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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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## EUROPEAN UNION

## CANNES SUMMIT ON EUROPOL: CONFUSION AND DECEPTION

The EU summit in Cannes has ended in total confusion. After the meeting, nobody - from the accredited press correspondents to the delegates of the member states involved in the negotiations - seemed to know what had actually been decided with regard to Europol. A day after the summit, Anita Gradin, the European Commissioner responsible for Justice and Home Affairs cooperation within the EU, was trying hard at her Brussels office to discover what the EU heads of state and chiefs of governments could have meant by their "agreement".

One thing is clear, however. Contrary to both solemn promises of the heads of state at the Essen Council last December, and duplicitous statements from the Summit that "agreement had been reached" on Europol, the Convention was *not* signed, because of the unsolved dispute on the jurisdiction of the European Court of Justice (ECJ). Nonetheless, the EU heads of state seem determined to start a "provisional ratification process", even before the essential question of judicial control of Europol activities is solved. Should this happen, this would amount to a unique affront to parliamentary democracy.

A day after the Summit, nervous journalists were seeking answers to many questions: Is Europol postponed? Has the adoption of the Convention been adjourned? Has a compromise been reached? Have the heads of states actually launched Europol? If so, why was the Convention not signed? Can parliaments ratify an incomplete convention?

None of these questions received straight answers at Cannes. Instead, spokesmen for the various member states resorted to verbal acrobatics aimed at making the European public believe that agreement had been reached on Europol, while carefully avoiding to mention that the Convention was actually not signed, as promised by the Essen Council, last December.

Confusion, deception and selfish opportunism are the terms that best characterise the behaviour of the leaders of the European Union in Cannes. This is illustrated by the following summary of press agency releases - all from Tuesday, 27 June.

### A chronology of confusion and deception

02.48 h: DPA (the German Press Agency) announces the postponement of the Europol Convention by one year, due to British Prime Minister John Major's "incapacity" to accept any role for the ECJ.

02.56 h: AP (Associated Press) confirms the Europol failure but says that the governments are trying everything that would allow "to begin setting up Europol now".

Until ten o'clock, the news of the Europol failure is spread throughout Europe.

11:19 h: DPA says that the French Presidency is making another attempt to achieve "agreement" on Europol. The question of the ECJ shall be "left out" for the time being.

13.45 h: Reuters announces that "agreement on a compromise" has been reached. According to the Belgian Prime Minister, Jean-Luc Dehaene, "the Convention will be signed in the forthcoming months" and subsequently submitted to the national parliaments for ratification. The dispute about the jurisdiction of the ECJ will have to be solved within a year, according to Dehaene.

The Dutch parliament has prohibited the government from signing a Convention text not giving jurisdiction to the ECJ. Such a text would not be ratified by the parliament.

14.08 h: AFP reiterates the Dutch stand, but adds that, pending a solution to the problem with the ECJ until summer 1996, the heads of state want the ratification process to begin in the member states. A spokesman of the French government is quoted as speaking about a "provisional ratification", enabling an early start for Europol.

14.37 h: "Summit finally adopts Europol Convention", it says in the rubric of an AP release. Agreement was reached following concessions made by both the UK and the Benelux countries regarding the role of the ECJ.

15.24 h: According to AFP, the establishment of Europol is "uncertain". However, "the heads of states and governments *formally approved* [our emphasis] the Europol Convention . . . The future Euro-police will be able to start working as soon as the Convention has been ratified by all parliaments of the EU member states . . . The ratification process is to be concluded by the end of June 1996". The release quotes diplomats talking about a "theoretical possibility" of further expanding the EDU [the provisional Europol nucleus] pending the ratification of the Convention.

15.26 h: Reuters announces that the creation of Europol has been "further delayed". A decision was postponed because "John Major, fighting for his political survival, was unable to move". The Dutch Minister for Foreign Affairs recalls that his government will not proceed with ratification, as long as the dispute on the ECJ is not

solved. The Committee on European Affairs of the German parliament says there will be no ratification without a role for the ECJ in the Convention.

15.41 h: AP quotes members of the German delegation as saying that the Convention will be submitted to the national parliaments "shortly" and "subsequently enter into force *after* the ratification of the Convention by the national parliaments [our emphasis]. With respect to the role of the ECJ, "the small countries [Benelux states] renounced their conditions, while the British came round by accepting the jurisdiction of the Luxembourg Court [ECJ] for disputes between single member states and Europol. The complaints of individual citizens shall in the future be considered by only the national courts. Individuals will not be able to petition the ECJ for a binding interpretation [of the Convention]".

17.04 h: AFP quotes a disillusioned Chancellor Helmut Kohl commenting on Prime Minister John Major: "What ever comes after him, whatever party - Europol will be put on the track in June 1996 at the Italian Summit, at the earliest".

Finally, in the official press release at the end of the Summit, the chiefs of government note "with satisfaction . . . that there is accord on the agreement concerning the creation of Europol", and they call on the Member States to do everything necessary for the speedy implementation of the Convention after ratification by the parliaments and its formal approval. This is followed by the intriguing sentence: "It was agreed that the question of possible jurisdiction for the European Court of Justice will be settled at the latest at the conference in June 1996".

### **What did they actually decide?**

A day after the Summit, EU Commissioner Anita Gradin's cabinet agrees on the following - provisional - interpretation of the Summit's Europol decision: The EU member states have begun the ratification process despite the fact that there is a big hole in the convention text. The hole is precisely over the judicial control and legal protection that was to be ensured by the ECJ. Ms Gradin says she is "not too happy" about these proceedings.

The Chief of EDU-Europol, Jürgen Storbeck, on the other hand, is "quite satisfied". He predicts that the Justice and Home Affairs ministers will sign the Convention within days, or by mid July at the latest, thus opening the way for ratification by the national parliaments.

This is confirmed on 29 June to a correspondent of the CL by a source within the British House of Lords. The same source says that the Convention text to be signed does not contain an "opt-out" clause for Britain on the jurisdiction of the ECJ, as had been claimed in some press reports, but that there was speculation about settling the ECJ issue in a protocol to the Convention to be annexed after the ratification of the "rump" text of the Convention.

On 30 June, a source within the Dutch parliament tells the CL that this parliament is very unlikely to proceed with the ratification of the Convention, even if the information that the Dutch government has accepted a compromise on the ECJ issue should prove to be correct.

