Fortress Europe?

Circular Letter No. 50 March/April 1997

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

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

CONTENTS

EUROPEAN UNION

WHAT KIND OF "OPERATIVE POWERS" FOR EUROPOL?

Until very recently, government officials throughout the EU dispelled widespread concern in some member countries about a EUROPOL with its own operational powers with assurances that EUROPOL would never become a "European FBI". Without this pledge, the adoption of the Europol Convention by the member state governments in the summer of 1995 would probably have been politically impossible. Two years later, and before the conclusion of the ratification process within the member states, the EU Intergovernmental Conference (IGC) is discussing how to confer "operative powers" on Europol without the need for a new ratification process, i.e approval by national parliaments.

"Operative powers"
The Presidency Conclusions on the Dublin Summit of December 1996 says: "Europol should have operative powers working in conjunction with the national authorities to this end". The so-called "Dublin II outline" of the then Irish Presidency for the draft revision of the TEU (Maastricht Treaty) proposes that the Council adopt, within binding time limits:
a) measures "enlarging the functions of Europol" allowing it to "facilitate and assist in the preparation and carrying out of *specific cooperative actions* by the judicial, police and customs

authorities of the Member States, including *operational actions of joint teams*" (our italics);

b) measures "allowing Europol to *call on* police forces in Member States to conduct investigations in specific cases and providing Europol with one or more technical units to assist Member States in investigating cases of international crime" (our italics).

"Operative tasks" tantamount to "executive powers"?

In the aftermath of the Dublin Summit it quickly appeared that the above declaration and proposals are far from expressing a common view of the member state governments. This clearly follows from a confidential German report on a meeting of the IGC representatives on 27-28 January, where the Europol issue was discussed. The report notes that "further discussion on the formulation of the tasks of Europol" is necessary. While the German representative, Secretary of State Hoyer, once again insisted on the importance of conferring operational powers on Europol, Britain, Denmark and "some other delegations" continue to oppose such a change. In particular, the British and Danish representatives rejected as unacceptable the formulation in the Dublin II outline according to which Europol would be empowered to "call on police forces in member states to conduct investigations". Instead, they said, Europol's role should remain limited to tasks of a merely supportive character. This view drew some support from the Greek, Spanish and Swedish representatives. While showing "flexibility" with regard to the final wording of the provisions in question, they demanded that a clear distinction be made between "executive powers" and "operative tasks".

Strong majority in support of time limits

Britain also objected to setting time limits in the revised TEU for the gradual extension of Europol's competencies, while Italy, Austria, and - remarkably enough - Sweden agreed to such a scheme, strongly advocated by Germany and France. Commenting on his country's position, which strikingly differs from earlier government statements on the matter, the Swedish representative, Gunnar Lund, said to journalists: "We think Europol should have powers and competencies beyond what we have so far agreed on. Europol should be allowed to enter into close and intimate cooperation with national police forces".

The delegate of the European Parliament, Elmar Brok, for his part emphasised the importance of establishing an obligation for national authorities to cooperate with Europol.

Lacking ratification no obstacle to extension of Europol competencies?

Secretary of State Hoyer listed the following competencies, which, in his words, would result in a genuine improvement of policing and could be conferred to Europol as first "intermediary steps" in a more far-reaching process of extending Europol powers according to a binding time-table:

- "coordination" of investigations in specific cases;
- initiation of joint investigation teams;
- providing staff and logistical support to member states;
- dispatching Europol liaison officers to the police authorities of the member states;
- "active obtaining of information"; and
- running a "European criminal search system".

The fact that most member states have not yet ratified the Convention is no obstacle to such an agenda, Mr Hoyer contended.

Defining "specific operative actions"

Jürgen Storbeck, the German Coordinator of EDU/Europol, said to the German Police magazine *Deutsche Polizei*, that the following definitions of "specific operative actions" (according to the Dublin outline II) were being considered:

1. Operational research (Own investigations run by Europol);
2. Operational support (support by Europol to national investigations through information, tactical advice, provision of other assistance, including personnel);
3. Operational coordination (coordination of investigations, surveillance operations concerning controlled deliveries, a "right of initiative" aiming at "parallel national investigations" according to "guidelines" set by Europol.
4. Operational teams (creation of task forces, whereby the scope of action can range from mere support to "investigative powers in specific cases").

Storbeck further said powers for Europol to conduct investigations and interrogations were "conceivable and desirable", but advised against a power of seizure or arrest, since such a right would "interfere too much with civil liberties and should therefore be reserved to national police authorities".

The problem of how to avoid

parliamentary scrutiny
According to the German report, the Dutch presidency raised the thorny issue of how the proposed extension of Europol's powers can be achieved "without the requirement of an amendment to the Convention with an ensuing need for ratification". The Presidency may have found some comfort in an assessment of the Council's Legal Service. According to the German report, this Service is of the opinion that "the Europol Convention contains provisions allowing a modification of the Convention in a simplified way" [i.e. without having to submit the changes for parliamentary approval].
The report does not say which particular provisions in the Convention the Legal Service is referring to.

Sources: Dublin II Outline for a draft revision of the treaties, Brussels, 5.12.96, Conf 2500/96 limite; Dublin European Council, 13/14.12.96, Presidency Conclusions; German confidential session report on the 23rd IGC meeting on 27-28.1.97, Federal Department of Foreign Affairs, Bonn, 31.1.97 (quotations above are our translations from German); Operative Befugnisse für EUROPOL, article in 'Deutsche Polizei', 2/97.

IGC 'NON-PAPER' ON SCHENGEN AND THE EU

The Schengen Agreements are increasingly being regarded as a possible model for "flexible" cooperation within the Union. The Intergovernmental Conference (IGC) is discussing a number of options, that allow an incorporation of the Schengen structures into the TEU (Maastricht Treaty), without taking the risk of the Schengen group's fast-track cooperation being stalled by vetoes of a small group of dissenting states. The magic words which will open the door to the incorporation of Schengen are "enhanced cooperation", "enabling clause" and "predetermined flexibility approach".

The incorporation of the Schengen *acquis* into the Union is "a gradual process which is already under way", according to a "non-paper" of the IGC of 4 February on "Schengen and the European Union".
Indeed, seven EU countries are already implementing the Schengen Agreements, while a further six EU states have signed them. Only the UK and Ireland have refrained from seeking Schengen membership. Britain is opposed to the "hard core" of Schengen policies - the abolition of controls at internal borders. Ireland has no choice but to follow the British position because of the common travel area between the two countries. Since the British opposition leader, Tony Blair, has made it clear that border controls in the UK would be maintained even in the event of a Labour victory in the forthcoming elections, the Dutch EU Presidency has given up earlier ideas of a "full incorporation", based on a full acceptance of the Schengen *acquis* by all 15 member states. Instead, discussions at the IGC are now concentrating on two approaches which will enable a "flexible" incorporation of Schengen policies into the TEU.

Two options for Schengen incorporation
The above-mentioned IGC non-paper describes two possible options.
Both options would make it possible for the Schengen member states to continue their cooperation without the participation of the UK and Ireland, but within the institutions of the EU.

