Court of Auditors".

Remedies

The SC finds that the draft Convention does not provide sufficiently for individuals to secure redress for damage suffered as a result of unauthorised or incorrect processing of their personal data. In the view of the Committee, the best solution would be for the individual to be entitled to bring action in national courts against his or any other appropriate national authority. The national authority should be entitled to join Europol as a defendant in the proceedings, since the individual will often not be in a position to determine whether fault lay with the national authority or with Europol. Citizens of member states should be entitled to sue Europol directly in national courts. The SC fails to make proposals on remedies available to non-EU nationals.

SC favours jurisdiction for the European Court

The SC rejects the arguments of the British government against a jurisdiction for the European Court of Justice on the grounds that "the European Court has sufficient experience of cases involving external agreements of the Communities to be sensitive to the differences of approach and interpretation between European Community law and public international law". While the Lords are "not persuaded that there should be direct access by the citizen to the European Court of Justice" they take the view that reference should be possible to the European Court where disputes arise as to the interpretation and application of the Convention and that it should be possible for proceedings to be brought against a member state by another member state if it is alleged that the Convention is being breached.

"It is . . . important that the Convention should be applied on a uniform basis by all Member States", the report says, and the Lords make it clear that they would "not support a compromise which left the European Court with uneven jurisdiction in regard to the Member States, whether by an optional protocol under which some member States could decide that the European Court would have jurisdiction involving themselves or referred by their national courts, or by permitting reservations [by certain member states]". This statement amounts to a rejection by the SC of any compromise formula (as proposed among others by the Dutch Standing Committee of Experts; see CL No.33 p.5) seeking to overcome the current deadlock regarding the issue of jurisdiction.

The report concludes that the Europol Convention raises "important matters of policy and principle" that require public debate in parliament.

AUSTRIA

THE ENTRY OF INTERIOR MINISTER CASPAR EINEM: AUSTRIA ON THE EVE OF CHANGE?

Throughout Europe, conservative hardliners increasingly seem to hold a monopoly on Interior Ministries; and the EU's only response to growing social conflict and resulting problems such as migration and criminality seems to lie in increased control and policing of the excluded. Austria, however, is bucking the trend: a former social worker with a history in Vienna's left-wing circles has been named Interior Minister.

Caspar Einem's predecessor and party comrade, Franz Löschnak, became known for his crack-down on aliens (see CL No.7, p.6; No.18, p.1; No.24, p.8; No.26, p.4, No.31, p.3) and his notorious inactivity against neo-nazi violence (see CL No.31, p.1). It was logical for Jörg Haider, the leader of the extreme right "Freedom Movement", to praise Löschnak as "our best man in the government".

Things are likely to change with Einem's nomination. After successfully resisting a right-wing media campaign aimed at forcing his resignation, the new Interior Minister has started working: amendments of foreigner and asylum legislation and a radical reform of the police and other executive branches of the Ministry are at the top of the Einem's agenda.

In mid-April, long-standing bickering between the Social Democrat (SPÖ) ministers on one side and their conservative coalition partner (ÖVP) and the SPÖ's own workers' union faction on the other, around a controversial austerity package, led to a major reshuffle of Chancellor Franz Vranitzky's government. The four new Social Democrat ministers all belong to the party's new generation. Caspar Einem, son of the renowned composer Gottfried von Einem, is one of them.

Einem is known to belong to the "progressive" wing of the SPÖ and his surprising nomination was resented as a provocation by a coalition of conservative law and order advocates, the extreme right "Freedom Movement" of Jörg Haider and their numerous followers in the Austrian press and in the law enforcement authorities.

Right-wing press campaign aims at Einem's resignation

Shortly after Einem's nomination, information was leaked to the media - probably by sources within the STAPO (the Austrian state security police) - showing that Caspar Einem had at various occasions made minor private donations to groups considered to belong to Vienna's "anarcho-extremist" left wing scene, and in particular to the magazine *TATblatt*. Austria's leading newspapers immediately accused Einem of sympathies with left-wing extremism and mingling with terrorists. Indeed, a man involved in the kidnapping of a Viennese businessman in the late 70s and two young men who killed themselves in a recent attempt to dynamite a power line are known to have moved in the capital's youth scene of "anarchist" squatters and drug addicts which formed in the early 70s around the "autonomous" youth centre, ARENA, and other experiments in communitarian living.

The TV debate that turned the tide

After these revelations, Einem's fate seemed to be sealed. "Away with him!", it said in an front cover banner headline in Austria's largest tabloid, *Die Krone*. The more reputable media also seemed united in their demand for the minister's resignation. The call was supported by a strong phalanx of civil servants and police officers who said they refused to serve under a minister who, according to them, showed a blatant contempt for law enforcement authorities.

After some hesitation, and some arm-twisting by the other new Social-Democrat ministers, Chancellor Vranitzky publicly backed his Interior Minister.

The tide turned decisively, however, when Caspar Einem met Jörg Haider on 30 April in a popular TV debate. Before the broadcast, Haider boasted that he was to finish Einem in front of a million viewers.

Yet, the show ended in a media debacle for Haider. One of the leading politicians of the Austrian Green Party, Peter Pilz (see CL No.5, p.3), also participated in the debate. Thanks to thorough preparation, Pilz was able to virtually ridicule Haider's terrorism accusations against Einem. Pilz presented records from the parliamentary Press Committee showing that the allegedly "terrorist" *TATblatt*, like many other legal publications, had received government subsidies for years without this drawing any protest from the Haider Movement's representative in the Committee. Pilz also took maximum advantage of a recent court decision stating that it is not slanderous to describe Mr Haider as a "spiritual father of extreme-right terror".

Einem himself calmly justified his contributions to the *TATblatt*, which he claims he never read: "These kids too have a right to freedom of opinion". With respect to his "mingling" with the terrorism suspect Viennese squatter scene, Einem said that he believed that his role as a social worker was to maintain contacts with the kids in the squatter and drug scene who were in need of assistance. Such social responsibility and common sense from an Interior Minister apparently convinced many spectators.

From the nation's whipping boy to Austria's future Chancellor?

