Fortress Europe?

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

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

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EUROPEAN UNION

EU INTERGOVERNMENTAL CONFERENCE ON THE FUTURE OF JUSTICE AND HOME AFFAIRS CO-OPERATION

One of the more important issues discussed by the Intergovernmental Conference (IGC) of the governments of the EU member states is the future form of Justice and Home Affairs (JHA) co-operation. There is broad acceptance that Union action on JHA affairs "needs to be made more effective". A chapter of the 'Progress report' on the IGC of 17 June relates the current state of discussions.

Objectives and scope of JHA
There are two complementary avenues which are being considered:
- clarification of the objectives assigned to JHA (these are not defined by the Maastricht Treaty (TEU) at present.
- an extension of scope by adding new areas to the list of "matters of common interest" currently listed in Article K.1 of the TEU. In particular, mention has been made of harmonisation of policies to combat crime, harmonisation of rules on the conflict of laws, the fight against racism and xenophobia and action to combat corruption on an international scale.

Methods of action
In the Presidency's view, existing methods could be adjusted as follows:
a) partial incorporation into the Community sphere: the most suitable areas would be: visas, asylum and immigration;
b) the use of certain Community methods and mechanisms (a non-exclusive right of initiative for the Commission; majority voting, possibly with the introduction of a super-qualified majority; role of the Court of Justice; closer involvement of the European Parliament, which, in the view of some, could extend to mandatory consultation); this approach, called creation of a "new third pillar", should be supplemented, "in the view of some", by giving a more important role to national parliaments.
c) strengthening the co-operation arrangements provided for in Title VI of the TEU, without fundamentally changing their nature or scope.

Decision-making process and instruments
With a view to improve the process of preparing JHA decision which has been widely criticised for its awkwardness, their are suggestions for the removal of the K.4 Committee and/or the three Steering Committees. Some also favour changes to the K.4 Committee (e.g. members permanently in Brussels).

Member States appear to agree that the legal instruments provided for in Title VI (on JHA co-operation) of the TEU are "not well suited to the essentially legislative nature of JHA action". The idea of creating a new legal instrument, which might be called a "common measure", has been generally welcomed. A "common measure", like a Community Directive, would *commit* member states to achieving certain results, leaving it to the national authorities to decide on ways and means. Questions have also been raised about the co-existence of "joint positions" and "joint actions", two instruments whose legal implications are subject to differing interpretations.

It has also been emphasised that "any progress on JHA depends on giving a direct role to national parliaments, who alone are capable of giving Union action the legitimacy required in such politically sensitive areas". However, more detailed proposals to this effect mentioned in the report indicate, that the participation of national parliaments would be limited to giving "advisory opinions".

Judicial Control
According to the Presidency, initial discussions show that the Court of Justice should retain *compulsory* jurisdiciton over disputes concerning the application of conventions and for interpreting their provisions, as well as in respect of legislative acts adopted under Title VI.

Some states are, however, said to favour a case-by-case approach, both for conventions and for other legislative acts.

International co-operation
The report notes that "the desirability of a specific provision on this point is linked to the debate on the Union's legal capacity".

Closer co-operation
The problem of how to preserve the consistency of the Union's action without preventing those member states wishing to increase co-operation more quickly to do so, is also being discussed. Various solutions have been considered, in particular:
a) an "enabling clause" opening the door to closer co-operation between interested member states, on the understanding that it would always be open to any member state to join in

the closer co-operation;
b) incorporation of the "Schengen" system into the institutional system of the TEU.

Source: Progress Report on the IGC of the Representatives of the Governments of the member States, The Presidency, Brussels, 17.6.96, CONF 3860/1/96 REV 1 LIMITE.

EUROPOL CONVENTION READY FOR RATIFICATION

At its Florence Summit on 21-22 June, the European Council succeeded in putting an end to the dispute in which Britain was opposed to the rest of the Union over the jurisdiction of the European Court of Justice (ECJ) on Europol. On 24 July, the Permanent Representatives of the 15 EU member states signed a Protocol opening the way for the ratification of the Convention by the member states.

Political agreement on the Protocol was reached in Florence, after the EU Heads of State managed to appease Prime Minister John Major on the "mad cows" issue, thereby obtaining an end to the United Kingdom's boycott of EU decision-making.

Compromise formula
Prime Minister Major finally accepted a compromise formula established by a Protocol. By a declaration made at the time of the signing of this Protocol or at any time thereafter, any member state may state that it accepts the jurisdiction of the ECJ to give preliminary rulings on the interpretation of the Europol Convention.

Two options
The Protocol offers member states a choice of two alternatives when making a declaration as described. According to alternative a), any court or tribunal of that State *against whose decision there is no judicial remedy under national law* may request the ECJ to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Europol Convention, if that court or tribunal considers that a decision on the question is necessary to enable it to give a judgement. According to alternative b) such a request to the ECJ may be presented by any court or tribunal of that State.

John Major satisfied with "flexible" cooperation
The ratification of the Protocol shall take place together with the Europol Convention itself.

In a comment on the compromise formula, a satisfied John Major said the fact that British courts were free to address the ECJ proved the advantage of "flexibility" in building Europe.

Sources: Florence European Council, 21-22.6.96: Presidency Conclusions; EU Council, General Secretariat: press release, Brussels 24.7.96, 9152/96 (Presse 218); Neue Zürcher Zeitung, 24.6.96.

'FLEXIBLE' EU CONVENTION ON EXTRADITION

In the wake of the Florence Summit, Justice and Home Affairs (JHA) Ministers have reached political agreement on a final draft of the Convention on Extradition. Among other things, the Convention provides for the extradition by member states of their own nationals and of persons accused of involvement in a "criminal association". Moreover, the political motivation of a crime shall no longer prevent extradition.
Several member states previously opposed such far-reaching rules on constitutional grounds. The obstacle was overcome by including a multitude of provisions providing for "opt in" and "opt out" options in the Convention text. Flexible "optional features" legislation seems to be the Council's new wonder-drug in preventing hesitating member states from blocking JHA cooperation.