Option A: "Enabling clauses" flexibility approach
Under this option the TEU would contain enabling provisions allowing for "enhanced cooperation" between particular groups of member states in each of the three pillars of the TEU. Thus, the 13 Schengen states would be authorised, through a procedure to be set up in the TEU, to establish a 'Schengen' enhanced cooperation among themselves within the EU. The scope of enhanced cooperation could comprise the whole of Schengen or parts thereof, and would be defined by the member states concerned when applying for authorization to set up a closer cooperation among themselves. The IGC non-paper notes: "Accordingly, this approach would not imply a prior identification of the relevant Schengen parts to be subject of flexibility nor of the specific (first or third pillar) flexibility clause to apply".

Option B: "Predetermined" flexibility approach
Under this option, the 13 Schengen countries would be authorised through a particular Schengen Protocol, attached to the TEU, "to have recourse to the institutions, procedures and instruments of the TEU for the purposes of adopting and applying among themselves the acts and decisions required to give effect to their Schengen cooperation, to the extent that such acts and decisions cannot be adopted by the fifteen".
The Schengen Protocol would authorise the Schengen states to continue to develop within the Union's institutions a Schengen *acquis*, applicable only to them.

"Enabling clauses" as referred to in Option A would allow enhanced cooperation also in areas which are not covered by Schengen.

Draft Schengen Protocol

A draft Schengen Protocol attached to the IGC papers provides that:

- The Council of the EU shall take over the tasks hitherto carried out by the Schengen Executive Committee (Schengen ministers).
- Whenever the Council deals with Schengen issues, the UK and Ireland shall not take part in the deliberations and decisions but shall attend the session.
- When taking a decision according to the Schengen agreements the Council shall act in accordance with the relevant legal basis which would apply were that decision to be taken under the EC and EU treaties. [This would imply a significant change, if qualified majority vote is established in the revised TEU for parts of the prevailing treaty's third pillar. Under the Schengen agreements, the decisions of the Executive Committee require unanimity. The issue could prove particularly sensitive in the non-EU member states Norway and Iceland which have signed Schengen association agreements. The Norwegian government in particular has repeatedly countered criticism by Schengen opponents that the country's Schengen membership would undermine national sovereignty and result in a gradual integration into the EU, by arguing that the unanimity requirement under the Schengen Agreements excluded any risk of Schengen decisions being adopted by the Executive Committee against the will of Norway. This argument would no longer be valid in the event of Council votes under qualified majority rules].
- The European Court of Justice (ECJ) has jurisdiction to give preliminary rulings on the Schengen *acquis*, and to rule on disputes between member states concerning the *acquis*. However, the Council may decide that the jurisdiction of the ECJ shall not apply to a particular decision or parts thereof [this could allow British participation in selected parts of Schengen, without Britain having to accept ECJ-jurisdiction].
- The EU Council may negotiate and conclude agreements with third countries in connection with the objectives pursued by those states under the Schengen agreement. [This provision implies that 'Schengen' enhanced cooperation under the TEU could be extended to countries such as Switzerland, the USA and Canada, while leaving out certain "immature" EU member states. In the IGC non-paper it is suggested that "a provision could be included in the Schengen draft protocol to allow the participation of representatives of Iceland and Norway" in Council decision-making].

Schengen bureaucrats fear for their jobs

The draft Schengen Protocol leaves out the sensitive issue of whether and to what extent the administrative tasks under the Schengen agreements presently conferred to the Schengen secretariat, the "Central group" of high officials and a plethora of working groups of officials, should be taken over by the General Secretariat of the Council and the K.4 structures. But in the IGC non-paper it says: "Consideration should also be given to a possible integration of the Schengen Secretariat into the General Secretariat of the Council". Such considerations are said to have created an air of uncertainty among Schengen staff. They fear that EU officials might be tasked with taking on some of the functions currently in the hands of Schengen officials.

Conclusions

While Option A could be described as a prototype of "flexibilisation", Option B is more of an "opting-out" solution. But the essential common feature of the two options is that they would lead to a two-track community, with a "first class" consisting of states that make full use of enhanced cooperation and thereby accelerating the process towards a federalist and centralised Union, and a "second class" made up of "anti-federalist" member states and, possibly, future new member states, regarded as not yet able to meet the requirements of "enhanced" cooperation.

Both options raise considerable institutional problems. First, Schengen contains elements both of the first pillar (internal market) and the third pillar (JHA: Justice and Home Affairs) of the TEU. This raises the question among others, of the European Parliament's future involvement. Secondly, Option B at least could lead to non-EU member states *de facto* having greater influence in decision-making at the JHA Council than certain member states. Finally, irrespective of the particular form eventually chosen, any flexibility approach threatens to lead to a confusing and barely manageable variety of legislation valid in the different member states. Legislation in the EU would resemble a self-service shop, where every member state picks the optional features which best meet the

respective government's political priorities of the day. In the Schengen case, for example, this could well lead to Britain participating in Schengen police and security cooperation, including the Schengen Information System, while maintaining its internal border controls. Both Option A and B include the idea of "enabling clauses", allowing enhanced cooperation among groups of member states even in the TEU and JHA areas which are not covered by Schengen. The "flexibility" approach would make it ever more difficult for EU citizens to know which sets of common rules apply in which member states. Moreover, "flexible" law-making as considered by the IGC, will not contribute to establishing common constitutional standards, but further extend governments' scope of action at the expense of legal security and democratic scrutiny.

Sources: Non-paper 'Schengen and the European Union', IGC Secretariat, Brussels, 4.2.97, Conf/3806/97, limite; annex 1: Enabling clauses flexibility approach; annex 2: Draft Schengen Protocol; Neue Zürcher Zeitung, 13.2.97; European Voice, 6-12.2.97.

NO NEED FOR RIGHT OF ASYLUM FOR EU-CITIZENS? IGC DISCUSSES SPANISH PROPOSAL

Despite warnings from the Office of the UN High Commissioner for Refugees, the EU Intergovernmental Conference (IGC) is now seriously discussing a Spanish proposal that no citizen of a EU member state be allowed to apply for asylum in another member state. An IGC "discussion paper" examines whether or not such a ban on asylum, based on a special agreement among the EU member states, is compatible with the 1951 Geneva Convention on Refugees and international law.

Spain has proposed adding the following new provision to the TEC (Treaty on the European Communities):

> "Every citizen of the Union shall be regarded, for all legal and judicial purposes connected with the granting of refugee status and matters relating to asylum, as a national of the Member State in which he is seeking asylum.
>
> Consequently, no State of the Union shall agree to process an application for asylum or refugee status submitted by a national of another state of the Union."

Surprising support from the EU Council

To the surprise of many, the Presidency Conclusions to the Dublin EU Summit of last December contained the following statement, indicating that Spain can count on some support for its demand, at least among the heads of the other EU countries:

> "The European Council asks the Conference to develop the important proposal to amend the Treaties to establish it as a clear principle that no citizen of a Member State of the Union may apply for asylum in another Member State, taking into account international treaties."

Geneva Convention does not "explicitly oblige states to deal with requests for asylum", IGC paper claims

An IGC "discussion paper" of 4 February examines how such an EU-internal ban on asylum could be included into the EU Treaties.

"No provision in the Geneva Convention explicitly obliges contracting States to deal with requests for asylum" the paper stresses. An "implicit obligation to deal with certain asylum requests" is, however, established by the Convention's Article 33 §1 which prohibits the return ("refoulement") of a refugee to a country where he or she is threatened with persecution on the grounds stated in the Convention.

EU to request revision of the Geneva Convention?

Considering this possible obstacle, the paper raises the question whether it would be possible for the 15 member states to "agree amongst themselves different rules than those provided under the Geneva Convention" without breaching international law, or whether EU member states would have to "request all other Contracting States of the Geneva Convention for a revision of this instrument"?

