CIRCULAR LETTER NO. 37 SEPTEMBER 1995

Editor: Nicholas Busch, Blomstervägen 7, S-791 33 Falun, Sweden
tel/fax: +46/23 26777, Email: nbusch@nn.apc.org

`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.

CONTENTS

EUROPEAN UNION

JUSTICE AND HOME AFFAIRS COUNCIL MEETS IN BRUSSELS

The Ministers of Justice and Home Affairs of the 15 EU member states (JHA-Council) met in Brussels on 25-26 September. Items addressed by the ministers included Europol, the fight against terrorism and organised crime, the common list of countries whose citizens need a visa to enter the Union, asylum policies, racism, and judicial and police cooperation with third countries.

Europol muddle continues

The Convention on Europol signed in July 1996 is an "unfinished" legal text. This is a consequence of the disagreement on fundamental issues that has characterised the work on Europol from the very beginning. Under strong political pressure to finally make some progress, the member states signed a Convention text that is hardly more than a fairly empty "legal shell". The wording of many instrumental provisions is vague and elastic. This allowed the member states to sign the Convention in spite of continuing fundamental disagreements. As a result, some of the legal and technical stumbling blocks preventing the implementation of Europol have still to be removed. The disputes have not been solved, merely postponed.

This is evident from the long list of controversial items that must be resolved prior to an implementation of the Convention.

No fewer than seven such items were on the agenda of the Brussels meeting of the JHA ministers:

- the internal rules of Europol's Management Board;
- the status of the Europol staff;
- privileges and immunities;
- rules pertaining to the type of information to be stored and processed in Europol's highly sensitive Analysis registers;
- the status of the liaison officers;
- the protection of confidentiality; and
- financial regulations.

On all these issues little progress, if all, seems to have been made at the Brussels meeting. At the end of the meeting the Council only held out the prospect of achieving agreement "on the principle" of the internal rules of the Management Board and the status of the staff, at its next formal meeting in November. As for the other items on the agenda, the Council instructed the K.4 working group on Europol to "continue its work". This is the sort of diplomatic wording the Council usually chooses when no agreement is in sight.

As for the thorny question of jurisdiction of the European Court of Justice (ECJ), the Spanish Presidency says that agreement on the principle of preliminary rulings by the ECJ could be reached in November on the basis of a Spanish proposition. Nothing was said about a possible role for the ECJ in disputes between the member states. The idea of a right for individual citizens to have their complaints considered by the ECJ was dropped long ago.

Europol Drugs Unit (EDU) expanding rapidly

The Council approved both Europol-EDU's report of activities for the first six months of 1995 and its working programme for the second six months period.

The two EDU documents are summarised in a briefing paper from the Danish Ministry of Justice to the Legal Committee of the Danish parliament. *Inter alia*, the following activities are named in the working programme:

- elaboration of a strategy for combating money laundering (a report on the subject is to be presented to the JHA Council in November);
- a report on cooperation with regard to the prosecution of trafficking in nuclear and radioactive materials;
- a project group on criminality linked to the smuggling of illegal immigrants;
- an evaluation of bilateral and multilateral activities with regard to illegal trade in stolen motor vehicles; and
- the setting up of EDU standard procedures pertaining to "controlled delivery" (delivery under covert police surveillance), observation techniques in the context of such operations, and the drawing up of so-called "smuggler profiles".

This list reveals that the EDU is currently focusing on new activities resulting from the widening of its remit agreed by the JHA Council in March (see CL No.32, p.6, p.10).

Moreover, the EDU has set up a project group charged with the technical and practical preparations in view of an implementation of the Europol Convention as early as possible. In particular, this involves plans to set up Europol's future computerised information system. The group is to collect bids from hardware and software producers, train the personnel, and carry out quality controls on the system.

JHA cooperation with third countries

A number of information meetings at ministerial level with third countries were held or are planned in the wake of the Brussels JHA Council.

Traditionally, such meetings have taken place

with the countries associated to the former TREVI group, i.e. mainly the USA, Canada, Switzerland, Norway and Morocco.

Meanwhile, the JHA Council has extended cooperation to the central and eastern European countries, including the Baltic states, as well as to Cyprus and Malta. Some form of cooperation in the field of the fight against drugs is also to take place with the Andean Pact states (Colombia, Peru, Bolivia, Venezuela and Ecuador).

The Council adopted a project of common action of the EU member states and the associated countries of Eastern and Central Europe in the fields of justice cooperation and the fight against international organised crime. The planned cooperation will especially cover the types of crimes under the remit of the EDU. The Council is believed to have discussed police and Customs cooperation, the fight against document forgery, visa policies, agreements on the return of illegal immigrants and rejected asylum seekers, the project of a police academy in Budapest and moves for the associated countries to join the relevant conventions in the field of justice cooperation.

Cyprus' and Malta's planned membership of the EU, and the co-operation this would entail were discussed at a separate meeting with the Ministers of these two countries on 25 September. The discussions focused on the fight against organised crime and illegal immigration.

Another meeting between the Troika of JHA ministers and representatives was planned for 26 September with the Andean Pact countries. The main topic on the agenda was an exchange of views on a possible agreement between the EU and the Andean Pact countries pertaining to the control of exports of chemical ingredients used to make illegal drugs. Many of these "precursory" ingredients are legal, while the final product is illegal. However, it is not evident from documents available to us whether the meeting actually took place.

The Council also agreed to give the European Commission a mandate to discuss with the Organisation of American States (OAS) how to control exports of "precursory" ingredients.

The Spanish presidency on terrorism

The Presidency declared its firm intention to promote work aiming at improving "operational measures" against terrorism, among other things, by developing existing networks of cooperation between the competent services of the member states.

With a view to facilitating exchange of information on terrorism between police forces, the member states will consider the harmonisation and review of respective national legislation.

Islamic fundamentalist activities were once again singled out as presenting the main current terrorist threat to European interests.

Racism and xenophobia

The Council discussed a draft project for "Common Action" of the EU states against racism and xenophobia, drawn up by the Spanish Presidency.

