

Fortress Europe?

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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

EURODAC COMPUTER TO HOLD FINGERPRINTS OF ALL ASYLUM SEEKERS

A confidential draft of a Convention on setting up the automated fingerprint register, Eurodac, provides for the compulsory registration of all asylum seekers in EU member states from the age of 14. Eurodac is presented as being necessary in order to implement effectively the Dublin Convention.

Criminalising asylum seekers

The Dublin Convention provides for the comprehensive exchange of personal data on asylum seekers between the member states for the purpose of determining the state responsible for examining an asylum examination. As well as exchanging applicants' personal details such as identity and travel documents, places of residence and travel routes, member states also bind themselves to communicate "other information necessary for establishing the identity of the applicant". Fingerprints are considered such "other information".

Since the often uncertain identity of asylum seekers is regarded as one of the main obstacles preventing the swift deportation of asylum seekers, a number of member states are already subjecting all asylum seekers to compulsory fingerprinting - an interference with persons' integrity, hitherto only considered acceptable in dealing with criminals and criminal suspects.

Swift deportation thanks to Eurodac

Swift deportation is also clearly the purpose of the planned Eurodac register. The preamble to the draft, however, suggests that the compulsory registration and exchange of asylum seekers' fingerprints in all EU member states is purely a humanitarian measure, which will help avoid lengthy asylum procedures and will spare applicants lengthy uncertainty about the outcome of their case. Fingerprinting is presented as a guarantee for asylum seekers that their application will be considered by a member state, and as a means of preventing "refugee in orbit" situations, where applicants are sent back and forth between countries, both of which deny responsibility for the case.

Extensive "pro-active" data matching

Eurodac is conceived as a central register for asylum seekers' fingerprints, managed by an automated system enabling the computerised matching and identification of fingerprints.

Member states shall take fingerprints of all asylum seekers over 14 and "promptly" transmit the relevant digital images to the Eurodac register. The Eurodac central unit checks the communicated fingerprint images against its own stock of images, stores them in the central data base and "promptly" sends the result of the check back to the requesting member state, together with those fingerprint images stored in the central database which the technical unit perceives as identical with images sent by the requesting state. The final identification shall, however, be carried out by the requesting member state in co-operation with the other member state(s) involved in the case.

It remains to be decided, whether the data sets will contain images of ten fingers or merely of two, together with the codes for ten fingers.

The fingerprints and other personal data stored in the Eurodac system may not be used for other purposes than determining the state responsible for examining an asylum application according to the Dublin Convention. However, each member state is authorised to use the data it has communicated itself for "other purposes in accordance with national law". This provision is likely to constitute a great temptation for member states to gradually set up their own fingerprint registers on foreigners accessible, for example, by prosecution authorities.

Data protection not for asylum seekers

Fingerprints shall be held in the Eurodac central register for a period of 10 years. The draft says nothing about an obligation to delete the fingerprints and other personal data concerning asylum seekers, as soon as they have been granted legal residence in a member state.

By contrast with, for example, the Europol and the Schengen Conventions, the draft Eurodac Convention does not provide for its own data protection authority, since the data stored in the central register are considered the property of the communicating state. Asylum seekers - theoretically - have a right to be informed about their own data and to have incorrect or unlawfully stored data changed or deleted, according to the laws and procedures applicable in the member state, where the request for access is filed. Complaints by registered persons concerning Eurodac can be brought to national courts or other "competent national authorities" only. The draft says nothing about how asylum seekers, whose legal and economic situation is usually precarious, might be able to exercise their right to a legal remedy in practice.

The Council controls the Council

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Disputes among member states about the implementation of the Convention shall be solved according to the same (fairly complicated and time-consuming) procedure established in Article 40 of the Europol Convention. The question of a possible competence of the European Court of Justice in disputes between member states, and preliminary rulings upon request of national courts, is to be considered at a later date.

According to the draft's Article 14, the Council (Justice and Home Affairs) "shall see to it" that the Convention's regulations are implemented in "a satisfactory way" and that the Eurodac system works "satisfactorily". The Council shall also adopt the "necessary implementing measures". It remains to be agreed whether such decisions require unanimity or merely a qualified majority.

"Flexible" entry into force

Like the Convention on Extradition (see CL No.45, p.), the draft Eurodac Convention enables member states to put it into force immediately upon ratification, without having to await the conclusion of the ratification process in all 15 member states. Just as in the case of the Convention on extradition, this is likely to result in the member states with the most advanced and comprehensive fingerprinting practices forming an "A-team", which will gradually impose its policy lines on the other member states.

Collection of fingerprints pending ratification of the Convention?

According to an introductory note of the (then Italian) Council Presidency to the K.4 Committee's Steering Group I, attached to the draft, a number of items still require further examination:

- On the question of using Eurodac data for other purposes than those named in the Convention, it is to be examined whether it is actually technically feasible to restrict a member state's access to only its own data stock.
- Belgium, the Netherlands and Sweden have presented reservations regarding the minimum age of asylum seekers who shall be registered in Eurodac. The age of 14 named in the draft actually would amount to harmonisation on lowest common denominator. For the time being, only Germany, Austria and Denmark are said to openly advocate the registration of children of 14.
- It is to be discussed whether third countries which have signed the so-called "parallel Convention" to the Dublin Convention (e.g. Switzerland), shall be allowed to join the Eurodac Convention.
- Finally, the note seriously raises the question whether the member states should *bind* themselves to start taking fingerprints as soon as the Eurodac Convention is *signed* (and provided the entry into force of the Dublin Convention), "so as to have available a database of a certain size the moment the Eurodac Convention comes into force". This would amount to something really new in the history of European constitutional states: the "*prae hoc*" collection of personal data with a view to setting up a database, whose legal basis (the Convention) remains to be approved by the national parliaments.

Sources: Note of the Council Presidency to Steering Group I regarding the draft Convention concerning the establishment of the EURODAC system for the identification of asylum seekers, Brussels, 17.4.96, 6545/96 Limite, ASIM 60, (All quotations in this article are our translations from the Danish version); (Dublin) Convention determining the State responsible for examining applications for asylum lodged in one of the member states of the European Communities; Our sources.

GERMANY

LÜBECK ARSON: NEW EVIDENCE OF NAZI INVOLVEMENT REFLECTS ON INVESTIGATION AUTHORITIES

During the night of 17-18 January, a fire in a hostel for asylum seekers in the Northern German city of Lübeck caused the death of 10 persons (including five children). At first, a group of German skinheads was suspected of the arson. But soon, the investigation concentrated on "S.E.", a 20 year old Lebanese inhabitant of the hostel. Many German politicians and media, irritated by the international uproar in the wake of the tragedy, reported on the emergence of a foreign suspect with outright relief and barely hidden triumph. Yet six months later, new evidence of Nazi involvement in the arson has fuelled suspicions of political bias on the part of the prosecution authorities.

