

CIRCULAR LETTER NO. 40

DECEMBER 1995/JANUARY 1996

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

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EUROPEAN UNION

K.4 COMMITTEE DRAFT CONVENTION ON EXTRADITION

In 1993 the Justice and Home Affairs (JHA) Council charged the K.4 Committee (established by Title VI of the Maastricht Treaty) with examining the prospects for easing and accelerating extradition procedures between EU member states. A first JHA Convention on facilitated extradition procedures was signed in March 1995, but it refers only to extraditions which are consented to by the subject. Now a further step is to be taken with a planned, more comprehensive, convention covering all extraditions. The following is a synopsis of a draft presented by the K.4 Committee's Steering Group III on 6 November 1995.

A major objective of the Draft JHA Convention is to enable extraditions between EU member states even where this is not permitted by the 1957 European Convention on Extradition (1957 ECEX). In the introductory statement to the Draft this objective is justified by reference to the common desire to improve criminal law cooperation between the member states and with the "trust" of the member states in the "structure and functioning of their respective legal systems and in the capacity of all member states to guarantee a fair procedure".

As the large number of reservations and alternative propositions of individual member states in the Draft shows, there is still some hesitation and disparity of views among member states with regard to sensitive issues such as the extradition of own nationals, the extradition of political offenders and the participation in a criminal organisation or conspiracy as grounds for extradition.

General pre-requirements for extradition

Agreement has been reached (within Steering Group III) as to the rule that member states must extradite even persons accused of minor offences punishable by a maximum of 12 months imprisonment in the requesting state, and a maximum of 6 months in the requested state (Article 2.1), and that an extradition may not be refused on the ground that the requested state provides another form of punishment (Article 2.2). As opposed to this, the 1957 ECEX limits extradition to offences punishable in both states by imprisonment for a maximum of **at least** 12 months.

According to Article 2.3 of the Draft, extradition must also be granted, if the acts on which the request is based amount to "conspiracy" or "participation in a criminal organisation" punishable only in the requesting state, provided the conspiracy or the criminal organisation is aimed at committing one or several extraditable offences (under Article 2.1). While five delegations (Belgium, the Netherlands, Spain, Italy and Portugal) accept this wording, the delegations of some member states expressed reservations on principle or favoured a "may" rather than a "must" provision. As opposed to this, Italy proposed an additional paragraph to the provision in its current wording, according to which the type of offence does not have to follow from the wording of the arrest warrant or the sentence (in the case of an existing conviction) entailing the extradition request, but from "other documents" presented by the requesting state.

Political offences

Draft Article 3.1 says that "no offence shall be considered a political offence". While the UK, Germany, Belgium and Italy agree to this proposition, some other member states want to retain the possibility of refusing an extradition if "the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that person's position may be prejudiced for any of these reasons" (Article 3.2 1957 ECEX). Both France and Greece have pointed out that extradition for political offences would breach their constitutions. France is now proposing a compromise formula that would consist in setting up a common list of all types of offences not considered as political by all member states.

Fiscal offences

Under the 1957 ECEX, extradition for offences in connection with taxes, duties, customs and exchange shall be granted only if the signatory states have so decided in respect of any such type of offence. The corresponding provision in the Draft JHA-Convention extends extradition even to acts corresponding to "similar punishable acts according to the law of the requested state" (Art.4.1) and that extradition shall not be refused on the ground that the law of the requested state does not provide for the same type of fiscal regulations as the law of the requesting state (Art. 4.2). However, any member state may issue a special declaration that it will extradite for acts amounting to offences in the field of consumer, value added and customs taxes (Art.4.3). As could be expected, Luxembourg is opposing this wording and wishes to limit extradition to "offences according to the law of the requested state" only.

Extradition of nationals

Under the 1957 ECEX, Article 6 the signatory states have the right to refuse extradition of their nationals. Article 5.1 of the Draft Convention moves away from this fundamental principle: "Extradition shall not be refused on the

ground that the persons whose extradition is being requested is a national of the requested state within the meaning of Article 6 of the European Convention on Extradition". However, any member state can partly or totally opt out of this obligation for a limited period of time by special declaration. While the Netherlands have expressed reservations on the principle of the provision on the whole, Finland, Sweden and Greece could agree to its point 1 on condition that opt-out declarations are not limited by time.

Statute-barred offences

Article 10 of the 1957 ECEx prohibits extradition for offences statute-barred in either the requested or the requesting state. Under Article 6 of the Draft JHA Convention, extradition may not be refused on the ground that the prosecution or punishment of the person would be statute barred according to the law of the requested state, except for acts coming under its own competence of jurisdiction. There appears to be agreement among all member states on this provision.

Amnesty

Extradition shall not be granted for offences benefiting from an amnesty in the requested state provided this state was competent to prosecute the offence concerned.

Prosecution of persons for offences not mentioned in the extradition request

Article 14 of the 1957 ECEx establishes a guarantee that has often proved vital for extradited persons. Under the so-called "rule of speciality" an extradited person shall not be proceeded against or punished "for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reasons restricted in his personal freedom". The main exception to this general rule allowed by the ECEx is the express consent of the state which extradited a particular person, upon specific request of the state wishing to prosecute him.

Article 8 of the Draft Convention crucially restricts this guarantee for the right of the individual. Extradited individuals may be prosecuted and/or punished for offences other than those having effected the extradition *without the consent of the requested state*,

- when the acts concerned are not punishable or not being punished by a liberty privative measure;
- when the individual concerned is subjected to punishment other than deprivation of liberty, "including a fine or a substitute measure, even if this may restrict his individual liberty";
- when the individual concerned expressly consents to prosecution and/or punishment for an offence not mentioned in the extradition request.

A number of delegations have issued reservations pending further examination.

Article 8a of the Draft Convention states that any member state may issue at any time a declaration according to which it will "automatically" consent to the non-application of the rule of speciality by all other member states having issued a similar declaration unless it expressly notifies otherwise with regard to a specific case.

The French delegation is opposed to this provision on the whole, and a number of other delegations have expressed reservations.

Re-extradition to another member state

Article 15 of the 1957 ECEx prohibits the re-extradition by the requesting state of a person to a third state, if this has not been consented by the requested state. Article 9 of the Draft JHA Convention says that this rule is not applicable between member states (i.e. that re-extradition shall take place) unless a member state has already refused an extradition request based on the same grounds as the re-extradition request.

No agreements appears to have been reached on this provision so far. It would seem that some delegations would prefer re-extradition to require the consent of the individual concerned.

Source: Entwurf eines Übereinkommens über die Verbesserung der Auslieferung zwischen den Mitgliedstaaten der Europäischen Union, K.4 Committee/Steering Group III, Brussels, 6.11.95, 11267/95, restricted, JUSTPEN 148; introductory remarks of the Steering Group III, 11160/95 JUSTPEN 144. All quotations are our translations of the German text.

SCHENGEN

GERMAN PROGRESS REPORT ON SCHENGEN IMPLEMENTATION

In September the German government presented a report to Parliament on the first six months of operation of the Schengen Implementing Agreement (SIA). By the end of September 1995, the Schengen states' common police data register, SIS, contained a total of 3.4 million data records on persons and objects. Control activities at external borders have increased considerably, the report shows, and while internal border checks at official crossing-points have been abolished by all Schengen states except

France, several member states have upgraded surveillance activities in areas close to internal borders. The report misses no opportunity to boast about the German leadership of the Schengen Group.