A German memorandum on a follow-up meeting of senior officials of the EU member states, on 29 June, after the closure of the Summit, speaks volumes about the reigning confusion and the uncertainty of an agreement on Europol. According to the document, the Summit has "politically adopted" three conventions [on Europol Convention, on the Customs Information System, and on the combat of fraud in the EU]. The provisions referring to the jurisdiction of the ECJ have simply been blocked. The follow-up meeting stresses that a formal decision on the conventions and their signing should be taken at a next meeting on 5 July, in view of the risk that the "fragile consensus" achieved at the Summit could otherwise crack. It is unclear at the follow-up meeting whether the question of jurisdiction will be settled until summer 1996 for all three conventions or merely for Europol. According to the German document, 13 member states have announced their intention to issue an annex declaration to the Convention whereby they would bind themselves to accept the jurisdiction of the ECJ in disputes between the member states [such an emergency solution was proposed by the Dutch Standing Committee as a last resort: see CL No.33, p.5]. The UK will not sign this declaration and the Greek representative at the meeting made reservations.

### **A provisional conclusion**

Everything indicates that the governments of the EU intend to go ahead with the ratification and subsequent implementation of an unfinished Convention. We would thus have a European police cooperation based on defective legislation. Legal experts at the European institutions privately admit that it would be invidious to ask the national parliaments to give their blessings to an unfinished law. Such a procedure would indeed constitute a disquieting novelty in the history of European democracies.

### **"Uncontrolled use of personal data"**

Apart from lacking supra-national jurisdiction over a supra-national police office, there are other dubious provisions in the draft Convention "approved" at the Summit. They were agreed by all member states already at the Justice and Home Affairs (JHA) Council in Luxembourg preceding the Cannes Summit, on 20-21 June. The JHA Council adopted both the French Presidency's proposals on the architecture of Europol's computerised data register and on access of individuals to their own data (French proposals: see CL 33, p.6 and 8).

In Germany, the Data Protection Commissioner of Hamburg, Hans-Hermann Schrader, has once again stressed the danger of an "uncontrolled use of personal data" by Europol. In future, he said, perfectly innocent citizens might be stopped for police questioning in some foreign European country, merely because their data have been transmitted to Europol by the German criminal investigation authorities.

### **You might be the victim of a future crime**

Indeed, according to the final version of the corresponding articles, even information about non-suspect acquaintances and fellow travellers, potential witnesses and "potential victims of future crimes" can be exchanged among member states. Even when the authorities of one member state have concluded an investigation, the others are free to continue and to store data they consider being of use.

### **"Direct" or "indirect" non-access?**

The Hamburg Data Protection Commissioner also claims that the right of access of individuals to their own data is not guaranteed by the provisions adopted by the JHA Council.

Indeed, according to the present version of the Convention, not only Europol but also any member state involved in an investigation may refuse all information.

According to Article 19 of the final draft Convention text resulting from the Luxembourg JHA Council, individuals' right of access to their own data (direct access) or to require a check of these data (indirect access) is to be considered in accordance with the law of the Member State in which it the application for access has been made. If direct access is provided by the law of the Member State concerned, information is refused "if this is necessary"

1. for the proper performance of Europol's tasks,
2. for the protection of the security of the Member States, of public order or for combating criminal acts,
3. for the protection of the rights and freedoms of third parties.

On these catch-all grounds the communication to an applicant of his private data can be refused if one single member state concerned by this data communication requires this.

Data stored in Europol's own Analysis Registers (see CL No.32 p.6; CL No.33, p.6) will be provided to an applicant only upon a *consensual decision* of Europol and all member states participating in an analysis operation.

In all cases where, on the above grounds, the required data are not provided to the applicant, Europol will inform the applicant that checks have been carried out, without however indicating whether data concerning his person are stored or not.

Theoretically, such denial of information can be appealed against to a joint supervisory body or, in cases concerning only one member state, at the national supervisory body. But the procedure is such that the applicant is unlikely to obtain a reversal of the initial decision.

In view of all this, the heated ideological controversy between the member states in support of "direct access" (mainly Germany and the Netherlands) and those in support of "indirect access" (France and many others) seems fairly irrelevant. Citizens denied information on their own data for reasons such as "the proper performance of Europol's tasks" will probably not care very greatly about whether the access refused would have been "direct" or "indirect". But they might care about the fact that they will never have their case considered by a supra-national Court - the European Court of Justice, for example.

### **Parliaments: a rubber-stamping club?**

Commenting on the Summit's Europol "compromise", the president of the Green Group in the European parliament says: "Proceedings followed an all-too-usual pattern. Agreement on a draft in clandestine circles, withheld from the general public and - to a large extent - also from parliaments - thereby degrading the parliaments to bodies allowed only to nod through agreement. Public debate is obviously undesirable. With Europol a new agency will start work in The Hague which will be able to snoop on anyone. The demands of "internal security" will prevail over civil liberties. Europol will not reduce criminality in Europe. But with the creation of Europol we have taken a further step away from a democratic Europe".

N.B.

Sources: Agency dispatches AFP, DPA, Reuters, AP, 27.6.95; Süddeutsche Zeitung, 29.6.95; Draft Convention on Europol, Brussels, 16.6.95, 7037/2/95 REV 2 (with the changes agreed at the JHA Council in Luxembourg, 20.6.95) in German; our sources in Britain, Germany, and the Netherlands. The quotations in this article are our translations from German.

## **JUSTICE AND HOME AFFAIRS COUNCIL IN LUXEMBOURG**

**The Justice and Home Affairs Council met in Luxembourg on 20-21 June. Here is a summary of the meeting.**

### **Draft Convention on Europol**

No final agreement was reached, due to continuing dispute over the possible jurisdiction of the European Court of Justice. Differences persisted, namely with regard to preliminary rulings by the Court. The Ministers, however, agreed to all specific provisions in the Convention

### **Customs Information System Convention**

No final agreement was reached, due to the problem of jurisdiction by the ECJ.

### **Convention for the protection of the financial interest of the EC**

Differences remain with respect to the type of information exchanged between the member states or between the member states and the Commission. Due to persistent British opposition, no agreement was reached over the role of the ECJ.