The Common Action is to focus on harmonising law and practice of the various member states and improved international cooperation.

No agreement has, however, been reached so far on whether the Common Action will be legally binding on member states or not.

Visa and asylum policies

The ministers finally approved a list of 100 countries deemed to pose a security or immigration threat. Citizens of these countries will need a visa to enter the Union. The list will include the Federal Republic of Yugoslavia (FRY: Serbia and Montenegro) and Macedonia. Earlier, Italy had alone opposed the inclusion of the FRY on the list.

The Council indicated it was open to demands from the UNHCR for the EU to take in more refugees from the former Yugoslavia, but abstained from making any commitment.

According to the UNHCR, more than 50,000 places are needed.

Once again, the question of "burden sharing" in dealing with massive refugee influxes came up, but no agreement was reached.

"Burden sharing" as understood seems to consist in the Ministers sharing the view that the burden must be kept out of the Union.

Sources: Reuters, 25-26.9.95; Briefing paper on the agenda of the JHA Council of 25-26.10.95, sent by the Danish Ministry of Justice to the Committee on legal Affairs of the Folketing (Danish parliament), Copenhagen, 14.9.95, 29 p., in Danish.

COMMISSIONER ANITA GRADIN ON THIRD PILLAR COOPERATION

In a speech to the European Parliament (EP), on 20 September, Anita Gradin, the Commissioner responsible for Justice and Home Affairs cooperation, has advocated the transfer of important parts of third pillar intergovernmental cooperation (on justice and home affairs) to the first pillar (Community law).

Referring to long-standing demands of the EP for increased involvement in third pillar decision-making, Ms Gradin said she shared the Parliament's view that there must be openness between the Commission and the Parliament. In particular she vowed that the Commission would fully inform the EP on all activities concerning migration policies. Article K.6 of the Maastricht Treaty states that the EP shall be consulted, when "important" aspects of the third pillar cooperation are concerned. Ms Gradin admitted that this provision is "somewhat equivocal" in its present wording, but insisted that the Commission considered all questions regarding migration as important.

Common external borders control
Ms Gradin said the Commission was "considering ways" to contribute to a solution regarding the draft Convention on external border controls that is still blocked by a political dispute. She noted that the JHA Council was to approve a common list of countries whose nationals will need a visa for entry to any EU member state, but said the common visa policy could not be implemented in practice as long as the problem with the Convention was not solved.

Third Pillar: insufficient cooperation
Ms Gradin appeared to share some of the EP's criticism of intergovernmental cooperation in the field of asylum and migration. She said: "a higher level of unity on central issues would have been desirable . . . The Commission desires that cooperation become more effective. Today, it is too slow, there are too many levels, and the requirement of unanimity makes it difficult to advance". [This latest remark from a senior member of the Swedish Social Democrat party on the deficiencies of intergovernmental cooperation within the EU is a further indication that "anti-federalists" would be wrong to rely too much on Swedish support at the Intergovernmental Conference on the future of the Maastricht Treaty in 1996.]

The Commission proposes that the six first points of Article K.1 of the Treaty, i.e asylum, migration, narcotics, fraud, civil law cooperation and Customs cooperation, be brought under the first pillar. The Commission further demands a right of initiative in the fields of criminal law and police cooperation, and Ms Gradin emphasised that the EP must be involved in a systematic manner. "This is true both with regard to information and appropriate consultation procedures", the Commissioner said.

Finally, Ms Gradin called for a role both for the European Court of Justice and the Court of Auditors in justice and home affairs cooperation.

Working programme of the Commission
Ms Gradin announced that the Commission will present a report to the Council before the end of this year on the possibility of bringing certain asylum issues under the first pillar, by applying article K.9 of the Maastricht Treaty. A similar Commission proposal was rejected by the Council in December 1993.

Ms Gradin further informed the Parliament on planned projects. Her department is working on a draft convention on common rules on immigration and residence. The draft also addresses questions such as family reunification and the integration of legal immigrants. The draft will contain a catalogue of rights and obligations of immigrants in all EU member states, mainly pertaining to work permits, basic social security and children's right to school training.

Another planned initiative refers to temporary stay permits for refugees and the conditions of return. Ms Gradin noted that, for the time being, practice differed strongly from one country to another.

Ms Gradin's department has also started two studies, on "burden-sharing" in refugee reception and on root causes of mass migration.

Source: Speech of Commissioner Anita Gradin to the European Parliament, 20.9.95.

AUSTRIA

"FAIR, HUMANE, INTELLIGIBLE": MINISTER EINEM PROPOSES REFORM OF FOREIGNER LAW

Last May, Austria's new Interior Minister, Caspar Einem, successfully resisted a powerful right-wing campaign aimed at forcing his resignation. No sooner had the Minister ridden out this political storm than he promised to present proposals for a thorough reform of Austria's ultra-restrictive foreigner and asylum legislation, before the end of the year (see CL No.34, pp.3-6).

Since then, the Minister has fulfilled his promise. On 22 September, he presented his "Integration Package 95" of proposals for a reform of the foreigner law. The package amounts to an unprecedented challenge to Jörg Haider's far right "Freedom movement" and a strong coalition of law-and-order and anti-immigration hard-liners.

According to Minister Einem, the draft proposals aim at making foreigner and asylum legislation "fair, humane, and intelligible". The main objective of the package is to limit as much as possible what the Interior Minister calls "the socially devastating consequences of illegality". Consequently, his proposals mainly aim at making it easier for foreigners, and in particular asylum seekers, to comply with the law, rather than forcing them into illegality by restrictive and discriminatory rules.

Right of residence strengthened

Failure of foreigners to meet set terms in procedures for the renewal of their residence permits shall no longer entail the loss of the right of residence, but merely fines. The separate proof of "decent housing" according to average regional standards shall no longer be a prerequisite for obtaining residence permit. "Inadequate housing should not be viewed as a problem of foreigners only", the Minister explains, referring to this change.