The situation at internal borders

The report stresses that, as a rule, German border police (BGS) are no longer carrying out any checks on persons except for checks justified by a specific suspicion or incident. This is not the case for Germany's Schengen neighbours, France and the Netherlands, the report points out. The Dutch have set up a mobile border police force operating in a vast zone behind its internal borders. The mobile units are authorised to stop and check persons at random. In French border districts, some 16,000 border police, Police, Gendarmerie and Customs officers are allowed to check persons without giving a reason. Moreover, France is still refusing to abolish checks at internal borders. (France recently announced that it was prolonging this measure for a further six months at least, due to the recent wave of terrorist attacks and to what the German report calls "alleged problems" in implementing the SIA). In doing so, the French government is referring to Article 2.2 of the SIA, which allows member states to reintroduce internal border checks for a limited period, where "public policy or national security so require".

The report suggests that the extensive internal border control activities of its neighbours are putting Germany's alleged willingness to reduce controls under strain. Since the entry into force of the SIA in late March 1995, the number of BGS officers posted at internal border crossing-points has been massively reduced to fewer than 200, it says. Their task is limited essentially to handling the readmission of foreigners according to the Schengen rules defining the member state of first entry. Between April and July 1995, Germany took back 7,556 individuals, while it returned only 728 to other Schengen states. The report blames this "disparity" on the intense French and Dutch control activities behind their internal borders. However, some lines below, it says: "Along the internal frontier an extra 500 BGS officers are keeping a watching eye". The main objective of the force is "to counter the continuing migratory pressure from Yugoslavia via Italy by the use of all possibilities still permitted under the Schengen Implementing Agreement". Their tasks consist of "surveillance and reconnaissance in "areas near the borders" and in carrying out checks in "concrete cases of suspicion". These "discreet" BGS activities resulted in the seizure of 496 illegal aliens and 29 "presumed smugglers of immigrants" in areas near the border, between April and August 1995. The BGS further arrested 50 persons in border areas based on criminal search requests in the SIS.

The situation at the external borders

The report notes that all Schengen member states have reinforced their control and surveillance forces. Increased control activities at German external borders have not caused any major problems, it says, thanks to the BGS which "on the one hand is putting into practice the Schengen regulations but is on the other is proceeding with unbureaucratic flexibility". But queues of up to four hours are reported from the German-Polish borders.

The average number of entries denied at German external borders (10,000 per month!) has not increased since the entry into force of the SIA. In the first six months of the SIA in operation, only 56 persons were denied entry due to registration in the SIS by other Schengen states.

There has been a steady rise in illegal immigration since January 1995. In the month of August 1995, 3,135 persons were stopped for attempting to enter Germany illegally.

26,828 searched persons were arrested at German external borders in the second quarter of 1995. Most of the arrests took place at the Eastern borders with Poland and the Czech Republic. According to the report, the increase in arrests at the external borders is not due to the SIS (only 181 hits) but rather to an increase in personnel responsible for border checks as required by the Schengen Agreement.

Schengen Information System

The information stored in the N-SIS of the seven countries in which the SIA entered into force on 27 March 1995 is now identical [N-SIS: the national components of the SIS, linked by the C-SIS, the central support of the system in Strasbourg].

A total of 30,000 terminals in the seven Schengen states have access to the SIS, of which 9,000 are in Germany.

According to the report, the higher hit rate of the SIS as compared with national criminal search databases confirms its practical effectiveness.

At the end of September 1995, the number of data records stored in the SIS had reached 3.4 million records on persons, objects and orders of denial of entry. The overwhelming majority of records were entered by Germany and France (Germany: 2.3 million, France: 1 million).

Of the 2.3 million German records, 701,534 concerned individuals, 290,000 motor vehicles, and 956,778 ID documents. The large majority of persons, 603,732, were "undesirable aliens (mostly rejected asylum-seekers)" registered for refusal of entry (under Article 96 SIA). The number of individuals registered on other grounds was

- 897 (arrest for the purpose of extradition, Article 95 SIA);
- 760 (missing persons, under Article 97);
- 221 (individuals subject to "covert surveillance", under Article 99).

From 26 March to 8 September the SIRENE-Office of the BKA (Federal Office of criminal Investigation) was notified of a total of 6,024 hits involving Germany and resulting from information requests to the SIS. 5,268

of these hits occurred in another Schengen member state, due to a German entry, while 756 hits occurred in Germany due to an entry by another member state. Of the total 6,024 hits, 4,261 concerned aliens denied entry or subject to a deportation order. The above figures do not include SIS hits with no German involvement.

It is noted with some pride that "the German data in particular are constantly changing due to frequent updating", but that "various contracting parties" are late with loading and updating information.

The report expresses satisfaction with the technical functioning of the SIS. However, the only evidence for this presented in the report concerns one single month: in August 1995, the German N-SIS suffered "only a single" one hour system breakdown. (This wording arouses one's curiosity: what is the total number of breakdowns of the C-SIS and all N-SIS in the first six months of operation of the system?).

Common visa policy

"Important progress" was made in realising a common visa policy. The Schengen countries' uniform visa, as affixed inside passports, has technical security features which make counterfeiting all but impossible.

Germany would like the so-called "Grey visa-list" (the list of countries whose nationals are subject to different visa requirements in the Schengen states) to be reduced rapidly. "Due to pressure from the other member states, particularly Germany", Italy agreed to re-introduce a visa obligation for citizens of the FRY (Serbia and Montenegro) in September, the report stresses.

Implementation of the SIA's asylum law provisions

The report identifies a tendency among member states to refuse to take back rejected asylum seekers and other aliens from another member state under the "first country of entry" scheme.

In the opinion of the German government, this is due to inadequately-prepared requests. The report demands that requesting states must present "sufficient circumstantial evidence" showing that the requested state is actually the country of first entry into the Schengen territory. Moreover, the period for replying to a request must be considerably reduced.

Police cooperation

A bi-lateral agreement on police cooperation already exists between Germany and France, and similar agreements are currently being negotiated with the Benelux countries.

Cross-border "hot pursuit" and police observation are already possible for the German police in all Schengen neighbour states. The report lists 11 cases of hot pursuit between the end of March and the beginning of July. All cases concerned the Dutch-German border.

The German government finds it "unsatisfactory" that the individual member states have made different declarations as to space and time limits of police cross-border operations. "Germany advocates a harmonisation and extension of the provisions on observation and hot pursuit. The aim is harmonisation on the basis of the German position: a right of pursuit and seizure for foreign police on the neighbouring territory without any space or time limits."

Fight against drugs

Referring to the French-Dutch dispute on anti-drug policies, the "German government is prepared to once more put pressure on the Hague, together with France" with the aim of obtaining a change in the liberal Dutch policies on drugs. But hinting at the French unwillingness to abolish checks at internal borders, the report also states that "the liberal Dutch attitude in the field of drugs has long been known about, and has not been a reason not to sign, ratify and put into force the Schengen Implementing Agreement".