After the debate, whipping-boy Einem almost overnight found himself a public hero. The anti-racist movement, *SOS-Mitmensch* (SOS-fellow human being), known for its mass demonstrations against both the Haider movement and former Interior Minister Löschnak's foreigner policies (see CL No.25, p.7), rallied in a "sea of torches" demonstration in support of the new Interior Minister, and on 1 May, marchers in the traditional Social Democrat demonstration carried banners in support of Einem. Opinion polls conducted just after the TV event showed that Einem had become one of Austria's most popular politicians overnight, with 59 per cent of the interviewed expressly wishing him to remain in office.

"I believe I have just seen a prospective Chancellor and his Vice-chancellor", the Vienna correspondent of the German magazine, *Stern*, commented on the TV performance of Einem and Pilz.

Haider debacle reveals political turn of the tide

Indeed, many believe that the Haider movement's failed coup indicates a reversal of recent trends in Austrian politics. According to a prominent Social Democrat, "it was clear from the very beginning: if Einem falls, the SPÖ will fall with him, if he survives, he is the successor of Vranitzky [the present Chancellor]". Indeed, for many Social Democrats, Caspar Einem impersonates a long awaited new image of the SPÖ - social security, warmth and humaneness, a modern form of humanism rooted in the old Social Democratic principle of solidarity.

Green rescue operation for Einem: preparing for a red-green coalition

All of the sudden, the Social Democrat party, after years of decline, seems to have become an attractive alternative for Green, liberal and young voters again. Green party politician Pilz' deft rescue operation for Einem is viewed by many observers as a smart move by the Greens, aimed at preparing the ground for a future coalition government with the SPÖ in 1998 - probably the only way to stop the hitherto irresistible rise of Mr Haider.

An odd curriculum for an Interior Minister

Caspar Einem's *curriculum vitae* is, to say the least, unusual for an Interior Minister. After studying law, Einem began to work in banking, but soon discovered that the money business bored him. Instead he attended practical courses as a social worker at a youth custody centre. After that he worked for five years as a probation officer for juvenile delinquents. Through this work, he discovered the problems of the "kids" (who were frequently drug addicts and criminals) frequenting Vienna's "anarchist left-wing" scene. Einem began to spend much of his free time with helping them to "find a way out of illegality", as he puts it. He opened his large Vienna flat to homeless drug addicts, who eventually stripped the apartment bare. The Minister openly admits that he occasionally hid young runaways from education centres while trying to find better homes for them. He was several times the subject of tip-offs to the police, but he was never prosecuted.

When some social worker friends presented a private project to set up a therapeutic community for drug addicts in a farm house near Vienna, Einem spontaneously donated half of the purchase price for the farm.

No wonder that, through his presence in the scene, Einem also met with radical youths who later were to get involved in acts of political violence. He acknowledges that he was grappling with all sorts of "Communists" and "Maoists", but says that he was never seduced by their unrealistic policies. Einem's political models were people like Chancellor Bruno Kreisky and his brilliant Minister of Justice, Christian Broda, the father of the reform of the Austrian Justice system, perhaps the most far-reaching reform of its in post-war Europe.

In 1977, Einem belatedly and with little enthusiasm joined the SPÖ and was employed by the Austrian Chamber of Workers, working first with consumer protection issues and later as a director of the department for communal policies. In this latter function he again had to deal with the radical youth scene, in particular the squatter movement which was opposing the city council's city sanitation project. Rather than supporting extremists and terrorists, as suggested in the right wing campaign against his nomination, Einem tried to prevent the desperate youth from resorting to violence by acting as a semi-official mediator between them and the city authorities.

Due to disagreements with his board, Einem left the Chamber of Workers and became a director of ÖMV, the state-owned Austrian mineral oil trust. Almost apologetically, Einem explains that he had to take the job, because he was without work. Einem's brief come-back into the business world ended with his nomination as first as state secretary and then as Interior Minister.

Right wing police officers out for a putsch

By successfully fighting Haider, Einem has won an important battle, but not the war. While even the conservative junior coalition partner, OVP, finally said that Einem should be given a chance, the Central Committee of Austrian police personnel has not retracted its demand for Einem's resignation.

In the view of Peter Pilz, the protest movement within the law enforcement agencies against Einem amounts to no less than "an attempted rebellion of the political police against their Minister. The right-wing police are out for a putsch, they want to overthrow Einem and make the law enforcement apparatus pave the way for a right-wing Republic. Einem will only survive if he clears out these pockets of insurrection".

Indeed, there is cause for concern. At least some of the accusations against Einem relating to terrorism

seem to be based on a STAPO-file on Einem, set up in the early 70s by the then young police commissioner Sika. Ironically, Mr Sika is now the General Director of the Department for Public Security, and thereby one of the most senior officials at the Interior Ministry.

Initially, the STAPO, in a blatant lie, told Einem that they had no file on him, but in the course of the campaign for his resignation, copies of the non-existent file were leaked to journalists.

Extreme right infiltration of law enforcement agencies

The rebellion against Einem appears to be the work above all of AUF, a police association close to the Haider movement which has rapidly grown since its creation in 1991 and now represents almost a third of Austria's law enforcement officers.

Haider's populist black and white painting seems to appeal to many police who suffer from antiquated work conditions, high professional risk, and a pitifully poor image among the general public.

AUF president Michael Kreissl has declared war on Minister Einem, his superior. If Einem remained in office, police officers would demonstrate their "lack of motivation" by serving "strictly according to regulations", Kreissl threatened. And the police officer left no doubt about whose orders he obeys: "My boss is Jörg Haider". The Vice-president of AUF, Josef Kleindienst is known for his friendly relations with illegal extreme right circles.

Among other things, AUF has demanded that the Austrian police be equipped with pump-guns.

The WEGA (*Wiener Einsatzgruppe Alarmabteilung*), an elite special task force in the Vienna police, is among the strongholds of AUF. Fifty per cent of the 435 WEGA members voted for AUF in the 1991 election of the police personnel representatives. The government ordered an inquiry into WEGA, following growing accusations of nazi activities and violence within the unit. Indeed, since 1991, WEGA officers were involved in 137 established cases of maltreatment, and stories are circulating about WEGA men singing nazi songs at parties. One WEGA police officer acts as a body-guard for Haider in his spare time. The officer was however removed from WEGA to a less prestigious task as a guard of the Vienna police barracks and is now under investigation, after nazi pamphlets were found in the guards room at the barracks.