Asylum law: Softened "third safe country" regulation

Under the present Austrian asylum law, asylum seekers may be sent back to any third country in which they **could** have sought protection on their way to Austria. Consequently, ever since the introduction of this regulation in June 1992, asylum seekers who entered Austria via a transit country had their applications turned down and were deported. This contributed to a massive drop of the number of recognised refugees in Austria in the last two years. The ultra-restric-tive practice was condemned, among others, by the UNHCR (see CL No.24, p.8).

Under the new rule proposed by Minister Einem, the asylum authorities would not only have to establish whether an applicant **could** have sought protection in a specific third country, but also whether he **will** have full access to an asylum examination procedure meeting the requirements of the Geneva Convention on Refugees, in the event of being sent back there. The safety of third safe countries shall be established in cooperation with the UNHCR, by way of ordinance.

The proposed change has more far-reaching implications than one would expect at the first glance. Indeed, Austria currently deems all its neighbour states to be safe, but experience shows that Central European neighbour states such as Hungary and the Czech Republic tend to, in turn, deport returnees from Austria, whom they view as illegal immigrants. This has led to an increasing number of "Refugees in Orbit" ending up in their country of origin.

Finally, asylum seekers shall be granted temporary stay pending a final decision on their application. Under the present law, asylum seekers could be deported after the first rejection of their application, even if they appealed the decision.

Facilitated integration

Mr Einem emphasises that he wishes to keep to a very restrictive immigration policy and that he is not in favour of an amnesty for illegal immigrants. Indeed, his proposals mainly concentrate on a speedier integration of foreigners already living in Austria. Among other things, foreigners shall have a right to a permanent residence permit after five years of legal stay in the country. The expulsion of foreigners born and brought up in Austria shall no longer be possible, "even if they commit offenses as teenagers, as Austrian youth do".

As far as new immigration is concerned, applications on family reunification grounds shall be given priority. Initially, the Interior Minister wishes to reduce the backlog of pending applications from recent years. Once this has happened, new applications will be handled according to the following rule: Either immigrants will not be granted residence permit at all, or the permits shall automatically include their family.

If things go according to the Interior Minister's time table, the proposed changes should enter into force on 1 January 1996. However, he has still some way to go. First, the package will be considered by the parliamentary Home Affairs committee. Then, it will be presented to the *Nationalrat* (the Parliament).

First negative reactions to Mr Einem's package seem to indicate, that the Interior Minister is heading for a hard battle. The ÖVP, the conservative Christian Democrat junior partner in Chancellor Franz Vranitzky's coalition government, is showing scepticism about the proposed changes. An ÖVP MP said the proposals open the way to "abuse" by foreigners, and accused Mr Einem of showing a "lack of understanding for the fears of the Austrians", and the leader of the "Freedom Movement", Jörg Haider, announced "resistance". As for the Greens, they have shown disappointment with the package which they view as too moderate.

Sources: Wiener Zeitung, 23.9.95, 26.9.95; Profil, 25.9.95.

Comment

Advocates of more open immigration and asylum policies in Austria are pointing to the limited scope of Mr Einem's package. Some tend to believe that the Minister has already given in to a strong anti-foreigner and "security" lobby comprising Haider's far right populists, the ÖVP, parts of Mr. Einem's own party, the SPÖ, and a powerful faction of senior officials within his own Ministry.

However, this is not the time for hasty and over-emotional conclusions.

At a first glance, it is true, Mr. Einem's "Integration Package 95" looks more like a haphazard compilation of corrective measures aimed at repairing obvious "technical" deficiencies of the present law, rather than at a wholesale reform of an asylum and immigration policy that many believe is fundamentally inhumane.

But Caspar Einem's proposals must be considered within the general political context not only in Austria,

but in Western Europe as a whole.

If adopted, the changes will strengthen immigrants' and refugees' rights in Austria at a time where literally all other European countries are introducing ever more restrictive and discriminatory legislation. Everywhere, anti-immigration and law-and-order hardliners are increasingly dictating the political agenda. Opposition forces have shown themselves unable so far even to propose an alternative policy project. Instead they have concentrated on defensive tactics consisting mainly in "accepting the bad to prevent the worse".

Caspar Einem's "Integration Package" is more than that. All over Europe, governments are perceiving "undesirable" foreigners as a security risk and thus pressing them into illegality. "We have not succeeded in calming down public fears that way", Minister Einem notes, and he comes with a radically different approach. In his view, the genuine security risk consists not in the foreigners, but in policies of exclusion and denial of rights forcing them into illegality. Thus, Interior Minister Einem's proposals represent a perhaps small, but crucial step towards addressing the problem of asylum and immigration from a social rather than a policing angle.

By presenting his proposals, despite formidable resistance both from politicians and from his own civil servants, Einem is the first senior politician for years who dares to openly challenge Jörg Haider and his "Freedom movement". "All of a sudden, the chief of the Freedom movement is confronted with a situation he is not used to - that at least one man in the [SPÖ/ ÖVP] coalition is not running after him, but doing what he feels is right himself", Hubertus Czernin writes in the Vienna magazine, *Profil*. "Einem's foreigner law package can therefore be perceived as the beginning of an assault on this country's political hegemony.", the columnist concludes.

Indeed, Caspar Einem has launched a political offensive. Whether it will succeed or not will depend of the support liberal and human rights groups circles will give its initial phase - the "Integration package 95". This is true not only for Austria, but for the whole of Europe.

The Austrian Interior Minister is challenging the European Union's policy on immigration and asylum. He deserves international attention and support.

N.B.

Quotes from: Der Kontra-Minister, by Hubertus Czernin, in Profil No.39, 25.9.95.

SCANDINAVIA

DANISH MINISTER PROPOSES A SPECIAL LAW FOR DESERTERS FROM SERBIAN ARMY

Deserters and conscientious objectors from the Serbian army who are refused political asylum in Denmark, may be granted temporary stay, if the parliament accepts a proposal from the Minister of Interior, Ms. Birte Weiss, to add a special "Serbian deserters" paragraph to the Foreigners Law in October. This is the latest attempt by the Minister to escape the corner she has driven herself into.

