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.
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EUROPEAN UNION

MASS ARRESTS AT THE AMSTERDAM EU-SUMMIT

While the heads of governments of the EU were discussing the amendment of the Maastricht Treaty on European Union at the Amsterdam EU-Summit, the Dutch host city was under a state of siege. The Dutch police preventively arrested hundreds of demonstrators as suspected "members of a criminal organisation". All this was observed with great interest by police liaison officers from other EU-countries. A first glimpse of the "area of freedom, security and justice" established by the Amsterdam Treaty?

Under local emergency regulations decreed by the city authorities, large areas of Amsterdam's inner city were declared "security zones" and the 5000 police concentrated in the city were given special powers to maintain public order.

When the Summit was over, at least 700 people, most of them anti-Summit protesters, had been temporarily detained, sometimes without their arrest even being registered. Preliminary estimates indicate that between 200 and 300 foreigners from EU countries were summarily deported, in many cases without being informed of the

grounds for their removal. Many foreigners were deported without their passports, money and other personal belongings. Some were told they would not be allowed to enter the Netherlands for some time and were advised to pick up their belongings at the Dutch embassy in their country. Approximately 130 Italians were held for hours on the train that brought them to Amsterdam and sent back to Italy under police escort in the middle of the night. Belgians and Germans were bussed to the borders and handed over to their home countries' police. Scandinavians were put on planes. 4 Swedes and 12 Danes were brought home on a military aircraft, escorted by a Dutch fighter-bomber the first part of the way. Hundreds of people randomly arrested on the streets of Amsterdam were subjected to police abuse and ill-treatment under detention. Commenting on the treatment of 13 arrested Danes, an upset Danish Vice-consul, Ms Hanne Boonstra, told the Danish press agency Ritzaus: "They sat in a bus for 6 hours, locked in handcuffs and without being given anything to eat or drink. Women were body-searched and accompanied to the toilet by male police, and people were not allowed to ring their embassy, their consulate, or contact a lawyer or their families". Two young Danes say they were arrested as they were peacefully walking on the street, far away from any demonstration or security zone. They were suddenly pushed to the ground from behind by two plain-clothes police, handcuffed and blindfolded like dangerous criminals.

The EU-Summit lasted from 16 to 17 June. But already on Saturday 14 June, a large, long-planned European demonstration against unemployment gathered some 50,000 demonstrators from many EU countries. Some minor clashes with the police occurred during this march, but both the Social-Democrat Mayor of Amsterdam, Mr Schelto Patijn [incidentally a brother of Michiel Patijn, the Minister of European Affairs and Dutch chief-negotiator at the IGC] and the public relations officer of the police declared themselves very satisfied with the outcome of the march and said that minor damages and disturbances were quite normal at events of that size. They omitted to say that hundreds of Italians had been effectively prevented by the police from taking part in the march. As a matter of fact, the police simply held them on the train upon arrival at Amsterdam. Only after the demonstration was over were most of them allowed to leave the station. However, approximately 130 passengers were locked in the train during the whole afternoon. They were later handcuffed and brought to a penitentiary. Their photographs were taken and in the middle of the night they were put on a train back to Italy, allegedly on suspicion of having caused damage in train cars. Significantly, two Italian members of the European Parliament, who wanted to check for themselves whether these police allegations were correct, were denied access to the train by the police. Dutch observers question that the alleged damages were the real ground for the mass arrests. Extensive damage to trains is often caused in the Netherlands by hooligans on their way to football matches, they say, but this has never led to mass arrests. Indeed it seems that the real purpose of the police operation was to prevent as many people as possible from joining the protest march and to remove those Italians regarded as would-be trouble-makers from the Netherlands. A statement of the public prosecutor in the case seems to confirm this: "If you saw what was coming out of this train, you understand what could have happened".

Random arrests on suspicion of "membership in a criminal organisation"

The second wave of mass arrests took place on Sunday 15 June around the 'Vrankrijk' building, one of the information centres belonging to Dutch groups opposed to the Summit. Already on Sunday morning the police presence around 'Vrankrijk' was massive and a police special video-van was filming everybody in front of the building. In the late afternoon the police suddenly began arresting people entering or leaving the building, or merely walking around in streets in its wider surroundings. Some people

were literally kidnapped - handcuffed, blindfolded and driven away by plain-clothes police in black Mercedes cars. Soon, information spread that the people arrested were being detained and charged on the accusation of "membership in a criminal organisation", in accordance with Article 140 of the Dutch Penal Code (DPC).

