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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

RULES FOR EUROPOL'S ANALYSIS FILES: INCONGRUOUS NEW DRAFT

Mounting protest in both national parliaments and the European Parliament against Europol plans to register sensitive information on persons not suspected of any crime is causing alarm within the Council of Justice and Home Affairs (JHA). In what a appears to be a somewhat panicky attempt to calm critics, the new Italian Council Presidency has drawn up a new draft document on implementing rules for Europol's so-called analysis registers. At first sight, the draft contains some improvements. But on the crucial issue of whether it shall be allowed to store data on features such as the political views and the sexual behaviour of non-suspects, the Italian draft is evasive and incongruous.

The Europol Convention provides for the collection, processing and utilisation of personal data concerning one category of criminal suspect and 4 further categories on non-suspects, all listed under Article 10.1(1-5):

1) suspected criminals and suspected future criminals;
2) Possible witnesses in future criminal proceedings;
3) Victims or possible future victims;
4) "contacts and associates";
5) Possible informers.

The Convention, however, does not define the **types** of personal data to be stored. These rules are to be set up in separate "implementing rules" for Europol's analysis registers, prepared by the agency's Management Board and adopted by the Council.

A first Spanish draft of the implementing rules expressly provided for extensive registration of highly sensitive types of personal data (race, political and religious views, sexual behaviour, health) concerning even the four categories of non-suspects named in Article 10.1 of the Convention (see CL No.39, p.1) .

The relevant provisions have undergone considerable changes in the new Italian draft of 4 January 1996.

Article 3 (of the Italian draft implementing rules) authorises Europol to store and process data "relating to persons referred to in Article 10.1 [of the Europol Convention]", i.e. information on **all five categories** of persons named in the this Article.

Article 4 (of the Italian draft) continues with defining 13 categories of data that may be processed "to the extent required for the analysis". They include features such as "general information", "lifestyle, routine and movements", and "contacts with persons, bodies or national and international companies". However, as opposed to the Spanish draft, the new Italian proposal appears to limit the storing and processing of the above types to suspect criminals and "future criminals" according to Article 10.1(1) of the Europol Convention and simply refrains from naming the types of information that may be stored on non-suspects (according to Article 10.1(2-5) of the Europol Convention).

Finally, Article 5 of the Italian draft says:

> "It shall be forbidden to collect personal data **solely** on the grounds that they relate to racial origin, religious or other beliefs, sexual life, political opinions or membership of movements or organisations that are not prohibited by law. Such data may be collected, stored and processed only if they supplement other personal data stored in the analysis file and only where they are absolutely necessary, taking into account the purpose of the file in question" [our emphasis].

Council Presidency spreads smoke screen

Some weeks ago, the Italian Deputy Minister of Foreign Affairs, Walter Gardini, made a new attempt on behalf of the Council Presidency, to calm parliamentary criticism against Europol's analysis files. Replying to questions from MEPs, Mr Gardini at first flatly denied any plans to allow Europol to store personal data on race, political and religious views and the sexual life. But the Minister was visibly caught by surprise, when a Swedish MEP, Jonas Sjöstedt, began to read aloud from the latest Italian draft which he had obtained from the Swedish government. Thereupon, Mr Gardini tried - unsuccessfully - to play down the significance of the proposal by calling it "merely a working paper of limited value".

"This once again shows the great value of Swedish rules on public access to information", Jonas Sjöstedt commented on the incident. "I was able to demonstrate that the Minister presented incorrect information in his first reply. He probably assumed that nobody in Parliament had seen the draft document." Two social democrat Danish MEPs, Kirsten Jensen and Freddy Blak, also showed indignation at the plans for Europol's analysis files. "It's incredible that such a proposal can exist at all, and it is just as incredible that the Presidency of the Council can imagine that it will get political support for such a register", Ms Jensen commented to the Danish newspaper, *Det Ny Notat*, after the debate.

Sources: Proposal for rules applicable to analysis files, from the Council Presidency to the Europol Working Party, Brussels, 4.1.96, 4038/96, Limite, Europol 2 (23 p., in English); Staffan Dahllöf, journalist, Copenhagen.

Comment

In their present shape, the above-named provisions of the Italian draft are completely incongruous. Indeed, the very purpose of the Implementing rules for Europol's analysis files is to specify the various types of information that may be stored with regard to the five categories of persons named in Article 10.1 of the Europol Convention. By leaving the question open with regard to the four categories of non-suspects (witnesses, victims, etc) the Italian draft looks very much like a desperate attempt to circumvent a very controversial issue by simply postponing its regulation.

Obviously, this is unlikely to put an end to criticism against Europol's planned "analytical" activities. As long as the Implementing Rules contain no regulations with regard to the type of information that may be stored on the categories of non-suspect persons named in Article 10.1 of the Europol Convention, we have good reasons to believe that Europol has not renounced its original objectives, laid down with commendable bluntness in the first Spanish draft of July 1995.

The national parliaments and the European Parliament would be well advised to demand immediate clarification. Indeed, once the Europol Convention is ratified, its implementing rules can be changed and further detailed by Europol's Management Board and the Council without their involvement. Could the Council's awareness of this be an explanation for the striking vagueness of the Italian document?

N.B.

SWEDISH JOURNALISTS CHALLENGE EU-COUNCIL ON SECRECY

***Journalisten*, the weekly publication of the Swedish Federation of Journalists, has appealed to the European Court of Justice (ECJ) against the EU Council's decision to refuse the disclosure of 16 of a total of 20 Council documents concerning Europol requested by *Journalisten*.**

Ironically, the Swedish government had already generously handed out all but 4 of the documents in question to *Journalisten*, when the Council made its decision. After the *Guardian* case (see CL No.38, pp.1-3, No.24, p.5), the appeal of *Journalisten* amounts to a new test of the EU's policy on transparency. Some observers fear that if the appeal is turned down by the ECJ, this could put an end to the Swedish and Nordic tradition of freedom of information.

In Spring 1995, Christoph Andersson, a journalist at *Journalisten*, applied for copies of a set of 20 EU documents related to Europol at the Swedish Department of Justice. Referring to Swedish secrecy regulations, the Department denied him only four documents and deleted certain passages in some of the 16 documents handed out.

Andersson than applied for the same set of 20 documents at the EU Council - with a somewhat disappointing result. After some waiting, Andersson was sent no more than two of the requested documents. On 8 June, *Journalisten* sent a letter of protest to the Council and asked its Secretary General to reconsider the application in compliance with the Council's "Code of Conduct" (on public access to Council documents). Almost a month later, the COREPER (The Council's Permanent Committee of Representatives), "after a brief discussion", recommended that the Council disclose an additional two documents. After some more time, 10 Council members approved the wording of the COREPER's proposal, while five (Denmark, Finland, Ireland, The Netherlands and Sweden) abstained from voting. In other words, no member state opposed the decision.