The IGC discussion paper concludes with the following assessment:

> "The EC Treaty amendment proposal by the Spanish Government is not prohibited by the Geneva Convention. Nor does it affect the rights of third countries party to the Convention. The question as to whether it would be incompatible with the object and purpose of the Geneva Convention depends on an assessment of the greatest political significance. In other words, what is the risk, if any, of citizens of the Union being persecuted in a Member State on account of their race, religion, nationality, membership of a particular social group or political opinion?"

Impossible to exclude persecution in any particular country of the world,

UNHCR says

The United Nations High Commissioner for Refugees (UNHCR) clearly does not share the assessments made in the IGC paper. Thus, a UNHCR position paper sent to the IGC stresses the fact that "it is impossible, realistically speaking, to exclude the possibility that an individual could have a well-founded fear of persecution in any particular country however great its attachment to human rights and the rule of law.(...) [The] need for international protection cannot be excluded absolutely and categorically in every case. Nor, regrettably, can fundamental changes in the political system or in the human rights situation".

The UNHCR goes on to remind the EU member states that in joining the Geneva Convention they "have... adopted a refugee definition without any limitations as to the country of origin". The modification of the TEU proposed by Spain would amount to introducing "*a posteriori* a geographical limitation to the application of the refugee definition". An "automatic ban" on refugees from EU countries would furthermore breach Article 3 of the Geneva Convention which prohibits discrimination against refugees based on their country of origin, UNHCR claims. The UNHCR makes it clear that the "above-mentioned concerns can... not be remedied by mere reference to the need to take international treaties into account". This is a hint at a well established practice among the EU states - to declare in the introductory provisions of conventions and policy decisions that interfere with human rights obligations that the relevant international treaties will be "taken into account".

Spanish proposal would affect "the very essence of international refugee law"

The modification of the EU Treaties considered by the member states would "affect the very essence of international refugee law" and would be "incompatible with the object and purposes of these instruments as a whole".

The UNHCR has accepted the use of fast-track asylum examination procedures by EU member states for asylum seekers from "safe countries of origin". The general assessment of a country of origin as safe may give rise to a "*rebuttable* presumption concerning the general absence of a serious risk of persecution". But, as it says in the EU Immigration Ministers' own 1992 Conclusion on "countries where there is generally no serious risk of persecution", this "should not automatically result in the refusal of all asylum applications from its nationals or their exclusion from individualised determination procedures". Finally, the UNHCR recalls the Resolution "on minimum guarantees for asylum procedures" adopted less than two years ago by the EU Justice and Home Affairs Council. This Resolution says asylum applications of nationals of another EU country should be handled in particularly rapid and simplified procedures, but it states at the same time that all EU member states continue to be obliged to examine individually every application for asylum.

Dangerous precedent value of EU-internal automatic ban on asylum

More generally, the UNHCR warns against the "precedent value" of an EU-internal automatic ban regulation. "The ripple effects may be considerable, and this concept may well be followed by other regions, with the inherent danger of undermining the scope of applicability of the international refugee instruments universally. It may also erode the humanitarian nature of asylum by complicating relations with non-EU States."

Aggressive Spanish memorandum

The concerns of the UNHCR and the hesitations expressed in the IGC discussion paper are summarily refuted in a "memorandum" signed by the Spanish representative at the IGC, Mr Javier Elorza. The polemical and lecturing tone of the documents speaks for itself: "In principle, it should most certainly not be logically possible to think that the nationals of a member state should be in need of seeking asylum in another member state", the memorandum begins. As opposed to third country nationals, citizens of the member states "already benefit from important rights in the other member states", deriving from their EU citizenship. EU member states have bound themselves to respect human rights. Therefore, "asylum for nationals of the member states should already be completely out of date, because not applicable".

Consequently, in the Spanish view, nationals of EU member states applying for asylum in another member state are simply abusing the system with a view to obstructing judicial cooperation in criminal matters, that is, "usually an extradition request, whose examination cannot begin pending an asylum application". Moreover their purpose is "to arouse suspicion between the states concerned", insofar as the applicants in question contend they are victims

of political persecution for "both external and internal purposes".

The memorandum calls the 1995 Resolution of the EU JHA Council on minimum guarantees for asylum procedures "totally unsatisfactory", particularly in view of the fact - apparently completely incomprehensible from a Spanish viewpoint - that "in certain member states, the decision to grant or refuse political asylum does not depend on government bodies, but is instead left to independent bodies or to courts".

A solution to the problem by means of a joint political declaration or a provision in the Third Pillar framework would fail to meet Spanish demands, the memorandum stresses and it goes on to call for the introduction of a First Pillar provision into the Treaties of the Union which would be directly binding on all authorities of a member state and subjected to the jurisdiction of the European Court of Justice (ECJ).

As regards a possible incompatibility of such a provision with the member states' obligation under the Geneva Convention, this is a non-issue according to the Spanish memorandum. The ultimate purpose of the Convention, it argues, is to ensure the widest possible exercise of human rights and fundamental liberties. "Given the fact that, within the framework of the EU, one starts from the principle that all persons enjoy these rights and liberties, in whatever member state they are, it does not seem that the suppression of refugee status and of political asylum for citizens of the Union undermines the achievement of the object and purpose of the Geneva Convention". Consequently, "one must understand at last that, between the member states of the EU, the causes or circumstances which determine the institution of political asylum have ceased to exist". And since it is stated in the Convention that its regulations no longer apply if and when the circumstances entailing refugee status have ceased to exist, "the general suppression of asylum between states in which such circumstances can no longer arise can in no way be contrary to the object and the purpose of the Convention".

Finally, the memorandum brushes aside the legal concerns voiced by the UNHCR: "The interpretations of the UNHCR Executive Committee are mere recommendations and do not represent an authentic interpretation of the 1951 Convention". Neither the Geneva Convention nor the 1967 Protocol requires an individual examination of asylum applications, the memorandum contends. The Spanish proposal does not aim to state reservations with respect to the Geneva Convention, but seeks its "modification" based on the Vienna Convention on the Law of Treaties.

Sources: Conference of the representatives of the Governments of the member states (IGC), Discussion Paper, Brussels, 4.2.97, SN/507/97 (C8); UNHCR's position on the proposal of the European Council concerning the treatment of asylum applications from citizens of European Union Member States, UNHCR Office, Geneva, January 97; Memorandum espagnol sur la non reconnaissance du droit d'asile pour les citoyens de l'Union, IGC Document, Brussels, 24.2.97, CONF/3826/97 Limite, in French (Quotations above are our translations from French).

Comment

The Spanish proposal is based on a pure fiction, that is, a federal European state with a common constitution and legal system, and a common federal government and administration. If such a federal Europe was already a reality, it would make no sense to uphold the right for a citizen of one member state to seek asylum in another, just as it makes no sense for a US citizen from California to seek protection from persecution in the State of New York. But in view of the fact that the EU is still a union of sovereign states with their own national legislations and systems of government, one finds it hard to believe that an EU-internal abolition of the right of asylum can not only be proposed by the government of a Western democratic country, but even seriously discussed by the EU Intergovernmental Conference. This fact alone shows the growing influence of "federalists" in the EU-Council. Moreover, the real motivations behind the Spanish proposal illustrate how a single member-state government can impose its internal political agenda on the whole of the EU by resorting to blackmail: if you don't accept our proposal, we will block cooperation.