The handling of this situation is a very delicate matter and has been troubling the Danish asylum authorities and the Government for the last couple of years. The Minister is trying her best to find a way to avoid granting the deserters asylum according to the guidelines in the UNHCR Handbook (paragraph 171). This is probably because Denmark - and other countries in the European Union - fear a tide of asylum applications from the 200-300,000 deserters spread across Europe, if they follow the Handbook.

But there is another side to the Minister's problem. She is simply not able to send the people, who are refused asylum, back to Serbia, because of the Serbian authorities' policy of not accepting Serbian citizens who have sought asylum abroad (see CL No.36, p.9).

Therefore, Mrs Weiss has been searching for a way out of this dead-end. Her latest attempt was to propose a new provision in the Foreigners Law.

Under such a provision, the rejected deserters would be granted temporary stay in Denmark for up to three years, or until the situation in Serbian changes and the immediate obstacle to their return is removed.

Desperate attempt to avoid permanent residence permits

The Minister has been very creative in finding different solutions to the problem of rejected asylum seekers who - for various reasons - cannot be returned.

At one time, she advocated a liberal use of a paragraph in the Foreigners Law, according to which asylum can be granted on "humanitarian grounds" to applicants who do not qualify for refugee status under the 1951 Geneva Convention. Under this scheme, the persons concerned would have obtained permanent residence permits.

From the government's point of view, the Interior Minister's new proposal to introduce a special provision into the foreigner law has the great advantage that it would affect only deserters from the Serbian army who have applied for asylum before October 1995, and that it would not make them eligible for permanent residence permits.

The bill is to be presented to the Parliament in October.

Ministerial plans thwarted by Appeal Board?

Of the up to 2,700 refugees from the FRY (Serbia and Montenegro) whose cases have been moving through the Directorate for Foreigners, the majority have had their application turned down, mainly on the grounds that the FRY was no longer a country at war and that deserters from the Serbian army did not face serious persecution (see CL No.29, p.9).

However, within the last two weeks, the Refugee Board (instance of appeal) has handled twelve cases involving deserters from the FRY forces. The board's findings seem to indicate that there has been a change in the perception of the danger facing deserters in the event of forcible return to the FRY. The appeals of eight deserters were approved, decisions on three others were postponed pending further evaluation of evidence, and only one appeal was dismissed.

In at least two of the positive cases concerning two Kosovo-Albanians, the Refugee Board held that they had deserted from active service during the period of the 1991-92 war, which should "qualify" them for harsher punishment than if they had deserted during a non-war period. Secondly, the Board found that the benefit of the doubt concerning the character of the punishment feared should be to the appellants' advantage.

The judge said afterwards that the question of the ethnic persecution of the Albanian population in Kosovo was not considered, because the two first reasons constituted sufficient grounds to grant them asylum under *de facto* status.

Their lawyer had argued that they should be given refugee status according to the Geneva Convention, because the UNHCR Handbook clearly spells out the right to protection for deserters from internationally condemned wars. However, the Refugee Board - in line with the Directorate for Foreigners - did not find this argument relevant.

Mads Bruun Pedersen (Copenhagen)

INNOCENT ALGERIAN HELD IN SWEDEN UNDER ANTI-TERRORISM LAW

For more than a month, an Algerian national has been held on order of the Swedish Minister of Justice. France is claiming the man's extradition for his alleged involvement in a 25 July bomb attack in Paris that French security believes to be the work of Algerian fundamentalists. Technical evidence shows that the man is innocent, but under a notorious Swedish law on "special control of foreigners", foreigners who are not suspects under criminal law can be detained and expelled on internal security grounds.

On 25 July, seven persons were killed and 80 injured in a bomb attack at a Paris metro station. French authorities were quick to blame the Algerian GIA, an armed Islamic group, for the bloodbath.

A month later, Swedish police arrested a 39 year old Algerian in Stockholm at the request of the French prosecution authorities. According to the French investigators, a witness to the Paris bomb attack had identified the man as one of three "suspect" North Africans he had seen on the site of attack.

However, the man soon presented strong evidence indicating that he was in Stockholm on the day of the Paris bombing. Consequently, the Swedish Chief Prosecutor, Jan Danielsson, found there were no grounds under Swedish criminal law for keeping him in custody and ordered him free. But this was far from the end of the matter. At the request of SÄPO, the Swedish Security Police, the Minister of Justice, Ms Leila Freiwalds, decided that he should remain in custody. The minister stressed that the man was "involved in activities that are not desirable in our country". SÄPO claims they have evidence showing the man's involvement in extremist Islamic activities, but has never spelt out these allegations.

Meanwhile, France has presented a formal request for the Algerian's extradition. It is, however, unlikely that the Swedish Highest Court will approve the request, in view of recent technical evidence showing that the Algerian personally signed a payment form at a Stockholm post office on the very day of the Paris bombing.

Nonetheless, the man still faces the risk of deportation and permanent separation from his Swedish wife and two children.

The "terrorist law": a legal outrage

This legal monstrosity is made possible by special Swedish anti-terrorist legislation, the "Law on special control of foreigners".

The 1991 law provides for the expulsion of foreigners if "this is necessary with regard to the security of the state" or if there are reasons to believe that the foreigner concerned "will commit or participate in a criminal offense involving violence, threat or coercion for political purposes". As distinguished from an earlier version of the law from 1973, the 1991 law applies even to potential future offenses outside Sweden.

Pseudo-trial
Expulsions under this law are ordered by the government acting on its own or upon request of the National Police Board (i.e. in practice, Säpo).

The law provides neither for a trial nor for any legal remedy. The role of the judiciary is limited to a "thorough investigation" of the circumstances, that "could affect the outcome of the [government's] decision" by a court of first instance. The court will then make a non-binding statement of opinion.

Secret proceedings
The parties in this pseudo-trial are the National Police Board and the foreigner concerned. The foreigner shall be "given the opportunity to present his viewpoint".

The court may base its statement of opinion on documents and other evidence to which the foreigner and his lawyer are denied access.