The night of the fire

The hostel, housing asylum seekers from six African and Arab countries, was situated in an isolated area of Lübeck's port zone. At midnight, S.E. and another occupant of the hostel chased away two men tampering with the car owned by S.E.'s family, parked in front of the house. At 3.25 AM, BGS police (Border Protection)

patrolling the area saw sparks followed by a bang in the porch of the hostel. The fire brigade arrived on the site 15 minutes later. The police immediately started extensive interrogations of the surviving hostel occupants, many of whom were in a state of shock and despair. The occupants later bitterly complained that the police were constantly asking about disputes among the resident families and suggesting that "ethnic conflicts" inside the hostel could be the origin of the arson attack.

Young Nazis found in the immediate vicinity of the burning hostel

At 3.43 AM, a city police patrol checked a group of three young men with skinhead looks in the immediate vicinity of the hostel, but, astonishingly, let them go. The three skinheads from the East German town of Grevesmühlen were arrested later the same day, together with a fourth man from the same town. Their Nazi sympathies quickly came to light.

Official and press comments on the dreadful event and the arrest of German suspects displayed a curious mixture of sentiments: On the one hand, honest dismay, demonstrations of grief, and collective self-accusations. Speaking to thousands of mourning demonstrators, the Mayor of Lübeck, Michael Bouteiller, vehemently accused the Government of having contributed to a climate of racism and violence by its tough anti-immigration policies and demanded that all survivors of the fire, regardless their legal situation, be granted permanent residence in Germany. On the other side, awkward self-pity and irritation over an "anti-German" campaign "unjustly" affecting Germany's and Lübeck's reputation abroad. Thus, for example, the *Land-Interior* Minister of Schleswig-Holstein, Wienholz, lamented the "real bad luck" of Lübeck being the site of such an incident.

Arrest of foreign suspect: grief turns into relief

Such outbursts of self-pity and offended national pride quickly turned into a general sigh of outright "relief", when the four Nazis were released from detention the next day, and S.E., the young Lebanese, was arrested on suspicion of having started the fire himself. Politicians and newspaper editors throughout the country at once joined in a concert of indignation over "influential people in Germany and outside" (the words of the influential editor of the national daily *Frankfurter Allgemeine Zeitung*, Reissmüller) who were jumping at every opportunity to accuse Germans of Nazism.

The four Nazis were released after presenting what the prosecutors considered a solid alibi for the time of the fire. The charge against S.E. was based on the eyewitness account of a German Red Cross rescue worker, J.L. He told the police that, on the night of the fire, the young Lebanese man had confessed to him that he had started the fire.

New evidence undermines the credibility of the prosecution's version of the events

The trustworthiness of J.L. was seriously undermined when private investigators revealed the witness's friendship with M.H., another Red Cross worker engaged in the rescue operation at the hostel. M.H., who has a history of Nazi activism, eventually proved to have urged J.L. into incriminating S.E. Doubts about the investigation grew, when it emerged that a police medical examination of the three skinheads had revealed traces of burned hair, and that the alibi of the three was not as watertight as originally claimed by the prosecutors.

International committee of experts ignored

After conducting its own investigation in Lübeck at the request of S.E.'s lawyer, an international committee of experts (including among others the Israeli-German lawyer, Felicia Langer, the British Human Rights expert and lawyer, Geoffrey Bindman, the Nazi-hunter, Beate Klarsfeld, the French lawyer and professor of law, Christian Bruschi, and the Italian expert of international and criminal law, Mario Agelelli) presented a preliminary report in late June, expressing strong criticism over the general "lack of balance and objectivity" by the prosecution authorities. In particular, the committee pointed at serious technical deficiencies in the police investigation, which, it said, resulted in the loss of crucial pieces of evidence. It also criticised the hasty release of the Nazis in spite of blatant inconsistencies in their accounts, and warned that the intended deportation of some of the former hostel residents and witnesses of the fire before the conclusion of the court case would inevitably undermine the credibility of the coming trial. Significantly, many German media barely reported the committee's conclusions and instead accused its members of bias.

New evidence leads to S.E.'s release from detention

However, a further blow to the credibility of the prosecution authorities came with the publication of a scientific report by Germany's most eminent expert on fires, Ernst Achilles. His findings on the starting place and possible causes of the fire strongly contrasted against the prosecutor's theory that the fire started in the second floor of the hostel. This question was crucial, since the charges against S.E. were essentially based on this assumption.

Meanwhile, S.E. remained imprisoned on remand, despite unanimity among all former occupants of the hostel about his innocence, and despite the prosecution's own admission of S.E.'s lack of a motive for the arson. S.E.'s conversations with visiting family members were bugged.

Only when further investigations by journalists established friendly contacts between the Red Cross rescue worker M.H., and the two car thieves chased away by S.E. less than three hours before the fire, did the Court responsible for S.E.'s detention find it opportune to set him free pending the trial, despite the prosecution's continuing claims that he was still considered the main suspect.

Embarrassing questions from "outside Germany"

S.E. is no longer charged with murder, but with "arson leading to death" instead. The court has designed Ernst Achilles as its expert concerning the fire. As a result, an acquittal of S.E. is now more probable. But whatever the outcome for S.E., the handling of the case by the public prosecutors, and, in particular, their remarkable lack of initiative in searching for other possible perpetrators will continue to fuel grave doubts in many quarters about the determination of German authorities to tackle anti-foreigner violence. Commenting on the Lübeck tragedy, the Swiss conservative newspaper, *Neue Zürcher Zeitung*, raised a number of disquieting questions: "Did the prosecution, out of misplaced zeal, engineer a wrong version of the crime? Did it overlook crucial evidence out of incompetence or ignorance? Have invaluable traces been definitively blurred? Did the strong public pressure lead to the premature charging of a suspect? Was a foreign suspect more of a relief to the German public? Will the initial suspects be interrogated again?". For the time being, all these questions remain without an answer.

Sources: Press dispatches compiled by AG für Freies Fluten, Hanau, Tel/Fax: +49/6181 184892, E-mail: AG3F@oln.comlink.apc.org; "Dir warn's", c/o Antirassistisches Telefon Hamburg, Fax: +49/40 430449; Lübecker Bündnis gegen Rassismus, c/o alternative, Willy-Brandt Allee 9, D-23544 Lübeck; Informationszentrum f. Rassismusforschung/D.I.R. e.V., Postfach 1221, D-35002 Marburg, Fax: +49/6421 61188; E-mail: dir@mail.uni-marburg.de; Neue Zürcher Zeitung, 26.7.96.

FRANCE

IRREGULAR IMMIGRANTS: INCONSISTENT AND ARBITRARY GOVERNMENT POLICY

On 23 August, riot police using batons, tear gas and sledgehammers stormed a Paris church and evicted 300 African migrants. But the dramatic raid failed to put an end to the ever more heated conflict between the Government and the steadily increasing number of "irregular" immigrants, together with French human rights groups. The French sanctuary movement is growing and authorities' attempts to tackle the situation are marked by inconsistencies and arbitrariness.