Journalisten responded by filing an appeal to the ECJ.

Code of Conduct has no significance, Council says

The Council replied with a statement of defence prepared by its Legal Service. In the statement, the Council's legal experts not only argue against *Journalisten*'s claim to the Europol documents but also against the Council's own "Code of Conduct": "The Council considers that the existence of decision 93/731/EC [Code of Conduct] cannot give rise to legitimate expectations with regard to a particular result...", the statement holds, and it argues that the Code of Conduct provides for no more than a "fair examination" of applications.

The Council also brushes aside its own decisions on improved public access to information at its Summits in Edinburgh, Birmingham, Maastricht (1992) and Copenhagen (1993) pertaining to transparency and public access to information: "Neither the [above] decisions and the Code of Conduct, nor political statements constitute a ground for legitimate expectations of individuals as to a right to receive Council documents whose disclosure may be requested with reference to the mentioned decisions", the Council argues.

Disclosure a threat to public security?

The Council objects to the disclosure of the documents requested by Andersson on "public security" grounds. This is all the more amazing considering their content. Some of the documents withheld are:

- a list of various forms of crimes and their definition;
- a request of EDU (Europol Drug Unit) for the purchase of five portable computers and for a subscription to a database for a total of 100,000 Ecu;
- a note of the Council's Legal Service on the extent to which common police activities are provided for by

the Maastricht Treaty; and
- a discussion paper of the Commission concerning citizens' access to their own data in Europol registers.

Swedish violation of Community law?
A footnote of the Council's Statement of Defence says: "The Council wishes to emphasise that (...) Swedish authorities have accepted, considered and replied to a request [by *Journalisten*] for insight into the same documents, several months before the question was raised by the Council". And the Statement unequivocally blames both the Swedish government and *Journalisten* of breaching Community law: "In the opinion of the Council, the documents concerned passed into public hands as a result of an act that conflicts with Community law which prohibits the applicant [*Journalisten*] from pursuing this case. (...). In this context we must recall that the Community is based on law and that this is a fundamental principle for the legal order of the Community".
"The applicant [*Journalisten*] admits that the documents in question were obtained from Swedish authorities. This was a violation of the laws of the Community, since no decision had been taken or even sought for within the Council for authorising such public disclosure".

Council attack against Nordic tradition of open government
In short, the Council demands that journalists be prevented from legally seeking and obtaining the disclosure of Council documents from their own governments under national law. Should this view be accepted by the ECJ, this would amount to a devastating blow to the Nordic practice of open government (see CL No.15, pp.6-9).

"Only the Council - made of representatives of each member state - is in a position to determine in how far the disclosure of a particular document might jeopardise public interest (security)", the Council's legal experts contend, and they warn the ECJ against drawing any own conclusions on whether the content of the documents disclosed by Sweden still constitutes a security risk or not. Only the Council itself can decide "from case to case" whether and for how long a specific document must be considered sensitive, the statement says.

After some reluctance on the part of the Swedish government, Sweden and Denmark decided at the end of January to support the case of *Journalisten*.

In both countries, the pro-EU political establishment has vowed to its EU-sceptical people that the Nordic principle of open government would not be restricted by EU membership. Instead, the Nordic countries would "export" their tradition of transparency and freedom of information to the rest of the Union.

The big question is, whether the Nordic countries will not rather "import" secret government from the EU.

Whatever its outcome, the *Journalisten* case is likely to have far-reaching consequences both for the Community and the Nordic countries.

Sources: Journalisten No.2 (18.1.96), No.4 (1.2.96), No.5 (8.1.96); Det ny Notat, No.783, 26.1.96; Svenska Dagbladet, 27.1.96. The quotations from the Council's Statement of Defence are taken from *Journalisten* and are our translations from Swedish.

SCHENGEN

WORKING PROGRAMME OF THE DUTCH PRESIDENCY

The entry into force of the Schengen Implementing Agreement (SIA) in Greece, Italy and Austria, improved controls and surveillance at external borders, bilateral police cooperation in border areas and continued discussion regarding a possible jurisdiction of the European Court of Justice: these are some of the priorities named in a working programme of the Dutch Schengen Presidency for the first six months of 1996.

The Document stresses the need for the Schengen Group to both deepen existing cooperation and expand it. A rapid entry into force of the SIA in Greece, Italy and Austria, and the maintenance of "optimal relations" with the European Union are of great importance in achieving this goal. Formal membership negotiations with the five Nordic states will begin in May.

Contacts with international institutions "such as the European Parliament and the United Nations High Commissionary for Refugees" will be "continued on the same basis as before".

Movement of persons - external borders
The effectiveness of controls and surveillance at external border shall be assessed and further improved. A special "Ad hoc working group" has been charged with this task.

Attention will also be given to the practical functioning of the SIA's regulations regarding visa and asylum, and to existing problems concerning the readmission of third country foreigners among Schengen member states.

Common, uniform visa fees are to be introduced in 1996. With this in view, a satisfactory regulation for transit and airport-transit visa must be agreed. For the time being, the Schengen states' policy regarding transit visa is far from harmonised. Nationals of seven countries (Afghanistan, Bangladesh, Ethiopia, Ghana, Iraq, Iran, Nigeria, Pakistan, Somalia, Sri Lanka, Zaire) need an airport-transit visa in all Schengen states. But for nationals of an additional 21 countries, including Albania, Bulgaria, Turkey and Algeria, such a transit visa is required by one or several member states only. There are strong variations among Schengen states regarding transit visa requirements. With 12 countries on its national list, Portugal is most restrictive, while Austria, with two countries, is most liberal.

At the Oostende meeting of the Schengen Executive Committee on 20 December 1995, several member states called for a more restrictive delivery by individual member states of visa with territorial restrictions. In view of this, the Dutch Presidency will reassess existing procedures.

The "Common Instructions for Consulates" shall be further detailed. New regulations shall provide for the integration of the existing network of inter-consular consultation into the SIRENE system. According to the "Common Instructions", foreign representations of the Schengen member states shall exchange information and cooperate on the spot in examining visa applications (see CL No.32, p. 4).

Asylum policies

Cooperation between the member states in determining the member state responsible for examining an asylum application must be improved and national jurisdiction pertaining to the application of asylum regulations in the SIA must be closely followed.

