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

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GERMANY

THE GERMAN SYSTEM OF ALIENS CONTROL

In Germany - just as elsewhere in the EU - electronic registration of aliens is not something that gets much public discussion. Immigrants themselves usually have more urgent problems to cope with than the protection of their personal data. For them, securing their residence permit or/and their livelihood is more important than the constitutional right of "informational self-determination" [the right to control one's own data]. However, the extensive registration and exchange of aliens' personal data in the AZR (*Ausländerzentralregister: Central Register on Aliens*) and a multitude of other electronic registers compiled by the public authorities, often dramatically affect immigrants' rights. Decisions about aliens law are not only made by the individual civil servants in charge. Behind every decision concerning an alien, there is a large administrative machinery with complex and extensive informational links.

The following is an outline of the German system of aliens' registration and control. The author, Thilo Weichert, is currently the Deputy Data Protection Commissioner of Lower-Saxony.

AZR, the Central Register on Aliens

The AZR is the central structural unit for the registration and control of foreigners in Germany. It was set up in 1953, at a time when Germany began actively recruiting foreign workers and it was justified by "the need for increased surveillance of foreigners on federal territory". As early as 1967, the register was adapted to automated data processing.

The AZR is run as a department of the Office of Federal Administration (Bundesverwaltungsamt) in Cologne, and contains information on approximately 10 million aliens, only 6.3 million of whom are actually living in Germany.

In the first instance, all aliens living in Germany are registered in the system. In addition to this, registration takes place on the following occasions: asylum application, expulsion, deportation, prohibition to leave the country, "tolerated" stay, restriction on political activities, entry objections, extradition, reporting of persons for search at the border, for residence inquiries and for arrest. All data of an alien are registered under a so-called "AZR number". The standardised data set under the number contains information on the particulars, the reason of registration, ID documents, profession and place of residence in the country of origin, as well as information on relatives (including those not staying in Germany), entries and exits and decisions pertaining to aliens law, together with the reasons.

Data are supplied in the first place by aliens authorities of the communes and the *Länder* who are gradually being equipped with on-line access to the AZR. Other agencies allowed to enter data are: Germany's foreign representations, the border protection forces (BGS), the Federal Office for the Recognition of Refugees (BAFI), the Federal Office of Criminal Investigation (BKA), the public prosecutors, the authorities in charge of citizenship applications, the agencies for displaced ethnic Germans, and Germany's home intelligence service, the *Verfassungsschutz*. Most of these authorities as well as the Customs and the Federal Labour Office shall be enabled to enter data online in the near future. There is, however, some controversy on whether the secret services too shall obtain such a right.

Any federal authority looking for an alien can have a search notice entered into the AZR. The entering authority is then informed at once, if any other public authority comes across the alien concerned.

Unrestricted retrieval of information from the AZR is granted to aliens' authorities (local, regional, and federal), the federal asylum authorities (BAFI) and the border protection forces (BGS). The same applies to the police, the secret services and the judicial authorities, if they supply "valid grounds".

Limited access is granted to the Customs, the labour offices and the agencies for displaced ethnic Germans. Some basic personal data stored in the AZR are accessible to practically all public agencies in Germany. Finally, private charities (e.g. the Red Cross), and - depending on the circumstances of each particular case - other private organisations and persons can be given information. Thus, it is not inconceivable that, for example the Turkish military or police authorities could obtain information on their nationals living in Germany from the AZR. Such communication of data is, however - theoretically - not permitted if a ban on the communication of data of a particular person has been ordered. Such a ban must, however, expressly be demanded by the alien. This is true even for political refugees.

The AZR also provides for "group evaluations", i.e. information on all persons with certain identical characteristics (for instance, all male Turks aged between 16 and 50 years residing in a particular town). Such group evaluation may be used by the police, the prosecution authorities and henceforth also by the secret services for the purpose of search by automated screening.

Finally, AZR data are not only used for the execution of administrative measures but also for statistical evaluation and planning.

Data sets are erased when an alien acquires German citizenship, or else 5 years after death or 10 years after the last departure from Germany.

Following growing criticism of the fact that the system had no legal basis, an AZR law was finally introduced in 1994. Among other things, the law provides for the setting up of a particular "visa register" linked to the AZR. All foreigners applying for a visa are registered in

this special database, together with the foreign embassy or consulate where the application was lodged, the type of travel document and its number, as well as the decision on the visa application. The relevant data are entered directly or indirectly by the foreign representations. The law allows access - and possibly automated direct access - to the visa register for the BGS, the BAFI, the BKA and the secret services. The integration of data exchange between German foreign embassies and consulates and the AZR register in a world-wide communication system of the federal Government is planned. This system will enable the transfer of encoded data.

The aliens authorities

The aliens authorities in districts and towns keep records on each alien. Electronic data processing has been gradually introduced in these offices since the early 80s. Meanwhile, most larger aliens authorities are equipped with computers enabling them to directly retrieve information from the AZR. The aliens authorities who are the main suppliers of the AZR obtain most of their information from the aliens directly. Besides, upon request, they can obtain data they consider to be necessary from practically any public agency. According to the foreigner law, all authorities are liable to inform the aliens authorities on any particular "negative facts" regarding an alien, that might, for example, justify an expulsion. This obligation to denounce was strongly criticised when the law was adopted by parliament.

Foreign representations (embassies and consulates)

Since March 1987, the German foreign department has kept a list of persons who are to be denied a visa. For the time being, this list is issued as a booklet as a practical aid for the foreign representations. At the end of 1991, approximately 23,000 persons were on the list. The entry of names into the list is decided by the Federal Interior Ministry.

The federal Office for the Recognition of Refugees (BAFI)

The BAFI with its head office in Nuremberg and some 50 branch offices throughout the country is responsible for all asylum procedures.