Convention to be signed in September
At the Florence Summit the European Council requested the JHA Council to "do its utmost" to ensure the conclusion of the Convention by the end of June. According to the Council's press service, however, the signature was delayed "for "purely procedural reasons". The Convention is now expected to be signed in September.

Extradition for acts not punishable in the requested member state
Extradition shall be accorded for all criminal offences punishable by at least 12 months imprisonment in the requesting state, and six months in the requested state.

Article 3 states that, if the crime for which extradition is being requested is a "conspiracy" or a "criminal association" according to the national legislation of the requesting state, extradition must be granted, if the conspiracy or criminal association named in the request
aims at committing
- a major crime (or crimes) named in article 1 or 2 of the 1977 European Convention on the Fight against Terrorism; or
- any other criminal offence in connection with illegal drug

trafficking and "other forms of organised crime", or other acts of violence.

The requested member state must extradite, even if "conspiracy" and involvement in a "criminal association" are no punishable acts under its national law (Article 3.1).

In assessing whether a conspiracy or an association is actually aimed at committing a crime named above, the requested state shall refer to "information in the arrest warrant or another decision to the same effect" (Article 3.2). This means, remarkably, that a person shall be extradited, even if he is not accused, or even suspected, of having himself committed any crime.

Member states which have difficulties in overcoming moral or constitutional scruples are offered the option of subscribing to a "softer" version of this rule. They may reserve the right not to apply Article 3.1 by special declaration (Article 3.3). But they shall determine that a behaviour contributing to the commission of a terrorist crime or a number of other serious violent crimes by a "group of persons acting with a common objective" shall entail extradition, "even when the person concerned is not himself taking part in actually carrying out the crime(s) in question" (Article 3.4). However, in contrast to Article 3.2, Article 3.4 requires that the person's "participation" must be premeditated and based on his knowledge about the criminal group's "objectives and general criminal activities" or the knowledge that the group in question "has the intention to commit the crime(s) in question".

Political motives no obstacle to extradition

Article 5.1 establishes the rule that a requested member state may not refuse an extradition on the grounds that the crime concerned is political or politically motivated. Again, member states with moral scruples are offered a "soft" option. They may declare that article 5.1 applies only to serious terrorist crimes named in the European Convention on Terrorism and to crimes that can be characterised as conspiracies or criminal associations (Article 5.2).

Extradition of own nationals

Article 7.1 establishes the extradition of their own nationals by member states as the rule. The "soft" alternative option is offered in Article 7.2: member states may declare that they do not - or only under specified conditions - permit the extradition of their nationals. Such a declaration is valid for a period of five years and can be renewed at the end of each period.

Statute-barred offences

Extradition may not be refused on the ground that an offence is statute-barred in the requested state.

"Rule of speciality" undermined

The 1957 European (Council of Europe) Convention on Extradition established the so-called "rule of speciality" which prohibits the prosecution of an extradited person for any offence committed prior to his surrender other than that for which he was extradited. The main exception to this rule allowed by the 1957 Convention is the express consent of the state which extradited a particular person, upon specific request of the state wishing to prosecute him. The new EU Convention on Extradition distinctly departs from the speciality rule in as it allows prosecution and punishment for offences other than those having effected the extradition, and *without* the consent of the requested state, when the acts concerned are not punishable by imprisonment or when the extradited person consents (Article 10.1). Article 11 offers an alternative option - this time for less scrupulous member states: they may declare at any time that they automatically and generally permit the prosecution and punishment of extradited person by the requesting state for any criminal offence not named in the extradition request. This amounts to the plain abolition of the rule of speciality. Only if the surrendering state signifies in a particular case that it opposes prosecution, is this automatic provision overridden.

Re-extradition to another member state

The 1957 Council of Europe Convention on Extradition prohibits the re-extradition by the requesting state of a person to a third state, unless this has been consented to by the requested state. The EU Convention departs even from this procedural safeguard. According to Article 12.1, in cases of re-extradition to a member state, the consent of the surrendering state is no longer required. Scrupulous member states may however notify by special declaration that they refuse re-extradition, unless the extradited person consents.

Entry into force of the Convention: fast-track option

The Convention enters into force when all member states of the EU (at the time the Convention was agreed by the Council) have ratified the text and

issued their notification (containing their declarations regarding the various options) (Article 18.1-3). However, here too, an alternative option is offered to impatient member states. Any member state which has ratified the Convention may declare in its notification that it will apply the Convention immediately in its relations with other member states having made such a declaration.

Declarations in the annex to the Convention

According to a joint declaration of the member states, the Convention does not affect the right to asylum and member states' application of the 1951 Geneva Convention on Refugees.

Denmark, Finland and Sweden declare that they are prepared to depart from their present legislation which prohibits the extradition not only of own nationals but also foreigners legally residing on their territory. Nationals from non-Nordic states will be extradited.

Greece declares that with regard to political crimes, its Constitution expressly prohibits the extradition of a foreigner persecuted because of his "fight for freedom" and draws a distinction between political crimes and so-called mixed-type crimes.

Portugal reserves the right to refuse extradition for crimes punishable by life imprisonment in the requesting state, unless the latter satisfactorily shows that the person concerned will not be sentenced to life imprisonment in the event of extradition.

The above declarations made in the annex to the Convention text, must be distinguished from the declarations member states can make on the various optional articles of the Convention in their notifications.

Competence of the European Court of Justice (ECJ) to be considered next year

The Convention says nothing about jurisdiction by the European Court of Justice. However, Anita Gradin, the EU-Commissioner in charge of JHA affairs, said at the end of June that agreement the question of a role for the ECJ will be reviewed in a year.