Police and security

The Dutch working programme calls for the elaboration of "common proceedings" in the field of public order and national security, as an alternative to individual measures of single member states. The point comes as a reaction to the French use of Article 2.2 of the SIA, which many member states consider abusive. The provision allows individual member states to re-introduce internal border controls for a limited period of time on public order and national security grounds. On 20 December, the Schengen Executive Committee, pressed by Germany, established a procedure implying that any member state must submit its decision to resort to Article 2.2 to the other member states, before putting it into force. The procedure does, however, not provide a right for member states to veto the application of Article 2.2 by an individual member state. For their part, the French said in Oostende, that improved police cooperation in border areas would contribute to a more sparing use of Article 2.2. On 7 December 1995, France and Germany signed a bilateral agreement providing for the setting up of joint police stations in German-French border areas. In Oostende, the Schengen Executive Committee hailed the agreement's "pilot function" for bilateral police cooperation within the Schengen framework and recommended that all member states conclude identical agreements with their respective neighbour states.

A particular measure named by the Dutch presidency is the organisation of police cooperation to cover "large-scale controls and demonstrations" in border areas.

A role for the European Court of Justice?

The Dutch are determined to continue the discussion on some form of jurisdiction of the European Court for the SIA. For the time being, the Executive Committee (made of the ministers of the member states) is alone in charge of settling disputes concerning the interpretation of the convention.

Sources: Working Programme of the Dutch Presidency for the first half-year of 1996, Groupe Central, Brussels, December 1995, SCH/C(9-6)1; Schlussfolgerungen der Sitzung in Oostende am 20.12.1995, Executive Committee, Brussels 21.12.95, SCH/Com-ex(95)PV4; Report of State Secretary Kurt Schelter to the German Bundestag, Bonn, 22.12.95.

AUSTRIA TO REARM EXTERNAL BORDERS WITH VIEW TO SCHENGEN IMPLEMENTATION

In April 1995, Austria signed the Schengen Agreement. The country has bound itself to comply with all Schengen requirements as of the beginning of 1998. The Austrian Interior Ministry is now preparing an impressive set of organisational and technical measures aimed at improving controls and surveillance at its eastern and south-eastern frontiers, the future external borders of the Schengen territory.

Under the Schengen Implementing Agreement (SIA), controls at the member states' common internal borders shall be abolished, but, at the same time, controls at external borders (i.e. a Schengen member state's borders with non-member states) must be massively sharpened. Austria has long external borders with the Czech Republic, Slovakia, Hungary and Slovenia. The Interior Ministry seems to be well aware of the country's future role as the Schengen Group's eastern watchdog and is making particular efforts in order to tighten its eastern and south-eastern frontiers.

As from 1998, at external borders every person without exception will be subjected to an identity control including a passport check by an automated reading machine linked to the Schengen Information System (SIS).

"By then, there will and can no longer be any `nodding through'", says Major Oscar Stromeyer, the head of the border service department at the Interior Ministry. At all external border-crossing points there will be separate lanes for EU and EEA citizens on the one hand and "third country nationals" on the other. The latter will be subjected to additional and lengthier checks, including U.V.-screening of passports and visas, and checks of financial means and vehicles.

All external border-crossing points will be equipped with the following technical devices:

- cavity scanners with which cavities in vehicles can be illuminated and checked by a video-camera - a measure mainly aimed against smuggling of persons and narcotics;
- CO2-measuring instruments enabling the detection of the breathing of hidden illegal immigrants;
- Thermal radiation cameras for the detection of "illegals"; this type of camera will also be used for the surveillance of the "green frontier". It enables the detection of human movements within a distance of 10 kilometres. Within a range of 4 km. they are even capable of identifying people. The thermal radiation cameras will be mounted in the helicopters of the border protection force, among other places.
- Drug-testing devices enabling for the speedy identification of suspicious substances;
- Corrosion tests to detect forgeries of motor or chassis numbers; and
- Special reading devices with which the number plates of all motor vehicles on the waiting lane are video-filmed before the actual border check and automatically matched with the SIS-register of stolen motor vehicles. This last device is, however, not yet technically operational.

This impressive rearmament will be accompanied by a thoroughgoing reorganisation of the border control forces.

According to the plans of the Interior Ministry, Customs will no longer have border guard functions and the use of the army for border surveillance purposes will come to an end. Instead, the Gendarmerie (assigned to the Interior Ministry) will alone be responsible for border checks and surveillance.

Source: Der Standard, 10.1.96.

AUSTRIA

BILL AGAINST ORGANISED CRIME PROVIDES FOR EXTENSIVE BUGGING

A bill on the fight against organised crime prepared by the Austrian Interior and Justice Ministries provides for the extensive use of electronic surveillance, computerised "search by screening", and the protection of police under-cover agents and other witnesses. Opponents of the bill fear it will open the way for extensive surveillance of innocent people. The bill is expected to be adopted by Parliament in March.

Just as in Germany, police and prosecution authorities in Austria have long been calling for the legalisation of the so-called *grosser Lauschangriff* ("major eavesdropping-attack"). This is the catchword describing the use by the police of "bugs" and other audio- and video-surveillance equipment inside private locals and rooms (see CL No.40, p.8, No.28, pp.1-3, No.20, pp.1-4).

In principle, private rooms are protected against state infringement by the constitutional guarantee of privacy. If adopted, the new bill will establish drastic exceptions to this rule. The use of surveillance equipment without the knowledge of the people concerned shall be permitted in three cases:

1. In cases involving kidnapping and deprivation of liberty (e.g. a bank robber taking hostages).
2. For the purpose of solving "simple" crimes, i.e. offences punishable by a maximum of more than 3 years imprisonment, on condition that a person aware of the surveillance measure (i.e. an informer or an under-cover policeman) is also present in the room under surveillance;
3. For the purposes of combating particularly serious crimes (crimes punishable by a maximum of more than 10 years imprisonment) *or* "organised crime". Under this central provision of the bill, electronic surveillance shall be permitted in particular in presence of "well-grounded suspicion" of the creation, membership of, or the participation in a criminal organisation and may be resorted to even in investigating *planned* offences and *petty* crimes imputed to a criminal organisation. The police are expressly allowed to break in a private home secretly with - as such - unlawful means in order to install surveillance equipment. The presence of a person aware of the bugging on the site is not required and even completely innocent people may be subjected to this most drastic form of surveillance, if there are "reasons to believe" that a suspect might approach them.

The admissibility of the latter "major eavesdropping" is seemingly limited in so far as it requires the "probability" of a "serious threat against public security". But instead of clearly defining the scope of this term, the provision merely lists a number of examples of activities considered as serious security threats, including ... suspected involvement in a criminal organisation.

Secret video (but not audio) surveillance of "semi-public" locations, i.e. private premises accessible by the public at certain times, is also to be allowed. Besides restaurants, business and meeting places the proposal also names restaurants and waiting rooms in doctors' surgeries (!) as examples. This restricted form of video-surveillance may be resorted to without the approval or information of the owner of the premises, even for investigating petty offences.