Electronic data processing was introduced at the BAFI in 1985 and at present the agency runs several computerised data bases, the most important of which is ASYLON (asylum on-line), a system for the processing of case files. The system makes it possible to locate any particular records, and to discover what stage any asylum application has reached. It serves as a link to and between the branch offices in the *Länder*. ASYLON and the AZR are connected so as to enable the reciprocal transfer of the data in the other system. The BKA too is linked with ASYLON and supplies it with its evaluations of finger prints produced by the BKA's own computerised finger print register, AFIS.

Another system operated by the BAFI is ASYLIS with information on all asylum administrative law cases currently before German courts and topical information on political, religious, economic and societal developments in nearly 200 countries of origin. Since mid 1991 this information has also been available to the public via the legal information system JURIS.

The Federal Office of Criminal Investigation (BKA)

The BKA in Wiesbaden is the central office of the nationwide police information system INPOL, set up in 1972. The Border Protection Forces, the Criminal Investigation Offices and the Police of the *Länder* are also connected to this system. Inter alia, INPOL's remit includes criminal searches for persons and objects, the checking of criminal records, a register of detainees and registers for crimes of federal importance.

The criminal search data base of INPOL holds details not only of criminals, but also persons who are considered as a threat to public order and security according to foreigners' law provisions, i.e. also expelled or deported aliens who are not criminal suspects. While the data of German offenders are erased after a relatively short time, the data of migrants are stored for 10 years as a rule. As a result, the majority of entries in INPOL now relate to "undesirable" migrants. In 1988, 171,000 warrants for arrest were registered in INPOL, of which 103,000 referred to expulsion orders against aliens.

The aliens' authorities have no direct access to INPOL, but the BKA is authorised to inform them about particular aliens by conventional means.

Other rules are applicable whenever the BKA provides administrative assistance to the aliens' authorities. Since 1992, this has been the situation with the automated finger-print system, AFIS. AFIS electronically stores the finger-prints not only of criminals but also of all asylum-seekers and all other aliens whose identity is unclear. Automated data-matching is used to prevent refugees from applying for asylum several times under different names. AFIS enables the storage and matching of some 400, 000 data sets per annum. Moreover, the BKA is also using finger-prints stored simply through the application of asylum and aliens' law for its own purposes of prosecution.

The Federal Central Register (BZR)

The BZR is run by the Federal Office of Prosecution in Berlin. The register makes available information on criminal sentences, persons under tutelage, and certain administrative decisions. Among other things, the BZR also registers expulsion orders, bans against aliens on leaving the country and deportation orders. The data are erased, once the decisions can no longer be executed. The aliens authorities are granted unrestricted information from the BZR, though not by automated access.

Secret services

Particularly sensitive data on foreigners are collected by the internal intelligence service, BVS (Bundesverfassungsschutz), and the corresponding agencies on the *Länder* level, for the detection of activities "that would prejudice the foreign interests of the Federal Republic of Germany". The BVS is based in Cologne. Contrary to what the law unequivocally states, the emphasis of the BVS' intelligence activities against aliens does not lie with acts of violence, but instead with the observation and evaluation of simple oppositional political activities. According to figures from 1984, 9 per cent of all Iranians over 16, and 5 per cent of all Turks and Kurds living in Germany were rated and registered as "extremists" by the BVS. The relative intensity of surveillance is twenty times higher for immigrants than for Germans. The data of the persons concerned are registered in the secret services' intelligence information system, NADIS. Apart from the secret services, only the police state protection service has restricted access to the system.

The BVS is authorised to hand over data to foreign secret services, if and when this is necessary "for safeguarding considerable security interests of the recipient". Thus, there is some evidence indicating that the German secret services have handed out information on Turks and Kurds active in opposition politics to MIT, the Turkish intelligence service.

Little is known about the activities of the German Foreign Intelligence Service, the BND. Considering its tasks, we may conclude that aliens are among the groups most subjected to surveillance by this service.

An evaluation

The above shows that refugees and immigrants are the population group most controlled by automated information systems in Germany. While there are decentralised systems for registering German citizens, data processing for aliens is highly centralised. There are no analogous systems to the AZR, ASYLON and AFIS for the German population. Moreover, data exchange and matching is far more frequent with data on aliens than with data on Germans. While the principle of limiting the use of data to the original purpose of their collection still has some relevance as far as Germans are concerned, this principle is in practice completely abolished for immigrants and refugees.

Historically this can be explained by the fact that, in this country, aliens have never been recognised as having constitutional and fundamental rights in the same way as German citizens. The German population may also have been more successful at resisting to the collection of private data.

The public authorities claim that centralised data registering of aliens is necessary because of the greater mobility of migrants, their different cultural behaviour and their particular legal status.

The consequences for migrants can be seen both on the individual and the societal level: The possibility of uncontrolled and unobserved entry is minimised. The pressure on individuals to conform is particularly strong. The informational discrimination against aliens merely mirrors their social discrimination. The greater informational "transparency" of aliens also entails that this population group makes it more suitable for administrative and political planning.

It is noticeable that technical structures for information processing being set up on the European level have the German system of migrant control as a model. The German INPOL system is mirrored by the European SIS (Schengen Information System) and the EIS (European Information System). The Fingerprint register AFIS is to be extended to the entire EU territory under the name of EURODAC. As for the AZR, a recent Recommendation of the Council of Home Affairs Ministers suggests that all EU member states set up their own central registers on foreigners (see CL No.35, p.5), and the Schengen Treaty provides for mutual exchange of data and common lists on foreigners, although by conventional (non-automated) means for the time being.

Thilo Weichert

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ORDINANCE PROVIDES FOR UNLIMITED SURVEILLANCE OF TELECOMMUNICATIONS

On 4 May, the German cabinet passed a new ordinance on telecommunications interception, the *Fernmeldeüberwachungs-Verordnung (FÜV)*. The regulation amounts to a major expansion of communication interception in Germany, both in terms of quantity and the type of monitoring allowed.

The ordinance is supposed to establish ground rules for interception, based on the law on telecommunications

systems (*Fernmeldeanlagen-gesetz, FAG*), which in turn was necessary for the privatisation of the former state-owned telecom service, *Deutsche Telekom AG*, and its competitors.