The proceedings are secret. Lawyers are prohibited from informing the public on the proceedings.

Pending a decision by the government, the "accused" may be detained.

Expulsion or "special surveillance"?
The government can refrain from carrying out an ordered deportation, if it is technically impossible or would expose the foreigner concerned to the risk of persecution. In these cases, the government can expel the deportee to another country willing to receive him or order special surveillance measures, including bugging measures, surveillance of private mail, and an obligation for the foreigner concerned to regularly present himself to the police authorities.

The Minister of Justice has already indicated that she does not intend to expel the Algerian to his home country, due to the obvious risk of persecution, but that he might be sent to Sudan which is said to be willing to receive Islamic militants. It is, however, more probable that, given a rejection of the French extradition request by the Highest Court, the Algerian will be allowed to remain in Sweden under "special surveillance", innocent according to the law, but suspect nonetheless.

A racist law, says Jan Guillou
The outrageous treatment of the Algerian by Swedish authorities has drawn little reactions from the public, so far. Obviously it is not fashionable to speak out for individual rights and liberties when Islamic fundamentalists are concerned. One of the few to speak out, is the renowned author and journalist, Jan Guillou. Commenting on the case in the Swedish daily newspaper, *Aftonbladet*, he suggests that the law on special control of foreigners is no less than a racist law:

> "Swedish race legislation, the so-called terrorist law, is currently being tested in an interesting way.
>
> Normally, things are handled in such a way that when there is evidence against a `black' we apply regular Swedish law, law that applies to everybody. When there is no evidence, we apply the terrorist law where there is no longer any need for evidence. In order to formally become a victim of the terrorist law, you must be a foreign citizen. This, of course, is not aimed at Norwegians, Danes, or white Americans. No, this concerns only 'blacks'."

Guillou is also furious about the fact that the French secret service, DST, sent covert agents to Sweden who secretly took pictures of the suspect. "This is, properly speaking, a criminal act", he notes, "but the DST is a buddy organisation of Säpo and therefore does not have to worry about Swedish laws".

Sources: Neue Zürcher Zeitung, 22.8.95, Svenska Dagbladet, 26.8.95, 11.9.95, 1.10.95; Aftonbladet, 28.8.95; Lag om särskild utlänningskontroll (Law on special control of foreigners), SFS 1991:572. See also: CL No.2, p.2.

BOAT PEOPLE IN THE BALTIC SEA

Between autumn 1992 and spring 1995, approximately 1,200 boat people refugees entered Sweden via the Baltic sea. Most of them came via Estonia and Latvia.

So far, the Swedish authorities have shown hesitation in returning them to these countries. Neither Latvia nor Estonia have signed the Geneva Refugee Convention so far and can therefore not be considered as "safe third countries".

As a consequence, crossing the Baltic sea with

the help of reckless smugglers and in often old and unseaworthy boats has become one of the last loopholes for migrants and refugees seeking protection and permanent residence permit in Sweden.

Under a recent Swedish law, "human smugglers" can now be sentenced to up to two years' imprisonment, and - what is more important - their boats may be seized by the Swedish state. As a result, smuggler organisations have begun putting migrants on old, defective boats that are towed out into the Baltic sea and then left to drift, leaving it to fate whether they will be discovered and their passengers saved by Swedish Coast Guard. Other migrants are dropped near the Swedish island of Gotland or the country's south eastern coast in rubber rafts by larger sea-going merchant ships.

According to Swedish police, smuggler organisations are charging up to 65,000 Swedish crowns per person for transport to Sweden.

Chronology of boat people arrivals

1992:
- 16 October: 20 refugees arrive at the coast of the Swedish island of Öland, from Kaliningrad.
- 26 October: A ship from Tallin with 47 refugees runs ashore near Stockholm.
- 14 December: 76 refugees reach the island of Fårö (near Gotland) from Riga.

1993:
- 20 January: A ship from Riga lands in Gotland with 391 (!) refugees on board.
- 23 January: A ship from Riga lands in Gotland with 81 refugees on board.
- 24 August: A merchant vessel from St Petersburg arrives in Kalix (Northern Sweden), with 13 refugees.
- 2 November: 28 refugees are dropped in rubber rafts outside the island of Gotska Sandö (near Gotland).

1994:
- 2 February: 54 refugees are transported from Latvia to Gotland.
- 20 February: 66 refugees arrive in Stockholm on board of the passenger ferry "Estonia", from Tallin. They had been smuggled into the ferry in freight containers.
- 6 June: 48 refugees reach the island of Fårö (near Gotland) with a fish trawler from Latvia.
- 25 September. A fish trawler from Latvia is stranded outside Gotland. 128 refugees reach land by swimming or in rubber-boats.
- 18 October: A Swedish air force plane discovers an unmanoeuvrable boat near the island of Öland. 2 Iraqi refugees are discovered on board.
- 8 November: A Russian vessel arrives in Karlskrona with 41 refugees.
- 18 November: 36 refugees in two rubber rafts are saved 10 km away from the southern Swedish coast (Smygehuk).
- 19 November: 2 rubber rafts with 36 refugees on board are discovered outside the port of Trelleborg.
- 16 December: Air force helicopters discover three rubber rafts with 63 refugees near the southern coast of Gotland. One refugee is dead.

1995:
- 1 April: 43 refugees are discovered on a former Russian navy vessel drifting without power in the sea, south-east of Gotland.

Sources: Dagens Nyheter, 21.4.95, p. A6; our sources.

GERMANY

SUDANESE ASYLUM SEEKERS THWART DEPORTATION ATTEMPT

Seven rejected asylum seekers from Sudan have thwarted an attempt by the German authorities to send them back to their home country. The pilot of the plane due to take them to Khartoum refused to take off when the men began rioting, and border guards had to remove them from the plane. The incident at Frankfurt airport occurred just hours after the Federal Constitutional Court lifted objections to the deportation measure. The Sudanese were put into custody.