In principle an eavesdropping operation must be approved in advance by a Chamber made of three judges. But many magistrates are doubtful regarding the effectiveness of this control. As a matter of fact, in assessing whether a suspicion is grounded, judges are entirely dependent on the account given by the police. As a rule, the veracity of this information can only be established once a surveillance measure has been carried out. Before, only its plausibility can be assessed.

It is noteworthy, that in cases involving "most serious crimes" according to Austrian legislation (especially, murder and resumption of nazi activities) *or* in any other cases, on condition that a person aware of the operation is present in the room, even editorial staff rooms of mass media may be subjected to surveillance.

Immunity from surveillance is granted only to conversations subjected to professional secrecy (doctors, lawyers, priests).

Search by screening

The term *Rasterfahndung* ("search by screening") stands for the automated and comprehensive matching of personal data registered in electronic databases according to certain searched for characteristics. For example, a set of known features of an unidentified criminal is matched with all personal data in one or more data registers in order to find persons whose features match with those of the criminal.

According to the bill, computerised search by screening shall be allowed if there is suspicion of serious crimes (more than 10 years imprisonment) *or* organised crime. Police shall have access to all data registers run by the state, including, for example, the registers of the Social Security. Here too, the authorization of a Chamber made of three judges is required. But according to the vice-president of *Österreichische Richtervereinigung*, the Austrian association of judges, Wolfgang Jedlicka, effective judicial control is almost inconceivable, as far as the later use of the data collected by the police is concerned. The data protection commissioner shall have a right of appeal against screening operations, but his appeal has no suspensive effect.

The Interior Ministry has vehemently demanded the inclusion of private computerised registers. This would, for instance, imply the obligation for newspapers to hand out their list of subscribers. So far, the Interior Ministry has, however, not got its way.

Certain aspects of the bill might still be changed as a result of its discussion in Parliament. A change for the better is, however improbable, considering the fact that the bill in its present form has drawn criticism only from a small circle of legal experts and practitioners. The president of the Austrian association of judges, Josef Klingler, put it as follows: "If one considers the prevention of crime to be so important that one is prepared to put up even with massive encroachments on fundamental rights, this is a political decision, whether we want it or not".
For the great majority of Austrians, this political decision appears to be a non-issue.

Thomas Sperlich

Sources: Proposal of the Federal Ministries of Justice and the Interior for a law on the fight against organised crime; Österreichische Richterzeitung, 1/96; Salzburger Nachrichten, 4.1.96. For more information contact: Thomas Sperlich, Zeitschrift Juridikum, Bergsteiggasse 43/16, A-1170 Vienna; Tel: +43/1 4089019, Fax: +43/1 4088985.

FRANCE

`VIGIPIRATE' MEASURES EASED BUT NOT RAISED

On 15 January, the French government eased its anti-terrorist plan of action, *Vigipirate*. The plan provided for the use of the army in maintaining public security and was put into effect in July 1995, in the midst of a wave of terrorist bomb attacks attributed to Algerian islamic extremists (see CL No.39, pp.6-8). But it has now turned out that Prime Minister Alain Juppé signed a "confidential defense" directive establishing the scheme on 15 June 1995, almost a month before the first terrorist attack occurred.

There have been no further terrorist attacks since October 1995 and criticism against the continuation of *Vigipirate* has grown in recent months, mainly because of its use for public order purposes without any relation to terrorism. Among others, the *Commission nationale consultative des droits de l'homme*, an advisory committee on human rights attached to the Prime Minister, expressed concern about a number of statements of the Interior Minister, Jean-Louis Debré. In a first assessment of *Vigipirate*, the minister had stressed the positive side-effects of the operation in terms of general public order and foreigners control. According to the Interior Minister, 3 million persons were checked, 21,450 taken in for questioning related to various offences, 19,972 denied entry at

the border and 2,324 expelled, since the entry into force of the plan.

The figures seem to confirm that *Vigipirate* served as a welcome pretext for multiplying random ID-checks affecting above all non-whites and for reinforcing measures against illegal immigration.

Under the reduced *Vigipirate* plan, military personnel no longer participates in the operation, except for guard and surveillance tasks at borders and airports. Military patrols are withdrawn from all cities except Paris.

The secret directive

The secret defense directive issued on 15 June 1995 by Prime Minister Juppé defines the distribution of central and territorial responsibilities in preventing terrorist threats and the principles of state action in this domain. Under the directive, the various ministries act together under the leadership of the Interior Minister who ensures the centralisation and the processing of terrorism-relevant intelligence. On the local level, the prefects are given considerable powers to implement the plan according to the "specificities" of the their *départements*, such as "concentrations of foreign populations". The decision to put the scheme into effect is, however with the Prime Minister. Originally, *Vigipirate* was the code name of a document drawn up by the General Secretariat for National Defense (SGDN) in July 1995 after a bomb attack at a Paris underground-station. The text further details the provisions of the government-directive. Inter alia, it provides for applying *Vigipirate* not only to French territory, but also "at sea and abroad, whenever its measures are compatible with the sovereignty of countries in which French representations, nationals, goods or interests are threatened".

The government directive also contains a set of special schemes adapted to particular forms of terrorism: "Piratair" (airplane-hijacking and hostage-taking of air-passengers); "Intrusair" (intrusion of "undesirable aircraft" into French air space); "Piratome" (attacks involving nuclear substances or aimed against nuclear sites); "Piratox" (attacks involving toxic substances); and "Piratemer" (hijacking and hostage-taking at sea). None of these special schemes was, however, put into operation in 1995.

Source: Le Monde, 10.1.96, 13.1.96

EUROPEAN REPORT SEVERE ON DETENTION CONDITIONS IN PARIS

A report of the European Committee for the Prevention of Torture and Inhuman Treatment (ECPT), an institution of the Council of Europe, sharply criticises detention conditions in a number of Paris police stations and in the infamous *Dépôt des étrangers*, a special detention centre for deportees (see CL No.35, p.7). The report dates from the late summer 1994. But only on 22 January 1996 did the Government allow its publication.

The report makes particular mention of the difficulties encountered by the representatives of the ECPT, in obtaining access to various detention locals during their visit to Paris in July 1994. The authors complain that, at one police station, the personnel made them wait for more than an hour and seemed reluctant to present the register of detainees. "Such a denial of rapid access to places of detention is incompatible" with the provisions of the European Convention on Human Rights", the report notes.

The report is no more lenient with regard to its actual subject, the conditions of detention. Concerning the situation in the *Dépôt*, it says that "outdoor exercise for the detainees was limited to entering a little barred cage situated at the end of each room", and that no progress had been made since the ECTP's last inspections in 1991 and 1993 with regard to activities proposed to the detainees: "In short, they passed almost all of their time locked up in their cells, in total inactivity".