Sources: Convention on Extradition between Member States of the EU, final draft, Brussels, 15.7.96; 8724/96, restreint, Justpen 99 (All quotations are our translations from the Danish version); European Convention on Extradition, 13.12.1957, Council of Europe; Press Service of the EU Council, 30.7.96; see also CL No.40, pp.1-3, No.44,pp.3-4.

UNITED NATIONS

UN COMMITTEE WARNS SWEDEN AND SWITZERLAND AGAINST VIOLATING CONVENTION AGAINST TORTURE

The United Nations Committee against Torture (CAT) has found in two cases concerning rejected asylum seekers in Sweden and Switzerland, that their forcible return would constitute a violation of the UN Convention against Torture. The CAT decisions highlight two important principles, increasingly ignored in asylum examination procedures throughout Europe: inconsistencies in an asylum seeker's story do not automatically indicate that an applicant is not trustworthy; and, asylum seekers cannot be expected to present irrefutable evidence of their persecution. What counts is the "general veracity" of a claim.

The Swedish case

The first case concerned a Zairian women, Ms M., who faced forcible return to her home country after her application for asylum in Sweden had been finally rejected.

In late 1990, Ms M. and her husband, both activists in the Zairian opposition party UDPS, were arrested by Zairian security forces. Ms M. was raped in her home in front of her children and then taken to Makal prison in Kinshasa, where she was detained for one year without trial. In prison, Ms M. shared a cell of three by six metres with seven other female inmates. Ms M. stated that guards came into the cell every morning and forced the women to dance, beat them, and sometimes raped them. Ms M. was repeatedly raped and subjected to other forms of serious torture.

In October 1991, she managed to escape from prison with the assistance of a bribed supervisor. She travelled to Sweden with a borrowed passport and immediately applied for asylum.

Immigration authorities: persecution "unlikely"

Her repeated applications and appeals were turned down and her deportation to Zaire ordered by the Swedish immigration authorities on the grounds that the political situation in Zaire had improved and that it was no longer "likely" that Ms M. would be subjected to persecution or severe harassment because of her past activities for the UDPS. The immigration authorities further questioned the circumstances surrounding Ms M.'s release from prison and her leaving Zaire. Another new application by Ms M., on the basis of new forensic medical evi-

dence, prepared by the Centre for Torture and Trauma Survivors in Stockholm was also rejected. The Aliens Appeal Board judged that the information now submitted could easily have been submitted earlier, thereby decreasing the trustworthiness of Ms M.'s claim. In order to avoid deportation, Ms M. went into hiding.

UN Commission on Human Rights: torture common in Zaire

In her complaint to the CAT, Ms M referred to two UN documents: a 1995 report of the UN Commission on Human Rights' Special Rapporteur on Zaire, where it is reported that torture is common in Zaire and that female prisoners are often raped; and, the UNHCR's "Background paper on Zairian refugees and asylum seekers" of March 1995, where it is mentioned that the Security Police has shown a particular interest in returned asylum seekers, who are being subjected to long sessions of interrogation. Moreover, Ms M. presented a letter of support from the UDPS exile organisation in Sweden and stated that she had continued her political activities as a UDPS member in Sweden.

Sweden points to "inconsistencies" in Ms M's story

In its comment on the complaint, the State party (Sweden) acknowledged the deplorable situation with regard to human rights in Zaire, despite alleged improvements since 1994. The comment particularly referred to a report of the Zairian human rights organisation, *La Voix des sans Voix*, where it is concluded that it could not be confirmed *a priori* that expelled Zairian asylum seekers are in danger in Zaire, but that each case deserved to be examined on its own merits.

As to the merits of the complaint, the State party referred to the criteria established by the CAT, according to which a person must *personally* be at risk of being subjected to torture, and that such torture must be a *necessary and foreseeable consequence* of the return of a person to his/her country.

The State party further argued that Ms M.'s complaint was inadmissible as being incompatible with the provisions of the Convention, due to its "lacking necessary substantiation". It pointed to "inconsistencies" in Ms M.'s account of the exact number of times she had been raped. According to the State party, these inconsistencies impact significantly on the veracity of the complainant's story.

The comments of Ms M's legal counsellor

In her comments on the submission of the State party, Ms M.'s legal counsellor pointed out that her statements about her sufferings were initially sparse and casual, and were only elaborated later, with the passage of time. However the Counsel emphasised that Ms M.'s story had remained "unchanged, coherent and plausible" throughout and she further referred to articles in medical journals explaining the psychological blockage among torture victims preventing them from telling their full story upon arrival in a safe country.

CAT: Complete accuracy cannot be expected by victims of torture

In its findings, the CAT considered that Ms M.'s "political affiliation and activities, her history of detention and torture, should be taken into account when determining whether she would be in danger of being subjected to torture upon her return", and further, that "complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's [Ms M.'s] presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims". Finally, the CAT held that deportees with a political profile, and, in particular, members of the UDPS, continue to be targeted for political persecution, detention and ill-treatment in Zaire.

Ms M.'s forcible return would violate the Convention against Torture

As a consequence, the CAT concluded that "substantial grounds" exist for believing that Ms M. would be in danger of being subjected to torture if returned to Zaire, that her return would constitute a violation of Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment, and that Sweden therefore "has an obligation to refrain from forcibly returning [Ms M.] to Zaire".

Commenting on the judgement, the Swedish minister responsible of asylum, Pierre Schori, said: "This is serious. The decision underlines what careful assessments must be made at our immigration authorities... The [CAT's] decision further emphasises the importance of a particularly diligent and careful handling of cases involving allegations of torture. I assume that this is what happens".