Enabling interception a duty of the system operator

The ordinance (FÜV) was officially justified by reference to the inability of German police and intelligence organisations to intercept mobile digital telephone traffic (see CL No.13, p.6). However, German police later admitted that an interception is already possible under a pilot project. In contrast with its official objective, the FÜV broadly regulates interception within all telecommunication networks, including ISDN and the common analogue system, and it establishes the duties of system operators. Any system operator has to submit a detailed specification for interception services to the security forces in order to obtain the necessary license for his telecommunications service. Since computer electronic mailboxes and other services are telecommunication systems under German law, the providers of information services also have to comply with the FÜV. There are only minor exemptions for such telecommunications services.

Every system operator has to guarantee a line of high quality for each person under surveillance - and one for every service, in case more than one service has an interest in one and the same person. The interception must be carried out in such a way that it is incapable of detection. The line connecting the system operator with the security service must not be a fixed one but may be a dial-up connection, enabling the security service to move its interception site around for tactical purposes.

By compelling operators to install systems with wide capacity for interception, the FÜV meets a long-standing demand of the German security agencies.

More phone tapping in Germany than in the USA

The widened capacity for interception of telecommunication traffic becomes even more questionable in the light of the available statistics. According to official figures, last year the communications of almost 4000 persons inside Germany were intercepted. This often amounts to far more than 100,000 telephone calls for every person under surveillance. The activities of the German foreign intelligence service, *Bundesnachrichtendienst (BND)*, are not included in this figure. They amount to an estimate 4000 intercepted and recorded calls per day between Germany and other countries. By contrast to this, only about 2000 surveillance operations were authorised in the USA last year. Thus, in proportion to population, surveillance measures are ten times more frequent in Germany than in the USA.

The FÜV enables security forces to gather not only information on the content of a communication, but also additional data. Operators are obliged to supply all data on connections, including failed calls, as well as the exact mobile phone cell and the services used, to the security services. By collecting these data police or intelligence services can establish communication and movement profiles of mobile phone users and profiles of the data services used in mailboxes and similar services.

Ordinance undermines constitutional rights, Fiff claims

In effect, both the quality and - through the capacity requirements - the quantity of telecommunications interception is being crucially increased by the ordinance that German MPs did not even see before it was issued. *Forum InformatikerInnen für Frieden und gesellschaftliche Verantwortung (Fiff)*, a German organisation of concerned computer scientists, sees the constitutional right to privacy in postal and telecommunication services being severely damaged. In the opinion of Fiff, the fact that a mere ordinance is used to fulfil the wishes of the security services is a further reason for serious concern.

The critical computer scientists claim that the ordinance actually reduces constitutional rights to a mere matter of defining technical interfaces for service providers (system operators) and security forces.

The FÜV is legally based upon the telecommunications law, FAG. This law will, however, no longer be in force in 1997. With this in view, Fiff demands that the FÜV be abolished and replaced by a new telecommunications law based on strict constitutional principles.

The German government has other plans. Only 13 days after the ordinance was passed, Justice Minister Sabine Leutheusser-Schnarrenberger announced her plans before the German Parliament to bring the few remaining telecommunication systems not regulated by the FÜV under control. New technical systems such as debit-card based mobile phones and private telecommunication systems such as company-wide networks will be included in an up-dated FÜV. She also vowed to bring the regulations within the EU to the standard established by the FÜV, since German mobile phone users can easily switch to one of the 22 non-German carriers in Europe to avoid being legally interceptable.

With the FÜV and these additional plans, Fiff commented, the much heralded Information Age has got off to an extremely bad start in Germany.

Ingo Ruhmann (Fiff)

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THREE MEN SENTENCED IN MUNICH PLUTONIUM TRIAL

On 17 July, a Munich criminal court sentenced three men involved in the so-called "Munich plutonium deal" (see CL No.33, p.1) to prison. However, the undercover agents of the German Foreign Intelligence Service, BND, who were instrumental in staging the deal, were not even charged. The Munich verdict amounts to a blank cheque for covert agents, critics say.

The Bavarian *Landesgericht* sentenced the Columbian Justiniano Torres Benites to 5 years' imprisonment. Two Spanish accomplices, Julio Oroz Equia and Javier Bengochea got terms of three years, nine months, and three years, respectively.

Three other men deeply involved in the deal were not even among the accused in the trial. They are

- "Rafa", a Spanish police and under-cover agent hired by the BND, who staged the deal;
- an "official" BND agent who was instrumental in negotiating the terms of the deal with the smugglers (according to unconfirmed reports, the man is however under criminal investigation); and
- "Walter Boeden", an officer of the *Landeskriminalamt* (Bavarian Office of Criminal Prosecution) who acted as a bogus purchaser.

Commenting on the relatively lenient sentences, the President of the Court acknowledged that the three accused had been "seduced" to smuggle Plutonium as a direct result of what he called the "private provocation" of an under-cover agent ("Rafa"), that later was taken over by the police.

The three men were charged under a federal Act on the Control of Weapons of War. The Public Prosecutor had demanded imprisonment of up to six years.

The Munich sentence has given further rise to doubts on whether the Parliamentary Committee of Control was correctly informed. The Vice-President of the Liberal Party's (FDP) parliamentary group, Mr. Hirsh, pointed to the Munich judges' assessment that the Plutonium deal had been provoked from the very beginning. This has always been angrily denied by the BND and other agencies involved in the affair.

The President of the special parliamentary committee investigating the Plutonium scandal, Mr Bachmann (SPD), stressed that the Munich sentence clearly showed that the Federal Government's presentation of the facts had not been correct.

Mr Bachmann further complained that months after its creation, his investigating committee had still not received any of the documents and records necessary for conducting the investigation.

Sources: Neue Zürcher Zeitung, 8/9.7.95, 18.7.95; our sources.

Comment

According to Jürgen Seifert, a Hannover professor of law and political sciences (see CL No.29, p.10), the Munich sentence is a new and disquieting illustration of "how far undercover agents are allowed to go in Germany today".