In early July, 300 Africans threatened with deportation sought sanctuary in the Saint-Bernard church in Paris. The 300 are part of the ever growing number of the so-called "*sans-papiers*" - foreigners without residence papers. Many of them have been living in France for years, but suddenly found themselves in a situation of illegality after the entry into force of the ultra-restrictive "Pasqua laws" on immigration control (see CL No.17, pp.7-8, No.18, p.5, No.35, p.6, No.43, p.7). Since March, "irregular" immigrants, often supported by French family members, friends and human rights groups, have been protesting against the government's deportation policy with hunger strikes, church occupations and marches. The movement soon spread from Paris to the provinces.

Contradictory government moves

The authorities' reaction was contradictory. On the one hand, police raids of churches and immigrants' homes - often ending in family break-ups and legally questionable expulsions, and the institutionalisation of charter flights taking deportees back to Africa. On the other hand: negotiations with human rights associations, Interior Ministry directives to the immigration authorities recommending a "humane" approach in dealing with residence requests, and the case-by-case re-examination of residence applications of immigrants whose deportation had been previously ordered.

The "home of human rights"?

In summer, an impressive number of celebrities, including stage manager Ariane Mnouchkine and film star Emmanuelle Béart, expressed their support for the *sans-papiers* and rumours began to circulate about an imminent negotiated solution to the conflict. But on 23 August, hundreds of riot police stormed the Saint-Bernard church in Paris. Police smashed the church gate with sledgehammers and evicted 300 Africans, 10 of whom had been on a hunger strike for 50 days. Press images of the incident went around the world, seriously denting the reputation of France as "the home of human rights". At home, a growing solidarity movement responded with a wave of demonstrations and public protests.

Ambiguous decision of the Conseil d'Etat

The government justified its rigorous action with reference to a recent decision of the country's highest administrative court, the *Conseil d'Etat*, denying any legal claim of the *sans-papiers* to residence. However, in the same decision, the Court also required that the government respect the right to family life, protect sick persons from deportation, and avoid undue hardship. Furthermore, the *Conseil d'Etat* required equal treatment of the *sans-papiers* in all parts of the country and condemned the prevailing arbitrariness of the authorities.

Government grants stay to 120

In a hasty effort to meet mounting public indignation, but in clear contradiction of the requirement of equal treatment, the government promised to reexamine the cases of the 300 Africans of Saint-Bernard. In the meantime, 120 of them have been granted stay. On the other hand, eight Africans have already been deported - partly in breach of legal and humanitarian requirements. Three are being detained for infraction of the foreigners law, and one person is being held pending deportation. Remarkably, the Interior Ministry refrained from giving grounds for its decision to regularise the 120, in order "to avoid precedents" likely to trigger a nation-wide flood of requests for reexamination.

Le Pen's shadow

By blending spectacular and tough action against the *sans-papiers* with sudden concessions and demonstrations of humaneness in publicised cases, the government is obviously trying to satisfy a part of the constituency that is continually drifting towards Mr Le Pen's extreme-right *Front National*, while at the same time avoiding unrest among the country's large immigrant population.

Cardinal blames solidarity movement

Significantly, the Catholic church seems to have similar concerns. While many parishes have offered sanctuary to the *sans-papiers*, and the lower clergy has been strongly involved in the solidarity movement, French Cardinal Lustiger was quick in condemning "political-humanitarian organisations" for "manipulating" the immigrants and stirring them up against the government. And when the police smashed the gates of the Saint-Bernard church with sledge hammers in blatant violation of church sanctuary, the Cardinal's first reaction was to blame the solidarity movement for its alleged obstruction of a peaceful settlement of the conflict.

Sources: GISTI (30, Rue des Petites Ecuries, F-75010 Paris, Tel: +33/1 42 470709; Fax: +33/1 42 470707); Reuter, 23.8.96; Neue Zürcher Zeitung, 6/7.9.96.

CONSTITUTIONAL COUNCIL CENSURES PARTS OF ANTI-TERRORISM LAW

The French Constitutional Council has partly censured the two most controversial provisions of a bill on terrorism (see CL No.39, p.9). In particular, the Constitutional Council annulled a provision defining "assistance" to an illegal alien as a terrorism-related offence.

The Bill was finally voted through by the French parliament's right wing majority in June, but the Socialist group filed a complaint against some of the law's most controversial provisions to the Constitutional Council. In its decision, the Council stated that the "automatic" connection established by the bill between "assistance to an illegal alien" and presumed involvement in terrorist activities breached the Constitution. The Council argued that, if a connection can actually be established in a particular case between an act of "assistance" (e.g. housing or hiding an illegal alien) and terrorist activities, existing punishable offences under the Penal Code - e.g. "complicity with terrorist acts" and "hiding of criminals" - already allow penal prosecution.

The Constitutional Court further censured a provision authorising the police to search private homes at night on presumption of a terrorism-related offence. Under the normal French penal procedure code, searches are prohibited between 9 pm and 6 am. The Council found that house searches at night breached the constitutional guarantee of the "inviolability of the home". The Council stated that night-time searches are acceptable in situations of "flagrancy" only - i.e. when a terrorist act is imminent or has just been committed.

The "delict of solidarity"

The Constitutional Council, however did not censure a provision, according to which persons assisting an illegal alien on humanitarian grounds face the same punishment as professional smuggler organisations acting for purposes of gain. The provision grants immunity from prosecution only to spouses, children and parents of illegal aliens. But helping a brother, a life companion or a childhood friend still is considered an offence.

In a common declaration following the decision of the Constitutional Court, some 30 French NGOs asked: "Must associations which are daily helping foreigners in difficulty also expect to be prosecuted some day?" Only "assistance" for purposes of gain should be punishable, the declaration stresses.

Sources: Le Monde, 19.7.96; Journal Officiel de la République Française, 23.7.96: Décision du Conseil Constitutionnel no 96-377 DC; Déclaration des Associations après la censure du Conseil Constitutionnel, Paris, 26.7.96.

SWITZERLAND

SWISS CITIZEN ABDUCTED BY WESTERN SECRET SERVICE?

Bruno Bréguet, a Swiss citizen and former accomplice of the legendary "king of terrorists", 'Carlos', has been missing since November 1995. There are reasons to believe that he was abducted by a Western secret service, acting on behalf of French Carlos investigators and with the knowledge of the Swiss Federal Prosecutor.

Bruno Bréguet (45) is not exactly an average Swiss citizen. In 1970, at less than 20 years, he was sentenced to 15 years imprisonment by an Israeli court for having attempted to smuggle explosives destined to the Palestinian resistance. Bréguet was set free in 1978, but already in 1982 he was arrested by the French police in Paris, together with Magdalena Kopp, the then life companion of the Venezuelan terrorist Ilich Ramirez Sanchez, alias "Carlos". In the car used by Bréguet and Kopp, the police found several kilograms of explosives. This time, Bréguet was sentenced to five years of imprisonment. After his release, three and a half years later, began to live a normal and inconspicuous life, staying mainly in Austria and Switzerland.

Strange disappearance

Bréguet and his partner, Carol-Anne Thompson, also bought a little house on the Greek island of Corfu, where they often stayed in recent years. On 11 November 1995, the couple and their child (aged two), on their way back from Greece to Switzerland, took the ferry *Lato*, linking Corfu with the Italian port of Ancona. Upon arrival at Ancona, Italian police searched the family and their car for explosives and weapons, but found nothing. Nonetheless, Bréguet was put back on the ferry to Greece, while his wife and their daughter were allowed to continue their journey home. Bréguet has been missing ever since.