In the view of Christa Nyblom, Ms M.'s legal counsellor, the CAT's judgement amounts to "a reproof of Swedish authorities' current handling of asylum cases". She regards the

Swedish Aliens Appeal Board's rejection of Ms M.'s application as "a typical example of stereotyped sifting of evidence" by asylum authorities. "By questioning the general trustworthiness of asylum seekers with stereotypes such as having no passport or an asylum request made some days after the actual date of arrival, very serious grounds for political asylum can be brushed aside", Ms Nyblom concluded.

The Swiss case

In another decision, the CAT objected to the forcible return to Turkey of an asylum seeker, ordered by the Swiss asylum authorities. The CAT did not accept the Swiss authorities' line of reasoning, according to which Mr. A., a Kurdish Turk, was not at risk of being tortured in Turkey, since this country had signed the UN Convention against Torture, and since he was not on the wanted list of the Turkish police. The CAT noted that the complainant's home in Turkey was put under police surveillance during his absence from the country and that his brother had been arrested and interrogated by police on several occasions. Just as in the Swedish case, the CAT further pointed out that certain inconsistencies in Mr A.'s story constituted no ground justifying his deportation.

Sources: UN Committee against Torture, 16th session, Document CAT/C/16/D/41/1996, Geneva, 13.5.96; Svenska Dagbladet, 4.6.96; Neue Zürcher Zeitung, 12.6.96.

CENTRAL AND EASTERN EUROPE

ASYLUM SEEKERS RETURNED BY GERMANY, JAILED IN POLAND

The strict implementation of the "safe third country" rule by German border authorities is resulting in refugees being jailed as criminals in Poland, according to *Forschungsgesellschaft Flucht und Migration* (FFM), a German research centre on migration and refugee problems,.

After seven months of imprisonment on remand, 20 young Macedonian refugees were sentenced to several months of imprisonment each by a Court in the Polish city of Szcecin. The Macedonian youths' only crime consisted in having attempted to enter Germany without visas - by crossing the "green" Polish-German border. The German Border Protection (*Bundesgrenzschutz*: BGS) stopped the 20 "undesirable aliens" and immediately sent them back to Poland - a "safe third country" according to the new German asylum law.

The 20 Macedonian youths were all set free on probation by the Szcecin Court since their detention on remand exceeded their prison sentences. In front of the judges, all of them declared that they could not return to the desperate situation in their home country. The only remaining option for them is to stay in Poland illegally.

FFM claims the case is not unique. For several months, this Berlin based research centre has been receiving evidence indicating that people arrested attempting to cross Poland's border with Germany are being detained in prisons in north-western Poland. This reality, says FFM, flies into the face of the German government's often reiterated assurances that returned refugees are granted "fair treatment" and access to an orderly asylum examination procedure in "safe third countries".

Together with the 20 Macedonian asylum seekers, the Szcecin Court also sentenced two of their countrymen living in Poland and two Poles, accused of having assisted the asylum seekers in their attempt to cross the border. Three of them were sentenced to prison terms between one and a half and two years.

Ironically, the sentences of the Szcecin Court are based on a law introduced by the former communist regime with a view to preventing its own citizens from leaving for the West. Under this law, "unauthorized exit" from Poland constitutes an offence.

A Polish demonstration for Germans asylum hard-liners?

FFM says that the Szcecin sentences must be considered an attempt to demonstrate to the Germans that Poland is willing to take firm action against undesirable refugees. Indeed, until recently, the Polish police merely stamped an order to leave the country legally in the passports of returnees from Germany and then set them free. This practice resulted in many asylum seekers making new attempts to cross the German border - often risking their lives, by swimming over the Oder or the Neisse at night. This situation increasingly irritated asylum hard-liners in the German government.

FFM representatives attending the Szcecin trial therefore were not astonished when they discovered two other German observers, who eventually turned out to be officers of the BGS, responsible for the arrest and return of the "illegal aliens". The two officers told the FFM observers that the Szcecin trial

was "the result of the BGS's investigation".

"Trafficking in human beings"?

The BGS, however, sharply rejected the claim of FFM that German authorities were trying to influence the Polish judiciary. In the view of the BGS, the German authorities are directly concerned by the Szcecin case, since two of the persons accused of assisting the 20 Macedonians in their attempt to enter Germany, are under investigation there for "trafficking in human beings".

Helmut Dietrich of FFM finds this term "rather absurd". Germany's new restrictive asylum law is making illegal travelling part of asylum seekers' everyday life, he says, and even the children and grandchildren of the generation of Yugoslav "guest workers" legally residing in Germany are being forced into illegal travelling, as the fairly cheap and formerly legal travel route from the Balkans to Szcecin is being closed. It is only natural that young people in particular continue their journey to their relatives and friends in Germany, even without a visa, Dietrich stresses. If they resort to the "commercialised assistance" of citizens of the transit countries and of countrymen living along the route, they are suddenly labelled as being part of operations of "trafficking in human beings", or even of "organised crime".

Indeed, in November 1995, a new paragraph of the Polish criminal code entered into force. Under the provision, the "creation of a criminal organisation" is punishable by up to 10 years imprisonment. According to FFM, the provision comprises "organised assistance" in "unauthorised exit".

Source: Frankfurter Rundschau, 5.7.96. For further information contact: FFM, Gneisenaustr. 2a, D-10961 Berlin.

UKRAINE RESTORES SOVIET-ERA BORDER ZONE

In attempting to satisfy Western demands for strict migration control, it is not just Poland that is resorting to practices introduced in the era of the Iron Curtain. In June, the Ukrainian Parliament restored a Soviet-era border control zone with special powers for the police to crack down on attempts by illegal migrants to travel to the West.

Deputies approved a law giving police and border guards authority to check individuals "giving cause for suspicion" and authorising them to use weapons more often. "This law allows for more thorough document checks", deputy Yuri Krizsky, one of the measure's sponsors, told reporters. "Most people trying to enter Ukraine or pass through to the West remain for a time in border areas to check them out".