The Constitutional Court lifted the injunction without giving grounds after the German Interior Ministry contacted the Sudanese Government and received assurances that the seven risked no maltreatment at home. The move of the Interior Ministry drew strong criticism from human rights groups claiming that torture of political opponents is still common in Sudan and that the Government in Khartoum could not be trusted.

In August, the Constitutional Court had blocked the planned deportation of the seven, when doctors pointed to physical evidence indicating that some of the men had been tortured in their home country.

In the August decision, the Court declined to rule specifically on the men's appeal, but said the Frankfurt court of first instance handling their case must delay their deportation to examine whether there were reasons preventing the men's repatriation, and whether they faced an increased risk of persecution due to the media coverage given to the case in Germany.

According to current German asylum practice, asylum applications of Sudanese nationals are handled in "accelerated" summary procedures and turned down, because Sudan is deemed a "safe country of origin".

Source: Reuter, 23.8.95, 12.9.95.

Comment
The case once again highlights the dramatic consequences of a "Conclusion" on countries in which there is "generally no serious risk of persecution" adopted at a London meeting in November 1992 by the then 12 EU immigration ministers. The Conclusion names a number of "elements of assessment" for establishing "safe" countries according to the above definition, but member states decide individually which countries they deem safe. Consequently, "safe country" lists often differ strongly from one member state to another. This has added to the legal insecurity facing asylum-seekers in the EU countries.

For the asylum seekers concerned, the question of whether their home country is deemed safe or not is of vital importance. Indeed, according to a "Resolution" agreed at the 1992 London meeting of the immigration ministers, applications of asylum seekers from "safe" countries shall be considered as "manifestly unfounded" and handled in a summary procedure enabling rapid deportation (London meeting: see CL No. 11, pp.1-3).

N.B.

OPINION

In the following article, Lode Van Outrive points to the numerous deficiencies of the Europol Convention as signed by the member states in July. The publicity given to the dispute between the member states regarding the jurisdiction of the European Court of Justice has drawn public attention away from a number of other disquieting aspects of Europol cooperation, the author suggests.

Lode Van Outrive is a Professor of Criminology at the Faculty of Law of the Catholic University of Leuven (Belgium) and a former MEP.

EUROPOL ON DRIFT

Unusual discretion marked the signing act of the Europol Convention, on 26 July in Brussels.

No minister appeared at what one would expect to be a ceremony in front of a sea of TV cameras. Instead, the text was signed by the EU member states' delegates at the Committee of Permanent Representatives (COREPER), in an atmosphere of almost shameful intimacy.

Indeed the belated signing of a "rump" convention simply leaving out the matter of jurisdiction by the Luxembourg Court (European Court of Justice: ECJ) was not really a matter for the Council to be proud about. Any publicity for the event would only draw public attention to the fact that the Convention had actually not been signed at the Cannes Summit in June, as solemnly promised by the Council at the end of 1994. Moreover, it threatened to highlight other serious defects of the Convention text, that all too obviously reflect the ministers' continuous incapacity to define a common and publicly defensible policy in the domain of policing.

The very circumstances of the signing of the Convention in July, as well as the preceding squabble in Cannes, merely illustrate the atmosphere of discord that has marked the creation of Europol from the very beginning.

Disagreement from the start
Indeed, according to the first common initiative aimed at setting up a European police office, and later to the Maastricht Treaty, the activity of the planned organisation was to be strictly limited to the exchange of information. There was no question of giving Europol any operational powers.

The British representatives participating in the group of senior police officers working on the first project in Strasbourg (under British presidency) made a draft in compliance with these prerogatives. It was striking that, according to this first British draft, Europol would not control its own data. Instead, the data should remain the property of the member states who communicated them. Moreover, the draft provided both for strict security measures regarding access to the data and for the access of citizens to their own data. It also established the jurisdiction of the Luxembourg Court (European Court of Justice). On this last point, however, the British government blew the whistle on its own civil servants. The Danes and the French also protested. As a consequence, after taking over the presidency, the Germans made a new proposition in June 1994. This German initiative was a clever attempt to overcome the controversy triggered by the British draft. On the one hand, it sought to embed Europol in the framework of the European Union to some extent by providing for competencies of the European Court of Auditors, of the Luxembourg Court and of the European Parliament. On the other hand, the draft proposed many full competencies for Europol pertaining

to collecting, processing and communicating data of its own, while at the same time providing for a direct access of individuals to their own data.

Although this German draft was accepted as a basis for discussion, it drew a lot of objections from the other member states.

The French compromise formula

The dispute between the ministers was about the following items:

- the "architecture" of Europol's information system, the access of the member states' police services to data stored by Europol, and citizens' access to their own data;
- budget control;
- the competencies of the European Court of Justice (ECJ) and the European Parliament.

Based on a new compromise proposal presented by the French presidency at a meeting of the JHA ministers on 26 January in Paris, agreement was reached on each of the above topics except for the competence of the ECJ.

***De facto* operational powers for Europol?**

The system architecture and the access of police services are important matters because they touch the protection of data against leaks as well as the possibility of own independent action of Europol. It is well known that Germany in particular wishes to entrust Europol with as many operational competencies as possible, thus permitting it to work on its own initiative.

Europol's information system will be composed of three types of data registers: the Information System (IS); the Analysis Registers (ARs) and the Index System.

The IS is a central register of data including personal data of sentenced and potential offenders. These data can be used by Europol itself and by the national authorities and their liaison officers at Europol's headquarters in The Hague.

The ARs are specific Europol instruments and will contain non-person related information as well as soft data on persons (persons registered in the IS, as well as potential future witnesses and victims, contact persons, informers, etc). They are set up for the purpose of strategic and of operational analyses. Strategic analyses will cover general criminal activities. The member states have full access. Operational analyses will focus on specific cases directly concerning a limited number of member states. They contain more sensitive information which will be communicated only to the states that are directly concerned by the analysis and that have communicated information to Europol. Other member states have to file an application, if they wish to join the investigation. Any dissemination of data is subject to prior consultation among the participants of the specific operational analysis. In the event of disputes, a conciliation procedure is provided for.