Spain's dubious fight against terrorism

Successive Spanish governments have been unhappy with EU police and justice cooperation for quite some time. In their view, other EU member states are showing a lack of solidarity with Spain in its effort to fight against Basque separatist ETA terrorism. This concern is at the origin of the Spanish proposal for a ban on EU-internal asylum applications.

It is true that courts in Berlin, Brussels and Lisbon (see article in this issue, p.7) have repeatedly prevented or at least delayed the extradition to Spain of mostly Basque

Spanish citizens accused by the Spanish authorities of some form of involvement with ETA. Asylum applications by Spanish Basques were not automatically rejected but admitted for substantial examination. As a matter of fact, the courts and asylum authorities in the EU countries concerned were performing no more than their duty as independent authorities in constitutional democracies. In a small number of cases, the authorities concerned, after thorough examination, concluded that Basque asylum seekers' claim of persecution was not manifestly unfounded and that Spanish extradition requests concerning alleged Basque terrorists were not sufficiently well supported as to allow extradition in accordance with prevailing national and international law.

Spanish human rights records not beyond suspicion

Given the strong evidence indicating involvement, no more than ten years ago, of members of the Spanish Government in the state terrorism of the GAL, (police-sponsored death squads responsible for the killings of more than two dozen genuine or alleged ETA activists in the 1980s) and in the light of continuing allegations of torture and mistreatment in Spanish police stations and prisons, a thorough examination of Spanish extradition requests concerning Basques was more than justified.

"Terrorism" label: guilt by contact

There are also good reasons to be sceptical of the Spanish use of the "terrorism" label. One should recall that the 1951 Geneva Convention actually excludes perpetrators of terrorist acts from the institution of asylum (Article 2F). Thus, genuine terrorists have no opportunity to obtain asylum in an EU member state. Yet, all recent disputes between Spain and other EU countries have concerned cases where Spain sought the extradition of Basques on terrorism charges, without providing any evidence indicating that the persons wanted had themselves committed or knowingly contributed to the carrying out of a particular terrorist crime.

The Spanish extradition requests seem to be based on the concept of "guilt by contact": anybody who sympathises with Basque separatism or - knowingly or otherwise - engages in any form of contact with suspected ETA terrorists, is considered an ETA terrorist himself and should be treated accordingly. Thus, a year ago, Spain sought the extradition from Belgium of a Basque couple whose only crime consisted in having housed in their Brussels apartment some Basque countrymen whom the Spanish police regarded as ETA terrorists.

The use of "guilt by contact" is a classic feature of anti-guerilla warfare, but has nothing to do with constitutional rule. It means reducing the role of the judiciary to enforcing the political aims of the government, rather than the law. Such a subordinate, executive role of the judiciary characterises authoritarian systems of government.

Terrorism a pretext for extending executive powers

To be fair, Spain is not the only Western European democracy which has succumbed to some extent to the temptation of authoritarian "executive action" in the name of "efficiency", when confronted with terrorism. Both Britain and Germany have at times acted in the same way in their attempts to cope with respectively the IRA and the "Red Army Faction" (Baader-Meinhoff). Situations of genuine or presumed emergency tend to result in a disturbance of the balance between the three powers of the democratic constitutional system - the executive power (Government), the legislative power (Parliament) and the judiciary. In such situations, the executive branch (Government and implementing authorities) tends to extend its powers at the expense of the judiciary and the parliament. Even if it is only of a temporary nature, such a disruption of the system of checks and balances increases the risk of summary and arbitrary action by state authorities. This can amount to persecution and result in people needing to seek asylum in another country.

Such a development cannot be excluded in any country of the world - not even in the best of constitutional democracies. To admit this possibility in one's own country is a sign of democratic maturity. It is a sign of strength for a state to accept foreign scrutiny of its human rights situation through the asylum and the judicial authorities of another democratic country. On the other hand, only absolutist and authoritarian regimes simply decree that their own national territory is free from, and will forever remain free from persecution.

A Brave New World of totally safe countries

The Spanish proposal is alarming because it reveals a total lack of understanding of democratic-constitutional rule. That the governments of the other EU member states are now seriously discussing

the "important proposal" is even more disquieting, but in some ways a logical consequence of the Union's lack of constitutional decision-making and accountability structures. The EU-system further contributes to the existing trend towards the predominance of the executive powers at the expense of parliamentary and judicial control. In the absence of this control, which is vital for democracy, governments can fulfil their dreams of "lean" and "efficient" government undisturbed. In terms of refugee policy, lean and efficient government means defining away refugees. Some years ago, the EU ministers deprived hundreds of thousands of third country nationals from any fair chance of obtaining asylum in an EU country by introducing the "safe third country" principle. The EU in this way got rid of a large number of refugees from outside. Today the IGC is preparing to abolish the right of asylum "inside", for their own citizens, by declaring the Union a safe area by definition and forever - an area where there can be no persecution, because its rulers have decided so. Thus we might soon live in a Brave New World of "totally safe countries" surrounded by lots of "generally safe countries".
Can we continue to feel safe in such an environment?

N.B.

SPAIN THREATENS PORTUGAL WITH REINTRODUCTION OF BORDER CONTROLS

Once again, Spain is resorting to political blackmail in trying to force the extradition by another Schengen country of an alleged ETA member.

The Spanish Minister of Foreign Affairs, Abel Matutes, has threatened that Spain will reintroduce border checks at its Schengen-internal borders with Portugal. The Spanish move is in response to a decision of the Portuguese Supreme Court to refuse the extradition, sought by Spain, of Jose Luis Telletxea, an alleged member of the violent Basque separatist organisation ETA. The man is accused in Spain of having smuggled terrorists out of the country.

The Supreme Court in Lisbon refused Mr Tellextea's extradition on the grounds that the Spanish authorities had not presented sufficient grounds justifying an extradition.

Commenting on the decision, Spanish Foreign Affairs Minister Matutes said Portugal was at risk of becoming a "sanctuary for terrorists". Mr Matutes summoned the Portuguese authorities to put Mr Tellextea under strict police surveillance. He warned that, if Portugal failed to comply, Spain would reintroduce controls at the Portuguese borders. These were abolished in 1995 in accordance with the Schengen Implementing Convention.

The Spanish threat comes only a few months after the signing in December of a Spanish-Portuguese agreement on the setting up of four joint police posts at their common border.

Sources: Süddeutsche Zeitung, 5.3.97; Migration News Sheet No. 166/97-01.

WESTERN GOVERNMENTS WANT SURVEILLANCE OF ELECTRONIC MAIL

Together with the USA, the EU Governments are seeking to empower their law enforcement authorities and intelligence services to intercept telecommunications. State authorities will be able to tap your phone and read your e-mail, whenever and wherever they wish.
We have earlier reported on the EU-sponsored 'Memorandum of Understanding' on the interception of telecommunications. The Memorandum aims at obliging service providers and manufacturers to technically enable interception (see CL No. p. 5 and 7). In the following article, Anders R. Olsson addresses other joint EU-US plans in the same domain: state authorities will be able to read your private e-mail. These plans, if realised, would put an end to confidential telecommunications.

Encryption a pre-requirement for confidential communication

The only technical means of ensuring that an e-mail message can be read only by the person(s) to whom it is destined is to encrypt (encode) it, using an electronic encryption-key. Only correspondents who share this key can decode and read the encrypted mail.