Soviet border regions had control zones up to 50 km wide which foreigners needed special permission to visit. Controls were toughest at western frontiers.

9,787 people, most from southeast Asia, were caught last year trying to cross Ukraine's western border to Poland, Slovakia and Hungary. Numbers are about the same this year. In June, border guards among others stopped groups of Kurds and Indian nationals and discovered 42 illegal Chinese migrants in a sealed refrigerator truck abandoned near the Slovak border.

A spokesman for Ukraine's border guards, Sergei Astakhov, said 58,000 border violators had been arrested since independence in 1991, about half of them illegal migrants. "This law will make our job easier, but it won't put an end to all our problems", Astakhov said. "An impoverished state has trouble reliably protecting its borders. Sometimes we don't even have enough petrol to follow up a call".

Source: Reuter, 18.6.96

AUSTRIA

VIENNA CITY ADMINISTRATION INDULGES IN "CULTURAL RACISM"

The Viennese Green party is blowing the whistle on the Social Democratic city administration for introducing racist criteria into the Austrian capital's immigration policy.

Affecting mainly Turkish nationals - but also a number of Serbian families - the city administration's Magistrate Department 62 (MA 62) rejected applications for family reunification of third-country (non-EU) nationals on the grounds that the applicants had not demonstrated their ability to "assimilate to Central European customs, habits, and way of life especially in the areas of language and communication". "Applicants belonging to a cultural group which according to experience have difficulty assimilating" shall not be considered positively, it said.

A spokeswoman for the Greens pointed out that MA 62 officials had taken their decisions without even having met the applicants concerned. Peter Pilz, the head of the Green Group in the Austrian Parliament, said the MA 62 decisions were "the first racist motivations by a public administration since 1945".

An expert opinion (Prof. Ruth Wodat, and Prof. Bernd Matoushek) from the Vienna University Department of Linguistics termed the policy and text of the MA 62 as a typical manifestation of "cultural racism".

Vienna's Mayor, Michael Häupl, criticised the MA 62 at his own press conference because identical wordings were used in the rejection of Turkish and Serbian nationals along cultural lines. According to Austrian law each case must be considered individually. But Häupl defended the principle of using cultural criteria because they are based on a ruling by the Ministry of the Interior in which "the ability to integrate" is considered a key factor in granting residency status. According to the mayor 25 cases have already been dealt with along the new "ability to integrate" lines.

A week earlier, Mayor Häupl had demonstratively expressed his support for several Social Democratic city district commissioners who had triggered a row by publicly demanding the "evacuation" of foreigners from city areas with a particularly large foreign population. Mayor Häupl argued such a policy aimed at the "soft renewal of the city".

Eugene Sensenig (Salzburg)

Sources: Salzburger Nachrichten, 19.6.96, 25.6-.96, 27.6.96, 28.6.96; Standard, 25.6.96. Department of Linguistics, University of Vienna, Expert opinion R. Wodak and B. Matouschek on a decision of MA 62, Vienna 21.6.96, 8 p., in German.

Comment

Austria joined the EU in 1995. Since then it has been having a hard time integrating its racist minority policies into a Western European greater whole. E.g.:

- Austria is the only country in the EU in which it is expressly forbidden to elect "third country nationals" (non-EU citizens) to the position of shop steward. In spite of international criticism, no policy reform is planned.
- non-EU-nationals are prohibited by law from standing for election in Chamber of Commerce, Chamber of Labour (Arbeiterkammer), and Student Union (Österreichische Hochschülerschaft) elections.
- non-EU-nationals are excluded from a large percentage of the welfare services they fund through the mandatory federal "Social Insurance" scheme;
- handicapped non-EU-nationals are not eligible for national and provincial support for the handicapped;
- Austria has no anti-discrimination or antiracist legislation;
- Austria has no minority, integration, or race relations policy; etc.

93 per cent of immigrants are non-community nationals. Bosnians, Turks, Serbs, Croatians, and Kurds are the largest non-EU-national minorities. Because of the EU-Association Treaty with Turkey Austria is now being forced to improve the legal status of Turkish nationals legally residing in the country. For this reason the federal and local authorities are trying to prevent any new "privileged" non-EU-nationals from immigrating to Austria.

Vienna will be holding city elections this autumn. The nationalist and nativist leader of the Austrian Freedom Party, Jörg Haider, has announced that he will be playing the xenophobic card. This is one reason why the local elite of the Viennese Social Democratic party are attempting to show that they are not soft on immigration.

Ironically, a large percentage of the party cadres are made up of second and third generation Czechs, Slovaks, and Hungarians who migrated to the Hapsburg capital prior to World War I.

A second explanation for the culturally racist policies of the Viennese authorities is the fact that the Austrian capital has followed a

policy of forced assimilation over the last 150 years. The very officials who are now defending Vienna from immigrants with a limited "ability to integrate" are themselves the children or grandchildren of Slavic, Magyar, or Mediterranean immigrants who were forced to become German Austrians in the first half of the 20th century.

Eugene Sensenig

Contact: alpin - Austrian Link to Progressive International Networking, A-5020 Salzburg, Jakob-Haringer-Str.3, Tel. +43/662 459454, Fax +43/662 454889, email: alpin@alpin.or.at

CONTROVERSIAL REFORM OF AUSTRIAN FOREIGNERS LEGISLATION

In early 1995, Caspar Einem, a "new generation" Social Democrat credited for his liberal views on immigration, replaced the notorious hard-liner Franz Löschnak as Austria's Interior Minister. When Einem went public with plans for a sweeping reform of Austria's obsolete and discriminating foreigners and refugee legislation, he at once came under massive attack from conservative and nationalist circles, including senior officials of his own department.

One year later, our correspondent Helga Schwarz asked Michael Genner (MG.), a legal counsel for refugees working with *Asylkoordination Österreich*, an NGO in support of asylum seekers, for his assessment of Minister Einem's reform.