Some 50 WEGA officers are organised in a particular neo-nazi association, *PSV-Polizei Böhse Onkelz*, called after the German neo-nazi rock-band *Böhse Onkelz*. They distinguish themselves from their fellow officers by a "blockhead" haircut and by masking their faces when on duty at demonstrations.

In particular older Austrians are concerned about the surge of right-wing extremism in the elite unit of the Viennese police of all things. They still have in mind that of the 120 pro-German nazi police who occupied the government building and murdered Chancellor Dollfuss in 1934, about 80 were members of the *Alarmabteilung*, the predecessor of WEGA.

Clearing out the nazi nests

Caspar Einem appears to be aware of the danger. One of his first acts in office was to replace the commander of WEGA. The new WEGA chief, Werner Brinck, is a member of the conservative ÖVP. He is said to be a declared anti-fascist and enjoys high reputation among rank and file policemen. Hardly had he taken office, did he make it clear that WEGA was no place for "American TV heroes" and that further cases of maltreatment would not be tolerated.

Reforming the police: Minister Einem's charm offensive

Einem himself has resorted to a strategy of his own, nick-named "buddy-visits" by the Viennese, to improve his image among rank and file police. For several weeks, he has been spending a lot of his time making unannounced visits to police stations throughout the country. On such occasions the Minister, rather than making speeches, mostly listens to the questions, complaints and demands of the officers, just as he listened to marginalised kids when he was a social worker.

In recent weeks, support for AUF has crumbled and Haider's policemen were forced to give up their unconditional opposition to the new commander of WEGA "in the interest of our colleagues".

Asylum and Immigration: a liberal back-lash

Einem is moving just as fast in the fields of asylum and immigration policies. Commenting on current legislation in the field, Einem said: "laws and ordinances which provoke appeals by thousands just can't be good". At the end of May he decided that the temporary stay permits of Bosnian refugees will be prolonged by a whole year (instead of only half a year, as under Löschnak). Moreover, pending a reform of foreigner legislation, exceptions will be made to Löschnak's restrictive residence law with respect to aliens' children born in Austria and to family members if and when the bread-winner has an unlimited work permit.

In view of the planned reform of foreigner legislation, Einem has announce a "period of discussion" until October. Within this period, the Minister invites interested parties to tell him of any concrete cases causing undue hardship. Observers fear that, as a result, the Ministry will be overwhelmed with complaints from aliens. As a consequence of recent restrictive legislation introduced by former Interior Minister Löschnak, of the only 2,500 asylum applications examined since the beginning of 1995, some 80 per cent were rejected. More than 50 per cent of the rejectees have appealed against the decision. In May 1995 alone, around 10,000 deportation

procedures were initiated, and currently, 1235 persons are detained pending their deportation.

To the astonishment of many observers, even Einem's humanitarian approach to the problem of asylum and immigration appears to be gaining sympathy among a general public hitherto thought to be largely supportive of the "foreigners out" slogans of the Haider movement.

The Vienna weekly, *Profil*, claims to detect a liberal backlash. According to the weekly, the trend reversal might be due to the fact, that in the traditionally multi-cultural Austria, almost everybody has been confronted with tragic individual cases of bureaucratic harassment and deportation involving "friendly neighbours", "the children's nice class mates" or "the well-accepted foreign workmate".

Sources: News No.18, 19, 21/95; Profil No.20, 15.5.95; Der Standard, 13/14.5.95; Kurier, 31.5.95; our sources.

SWEDEN

TEMPORARY PROTECTION FOR BOSNIAN REFUGEES WITH CROATIAN PASSPORTS

On 5 May, the Swedish Government decided to grant temporary protection to Bosnian Croats and other holders of Croatian passports. The measure is valid until 1 December and will benefit between four and five thousand asylum-seekers. Most of the asylum-seekers affected are formally citizens of both Bosnia and Croatia.

The decision follows more than eight months of tug-of-war between the Government and the Immigration Authorities on the one hand and Swedish NGOs, Churches and the UNHCR on the other. The sometimes inflamed controversy turned on whether Croatia could be deemed a "safe country" for Bosnians with Croatian citizenship or not.

Croatia's "bogus citizens"

The actual root of the controversy around the Bosnian-Croatian refugees lies in the introduction of the visa obligation for Bosnian nationals by most western European countries, including Sweden, in summer 1993. As a result of this measure, thousands of Bosnian refugees trying to make their way to some western European host country, found themselves trapped in Croatia - which was already dealing with over 300,000 refugees and displaced persons. In this situation, the Croatian authorities made what they thought was a smart move: they generously issued large numbers of Croatian passports to Croatian and Muslim refugees from Bosnia, thereby enabling them to continue their journey to Sweden and other western European countries. Most western countries at that time did not require visa from Croatian nationals.

In October 1994, Adalbert Rebic, the Head of ODP, Croatia's governmental agency for refugees, quite frankly admitted before a Swedish NGO delegation that Croatia's issue of passports to Bosnian refugees was a "goodwill gesture" aimed at improving the chances of Bosnians obtaining protection in another country. Indeed, Croatia never had any intention to grant full citizens' rights to the Bosnian holders of Croatian passports.

A new loophole

The effect of the Croatian passport trick was that, despite the visa barrier, Bosnian refugees continued to pour into Western Europe and, in particular, into Sweden via the Croatian loophole.

In response to this, the Swedish Government began to process applications of Bosnian-Croatian asylum seeker in "accelerated" summary procedures, enabling for the speedy deportation of rejectees to Croatia without awaiting appeals by the persons concerned. Sweden justified this practice by stressing that Croatia, as opposed to Bosnia, could be considered a "safe country" and should be expected to grant protection to its own citizens.

Croatia sends refugees back to Bosnia-Herzegovina

The controversy on the fate of the "bogus Croats" began in autumn 1994, when the Swedish sections of Amnesty International and "Save the Children", the Swedish Refugee Council, and the UNHCR claimed that Bosnian-Croatian refugees who had been forcibly returned to Croatia by Sweden were actually being sent back to Bosnia by the Croatian authorities.