With the rapid advance of information technology, society's need for encryption is enormous. Users must be able to:

1. send confidential messages accessible only to the "right" addressee;
2. put their electronic signature on documents; and
3. authenticate electronic documents.

By "document" we mean here anything that can be communicated in digital form - i.e. texts, images, film or sound.

It is quite natural and nothing new that individuals, firms,

organisations and public authorities feel a need in certain contexts to communicate discreetly or secretly.

As a matter of fact, encryption has existed since ancient times as a means of handling secrets. But thanks to computer technology, the practice of encryption has become both safer and faster. As soon as correspondents have exchanged electronic encryption-keys, they can communicate confidentially via computer networks. Moreover, encryption can be used to "sign" and authenticate documents. With an electronic signature the sender A confirms for all receivers that A and no one else is the author of the message. An electronic "stamp" represents a guarantee that a document has exactly the form and content it was initially given by its author.

Here we are dealing with one-way encryption, that is encryption codes function in one direction only. The "key" making it possible to decode and read the encrypted document can be handled openly and circulated without restrictions. The fact that one can read a text after having decrypted it with, for example, the national taxation authorities' open "key" proves that the text actually originates from these authorities. But this key cannot be used the other way round - i. e. it cannot be used for converting a text to something that looks like a document of the national taxation authorities.

This sort of encryption works very well in practice and will underlie all computer-based commercial activities, where purchaser X must be completely sure that vendor Y really is Y, and vice versa. We will need encryption keys not only as consumers but also as citizens - for voting, making income returns, filing appeals by e-mail. The "keys" will consist in electronically readable "smart cards".

More and more digital documents will be accepted as documentary evidence. This applies to contracts, receipts and vouchers, accountancy records, as well as court decisions and decisions of other public authorities. Many of the IT professionals' visions of the future - electronic money, the "friction-free" market and "electronic democracy" - are inconceivable without safe encryption.

As far as technology and theory are concerned, the problems are solved. In many countries, some public authorities and private firms are already using digital documents.

Yet, for this development to really get under way, there is a need for international standards and agreements of various sorts - and for cheap and easy to handle encryption software.

The key controversial issue today is whether these encryption programmes will be made really "crack-proof", or whether they will be proof against everybody except the police and the state security services.

No privacy from police and secret services?

Police circles in the EU and the USA are trying hard to push through international regulations making it possible for them to intercept any e-mail message they wish. This is necessary, they say, in the fight against organised criminals and terrorists who abuse the Internet. As a consequence, influential police and security people in the USA and in Europe are demanding no less than that anybody using encryption be obliged by law to deposit the key at the state authorities.

For the time being, most Western countries have no restrictions on the use of encryption. Any encryption programme may be used and there is no obligation to deposit the key. In France, however, encryption on public nets is permitted only with state authorization and provided that the encryption-key has been deposited with the appropriate authority.

The US government has made several attempts at the national level to push through a similar obligation to deposit encryption-keys - with little success as yet. The best known attempt was the so-called Clipper Chip project which triggered massive protests from American civil liberties organisations.

On the international level, however, advocates of strict restrictions on encryption appear to be more successful. Above all the USA is trying by various means to prevent the spreading of computer programmes for safe encryption. Thanks to its technological advantage the USA all but imposes its export control rules on the other Western countries. In these regulations, encryption programmes are placed on the same sensitivity level as plutonium and advanced radar techniques.

But knowledge of how to create safe encryption algorithms is already widespread. Anyone can get advanced encryption programmes free of charge from the Internet. If you have such a programme on your laptop when crossing the border, e.g. between Sweden and Denmark, you run the risk of being fined. If, instead, you delete your programme before crossing the border and reload it via the Internet as soon as you have reached Danish territory, you are acting in full compliance with the law.

In view of this, it may seem

somewhat bizarre that the governments of the USA, France and a number of other countries are so stubbornly pressing for export control and compulsory depositing of encryption-keys. Do they really believe that criminal organisations, spies and terrorists will deposit their keys? Are they really not aware that their action will only deter innocent citizens, companies, health care authorities, and many others with a legitimate interest in safe encryption from communicating by e-mail?

Be that as it may, stubborn they are. The controversy is now being fought out in the OECD and the EU. But the respective working groups are negotiating behind closed doors. According to individuals with insight into the current negotiation process, the USA is taking advantage of its technological supremacy to press countries with a more liberal view into accepting its restrictive policy goals. Countries unwilling to "co-operate" have been made to understand that they risk being subjected to US export restrictions.

Thus, a lot seems to be at stake: the sanctity of the mail, citizens' right to privacy and people's confidence in the new computer technology. In many contexts, electronic data communication will be used only provided the correspondents can be sure their messages will not end up in the wrong hands.

Fight against crime or political policing?

"I do not believe that the demand for the compulsory depositing of encryption keys has much to do with fighting against terrorists or drug dealers. This is just an excuse. Everybody - even the police and security services - realise that the real villains will never deposit any keys. Instead, I believe that the point is really to snoop on politically "interesting" people - radicals, intellectuals, journalists, labour union leaders, etc., and also established political leaders, both of the opposition and in the government". This is the blunt assessment of Gunnar Klein, a Swedish medical doctor and encryption expert. Klein knows what he is talking about. He was recently appointed chairman of the European body responsible for developing IT standards in the field of health care. He has also worked for the EU with data-security techniques in health care.

Many types of information being sent require watertight confidentiality protection, Gunnar Klein points out - data in the fields of health care, social welfare, and police and justice. In the private sector firms need to protect many types of information - e.g. offers, contracts, construction plans, research and accountancy records. Lawyers must be able to communicate confidentially, etc.

The various proposals concerning the depositing of keys that have been presented in Europe and the USA in recent years would enable law enforcement authorities to decrypt the data communications of a suspect. In most countries similar rules already apply when the police want to open mail or tap telephones. While such surveillance measures usually require prior authorization by a judge when carried out by the police against criminal suspects, eavesdropping by intelligence services is often not subject to any judicial control. Thus, according to Gunnar Klein, British courts authorise an average 8000 eavesdropping operations per year. At the same time, the US National Security Agency, at the request of the British authorities, intercepts the telecommunications of an additional 40,000 people on the UK territory - without any involvement of a court but in full compliance with British law. Thus, people's fear of state abuse of interception is not always ungrounded, Klein stresses.

In the last analysis, people's acceptance of eavesdropping depends on their trust in the state agencies involved. Klein names the example of the French intelligence service. It has become widely known that French intelligence assists French companies in spying on competitors: "Not long ago, regular French police arrested several persons who had broken into IBM's European headquarters in Paris and were in the process of installing eavesdropping devices. It eventually appeared that the burglars were working for French intelligence".

Illegal eavesdropping activities by the Swedish security police and the recent revelation of long-standing snooping activities by the Norwegian police aimed at large numbers of citizens considered politically "unreliable" or otherwise interesting (see CL No. 43, p.7, No.49, p.8) indicate that a certain lack of respect for the law is a widespread phenomenon among secret services beyond France.

Most important, however, are the international implications of an obligation to deposit encryption keys. International companies would have to deposit their keys in every country where they do business. Journalists and tourists would have to deposit their keys whenever they travelled. And the objective of the advocates of compulsory depositing of keys seems to be that a court in

country A should be empowered to decide on the use of an encryption key which has been deposited in country B.