Overall assessment

Considering the complexity of the Schengen structure, Germany's assessment of cooperation is "predominantly positive". "As the spokesman for the other Schengen states, the Federal Republic of Germany is undertaking all possible measures to continue to propel the Schengen process forward and not to let it be paralysed by the continuation of internal border controls by France". The following action can contribute to achieving this goal: Steady enlargement of Schengen to all EU member states; making it more difficult for Schengen states to maintain checks at internal borders under Article 2.2 SIA, by the establishment of common criteria; "The full use by the Border Protection Police, the Federal Office of criminal Investigation and the Police of the *Länder* of the widened limits of cooperation provided by the SIA".

Source: Fortschreibung des Berichts über die bisherigen Erfahrungen mit der Anwendung des Schengener Durchführungsabkommens, German Federal Government, Bonn, September 1995. See also on Schengen in operation: CL No.32, pp. 1-4.

Comment

Although the German report gives only figures and assessments of one Schengen member state, it contains some interesting indications as to the development of the Schengen cooperation.

An important preliminary conclusion is that the member states are betraying the main declared aim of the Schengen Agreement - to realize the right of free movement within the Schengen territory. Most member states are simply replacing the former visible and foreseeable forms of control at defined crossing-points at their internal

borders by invisible and unforeseeable surveillance in deep zones just inside the border. France is going even further. It is making full use of the arsenal of "compensatory measures" of massively extended police control provided by the Schengen Agreement, while opposing the abolition of internal border controls.

It is well known that police and security circles (and not only in France) while loudly promoting "compensatory measures", have never really accepted the idea of abolishing border checks and are attempting everything to have them re-introduced - formally, as in France, or informally, as in Germany and the Netherlands. Thus, we might soon find ourselves subject to increased policing as a "compensatory measure" for internal border checks that have never really been abolished.

A serious legal deficiency of the Schengen Implementing Agreement also deserves mention. In refusing to abolish its internal border controls, France is pleading Article 2.2, just one of the plethora of exemption clauses that characterise this convention. All other member states appear to agree that France is abusing this provision. However, they have few ways of forcing a French change. For this, the governments of the member states have only themselves to blame. Indeed, by agreeing a convention that does not provide for a common and independent court for its interpretation they have paved the way for conflicts such as the one which currently sets France in opposition to the rest of the Schengen-states. In the long run, this might well result in all member states applying only those parts of the Agreement that suit them, according to their political priorities of the day. This is unlikely to hamper increased police cooperation, but could well contribute to further undermining the rights and liberties of the citizens and in particular of asylum seekers and immigrants.

The German report makes mention of a steady rise of illegal immigration since the beginning of 1995 but sees no connection with the entry into force of the SIA. It would probably be more correct to say that increased illegal immigration is not only due to Schengen, but to generally ever more restrictive European immigration and asylum policies, of which the Schengen cooperation is a driving force. Be that as it may, there are growing indications from all Western European countries that illegal immigration is on a steady rise. This would suggest that the Schengen and EU policy of preventing immigration by increased policing is proving a failure. Some day, we may discover that by pressing migrants into illegality and thereby creating "outlaw" populations in the midst of our societies, so-called European "internal security" policies have become a threat to public security themselves.

N.B.

SWEDEN AND NORWAY ANSWER SCHENGEN QUESTIONNAIRE

It has become one of the rituals of Schengen that states applying for membership are supposed to give proof of their commitment to the common accord and the long-term objectives of Schengen cooperation by answering a questionnaire consisting of didactic statements followed by an impressive catechism of specific questions. The Swedish and Norwegian replies to this entrance examination suggest that the two Nordic states are determined to become the star pupils in the Schengen classroom.

The questionnaire is divided into the following 11 chapters, each introduced by a statement of common principles and goals: 1. Abolition of controls at internal borders; 2. Controls at external borders and border surveillance; 3. Airports; 4. Electronic police databases and data protection legislation; 5. Narcotics; 6. Visas; 7. Readmission agreements; 9. Immigration; 10. Mutual legal assistance; 11. Police cooperation.

As an example, the introduction to chapter 9 (on immigration) says: "The opening of borders in Europe has resulted in an increased migratory pressure on Western European countries. The Schengen states have provided themselves with legal instruments enabling them to fight against illegal immigration, which has become a central problem". This is followed by a number of questions: Does Swedish/Norwegian (S/N) legislation provide for penal sanctions against illegal immigrants and their employers? If not, is such legislation being prepared? Do carrier sanctions exist against companies that carry passengers lacking necessary travel documents? Does the breaching of borders outside official crossing-points entail penal or administrative sanctions? "As for the rest, the Schengen states request that S/N provide information on such [illegal] migration as established on S/N territory and how it has developed in the three last years". Does S/N maintain statistics illustrating illegal immigration at its external borders in 1991/92/93? Number of persons denied entry? At which border? The five countries whose nationals are turned away most frequently? How do the smugglers operate? Which nationalities make most frequent use of forged documents? What kind of documents are most often forged? Which are the methods of

forgery most resorted to? Which regulations apply to the stay and the expulsion of foreigners? What is the number of expelled foreigners?

The introduction to chapter 8 (on asylum) says that the Schengen regulations shall be implemented by the aid of "practical instruments drawn up by the 12 (now 15 states) [of the EU] with a view to implementing the Dublin Convention". Regarding the latter, the Schengen states "assume that S/N is able and willing to implement the corresponding provisions in the [Schengen] Implementing Agreement".

Nordic Passport Union a precursor of Schengen

Both the Swedish and the Norwegian replies implicitly suggest that Schengen cooperation is actually a Nordic invention. Indeed, many

"Schengen" concepts were realized within the Nordic countries long before Schengen was even conceived. As early as 1958, Sweden, Denmark, Norway, Finland and Iceland concluded the Nordic Passport Control Agreement (NPCA). Among other things, it introduced the distinction between internal and external borders and provided both for the abolition of passport checks at internal borders and increased control at external borders. Inter-Nordic cooperation further resulted in close Justice and Police cooperation. In 1982, Nordic Police, Customs and Drugs cooperation was initiated. According to the Norwegian replies, cooperation is "excellent both on the operational and strategic level" and includes domains such as Nordic police intelligence projects, mutual information and common operations involving, for instance, "controlled deliveries" of drugs. All Nordic countries have also exchanged police and Customs liaison officers, and in a number of third countries they are represented by one common liaison officer. Mutual judicial assistance provides for the direct communication of requests between executive authorities, without a need to involve ministries. There is also a common structure of information exchange in the field of expulsions. The Swedish authorities are in charge of drawing up a common monthly list on all foreigners subject to an expulsion measure in one Nordic state. The NPCA comprises rules establishing the Nordic state responsible for taking back a person who has entered another member state illegally via its territory.

Abolition of internal border controls

Both candidate states are prepared to abolish their internal border controls. Sweden, however, specifies that all member states "fully and effectively" implement the SIA's (Schengen Implementing Agreement) provisions on external border controls, as well as other compensatory measures and that the latter "meet Swedish requirements of control and security", including police cooperation, and "reconnaissance and surveillance in zones close the borders".

External border control

Both candidates are prepared to meet Schengen requirements. Norway emphasises that its 54 police districts and the Coast Guard are already ensuring effective surveillance. The planned adoption of a new law in 1996 provides for additional boats and limited specific police and Customs powers for the Coast Guard, which is placed under the Defense Department. A new coordinated information and communication system, currently being tested, will further improve the flow of information concerning vessel movement on Norwegian sea territory. Control and checks are particularly intense at Norway's 198 km border with Russia and already meet Schengen standards.