Indeed, the Munich sentence might soon be shown to constitute a dangerous precedent on a European level, by further paving the way for the ever more unrestricted use by police of covert agents acting as *agents provocateurs*, i.e. actively abetting to criminal offenses.

In view of plans in various countries (e.g. Switzerland) to legalise a wider use of under-cover agents, there are reasons for concern.

N.B.

CONSTITUTIONAL COURT PARTLY INVALIDATES ANTI-CRIME LAW

The German Constitutional Court (*Bundesverfassungsgericht*) has partly invalidated a controversial law on the "fight against crime" in force since last October (see CL No.28, p.1). By interlocutory decree, the Court bans the German Foreign Intelligence Service, BND, from evaluating and transmitting data on non-suspects gathered by interception of international telecommunication.

The Law on the Fight against Crime (*Verbrechensbekämpfungsgesetz*) significantly extends the powers of the BND to monitor and record international telecommunications and to transmit resulting evaluations to the prosecuting authorities. The BND is equipped with sophisticated computerised equipment allowing the mass interception of telecommunications without any need for prior suspicion. According to German data protection commissioners, since the introduction of the new law, the number of fax and phone communications (including mobile phones) intercepted daily is "in six digits", of which an estimate 4,000 per day are registered. To evaluate this mass of data the BND makes use of computerised "filters" that sift all conversations for "search terms" such as "drugs", "weapons", "money", or "D-Mark". Under the law, the BND may process and transmit data collected in the above way to the prosecuting authorities if there are mere clues indicating that a crime is being planned or committed.

By contrast, the Constitutional Court now demands the presence of "sufficient suspicion" of a concrete criminal offense. The judges found that the Law on the Fight against Crime in its present version allowed "the communication of a considerable number of recordings" involving non-suspect persons. Such extensive interception would undoubtedly lead to "communicational disturbances and behavioural adaptation" among citizens. This would in its turn not only infringe upon individuals' right to personal development, but also upon the public good, the Court stated.

The interlocutory decree is the first, provisional, response of the judiciary to a constitutional appeal against the powers of the BND under the Law on the Fight against crime. The appeal was filed by Michael Köhler, a professor of criminal law in Hamburg. He argued that due to his professional activity as an expert on narcotics law with numerous foreign contacts he was very likely to become a target of the BND's "search by screening of non-suspects", but that he would never learn anything about this, since the law prevented him from being informed. Consequently, he demanded a total ban on all interception activities of the BND under the Law on the Fight against Crime.

The Federal Interior Minister, Manfred Kanther countered that Professor Köhler's telephone communications could easily be identified as "correspondence among scientists" and that eventual recordings would thus be immediately destroyed. He further emphasised "serious prejudice" to the security interests, the foreign policy goals and the reputation of the Federal Republic and to the safety of the citizens", in the event of a interlocutory decree banning the BND's interception activities.

The Federal Court took into account the ministerial warning, by prohibiting only the evaluation and use of the controversial data, as well as their transmission to other authorities, while allowing the interception of telecommunications by the BND to continue pending a final decision on Mr. Köhler's appeal.

Source: Interlocutory decree of the Federal Constitutional Court (Bundesverfassungsgericht, 1 BvR 2226/94, 5.7.95); Süddeutsche Zeitung, 14.7.95.

Comment

In the Munich daily, *Süddeutsche Zeitung* (14.7.95), Heribert Prantl writes:

"The ruling [of the Federal Constitutional Court] restrains a legislator from arguing that the end always justifies the means...

[With the entry into force of the Law on the Fight against crime] the door between the secret service and the police was opened. The secret service became a supplier of the police. Now, the judges have slammed this door again - and this with a big bang. This should also rouse the Social Democrat Party, which, insensitive to constitutional rights, had at one time supported this law.

[The Constitutional Court] has issued an interlocutory decree. One is anxious to know the final ruling, since fundamental statements on the current policy of a "strong state" can be expected. This policy is based on the assumption that everybody is a potential criminal and that the state therefore does not need concrete suspicion as a pre-requisite for treating all of us as suspects. It is time for a trenchant correction."

SPAIN

CEUTA'S "FORGOTTEN REFUGEES"

Three hundred African refugees are being forced to exist in inhuman conditions in the Spanish enclave city of Ceuta in Morocco. The refugees are now on hunger strike.

For two years, the refugees have been living in the ruins of Ceuta without water, electricity, sanitation and adequate food. Some of them are suffering from tuberculosis, and many have been attacked by rats, but the Ceuta authorities do not permit any medical or legal assistance.

The refugees are all from African countries affected by war - Rwanda, Somalia, Burundi, Niger and Liberia. As a result of the strict entry procedures of the Schengen countries, they have become trapped in a legal no-man's land. The Spanish authorities have chosen to forget them, and they cannot return to their own countries because they are being refused re-entry. Many lack identity papers.

Like the authorities, most of the local population of Ceuta are avoiding any contact with the refugees. Apparently, there is a widespread fear in Ceuta that any help to the refugees would trigger new arrivals.

The local government claims that responsibility for the refugees lies with the Spanish central government. The Mayor of Ceuta has expressed concern that if no action is taken, more refugees will arrive in his town. "Ceuta cannot become a ghetto of Europe", he stressed.

The refugees themselves have become desperate and have started a hunger strike to draw attention to their situation. Many of the refugees are highly educated and have organised good discipline at the camp.

The Andalusian Human Rights Association in Seville has been documenting the situation of the Ceuta refugees, and has produced an excellent report.

Source: UNITED for Intercultural Action, PB 413, NL-1000 AK Amsterdam. Contact Louise Bernstein at UNITED for further information: Tel: +31/20 6834778, Fax: +31/20-6834582.

UNITED KINGDOM

TELEVISION PRODUCER OF "THE TORTURE TRAIL" UNDER CRIMINAL INVESTIGATION

The British Ministry of Defence Police has opened a criminal investigation against Martyn Gregory, producer of "The Torture Trail", a programme broadcasted by the private British TV company, Channel 4. The programme exposed the involvement of the British Government and British companies in exporting electro-shock weapons which could be used for torture (see CL No.31, p.4).