Swiss Federal Prosecutor "not competent"

Strangely, Bréguet's name was not registered on the passenger list of the *Lato*, on which he was sent back to Greece. Yet, the Greek captain of the ferry later deposited his Swiss ID card at a Greek police station. Bréguet's family soon issued a search request via Interpol. Bréguet's Swiss lawyer, Jean-Pierre Garbade, requested the Swiss Federal Office of Prosecution (Bundesanwaltschaft: BA) to open an investigation for suspected abduction. But the BA said it was "not competent". A spokesman for the Swiss Foreign department said in January that Bréguet's case could justify consular protection, but "as long as we don't know where he is, we cannot provide this protection". A UN Committee on forced and involuntary disappearances has investigated the case - without success.

Greek authorities belatedly deny any knowledge of Bréguet's whereabouts

The Greek authorities at first refused to answer any questions about Bréguet's disappearance. Then, in January, they firmly rejected allegations that they were holding Bréguet and the Greek ministry of public order ordered a nationwide search for Bréguet.

Abducted by a secret service?

It is established that there are no charges against Bréguet in Italy, Greece or Switzerland. But Bréguet's relatives, friends and lawyers have suggested from the very beginning that he was actually abducted and is being held by a "Western secret service" acting in connection with an international investigation against the former terrorist network of "Carlos", co-ordinated by the French services. This presumption seems fairly romantic and out of place at first sight, but cannot be completely refuted, considering Bréguet's former relation with Carlos. The retired former "global" terrorist was arrested by the French secret service in Sudan and brought to France where he has been detained on remand since August 1994. The circumstances of Carlos' arrest in Sudan suggest that, in this particular investigation, the French authorities are showing little respect for formal legal procedures.

Swiss crack-down on alleged accomplices of Carlos

Shortly after Carlos' arrest, the French requested the Swiss Federal Office of Prosecution to interrogate a number of alleged former Swiss members of Carlos' terrorist network. The Swiss Federal Prosecutor, Ms Carla del Ponte, reacted promptly, by ordering the arrest of four Swiss leftists on charges ranging from participation in bomb attacks to murder. However, the investigation of the Swiss Federal Police never brought about any concrete results and the four were set free after two months, although the investigation was never formally closed.

Bréguet a key witness against Carlos?

Bréguet's brother, Ernesto, is suggesting that the French authorities are interested in Bruno Bréguet as a possible key witness against Carlos. He points to the remarkable fact, that, despite Bruno Bréguet's known former involvement with the Carlos network, the Swiss police did not attempt to interrogate Bruno in 1994, when they arrested the four leftists. In the opinion of Ernesto Bréguet, his brother was deliberately left out: "Special treatment was being prepared for Bruno already at that time. Beyond doubt, the Carlos-hunters see my brother as one of the most important witnesses". In the meantime, it has emerged that the police of the Swiss canton of Ticino tried to deliver a summons for interrogation issued by the Federal Police, shortly before he left Switzerland for his fateful journey to Corfu in autumn 1995, but did not find Bréguet at his Ticino address.

Detained in Croatia?

Bréguet's family recently claimed that, according to their own investigation, Bruno Bréguet was first moved around between various places of detention in Greece after his abduction, but taken to Croatia already in January.

Bréguet's lawyer also points to the intriguing fact that a likely key witness to his client's disappearance, the Greek captain of the ferry *Lato*, has never been interrogated, in spite of all official affirmations by Greek and other authorities that Bréguet's disappearance is being investigated. Such inconsistencies have fuelled speculation by Swiss newspapers following a three day visit of Federal Prosecutor del Ponte to Budapest in February. According to these rumours, Federal Prosecutor del Ponte was not on the plane that brought her staff back to Switzerland from Budapest, but instead remained somewhere in Central Europe, for reasons connected with the Bréguet case.

Sources: WochenZeitung, 12.1.96, 26.1.96, 16.8.96 (research: Fredi Lauener); Tages-Anzeiger, 27/28.1.96.

Comment

A citizen of a Western European country abducted and secretly held by one or several Western secret services? An absurd piece of speculation, a new product of some leftist plot-hunters' flourishing fantasy, one would like to conclude.

However, in assessing the Bréguet case, one should not forget his very turbulent past as someone convicted of pro-Palestinian terrorism in Israel and a follower of the man who for years was hunted as the world's most dangerous terrorist by all western secret services - Ilich Ramirez Sanchez, alias Carlos. Neither should one forget the long-standing co-operation of Western intelligence services, known as the "Kilowatt Group". This highly secretive anti-terrorist intelligence network was founded in the 1970s on the initiative of Israel as a response to the "Black September" massacre of 11 Israeli athletes at the Olympic games in Munich in 1972. The Kilowatt group, which is said to have changed its name since, is made of the secret services of all EU countries, of Switzerland, Norway, the USA (FBI and CIA), Canada, South Africa and Israel. Israeli services are believed to be playing a leading role within the group.

In 1991, it emerged that the agents of the Israeli secret service, Mossad, were illegally operating on Norwegian territory, with the consent and support of Norwegian security. Mossad agents, posing as Norwegian police, interrogated Palestinians seeking asylum in Norway. The Israeli-Norwegian operation ran within the framework of the Kilowatt group (see CL No.2, p.1). As early as 1973, a Mossad death squad killed a harmless Moroccan waiter, Ahmed Bouchiki, in Oslo, whom they erroneously had taken for one of the perpetrators of the massacre at the Munich olympics. Early this year, evidence emerged suggesting that Norwegian police and security also covered this Mossad operation. Thus, a lot is possible in Western constitutional democracies.

This said, we should recall that, considering Bréguet's adventurous past, there could be many other reasons for his sudden disappearance than just a secret service plot.

N.B.

CZECH REPUBLIC

VOLUNTARY REPATRIATIONS TO BOSNIA

The planned organised voluntary repatriation of Bosnian refugees who were granted temporary protection in the Czech Republic began with a first group of 72 people who boarded a plane heading for Sarajevo on 17 July. A second group of 72 people followed four days later. The third group is expected to return to Bosnia in late August,

thus bringing the total number of voluntary repatriations to approximately 215 persons. The first group was accompanied by representatives of the Czech Interior Ministry, UNHCR officials and journalists.

By the end of June, the overall number of citizens of Bosnia-Herzegovina who had found temporary protection in the Czech republic was of 1,246. To date, some 400 persons have signed up for the voluntary repatriation process.

Each of the returnees are given 500 German Marks (children 250 DM) and a package with 10 days food and 6 months medicine supplies by the Czech government. The government also allows voluntary returnees to return back to the Czech republic within a period of three months if they find it impossible to live in their country of origin.

Source: Refugee Law Review, Legal Counselling Centre, SOZE, Mostecka 16, CZ-61400 Brno (Czech Republic); Fax: +42/5 45213746.