### **External Borders Convention**

The Council noted "that some progress had been achieved", but the Convention is blocked due to the dispute between Spain and Britain on the status of Gibraltar.

### **Visa requirements for third country nationals**

The ministers noted "difficulties" in setting up a common list of countries whose nationals are subject to a visa obligation. The "difficulties" arose because of Italy's veto against including the FRY (Serbia and Montenegro) on the common list as demanded by "numerous countries" [i.e. Germany and some others]. The decision on including a third country on the above list must be taken by unanimity until 1 January 1996. After this date, qualified majority will suffice.

### **Burden sharing**

The Council adopted a Resolution on burden sharing in the event of sudden massive influx of displaced persons in need of temporary protection. The Resolution, however, fails to specify objective criteria that would be used to establish the form and extent of the contribution of each member state in handling massive influxes. One point explicitly states that the (very vague) burden sharing procedures named in the resolution do not apply to displaced persons who have been received by various member states before the adoption of the resolution.

Obviously aware of the non-binding character of the resolution, the Council added a Conclusion calling for complementary work to enable the European Union to cope efficiently with crisis situations.

### **Convention on extraditions**

The Council discussed aspects such as the extradition of own nationals by member states, and the possibility of refusing extradition in political cases. Regarding the extradition of own nationals, the Council noted that the draft Convention took account to a large extent of the concerns expressed by the delegations.

### **Minimum guarantees for asylum procedures**

The Council formally adopted a Resolution on minimum guarantees already approved at the Council's Brussels meeting in March.

### **Organised crime - protection of witnesses**

The Council approved a resolution that will be formally adopted at the next JHA meeting.

Nothing is said in the official press release on the Luxembourg meeting about the Draft Council Recommendation on harmonizing means of combating illegal immigration. The Recommendation appeared on the agenda of the meeting (see article below) on the list of so-called "A" items, i.e. items approved by the COREPER (Committee of Permanent Representatives of the European Council) and submitted to the Ministers for adoption without debate.

## DRAFT RECOMMENDATION ON COMBAT OF ILLEGAL IMMIGRATION

**Former French Interior Minister Charles Pasqua "immigration zero" policies (see CL No.15, p.3; No.17, pp. 7,8; No.18, p.5) have left their mark not only in France but also in the European Union. A draft "Recommendation" drawn up by the "Migration Working Party (Expulsion)" (a sub-group under the K4 Committee's Steering Group I) intends to harmonise "checks on and expulsion of third-country nationals residing or working without authorization" in member states.**

The draft implicitly pleads for a wider use of identity checks "in accordance with national law" [of the member states]. A person's residence situation must be verified "at least" where he or she "appears" to be residing in the country unlawfully. Provisions allow random checks "to counter threats to public order or security" and "in frontier areas and at ports, airports and railway stations handling international traffic, without prejudice to border controls". No objective criteria are specified as to how suspicions should be justified when carrying out such checks. Provisions that they should be carried out "in a non-discriminatory manner" and "based on objective criteria which comply with non-racist and non-xenophobic principles" have simply been deleted.

### Shifting the burden of proof

It has become a characteristic of foreigner legislation in all European states that the burden of proof is increasingly being shifted onto the individual foreigner, thereby contributing to a public image of foreigners as being suspects by definition. The draft further confirms this trend by stating that public services should, as a general rule, refuse any benefits, "in particular in the area of health, retirement, family or work", prior to checks on the residence and employment situation of the beneficiary. As a consequence, public services are expected to denounce suspected illegal immigrants seeking assistance. Article 5 says: "Member States shall inform the central and local authorities responsible for dispensing benefits to foreign nationals of the importance of combating illegal immigration in order to encourage them to apprise the competent authorities, in accordance with national law, of such cases of breaches of the residence rules as they may detect in the course of their work".

Foreigners who wish to get married are suspect too, of course: "The authorities responsible for marriages should also have their attention drawn to the risk of non-genuine marriages".

On the other hand, the draft contains no obligation on Member States to introduce or implement sanctions against employers of illegal immigrants. It merely states that such employers "may be subject to appropriate penalties which may extend to prison sentences, fines or confiscation of the tools of trade or the proceeds of the unauthorised work" [our emphasis].

The draft also suggests in a non-binding form that member states set up central registers of foreign nationals. Such computerised foreigner registers have drawn strong criticism from data protection commissioners in Germany, the Netherlands, and Switzerland.

Source: Draft Council Recommendation on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control, 7972/95 ASIM 188.

### Comment

The draft, as a whole, amounts to a common inter-ministerial declaration of general policy aims, rather than to a legal text with precise binding provisions. The discretionary "may" is clearly more frequent in the text than the compulsory "shall", and it is repeatedly emphasised in the different provisions that they shall or may be implemented by the Member States according to their national law. The officials in the K4 Committees Steering Group 1 and the COREPER responsible for the draft seem to have gradually become aware of the non-binding character of its provisions. Indeed, before the JHA Council's meeting in Luxembourg, the draft was suddenly reduced from a "Joint Action" (maybe legally binding) to a "Recommendation (certainly not legally binding)".

Thus, the document should be viewed as encouragement or moral exhortation for the ministers concerned to realise the policy objectives of the Recommendation in their own member states. They should do so by seeing to it that the national executive bodies in charge make use of the most extensive interpretation of existing national rules (e.g. on the admissibility of ID-checks), rather than by time-consuming efforts to introduce new and presumably controversial laws.

The instrument of "Recommendations", provides a elastic form - more elastic even than "Joint Actions" - of political decision-making and, in effect, law-making. Recommendations have the great advantage (from the ministers' point of view) of requiring the involvement of neither the European Parliament, nor the national parliaments.

The very wording of the draft once again highlights the hybrid and blurred character of the instruments of "Recommendations and "Joint Actions", in the no-man's land between the rule of law and the rule of the executive.

N.B.

On "executive law-making" in the EU, see also CL No.32, p.10; No.11, p.10.