One should also bear in mind the implications of an international acceptance of key depositing for countries with less stable democratic systems. "Are we going to provide the authorities of such countries with the possibilities of playing Big Brother?", asks Gunnar Klein, and he points to other enormous practical problems that are likely to arise. Key depositing is both expensive and risky. "The numbers of keys will be enormous. In some applications the key is changed every five minutes during an on-going conversation. For each deposited key additional data on how and when the key in question is used must be stored. This means that, for instance, firms must disclose more secrets than just encryption keys - for example, whom they are communicating with and on which occasions. And security measures around these key deposits will pose gigantic problems".

Other countries should not give in to US pressure, stresses Gunnar Klein. Instead they should introduce legislation establishing clearly that the right to privacy and secrecy through encryption is a human right.

Anders R. Olsson (Stockholm)

Contact: Tel: +46/8 7393211, E-mail: anders.r.olsson@swipnet.se

GERMANY

TELECOMMUNICATION PROVIDERS TO ENSURE ACCESS OF SECURITY AUTHORITIES TO CUSTOMER DATA

In Summer 1996, the German *Bundestag* (Federal parliament) adopted the *Telekommunikationsgesetz* (TKG: telecommunications law). The TKG was widely hailed as a means to liberalise the monopolised German telecommunications market. However, it has gone almost unnoticed that the TKG includes a special paragraph 90, which states that all providers of telecommunication services must enable automated access by a "Regulation Authority" to their customer data. Telecommunication providers are becoming the state's suppliers of up-to-date data on its citizens, warns FIfF, the German organisation of computer scientists.

Under the TKG, service providers must see to it that the authority's access can take place without their own and their customers' knowledge.

The Regulation Authority is responsible for handling all queries from the police, the judiciary and the secret services concerning customer data (phone numbers, names, addresses, e-mail addresses etc). These elements of identification are considered necessary for intercepting the telecommunications traffic of the customer concerned.

Who is a "provider"?

It has long been unclear what the law actually meant by "provider". The answer can be found, at least in part, in a recent draft description of the interface requirements between providers and the Regulation Authority. In the draft the modalities for a secure data transmission of customer data is described in great detail. The two existing mobile telecommunications providers and the new competitors of the German Telekom AG (with the German state as its largest shareholder) are the first providers to have been asked to enable access to their customers' data, mainly because of their size. But the requirement of access will gradually be extended to small providers.

"Uncontrolled" access to customer data defined in draft "Interface Description"

In accordance with the requirements in the TKG, the technical definition of the access interface comprises not only the transmission of a telephone number but also of an e-mail address. This may become a sensitive issue, as soon as online-service providers also are obliged to allow access to their databases.

The draft "Interface Description" draws up a set of measures aimed at solving a problem that follows from the TKG requirement that the Regulation Authority must have access to customer data at any time without the knowledge of even the telecommunications provider. This requirement actually creates the need for an "uncontrolled" interface.

A back door for unlawful access

The problem with such an installation is that it provides a potential back door for unlawful access to and modification of provider databases.

To prevent this, the draft "Interception Description" lists a number of elaborate requirements:

1. The connections between providers and the Regulation Authority will be defined as a "closed user group" within Euro-ISDN. No traffic with other communication partners is allowed, and the installation has to be kept secret.
2. The providers must acquire at their, i.e. their customers' expense,

an authentification and encryption device for the encryption of the data traffic in accordance with specifications of the Regulation Authority. The device has to be set up in a safe location and is initialised by a special chip card, personally delivered by a representative of the Regulation Authority. The device follows an access protocol and alerts to misuse: "On an unauthorised connection, alarm signals are sent to the Regulation Authority, which in turn notifies the security official [of the provider concerned]." An RSA encryption system is used for key management, session key exchange and authentification. In this system a new encryption key is created for every session.

3.By way of the Euro-ISDN connection, the Regulation Authority transmits a database request for customer data transfer to the provider via ftp (file transfer protocol). The provider in turn has to send the result separately to a "data retrieval office" (*Abfragestelle*) of the Regulation Authority. The requests are divided into three categories: "immediate" (response within 60 seconds), "urgent" (maximum 15 minutes), and "normal" (maximum 6 hours).

Access to e-mail addresses

Examples in the "Interface description" indicate where the security authorities' main interest lies: incomplete data in fragments of names and numbers are to be completed by a full data set, made of the name, number and address. Significantly, while area codes are defined as numerals, telephone numbers are defined as a 100-character string. This is in accordance with the TKG and only makes sense, if there are plans to enable access to service providers other than just telecommunications providers. This is new evidence confirming the warnings of critics, most notably the German organisation of computer scientists, FIfF, that the interception regulation in the TKG might become applicable to even the smallest non-profit mailbox provider.

Supplying the state with up-to-date data on its citizens

The "Interface Description" presents itself as a "theoretical treatise" and "is meant to give an overview and an early opportunity to move into a planning stage". In other words, the providers are to get started with assessing their costs.

For customers the meaning of all this is not only that fees will increase, but also that henceforth telecommunications providers will have a new role to play: that of constantly supplying the state authorities with up-to-date information on its citizens.

Provider threatens to leave Germany

Telecommunications providers must now meet the following technical infrastructure requirements:

- one line for the customers;
- one for the surveillance of the customers (to be enabled at any time under a 1995 ordinance on the surveillance of telecommunications (FÜV: *Fernmeldeverkehrsüberwachungsverordnung*); and now
- a third line for enabling access to customer data at any time and free of charge for the authorities.

After studying the draft "Interface Description", an international provider of telecommunications services has already threatened to move its network centre from Germany to other European locations. This would result in the loss of 1,200 jobs in Germany.

Surveillance versus data protection: the government has made its choice

Only a few months after the entry into force of the TKG, we now have in hand a technical description of the "third line". A strengthened version of the 1995 FÜV-ordinance, in accordance with the regulations in the TKG has already been announced for the upcoming months. On the other hand, we still do not know how long we will have to wait for another ordinance based on the TKG - the data protection ordinance. This indicates that when the issue is whether to secure or restrict citizens' rights in Germany, the authorities have established their priorities.

Ingo Ruhmann (Bonn)

The author is member of the board of FIfF.
Contact: FIfF, Reuterstr. 44, D-53113 Bonn, Tel: +49/228 219548, Fax: +49/228 214924, e-mail: fiff@fiff.gun.de

(Quotations in the above article are our translations from German)

VISA REQUIREMENT FOR CHILDREN

Children from certain countries now need a visa to enter Germany, and must apply for a residence permit if they already live in the country. A decree to this effect entered into effect on 15 January, only a day after its announcement by the German Interior Minister, Manfred Kanther.

The decree deals with children under 16 years from Turkey, the former Yugoslavia, Morocco and Tunisia - that is, countries in which Germany used to recruit large numbers of guest workers. Children from these countries already residing legally in Germany have until 31 December to apply for a residence permit. In the Turkish community alone, some 400,000 children, many of whom are born in Germany, are affected.

All children under 16 from the above countries also require a visa to enter Germany.

Abuse of visa-free travel?

Minister Kanther justified the visa requirement as a necessary measure to prevent the entry of unaccompanied children. In 1996, more than 2000 unaccompanied children entered the country, as opposed to only 198 in 1994. According to the Minister, this indicates that parents have been abusing visa-free travel to send their children to Germany as unaccompanied asylum seekers. Once a child was granted asylum, they tried to follow themselves. While critics do not deny that abuse does occur, they point to the fact that around 1,300 of the 2,000 unaccompanied children were actually received by parents or other relatives already living in Germany and that many others actually are genuine refugees.