FBI TO OPEN OFFICE IN PRAGUE

The US Federal Bureau of Investigation (FBI) is to open an office in Prague before the end of this year. A Czech-speaking American director is being recruited to "liaise with the Czech police" as part of "friendly co-operation against organised crime".

The CIA is already operating in Prague from offices in the former building of the Czechoslovak Federal Parliament, which also houses the previously Munich based *Radio Free Europe* and *Radio Liberty*.

As for the FBI, it will cooperate with Czech authorities under a bilateral agreement. The FBI is not just an ordinary police body limited to carrying out criminal investigations, but also an intelligence service with tasks such as counter-espionage. Considering this, the FBI's interest in Prague could have something to do with a recent project of the Czech secret service, BIS.

Czech secret service allegations of Moslem terrorism

As long ago as 1993, BIS reports, recently resurrected by the Interior Ministry, have claimed that Arabs working and/or resident in the Czech Republic (CR) have links with "fundamentalist Moslem terrorist groups". It is said that Bosnian Moslem refugees in the CR are being recruited for terrorist missions against US targets. This is palpable nonsense because, according to information from the Interior Ministry in June, Bosnian refugees are concentrated in four tightly-controlled camps with a total population of 400 men, women and children, and seven smaller centres. Not the easiest conditions for highly visible Arab interlopers to operate in, one would have thought. But then, the story goes, Arabs, who studied in socialist Czechoslovakia, are assisting in this subversive work, posing as employees of foreign businesses, sometimes partly Arab owned, or even as spouses of Czech nationals. They know the infrastructure, the people and the language, and some of these former "students" were in fact undergoing terrorist training by the former communist authorities.

"Suspicious foreigners" to be monitored

The scenario is indeed far-fetched, but is seriously being used as a justification for the creation by the BIS of what Interior Ministry spokesman Jan Subert called "an integrated system for combating terrorism" in an interview with a Prague evening paper, at the end of July. The system will be fully controlled by the BIS, not the ordinary police. According to Mr Subert, it will be based on "analysis and monitoring of the movements of suspicious foreigners, with the help of computers which will be linked to all border crossing points".

Prague a strategic location

There are reasons to believe that the FBI is greatly interested in sharing in such intelligence activity, in particular if one considers the Czech Republic's geo-strategic position - a gateway to the East at the very heart of Europe and a would-be member of a possibly enlarged EU and NATO.

AUSTRIA

PRIVILEGED AND NON-PRIVILEGED THIRD COUNTRY NATIONALS

The overwhelming majority of all non-nationals in Austria are not natives of EU states, but originate mainly from the Southern Slav republics, Turkey and, more recently, Poland and Rumania. As a consequence of the EU Association Agreement with Turkey, Turkish citizens are now privileged against other non-EU nationals in Austria, in as they have free access to the domestic labour market after four years of legal residency. They can reunify their families in Austria after five years. Interior Minister Caspar Einem's recent proposal to extend the application of this rule to all non-EU nationals has drawn rabid protest both from the right and the labour faction within his own Social Democratic Party.

Six per cent of all foreign workers in Austria are EU nationals (4 per cent German). 19 per cent are citizens of Turkey. 75 per cent are non privileged third country nationals, of which 53 per cent are citizens of the Southern Slav republics (Source: G. Biffl, SOPEMI Report on Labour Migration, Vienna, 1995). The overwhelming majority of all undocumented workers most certainly come from non EU-states.

Many "guest workers" from ex-communist states

Austria has the highest percentage of "guest workers" from ex-communist states of all member states of the EU. It also has one of the lowest percentages of EU foreigners. This combination has led to a relatively low level of immigrant organisation and self-help. The former communist trade unions (of Yugoslavia, Poland, etc.) banned organisational work abroad. The classical EU (EC, ECC) immigrant activist nationals (Italy, Spain, Greece) were and are of no significance in Austria. Tripartite Austrian "social partnership" also played a role in preventing trade union radicalism among the immigrants. Finally, the shop steward ban for non nationals (as of 1992 non-EFTA/EC nationals - 94 per cent of total) has prevented the immigrants from working within the trade union structures.

Minister Einem's "thinking aloud" triggered a row

In a recent interview with the Vienna newspaper *Der Standard* the Social Democratic (SPÖ) Minister of the Interior, Caspar Einem, has proposed that all third country nationals be dealt with according to the same regulations now valid for Turkish citizens. This suggestion has met with radical and rabid opposition not only from the ultra-nationalist Freedom Party (FPÖ) of Jörg Haider, but also from the SPÖ's conservative coalition partner, The Austrian Peoples Party (ÖVP), and, more remarkably, the SPÖ-dominated Chamber of Labour (AK: *Arbeiterkammer*) and the Austrian Trade Union Federation (ÖGB).

Anti-foreigner stance of the SPÖ's labour faction

The anti-foreigner attitudes of the trade unions have long been a problem in Austria. The AK and the ÖGB were the most active opponents of the EU Association Agreement improving the situation of Turkish citizens. The labour faction within the SPÖ is responsible for the upholding of the shop steward ban on all third country nationals, including Turkish citizens. Interior Minister Einem, who started his career as a leftist social worker, is therefore taking a risk by proposing a "humanist" solution to the discrimination issue. He is one of the few SPÖ ministers working actively against xenophobia and racism.

As of 1 July 1988, Austria will have the presidency of the EU. Austria is also trying to have the EU Observation Centre against Racism and Xenophobia located in Vienna. The Austrian immigrant organisations plan to use the EU spotlight to pressurise the Federal Government to drop the shop steward ban for non-EU nationals.

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GREECE

29 ORGANISATIONS JOIN IN ANTI-RACIST COALITION

In recent times, Greece has changed from being a country of emigration to economically more developed countries, to a country of immigration. At the same time, xenophobia has been spreading in Greek society. But anti-racists are beginning to organise. 29 immigrant and anti-racist organisations recently joined in a coalition.

Immigrants and refugees from Poland, Turkey, Iran and Ethiopia began to arrive in large numbers in Greece in the 1980s. But immigration to Greece reached a peak in the end of 1990, with the massive influx of Albanian immigrants.

The largest ethnic category of immigrants today in Greece are the Albanians, followed by the Egyptians, Polish, and the Filipinos. No records are available on another large number of immigrants originating from Eastern European countries such as Russia, Ukraine, Rumania, Bulgaria. Over 250,000 Gypsies also live in Greece.

80 per cent of all immigrants illegal

It is estimated that immigrants currently make up at least 5 per cent of the population, the great majority of which (about 80 per cent) are illegal.

The living conditions of the immigrants in Greece range from very bad to wretched, while the most downtrodden category are the Albanians. The Albanians come to Greece illegally via the "green border", or by paying enormous sums of money in order to obtain a visa on the black market - in which Greek state officials as well as whole sections of the Greek state services are involved. The illegal immigrants cross the Greek-Albanian border at risk of their lives. In recent years there have been dozens of cases where illegal Albanian immigrants have been killed by the Greek Armed Forces and the Greek Police in the border area. These killings are rarely reported in the press, while those who do come to light are presented as accidents. In addition, there have been dozens of cases of illegal immigrants being tortured at the border. These have never been reported in the press, and there has been no investigation or prosecution of those responsible for these crimes.