# FRANCE

## **FEAR, SUSPICION AND DENUNCIATION: THE EFFECTS OF RECENT YEARS' ANTI-IMMIGRATION POLICIES**

**A drastic anti-immigration law package introduced two years ago, has deeply marked French society. Ever since, non-white foreigners have been living in a climate marked by constant fear of administrative and police harassment, denunciation, discrimination and racist violence. Families, including French citizens, are brutally separated by deportation measures and ever more immigrants are forced underground.**

The anti-immigration package introduced in 1993 affects various categories of foreigners and their French relatives:

### **"Just in time" deportations of teenagers**

One law abolished the former automatic right for foreign parents to obtain French citizenship for their children born in France. Since 1993, the children concerned have to apply for citizenship themselves, at the age of 16. However, if their parents lose their residence permit before this date, the entire family is no longer protected from deportation. The consequence is that teenagers who have gone to French schools all their lives are expelled from France "just in time" - before their 16th birthday.

### **"Mixed" couples**

Irregular foreigners no longer can apply for a residence permit on the grounds of marriage with a French national. The foreign spouse must return in his/her country of origin and apply there for a residence permit in France. Even those foreign spouses who are able to comply with this rule are now hesitating to do so and prefer to live semi-clandestinely, since it has become known that French authorities tend to reject even applications that comply with the new requirements.

### **Family reunion**

The right to family reunion has been sharply restricted through a decree requiring a rigorous check of the applicants' income and housing conditions. As a result, in the Paris region the success rate of applications dropped from 85 per cent before the new law to 25 per cent in 1994, and it is now all but impossible for foreigners with legal minimum wages to obtain reunion with their families. Many immigrants try to stay in France illegally in order to live with their families. Legislation has provided for this too by making "assisting in illegal stay" a punishable act. The French wife of a Moroccan man was recently prosecuted on the grounds that she had "hidden" her husband from the police.

### **Right of asylum**

The "Pasqua law", combined with the implementation of the Schengen Agreement, has meant that France no longer examines asylum applications presented by foreigners suspected of having entered the country via one of the Schengen member states. Applications considered as "manifestly unfounded" by the Interior Ministry are also not examined.

### **Visas**

Since the introduction of anti-immigration measures in 1993, there has been a massive fall in the number of visas issued. Only 100,000 visas were granted to Algerian nationals in 1994, against 800,000 in 1989. Similar drops can be observed with regard to other North African countries.

The restrictive visa practice has tragic consequences for the large number of people (many of whom are French citizens) in France with family members and friends in conflict-torn Algeria.

### **Undocumented parents of French children**

Foreign parents of children with French citizenship are protected by law against deportation. Yet, since 1993, foreign parents are denied residence permits if they are "irregularly" staying in France at the moment of their application. Thus, many foreign parents of French children have been denied a residence permit on the grounds that their visa or their stay permit had expired.

The regulation, introduced by former Interior Minister Pasqua, has led to absurd situations, with foreign parents actually living in France, because they may not be deported, but doomed to a permanent clandestine life, because they have no right to a residence permit.

However, in May, the then Interior Minister,

Charles Pasqua, issued a circular enabling "irregular foreigners" with French children to have their situation legalised. The circular requires Prefects to examine each individual case and to assess the possibility of regularisation according to "certain objective elements", including, *inter alia*, the length of stay of the parents in France, and the genuineness of their parental ties with the French child.

Minister Pasqua pointed out that the circular did not aim to create a general amnesty but provided for an individual examination of all cases. About 700 families affected by the decree are known to French NGOs concerned with immigrants and human rights.

Mr. Pasqua's climb-down followed a number of spectacular protest actions throughout Spring. In April, six foreign parents (most of them Africans) went on hunger strike in Paris, with the support of the protestant charity CIMADE. A visit of Mrs Danielle Mitterrand highlighted their desperate situation, and just before leaving office, President Mitterrand himself called on the next president to "put to a speedy end a situation that for the sake of the image of France, may not persist".

Ironically, by issuing his circular, Charles Pasqua acknowledged the inconsistency of his own law at the moment of leaving office as an Interior Minister.

Critics, however, point out, that this single measure will change little in the generally repressive philosophy behind foreigner law and practices introduced since 1993. Indeed, the 1993 law package has crucially contributed to growing hostility towards foreigners among the general public, the police and public administration. Non-white foreigners in particular are permanently exposed to suspicion, denunciation, administrative harassment, and racist violence. "At some times, this country appeared to be living in ignorance; now it seems to have entered the era of suspicion", Philippe Bernard and Nathaniel Herzberg write in *Le Monde*. The authors claim that "the traditional barrier between administrative services and police has vanished", and they name examples: the post office official who informed the aliens authorities about an African, because he had shown a passport with an expired visa when making a payment at the post office; the hospital administrator who notified the police of an undocumented woman admitted to give birth; officials at the *Prefectures* who invite a foreigner to an interview "for the renewal of his residence permit", only to ensure his arrest by the police at the office counter.

Such denunciations by public service personnel are systematically encouraged by the Interior Ministry. Foreigners have become accustomed to be asked for their civil status papers at all occasions - when hiring a flat, enrolling children at school, or taking an exam.

They have also become the prime targets of ever more frequent "routine controls" and "security operations" by the police. Whether such checks are carried out at football matches or during road safety campaigns, they always result in the detection of some "suspect" aliens.

Thus, the number of ID checks and detention for questioning of foreigners has rapidly increased since the introduction of the Pasqua laws, with 34,500 cases in 1994 against 18,000 in 1992, in Paris alone. However, increased control has not contributed to more efficiency in carrying out deportations. Indeed, of the 34,500 persons checked, 8000 were issued deportation orders, and only 1,500 actually left the country.

The main effect of increased administrative and police control and harassment has been that more and more aliens avoid, as far as possible, any contact with the authorities; and the number of illegal immigrants has multiplied.

Source: *Le Monde*, 19.4.95, 12.5.95.

## **JUDGES CHALLENGE POLICE ON PASQUA LAW**

**In a number of recent decisions, judges have ordered the release of foreigners detained by the police pending their deportation. In May, an examining judge released three "irregular" aliens, on the grounds that the police had arrested them illegally. In an earlier case, the judge brought about the release of 18 scheduled deportees, when the police refused to grant him and an accompanying lawyer access to an infamous detention centre for deportees.**

### **The "foreigners' warehouse"**

The judge argued that the police's refusal to permit access to the centre to lawyers of detainees "allowed the presumption that occurrences contrary to the European Convention on Human Rights are taking place" at the centre. The local is under the purview of the Police Prefecture. It lies in the basement of the *Palais de Justice*, the Paris Law Courts, and is very officially - and quite accurately - called *Dépôt des Etrangers* (the "foreigners' warehouse").