CL: Caspar Einem's reform seems to have stalled. Due to the fall of the previous red-black coalition government, the Parliament did not vote for Einem's law package in late 1995, as originally planned. Although the elections brought the "red-black" coalition [the coalition government formed by the Social Democrats (SPÖ) and the Christian conservatives (ÖVP)] back to power and Einem remained as an Interior Minister, controversy about his reform plans has only increased in 1996. Einem has come with two amended draft Bills in March and May which have disappointed human rights and asylum NGOs. Has the Minister finally bowed to the xenophobic circles?

MG: Austrian human rights groups were very hopeful after the nomination of Caspar Einem last year. However, although a year has passed, the law is still the same as before and nothing, or very little, has changed as regards the composition, the mentality and the practice of the civil servants apparatus under the Interior Minister. Mr Einem's first draft proposal for a reform of foreigners legislation which was not voted because the elections were advanced, was a step in the right direction.. A new draft proposal of March 1996 was acceptable too, except for a questionable "third safe country" clause. However, in May, Einem suddenly held a press conference together with the leader of the ÖVP's parliamentary group. This latest proposal brought a massive change for the worse, as compared to the earlier drafts, and even to prevailing unacceptable practice.

Two provisions of the draft, in particular, are totally unacceptable to NGOs. The first states that an asylum application may be rejected as "manifestly unfounded", if it does not meet the criteria of the Geneva Refugee Convention or if the applicant is manifestly untrustworthy. This sort of motivation of rejections is of course widely used already now. However, for the time being, legal remedy against such decisions is still available. The new draft abolishes this legal protection. According to the new draft law, asylum seekers have a right to stay in the country pending a decision on their application - a change much praised by the government. However, another provision of the new draft says that, if an asylum application is rejected as "manifestly unfounded" in a fast-track procedure, the applicant is also denied provisional stay. According to the new draft, such decisions must be appealed against within 48 hours and are decided upon within four days. Thus, an asylum procedure would take no more than six days. The reason for this is that Hungary and other countries are not obliged to readmit asylum seekers who have stayed in Austria for more than a week. That is why the authors of the draft invented what I would call a fast-track "prevention of asylum procedure".

We are completely aware, that practically all of our clients would have their applications turned down according to this scheme. Recently, a group of Afghan women with small children arrived in Austria. Their applications were all turned down. The grounds given were identical in all decisions: They had fled from a civil war situation "only" and therefore were not "refugees" under the Geneva Convention. One of the women had fled, because her husband had been murdered. The assailants had cut off his head, his arms and legs, torn out his eyes and placed all this in front of his wife's house door. We appealed against the negative decision. Under the new draft law, we

would have only 48 hours to do so, and quite probably we would never see the applicant and could not do anything at all.

This is why all NGOs massively opposed this proposal, and it was eventually withdrawn - partly because of our protests, but in the first line because of criticism of the Right, as well as the unions and the Chamber of Labour, which feared that some of the more liberal provisions of the foreigner law would weaken Austrian citizens' position on the labour market. The government also was afraid of Jörg Haider, the leader of the nationalist and xenophobic "Freedom" Party. Haider threatened to launch a referendum campaign against Einem's reform. Elections for the European Parliament and the Vienna City Council are taking place in October, so the Government wanted to put an end to the heated public debate and propose a new draft after the elections.

CL: Was the provision on "manifestly unfounded" applications introduced with a view to adapting to Schengen practice at a time when Austria is preparing for the implementation of the Convention?

MG: Already under its previous Interior Minister, Löschnak, Austria was pioneering European harmonisation of asylum law along the most restrictive lines. And this is continuing now. But we should not forget that an unstable situation has arisen in Austria. On the one hand, the human rights movement succeeded through years of massive campaigning in forcing Mr Löschnak's resignation and obtaining the nomination of an Interior Minister with a liberal reputation. On the other hand, the political pressure of the Schengen Group is obviously enormous. In my opinion, it is not certain yet, how this confrontation will end.

I do not believe that Austria will necessarily have to play the role of an eastern watchdog of "Fortress Europe". Austria, it is true, was among the first countries to introduce restrictive laws, but Löschnak's fall and the planned change of legislation could also result in a roll-back, with Austria becoming a pioneer of liberalisation on an international scale. This is what we are struggling for.

CL: You still seem to attach some hope to Caspar Einem's reform. Can you name some positive elements in his most recent draft proposal?

MG: Yes. For example, asylum seekers who are not considered refugees as defined by the Convention can be granted a *de facto* refugee status, if sending them back to their country of origin would constitute a violation of the principle of *non-refoulement*, or if their return is unreasonable considering the political situation in their home country. In practice, this category existed already before, but the draft establishes a legal title to de facto status. NGOs, however, demand that this legal title comprise a secure social status. They further demand that the de facto status be granted not only ex officio, but also upon application according to a fair procedure.

Another improvement concerns the right to family reunion. Asylum could be extended to relatives of a recognised refugee other than just spouses. And finally: For eight years (previously five years), refugee status cannot be withdrawn on the grounds that the situation in the country of origin has improved.

Even the "third safe country" provision has been softened down a bit in so far as it shall be examined whether a third country actually grants the asylum seeker concerned stay and access to a fair asylum examination procedure. In the present law it says that an application must be rejected even if an applicant only travelled through the third country in transit.

With regard to residency law, the most important improvement is that adolescent "second generation" immigrants may no longer be expelled. This is, indeed, substantial. Also guest workers shall have a right to bring their family to Austria. This particularly outraged the far-right xenophobics. They claimed that this would result in masses of foreigners pouring into the country, at a time when many Austrians were without a job. Very justly, Interior Minister Einem has always insisted on the need to link the right to work to the right to residency. In other words, anybody legally residing in Austria must automatically also be authorised to work. This means the abolition of the Law on the Employment of foreigners (*Ausländerbeschäftigungsgesetz*) which privileges Austrian citizens on the labour market. Yet, with this position, Einem has run into fierce resistance from the unions and the so-called Minister of Social Affairs.