In a hurried response to the NGO reports, the Government sent a delegation to Croatia which quickly came to the conclusion that Croatia was not forcing Bosnian-Croatian refugees to return to Bosnia, whereupon the Swedish immigration authorities decided to go on with the planned deportation of some 4,500 asylum Bosnian asylum-seekers to Croatia.

However, shortly afterwards, the Head of ODP, Adalbert Rebic, made the following statement in a letter to Caritas Sweden: "Many Croatian refugees from Bosnia-Herzegovina have both Bosnian and Croatian passports; that means that according to our law they have the right to dual citizenship. Their domicile has often for centuries been Bosnia-Herzegovina. For that reason all Bosnian refugees (both Croat and Muslim) who are

expelled from Sweden or other countries must return to Bosnia if they come from liberated areas [i.e. under Croatian control] in Bosnia-Herzegovina and from areas where no battles are taking place. Only those who come from disputed zones or zones occupied by Serbs can stay in Croatia. The Republic of Croatia, however much it would like to, cannot take care of all Bosnian refugees".

Despite this unequivocal information, the Swedish authorities continued to deport Bosnians with Croatian passports.

The fate of Croatia's "second class" citizens

In October 1994, an NGO-delegation made up of representatives of Caritas, the Church of Sweden and FARR (Swedish Coordination of Asylum Committees and Refugee Groups) went to Croatia and Bosnia. In both countries, the delegates met rejectees from Sweden who said that they had been given no choice by the Croatian authorities but to return to Bosnia. Indeed, Bosnian refugees with Croatian passports, do not - despite their formal citizenship - have the same rights as other Croatian citizens. Bosnian Croats who refuse to return to Bosnia are denied work permits, housing and health care. Only those housed by friends or relatives are tolerated in Croatia, without any legal status however. The report of the NGO delegation further referred to a still valid July 1994 decree of the ODPH in Croatia. According to the decree, refugees from Bosnia-Herzegovina returned by a third country and discovered within Croatian territory shall be sent to Herzegovina and be taken care of by the ODPH office in Mostar.

NGOs and Churches demand halt on deportations

Consequently, the NGOs and Churches who had sent the delegation recommended a stay of deportations until the Government made guideline decisions in a number of test cases concerning Bosnian Croats.

The Swedish authorities rejected the conclusions of the NGO-report, *inter alia* by resorting to a casuistic interpretation of the term "forcible return". The Croatian authorities' practice of offering a single ticket to Bosnia-Herzegovina as the one and only alternative to some Bosnian-Croatian refugees did not amount to forcible return, it was argued, because no physical constraint was used by the Croatian authorities to put the returnees on the buses. Consequently, the Croatian practice did not contravene the principle of *non-refoulement* under the Geneva Convention.

However, as a result of the NGO delegation's report, the Swedish immigration authorities dropped their earlier practice of processing asylum applications of Bosnian Croats in summary procedures. As a matter of fact, the practice had been shown to be counter-productive, because it led hundreds of rejected asylum-seekers to go into hiding to escape the threatening deportation.

A letter to Minister Blomberg

In February 1995, the Government rejected the appeals of a number of Bosnian Croats in guideline decisions and began with the deportation of rejectees. Interior Minister Blomberg justified the proceedings by citing "guarantees" of the returnees' right to stay in Croatia which he said he had been given in a letter from Croatia's Foreign Minister Granic. However, he refused to publish the exact text of the letter, citing "diplomatic practice".

When the Croatian Embassy in Stockholm publicised the letter, a month later, it transpired that Granic had merely written that Croatia was willing to receive the Bosnian Croats and "take care of them", leaving it open whether this would happen in Croatia or in Bosnia.

Shortly after the Government's announcement, NGOs published a letter by ODPH chief Rebic, in which he once again claimed that there was a clear risk of forcible return to Bosnia for Bosnians sent back to Croatia.

Deportations trigger a storm of protest

The beginning of deportations in March triggered nationwide protest. Reputable NGOs accused the Government of not having taken into account the possible escalation of the war in Croatia in the event of the withdrawal of UNPROFOR and emphasised that many of the rejectees were actually deserters whose life would be put at risk in the event of deportation. In particular, they questioned the reliability of "guarantees" from the Croatian Government in a conflict marked by unpredictability. Demonstrations against Blomberg were held in many cities, and prominent Social-democrats were demanding the resignation of their Immigration Minister.

Church sanctuary

In open disavowal of Government policies, the Archbishop of the Church of Sweden encouraged the faithful to open not only churches but also school buildings to sanctuary for Bosnians fearing deportation and called on the Government to postpone the expulsions. The media reported daily on the more than hundred refugees - men, women and children - who had sought protection from the police by seeking sanctuary in a church in the town of Karlskrona. Unexpectedly for the Interior Minister, who believed that his restrictive policy was widely supported by the general public, many local people showed their sympathy with the refugees by bringing food supplies, clothes and toys to the refugees camping in the church.

Angrily, Minister Blomberg threatened to resign his membership of the Church of Sweden. However, in an attempt to calm down mounting public criticism, he announced a delay in carrying out further deportations on the allegedly technical grounds that the Government wished to discuss "orderly return procedures" with Croatia in April.

Inconsistency of Croatian policy statements

In April, the Croatian Deputy Prime Minister Kostovic, on a visit to Stockholm, once again said what the Swedish Government wanted to hear, by assuring them that no Bosnian Croats would be sent to Bosnia-Herzegovina against their will. Critics, however pointed to the still valid July 1992 decree of the ODPB and to the increasingly inconsistent official Croatian statements. Indeed, only weeks before Kostovic's visit, the Croatian Embassy in Stockholm had emphasised Croatia's "strategic interest" in seeing that Bosnians with Croatian passports return to the areas of Bosnia-Herzegovina under control of the Croatian-Bosnian Federation.

Fearing a resumption of the deportations, many refugees returned to the church sanctuaries they had left after the announcement of the technical delay in March.