### **"Indescribable dirtiness and lack of privacy"**

In recent years, the "warehouse" has regularly drawn massive criticism from human rights organisations and immigration lawyers. Complaints about the intolerable situation in the detention centre were so serious and frequent that delegations of the European Committee for the Prevention of Torture (ECPT: a body set up by the Council of Europe) visited it on two occasions, in 1991 and in 1994. Both times, the ECPT established breaches of the rights of the detainees, and unacceptable hygienic conditions. In an unusually harsh report in September 1994 the ECPT denounced the "vile smell" and the "indescribable dirtiness and lack of privacy" to which detainees at the *Dépôt* were subjected. This amounted to a "breach of all their rights".

The "warehouse" comprises six collective cells measuring 35 sq. metres and designed for 13 persons each, six cells for three persons, and individual cells destined to "unruly, homosexual and transvestite" detainees. Neither toilets or washing rooms are equipped with doors. "You have to do everything in front of everybody", a former detainee says. According to a medical doctor working at the detention centre, detainees are often constipated or suffer from urine retention - a psychosomatic reaction against the incredible uncleanliness and total lack of privacy.

Formerly, the *Dépôt* housed fewer than 100 deportees, but as a direct result of the entry into force of the Pasqua laws the number soon rose to up to 150.

### **Police abuse**

In November 1993, members of GISTI succeeded in taking pictures documenting the inhumane conditions in the establishment. The photographs were published in the Paris press and drew public outrage. An administrative inquiry was ordered. It concluded in January 1994 that the *Dépôt* should be closed. Yet, except for some painting of the walls, nothing happened, and the Police prefecture continued to place deportees at the *Dépôt*, in spite of ever more serious indications of human rights violations there. In November 1994 a police officer went on trial for having raped a male Algerian inmate. Shortly afterwards, a young Moroccan committed suicide, and in February, one police officer was imprisoned on remand and five others suspended from service after they brutally beat up an Algerian.

### **A judge challenges the police**

In April, when a young Moroccan detainee, Minou Rahma, appeared in front of "delegate judge" François Sottet with his face swollen, bruises all over his body and an arm in plaster, the judge decided to inspect the "warehouse" together with Rahma's lawyer, before agreeing to any further detention. When this was denied by the Police Prefecture, Judge Sottet refused to sign detention requests by the police for Rahma and 25 other deportees and set them free immediately.

The decision triggered a furious controversy between the judiciary and the Police administration. According to the Police, under the Pasqua provisions, the "delegate judges" are not magistrates with full powers, but merely "assistants of a procedure pertaining to administrative law". Thus, the police argue, their only task is to formally authorise detention measures and they have no right to order releases.

The ordinance on the entry and stay of foreigners amended in 1993 provides for the detention for up to 10 days of deportees awaiting deportation. Detention is first ordered by the Police Prefecture, but must be confirmed by a judge delegated by the *Tribunal de grande instance* (County court) within 24 hours. Under the law, this prolongation of detention is to be ordered as a rule and the delegate judge may decide otherwise only if given guarantees that the person awaiting deportation will comply with the deportation order. Release on other grounds is not expressly provided for in the ordinance.

However, following a complaint of the Police Prefecture against judge Sottet, the Paris Court of Appeals found that the release was lawful, as detainees may not be subjected to assault and abusive infringement on their individual liberty.

At the end of April, the Police Prefecture finally announced the closure of the *Dépôt*, nick-named "the dungeon of the Republic", pending a thorough renovation of the premises.

### **Unlawful arrest**

The battle between the judiciary and the police is far from over, however. In May, an examining judge released 10 "irregular" foreigners on the grounds that their arrest was too vaguely documented in the police records.

The ten were stopped in a vast ID-check operation carried out under a 1993 law on the "prevention of threats to public security". The French Constitutional Council has stated that such checks are lawful only if there are particular circumstances establishing the risk of a breach of public order. In the case of the ten foreigners the police justified the arrests on grounds such as the following: "When he saw us, X. turned and went in the opposite direction, while repeatedly looking back at us with a worried expression . . . Incidentally, all persons stopped for such "suspicious behaviour" were non-white foreigners.

Judges and lawyers have long claimed that the 1993 law on identity checks wide has opened the door for discriminatory controls on the mere basis of a person's appearance. The Secretary General of the *Syndicat de la magistrature* (Union of Magistrates of the Judiciary), Jean-Claude Bouvier welcomes the release of the ten. "It is indeed incumbent on the judge to assess the lawfulness of the check that led to the arrest", he said.

The Police Prefecture has appealed against the decision.

Sources: Libération, 27.4.95, 14.5.95; Le Monde, 15.4.95, 25.4.95, 28.4.95, 5.5.95; GISTI: Guide de l'entrée et du séjour des étrangers, Editions La Découverte, Paris 1995).

## **SCANDINAVIA**

## **SWEDISH POLICE TEST YUGOSLAVIAN BORDER CONTROLS**

Since the end of last year, the authorities of the FRY (Federal Republic of Yugoslavia: Serbia and Montenegro) have been denying entry to their own nationals whom western European states attempt to return after the rejection of their asylum applications. The new practice is based on a government ordinance of 16 November 1994.

The measure was bad news for Sweden, which is trying to get rid of thousands of FRY nationals - most of them ethnic Albanians - who are not considered to be eligible for refugee status.

This is why, at the turn of the year, Swedish authorities decided to test whether it is possible to circumvent the FRY ordinance. In February, two police officers were sent out to test the border control of the FRY. They were "escorting" a Kosovo-Albanian deportee, who served as an involuntary guinea pig. A police memorandum shows how Swedish police, using fairly unconventional methods, are trying to smuggle deportees into the FRY, while at the same time hunting smugglers bringing boat-people to Sweden.

### **Denied residence in spite of Swedish spouse**

Sabedin Lekiqi is an ethnic Albanian from the FRY province of Kosovo. He came to Sweden as an asylum seeker and has been married to a Swede for more than a year. Yet, both his application for asylum and for residence permit on family grounds were rejected.