In another local, detainees complained about medical treatment for serious diseases, namely Aids and tuberculosis, being interrupted. The great majority of detainees said they had never seen a doctor, even after having explicitly demanded this.

The ECPT notes "considerable deficiencies" in a number of inspected police localities with regard to hygienic conditions and the dimension of cells (between 2.5 and 5 square metres). All the cells of the 3rd and 4th division of the *Police Judiciaire* were dirty, insufficiently lit up and aerated.

The ECPT further found that "a number of persons claimed they had not received anything to eat, or even to drink" during their arrest. In some cases these allegations were confirmed by the personnel.

The report reiterates earlier concern of the ECPT regarding police brutality, namely allegations of slaps in the face, punches and baton strokes.

In a reply of 19 April 1995, the French Government expressed its "regrets" about the difficulties of access encountered by the ECTP and announced a series of measures aimed at improving detention conditions.

The *Dépôt* was closed down "for renovation" in April 1995 after massive criticism by French human rights organisations. The centre is to be reopened by the end of September this year. According to the government its "mode of functioning" will be "reconsidered". Among other things, the cells will be equipped for four persons instead of 13, as before.

The French government, however refrained from an answer concerning alleged police brutality.

Source: Le Monde, 24.1.96.

FEWER "LEGAL" FOREIGNERS IN FRANCE

Legal immigration is on a significant decrease in France, an annual report from DPM, the French population and migration board, shows. The report, however, fails to assess the development of illegal immigration.

The document is based on the statistic figures of 1994. But it is believed that the trend towards reduced legal immigration continued, if not accelerated, in 1995 as a result of the gradual implementation of the "Pasqua laws" on immig-ration (see CL No.35, pp.6-7, No.18, p.5, No. 17,pp.7-8).

The 1994 drop mainly concerns permanent immigration (one year and more). Between 1993 and 1994, the number of permanent residence permits dropped by 30 per cent (1993: 89,000; 1994: 61,300). Half of these immigrants came from Africa and a quarter from Asia. 7,000 persons were granted refugee status and 44,600 arrived on family grounds.

The report shows that foreigners are more affected by unemployment than French people. While the number of unemployed increased by 12 per cent in France in between 1993-94, it grew by 24 per cent (an additional 75,000 persons) for foreigners in the same period. While foreigners constitute only 6.3 per cent of the active population of France, they represent 12.5 per cent of the total number of unemployed.

Forcible departures of foreigners also increased in 1994. The number of expulsions increased from 722 in 1993, to 1153 in 1994. The number of ordered "returns to the border" dropped by 2,000 in the same period, but the number of such returns actually carried out has increased, with more than 11,000 persons sent back to the border in 1994, as against an average 7-9000 per year between 1987 and 1993. [Figures provided by a Parliamentary Committee on illegal immigration indicate that harsher action is also being taken at the borders: thus at the French-Italian border alone, 14,000 foreigners were turned away upon entry in 1995, as against 9,600 in 1994].

Commenting on the DPM report in the newspaper, *La Croix*, Antoine Fouchet writes: "All these figures show that the objective of the `Pasqua laws' - limiting immigration - is on the way of being achieved. But the report of the DPM assesses neither clandestine immigration (that can be a way for circumventing the arsenal of legislation) nor breaches of human rights (namely separated couples and families) committed in order to obtain the outcome of 1994".

Source: La Croix, 1.1.96, VSD, 21/22.1.96.

IRELAND

HARSH TREATMENT OF IRISH REPUBLICAN PRISONERS IN BRITISH JAILS

A number of reports suggest that the conditions of detention of Irish republican prisoners in British jails have deteriorated rather than improved since the beginning of the peace process in Northern Ireland. This might have contributed to destabilising the peace process, Irish MPs claim.

At the launch of of report a report of the Irish Fine Gael party on 7 February, two MPs spoke of loss of weight and extreme tiredness among prisoners they visited and said all those held in so-called Special Secure Units (SSU) complain of sleep deprivation, barely adequate food and erratic heating. "The ongoing punitive treatment of Irish republican prisoners calls into serious question the sincerity of the UK government statements which asserted publicly almost 18 months ago that, in a cease-fire situation, the British response would be generous and imaginative". The delegation blamed the attitude of the British Home Secretary, Michael Howard, for the increasing severity of the prison regime and contended that Irish republican prisoners are subjected to discriminatory, "cruel and inhumane" treatment.

Similar accusations regarding detention conditions were made in earlier reports published between September and December by Fine Gael, the Irish Labour Party and two independent NGOs, British Irish Rights Watch (BIRW) and the Irish Commission for Prisoners Overseas (ICPO: a subsection of the Catholic Bishops' Commission for Emigrants, based in Dublin).

Inhuman and degrading treatment

The very comprehensive report of the two NGOs deals among other things with the particularly restrictive regime imposed on Irish republican prisoners in SSUs after attempted escapes from several high security prisons in 1994.

Of the 52,000-strong prison population in Britain, 11 inmates are regarded as "exceptionally high risk category A". Five of these are republican prisoners and are held in a SSU at Belmarsh prison in London. "The

reality of SSUs is that the occupants can spend up to 10 years in the company of only 10 other people, or less", the BIRW /ICPO report says and describes the situation in Belmarsh as particularly harsh: "[Prisoners] get exercise but no sports, gym, or association except with each other. There is nothing for them to do. They are under constant scrutiny and are strip-searched every time they go on and off the corridor. They are confined to their cells for between 18 and 19 hours each day. According to their solicitor, all men have lost a lot of weight (...). They are very pale. Their skin is blotchy. Their eyes are reddish". The inmates blame food of bad quality delivered in dirty trays for stomach disorders and say they have been deprived of vitamin supplements they were formerly allowed, which are essential in view of their poor diet".

Children strip-searched
The NGOs' report further mentions severe restrictions on family visits. Among other things, since Summer 1995 prisoners and visitors are separated by a glass screen and all conversation can be heard by a guard. Visiting family members including young children are subjected to 12 separate searches in the course of each visit. "Because of these sort of difficulties, most families have decided not to take children to visit their fathers". "In view of the fact that prisoners and visitors already undergo stringent security checks, this regime of closed visits is both inhumane and unnecessary, the NGOs' report states.

Political rather than humanitarian concerns
The report further suggests that Irish republican prisoners are discriminated against on political grounds: There are currently ten republican prisoners in English prisons who have served more than 20 years. No republican prisoner jailed in England has ever been released on parole. In addition to the 10 who have already served 20 years or more, another 11 will serve at minimum 16.7 years, while the two serving 35 years will serve at least 23 years. This must be considered against the fact that the average sentence served by murderers sentenced to life imprisonment in England and Wales and released in 1992 was 13.2 years.