Finally, the Index System contains only key words. Access is limited to Europol and the liaison officers, but restricted to information concerning their own country.

Complex system architecture open to dispute and abuse

The whole architecture is highly complex and therefore open to all kinds of interpretations and disputes.

It is not certain that national police authorities will communicate their "sensitive" information to Europol, which they know will always try to function as an independent body - as the first real European criminal intelligence service.

There is also a manifest danger of an uncontrolled use of personal data that could result, *inter alia*, in innocent citizens being stopped by the police, merely because their data have been transmitted by one or another national criminal investigation authority.

Citizens' right of access to their own data undermined

Regarding citizens' access to their data, a problem lies in the great differences of national legislations. A right of direct access is provided in Germany and the Netherlands; other countries grant indirect access.

The French proposal contained the creation of a "common authority" and a "single point of application" within Europol, where any citizen could ask to check his personal data. If the data concerned originate not from Europol itself but from a national police service, Europol would forward the demand to the member state concerned, which would then handle it according to its national legislation.

In fact, the right of access of individuals to their own data is not guaranteed at all: Europol as well as any member state involved in an investigation can refuse all information, "if such refusal is necessary" according to the truly catch-all grounds named in Article 19 of the Convention. Europol is not even required to give an explanation. Denial of information can be appealed against, it is true, but the applicant is most unlikely to obtain a reversal of the initial decision. For the citizens, the access to their own data becomes all but impossible.

"Ad hoc" audit committee

The Germans proposed that the European Court of Auditors should be competent to control the Europol budget. Both France and the UK rejected this proposition. They want to keep Europol intergovernmental and are firmly

opposed to any "communitarisation".

Finally, the French compromise formula was accepted: the creation of an "ad hoc" body, made up of three members of . . . the European Court of Auditors. This raises the question of whether the Court could be able to refuse this arrangement.

Parliamentary control: wishful thinking

From the very beginning, the European parliament asked for a chance to control Europol. This demand was always a matter of disagreement between the member states.

The European parliament was at no stage involved at all in the preparation of the Europol project. Nor were the national parliaments.

Finally, the French presidency proposed to only apply the Maastricht treaty's article K.6 and to add just one new element: that the European Parliament would be communicated an annual report on the activities of Europol and that it should be consulted about changes of the Convention.

Meanwhile, we have learned how the parliament's rights to be informed and to make suggestions are perverted by the Council of Ministers, and that national parliaments are only allowed to nod through agreements negotiated and signed without their participation.

The reasons for this can be found as well in the nature of the ratification process, as in the fact, that in most EU countries, parliaments no longer control governments, but governments control their parliaments.

Indeed, the "democratic deficit" is not a disease particular to the European Union. It is spread all over Europe.

The competence of the ECJ

The competence of the Luxembourg Court is still one of the most controversial questions.

Should the Court be competent, and, if so, what kind of competencies should it be vested with?

The British government objects to any competence and has vetoed the matter in Cannes. The French are very reluctant and would accept ECJ competence only in litigation between member states. The Benelux countries advocate full competence of the Court as far as means of appeal regarding the interpretation of the Convention, the civil responsibility of Europol and its staff, and the litigation between member states are concerned. There have been some rumours about 13 member states (not including the UK and Greece) being prepared to issue an annex declaration to the Convention, wherein they would bind themselves to accept the jurisdiction of the ECJ in disputes between the member states. We shall see!

In any way, not a single member state is prepared to accept the access of individuals to the ECJ.

Another important fact is that no systematic judicial control is provided by the Convention. The consequence is that we have a Euro-police, but no Euro-magistrates.

The question whether and to what extent the national activities and the input and output of the Europol information system can be subjected to effective control by the national courts of the member states, remains to be answered. We may guess that judicial control will vary a lot from one country to another.

An all too "elastic" Convention

There are other uncertainties regarding Europol's future activities.

- In the domain of data protection, the Convention leaves a large margin of interpretation to Europol's management. Many exceptions from the general rules stated in the Convention are allowed.
- The list of forms of crimes that can gradually come under the remit of Europol tends to grow longer with every meeting of the JHA Council. This year, Europol's remit was extended to trafficking of stolen cars, of human beings . . . and of plutonium. Other forms of crimes that are currently both more profitable and more harmful to society, such as illegal arms trade, have been left out. Nothing is being said either on how Europol is expected to come through all these jobs.
- It remains unclear whether or not national intelligence services can be considered as "competent authorities in the Member States" according to the Convention. This lack of precision wide opens the door for a dangerous amalgamation of police and secret service activities.
- The Europol staff is subjected to an unusually strict obligation of discretion and confidentiality. Thus, for instance, staff members "may not give evidence in or outside court or make any statements on any facts or information which come to their knowledge in the performance of their duties or the exercise of their activities" without authorization of the Director (Article 32.3).
- Finally, the legal status of the EDU, the already operational nucleus of Europol, is questionable from the viewpoint of democracy and of international public law. It is amazing, indeed, that such an important matter can be decided by mere agreement between ministers, i.e the executive powers of the member states.

No European police without a European state!

So, there are more reasons for concern about Europol than just the question of the competence of the Court of Luxembourg.

The president of the European Parliament was right, when he declared after the Cannes Summit: "The procedure applied for Europol is a new example for the

inefficiency of the third pillar [The Maastricht treaty's Title VI on justice and home affairs cooperation]: it shows that simple intergovernmental cooperation is not suited to the solution of the real problems facing Europe".

Indeed, without a real common political and judicial framework, a European police is not acceptable. We cannot have a police without a state.

Meanwhile the setting up of EDU/Europol is going on, uncontrolled as usual.

One would like to know how the police people involved in the new body feel about this situation of institutionalised legal deficiency?

Lode Van Outrive

Contact with the author: Prof. Dr. L. Van Outrive, Faculty of Law, Catholic University of Leuven, H.Hooverplein 10, B-3000 Leuven; Tel/Fax (home): +32/16 488458; E-mail: Lode.VanOutrive@law.kuleuven.ac.be

MESSAGE

MIGRATION, POPULATION AND POVERTY - A CEIFO RESEARCH PROGRAMME

CEIFO, the Centre for Immigration Research at the University of Stockholm, has initiated a theoreti cal and empirical project on South - North migration and the immigration control policies of industrialised countries.