In late June, Mr Gregory was interviewed under caution by Ministry of Defense Police alleging breach of the Firearms Act and incitement of others to do so. At the same time, three MPs, including the then President of the Board of Trade (DTI) and acting Deputy Prime Minister, Michael Heseltine, contended in letters that Mr Gregory's film was "scaremongering" and made "false" or "contrived" allegations against British Aerospace and others.

On 26 July, Ann Clywd, MP, and others put down a motion in Parliament in support of Mr Gregory. The motion notes that "The Torture Trail" recently won Amnesty International's 1995 award for best television documentary, and expresses indignation over the fact "that the Ministry of Defence Police have now made Mr Gregory the target of a criminal investigation".

Following the accusations against him, Mr. Gregory commenced proceedings against the DTI and Mr Heseltine. Commenting on his action, Mr Gregory said that "The Torture Trail" was an honest investigation that revealed the British contribution to the very disturbing trade in torture weapons. "I was surprised to find that the British Government and British companies were involved in the torture trade, and extremely disappointed that the Government has tried to discredit the programme. This is why I have taken action in the High Court against Michael Heseltine and the DTI. How can the Government justify spending thousands of pounds investigating me as the journalist who exposed the trade in electro-shock weapons, while they have yet to bring any of the traders in weapons of torture to justice?"

Mr Gregory's solicitor, Geoffrey Bindman, commented that his client deserved "high praise for exposing a disreputable trade. For Government Ministers to hound the messenger instead of heeding the message is a disgraceful misuse of their power".

In the meantime, Mr Gregory has won his libel case against the DTI, but the Ministry of Defence's case against the journalist is still pending.

Source: OMEGA Foundation (Manchester, UK)

Comment

The action against Martyn Gregory confirms the well-established rule, that when national armament industry is at stake, governments tend to act against the "traitors" who reveal unlawful and/or morally repugnant schemes of this industry of "national interest", rather than against the wrong-doings revealed.

In 1931, the renowned German journalist and editor, Carl von Ossietzky, was sentenced to imprisonment for high treason, because he had published an article in his magazine, *Die Weltbühne*, that revealed Germany's secretive and illegal efforts to rebuild its air force under the cover of an alleged civilian aviation programme. In 1934, Ossietzky was transferred to a concentration camp by the Nazi regime, where he died in 1938, after having been awarded the Nobel prize. Two years ago, Germany's highest Court rejected a petition demanding the rehabilitation of Ossietzky.

In Israel, a nuclear technician, Mordechai Vanunu, has been in jail since 1986 for having exposed this country's nuclear weapons project.

Britain, a country with a long democratic tradition and living in a state of peace, can not be compared neither with Germany in the 30s nor with the "front state" Israel. Even if Martyn Gregory should actually be tried for breach of the Firearms Act, a sentence is unlikely to be high, although the offence carries a maximum of five

years sentence. Nevertheless, the British Government's treatment of a "disagreeable" journalist calls forth unpleasant memories and once again highlights a notorious disrespect of state powers for journalists' duty to monitor government.

N.B.

SWEDEN

PARLIAMENTARY COMMITTEE ADVOCATES TIGHTER ASYLUM POLICY

A parliamentary committee on asylum policies has presented a report that is likely to lead to a further tightening of the country's asylum and immigration policies.

A declared aim of the proposals is to reduce state expenditure at a time when Sweden is coping with an unprecedented state debt and ensuing tough austerity measures.

The report predicts that European countries are facing a "continually growing migration pressure" caused by the rapid growth of world population and an income gap between the northern and the southern hemisphere that has doubled within 30 years.

According to the report, this will inevitably lead to a constant rise of the costs of refugee reception and social assistance. The Committee emphasises the high cost of refugee reception (20 billion Swedish crowns in 1992-1994, when the number of refugees increased massively due to the war in Yugoslavia).

In future Sweden should focus more on "preventive measures" contributing to reduce refugee and migrant flows, says the report. The long term goal of refugee policies should be "voluntary return". Refugees should in the first line be granted protection in "their own regions".

Based on the above fairly controversial assessments the Committee lists a number of concrete proposals, including:

- abolition of the eligibility for asylum of war resisters, "de facto" and "political-humanitarian" refugees, as stated by the present alien law;
- Punishment of smuggling of illegal migrants with up to four years' imprisonment (instead of two);
- Restriction of asylum on "humanitarian grounds" to "seriously ill" persons.
- Mandatory photographing and finger-printing for all asylum-seekers;
- Increased identity checks inside the country;
- Abolition of the right for aged parents of aliens legally residing in Sweden to join their children on family reunification grounds.

The report also proposes measures intended to improve the rights of refugees and immigrants, such as:

- temporary stay permits for "protection-seekers" in situations of mass flight (such as war, environmental catastrophes); temporary permits shall be issued for 2 years at most and refugees tolerated under this scheme may apply for asylum on Convention grounds only once the temporary permit has expired;
- Increased use of interviews of the applicants in the asylum examination procedure; interviews shall be tape-recorded in the interest of a fair procedure.
- Rise of the minimum age-limit for detention under the alien law to 18 years;
- Granting of temporary stay permits pending paternity enquiries;
- More liberal interpretation of the term "refugee" under the Geneva convention, in compliance with the recommendations of the UNHCR.

Sources: Svenska Dagbladet, 30.6.95; Svensk flyktingpolitik i ett globalt perspektiv, report of the Parliamentary Committee on Refugee Policies, Summary, SOU 1995:75.