Government bows to public pressure

By deciding on 5 May to grant temporary stay to the Bosnian-Croats, the Swedish Government has finally bowed to the demands of the NGOs and the Churches. The new decision was officially justified by reference to the self-evident fact that "further developments in Croatia are difficult to assess". But the Government also said that permanent residence permits should not be issued unless an applicant qualified for refugee status or family reunion, because there was hope that "the situation will improve within a short period of time".

By granting temporary stay to holders of Croatian passports, the Swedish authorities are for the first time making use of a new provision in the Aliens law, providing for short term protection of refugees. Refugees granted this kind of protection have a right to work and to reunion with their spouses and children under 20.

Visa requirement for Croatian nationals

The same day, the Government also decided to reintroduce the visa requirement for all Croatian nationals. "If we can't send a country's own citizens back to its own territory, then it is reasonable that we do not offer these persons the chance to travel to Sweden".

The visa requirement amounts to a late punishment of Croatia for its "passport trick" and is likely to effectively plug the last loophole open to Bosnian refugees fleeing from the war.

In a public statement, Amnesty International called the measure a "deeply immoral decision", amounting to an act of sabotage against the right of asylum and in contravention of the minimum guarantees for asylum procedures as recently agreed by the Ministers of the EU member States. The unusually harsh Amnesty statement shows that the tug-of-war between the Government and the NGOs is far from over.

Source: FARR-documentation, Swedish press, October 94 - May 95.

SWITZERLAND

NO DEPORTATIONS TO KOSOVO BEFORE FEBRUARY 1996

The Swiss federal Government has prolonged once more the final leaving date for asylum-seekers from the FRY (Serbia and Montenegro) whose application has been turned down. Some 5000 people, most of them ethnic Albanians from Kosovo, are affected by the measure. A similar measure, pertaining to Bosnians, was decided at the end of March.

According to official Swiss assessment, the situation of Albanians in Kosovo (FRY) does generally not make them eligible for asylum. Consequently, most asylum applications have been finally rejected and the persons concerned were ordered to leave the country. However, the Swiss authorities have been unable to carry out deportations since 1993, when Macedonia revoked a transit agreement with Switzerland enabling the forcible return of Kosovo-Albanians and other holders of FRY-passports to Serbia. When Switzerland succeeded in negotiating another route via Bulgaria, the FRY began denying entry to their own nationals, returned by western European countries. Because of this technical impediment, the Swiss authorities decided to delay all deportations, pending negotiations with the Serbian Government (see CL No.25, p.5; No.20, p.8). A spokesman of the Federal Office for Refugees, however, made it clear, that Switzerland was still determined to carry out the deportations, as soon as a solution could be found, and that Switzerland was seeking to coordinate its actions with those of Germany and Sweden.

Should a return of the rejectees prove impossible after the new January 1996 time limit, the more than 5,000 Albanians and other FRY pass-holders currently tolerated without status in Switzerland will be granted "temporary reception". Under this scheme, the refugees are granted access to social assistance, may work, and have a right to appeal against the withdrawal of their stay permit.

On 29 March, the Swiss Federal Government had already decided to prolong the validity of its "special

regulation" concerning Bosnian refugees with temporary stay permits. According to the decision, approximately 10,000 Bosnians are allowed to remain in the country until the end of April 1996.

Sources: Neue Zürcher Zeitung, 18.5.95; Press release, EJPD (Federal Department of Justice and Police), 29.3.95; Press documentation, BFF (Federal Office for Refugees).

CZECH REPUBLIC

GOVERNMENT TO CRACK DOWN ON RACISM?

The beating to death of Tibor Berkim, a 42 year old Romany father of five in front of his wife and children in his home in South Bohemia led to an emergency meeting of Prime Minister Václav Klaus with ministers and police chiefs on 16 May. After the meeting, the government announced a crackdown on racially motivated crime, but representatives of the Romany minority are showing scepticism about the government's determination.

Tibor Berkim was killed by a group of teenage supporters of the neo-nazi skinhead movement.

Romany community leaders welcomed the government's declaration of intent, "belated as it is". They said they would be watching developments closely to ensure that the government, police, prosecutors and the judiciary actually acted as promised.

The cautiousness of the Romany leaders is understandable. Indeed, Czech neo-nazi groups have all been allowed to register with the Interior Ministry, despite their commitment to promoting race hatred and fascist ideas - acts which are banned by law in the Czech Republic.

Such groups are behind the wave of racial violence which has swept the Czech Republic since the so-called "velvet revolution". According to official figures, which the government itself admits are an understatement, 160 incidents occurred last year and since then, 225 people were charged with inciting racial or national hatred. A report currently before the Czech parliament says that most of the victims were Romanies or people with dark skin mistaken for such.

After the murder of Tibor Berkim, the Justice Minister announced in a TV programme that, in future, persons convicted of racially motivated murder could be sentenced to life-time imprisonment - effectively 15 years, provided parliament voted through an amendment of the existing law.

In its turn, the Interior Ministry has said it will look again at the registrations of neo-nazi groups.

One such group, the "Bohemia Hammer Skins", has as its aim "a society based on the leadership principle and the superiority of the white race, in which there will be no place for coloured subhumans, Jews, drug addicts, political deviants, race traitors and other filth".

Police often stand by or even escort demonstrations by such groups where slogans shouted are of the type "Gypsies to the gas chambers!", "Ku Klux Klan!", and "Czech lands to the Czechs!".

Some municipal authorities have bestowed such demonstration with some "respectability". Local councils rarely ban skinhead marches, and on two occasions the local mayor addressed racist rallies and declared their support for typical neo-nazi demands such as clamping down on "Romany criminality", drug addiction, prostitution, and communism - while of course disowning the organisers' "regrettable nazi traits".

This happened in March at Mladá Boleslav, where the giant Skoda-Volkswagen car plant is located. The local mayor, Svatopluk Kvaizar, who was elected on the ticket of the right-wing Civic Democratic Alliance (a member of the Czech Republic's ruling coalition), declared his support for the political demands of a rally while distancing himself from the genocidal slogans chanted during the preceding march.

In the South Moravian town of Hodín, mayor Dusan Grombirik addressed a crowd including 300 skinheads, supporting their opposition to drug addicts and other policy aims of the organising National Front. Forty of the NF demonstrators were arrested for possession of clubs, knives and other weapons.