Mr Kanther further contends that Kurdish children in particular are used by drug traffickers for smuggling and selling drugs, since criminal prosecution of children is not possible under German law.

The Christian-Democrat Berlin Foreigners Commissioner, Barbara John, argues that the new visa requirement will "better protect children from being moved back and forth" and from being "abused for dubious purposes".

Decree benefits immigrants smugglers, experts say

Throughout the country, people with insider knowledge of the immigrant communities dispute the contention that the decree will benefit children. Instead, they say, it will contribute to further discrimination against immigrants. The reunification of foreign children with their families in Germany is being made even more difficult and the visa requirement will only benefit immigrant smugglers who will raise their prices for forged travel documents, while such a development will not deter drug traffickers. Instead, asylum organisations fear it will prevent genuine child refugees who cannot afford to resort to smuggling organisations from travelling to Germany.

Doubts even among Christian Democrat MPs

The requirement of a residence permit has been publicly censored by 10 federal MPs of Mr Kanther's own Christian Democrat party, who described the measure as "counterproductive". They fear the decree will lead to great uncertainty for the children and families concerned and thereby jeopardise their integration into German society.

Panic among immigrant families, confusion among foreigners authorities

The Interior Minister's sudden move has created confusion and panic among the immigrant communities concerned. Within days of the announcement of the decree, in Berlin alone anxious Turkish parents had 500 children flown in from Turkey, in order to prevent the risk of definitive separation.

The decree has led to some confusion even among foreigners authorities. It remains the secret of the Interior Minister how they are expected to handle hundreds of thousands of residence applications within a reasonable time period. Moreover, there is disagreement over the period of validity of residence permits for children. While some foreigners authorities are talking about eight years, others say permits must be renewed every two years.

A proposal by the Federal Foreigners Commisioner, Ms Schmalz-Jacobsen, to grant unlimited residence permits was quickly rejected by Interior Minister Kanther. An unlimited residence permit would have entitled foreign children in Germany to travel freely within the Schengen territory.

Decree fuels extremism, critics say

Critics of the decree say the message from the Government is that immigrants are not considered part of German society, no matter how hard they try to integrate. This, they claim, is grist to the mills of xenophobic and racist groups. Cem

Özdemir, a Green member of the *Bundestag* (Federal Parliament) of Turkish origin, fears the decree will also drive young foreigners into the arms of Islamic extremists who oppose any integration into German society.

Sources: Der Spiegel, 04/97; Migration News Sheet, No.167/97-2 (MNS is available at: 172-174, rue Joseph II, B-1000 Brussels, Tel/Fax: +32/2 2303750).

ITALY

COUNCIL OF MINISTERS ADOPTS IMMIGRATION BILL

The Italian Council of Ministers has adopted a proposal for a new immigration law. The Bill has two main objectives: more rights for legal immigrants and strict immigration control. Massive opposition against the proposal from the anti-immigration parties Lega Nord and Alleanza Nazionale suggest that its adoption by parliament is likely to take time.

Improvements for legal immigrants
Under the Bill, anybody lawfully living in the country for more than 6 years will be granted a residence permit of unlimited duration. Holders of such unlimited permits will have the right to vote and to stand for election in local elections. Family reunification will be eased for foreigners with legal stay, on condition, however, that they certify sufficient accommodation and income. Foreigners will also become eligible for housing benefits and willl be granted the same access to social services as Italian citizens. School attendance will be compulsory for all foreign children.

The Bill also provides for the employment of workers from Third World countries. In such cases, the employer will sign a guarantee for the foreign employee. Moreover, individuals and associations will be authorised to guarantee the stay of foreigners who are unemployed but looking for work, through a form of sponsorship.

Harsh action against clandestine immigration
The Bill provides that anybody entering or staying in the country without valid documents will be "accompanied" to the border by the police. Unauthorised re-entry will be punishable by imprisonment.

Controversial figures on the number of 'clandestini'
Registered immigrants in Italy number about 1 million. About half of them live in the urban agglomerations of Rome and Milan. Estimates of the number of illegal immigrants, the so-called *clandestini,* differ widely from each other and are a controversial political issue.

Reports published recently in the British newspaper, *The Economist*, claimed that some 700,000 clandestine immigrants entered Italy in 1996. The Italian Interior Minister, Giorgio Napolitano, however, sharply contested these figures as "totally arbitrary" at a Schengen symposium in Rome in January. "Even Germany cannot estimate its number of clandestine immigrants", the visibly irritated Minister added.

Sources: Neue Zürcher Zeitung, 17.2.97; Agence Europe, 13.1.97; our sources.

SWITZERLAND

SWISS-YUGOSLAV AGREEMENT ON READMISSION

Swiss authorities are preparing the forcible repatriation of some 12,000 citizens of the Federal Republic of Yugoslavia (FRY). A bilateral readmission treaty to this effect is expected to enter into force within the next two months. Most of the people covered by the agreement are ethnic Albanians from Kosovo.

The Swiss Federal Council (Government) has already formally approved the readmission agreement and given the FRY citizens concerned until the end of August to leave the country.

According to a senior official, the content of the agreement is identical with the German-Yugoslav readmission treaty of last year.

The Swiss-Yugoslav agreement enables the repatriation of more than 12,000 asylum seekers - mostly Kosovo-Albanians whose asylum applications have been turned down. Since November 1994, Swiss authorities have been unable to carry out deportation measures to the FRY, because the Government of the FRY refused to grant entry to its own citizens.

The agreement can be signed as soon as it has been formally approved by the Government in Belgrade. This is expected to happen within two months. The agreement will enter into force at the earliest the first day of the

second month after its signing.

Due to the FRY ban on entries, the Swiss Government repeatedly extended the temporary stay of the Yugoslav citizens concerned. The new deadline is 31 August. Until that date, the Federal Office for Refugees will set definitive individual time limits, within which the persons concerned must leave the country. This will enable a regular and continuous pace in the repatriation process.

A total of 12,431 rejected asylum seekers from the FRY are currently in Switzerland. For another 5,200 the final decision is still pending.

Switzerland has accorded temporary residence permits to 1,450 refugees from the FRY. Permanent residence permits have been granted to 2,224 refugees on humanitarian grounds. 2,436 refugees have obtained status under the 1951 Geneva Convention.

Asylkoordination Schweiz and several other Swiss asylum organisations appealed to the Swiss Government to refrain from sending ethnic Albanians to Kosovo in view of the "explosive situation" in this province.

Source: Neue Zürcher Zeitung, 4.3.97.

EVENTS

Hannah Arendt et le monde d'aujourd'hui - le "droit d'avoir des droits"

International colloquium organised by the University of Geneva (FPSE) and Université Ouvrière, 20-22 May 1997, Geneva, Switzerland. Organiser: Marie-Claire Caloz-Tschopp.

This colloquium will deal with the topicality of the work of Hannah Arendt. It is conceived as an interdisciplinary meeting and aims to confront Arendt's political philosophy with the world today, and in particular the situation of refugees and stateless people.

With the participation of, among many others: Lothar Baier (The weight of history and the banality of evil), Prof. François Rigaux (The right to have rights: status and/or movement?), Rada Ivekovic (Post-socialist transition in the former Yugoslavia), Maja Wicky (Law and political action), Sidonia Blättler (Arendt and the fate of refugees and stateless people), Wladislaw Godzich (The frontier in our mind), Etienne Balibar (the right to have rights: the right to politics), Nurruddin Farah (Statelessness today).