Illegal immigrants excluded from health care, social security and education

Immigrants as a whole play an important role in the Greek economy - mainly in agriculture. Indeed, due to their extremely low wages and their exclusion from social security, they contribute strongly to its profitability.

The housing conditions of the immigrants are wretched. The overwhelming majority of immigrant workers are piled into miserable lodgings, with five to ten people living in one room. Many of them - mainly Albanians and Africans - are forced to live in the work-places and, at the same time, offer their labour to their employers as house servants.

Illegal immigrants have no right to hospital care, even in emergencies. In practice, some emergency cases have been accepted. But under no circumstances are immigrants admitted to treatment in the public hospitals.

Foreign workers are required to pay contributions to the state insurance fund, but they do not obtain the health care they deserve and, if they leave the country, their contributions toward the social security fund are not returned.

There are no educational provisions for immigrants. With a few exceptions, nothing is being done to integrate immigrant children into the Greek school system. There are no teachers speaking a foreign language or preparatory centres of education. Recently, the Ministry of Education, by way of a circular letter, prohibited the admission of children of illegal immigrants to elementary schools. The circular was, however, withdrawn after protests by anti-racist organizations and teachers.

Legal immigrants blackmailed by their employers

Current foreigner law recognizes a set of rights for foreigners living in Greece with a residence permit, but does not recognize any rights for immigrants whose permit has expired or without any permit. The law places strict conditions on eligibility to residence, and prohibits the legal immigrants from changing their jobs or their employer. That is, it ties the foreign worker to a certain employer, to a specific job and work area. The work permit or residence permit is revoked if there is change in any of the above conditions. Thus, the immigrants are directly dependent on their employers. Employers tend to take advantage of this situation by blackmailing them into submission under the threat of delivering them to the police for deportation - a threat that is often carried out.

200,000 Albanians per year deported

The Albanians are among the immigrants most exposed to mass round-ups and deportations. In the last years,

over 200,000 have been deported each year.

In recent years, there has also been an increase in the deportations of political refugees living in Greece and recently there have been cases where political asylum has been officially revoked.

Trade-union xenophobia

Not only the state, but many trade unions, have a negative attitude towards immigrants. They are not only indifferent toward the defence of their most elementary rights, but, in more than one instance, unions - such as the construction and the shipyard workers union - have openly attacked immigrants, helped the police to catch and deport them, blamed the foreign workers for unemployment, and called upon the Greek workers to isolate them. The stance of the General Confederation of Greek Workers (GSEE) as a whole is not so different from that of public administration or the government. Although it has made proposals for the legalization of immigrants, these are limited, since they offer only a very small duration of stay permits, while at the same time demanding the swift deportation of illegal immigrants.

Foreigners as scapegoats

The dominant view in society, more or less openly supported by all Greek government and opposition parties, is that immigrant workers are responsible for unemployment. Much of society tends to perceive immigrants as inferior human beings, satisfied with low living standards and education.

The apparently high crime rate among immigrants - mainly Albanians - is constantly pointed out by the press. However, commentators regularly ignore the fact that the overwhelming majority of these cases concern either the legal situation of the foreigner in Greece - for example, their illegal entry - or involve petty crimes. Crime figures indicate that serious criminality is actually lower among foreigners than among Greeks.

"Grass roots" racism

In order to grasp the extent of xenophobia in Greece, it is worth examining how certain words have changed their meaning within a few years. Thus, the word "Albanian" now is often used to describe a wretched person who will do any job for the lowest salary. The word "Filipina" is frequently used as a synonym for a house servant.

People in Greece opposed to the growing racism against the immigrants like to emphasise that the traditional "Greek hospitality" cannot fade away so easily. However, although examples of hospitality and protection of immigrants from the police and the state can be found, they are certainly not the norm. Quite the reverse: racist acts are becoming more and more brutal. In the worst case so far, the native population of a village hunted, beat up and expelled Albanian immigrants from their lodgings. Recently a group of masked people tortured Albanian immigrants, subjecting them to, among other things, mock executions.

Anti-racist coalition formed

The systematic fomenting of nationalism by political circles during the period 1991-94, with the aggressive policy of Greece towards the former Yugoslavian Republics of Macedonia and Albania, decisively contributed to the rise of anti-immigrant racism.

On the other hand, there is no tradition of an anti-racist movement in Greece. Nobody can expect from the large parties of the Left a systematic anti-racist policy.

The foreign workers themselves are organized on a national basis, but not all of them. The Albanians, who comprise the big majority of the immigrants, are not organized at all.

In recent years anti-racist movements and organizations have formed in Greece. There have been some limited mobilisations and demonstrations against the deportation of Albanians, for better living conditions for the Gypsies after a police attack on their camp-sites, and campaigns to influence public opinion. The most systematic and hopeful activity in recent years was lead by a coalition of immigrant and anti-racist organizations with the slogan "Immigrants are not a problem, they have problems". The coalition, which is made up of 29 immigrant and anti-racist organisations, demands the legalisation of all immigrants, with equal rights, and a stop to all deportations.

Thus, for the first time, elements of an organised anti-racist movement can be discerned in Greece.

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OPINION

A SKETCH OF AN ENTIRELY DIFFERENT EUROPOL

The following article by Thilo Weichert is based on a lecture at the Münster-Hiltrup Police Academy of the BKA (the German Federal Office of Criminal Investigation), in May 1996. The author is president of *Deutsche Vereinigung für Datenschutz* (German Association for Data Protection).

Introduction

The purpose of this contribution is to overcome the deadlock in the current debate on whether and how the powers of the police should be extended and international police co-operation improved in view of increasing trans-border criminality. Indeed, debate on this subject has long been characterised by preconceived views and mutual unwillingness to listen to the other side. On the one side, the police as a rule, tend to call for more powers as a necessary pre-requisite for effectively combating international organised crime. On the other side, civil rights and liberties activists tend to be just as uni-dimensional. The threat scenarios are exaggerated by the police, they claim, to promote their own interests. The process of internationalising policing is undermining constitutional guarantees, democratic rights and civil liberties. Together with the repressive exclusion of social groups such as migrants, refugees, unemployed people and drug addicts, international police co-operation outside parliamentary and judicial control is posing a greater threat to society than international organised crime.

In the following, I will attempt to design a concept for European police co-operation, taking into account both the requirements of the police and the objections from civil liberties circles.

A need for new forms of action

Like the police representatives, I start from the assumption that a changed political situation brings about the need for new forms of action in fighting against crime. In particular, there is a need for increased co-operation and coordination. The new situation is characterised by the disintegration of the former political blocs, the disappearance of the "iron curtain", increased mobility worldwide, dramatically improved global means of communication, a rapid technical evolution both among criminals and crime fighters, and the reduction of national restrictions to trade, e.g. by the abolition of internal border checks in the EU. These changed circumstances are contributing to partly organised and specialised cross-border criminality that requires improved communication among the prosecution authorities of various countries.