The courts appear to be noticeably harder on Romanies and others who defend themselves against skinhead terror on the streets or who deal out rough justice to skinhead thugs. A well-known Czech sculptor, Pavel Opocensky, who intervened to help a victim of skinhead violence was himself attacked by the steel tube-wielding thugs. In an attempt to defend himself with a penknife, he mortally wounded one of the skinheads. Opocensky was given a three year sentence.

In another incident, skinheads were released by court, scot-free or conditionally, after having thrown a Romany boy into a river. The boy drowned. Seeking

revenge, a Romany youth injured one of the skinheads with a knife. The Romany was sentenced to one year's imprisonment.

A neo-nazi rock band was similarly given a conditional discharge after being charged with stirring up racial hatred. One of the band's songs went: "Your mission is sacred, you'll beat up these swines - niggers, gypsies and yellows. Don't give them peace!".

Source: Postmark Praha, No.61, 22.5.95.

Comment

When it comes to the growing neo-nazi violence in the Czech Republic, the Klaus government's hands are far from clean.

When Czechoslovakia split into two states in 1993, the Czech government adopted a citizenship policy which denies Czech citizenship to Czech-born Romanies who have lived there all their lives. If they are under 40 and their parents were registered as Slovak citizens, they can not obtain Czech citizenship. This discriminatory policy has been confirmed by a decision of the Czech Constitutional Court whose members are well known to be hand-picked by President Václav Havel.

It is hardly surprising then, that the Romanies can be depicted with impunity as an alien force subverting the country by their criminality, their unwillingness to work, their large families etc. Hardly surprising, either, that young men with shaven heads take the government at its word and conduct pogroms all over the Czech Republic.

The frustration of the Romany community can be seen in the comment of Ladislav Body, the only Romany in the Czech parliament, representing the left block, at the funeral of Tibor Berkim on 20 May: "Berkim had to die because he was a Romany", Body said. "The government does not care about the safety of the Romanies. So, now the Romanies are saying that since they cannot rely upon anyone they must defend themselves".

Ken Biggs (Prague)

OPINION

ACCOUNTABILITY: A PREREQUISITE FOR A LEGITIMATE AND EFFECTIVE EUROPOL

In written evidence presented on behalf of the Institute for Public Policy to the British House of Lords' Select Committee on the European Communities, Dr Neil Walker, a teacher at Edinburgh University, advocates the incorporation of a strong system of policy and individual accountability in the Europol Convention. The pursuit of police co-operation is too important to be left to professionals and bureaucrats alone, since it involves difficult and genuinely political value choice and the allocation of scarce public resources, Dr Walker argues. This requires strong measures of public scrutiny.

The following is based on excerpts from the evidence. The article numbers mentioned in this text relate to the draft Convention of 25.10. 1994.

Despite the unpromising portents, it is vital that speedy progress is made towards the establishment of a Europol Convention. There has been a historical tendency for the growth of practical measures of international police co-operation to outpace the development of systems of adequate regulation of such measures. This tendency remains evident in the circumstances surrounding the negotiation of the Europol Convention. Having failed to conclude agreement on the Europol Convention at Essen, the European Council announced an extension of the crime-fighting remit of the EDU beyond drug-trafficking to embrace trade in radioactive and nuclear materials, illegal immigration networks, vehicle trafficking and associated money-laundering operations.

In effect, this means that, notwithstanding their failure to agree on regulatory principles for the wider Europol, the political leaders of the EU are prepared to allow a significant broadening of the activities of the pilot organisation, the EDU, although it possesses only a skeletal regulatory framework which fails to address the major issues impeding settlement of the Europol Convention. Clearly, the view of the political leadership of the EU is that progress towards more intensive police co-operation should not be thwarted just because an optimal regulatory system is not in place.

This perspective reveals an inadequate grasp of what is at stake in the failure to provide comprehensive regulation. In particular, it fails to appreciate the centrality of the issue of *accountability* to the future of European police co-operation, and the difficulties and dangers of proceeding without adequate resolution of this issue.

There are a number of reasons why it is important to provide a strong framework of accountability.

Development of European police co-operation a political choice

The development of policy in European police co-operation is ultimately a question of *political* choice, and, as such, should be subject to close public scrutiny and consultation. A number of reasons have been advanced to explain and justify the growth in European police co-operation. The most important of these are: the general increase in the mobility of the criminal and in the international dimension of criminal transactions and enterprises, particularly in activities which have a high public profile such as terrorism, drug-trafficking and money-laundering; the effect of the reduction, and eventual abolition, of border controls between member States pursuant upon the "1992" Single market initiative; and the threat to the domestic security and stability of Member States of an increased migratory pressure from economically disadvantaged and politically volatile regions to the South and East of the EU. In some circles it has been suggested or assumed that the need for a European system of police co-operation flows inexorably from these law enforcement and public order imperatives. However, police co-operation is no mere technical response to a self-evident security deficit.

To begin with, although there is broad consensus that it has reached significant dimensions, systematic information about the level of European crime is lacking.

Secondly, even if an accurate picture of the amount of transnational European crime was available, this would not resolve the question of how seriously it should be viewed. Quantitative analysis does not address the relative gravity of different crimes, of particular concern when the crimes at issue include such as terrorism and drug-trafficking; these crimes arguably pose such a profound threat to the state or to society as to defy meaningful comparison with most "ordinary crimes".

In the third place, the causes of international crime remain controversial. In particular, the impact of the removal of border controls is unclear. The overall trend in European transnational crime, therefore, although undoubtedly upwards, remains difficult to predict.

Security-based response to problems of crime controversial

Finally, the general priority to be given to a security-based response to problems of transnational crime and public order as opposed to other types of social policy response is also controversial. Drug abuse, terrorism and migration patterns - open and clandestine - have complex social, economic and political roots. They may be amenable to different types of treatment, with variable implications for the nature and intensity of police co-operative measures.

In sum, the pursuit of police co-operation involves difficult value choices and the allocation of scarce public resources to a set of problems which resist precise definition. This is a combination of political circumstances which justifies strong measures of public scrutiny and accountability.

Who controls the post-ratification evolution of Europol?