At 9pm a group of about 350 people attempted to leave 'Vrankrijk' for a demonstration at the police headquarters in protest against the arrests. After only 20 metres, the marchers were surrounded by riot police, whereupon they sat down on the street and began chanting. After having "cleaned" the area around 'Vrankrijk' from passers-by and curious press people, the police arrested all 350 people, as well as some passers-by protesting against the operation. Again, the arrests were made on the charge of suspected "membership in a criminal organisation". It was the biggest mass arrest in the Netherlands since 1966. Pernille Rosenkrantz, a candidate for parliament of *Enhedslisten* (Red-Green Alliance Party), was among the arrested. She says that the marchers showed no signs of violence and that she sat down on the street and waited for what was to happen next, simply because the police prevented anybody from moving. She was roughly pushed into a bus, hand-cuffed, and brought to a detention centre, together with 80 other women.

Around 1am the police lifted the cordon around 'Vrankrijk' and a crowd of sympathisers and curious passers-by flocked to the building to size up the situation. Again, there were no signs of violence, again the area was cordonned off, and again the police immediately arrested anyone leaving the building on suspicion of "membership in a criminal organisation". Strangely enough, the police eventually cancelled preparations to storm 'Vrankrijk', although the building, going by the official motivation of the arrests, must be considered the centre of the "criminal organisation".

Opening of Summit: Amsterdam a fortress

On Monday 16 June, the opening day of the official summit, the city centre of Amsterdam had all the characteristics of a fortress. The police were omnipresent. Throughout the city people "disappeared", randomly arrested as possible trouble-makers - a suspicion based only on their appearance. Far away from any security zone, 6 people were arrested under Article 140 DPC. Their crime consisted in having somewhat naively, perhaps, asked some policemen for the way to an announced demonstration of Kurdish people.

On Monday evening, a few hundred people gathered near a security zone for what they called a "jubilation march". The marchers intended to approach the hotels where the European heads of government were staying and "cheer" them (somewhat noisily we may assume) "for all the efforts they are making". The organisers also carried a cake they intended to deliver to French President Chirac. After a short discussion with the police, the marchers dropped their idea of delivering the cake. The whole atmosphere was rather jolly and relaxed. But again, riot police surrounded the demonstrators. Some 200 people were arrested. They were tightly handcuffed with plastic tape and put on a bus. The bus did not leave until an hour later. Then, it first headed for a prison on the outskirts of Amsterdam. When it turned out that there was no room for the arrested there, it returned to the city. After a whole night on the bus without food or water, the arrested were finally admitted to another penitentiary. Everybody was released the next day with a fine of 125 Dutch guilders for "illegal gathering", according to a provision of the local emergency regulation in force during the Summit.

No formal charges brought

On Tuesday 17 June, a judge ordered the immediate release of three persons, who had brought complaints against the Dutch State for their detention under Article 140 DPC. The judgement said there was no evidence to prove their individual contribution to any criminal organisation. The judge added that this ruling applied to all those detained under similar

conditions. A dispute arose about how this ruling should be interpreted. The prosecutor argued that the ruling applies only to persons for whom the grounds of detention have been examined by a judge. Thus, while the three complainants were set free immediately, the other people detained under Article 140 were released only in the days after the official conclusion of the Summit - significantly, without any prior individual examination of the lawfulness of their arrest and without anybody being summoned. To our knowledge, none of the people arrested under Article 140 have as yet been formally charged and Dutch lawyers doubt that anyone will ever stand trial. This is a further indication that the purpose of the arrests never was to actually start penal procedures, and possibly sentence the persons concerned, but merely to keep them away from the streets during the days of the Summit.

Well-planned operation

The chief public prosecutor stated several times on television that, long before the Euro Summit, the decision had been taken to get hold of possible trouble-makers through the use of Article 140 DPC. Commenting on the authorities' justification of the arrests, Fritz Rüter, a professor of penal law at the University of Amsterdam, said that in considering what had happened he could see only one criminal organisation - formed by the Mayor, the public prosecutor and the head of the police, who had been working in a organised way for some months on preparing the deliberate and unlawful arrests.