The report also points at the UK's failure to comply with European Prison Rules, which stipulate that prisoners should be imprisoned as near as possible to their families. Transfer to Ireland or Northern ireland is often refused and "Families visiting republican prisoners in England have sometimes arrived to find that their relative has been moved to another prison many miles away without their having been informed, a practice known as "ghosting".

The important role of Irish republican prisoners and their families in contributing to the peace process has often been stressed. With this and the recent IRA bomb attacks in mind, their treatment by the British authorities, indeed gives grounds for concern.

Sources: Irish Times, 8.2.96; Submission to the European Committee against Torture: The Situation of Irish Prisoners in England, British Irish Rights watch and Irish Commission for Prisoners Overseas, September 1995; Report of the Fine Gael Party delegation visit to republican prisoners in Britain, 11-13.9.95; Report of Labour delegation to UK prisons, 19-21.12.95.
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OPINION

DRIVING FORCES BEHIND PRISON GROWTH: THE MASS MEDIA

This article is an abridged and edited version of a paper presented at the International Conference on Prison Growth held in Oslo, Norway in April 1995. The author, Thomas Mathiesen is Professor of Sociology of Law at the University of Oslo. Beyond just dealing with the mass media's influence on policies in the particular area of prison growth, the author analyses the very functioning of modern mass media and the dilemma this situation creates for those striving for rational and sincere public debate on societal issues. This is why we believe that Mathiesen's reflections are inspiring reading - not only for people concerned with prison growth.

A true story
Let me begin by telling a story. A true story. But let me first briefly describe its context:

The 1970s were a relatively liberal period in Norwegian penal policy, with a substantial decrease of prison population. Decriminalisation and depenalisation were at least relatively positive public concepts. And though implementation lagged behind, it was at least possible to voice the view that prison conditions were in need of improvement and that imprisonment should be resorted to more sparingly. The Norwegian liberalism of the 1970s had parallels in other Western countries. In some countries (e.g. Sweden, Britain and parts of the USA) it led to an actual decline of prison populations.

All this changed towards the end of the 1970s and during the 1980s. Those of us participating in the public debate over penal policy experienced a gradual stiffening of the climate. In Norway, this backlash took place in the late 1980s. As a matter of fact, it was

triggered by one particular incident in 1988. And this is where my story begins.

In July 1988, a well-known imprisoned drug dealer escaped from a birthday dinner while on a few hours leave, with staff, from prison. Again in July 1988, it became known, that a lesser-known liquor smuggler had received a few days furlough to Denmark from a treatment institution to which he had been transferred from prison during his sentence. The drug dealer's escape was of course contrary to the rules, but escape from prison is not criminalised in Norway, and this escape represented no danger whatsoever to the public. In fact, during a later trial the inmate was acquitted of criminal charges brought against him for activities during his escape. As for the liquor smuggler's furlough, it was entirely lawful. It had been granted by the treatment institution to which he had been transferred. At face value, in other words, both events were entirely undramatic. But in my society, drug dealing and liquor smuggling have the darkest of connotations, and with these particular ingredients, a public frenzy broke loose. The frenzy mounted through three major steps.

Firstly, the police immediately made statements in the strongest possible language about the neighbouring department - the prison service. "So spineless that I cannot stand it", said the chief of the narcotics police to the largest Oslo morning newspaper. "We all have quotas of blunder, but the prison department has long since exhausted theirs", was the comment of the chief of the Oslo criminal police to the same newspaper.

The police had for a long time been "after" what they considered the prison department's far too liberal policies, especially towards drug offenders. Now the police obviously saw their chance.

The second step was the mass media follow-up of the harsh verdict of the police. That follow-up, which actually continued during most of the summer of 1988, followed two typical and partly overlapping lines. For one thing, the mass media searched intensively for similar sensational individual cases. It is part of the very development of the modern mass media, and of a modern concept of the "newsworthy", to do just that. And they found a few cases - among others, a convicted murderer and model prisoner who had received a furlough from prison and who -according to rumour - had escaped to Morocco. Major headlines were devoted to this escape.

Furthermore, the mass media squeezed the maximum amount of sensation out of the cases that were found. To do this is also a part of the very functioning of the modern mass media. The "squeezing process" in its turn also followed two lines. Firstly, the media, including the powerful national Norwegian Television Company, treated the few individual cases as serials. The cases were kept on the front pages and the television screen for weeks, thanks to a continual presentation of new "angles" - to use a phrase from modern media language. Secondly, the cases were given *rich contextual details* in the most titillating ways. Again, the Norwegian Television Company was particularly imaginative. The drug dealer, it was reported, had ordered breast of duck and Cardinal red wine during his escape. The reason for this particular order was, again, his birthday celebration. Breast of duck and red wine were shown on the screen, the cardinal being poured into crystal glasses on white damask. The liquor smuggler, it was speculated, might just now be visiting "Legoland" - a kind of Danish version of Disneyland. Pictures from the toy trains and fun in Legoland were shown on the screen.

Let me, at this point, personalise the story a bit. On one of these hot July days I received a telephone call from the Norwegian Television Company. They wanted me to make a statement. What followed, shows some of the details in the workings of modern mass media, especially television. I agreed to make a statement. Why did I agree?

In advance, I had a fair amount of experience with media, I had even written a fair amount about them and knew that they were distrustful allies, to say the least. But phenomenologically, as the pleasant television woman called, that experience somehow faded into the background. I remember I thought that this was after all a chance to say something, to correct something. My prior knowledge of the fact that you are often unable to say much at all on television, somehow evaporated. The point here is that the modern mass media, such as television, give you what I would like to call a marginal chance to express yourself. They do not stop you completely, but give you a marginal chance. The alternative to the marginal chance is to say nothing, which means silence. The structure of marginal chances to express something lures you into participation.

Furthermore, I also remember that deep inside I felt a diffuse sense of pride. I was important enough to be asked. I was not an unimportant outsider. In other words, I behaved a bit like a child who is asked to play with other important children in school. The marginal chance to express at least something, which the mass media give, coupled with the sense of pride, or even feeling of existence, attached to appearance on the media scene, are two extremely important forces driving professionals and semi-professionals of all sorts and types into the network of the mass media. Such are the fine lines of media power.

As for my particular appearance on TV that hot summer day of July 1988, I made a ten-minute statement made "on location" in front of the Oslo District Prison. The fact that the escape had taken place from an entirely different prison did not matter to the Television Company. My ten-minute statement was "condensed" to one sentence in the evening news: "I am for more liberal prisons!" My statement was accompanied by pictures of breast of duck and Cardinal red wine in crystal glasses on white damask. The director of the local prison was also interviewed. Again, little more than one sentence was extracted: "I am for more discipline, though not slavish discipline!" Knowing him as a very meticulous and correct person, I am sure he said more than that. His words were accompanied by pictures from American prisons, where the uniformed prisoners had to run around in a circle under the watching eyes of armed guards wearing brown battle dresses and shouting orders. "Two views on prison policy", the reporter objectively

concluded, implicitly informing the television audience, that in Norway, breast of duck, Cardinal red wine and Scandinavian versions of Disneyland are the order of the day in the prison system.