Comment

Thanks to lobbying of FARR (the Swedish Network for Asylum and Refugee Groups) and other Swedish NGOs concerned with asylum and human rights, the refugee policy report is less anti-asylum than originally expected by most observers. The report even recommends some measures that, if introduced, would improve the legal security of asylum-seekers. Thus, the proposal of tape-recording interviews would provide an opportunity for applicants and their lawyers to question and eventually have corrected the immigration authorities' records of interviews. This is all the more important, as the only interviews with the applicants are often conducted in an atmosphere of stress and intimidation, shortly after the arrival of the asylum-seeker, and by ill-trained officers and interpreters. All this can lead to misunderstandings and lack of precision that can crucially affect the final decision on an application.

The Committee also refrained from proposing the introduction of special fines - so-called "carrier sanctions" - against airlines and other transport companies bringing insufficiently documented aliens to Sweden. As before,

carriers are merely liable to pay the costs of an eventual return.

However, the main problem with some of the more "liberal" proposals of the report is their lack of precision. The Committee claims that the abolition of a series of protection criteria in the present law (war resisters, "de facto" refugees, etc.) will not significantly affect applicants' chances of obtaining asylum, as it simultaneously calls for a more "liberal" interpretation of the protection criteria under the Geneva Convention on Refugees. In reality, however, the proposal amounts to replacing fairly liberal established criteria by an all too non-committing pledge to respect the Convention. By doing so, the parliamentary committee is merely putting the responsibility for a likely further restriction of asylum practice on the executive authorities who will obviously have their own interpretation of the Convention.

N.B.

DENMARK

2,300 DESERTERS FROM THE SERBIAN ARMY FACE AN UNCERTAIN FUTURE

For the Interior Minister, Ms Birte Weiss, the question of how to cope with deserters from the Serbian army who for the last three or four years have been waiting for an answer to their application for asylum has been a constantly recurring problem. Should they be given asylum in Denmark or should they be sent back? It now seems that the minister is trying to get out of the dilemma in which she has put herself by applying a special interpretation of the Danish foreigner law.

Around 2,300 refugees from the FRY (Serbia and Montenegro) who have deserted or refused to respond to a call-up to the Serbian army are currently living in Denmark. Of this group the majority is from Kosovo and they fear persecution in the event of forcible return to the FRY. Their cases has been moving through the Danish asylum procedure and final decisions by the appeal court are expected within the coming months.

No serious risk of persecution?

The Minister's expectation is that the appeal court, which is a government-independent institution, will not grant them asylum on the grounds of their being war resisters.

The reasons are twofold: according to the asylum authorities, they do not face harsher punishments than a maximum 60 days' imprisonment - i.e. sentences that do not differ from those handed out to Danish draft dodgers in a similar situation.

The asylum authorities' view is, however, being seriously questioned by experts and lawyers in and outside Serbia-Montenegro and in Kosovo. In May, the Minister therefore decided to send a special delegation to Serbia to investigate the situation. The delegation was, however, not able to travel because the Serbian representation in Copenhagen denied them visa. The other argument used by the Danish asylum authorities is that formally Serbia is not a country at war and therefore any reference to paragraph 171 in the UNHCR Handbook on how to interpret the Geneva Convention is not relevant. In this paragraph it is clearly stated that deserters from wars condemned by the international community should be granted asylum.

A Minister's dilemma

The problem for the Minister is that she is not able to get rid of the deserters. Indeed, in November 1994, the Serbian authorities issued a set of guidelines regulating the readmission of citizens abroad. One of the points in these regulations concerns asylum-seekers. They must have a special permit from the Serbian representations allowing them to return. These rules are widely viewed as an attempt to keep people from Kosovo from returning and thereby as a means to alter the ethnic balance in Kosovo.

It is this difficulty which has forced the Danish Interior Minister to consider "alternative" solutions, such as using a paragraph in the foreigner law (§ 9.2.4) which provides for granting stay permits on "humanitarian grounds". Under this provision, the Minister could grant the war resisters concerned asylum on the mere ground that the Serbian authorities currently refuse to readmit them. Earlier this year, this practice of the FRY forced the Swiss authorities to postpone the deportation of Kosovo--Albanians until January 1996 (see CL No.34, p.8).

For deserters from the Serbian forces in Denmark, this means that they have been allowed to stay on a temporary basis pending a change in Serbian readmission practice. In Denmark, temporary stay permits are granted for a period of six months. They can however be prolonged several times by further six months within a period of three years, after which permanent residence will be granted. The reality behind this so-called "solution" is that the Danish Government is *de facto* leaving it to the authorities in Serbia to decide if and when the re-jected refugees are sent back home.

A new loop-hole for forcible returns to the FRY?

Meanwhile, the Danish Government is already considering backing away from temporary admission. At a meeting on August 14 between the Interior Minister and representatives of the political parties in the Danish Parliament, the Minister announced that "a rumour" had arisen that it was actually possible to return rejected FRY-refugees through Italy to the port city of Bar in Montenegro. The Minister said she would await more precise information before making a decision on the FRY-refugees further stay in Denmark.

On the same day the Norwegian police made an attempt to forcibly return two young Kosovo-Albanians to the FRY. The deportees who were escorted by two police took a flight from Oslo to Rome from where they travelled to the port town of Brindisi. There, the Norwegian police escorts put them on a ferry bound for Bar in Montenegro. The exact circumstances around this deportation are still to be investigated. But at least one of the deportees is now in Prishtina, Kosovo. His situation is not clear and is being checked.

Mads Bruun Pedersen (Copenhagen)

SWITZERLAND

DATA PROTECTION COMMISSIONER WARNS AGAINST PRO-ACTIVE CONTROL

Odilo von Guntern, the Swiss federal Data Protection Commissioner has once again strongly engaged in the current debate on "internal security" policies in this country. The ever wider use of pro-active control is posing a threat to the freedom of information and the right to privacy of many non-suspect people, the Commissioner claims.

"Pro-active" eaves-dropping

While presenting his second annual report at a press conference, the Commissioner said he strongly disagreed with the decision of the second chamber of the Federal Parliament to allow the use of sophisticated eavesdropping equipment for the pro-active surveillance of "suspect organisations" (see CL No.35, p.11). Mr von Guntern called on the parliament to withdraw the controversial provisions.