Airports

Both candidates are able to meet Schengen requirements after a short period of transition.

Police databases and data protection

Both countries are ready to comply with Schengen requirements and point to the wide use of electronic data processing in border control and policing. Sweden names nine such registers. No figures are given, but it is stressed that the amount of information stored is "very large for most of the databases". Police and Customs access to the registers is ensured by a very developed network of entry points, including all Police and Customs units.

Norway names eight registers with access for all of the country's 430 police stations. The police have a total of 3000 terminals.

Both countries have set up electronic fingerprint registers. The Norwegian reply specifies that this register includes a special section on foreigners, according to the following categories: undocumented, suspected false identity; asylum or other application under the foreigners law; expulsion measure or suspected unlawful stay. Fingerprints can be communicated throughout the country by aid of the FIT system (Fingerprint Image Transmission).

Narcotics

Both candidates stress their repressive attitudes towards drugs. Sweden stresses the need for the "special surveillance of places known for drugs trafficking". It also names a number of bilateral agreements on police cooperation concluded with France (fight against terrorism, illegal drug trafficking and organised crime), Spain (terrorism), and Russia (fight against crime).

Visa

Both candidates approve Schengen's common list of countries whose nationals need a visa. Sweden and Norway are currently testing an electronic communication system which will link their foreign representations to the relevant foreigners registers.

Readmission

Both candidates accept Schengen policies on readmission. Norway further confirms its willingness to sign a parallel convention to the Dublin Convention (as a non-member of the EU, Norway cannot join the Dublin Convention itself), as soon as the latter is in force.

Both Norway and Sweden point out that they have also concluded readmission agreements with non-Nordic countries. Sweden has concluded such treaties with Germany, France and Romania. A similar agreement is due to be signed shortly with Poland and further agreements are planned with Estonia, Lithuania and Russia. Regarding the agreement with Poland, the Swedish statement points out that it was drawn up in compliance both with the Schengen states' agreement with Poland and the EU's framework text for readmission agreements. Sweden claims that its agreement with Poland "better serves the aimed-at objective of a smooth handling of readmission cases than the Schengen-Poland agreement". Sweden is however "prepared to implement the Schengen-Poland agreement vis-à-vis the Schengen states".

Asylum

Both candidates produce comprehensive statistics showing a decline in asylum applications between 1992 and 1995 (S: 92: 84,018; 95 (first six months): 4,777; N: 92: 5,238; 95 (first nine months): 1,099).

Immigration

The replies of both candidates suggest an increase of illegal immigration but are unable to provide overall figures.

The Swedish replies notes that "the item is complicated because of the lack of a legal definition of 'illegal immigrant'". In 1994, 18,774 foreigners were deported from Sweden. Persons turned away immediately at the border are not included in this figure.

Sweden lacks legislation enabling to fine carriers that transport insufficiently documented passengers. In Norway, such a regulation will enter into force this year. The countries whose nationals are denied entry to Norway most frequently are Poland (1992); Russia (1993, with UK-citizens in the fourth place!); Poland (1994), and Bosnia & Hercegovina (1995). Most of them travelled to Norway via a Western European country. The Norwegian reply points out that half of the asylum seekers were undocumented in 1995.

Mutual judicial assistance

Both candidates are willing to comply with Schengen requirements. Together with the other EU member states, Sweden signed the Convention on simplified extradition procedures in March 1995 and is in favour of "further simplifying extradition procedures" in the EU-framework of Justice and Home Affairs cooperation.

Police cooperation

The candidates have no objections against the Schengen rules on police cooperation, and namely its regulations on cross-border pursuit and observation. Norway, however, mentions a little problem consisting in the fact that Norwegian police are normally unarmed, while this is not the case for their colleagues in the other Nordic countries. "This is the situation, Norwegian and, the Swedish and Finnish authorities will have to tackle together", the Norwegian statement concludes.

Sources: The Norwegian Replies to the Schengen Questionnaire, 7.12.95; The Swedish Answers to the Schengen Questionnaire, 10.10.95.

GERMANY

JUSTICE MINISTER RESIGNS IN PROTEST AGAINST BUGGING

For years, a political dispute over the introduction of the right for prosecution authorities to place bugging and other surveillance equipments inside private homes has opposed law and order enthusiasts and "liberals". Debate was particularly heated within the FDP, the Liberal Party, traditionally committed to civil liberties. This internal conflict has now resulted in the resignation of Ms Sabine Leutheusser-Schnarrenberger (FDP) from her post as a Federal Minister of Justice.

Since 1992, the use of what Germans have nick-named "*Kleiner Lauschangriff*" ("minor eavesdropping-attack") is permitted in investigations pertaining to certain forms of serious crime. "Minor bugging" implies the right for the police to make use of secret video and audio surveillance and recording **outside** private apartments. Ever since its introduction, police and security circles have been calling for a more extensive use of modern surveillance techniques even **inside** private apartments, by the legalisation of the so-called "*Grosser Lauschangriff*" ("major eavesdropping-attack").

These demands drew immediate support from Chancellor Helmut Kohl's conservative Christian-Democrats (CDU), who won the last parliamentary elections in autumn 1994 on a "tough on crime" campaign. But a broad "liberal" front comprising renowned jurists, the Greens, a minority of Social-Democrats and some of the FDP's senior politicians, including Justice Minister Leutheusser-Schnarrenberger, vehemently opposed "major bugging", on the grounds that the sweeping use of eavesdropping, rather than being an effective weapon in combating crime, threatens to affect a lot of perfectly innocent people and put an end to the constitutional right to privacy "even in your own bedroom".

The FDP is the junior coalition partner in Kohl's Federal Government. This is why the Christian Democrats time and again were forced to postpone the planned introduction of "major bugging", so as not to put the coalition at risk. At the same time, the Christian Democrats and their Interior Minister, Manfred Kanther, missed no occasion for blaming the FDP of obstructing the Government's fight against crime. After a series of election setbacks for the FDP, this party's own hardliner faction insisted that FDP members be consulted by internal referendum on the issue. Confronted with the clear victory of the hardliners, Justice Minister Leutheusser-Schnarrenberger resigned in protest. She was followed by another prominent FDP-member, the leader of the party's left wing and former Justice Minister, Burkhard Hirsch. Mr Hirsch, a jurist of international renown, resigned as the Home Affairs speaker of the FDP's parliamentary group and as a member of the Federal Parliament's Home Affairs Committee. Both said that the FDP's turn-about indicated a dramatic change of orientation of the party's justice and home affairs policies, and Ms Leutheusser-Schnarrenberger expressly announced that she would fight against the "Haiderisation" of the party (a reference to Jörg Haider, the far-right leader of the Austrian sister party of the FDP).

Sources: Neue Zürcher Zeitung, 15.12.95; our sources; see also CL No.20, pp.1-4, No.28, pp.1-3.

NEW ROW OVER MUNICH PLUTONIUM DEAL

The top coordinator of Germany's secret services, Bernd Schmidbauer, has come under fire again for his alleged role in a plutonium deal staged by the BND, the Foreign Intelligence Service (see CL No.33).