CL: Einem likes provocation. For example, he maintains stubbornly that Austria is a country of immigration. This in an act of courage on the part of an Interior Minister and considering today's political climate.

MG: Einem is courageous on the one

hand, when he makes remarks that question existing regulations and habits. Yet he made one big mistake. He was not courageous enough, or he gave up to soon. He always refrained from purging his department of blatantly disloyal civil servants. After Mr Löschnak's fall, we repeatedly demanded a thorough reform of the civil servants apparatus. This meant no less than purging the Interior Ministry's bureaucracy of those racist and anti-constitutional elements who tried to oust Einem from office immediately after his nomination and with the enthusiastic support of Mr Haider and the Viennese tabloid, *Die Kronenzeitung*. This was actually little less than a coup attempt, thwarted only thanks to massive demonstrations on 1 May 1995 (see CL No.34, p.3). Einem failed to get rid of these people. In such dangerous situations, mistakes made out of good nature often prove to be the worst.

We did get rid of one extremist and in the asylum authorities. He was the former director of the Vienna asylum office and he was a candidate for the directorship of the Federal Office for Asylum. At the decisive moment, we presented Minister Einem and the public with a comprehensive dossier. The man did not obtain the post, he disappeared from the asylum authorities as a whole and is now administering the law on war weapons exports. Of course, he can do a lot of harm there, but at least he no longer deals with refugees. In his place, Wolfgang Taucher, a former head of the legal department of the catholic charity, Caritas, has become the head of the Federal Office for Asylum. This is an improvement, indeed. However, too many other civil servants are continuing to do mischief in Mr Einem's department.

CL: Does this not indicate that the Interior Minister lacks support within the ranks of his own party an70d in the coalition government?

MG: Certainly. Within the SPÖ (Social Democrats) he represents minority positions. Nonetheless, he did very well in the elections for Parliament, although he was placed at the bottom of the list of candidates on his party's voting-papers. He was actually voted by direct mandate. The Social Democrats increased their share of the vote from 31 to 38 per cent in these elections, but they should be aware that these were "lent" votes. They got them, because people were afraid of a conservative-nationalist coalition (ÖVP and Haider's Freedom Party) and because they wanted a change of foreigner law. That is what Einem promised when he became Minister. He presented his first proposal just before the advanced elections were announced, so he was bound to fail that time. But now, we must demand that the Social Democrats fulfil their promise.

Abridged English version of an Interview by Helga Schwarz, Vienna.

DENMARK

UNCONTROLLED REGISTRATION OF FOREIGNERS

A loophole in the law establishing the type of personal data the Danish police intelligence service, *Politiets Efterretningstjeneste* (PET) may store and process, has been revealed. The law gives the PET a free hand to register whatever they want and without any restriction in time on foreigners legally resident in Denmark.

It is not known to what extent the PET actually did register foreigners, since this is considered classified information. But a recent court case against three Egyptians who were accused of planning terrorist attacks in Denmark gives an idea of the extent of the PET's surveillance activities. The three defendants were suspected of involvement with the organisation responsible for the bombing of the World Trade Center in New York.

Arab community in Aarhus region "scanned"

The defence lawyers for the three Egyptians told the press that the PET had extensively scanned the Arab community around the city of Aarhus, where the three were living. According to press information, the PET questioned around 2,000 persons - mainly foreigners. The three Egyptians were later acquitted by a Court of first instance, and the Public Prosecutor has decided not to submit the case to a higher court.

Danish citizens: registration on solely political grounds prohibited

The PET is prohibited by law from opening files on any Danish citizen solely on political grounds. However, this definition does not exclude registration on political grounds, if these grounds are related to crimes threatening the state, the security of the society and public order. These rules were established in 1968 by a Declaration of the Government stating on which terms registration by the PET should be allowed.

No control of PET registration of foreigners

In answering a series of questions from Sören Sondergaard, an MP for *Enhedslisten* (The Red-Green Alliance), about the control of the PET and the military intelligence service, FE (*Forsvarets Efterrettningstjeneste*), Minister of Justice Björn Westh also gave the information that the committee controlling every registration of Danish citizens has no such authority with regard to the registration of non-Danish persons permanently residing in Denmark. The Minister contended that, in practice, the registration of foreigners followed "mainly" the guidelines concerning Danish citizens. But the Deputy Chief of the Police Office of the Ministry of Justice has refused to give a more precise definition of what "mainly" means in relation to non-Danish persons.

The Wamberg Committee

The committee controlling the activities of the PET is called the Wamberg Committee after its first chairman. It was formed in 1964 after the press revealed that thousands of Danish citizens had a file in the PET archives based only on information about their political opinion. These files were ordered to be destroyed and after that any new "political" registration should be sanctioned by the Wamberg Committee. In June 1968, the Government set up guidelines which regulate how the PET must proceed when it wants to open a file on a Danish citizen.

The Wamberg Committee has eight members. Four of them, considered "non-political", enjoy the respect and esteem of a wide public. The other four are: a representative of the PET, the director of the Foreign Office and the chiefs of department in the Ministries of Justice and of Defence. The committee meets about 10 times a year at the PET headquarters. At these occasions the PET presents the persons they want to open new files on and the committee supervises whether the provisions are followed. The committee is also responsible for making spot checks in the PET register. The quality of these checks is, however, disputed, since it is the PET who at each meeting presents the committee with a number of cases, which then are examined.