Conference languages: French and German (simultaneous translation).

Information and registration: Colloque Hannah Arendt, Sécrétariat-Inscriptions, c/o Fanny Perrelet, Av. Parc Rouvraie 26A, CH-1018 Lausanne, Switzerland; Tel/Fax: +41/21 6476197.

National security and the rule of law

International symposium, Gothenburg School of Law and Economics, 8 - 11 May 1997, Gothenburg, Sweden. Organiser: Prof. Dennis Töllborg.

Lecturers: Dennis Töllborg (Some hypotheses on significant features for security policing), Kirsi Piispanen/Matti Wiberg (The political control of the Finnish police 1945-1996), Oscar Jaime-Jimenez (Politics, security agencies and terrorism in Spain), Heiner Busch (Swiss state protection - law and practice), Laurence Lustgarten (Accountability and oversight: the British example), Iain Cameron (The ECHR on national security and the rule of law), Ingse Stabel (The Lund-report in Norway), Thomas Mathiesen (Sub-cultures in policing), Nicholas Busch (Europol, Schengen and Sirene), Peter Klerks (Policing Europe towards the year 2000: changes, chances and challenges).

Conference language: English.

Information and registration: Dennis Töllborg, Fax: +46/31 7734454 (mention: Institution of Legal Science, Gothenburg University att. Töllborg); e-mail: Dennis.Toellborg@law.gu.se

Conference on Communities, Culture, Communication and Computers (C5) - on the role of concerned professionals in the information age

21-23 August 1997, Paderborn (Germany). Conference arranged by FIfF (German Forum of Computer Professionals for Peace and Social Responsibility), Computer Professionals for Social Responsibility (CPSR) and Gesellschaft für Informatik.

Information and registration: Prof. Dr. Reinhard Keil-Slawik, University of Paderborn, FB 17, Fürstenallee 11, D-33102 Paderborn; Fax: +46/5251 60-6414; e-mail: c5@uni-paderborn.de

DOCUMENTS AND PUBLICATIONS

Schengen - Politisamarbeid, overvåkning og rettssikkerhet i

Europa (Schengen - Police Co-operation, surveillance and legal security in Europe), by Prof. Thomas Mathiesen, publ. by Spartacus Forlag AS, Oslo 1997, 120 p., in Norwegian (ISBN 82-430-0096-8).

This book provides an excellent overview of less publicised aspects of Schengen co-operation and a critical analysis of European developments in the field of police and internal security. The author also addresses the lack of democratic scrutiny and judicial accountability inherent in Schengen co-operation and the serious consequences this might entail for the fundamental rights and liberties of European citizens.

For the time being, this outstanding book is available in Norwegian only. Hopefully, we will not have to wait too long for an English translation.

Order from: Spartacus Forlag AS, Postboks 2587 Solli, N-0203 Oslo; E-mail: post@spartacus.no

A migration policy for the future - possibilities and limitations, by J. Doomernik, R. Penninx and H. van Amersfoort, publ. by Migration Policy Group, Brussels, April 1997, 92 p., in English.

This study gives an overview first of the changing context in which international migration is currently taking place. There follows an analysis of the precise development of migration and of migration policy in the Netherlands in the last two decades. The third stage is made up of a presentation of the current academic understanding of the processes of international migration. These three stages provide (at least in theory) a survey of what is possible and what is not possible in migration policy. At this point the authors depart from the strictly academic pathway and consider which of the suggested methods of influencing international migration are feasible and achievable, and which of them are capable of winning political support.

Order from: Migration Policy Group, 174 Rue Joseph II, B-1000 Brussels; Fax: +32/2 2800925; e-mail: 101324.622@compuserve.com

Human rights and the IGC: Judging the European Union - Judicial accountability and human rights, published by JUSTICE, London 1996, ISBN 0 907247 26 1, 26 p., in English. Price: £5.00.

This report deals with the adequacy of judicial mechanisms for the protection of human rights within the EU. It considers two main questions:

- the extent to which the European Court of Justice is able to act as an effective guardian of human rights without specific provisions in the TEU which would provide a clear competence;
- the absence of any overall supervision of the intergovernmental third pillar of the TEU, which covers justice and home affairs matters.

The report concludes that there is a substantial judicial deficit regarding the protection of fundamental rights in the EU, particularly in relation to justice and home affairs matters under the third pillar of the Maastricht treaty and recommends that the ECJ's jurisdiction be strengthened and clarified.

Order from: JUSTICE, 59 Carter Lane, London EC4V 5AQ; Tel: +44/171 3295100, Fax: +44/171 3295055; e-mail: justice@gn.apc.org

Human rights and the IGC: The democratic deficit - Democratic accountability and the European Union, published by JUSTICE, London 1996, 30 p., in English. Price: £5.00.

This report deals with the structures and procedures for providing democratic accountability at national and European levels for law-making and policy-making within the EU. It considers three main questions:

- whether the powers of the European Parliament need to be strengthened, in particular under the third pillar of the TEU;
- whether and how national parliaments can properly exercise their role of scrutinising EU matters;
- the extent to which procedures in the Council inhibit transparency and citizens' rights to freedom of information.

Spotlight Report No. 23: Law enforcement and the law in the Federal Republic of Yugoslavia Humanitarian Law Center, Belgrade, November 1996, 26 p., in English.

Order from: Humanitarian Law Center, Avalska 9, FRY-11000 Belgrade; Tel/Fax: +381/11 4443944; e-mail: hlc@EUnet.yu. Home page: http://www.opennet.org/hlc

Contributors to CL No.50: Helle Hagenau (Brussels), Mads Bruun Pedersen (Copenhagen), Anders R. Olsson (Stockholm), Ingo Ruhmann, Christian Busold, Petra Hanf (Bonn), Michael Williams (Hedemora, S), Thomas Mathiesen (Oslo), Janet Dench (Montreal), Nicholas Busch (Falun).

SUBSCRIPTION INFORMATION

A subscription period covers 10 issues of the Circular Letter.

Individuals and voluntary associations: 230 Swedish crowns / £20/ 40 Swiss francs/ 170 French francs/ 50 DM/ 350 Austrian Schilling/ 1020 Belgian Francs/ 33 US$.

Institutions and firms: SEK 600 (Swedish Crowns).

(Moms-tax included for subscribers in Sweden).

Subscription is free for individuals and voluntary associations in Eastern Europe and the former Soviet Union.

Payment modes:

1.to Nicholas Busch, Postgiro konto 637 57 41-3, Stockholm or by international postal order (pink form) to Nicholas Busch, Blomsterv. 7, S-791 33 Falun.

2.*Eurocheque* issued in Swedish crowns, payable to Nicholas Busch. *Private cheques are not accepted.*

3.Svenska Handelsbanken, S-106 70 Stockholm, S.W.I.F.T.: hand se ss, account no. 376 746 092, Nicholas Busch. *Add 60 SEK for banking charges.*

4.Individual subscribers in non-Scandinavian countries may send the amount in cash in their national currency.

Firms and organisations in the EU: Please indicate your VAT-number on your payment.

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

SPONSORS:

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

European Civic Forum/C.E.D.R.I.
Postfach, CH-4004 Basel
Tel: +41/61 2620111, Fax: +41/61 2620246

Geneva Group - Violence and Asylum in Europe
(Groupe de Genève - Violence et Droit d'Asile en Europe)
Université de Genève, Faculté de Psychologie et des Sciences de l'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

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