Background and social relevance of the research programme

The issue of international migration has reached the top of political agendas in industrialised countries and in international organisations. Many prognoses of future large scale migration are motivated by the fear of receiving countries in the North of not being able to control the flows. Simple pictures, however, all too often replace realistic scenarios in forecasting migration. African "resources for catastrophes" (most often referring to sub-Saharan Africa) are usually mentioned as grounds for future "mass emigration" to Europe. Average population growth is 3 per cent annually. On top of imperfections in the labour market and in the overall economy, the labour force is growing rapidly, partly due to increasingly more women aspiring to employment, and additional millions of jobs will be required. The concept of "jobless growth", has been use by UNDP to describe the labour market in developing countries. Economic growth has not been paired with an expansion in employment opportunities.

South to North migration has increased during recent years, but not nearly as much as could be expected given prevailing theories. The main puzzle for students of international migration and development is perhaps not that this migration has increased so much, but that it has not increased much more. Emigration from Africa to Europe or America has so far been relatively small compared to emigration from Latin America, the Middle East or South/South-East Asia. Most of the emigration from Africa has originated in the Maghreb region and not in sub-Saharan Africa.

The size of a country's future population and labour force is fairly predictable, but the number of people who will migrate is far more unpredictable. Equally unpredictable are circumstances such as political instability or upheavals, oppression and war, religious and ethnic conflicts, ecological disasters, desertification and famine, which all may contribute to migration and refugee flows. Often several of these circumstances are intertwined which make it increasingly difficult to differentiate between voluntary and involuntary categories of migrants.

These and many other preconditions of migration may have broad implications and shall be part of our empirical study. There is thus a practical and policy relevant dimension of this project, namely to study the relationship between intercontinental migration and economic development, and thereby to improve our possibilities to make assumptions about future South to North migration.

A research programme with three projects

1. Within our first part project, the theory study, we are systematising and evaluating social science literature on international migration within several disciplinary traditions (anthropology, economy, geography, political science, sociology). Our aim is to improve existing theoretical frameworks to explain present and potential migration flows. The particular focus is on the initial phases of migration from the South.

2. The second, empirical, part project shall be developed as a joint undertaking between CEIFO, UAPS and other researchers in Africa. The project will benefit from the theoretical studies established in the first project. It will focus on the conditions under which international and intercontinental migration starts, grows and takes various directions in selected regions of sub-Saharan Africa. An equally important focus will be the counter-question - why international migration does not occur, despite seemingly favourable prerequisites.

3. In the third part project, we will study the immigration control policies of countries in Europe, their economic,

humanitarian etc. costs, and their impact on international migration. Policies of European receiving countries are at present obstacles to immigration, but may in other periods encourage labour migrants. Control and regulatory policies in receiving countries in the North have a considerable impact on the size and composition of immigration from the South, and represent a third important dimension in our research programme.

For more information about the project, contact: Kristof Tamas or Prof. Tomas Hammar, CEIFO, Stockholm University, S-106 91 Stockholm; Tel: +46/8 162828; E-mail: Kristof. Tamas@ceifo.su.se; or: Tomas.Hammar@ceifo. su.se

Contributors to CL No.36: Mads Bruun Pedersen (Copenhagen), Michael Williams (Hedemora, S), Helga Schwarz (Eisenkappel, A), Willi Stelzhammer (Vienna), Lode Van Outrive (Leuven, B), Jolyon Jenkins (Brighton, UK), Nicholas Busch (Falun, S).

SUBSCRIPTION INFORMATION

A subscription period covers 10 issues of the Circular Letter.

Individuals and voluntary associations: 180 Swedish crowns / £15/ 31 Swiss francs/ 125 French francs/ 36 DM/ 255 Austrian Schilling/ 750 Belgian Francs/ 23 US$.

Institutions and firms: 600 sek/ £49/ 100 sfr/ 410 ff/ 120 DM/ 850 öS/ 2500 bfr/ 75 US$.
(Moms-tax included for subscribers in Sweden).
Subscription is free for individuals and voluntary associations in Eastern Europe and the former Soviet Union.

Payment modes:

1. to Nicholas Busch, Postgiro konto 637 57 41-3, Stockholm or by international postal order (pink form) to Nicholas Busch,
   Blomsterv. 7, S-791 33 Falun.
2. *Eurocheque* issued in Swedish crowns, payable to Nicholas Busch.
3. Svenska Handelsbanken, S-106 70 Stockholm, S.W.I.F.T.: hand se ss, account no. 376 746 092, Nicholas Busch. *Add 60 SEK for banking charges*.
4. Individual subscribers in non-Scandinavian countries may send the amount in cash in their national currency.

Private cheques are not accepted.

Do not forget to specify the purpose of your payment by indicating "CL-SUBSCRIPTION" and communicate your complete post address!

SPONSORS:

The Circular Letter is published with the assistance of grants from:

European Civic Forum/C.E.D.R.I.
Postfach 2780, CH-4002 Basel
Tel: +41/61 3826619 Fax: +41/61 3826620

Geneva Group - Violence and Asylum in Europe
(Groupe de Genève - Violence et Droit d'Asile en Europe)
Université de Genève, Faculté de Psychologie et des Sciences de l'Education, Marie-Claire Caloz-Tschopp et Axel Clévenot, 9 route de Drize, CH-1227 Carouge-Genève
Tel: +41/22 7057111 Fax: +41/22 3428924

FARR (Swedish Network for Asylum and Refugee Support Groups)
Box 137, S-776 23 Hedemora; Tel/Fax: +46/225 14777

"Fortress Europe?"- Circular Letter
Utgivare: N. Busch, Blomsterv.7, 791 33 Falun;
Tryck: Landstinget Dalarna, Falun
ISSN 1104-7976