The range and intensity of political controversy surrounding the negotiation of the Europol Convention reinforce the significance which will attach to policy accountability mechanisms during the progressive implementation of the Europol Convention. Under the Convention as finally negotiated, a number of key policy questions are likely to remain unresolved, to be dealt with at a later point through a secondary system of regulation. The decisions made at the later stage may depend critically upon who has rights of prior information and consultation.

Under Article K.6 of Title VI of the TEU [Maastricht Treaty], the European Parliament is entitled to be consulted on "the principal aspects of activities" within the domain of justice and home affairs and to have its views "duly taken into consideration". How exactly will these general phrases be interpreted in the post ratification of the Europol Convention? For example, the key question whether Europol may, in time, acquire wider operational powers will depend upon whether the amendment mechanism under Article 40 is activated so as to extend the definition of competent tasks in Article 3; the broadening of the range of crimes which Europol is competent to address requires the satisfaction of a procedure contained in Article 2, involving, *inter alia*, the preparation of a draft decision by Europol's management Board prior to final resolution by the Council of Justice and Home Affairs Ministers; the development of data file rules determining the nature of the data to be stored under Article 10, [in the so-called Analysis Registers] and the adoption of rules governing the communication of personal data between Europol and third parties under Articles 10 and 16, are postponed to a later decision of the Council, again assisted by the Management Board.

The extent to which, and the point at which the European Parliament is consulted about these and many other decisions will depend upon the detailed content and interpretation of draft Article 31 [Information of the European Parliament]. The accountability mechanism which it eventually puts in place will be of vital significance, therefore, as it will be required to invigilate not only the general performance of Europol, but also key aspects of its structural development.

Individual vulnerability

The international exchange of information on individuals, which in the early years at least, will provide the main thrust of Europol's operational activities, is particularly susceptible to error and abuse. An international database of criminal information and intelligence on the scale contemplated increases the likelihood of the dissemination of false information about individuals. Further, if Europol is influenced by a strong "IT culture", there is the danger that information may assume a spurious objectivity in the perspective of those to whom it is disseminated. This possibility is reinforced by the fact that persons physically remote from the context in which information was produced may lack the background knowledge necessary for adequate interpretation of that information.

An effective system of data protection is

required to address these problems, including more precise protective criteria and mechanisms wherever possible, and the provision for an effective and consistent enforcement regime.

The detailed working of the data protection system will raise policy issues, in which the European parliament will have an interest. A mechanism should therefore be provided whereby the European Parliament can keep itself informed of the workings of the data protection system.

The tyranny of the majority

In domestic policing literature, arguments in favour of special mechanisms both of policy accountability and individual accountability, often refer to the danger associated with the tyranny of the majority. By its nature, policing tends to be directed against deviant groups which often attract little support amongst the general public. In such a climate there is a danger that a form of authoritarian populism will gain currency which is unduly dismissive of the point of view and careless of the entitlements of members of minority groups or associated persons. In these circumstances, it is particularly important that a package of accountability measures is developed which is vigilant in its representation and protection of a plurality of interests.

Does accountability jeopardise effectiveness?

There has traditionally been a tendency for questions of democratic accountability to be marginalised in discussions about international police co-operation, and for only limited - and largely internal - accountability controls to be proposed and implemented. As was indicated by the readiness with which the European Council was prepared to extend the remit of the EDU despite its lack of accountability mechanisms, there remains a strong body of opinion opposed to or indifferent to more external control.

There are three main arguments which explain the persistence of such attitudes. These arguments speak, respectively, to the limited role of the general public in European police co-operation, and to the political preference for intergovernmentalism. Each argument can, however, be successfully answered. The cumulative effect of these counter-arguments is to suggest that the inclusion within the Europol Convention of a robust framework of accountability is a prerequisite to the development of an *effective* system of practical police co-operation.

Professional autonomy versus accountability

In the first place, there is the emphasis upon specialist knowledge and techniques in international policing. Many of the key issues of international policing are typically tackled by specialist units, each claiming to possess their particular brand of exclusive knowledge, with their own, necessarily confidential sources and techniques of criminal intelligence. From this point of view, professional expertise is seen as paramount. Even the broadest issues of constitutional design are viewed primarily from the point of view of professional efficiency. The development of an integrated approach to criminal justice matters under Title VI of the TEU, for example, has been encouraged and welcomed as a way of facilitating a more co-ordinated European security programme involving policing, Customs controls, extradition, mutual legal assistance, asylum and immigration policy etc.

On the other hand, the professional world-view is not necessarily receptive to the idea of strong systems of accountability. From its perspective, external consultation and supervision can lead to undue interference with professional expertise and inadequate security of sensitive information.

An organisational paradox

We have already argued that to view European police co-operation exclusively as a matter of professional expertise and technical accomplishment is to ignore its political dimension and to deny the undoubted relevance of democratic values. However, the argument from professional autonomy is also flawed on its own terms. The integration of the various aspects of criminal justice co-operation under Title VI appears to give rise to an organisational paradox. Proper co-ordination of Justice and Home Affairs matters in the name of professional efficiency, it seems, can only be purchased at the price of excessive bureaucracy. The Council of Ministers is served by a general Co-ordinating Committee [the K4-Committee], which in turn has three "Steering Groups", each with a number of working groups which, finally, have direct oversight of particular functions, including Europol. This elaborate architecture may give rise to a number of bureaucratic pathologies. These include delays in decision-making, a narrow and self-referential attitude to policy development, blurred lines of responsibility, defensive reporting, buck-passing, and pedantic preoccupation with rules and procedures. In the name of optimal efficiency and effectiveness, the professional approach may generate an unwieldy structure which harbours its own inefficiencies.

Arguably, the introduction of mechanisms of overview by and consultation of representative bodies at key points within the structure, Europol included, can help to overcome the paradox by ensuring against complacency and insularity and by countering the opaqueness of internal decision-making processes. In the context of an expanding bureaucracy, accountability arrangements can complement rather than compromise professional expertise.

Policing without the public

A second argument against strong accountability controls refers to the limited role of the general public in many areas of international policing. Domestically, the doctrine of policing by consent implies that the police service requires a steady flow of information from all sections of the public in order to achieve acceptable standards of

effectiveness in preventing and detecting crime. This information flow depends upon mutual trust, which, in turn, is at least partly dependent upon public confidence that the police are answerable for their activities.