So much, for the time being, about the mass media. I will return to them shortly.

The third step in the mounting frenzy was the ensuing reactions of the politicians, including several leading members of parliament. A large number of political statements were made by the whole spectrum of political parties, from the ultra right-wing party at one extreme to the Social Democrats at the other. The ultra right-wing party wanted private prisons because they would presumably tighten security in order not to lose business. The party claimed that the proposal was brand new and original, obviously not knowing what had long been going on in several other Western countries. The Social Democrats argued that the penal policy of the 1970s was no longer suitable. The statements from politicians to the left of the ultra-right must be understood with the fact in mind that the Norwegian ultra-right party, the so-called Progressive Party, had shown increasing gains in the opinion polls during the preceding years and had become the third largest voting group in the country by 1988-89. National elections were coming up in September 1989. Except for the parties to the left of the Social Democrats, all of the major political parties were now making a run for it to prevent the ultra-right from win ning more votes.

The three steps briefly outlined here stimulated each other. The police sent out new bulletins on the need for restrictions on leaves, furloughs, etc. This gave the mass media more to report on and the politicians more to comment on. For several weeks the three steps functioned as a totality - you might say as a typical, mounting moral panic of interacting forces. The results soon became apparent. During the autumn of 1988 the Social Democratic minister of justice instituted more control in the prisons and new and more restrictive rules on leaves, furloughs, and the like. The new rules were to enter into effect as soon as possible.

Somewhat later, in March 1989, a prisoner sentenced for murder and serving time in a special treatment section of a national prison, raped and killed the female guard who was accompanying him on a few hours leave from the prison. The leave had been granted as a part of the treatment programme for the prisoner in question. It is hardly necessary to detail the public reaction. Again, the police, the mass media and representatives of a broad spectrum of political groupings participated in a major public outcry. The rape and murder were reported in the greatest possible detail on the front pages of the newspapers and on the television screen. New "angles" were continually found so that the incident was kept publicly alive throughout the spring. But the sequence of events is important. The rape and murder did not come first. The completely harmless and undramatic escape of the drug dealer from a birthday dinner - the man simply left the restaurant - coupled with the entirely lawful leave granted to the liquor smuggler, came first. If the sequence had been reversed, the media treatment, and the ensuing outcry, would have been more understandable. Rape and murder are the most serious criminal acts we have. The media treatment and the frenzy, however, commenced and escalated around events which exposed the public to no danger whatsoever.

At no point did the politicians avail themselves of the opportunity to look at facts of a more general kind concerning leaves and furloughs. As a matter of fact, in 1988, no less than 20,492 short-term leaves, in which the prisoner leaves the prison for a few hours accompanied by personnel, were granted throughout the Norwegian prison system. Of these, 99.7 per cent were concluded without registered misconduct. During the same year, 13,613 furloughs, in which the prisoner leaves the prison for several days, usually alone, were granted. Of these, 96.8 per cent were concluded without registered misconduct. Only 0.2 per cent of the unaccompanied furloughs were associated with registered criminal behaviour. While the number of leaves as well as furloughs increased between 1987 and 1988, the percentage of registered misconduct went down. The possibility of unregistered crime cannot of course be disregarded in connection with the unaccompanied furloughs. But it may quite safely be concluded that dangerous, violent crime, which of course is the great public fear, almost never occurs in connection with leaves and furloughs. From a wide range of empirical prediction studies we also know that it is almost impossible to predict the extremely few incidents of this kind that do occur. None of this informa tion, which was readily available (the figures above were provided by the Prison Department), was at any point utilised by representatives of the political establishment. They relied only on the mass media presentations of the isolated spectacular incidents.

In short, through interaction between the police, the mass media, and the political establishment revolving around isolated spectacular incidents in the prison system, a long-lasting moral panic was created that has fundamentally altered the political climate in the field of criminal and penal policy. In turn, this altered climate has paved the way for major changes in penal policy, notably changes which increased restrictions and repression within the prison system.

The mass media and public space

We have piles of reports and books in media research suggesting that the influence of media on attitudes and behaviour is at best complicated, probably overestimated. It appears from a large number of studies that the line from the media to public violence is thin at best. So is the line from the media to fear of crime, and so on. I think much of this research, which is of a distinctly positivistic kind, to a large extent misses the point.

The point is that with the entry and development of television, we have entered something which is equivalent to a new religion. When the automobile arrived around the turn of the century, many people believed it

was a horse and buggy, only without a horse. In reminiscence of this early perception, we still speak of "horse power". Yet, the automobile was not a horse and a buggy without a horse. It was something entirely new which contained the seeds of an entirely different society. So with television. When television arrived after World War II, some people believed that it was just a newspaper in pictures. Yet, it was more than that. It was an entirely new medium fundamentally influencing the shape and content of the old media. The American media researcher, George Gerbner, has put it succinctly as follows (Gerbner and Gross, 1976):

> "[The point is a concept of] broad enculturation rather than of narrow changes in opinion or behaviour. Instead of asking what communication "variables" might propagate what kinds of individual behaviour changes, we want to know what types of common consciousness whole systems of messages might cultivate. This is less like asking about preconceived fears and hopes and more like asking about the "effects" of Christianity on one's views of the world or - as the Chinese *had* asked - of Confucianism on public morality."

The parallel drawn with religion should be taken as more than a metaphor. Our relationship to television has several of the characteristics of the relationship of the faithful to the Church. The British media researcher, James Curran, has put it this way, in functional terms (Curran, 1982):

> "The modern mass media in Britain now perform many of the integrative functions of the Church in the middle ages. Like the medieval Church, the media link together different groups and provide a shared experience that promotes social solidarity. The media also emphasise collective values that bind people together, in a way that is comparable to the influence of the medieval Church: the communality of the Christian faith celebrated by Christian rites is now replaced by the communalities of consumerism and nationalism celebrated in the media "rites" such as international sporting contests (that celebrate a collective identity of consumers). Indeed, the two institutions have engaged in some ways in very similar ideological "work" despite the difference in time that separate them... The modern mass media have [for example] given, at different times, massive and disproportionate attention to a series of "outsiders"... comparable to the hunting down and parading of witches allegedly possessed by the devil by the medieval and early modern Church..."