At a press conference on 15 December, Mr Schmidbauer, Minister of State at the Federal Chancellery in charge of coordinating the numerous German intelligence services, sharply rejected new accusations by the German media. According to recent press reports, Mr Schmidbauer was informed in advance about a spectacular case of plutonium smuggling in August 1994 and actually staged the deal, involving a number of dubious Russian and Spanish "business men" and covert agents acting for the BND and German criminal investigation authorities. Moreover, some newspapers claimed that the Secretary of State had personally arranged for a fee to be payed to "Rafa", a Spanish secret service man hired as an informer by the BND.

In 1995, the revelation of the BND's involvement in the smuggling case led to a parliamentary committee of investigation being set up. The committee has still not concluded its work.

The new press accusations are mainly based on an office memorandum written by an official of the Federal Foreign Department. The note, made in October 94, referred to the plutonium deal and said the case was "problematic", since - "even according to the BND's own account" - it was "not only uncovered, but to a great extent staged" by German intelligence services. In addition to this, the Spanish BND informer, "Rafa", has claimed before the parliamentary committee investigating the case that he was pressed by the BND to give false evidence.

At the press conference, Mr Schmidbauer stressed that he learned about the planned deal only on 25 July 1994, that he had not influenced the operation at any time, and that he was informed about the plutonium transport on 11 August 1994, a day after the seizure of the plutonium and three smugglers in Munich. According to the Social-Democrat members of the investigating committee, Schmidbauer was actually informed on 7 August, at the latest, of the BND's plan to bring the plutonium into Germany.

At the press conference, the Secretary of State distributed a voluminous dossier to journalists with hitherto classified documents which, according to him, prove his innocence. One of the documents is an office memorandum referring to the remuneration of "Rafa". It says that Mr Schmidbauer should not be "directly informed" about the payment.

Mr Schmidbauer accused some journalists of "manipulating information" and hunting him "like a rabbit". He strongly denied that he had any plans to step down.

The Secretary of State's counter-attack, however, does not seem to have convinced all of the German press. There is still a strong belief among investigating journalists that Mr Schmidbauer had an obvious political

interest in staging a spectacular operation of the police and the security services shortly before the 1994 parliamentary elections in Germany and as a means to speed up European police cooperation.

Sources: Neue Zürcher Zeitung, 16/17.12.95; our sources.

UNITED KINGDOM

NEW IMMIGRATION AND ASYLUM BILL: TORY ATTACK ON ASYLUM-SEEKERS

Only a month after Social Security Minister Peter Lilley announced proposals to deprive most asylum-seekers of the right to claim welfare benefits (see CL No.38, p.4), the Tories (British Conservative party) published their new Immigration and Asylum Bill (IAB) last November.

The IAB marks a new stage in the Tories' attacks on asylum-seekers in particular and black people in general.

The Bill gives the Home Secretary the powers to create a so-called "white list" of "safe countries". Asylum-seekers from those countries will automatically be assumed to be bogus, and will be dealt with under an accelerated application procedure.

Most asylum-seekers - not just those on the "white list" - will also be subject to a special "fast-track" appeals system, leaving them with insufficient time to prepare their case.

In addition, most asylum-seekers will also lose their right to a second appeal which they enjoy under the current appeals system.

One category of asylum-seekers - those who travel to this country through a safe country (such as any member state of the European Union) - will lose their right to appeal in-country completely.

Instead, they will be deported to the country through which they travelled and will have to appeal from there - even though the IAB makes no mention of any mechanism of how this would be possible.

New criminal offences

The IAB also introduces a series of new criminal offences.

Obtaining, or seeking to obtain, leave to enter this country by deception becomes a criminal offence. But, almost by definition, asylum-seekers are unable to approach their own authorities for correct documentation and are therefore obliged to travel illegally.

Assisting anyone to enter, or attempt to enter, this country by deception also becomes a criminal offence. This is aimed at the network of agents who, for whatever reason, assist asylum-seekers to flee their country.

Employing someone who has no immigration entitlement to work in this country likewise becomes a criminal offence. The employer's only defence is that they took "adequate steps" to check up on the immigration status of their employees. In other words, employers are transformed into immigration officers.

New powers for the police

In order to enforce these new laws, the police and immigration officers are given new powers of search and arrest by the IAB.

They will have the right to arrest, without a warrant, anyone they suspect of illegal entry or breaching the conditions of their visa. They will also have the right to search the homes of suspected illegal immigrants and remove them by force.

No public housing and Child benefits for asylum-seekers

Finally, the IAB complements Social Security Minister Peter Lilley's new social security regulations. It scraps the eligibility of asylum-seekers for public housing, and also removes their right to claim Child Benefit.

The Tories have been forced to postpone the introduction of the new social security regulations, largely because of a backlash from local authorities, including Tory-controlled ones.

The regulations scrap the right of asylum-seekers to Housing Benefit. But local authorities would be left to pick up the bill: until the IAB becomes law, they would still have a legal obligation to give accommodation to asylum-seekers with families.

Tory controlled Westminster Council - no friend of asylum-seekers - is therefore taking the government to court over the new regulations. The Tories have, however, not yet encountered any such problems in pushing the IAB through Parliament.

Although Labour imposed a three-line whip when the Bill received its second reading in December, the Party leadership is still pleading with the Tories to make the legislation "a genuine consensus exercise".

Labour wants the Bill referred to a special parliamentary Standing Committee which would examine the Bill's proposals, but the Tories are in no mood to accommodate Labour wishes and are pressing ahead regardless.

Stan Crooke (Glasgow)

The author works for the Scottish Refugee Council, Glasgow, but has written the above article in a personal capacity.

SCANDINAVIA

CL-REPORT ON EUROPOL REGISTERS TRIGGERED PUBLIC DEBATE

A report in CL No. 39 on a Spanish proposal for Draft Implementing Rules for Europol's so-called analysis registers is making waves in Denmark and Sweden.

Under the draft, Europol would be allowed to store and process information on the race, political and religious convictions, the sexual behaviour, and the health of persons not suspected of any crime (see CL No. 39, pp.1.-3).

Danish Parliament to discuss Europol registers

The item was a prime news on Danish TV on 14 December and the chairman of the Parliament's Legal Affairs Committee, Bjoern Elmquist, told the Danish newspaper, *de ny NOTAT*, that his Committee had discussed the question of the content of Europol's analysis registers at several occasions but that it had never been shown the concrete draft. "It should not be permitted to register Danish citizens based on other than national regulations", he said and added that the planned registration of personal data of the kind named in the Draft Implementing Rules "will definitely bring about problems in the [Parliamentary] Committees both on Legal and on European Affairs".

In the meantime, the Red Green Alliance, *Enhedslisten*, has put a number of questions to the Minister of Justice. Among other things, *Enhedslisten* wishes to know the extent of the mandate of the Danish officials participating in the K.4-negotiations on Europol and whether or not the *Folketing* (the Danish Parliament) will have a say with respect to the final version of the Draft Implementing Rules. On 9 January, *Enhedslisten* further put down a motion for a decision by Parliament, according to which The "*Folketing* calls upon the Government to block any further work with regard to the implementation and extension of Europol's registers". In the explanatory remarks to the motion it says that "the character of the information to be stored in the registers is deeply objectionable and grossly violates legal security and democratic principles". The motion is to be voted on within two months.