Digital systems threaten privacy

The Data protection Commissioner also expressed criticism of Swiss public Post and Telecommunications, PTT, for not having informed his office in time - or at all - on projects in sensitive fields of electronic data processing. The complexity of modern telecommunications increase the risk of encroachments on individual liberties and privacy, Mr von Guntern said, and particularly mentioned the new digital telephone network as an example. The digital system enables the identification of the calling person without his knowledge. The Commissioner expressed similar reservations against other projects of the PTT, such as the "Swiss Telecom Card", and against low data protection levels in the PTT's money transfer and mailing activities.

Call for harmonised international data protection

Von Guntern expressed legal reservations about the Internet and advocated the creation of a central international mechanism of control that would watch over violations of data protection regulations. Data protection should not oppose developments in communication, Mr von Guntern stresses, but in view of the chaos that now reigns, there is a need for international harmonised data protection regulations. In the view of the Commissioner, the Council of Europe is best suited to deal with the matter.

"Risk prevention" versus civil liberties

Speaking more generally, Mr von Guntern warned against the current trend towards justifying ever more comprehensive data registers on the grounds of general "risk prevention". The Commissioner drew an alarming picture of a future marked by the electronic surveillance of citizens reduced to transparent chip-card bearers. He called on the public to become more aware of this danger, instead of handing out ever more personal data - often of their own free will. Mr von Guntern called on the state and on the private sector to restrain their "thirst for data", and to deliberately accept the "incompleteness of information". This was better than collecting data "without end and aim", to the prejudice of individual rights.

Source: Neue Zürcher Zeitung, 4.7.95. See also CL No.26, p.3 on Swiss Data Protection Commissioner.

EUROPEAN UNION

AMBASSADORS SIGN EUROPOL CONVENTION IN BRUSSELS

On 26 July, the representatives of the 15 EU-member states finally signed the Convention on the setting up of Europol. The act was marked by an atmosphere of intimacy unusual at such occasions.

Indeed, the document was not signed by solemn and important ministers ceremoniously showing up for the European press, as one would have expected, but merely by the COREPER ambassadors of the member states. Apparently, the Council does not feel very proud about the Convention in its present shape.

According to diplomats, the Benelux countries, Germany and Italy added a protocol to the convention text. The protocol makes reference of the decision of the Cannes European Council that a regulation on the judicial role of the European Court of Justice (ECJ) must be agreed until June 1996. The Benelux countries went even further by expressly making a "satisfactory solution" a pre-requisite for their ratifying the Convention.

By simply leaving out the controversial provisions on jurisdiction over Europol, the heads of government of the member states are hoping to enable the wearisome ratification process to begin at once. The Europol chief, Jürgen Storbeck, has said that this compromise solution made it possible to begin now with the "technical and organisational" preparation of Europol. This probably means no less than that the controversial automated information systems of Europol will be set up without a regulation on the role of the judiciary in compliance with fundamental democratic and constitutional standards.

Two other conventions signed

The two other conventions signed by the ambassadors on 26 July were the CIS (Customs Information System) Convention and the Convention on the Protection of the Financial Interests of the Community (under which serious fraud will be a criminal offence that is imprisonable and extraditable). For these two conventions, the UK apparently agreed that for inter-state disputes and disputes between the member states and the Commission, the ECJ could be involved.

Transparency gone for its holiday

The precise agreement reached on postponement of the ECJ issue is said to have been described not in a press release, but in a communique from the Council. However, our attempts to obtain a copy of this text from the Council Administration failed lamentably. The entire Council, including its allegedly "permanent" representatives, we were told, is currently on a holiday, and consequently, no documents are available before 1 September on the affairs of the European Union.

Sources: Neue Zürcher Zeitung, 27.7.95, 4.7.95; a friendly and lonesome caretaker at the Council-building in Brussels; our sources.

MESSAGE

eCE - AUSTRIAN COMPUTER EXPERTS

eCE stands for "engagierte Computer ExpertInnen". eCE is a network of people from science and practice, who are monitoring the deployment of information technologies in various areas. eCE strives for a positive, humane development of computer technology. Founded in 1986, eCE has steadily widened its scope to areas such as educating the public by supplying the mass-media with information; participating at public debates; and supplying comprehensive information. eCE's work also aims at presenting positive proposals on how to apply information technology. The main emphasis is put on cooperation with grass root organisations. eCE further initiates and participates in research projects.

Current working areas are:

- Networks for the public (The digital city/Die digitale Stadt/De digitale Stad)
- the use of information technologies in health care;
- the use of information technology in trade and industry;
- data exchange between governments/police forces as a result of european integration as well as its privacy implications;
- networks, cryptography and secret agencies;
- loss for society due to patent law in the software business.

eCE has contacts with the following organisations: ARGE Daten (Austria), Forum InformatikerInnen für Frieden und gesellschaftliche Verantwortung, FfF, Institut für Kommunikationsökologie, IKÖ (Germany), Electronic Frontier Italy, EFI (Italy), TY (Finland), Association for Progressive Communication, APC, Computer Professionals for Social Responsibility, CPSR, Cypher Punks, Electronic Frontier Foundation, EFF, LaborNet (USA), Electronic Frontier Australia, EFA (Australia).

eCE is a non-profit organisation.

Contact: eCE, Postfach 168, A-1015 Vienna,

Austria; E-mail: eCE@iguwnext.tuwien.ac.at

EVENTS

Presse écrite et immigration - Séminaire Européen, Paris, 7 - 8 September 95.

Organised by *Génériques* and CIEMI. Themes: Evaluation of newspapers and magazines published by immigrant groups in various European countries, as well as of the problems such publications are facing; Reflection on the approach of the European press to the immigration issue and on how this affects society.

Contact: *Génériques*, Laurence Jiminaga, 34, rue des Citeaux, F-75012 Paris; Tel: +33/1 49285775, Fax: +33/1 49280930.

The Status of Migrants in the Southern Countries of the European Union - International Conference in Madrid, 14 - 16 September 95.