It is not clear which of the authorities ordered the "test deportation" of Lekiqi. The Ministry of Foreign Affairs and the Police are each blaming the other. What is clear, is that the Police of Karlstad were ordered to carry out the deportation, according to instructions and with logistic support from "Stockholm". This arises from a detailed memorandum on the deportation attempt written by the two Karlstad police escorting Lekiqi. The following quotations are literally translated from the memorandum.

### **The beginning of a troublesome journey**

The two police flew to Vienna with Lekiqi via Copenhagen, but their plane was late, so they missed the connecting flight to Sofia and were forced to stay in Vienna overnight:

"The next problem was that the Austrian police did not agree to us staying in Vienna, because they had not been informed that we were coming to Vienna with a depo [deportee]. We were running the risk of being sent back to Copenhagen. An Austrian Airlines employee promised his best to help us. A little later, he came back and he had the following solution to our problem. We could stay in Vienna, but we were not allowed to leave the transit zone [of Vienna airport] and we were responsible for guarding Lekiqi. We managed to get two sleeping rooms in the transit halls where we were able to rest".

### **Testing the Bulgarians**

On the following day, the three men arrived at Sofia:

"We were able to pass the Bulgarian passport control without any problem. We said that we had a depo with us and that we were going to the Serbian border. The depo was not asked to pay a visa fee. We announced our arrival at the airport because we wanted to test whether the Bulgarians would say anything. Before travelling we had agreed not to announce our arrival in advance by fax, in order to give no chance to the Bulgarians to deny us entry. Should they have any objections, once we were actually standing in front of them, we would expect to wriggle out of difficulty by saying that it was not our fault that no announcement had been made in advance. Furthermore, for the same reason, we did not mention our contact at the airport police".

### **Helpful Bulgarian taxi drivers**

The further journey by taxi to the border of the FRY was well organised, it seems:

"The taxi drivers contacted from Sweden awaited us outside the airport . . ."

"Lekiqi refused to follow us to the border, but was asked to sit down in the car and be quiet. He did this with some protest".

"We drove to the border in two taxis because one car was to pass the border and head for Dimitrograd . . . We need to keep the other taxi at the Bulgarian side, in case something happened - the border zone is known as a so-called unsafe area due to the mafia and other criminal elements".

"We arrived at the border crossing-point of Kalotina/Gardiena . . . and jumped the car queue with the help of the taxi drivers' contacts. We thereby saved an estimate two hours of queuing and reached the Bulgarian exit control. The Bulgarian border police approved Lekiqi's passport and let him through. At earlier executions [of deportation orders] possible difficulties have arisen at that stage. In such situations Swedish escorts have sometimes tried to get to the Serbian side with the help of the Bulgarian police in order to alert the Serbs to receive the deportees. This measure is not without some risk. On some occasions the Serbs have broken off negotiations by threat of arms and Norwegian colleagues narrowly escaped being arrested and taken to Belgrade. We had already decided that we would leave this border crossing-point at once and go to another one, if the Bulgarians showed any hesitation. We had settled on an alternative crossing-point 70 km to the south".

Once we were at the last Bulgarian control, there remained no risk that Lekiqi would back out, since the whole situation in the border zone with all the armed police and militia men does not encourage anyone to try to be too clever".

### **Failed border crossing**

As planned by the two diligent Karlstad officers, one of the Bulgarian taxi drivers took Lekiqi to the "Serbian side". But after more than an hour, the taxi returned to the Bulgarian crossing-point with Lekiqi. The Serbian border police had let through Lekiqi, but the Customs had cancelled his entry visa and sent him back.

According to Lekiqi, the Serbian Customs officers denied him entry because they found out that he was a Kosovo-Albanian. He further claimed that Serbian police verbally and physically abused him and that they had threatened with sending the police to his family. When he told them that he was married to a Swede, they stamped his passport and told him to return to Sweden.

### **Home, sweet home**

After this failed adventurous attempt to get rid of their deportee, the two brave Karlstad police apparently decided it was safer to refrain from a second try at another crossing-point and brought Lekiqi back to Sweden, via Sofia:

"We obtained air tickets for all three of us for Friday and left Sofia on 16.20 hours local time. Lekiqi's 30 hours visa [for Bulgaria] was arranged for by a contact of ours at the airport".

It does not say in the memorandum whether or how this "contact of ours" was compensated for his services.

Sources: Ahasveros (a FARR-newsletter on Yugoslavia) No.2/95; Pro memoria of the Karlstad Police authorities, 11.2.95.

## **SWEDISH MINISTER OF JUSTICE PREPARED TO EXTRADITE OWN NATIONALS**

The Swedish Constitution prohibits the extradition of Swedish citizens to other countries, with the exception of the Nordic neighbour states. The Minister of Justice, Leila Freivalds, now says the same exception could apply to EU member states.

The Minister denies that this would breach the Constitution, but in her note to the parliamentary committee on the EU it says: "With respect to own nationals, as far as Sweden is concerned, the prohibition of expatriation [by the Constitution] could be solved by requiring that the extradited person be transferred to his home country for the execution of the sentence. With this as a starting point, Sweden should be favourable to a relaxation of the present system of prohibiting the extradition of own nationals".

Source: Svenska Dagbladet, 17.6.95

## **NORWAY TO JOIN SCHENGEN BY THE BACK DOOR**

**Norway seems willing to become part of the Schengen Agreement as a junior partner excluded from**

**decision-making in the Schengen Group. The news came after a meeting between the acting president of the Schengen Group, the Belgian Minister of Trade, Robert Urbain, with his Nordic counterparts in Brussels, on 16 June.**

Mr Urbain said after the meeting that Norway and Iceland could not become formal members of the Schengen Group, since the Schengen Agreement does not provide for membership of non-EU states. The Schengen member states are unwilling to renounce this requirement, as this would put at risk a future integration of the Schengen Agreement into a common EU framework.

Instead, the President of the Schengen Group proposed to conclude a "secondary agreement" with the EEA countries Norway, Iceland, and Liechtenstein. "In this, they would assume the obligations of Schengen membership, but would not obtain all rights", Mr Urbain explained.

The rights that the EEA countries would have to renounce include decisions of the Schengen Group on asylum rules, visa policies and the implementation of border controls.