The legal deficiencies of international policing

A number of instruments of international policing have been developed to meet this challenge. I wish to briefly analyze the costs of these instruments from a constitutional viewpoint. In doing so, I will draw a distinction between informal and institutional instruments.

Informal instruments of police co-operation

Informal instruments were tried out as long ago as the second part of the last century. They led to the founding of a private law international association of police forces that in its turn resulted in the birth of ICPO-Interpol.

Informal co-operation further comprises a multitude of international police working groups and "clubs" charged with coordinating the various national authorities with respect to particular forms of crime. Unbureaucratic cross-border co-operation of local and regional police forces of neighbouring states is usually also fairly informal.

From a constitutional and civil libertarian point of view, the problem with informal police co-operation is precisely its lack of formality. It may be acceptable as long as it pertains to matters such as assistance in training and equipment, or brief telephone calls between police officers of two countries in a particular investigation. However, as soon as active police measures such as house search, seizure, arrest or interrogation interfere with constitutional rights, informality is no longer acceptable. As a rule, this is also valid for all forms of covert investigation that interfere with people's right to their own data. It is now an established European standard that such interference, as well as executive police measures, must be based on formal law. Many of the international working groups and clubs which operate in the world of internal security

lack this legitimation. This is also true for old auntie Interpol, which still is not much more than a private association of national criminal investigation offices.

Unreliable and unpredictable

Informal co-operation has great disadvantages: it takes place in special cases, it is unreliable and unpredictable. It shuns the publicity of the media, the publicity of parliamentary debate, as well as the public trial. When informal police action comes to the knowledge of the public, it has to be successful. If this success does not materialise, there is an inevitable media, parliamentary and judicial debacle. The Plutonium transport from Russia to Germany in 1994 under the eyes of German security agencies (see CL No.33, p.1, No.36, p.5, No.40, p.8) is a classical example of such a fiasco. The constitutional and democratic costs of informal police co-operation are obvious: it is the exclusive domain of the executive branches of government. The parliaments, and even more, the public, remain outside. The citizens concerned are not only denied the right to their own data. Since informal police proceedings often are not documented on any records, they are also denied legal protection - i.e. in criminal procedures their right to a due process, a fair hearing and to a defence. And we should not forget the costs for the police: the coverage of such proceedings by the mass media tends to present the crime fighters in the same light as the criminals - as organised gangs engaged in semi-legal or even criminal machinations and in corruption.

Institutionalised co-operation: the example of EDU/Europol

In my opinion, prevailing institutionalised police co-operation is barely better. Let me illustrate this with the example of Europol, and the Europol Convention: Europol has the advantage of not having to operate in the dark. Through common statements of the governments of the EU states, Europol, or rather, its forerunner, the EDU, has obtained a semi-official status. Yet already, the concrete activity of EDU, the European Drug Unit, is outside the scope of national law. National law is based on the idea of bilateral co-operation over, for example, the rules concerning data communication or judicial assistance. But the EDU no longer aims at merely bilateral co-operation, but at multilateral co-operation. And this is actually what is taking place. I am not imputing anything to the officers in The Hague [Europol's location]. But far from home, the temptation to privilege "unbureaucratic co-operation" against legal restrictions at home must be constant. The motive for such a behaviour is honourable, after all: the effective fight against crime.

Europol: "organised unaccountability"

Compared with the planned European Police Office, Europol, the current activities of EDU are fairly innocent. The Europol Convention provides for "organised unaccountability". In describing the tasks of Europol, the Convention makes use of blurred and elastic legal terms such as "serious forms of international crime" (Article 2.1). An unlimited annexe of additional forms of crime not named in the Convention and a clause extending the remit of Europol to other "related criminal offences" allow for Europol to get involved in dealing with almost any imaginable criminal offence. Any subjection of Europol to directions is expressly excluded: Article 30.1 states that Europol "shall not take or seek orders from any government, authority, organisation or person outside Europol". The Management Board, made of representatives of the member states, shall "prepare", "deliver opinions", "examine" and "oversee", but has very little direct influence on the concrete work of Europol (Article 28), aside from proposing the dismissal of Europol's Director to the Council [Justice and Home Affairs]. As for the national parliaments, their role is limited to receiving reports. The same is valid for the European Parliament, but - and this is important - only once a year and in compliance with "the obligations of discretion and confidentiality" (Article 34).

Judicial control is in a sorry state too. The recent news that the dispute on the competencies of the European Court of Justice (ECJ) has finally been settled should not make us forget that, according to unanimous decision of the member states, individuals are denied the right to file complaints to the ECJ. Instead, the citizens concerned are referred to often very differing national law. This is true for cases concerning the liability of Europol (Article 38 and following) as well as for data protection claims (Article 19 and following). If I have not got the Convention completely wrong, Europol is even granted a right to veto the disclosure, correction and deletion of data without any Court having the chance to examine the lawfulness of such a decision (Articles 19.7, 20.2).

In the interest of legal security, it is important that criminal investigations are carried out under the supervision of the public prosecutor or an investigating judge. In other words, the judiciary, and not the police, should be the masters of the criminal procedure. In international and thereby particularly sensitive investigation procedures, this principle will henceforth be turned on its head. The judiciary has no right to instruct Europol. If investigating magistrates need information from abroad, they must beg for it via Europol.

Poor substance of data protection rules

Since Europol's activities will concentrate on collecting, storing, matching, analyzing and evaluating data, the Convention's data protection regulations are of particular interest. The impressive number of rules concerning data protection established by the Convention changes nothing in their poor substance. The Convention allows for the registration not only of criminal suspects and convicts, but potentially also of anybody else, e.g. possible future witnesses and victims, contacts, associates and informers (Article 10.1). National police authorities are not merely authorised, but *obliged* to supply information to Europol (Article 4.3-4). Europol may also exchange personal data with third countries (Article 10.4, Article 18). This opens the way for the exchange of sensitive personal data with the police in countries such as Turkey, Rumania or Russia. Member states may also supply Europol with intelligence from secret services (Article 4.5.1). Finally, Europol is authorised to engage in pro-active policing, and may store and utilise data on potential future offenders (Article 8.2). Since the Convention allows a far more extensive use of data than the national data legislation of certain member states, Europol is likely to function as a "data laundering facility". National regulations limiting the use of data to a specific purpose or concerning the deletion of data no longer apply, once national data have mutated into Europol data.

My conclusion from the above is that both informal and institutional European police co-operation in their present form fail to meet constitutional standards regarding democratic accountability, judicial control and data protection.

Proposal for a legitimate Europol

I wish to submit to you some outlines for a European police co-operation that would meet both democratic standards of accountability and judicial control and the legitimate demands of the police.

Index system a central element

An electronic information system to which all national prosecution authorities would have automated access is the central element of my proposal for a completely new Europol. In this system, reading and writing access would be granted not only to central national units of criminal investigation, but also to regional police and the public prosecutors. The type of information that may be communicated to the system shall be established in rough outlines only in an international law framework regulation. The precise definition of admissible types of data would have to follow from national regulations that may differ from each other. Thus, the national authorities would keep their control of the data they communicate. They could regulate the retrieval of their data through an access procedure consisting of several levels. The central Europol office would merely be in charge of providing the necessary technical facilities for the communication of the data and for a differential access in accordance with the various national regulations. The communicating authority would remain fully responsible for its data and consequently it would be accountable to national institutions of control (superior authorities, data protection authorities, parliament, Courts).