The number of Danish citizens registered by the PET is unknown. The Minister of Justice said in one of his answers that in 1972 there were around 37,000 Danish citizens registered for other reasons then security clearances (which are not controlled by the Wamberg Committee). This number had shrunk to an approximate 18,000 in 1980 and was down to around 13,000 persons in 1980. By the end of 1995, the exact number of Danish citizens with a PET file was 6,135.

The register of the military intelligence service

Since 1978, the Wamberg Committee has also been controlling the work of the military intelligence service, FE. According to the Minister of Defence, Hans Haekkerup, there are around 76,000 persons in the archives. The great majority of these files concern security clearances. The number of Danish citizens registered by the FE on other grounds is around 550.

Mad Bruun Pedersen (Copenhagen)

Sources: Answers to questions no.2425-2430, no.2605-2608, no.2613-2616, publ. in Folketingstidende 1995-96; Berlingske Tidende, 3.7.96; Danmarks Radio, Orientering, 3.7.96; Socialisten Weekend no.10, 5.7.96.

BELGIUM

PARLIAMENT ADOPTS HARSH ASYLUM LAW

At the end of June, the Belgian Senate voted a new, particularly harsh asylum law. Among other things, the law provides for the unlimited detention of asylum seekers whose application has been turned down.

The Bill was proposed by the Socialist Interior Minister, Johan Vande Lanotte, and was first vehemently opposed by the Christian Democrat coalition partners in Belgium's "red-black" coalition government, who accused the Interior Minister of "perfidious inhumanity". When the Christian Democrat Senate group threatened to abstain from voting the Bill, the Socialist Prime Minister Dehaene himself had to rush into Parliament and catechise the leaders of the four coalition parties in order to ensure the adoption of the Bill. Nonetheless, several Christian Democrat senators abstained from voting.

Detention of "illegal" aliens

The new asylum law has provoked controversy not only within the ranks of the government but also in the Belgian public. It provides for the unlimited detention of rejected asylum seekers in special centres, pending their deportation. Under the former law, this form of detention was limited to a maximum two months.

Carrier sanctions
Airlines are required to check their passengers' travel documents before boarding and make sure that their livelihood is ensured in Belgium, otherwise they are made responsible for their return.

Medical care only in emergency situations
The most controversial provision of the new law concerns "illegal" aliens' right to medical care. They are to be granted medical assistance in "emergency situations" only.

Christian Democrat MPs expressed concern that doctors and hospitals might turn away people seeking help, merely out of fear of not being reimbursed. They particularly referred to routine examinations of pregnant women which can be crucial in avoiding complications at birth. It was finally agreed to leave it to the doctors to decide in each case whether their is an emergency or not.

Source: Neue Zürcher Zeitung, 29/30.6.96

FRANCE-SPAIN

CLOSER FRENCH-SPANISH POLICE COOPERATION

The Spanish Interior Minister Oreja and his French counterpart, Jean-Louis Debré have signed a bilateral treaty on police cooperation. The treaty provides for the establishment of four joint police stations at the French-Spanish border with the aim of improving the two countries' action against illegal immigration, drug trafficking and terrorism.

A day before the signing of the treaty on police cooperation, the Spanish Prime Minister Aznar on a visit to Paris expressed satisfaction with what he called "recent French efforts" to intensify the prosecution and facilitate the extradition of ETA terrorists. He also welcomed the imminent signing of the EU Convention on Extradition (see article in this CL), under which, he said, extradition will be possible for mere "affiliation to a terrorist organisation" [i.e. even when the extradited person is not suspected of participation in any particular terrorist crime].

The signing of the treaty follows long-standing Spanish allegations that ETA terrorists are finding sanctuary too easily in France. As late as in May, the Spanish Interior Minister Oreja had complained to his French counterpart that the ETA leadership was still hiding in France.

Source: Neue Zürcher Zeitung, 3.6.96.

DOCUMENTS AND PUBLICATIONS

Conference of Representatives of the Governments of the Member States:

- Progress Report on the Intergovernmental Conference, IGC, The Presidency, Brussels, 17.6.96, CONF 3860/1/96 REV 1, Limite (Chapter on JHA cooperation: see article in this CL).

- Note No 1, Citizenship of the Union, Brussels, 18.3.96, SN 1802/1/96 REV 1.

- Note No 2, Fundamental rights, Brussels 14.3.96, SN 1803/96.

- Note No 3, Justice and Home Affairs: Objectives - Scope - Means of action, Brussels 14.3.96, SN 1804/1/96 REV 1.

- Note No 4, Justice and Home Affairs, Decision-making process / Instruments - Implementation, Brussels, 14.3.96, SN 1805/96.

- Note No 5, Justice and Home Affairs - Judicial Control, Brussels, 12.3.96, SN 1806/96.

- Note No 9, Subsidiarity, Brussels 2.4.96, CONF/3809/96 LIMITE.

- Note No 10, Transparency/Opening up the Council's proceedings, Brussels, 2.4.96, CONF 3810/96 LIMITE.

- Note No 12, European parliament - Legislative function, Brussels, 2.4.96, CONF 3812/96 LIMITE.

- Note No 14, Role of the national parliaments, Brussels, 2.4.96, CONF/3814/96 LIMITE.

- Note No 19, Court of Justice, Brussels, 18.4.6, CONF 3819/96, LIMITE.

- Note No 21, Enhanced Cooperation - Flexibility, Brussels, 16.4.96, CONF/3821/96 LIMITE.

- Note No 26, Financing the CFSP (and JHA), Brussels, 24.4.96, CONF 3826/96 LIMITE.

Contributors to CL No.45: Helle Hagenau (Brussels), Mads Bruun Pedersen (Copenhagen), Helga Schwarz, Michael Genner (Vienna), Eugene Sensenig (Salzburg), Michael Williams (Hedemora, S), Michael Spencer (Sevenoaks, Kent, UK), Jolyon Jenkins (Brighton, UK), Nicholas Busch (Falun, S).

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

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

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