At the Brussels meeting, both Norway and Iceland were prepared to begin negotiations on this basis. Iceland, however, appeared to be more doubtful than Norway.

The ministers also discussed an alternative solution in the event of strong popular opposition in Norway and Iceland against the proposed formula. This would consist in granting observer status to the two non-EU states at meetings where the Schengen member states draw up and take decisions, whereupon the Schengen Group meeting would immediately be renamed and repeated as a "Schengen plus" meeting - this time, formally, with the full participation of Norway and Iceland.

Hitherto, uncertainty about Norwegian relations with Schengen had prevented the start of negotiations on the Schengen membership of the Nordic EU member states Denmark, Finland and Sweden.

This impediment has now been overcome, thanks to the flexibility shown by the Norwegian government, and negotiations could now begin as early as September.

It is, however, much less certain that the Norwegian people will approve either of the proposed quasi-membership formulas.

Source: Svenska Dagbladet, 17.6.95.

## **FORMER DANISH MINISTER SENTENCED ON PROBATION**

The Danish State Court has sentenced the former Minister of Justice, Erik Ninn-Hansen, to four months imprisonment. The sentence has been suspended. Ninn-Hansen was found guilty of unlawful obstruction of immigration procedures. Between 1987 and 1989 the former Minister of Justice, who was responsible for immigration, had stopped the entry of family members of 140 recognised Tamil refugees, who had been granted family reunion by the Danish immigration authorities, by simply shelving the decisions.

Ninn-Hansen resigned in January 1989, shortly after the scandal came to light, but the conservative government of Prime Minister Poul Schlüter only fell four years later, in January 1993, when Schlüter was accused of having withheld the truth from the parliament about the unlawful proceedings of his former Minister of Justice.

Source: Neue Zürcher Zeitung, 23.6.95.

# **SWITZERLAND**

## **SUPPORTERS OF INCREASED POLICING ON THE ADVANCE**

**The second chamber of the Swiss parliament wants to permit extensive pro-active telephone tapping, as well as bugging and videofilming private rooms. RIPOL, the computerised register of criminal investigation, is being extended, and in a secret report, the Federal Minister of Justice and Police is advocating additional measures for the protection of "internal security". Switzerland, it seems, is desperately trying to give proof of its "Euro-compatibility" in the field of pro-active policing.**

### **The "assault on privacy"**

Against the explicit will of an advisory committee and of the Minister of Justice, Arnold Koller, the second chamber of the Federal Parliament (comparable to the US senate) has further sharpened an already far-reaching bill on state security (officially: Draft Federal Law on the protection of internal security). In its former version, the bill already provided for the *de facto* abolition of the right of data subjects to examine their private data and an

obligation for the authorities of the Cantons to communicate information to federal state security.

The last remaining "liberal" cornerstone of the bill - the legal restriction on bugging - has now been removed by the second chamber. Now, the police shall be allowed to tap telephones and spy on private rooms with bugs, directional microphones and video cameras, without a court warrant. Under a new provision, the Director of a future "Federal Office of Internal Security" will be empowered to order the surveillance of mail and telecommunications in individual cases for the purpose of procuring information on organisations and groups", whenever a "serious threat to the internal security of Switzerland requires this".

A minority of the second chamber questioned the justification for unrestricted interception of telecommunications and covert surveillance. A conservative MP emphasised the fundamental difference between the surveillance of the participants at a political meeting or of public buildings and infringements on the privacy of people, as allowed by the new provision.

"This is a major assault on privacy", the lawyer and Social Democrat MP, Paul Rechsteiner warns. He illustrates his claim with an example: "Anyone standing up for Kurdish refugees, or dealing - or merely presumed to be dealing - with members of the PKK [Kurdish Workers Party], must assume that he or she is subjected to electronic surveillance".

The Minister of Justice opposed the introduction of the new provision on tactical grounds. He fears that a law giving further powers to the state security police is likely to be rejected by the people. Indeed, in the whole of the 20th century, not one law on policing has been approved by the people in referendum votes, and the "secret files scandal" of 1988 (see CL No.6, p.1), is not likely to have diminished the traditional distrust of the Swiss people against federal policing.

### **RIPOL extended**

RIPOL, the automated criminal search system, is to be extended by including registers for unsolved crimes and for the search for objects. Moreover, Swiss foreign delegations will have access to RIPOL.

The extension of the system is officially justified by reference to the need for more effective means of combating national and international crime. The access of Swiss embassies and consulates to RIPOL aims to prevent the issuing of entry visa to foreigners banned from entering Switzerland or searched by the police.

The upgrading of RIPOL and its connection to Swiss foreign delegations can be viewed as a further step in Swiss efforts to achieve compatibility with Schengen standards (see CL No.32, p.4).

### **Secret project on internal security**

A secret report ordered by the Minister of Justice and Police, Arnold Koller, recommends the introduction of a "coordinator of internal security" assisted by a "committee of coordination". The coordinator and the committee are to be given far-reaching powers to supervise and coordinate the activities of the various and often competing bodies concerned with internal security and public order. The project seems to be strongly inspired by the "Committee of Coordinators" set up in 1988 by the Council of Ministers of Justice and Home Affairs. After Maastricht, the body was renamed the K4 Committee.

The report has not yet been made available to the parliament and Mr. Koller made no mention of it during the recent debate of the second chamber on the state security law.

Sources: Basler Zeitung, 14.6.95; Neue Zürcher Zeitung, 23.6.95; WochenZeitung, 16.6.95.

# HUNGARY

## **SLAVONIA POSES NEW REFUGEE THREAT, MINISTER SAYS**

The Hungarian Foreign Ministry is anticipating a new surge of refugees in Hungary with the increase of fighting near this country's borders again. "Our most immediate concern is the eastern Croatian region of Slavonia," Andre Erdos, Foreign Ministry deputy secretary of state told the Budapest Sun. "It is bordered on three sides by Bosnia, Serbia and Hungary, so naturally that is where refugees are most likely to come from." Slavonia has been the site of recent fighting, with Croatian forces reclaiming what was till recently Serb-held territory. Hungary has throughout the war received large numbers of refugees, sharing its southern border with both Croatia and Serbia ('rump' Yugoslavia).