In an attempt to calm mounting public criticism, the Danish Minister of Justice, Bjoern Westh, declared that his government had successfully opposed the Spanish draft and that a new proposal drawn up by the Italian presidency took into account Danish demands. The Minister, however refused to be specific.

Sweden: Europol a pretext for extending police powers

In Sweden, the two largest evening papers had stories on the Europol registers. "Stop the opinion register of the EU-police!", it said on *Aftonbla-det's* headline, and *Expressen's* story was entitled: "Now, the EU wants to register your sexual habits".

For the time being, Swedish legislation does not allow registration of personal data of the type named above in electronic databases, as far as non-suspects are concerned. But an expert committee set up by the Government is currently considering changes in Swedish legislation concerning police registers. Minister of Justice Leila Freivalds is pressing for the police to have greater power to resort to sophisticated means of secret audio and video surveillance and to set up electronic police intelligence registers similar to Europol's analysis registers. A number of high-ranking police officials have long demanded such powers as a means to combat "organised crime". But hitherto, the Swedish data protection authorities have always stopped such plans.

The plans are controversial even within the police. "The existing forms of international police cooperation are perfectly sufficient", the chairman of *Polisförbundet*, the Swedish Police Union, told *Aftonbladet*. "We are not of the opinion that Swedish regulations on criminal search registers and on surrendering personal data to other countries should be changed".

An official of the Ministry of Justice, Peter Strömberg, played down the importance of the Spanish draft document by pointing out that a number of points had been changed since. But he added that the draft's present wording was secret. According to Strömberg, who is participating as a Swedish delegate in negotiations on Europol, work on the Implementing Rules are likely to continue for "at least one year".

As for the expert committee on police registers set up by the Government, its head, Mats Börjesson, is a former Chief of the Swedish state security, *Säpo*. According to Mr Börjesson, his committee will shortly present proposals for setting up of a special register for pro-active search including information on innocent people seen "in company" of a suspect or showing some other form of "deviant" behaviour. The expert committee claims that the proposed changes of legislation are a

consequence of the analysis register to be set up by Europol and that Sweden has bound itself to communicate intelligence to Europol by joining the Europol Convention. Considering the fact that Sweden participated in the negotiations on the Convention and agreed to its provisions establishing the analysis register, the reference to "European obligations" making necessary a change of Swedish law and practice seems to be a somewhat crude attempt by Swedish Justice and Home Affairs officials to blame the EU for an unpopular change for which they themselves have been striving.

Sources: de ny NOTAT, 15.12.95; Ritzaus Press Agency, 14.12.95; Aftonbladet, 26.12.95; Expressen, 3.1.96; Svenska Dagbladet, 11.1.96; Forslag till folketingsbeslutning om stop for forberedelsen af Europols registre, 9.1.96, B 64, Enhedslisten, Danish Parliament; Berlingske Tidende, 18.1.96.

SWEDISH BORDER CONTROLS MOVED TO COUNTRIES OF DEPARTURE

From 1 January 1996, the Swedish immigration authorities will place their first so-called "aliens attaché" at a Swedish embassy. The attaché's task is to prevent ill-documented persons from travelling to Sweden and to assist immigration authorities in asylum examination procedures. In practice, this amounts to moving Swedish border controls to foreign countries, critics contend.

The first aliens attaché will be stationed at the Swedish embassy in Damascus, but will have both Syria and Lebanon as his field of work and will have diplomatic status. The immigration authorities plan to send aliens attachés to a number of countries later. They are to work alongside with attachés of the police's aliens department and forms of cooperation on the spot with the other Nordic countries is currently being discussed.

The aliens attachés will, among other things, be charged with preventing insufficiently documented persons from boarding planes to Europe. Moreover, they will carry out investigations on the spot in connection with specific asylum procedures in Sweden. According to the immigration authorities, this will contribute to "speedier and better asylum examination procedures" and thereby reduce the cost of asylum procedures.

"Just by preventing a number of entries of persons who abuse the asylum system - persons who accede to the procedure without identity, who give false names and are eventually deported, this activity will be cost-effective", says an immigration authorities official.

The aliens attachés will be responsible for training airport personnel in detecting false travel documents and advise them in handling specific "suspicious" documents.

According to the immigration authorities, the aliens attachés' task is not to prevent persecuted people from leaving their home country, but the UNHCR, the Swedish Red Cross and Amnesty International emphasise that victims of persecution often flee with false documents. A speaker from the Red Cross also expressed concern about the immigration authorities' intention that aliens attachés should seek contact with local authorities abroad in checking claims of asylum seekers.

Source: Svenska Dagbladet, 18.12.95.

Comment

"We are not hindering anybody from getting out. Objectively, what we are doing is to inform. If somebody has a false travel document, we will not accept this, but of course will make it clear that this is a false passport and an invalid Swedish visa". This is how a spokesman of the immigration authorities meets the concern expressed by a number of human rights and asylum organisations.

Indeed, the aliens attachés will not themselves prevent anyone from boarding a plane. The dirty work will be done by the personnel of the airlines . . . acting upon information provided by the attachés.

N.B.

HUNGARY

STEMMING THE FLOW OF MIGRANTS

Western European states regard Hungary as a so-called "safe third country". Refugees are expected to seek asylum there. As a consequence, asylum seekers and other unwanted migrants who have entered a Western European state via Hungary are usually taken back by this country. However, information

published by *asylkoordination-österreich*, an Austrian network of voluntary organisations in support of refugees and immigrants, suggests that asylum seekers and immigrants caught in Hungary on their way to Western European countries are unlikely to be granted effective protection there. Instead they face detention and deportation.

Hungary has concluded bilateral agreements on taking back migrants with all its neighbouring countries, as well as Switzerland and Poland. Corresponding agreements are currently being negotiated with Germany and France. The reason for this is that Hungary has become a prime transit country for migrants heading for Western and Northern Europe. According to official figures, 230,000 persons were turned away at the border and 7,000 deported in 1995. 4,500 persons (90 per cent of them foreigners) were arrested at the border for "unlawful acts" - mostly illegal crossing of the border, use of false travel documents and illegal stay.

The "German model"

Senior Hungarian Border Protection officials stress that Hungarian legislation is neither more nor less repressive than legislation in Western European countries. "Hungarian border control practice is following the German model", they proudly told a representative of *asylkoordination*.

Hungarian legislation provides for different procedures for European and non-European asylum-seekers. Applications by Europeans are handled by the Office for Immigration alone, while the UNHCR is informed of all procedures concerning non-Europeans. In practice, however, this only happens when a refugee expressly applies for asylum in Hungary.

The deportation centre of Győr

The Border Protection is in charge of nine "reception centres". The largest, the deportation centre in the Western Hungarian town of Győr, can accommodate 500 persons.

Hungarian officials interviewed by *asylkoordination* emphasised that all foreigners stopped by police were informed of their rights and, in particular, of the possibility of filing an application for asylum in Hungary. Therefore, persons held in Győr could not be regarded as refugees, but merely foreigners who had committed offences. But detainees in the Győr deportation centre contest such allegations. Many complained to *asylkoordination* that they were given no information whatsoever and showed themselves totally unaware of their situation. Most of them seemed naively confident that the Hungarian authorities would provide them with travel documents permitting them to go to Germany. Others said they had actually been offered the chance of applying for asylum in Hungary but had turned down the opportunity - not because they lacked grounds, but because they wished to seek asylum in a Western European country and were unaware of the "third safe country" practice, actually barring them from seeking asylum elsewhere than in Hungary.