A "data pool" rather than a data bank

The purpose of such a Europol "data pool" would not be the creation of a gigantic data bank on international crime, but of a communicating authority. Only information indicating to the prosecution authorities of other countries that a criminal investigation concerning particular facts, organisations or persons is under way, could be retrieved online. The hierarchical structure of the data sets would secure that person-related data could only be retrieved if and when this is necessary for carrying out a particular criminal search. Queries, statements of problems and search notes could also be entered in the system, but the data stored would be limited to mere index information. Person-related information in the data pool would thus merely signal *that* information on a searched person is available from a prosecution authority, and not *which* concrete information on the person in question exists.

The purpose of this index system is to bring together the prosecution authorities of different countries which are working on the same crime or set of crimes. One would thereby avoid having more people gain access to certain types of information that are highly sensitive by their very nature than would be strictly necessary. The exchange of data would not take place on a haphazard multilateral level, but merely between the authorities actually concerned, and it would not be based on a central database but on the records of the criminal investigation. Thus, the concrete decision to exchange information is not taken by a Europol authority which has no knowledge of the concrete investigation, but by the authority most closely involved in a case. Only the recipient of the data would be responsible for a retrieval in the Europol data pool. The data pool would inform the data owner, whenever a query has been made concerning his data. In case of doubt on the necessity of a retrieval, the owner of the data in question must have the opportunity to require the data-requesting authority to account for their intended use. This obligation of accountability must be established under international law, but would be rendered on a purely bilateral level.

Also the further co-operation in an international

criminal case shall not run via Europol, but via the co-operation of the national officers dealing with the case. This co-operation will be subject exclusively to the national rules applicable in each case. As an element of the national investigation, the co-operation would appear in the records of the investigation and would thereby become transparent for the public prosecutor, the court and the defence.

Thus, the Europol data pool would have the same function as the so-called Index System established by the Europol Convention (Article 11). Europol would not have its own data and there would be no need for a Europol bureaucracy constantly striving for expansion. Europol would merely serve as a "junction" for national authorities. For this purpose it would have to concentrate on providing a technical support unit that would be responsible for the correct functioning of the information system in compliance with the applicable rules. This would prevent a politically and legally unaccountable apparatus from expanding according to its own dynamics and priorities. The integration of such an information system with the Schengen Information System (SIS), which fulfils similar tasks in the field of criminal search, would suggest itself. As opposed to the SIS, there would, however, be no common data stock accessible by all, but just national stocks with a multi-level system of access.

Advantages of a flexible construction

The great advantage of such a flexible construction is that it can develop steadily, taking into consideration previous experience. If it becomes evident that the retrieving authorities handle the data available from the data pool in a responsible manner and that more information should be stored in order to enable prosecution authorities to establish a working contact with each other, an extension of the set of retrievable data stored in the pool can be considered. If it transpires instead that the authorities of a member state or a particular authority make inappropriate or unlawful use of the accessible data, they can be denied access. Such schemes of "flexible integration" with different speeds are quite common in the EU. Schengen co-operation works that way and a flexible approach is also being sought concerning European monetary union.

International law framework a necessity

An international law framework for the setting up of a Europol data pool as proposed here should focus on procedural questions. The basis of international law is a necessity. A quasi-civil law contract with statutes, as in the case of Interpol, is not a suitable way to establishing the rights and obligations of national prosecution authorities in a legally binding form. There would be no need for substantive law competencies for Europol to interfere with the rights of persons. Instead, the technical procedure, the structure of the database and the obligations of the parties sharing the system (regarding entries, retrievals, obligations regarding accountability) must be defined. Disputes would be limited to the member states directly concerned by a particular case and their authorities. The European Court of Justice could - but need not - be made competent for settling disputes.

"Soft" harmonisation according to highest legal standards

In addition to this, each member state would have to introduce a national law, stating clearly how the national authorities might use the Europol data pool and what are the rights of registered citizens. This national law would have to define not only which data may be automatically retrieved by foreign authorities, but also on which conditions access is granted to which foreign authorities. These (differing) national rules will form the basis for the decision on which conditions the authorities of a particular foreign state are granted access by the requested state to the latter's own national data stocks. This, in its turn, can lead to a "soft", gradual mutual adaption of national legal standards. It is obvious that, instead of resulting in a common European norm inspired by the legally most unsatisfactory national law (as often happened in European Justice and Home Affairs co-operation), such a proceeding would further a harmonisation according to the highest standards of practicability and legal security.

Unlike the present construction of Europol, such a system would not trigger reservations of member states on national sovereignty grounds, since each member state would be able to define its contribution to Europol through national legislation within a relatively open international law framework. No national sovereignty rights would have to be renounced.

Open to non-EU states

Another advantage of the proposed system is that, on the one hand it does not inevitably have to comprise all EU member states, while on the other hand it does not have to be limited to EU member states. Indeed, it would, for example, allow for the participation of Central and Eastern European countries (CEEC), whose criminal scenes are of great relevance to the West. At a first stage, "newcomer" states could be excluded from direct access to certain particularly sensitive types of data concerning e.g. inquiries on individuals.

The data protection rights of registered persons must be safeguarded by the authority communicating the data.

Concerned persons' right to their own data must comprise both information on which authorities *are* authorised to request private data and which authorities actually *have* requested data on the person in question. The data protection control of the central unit could be limited to technical-organisational measures only. This control could be exerted by a common body of the national data protection agencies or, eventually, by a European data protection commissioner.

Accountable police co-operation avoids rivalries and over-lapping

My proposal for a completely different construction of Europol combines the advantages of prevailing forms of international police co-operation, without suffering from its legal deficiencies. It is my conviction that it would also meet the requirements of police practice - maybe even better than EDU/Europol. Indeed, with its present construction, this agency will constantly be tempted to conduct its own investigations. This is likely to entail detrimental rivalry, waste of energy and mutual obstruction. With the alternative construction proposed here, the responsibility of the authorities in charge of an investigation would be reinforced without the need to resort to the prevailing bureaucratic procedure of international legal assistance .

Should my proposal be considered completely unpracticable, I would be happy to learn, why. Should it, on the other hand, be practicable, we must continue to think along these outlines. It cannot be in the interest of police acting on an international level to evade judicial and parliamentary control and to be exempted from respecting civil rights and liberties.

Thilo Weichert

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APOLOGIES

We apologise to our readers for the delay of this issue of Fortress Europe?. It is due to the coincidence of two very different factors:

- 1. Your editor is struggling with new computer software. Modern software makes life easier when it works as it is supposed to. For the time being, it definitely does not!*
- 2. A daughter born on 12 August is effectively distracting your editor from his work. Hopefully, both the software and the baby will soon behave better.*

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**Geneva Group - Violence and Asylum in Europe
(Groupe de Genève - Violence et Droit d'Asile en Europe)**

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