Organised by Migrants Forum of the European Union. Themes: discussion of the status of migrants in Spain, Italy, Greece and Portugal.

Contact: Migrants Forum of the EU, 33 rue de Trèves, B-1040 Brussels; Tel: +32/2 2301414, Fax: +32/2 2301461.

Human Rights and Community Law - International Conference in Luxembourg, 28 - 29 September 95.

For community, international and national civil servants, magistrates, lawyers and universities.

Contact: EIPA) European Institute of Public Administration, Postbus 1229, NL-6201 BE Maastricht; Tel: +31/43 29622; Fax: +31/43 296296.

"East-West No Exclusion" - International Conference in Bratislava, 8 - 15 October 95.

Organised by IUVENTA - Youth exchange Centre of Slovakia. Themes: integration in Europe, migration in Europe, global problems of mankind - European approach, extreme forms of intolerance - European phenomena...

Contact: IUVENTA, Karloveská 64, SQ-84258 Bratislava; Tel: +42/7 722303, Fax: +42/7 722342.

DOCUMENTS AND PUBLICATIONS

European integration: The implications for police accountability in Britain, by Patrizia Klinckhamers, MSc Criminal Justice Policy 1993/94, London School of Economics and Political Science, London, September 1994, 46 p.

The author explains how and why a multi-tiered policing system has evolved in the United Kingdom. Beside the local and regional level, a "national" level is gaining increasing importance, while at the supranational level new police structures are being more precisely defined and organised.

The British police has undergone many changes. In part, these were the consequence of a growing internal conflict about the police system and what it was supposed to represent and achieve. The reform is realised in the Police and Magistrates Court Act of July 1994. On the other hand, European integration and the - assumed - threat to security and public order related to the open borders policy instigated reorganisation and the establishment of structures which are used as central points of reference and are supposed to help in the combat against international crime.

The author comes to the conclusion that accountability structures which are present at the different tiers of policing are far from satisfactory. If anything, the organisation of control over the new "national" initiatives adds weight to the already existing tendency towards more centralisation of power. From every level, lines of authority extend towards the Home Office and its officials, eroding the democratic accountability of the institutions. At the local level, democratic accountability is replaced by an "accountability to the Community", in the form of service delivery and the pretence of devolving more responsibility towards the local police authorities.

The author comments on efforts of the conservative government to enhance "value for money" thinking also into the management of the police service and to reduce public expenditure by internal monitoring and appraisal of its performance, and she quotes Professor Robert Reiner: "Under this regime [the police officers] will be accountable for their actions as never before. That's the good news. The bad news is that they will be accountable in the spirit of accountancy, not democratic accountability". Klinckhamers suggests that the conservative police reform "will devolve responsibility downwards to local police commanders, but power will be concentrated more than ever in the hand of central government". The position of the police is "somewhat ambiguous", she concludes: "While being on one side - especially at the local level - more under the control of central government, it nevertheless seems able to gradually expand its professional autonomy, using their

expertise on international crime.

Available from: Patrizia Klinckhamers, Institut v. Politiele Organisatie, H. Hooverplein 10, B-3000 Leuven; Tel: +32/16 325307; Fax: +32/16 325427.

Integrationsindex - zur rechtlichen Integration von AusländerInnen in ausgewählten europäischen Ländern, by Rainer Bauböck, Dilek Çinar, Christoph Hofinger and Harald Waldrauch, Institut für Höhere Studien, Vienna, July 95, 57 p. and appendix, in German.

The "Integration Index" is the first attempt to measure and compare legal integration barriers in various European countries on the basis of equivalent statistical indices in the domains of stay and residence, access to the labour market, family reunification, naturalisation, legal status of the "second generation" (immigrant children born in the host country). The study reveals considerable differences of legal frameworks of relevance in the integration of legally resident immigrants. The countries comprised in the study are: Belgium, Germany, France, the United Kingdom, the Netherlands, Austria, Switzerland, and Sweden. The study seems to confirm that German speaking countries and in particular Austria have the most restrictive policies with regard to the integration of immigrants, while Sweden has the most liberal approach.

Available at: Institut für Höhere Studien, Stumpergasse 56, A-1060 Vienna; Fax: +43/1 5970635.

Grenzenlose Polizei? - Neue Grenzen und polizeiliche Zusammenarbeit in Europa, by Heiner Busch, CILIP, publ. Westfälisches Dampfboot, Münster, 1995, 440 p. in German.

The author, one of the foremost experts on policing in Germany and the EU, describes the "autonomous" functioning of national police in countries such as Germany, the Netherlands, the United Kingdom and Spain, and their capacity of influencing "big politics" in their countries and within the EU by the use of manipulatory methods. The book also addresses what the author calls the "intelligent centralisation" of police by the introduction of new computerised search and surveillance systems.

The author stresses the need for research focusing on what he views as the "inefficiency of policing, i.e. of violent solutions of political problems". Based on broad statistical evidence, Busch rejects the common allegation that the abolition of internal border controls in the EU automatically leads to a "security deficit" that requires "compensatory measures".

Available from: Heiner Busch, Schulweg 4, CH-3013 Bern.

Humanitarian law Centre

Spotlight Report No.18: The Conscriptation of Refugees in Serbia - Mass abductions for the armed conflicts in Croatia and Bosnia, Belgrade, July 95, 6 p., in English.

Spotlight Report No. 19: The Trial of General Trifunovic II - An analysis of the Lower Court opinion, Belgrade, July 95, 5 p., in English.

Available at: Humanitarian law centre, Terazije 14, Belgrade, FRY;
Tel: +381/11 657355, Fax: +381/11 645589.

The principle of open government in Schengen and the European Union: democratic retrogression?, by Deidre Curtin and Herman Meijers of the Standing Committee of Experts on international immigration, refugee and criminal law; article published in Common Market Law review 32: pp.391-442, in English.

Available at: Permanente Commissie, postbus 638, NL-3500 Utrecht; Tel: +31/30 963900, Fax: +31/30 944410.

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