Source: 'Hungary Report', 12.6.95, on hrnet.eur-mide; by bruner @ind.eunet.hu. Hrnet.eur-mide is an electronic conference with on human rights in the countries in Europe and the Middle East. E-mail contact: hrcoord@igc.apc.org.

# DOCUMENTS AND PUBLICATIONS

## Europol Convention:

- **Übereinkommen über die Errichtung eines europäischen Polizeiamtes (Europol-Übereinkommen), Entwurf**, Brussels, 16.6.95, 7037/2/95 Rev 2 limite, including changes as adopted at the meeting of the JHA Council on 20.6.95, in Luxembourg; in German.
- **Version provisoire du projet de Convention portant sur la création d'Europol**, Brussels, 26.4.95, 10324/4/94, limite, with the changes proposed by the French Presidency and reservations made by various member states; in French.
- **Konvention om oprettelse af en europæisk politienhed (Europol), udkast**, Brussels, 29.5.95, (no reference no.); in Danish.

**Draft Resolution on minimum guarantees for asylum procedures**, European Council, Brussels, 14.3.95, 5585/95 limite, ASIM 78, in English. Adopted by the JHA Council on 20.6.95, in Luxembourg.

**Spotlight on - Human Rights Violations in Times of Armed Conflict**, The Humanitarian Law Center (HLC), Belgrade, 1995, Editor: Natasa Kandic; ISBN 86-82599-02-3.

This paperback contains the 15 "spotlight reports" published by the HCL in 1993 and 1994, on the human rights situation in the FRY (Serbia and Montenegro).

**AHASVEROS**, periodical published by FARR's Country Committee on the former Yugoslavia. Editor: Poul Sanver; in Swedish.

Comprehensive background information on political developments in Yugoslavia and the role of western European countries, with a particular focus on the situation of war resisters, displaced persons and refugees. 10 issues per year. 1 year subscription:

Order at: Sanver, Distansgatan 35, S-502 46 Borås, Tel/Fax: +46/33 131578; e-mail: ahasveros@nn.apc.org.

**Intergovernmental Co-operation on Immigration and Asylum**, by Tony Bunyan and Frances Webber, Churches Commission for Migrants in Europe (CCME), Briefing Paper no. 19., 33 p., in English. Price: 6 ecu.

A useful overview by two competent authors. Tony Bunyan is the editor of *Statewatch* bulletin, which monitors civil liberties in Europe. Frances Webber is a barrister specialising in immigration and refugee and was prosecutor in the Basso Tribunal on the Right to Asylum, Berlin, December 1994.

**The 1996 Intergovernmental Conference and the Future of the Third Pillar**, by Simon Hix, CCME Briefing Paper no. 20), 36 p., in English.

This Briefing paper contributes to the debate on the 1996 IGC. The Annex to the paper contains five concrete proposals for amendments to the Treaty on European Union.

Brussels; Tel: +32/2 2308512, Fax: +32/2/ 231 1413.

Available at: CCME, 174, rue Joseph II, B-1040

**Asylum applications and the entry into force of the Schengen Implementation Agreement: Some observations of the UNHCR**, UNHCR Regional Office for the Benelux Countries and the European Institutions, Brussels, March 1995.

This document deals with possible effects of the implementation of the Schengen Agreement on the situation of asylum-seekers. *Inter alia*, the UNHCR warns against the risk of violations of the principle of non-refoulement as a result of Schengen visa policies and other border-control measures. With regard to carrier sanctions as provided for in the Schengen Agreement, the UNHCR recommends that "States should enforce sanctions only in the event that they can *establish* that carriers have been negligent in checking documents and knowingly brought into a State a person who did not possess a valid entry document. This puts the burden of proof on the State, in recognition of the fact that States, not carrier personnel, have appropriate training and authority to identify potential refugees". Implicitly referring to the fact that some member states are fining carriers even for transporting insufficiently documented person who are later granted refugee status, the UNHCR suggests that States should exempt carriers from liability if the person is admitted under the asylum procedure.

The compatibility of the Schengen Agreement with the "safe third country" concept remains unclear, the UNHCR further remarks, particularly since the application of this concept is normally the responsibility of border officials who can send back asylum-seekers immediately at the border, in some Schengen State, without the interference of the central authorities responsible for the implementation of the Agreement.

## EVENTS

### EUROPEAN SUMMERCAMP '95, 16 - 19 AUGUST IN BORÅS, SWEDEN

Visa requirements on refugee-producing countries, the Schengen agreement, the strict application of the first-country of asylum principle, tighter laws on aiding illegal entry are just a few examples of the restrictions to the right to asylum in Europe. The thought of excluding a majority of the world's population from what we deem in our terms a humane existence in order to protect material and economic values is not a new thought but the fact that the idea is old does not make it more acceptable.

There are reasons to believe that the "Fortress Europe" under construction will only function as a short term, temporary solution in order to ease the pressure on Europe. This does not solve the problems as such, it only relieves the symptoms. Through short-term policies the pressure of refugees increases on the rest of the world and in turn leads to an inevitably more rapid growth in refugee flows. Moreover there is an overriding risk that the undermining of the right to asylum will in the long term lead to the undermining of wider basic human rights. This is a development that no European can consider desirable.

In order to strengthen the importance of humanist ideals in the long run when European decisions are made, there is a need for informal contacts at the grass-roots level. The purpose of the meeting in Borås is to initiate the development of an informal network which will not function as an umbrella organisation but rather be based on individual contacts between groups and persons. Our hope is that better contacts between different refugee-support and anti-racist groups at the grass-root level in Europe and a wider knowledge of asylum policies in different European countries will lead to increased pressure on the European decision-makers to show equal respect to human values as to economic considerations.

#### Programme

The programme of the meeting includes Working groups on: Church sanctuary- a serious option?; Illegal in Europe; Why do people flee?; Help in areas near to home country; Deserters and war-resisters: a question of morality; Border policies and third countries; Refugee policy in the European Union; Expulsion; Influencing through the media; Established immigrants; The situation of "imported" wives; Xenophobia and racism; Building up an e-mail network for grass-roots organisations.

The working language at the meeting will be English.

For more information contact: Poul and Lena Sanver, Tel/Fax: +46 33 13 15 78 or by e-mail: [ahasveros@nn.apc.org](mailto:ahasveros@nn.apc.org)

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