Curran ends with the following words:

> "The medieval Church masked the sources of inequality by ascribing social injustice to the sin of the individual; the modern mass media tend, in more complex and sophisticated ways, to misdirect their audiences by the ways in which they define and explain structural inequalities... The Church... offered the chiliastic consolation of eternal salvation to "the meek (who) shall inherit the earth"; the media similarly give prominence to show-business personalities and football stars who, as "a powerless elite", afford easily identifiable symbols for vicarious fulfilment... The new priesthood of the modern media has supplanted the old as the principal ideological agents building consent for the social system."

In terms of *form* we are in the midst of a crucial transformation from an emphasis on the written message towards an emphasis on the picture. The picture defines what is true and false, and what actually happened, as if staging did not exist. This emphasis on the picture implies a fundamental change in the West. This change also affects the modern press, for example through the "tabloidisation" of the newspapers, with large "on the scene" pictures, large punchy headlines and brief texts. We are living in a "viewer society" (Mathiesen 1987). Michel Foucault's notion of a "panoptical" development, in which the few see and survey the many, is paralleled by a contrasting but functionally related "synoptical" development, in which the many see, survey and admire the few.

In terms of media *content*, we are in the midst of a parallel change towards entertainment. Even the most serious news are given an "entertaining slant". Writing is still with us, to be sure, as are serious analyses. But in terms of tendency, public news space is predominantly filled with "infotainment".

Prison growth

Now, what has this to do with prison growth? Quite a bit, I think. I am of course not suggesting that the development of the mass media is the only factor behind prison growth in Western countries. I *am*, however, suggesting that the development of the mass media described above opens up for prison growth. It dismantles the defenses which otherwise might be mustered against escalation and for de-escalation.

Three major and related consequences of this development may be pointed out.

Firstly, penal policy has become much more of a "commodity" than was the case a few decades ago. Penal policy today is governed much more by "news" that is saleable for the media and by what is marketable political opinion in the media. One might say that political marketability is part of Western democracy. However, considering that in the field of penal policy the politically marketable is founded on highly indirect, selective and skewed information filtered through the mass media, its alleged democratic character becomes suspect to say the least. The commodity character of today's penal policy explains the erratic repressiveness and sudden rounds of escalation of penal measures which is so characteristic of contemporary decision making in the area.

Secondly, in parallel with the first change, a change has also occurred in the type of legitimation sought by those who make penal policy decisions. Some decades ago, one could say that legitimation at least to some extent was grounded in principles about the rule of law and similar values. These principles could open the way for many kinds of policy, but principles they were nevertheless. Today, legitimation seems to be almost purely

opportunistic: it is grounded in concerns about what "goes" in the mass media and among voters.

Thirdly, a change has also occurred in the nature of public debate over penal policy. The more theoretical approach and the search for principled legitimation some decades ago favoured what Jürgen Habermas called communicative rationality in the debate. It was possible to argue in a truthful manner, with relevance and with sincerity, and such argu-mentation was given at least some hearing at the decision-making level. Today, communicative rationality seems to be in retreat. More than before, communicative rationality lives in the secluded corners of the professional journals and meetings, while the public debate, flooded as it is with dire warnings by the police and sensational crime stories and, most significantly, by opportunistic political initiatives in the context of burlesque television shows called "debates", is predominantly characterised by the rationality of the market place.

An alternative public space

What I have said here points to a rather bleak immediate future. I think this is a realistic assessment. But the fact that penal policy is developing for the worse, is no reason for giving up resistance. In contrary, it is rather a reason for offering resistance.

That a reversal may take place is more than wishful thinking. Indeed, history teaches us that most major social and policy changes were deemed totally unrealistic by a large majority of experts almost until the day they took place.

By way of conclusion, let me briefly mention one possible line of action in view of the mass media situation described above.

The point is to contribute to the creation of an *"alternative public space"* in penal policy, where argumentation and principled thinking represent dominant values. In the area of penal policy, the development of an alternative public space could be facilitated by three ingredients.

1. Liberation from the "absorbent power" of mass media. I have touched on it before: the definition of the situation implying that existence is dependent on media interest. Without media coverage, with silence in the media, I do not exist, my organisation does not exist, the meeting has not taken place. In Western society, it is probably not possible to refrain completely from media participation. But it is certainly possible to say "no!" to many talk shows and entertainment-like debates. And most importantly, it is certainly possible not to let the definition of our success and very existence be dependent on the media.

2. Restoration of the self esteem on the part of grass roots movements. It is not true that the grass roots movements, emphasising network organisation and solidarity at the bottom, have died out. What has happened is that with the development of the mass media which I have outlined, these movements have lost faith in themselves. An important example from recent Norwegian history of the actual vitality of grass roots movements: In 1993, thousands of ordinary Norwegians participated in a widespread movement to offer Kosovo-Albanian refugees threatened with deportation sanctuary in churches throughout the country. The movement ended in a partial victory. The example suggests that grass roots solidarity even with "distant" groups like refugees did not die out with the Vietnam War.

3. Restoration of the feeling of responsibility on the part of intellectuals. I am thinking of artists, writers, scientists - and certainly social scientists. That responsibility should on the one hand imply the refusal to participate in the mass media show business and on the other hand re-vitalise a type of research taking the interests of common people as a point of departure.

We have tried to do some of this in KROM, the Norwegian Association for Penal Reform, which is a strange hybrid of an organisation, with a membership of intellectuals and prisoners sharing a common cause (Mathiesen, 1974, 1995). KROM organises large conferences on penal policy every year with wide participation from the whole range of professions and agencies relevant to penal policy, and many prisoners. It also organises regular seminars. Thereby, we try to create a *network of opinion and information* transgressing the formal and informal borders between segments of the relevant administrative and political systems, between concerned laypeople and academics. The objective is precisely to create an alternate public space which in the end may compete with the superficial public space of the mass media.

Compared to the functioning of the mass media, our network has the advantage of being based on the actual and organised relationships between people. The public space of the mass media is weak in that sense. Indeed, it is unorganised, segmented, splintered into millions of unconnected individuals - this is its truly mass character - and equally segmented into thousands of individual media stars on the media sky. This is the Achilles' heel of the public space of the media, which we try to turn to our advantage.

Networks of opinion and information bringing people together represent one line of thinking and working. There are obviously others. The objective of limiting prison growth and turning escalation into reduction requires them all.

Thomas Mathiesen

A full version of this paper, including a list of literature, has been published under the same rubric by: The Sentencing Project, June 1995, Washington DC.
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DOCUMENTS AND PUBLICATIONS

The EURODAC system for recording asylum seekers' fingerprints, EU-Council, General Secretariat, final report prepared by Bossard Consultants/Organotechnica/Team Consult; O/Ref: (EUD2/JPB/I&C), Paris, 11.10.95, 115 p., in English.

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Available at: Presses des Sciences Po, 44, rue du Four, F-75006 Paris; Tel: +33/1 44393960; Fax: +33/1 45480441.

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