63 asylum applications in 1995

It is not only detainees' accounts that are in conflict with official declarations. According to the Hungarian authorities' own figures, from January to September 1995, only 63 persons applied for asylum in Hungary. Within the same period, 2,500 foreigners from 115 countries were held in the deportation centre of Győr alone.

Among the people detained in Győr prior to deportation were 18 refugees from Sri Lanka, who had miraculously survived a transport in a tractor-trailer. Nineteen other refugees had already died of suffocation when the trailer was discovered in the outskirts of Győr in July 1995. The 18 survivors were all sent back to Sri Lanka in late August, after the UNHCR found that they did not come under its mandate. The Hungarian Foreigners Police later confirmed that they had handed out the personal details of the refugees to the Sri Lankan embassies in Hungary and Austria from the very beginning, even before the decision to deport them was taken.

Emaciated and apathetic detainees

At a visit to the Győr deportation centre, Anny Knapp of *asylkoordination* found that the detainees were emaciated and apathetic. Nourishment in the camp is of poor quality and insufficient. Voluntary organisations are doing their best to supply the detainees with extra food, clothes, cigarettes and other basic items.

The detainees were living constantly cooped up in rooms with up to 29 bunk beds and were guarded by young army recruits.

The fenced outdoor area of the centre is only 1 metre large and reminded Ms Knapp of a kennel.

In theory, the inmates are allowed to leave the centre with a special permit card. In practice, however, only persons with sufficient cash are allowed to go out, provided they are not suspected of planning to abscond. On the day of Ms Knapp's visit, only 10 long-term detainees were on allowed leave.

It is well established, according to *asylkoordination*, that Austrian authorities frequently and successfully turn back rejected migrants to Hungary, even when they are unable to prove - as required under the agreement on the return of migrants - that the persons concerned actually entered Austria via Hungary. Hungarian authorities contest this and claim they are strictly conforming to their obligations and no more. Be that as it may, every day bus-loads of deportees leave the camp of Győr for the Hungarian border. Hungary is, indeed, steadily integrating itself into the European Fortress.

OPINION

MIGRANTS IN GREECE: ISSUES OF POLICY AND THEORY

The author of the following piece, Dr. Vassilis Karydis, is a lawyer and lecturer in criminology at Democritus University of Thrace. He is currently working on legislation, deviance, social control and preventive policies relating to migration.

For the last six years, following the collapse of the "existing socialism" regimes in Europe, Greece - traditionally an emigration country - received an unprecedented wave of foreign migrants, most of which were undocumented. Today, the migrant population in Greece numbers 500,000 people (of a total population of about 10 million). Half of these migrants come from neighbouring Albania. This means that 5 per cent of the total population and almost 10 per cent of the economically active population in Greece are migrants - an impressive number considering the fact that according to the 1991 census in Britain - traditionally an immigrant receiving country - 5.5 per cent of the population belong to an ethnic minority group. We should point out, however, that in Britain minority group members are UK citizens or legal residents, often "second generation" immigrants (as is the case for other early industrialised countries like France or Germany).

By contrast, a totally unprepared Greece found itself confronted with a sudden and massive wave of immigrants, the big majority of whom were both illegal and of European origin.

Another feature distinguishing the Greek experience is the reality of a long border and coast line, which is also an external frontier of the European Union. Moreover, political considerations in the turbulent Balkan context are strongly influencing state policies in the field of migration.

Migrants in Greece are mainly employed as unskilled workers (usually regardless of their profession at home) on construction sites, in temporary jobs in the farming and fishing sector, and in the tourism business and housework. Their average pay is half the legal minimum pay of a Greek worker or even only one third. The latter is usual for Albanians without social security.

The Schengen dictate

The aliens law (L.1975/1991) materialises the "Fortress Europe" conception of the Schengen Agreement (which has still not been ratified by the Greek parliament) aimed at deterring migrants from entering the common territory of the European Union and to restrict the rights of those already established here. Illegal entry is a criminal offence, just as working without a permit is. Article 4 of the aliens law allows for the immediate administrative deportation by police and border authorities of illegal migrants - even on a massive scale - upon a mere "order of a prosecutor" that can be obtained orally! This provision has been applied in hundreds of thousands of cases without any legal remedy for the migrants concerned. Article 31 of the law precludes illegal immigrants from any public services, except for emergency health care. In this way, children, for example, are not allowed to register at schools. The law also gives extensive powers to the administration to decide on serious matters such as the recognition of refugee status, the rejection of asylum applications on the grounds that they are "manifestly unfounded", the granting of stay and work permits, the list of "undesirable aliens", etc. An illegal immigrant may even find it difficult to leave the country voluntarily since he/she faces heavy fines if stopped when exiting the country.

Thus, the legal framework more or less dictated by non-accountable inter-governmental bodies of the EU actually delimits the first circle of exclusion of migrants in Greece.

"Immigrant" = "illegal" = "criminal"

The second circle of social exclusion has to do with police action and its consequences. Any person wandering around poorly dressed or talking with an accent automatically becomes suspicious as an "illegal immigrant" - a term that in today's Greece is almost tantamount to the stereotype of the "dangerous" or even "criminal element". The particularly intense police control of the immigrant community is very likely to have contributed to a higher rate of registered crimes as compared with other less controlled segments of the population. Needless to say, no information or translation facilities are provided to the immigrants who are handled by the police or the border authorities. Legal representation at police stations during arrest or pending deportation is a rarity. Many allegations have been made of ill-treatment or even torture of migrants at places of detention.

Quick sentences and discretionary detention

The third circle of social exclusion is drawn by the judicial and prison system. Lack of legal representation, language problems, the possibility for the court to suspend the sentence and order immediate deportation, and the prejudice of ordinary judges, lead to quick convictions of migrant defendants. Also, pre-trial detention is regularly imposed on migrants on the grounds that they lack permanent residence and the suspicion that they

might flee the country pending the trial.

which half are Albanians.

A quarter of the prison population are aliens, of

foreigners in Greece has shown a lack of communication and of elementary knowledge of their rights. In general, detained migrants are perceived by the authorities as an undesirable burden, responsible to a great extent for the overcrowding and bad conditions in prisons.

People's fear of the "generalised other"

The fourth circle of social exclusion consists of the informal social reaction to the presence of the migrants. People are afraid of the "generalised other" which migrants represent. They avoid letting houses to migrants, let alone socialising with them. Victims are often inclined to report minor offences when the offender is a foreigner and to name migrants as perpetrators of crimes - specially against property - when the offender is not known. It is not unusual for employers to turn migrant workers to the police for deportation in order to avoid payment of wages. "Paradoxically", they do not seem to be afraid of consequences for themselves although it is an offence to hire illegal immigrants.

they get the opportunity to exploit their workforce by using them in heavy and underpaid jobs.

I asked my students to choose between the three following meanings of the sentence "I have Albanians at home": a) business meeting; b) social gathering; c) performance of a job. Without exception, all of them chose the third option.