In international policing, the connection between effectiveness, public cooperation and adequate accountability is more tenuous. To the extent that the public subscribe to arguments concerning professional autonomy and the marginal status of targeted minorities, their support may not depend upon adequate accountability. More importantly, their active support may in any case be of less importance; small sections of the public are crucial informants in intelligence networks associated with international policing, but the public as a whole is not such a vital resource.

This is, however, only a sustainable position in a short term. In the longer term, as European policing intrudes into more mundane areas of crime (a tendency which is already evident in discussions of the remit of Europol), and as the relative transparency of the new Title VI procedures encourages greater public awareness of their role, international policing arrangements may lose their mystique and their detachment from normal processes of public involvement.

Europol will have to come to terms with a more knowledgeable, critical and potentially useful general public. As the Committee on Civil Liberties has argued, if the European general public are to become an effective weapon in the fight against the developing threat of transnational organised crime, a process of "social mobilization" is required, which can only be achieved by the forging of stronger accountability links.

Intergovernmentalism versus supranationalism

A third argument against holding European police institutions closely to account has deeper roots. Political ambivalence towards a supranational as opposed to an intergovernmental system of governance within the EU entails a lack of enthusiasm for accountability arrangements which accord a key role to supranational organs such as the European parliament and the Court of Justice. In part, this is a consequence of general political attitudes towards the development of *any* new competence on the part of supranational organs. In part, it is a concern peculiar to policing and internal security. The maintenance of internal security has traditionally been one of the defining characteristics of statehood. Moreover, many of the areas in which pressure for police co-operation is greatest, such as terrorism and money-laundering, are also those where the security of the state and the protection of its key interests are most directly at stake. Viewed through a nationalist lens, the strengthening of the capacity of the European centre to monitor policing may automatically be perceived as a threat to state sovereignty.

A refusal to give up traditional intergovernmental methods of international co-operation in policing and criminal justice matters may help to sustain a belief in the integrity of state sovereignty, but it also can provide a severe impediment to the development of effective systems of co-operation. After the Essen Council of Ministers meeting in December 1994, both the outgoing European Commissioner for Justice and Home Affairs, Pádraig Flynn, and the European Parliament, expressed their disappointment at the slow rate of progress in the first year of operation of Title VI. They reserved particular criticism for those Member States who insisted on the use of the unanimity rule when negotiating Conventions.

The preference for unanimity is at least partly explicable by reference to fear of the "democratic deficit" at EU level. Only the veto, it is often argued from this perspective, stands between the Member States and the overweening authority of the European Commission, backed by a majoritarian Council of Ministers. There is, however, an alternative response to this fear which involves a more positive embrace of supranationalism rather than its outright rejection. If the European parliament - its legitimacy increasingly bolstered by its separate democratic mandate and its distinctive contribution to European politics and public policy - were to be permitted effective input into and overview of Title VI decisions, the veto might no longer be widely perceived as an indispensable constitutional longstop. Such a change of attitudes might free the way for more effective progress under Title VI along majoritarian lines.

Indeed, strong supranational accountability, in combination with national systems of accountability, is most likely to contribute to reducing the present overall democratic deficit and to providing a climate within which international agreement on co-operative arrangements becomes easier to secure.

Neil Walker

This abridged version of evidence presented by Dr Walker to the Select Committee is published with the kind permission of the author. The full text is available at: Dr Neil Walker, Department of Public Law, University of Edinburgh, Old College, South bridge, Edinburgh EH8 9YL, UK; Tel: +44/131 6502058, Fax: +44/131 6620724.

DOCUMENTS AND PUBLICATIONS

Mise en oeuvre de la Convention de Schengen - Rapport d'information, Belgian Senate, report of the Committee for European Affairs, Rapporteur: M. Jonckheer, 14.3.95, 1325 (1994-1995), in French and Dutch, 87 p.

This report provides a good overview, beginning

with September 1993, of the long and complex preparatory phase preceding the implementation of the Schengen Agreement, and on problems remaining to be solved. The report also addresses the legal relationship between Schengen and the third pillar of the TEU. The appendix includes an account of the German Schengen Presidency from 9.11.94 on the implementation of the Schengen Agreement.

STATES OF INJUSTICE - A Guide to Human Rights and Civil Liberties in the European Union, by Michael Spencer, Book published by Pluto Press, London, 1995, ISBN 0 7453 0979 8 hbk; 234 p.

Michael Spencer, the author of this comprehensive guide to human rights and civil liberties in the EU, 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 well-known to our readers as a contributor to the CL (see e.g. CL No.29, p.1).

The book starts with a guide to the confusing decision-making structure of the Union, as amended by the Maastricht Treaty. The next chapter is on the protection of human rights in Europe. Later chapters examine particular areas of concern: measure flowing from the abolition of internal frontiers, the treatment of refugees, immigration policy, racism and discrimination, police co-operation, and data protection. The chapters explain which individual rights are covered by Community law and capable of improvement in this way, and which are currently left to the decisions of national governments. Particular attention is given to the "grey area" of matters coming under Title VI of the Maastricht Treaty. Discussion of these topics is then illustrated by "snapshots" of seven member states of the EU. The aim here is to concentrate on the special problems facing states that fall in particular broad categories: founder members, later recruits and very new members.

Throughout the book the reader will encounter words and phrases that have acquired special meanings in "Eurospeak" as a shorthand for quite complex concepts: subsidiarity, transparency, the *acquis communautaire* and so on, not to mention the baffling acronyms that are a Brussels speciality. All these are defined where they first occur, and the location of each definition is included in the Index.

Finally, the key issues for reform emerging from earlier chapters are summarised. Throughout the book, original references drawn from various countries are given. An Appendix lists a selection of national and international bodies which can provide more detailed information on every topic.

"Nobody need feel that they are alone in wishing for change or unable to exert any influence. The only problem is getting together to work for it", Michael Spencer stresses. He is right - and as his book shows, that there is a lot of work ahead.

For book orders, please refer to the flyer enclosed with this CL.

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