The role of the mass media

Mass media amplify this stereotype of the "dangerous migrant" by exaggerating their criminal activity, focusing on particular crimes, and sometimes distorting the circumstances of the act itself. A passenger on a bus died of a heart attack after he tried to chase migrant pick-pockets who had stolen his wallet. The incident was presented under headlines such as "Albanians attacked and killed a man in front of the public". Any migrant offender is described by his national identity and not by personal characteristics. As a rule, the commission of an offence by a migrant is conspicuously reported as the crime of an "Albanian rapist", "Romanian thief", and so on and so forth.

Migrant criminality a construction of the privileged?

Contemporary criminology and sociology of deviance have pointed out that negative interaction of the kind which I have referred to leads to the internalisation of stigma and the acquirement of criminal identity; that mechanisms of formal and informal social reaction are actually responsible for the marginalisation of lower social strata and the creation of an underclass; that criminality and "street crime" in particular are actually a construction of the privileged who make the rules and enforce them according to their interests; that migrant communities are the ideal ground for such an enterprise because of their economic and social vulnerability.

However, is it possible to merely close the issue and conclude with the acceptance of the above analysis? I feel that this would be too simplistic. Is criminality just a self-fulfilling prophecy - merely the product of discretionary police activity, arbitrary media stereotyping and peoples' unfounded "fear of crime"?

"Crimes of poverty"

To answer such questions, I think it is necessary to bring into the scheme of the interaction between offenders and control agencies the notion of a criminogenic social reality which affects migrants both as offenders and as victims. Migrants do commit crimes, usually "crimes of poverty" or even "crimes of survival". This is illustrated by the following quotation of an illegal immigrant in a recent study: "When somebody has nothing to eat, one never knows what he might do. I realized this when we just had come here and our baby was hungry and crying and we had no milk. I'm not sure what I might have done, if nobody had helped us".

Decades ago, R. Merton described a lawless social reality where legal means for the attainment of the socially acceptable goals are not available to the lower classes, which are suffering from relative deprivation in a materialistic and class-ridden society. However, in the case of illegal migrants in Greece we are talking about people who are illegal "by definition", human beings "in parentheses". They experience a situation of almost absolute deprivation and alienation that reflects directly on their self-esteem, moral standards and respect for other human beings. At the dawn of the 21st century, Manchester's "criminal classes" of the 19th century have, in a way, come to life again in Athens and other European capitals.

Creating a "hot house" for organised crime?

Personally, I find the indices of migrants' recorded criminality surprisingly low, considering their living conditions and the negative interaction with Greek society. Indeed, only in the case of offences against property the crime rate of migrants is about the same as the active population's, i.e. about 10 per cent. In all other categories of offences, official indices of migrant criminality are lower. However, I believe that this impression is misleading too. There are certain indications that hidden criminality is high within the migrant community. Only serious crimes, such as homicide, grave bodily harm or armed robberies seem to be reported and subsequently recorded when the victims are migrants. In many other instances victims refrain from turning to the state authorities for help since this would result in their own arrest and deportation because of their illegal status. In other words, a perfect "hot house" for organised crime has been created. Research findings already point at this direction in the fields of

prostitution, child exploitation and drug-trafficking.

Macro-theoretical approach does not suffice

Macro-theory is very useful and necessary, but not always effective in addressing problematic situations which call for quick solutions. In the academic discourse we should never lose sight of the fact that the object of certain theoretical disagreements and political discord are human beings who suffer, who strive for a better life during their own lifetime. Intervention at the micro-level of social realities in a given economy must be pursued according to the particular circumstances. One should take into account the structure of the migrant population in a particular country, their aspirations, their needs, their interaction with state and social agencies, the reality within their own community. Questions of age, gender, subcultures, antagonisms and differences between various ethnic groups - and within each group - must also be considered.

Without being an eclecticist, I submit that the Greek experience regarding migrant population and its interaction with this country's particular social reality calls for a different use and assessment of theoretical frameworks originating from the experience of the post-industrial societies of Northern Europe, and, even more so, North America.

Repressive policy against migrants a failure

The existence of a significant migrant community within Greek society is a reality and already a part of the country's social history. The existence and implementation of a repressive and myopic legal framework not only violates human rights, but actually contributes to the creation of serious social problems, while manifestly failing to achieve the aims publicly set by the rule-makers, i.e. to improve public security. I believe that this policy failure must be made clear to the Greek public if we shall succeed in promoting alternative strategies towards the migrant population. An active movement must be involved in interventions at all levels of social exclusion which I briefly described above. It must press for the necessary changes of the legal framework, confront stereotypes and discrimination and at the same time present specific proposals for addressing the root-causes of migrant criminality and alienation. All this must happen not only at the macro-level but also - and more important - at the micro-level of everyday life and interaction.

Vassilis Karydis

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MIGRANTS' MISERIES IN BULGARIA

Last September, the EU Justice and Home Affairs Council approved a list of 100 countries whose citizens will need a visa to enter EU territory. Bulgaria is one of the few European countries on the black list. Tanya Marincheska from the Bulgarian Helsinki Committee explains the reasons for this "punishment".

The notion of economic migration has so far been applied to Bulgarians themselves migrating to developed countries all over the world. This situation, however, is undergoing a radical change.

Interpol data show that the number of illegal migrants trafficking by land from Asia and Africa has increased ten times in recent years. Bulgaria is on the crossway of the mapped out trafficking routes. Trafficking means money and big temptation. In this context, then, it is not surprising that one of the reasons for the punishment of Bulgaria by leaving it in the EU list of "risky" countries was the traffic in illegal migrants through its territory. The abrupt increase in the smuggling of people, drugs, arms and objects of cultural value via Bulgaria coincided with the down-fall of the totalitarian regime. Local and foreign criminal groupings have profited from the situation in the country for several reasons. The secret services that used to be interested in the problem of international trafficking have been all but dismantled; the national police and the judiciary have been shaken up by personnel and structural changes; lack of money has tied the hands of state institutions and reciprocal action was and is still lacking.

In a situation where about 2,000 trespassers have been detained by the border police, and an even greater number have successfully passed through and are now illegally residing in Bulgaria, xenophobic and racist attitudes are increasing. There are victims. Experts report that with the present rate of expulsion of illegal aliens we will need 50 years more. Many of the illegally residing foreigners have been trapped in Bulgaria, since they are not wanted either in their own countries or in Western Europe; consequently, they will have to remain here for a considerable time. Shall we call them immigrants and shall we treat them like such?

These are the problems that should be urgently discussed and resolved in a way compliant both with humanitarian principles and with national security requirements. Otherwise, bilateral violations of human rights will continue to be a burning issue: on the one hand, the violation of the human rights of Bulgarian citizens, who have to pay a high price for the inability of the State to stop illegal trafficking and migration; on the other hand, the rights of asylum-seekers (who are much fewer than the economic migrants) are also violated. In other words, we must urgently reconsider whether the elaboration and enforcement of an immigrants' law is an issue for Bulgaria.

Tanya Marincheska

Published with the kind permission of the Bulgarian Helsinki Committee (BHC). The article was first published in the BHC's English newsletter, OBJECTIV 11/95. Available from: BHC, 21 Gladstone St, 1st floor, 1000 Sofia, Bulgaria, Tel/Fax: +359/2 873659; E-mail: bhc@sf.cit.bg.

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

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Utgivare: N. Busch, Blomsterv.7, 791 33 Falun;

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ISSN 1104-7976