Article 140 a catch-all offence

The use made of Article 140 in the days of the Amsterdam Summit is without precedent in the Netherlands. Article 140 is an old provision within the Dutch Penal Code. In 1918, a leading member of the Social Democrat Workers Party was sentenced under this article for having called for a revolution in the Netherlands. After World War II the provision was used against freedom fighters in Indonesia, when the Netherlands were fighting their colonial war there. Thus, it has been used before against political groups, but always after something actually had happened and with more substantial evidence and more clearly defined charges.

Significantly, almost 90% of the charges based on Article 140 never resulted in a conviction. Thus, one could argue that the "usefulness" of the provision consisted in its authorising the police to make much wider use of sweeping investigative techniques than in investigations based on other provisions of the Penal Code. In most of the cases the provision has been used not against dangerous, violent criminals but against radio pirates, organisations involved in the trafficking of soft drugs, squatters, football supporters and extremist right-wing parties.

The Dutch High Court approved of the use of Article 140 DPC for political organisations, but at the same time made a restriction on its use by specifying that the individual participation of persons charged under the Article should have a direct relation to the realisation of the aims of the organisation involved. However, this apparent restriction does not prevent arbitrary interpretation in practice. Is, for instance, someone who donates money every month to an existing organisation to be regarded as a "member", when the organisation is suddenly and unexpectedly being prosecuted under Article 140? According to which objective criteria of assessment (e.g. common objectives, organisational structures, methods of operation, necessary individual contribution) should people be considered part of a criminal organisation?

This is the first time that Article 140 DPC has been used for "pro-active" policing purposes, i.e. to prevent an alleged risk of "disturbances" of public order and security. Dutch critics claim the objective of the operation was not only to prevent people from exercising their basic right to demonstrate at the Amsterdam summit, but also to generally establish a new interpretation of Article 140, extending its use to groups within society whose crime consists in being disliked by the state.

"Shoot first, ask later" policy

On Tuesday 24 June the Amsterdam city council discussed the events occurring during the Summit. Only the Green Left clearly disapproved of the behaviour of the police. Most other parties approved, because, as the leader of the Social Democrats put it, "it is better to have an investigation as to why the police arrested innocent people than to have an investigation into the question of why half the city was burned".

The Dutch parliament discussed the police action on 26 June. Apparently inspired by the "shoot first, ask later" philosophy of Clint Eastwood films, the Minister of Justice, Ms Winnie Sorgdrager, said she personally approved of using Article 140 in cases like this, but that it was ultimately up to a judge to decide whether its application was justified or not.

The majority of parliament did not disapprove of the arrests as such, but said that the use of Article 140 was not really appropriate and that the time had come to amend the penal code, in order to make this kind of arrest possible under another article of the penal law. Most parliamentary groups carefully avoided addressing the crucial question of whether there were any grounds for the arrests in the first place and whether the state has the right to prevent demonstrations only because it dislikes them.

Most political parties now demand that at least some people be prosecuted under Article 140, so as to allow a court to state whether its use against the anti-Summit protesters was lawful or not. In the meantime, most observers agree that there will be no convictions under Article 140 in this case. Consequently, by calling for "test" prosecutions, the parliament has in fact given the Department of Justice a mandate to investigate an unknown 'criminal organisation' which - in application of the "guilt by association" principle - could theoretically comprise the entire extra-parliamentary opposition in the Netherlands.

Foreign police involved in the operation

Foreign police were involved in the police operation at the Amsterdam Summit.

A Dutch police spokesman told a Danish journalist that German, Belgian and British police were dispatched to Amsterdam during the days around the Summit. The Germans brought with them dogs trained to find bombs. The spokesman insisted, however, that the foreign police (including their dogs?) did not actively take part in any operations, but were there merely as observers.

The Swedish police officially confirmed that they had dispatched an "observer" to Amsterdam.

According to Italian activist circles an Italian police liaison officer passed information on protesters on the train from Italy to his Dutch colleagues.

A young Danish woman arrested under Article 140 DPC says she was interrogated by a Dutch police official in the presence of a German officer. Most of the questions of the Dutch interrogator related to her participation in 1996 in a demonstration in Germany. According to the woman, the Dutch police officer constantly referred to information he could only have gotten from the German police.

Dutch groups involved in the anti-Summit protest claim that German and Italian police warned the Dutch authorities before the Summit about trouble-makers from their respective countries planning major disturbances of the Summit, thereby triggering panic among the Dutch police who had earlier shown a rather relaxed attitude in preparing for the Summit. While there is, for the time being, no substantial evidence to confirm this, it is established that, weeks before the Summit, a couple of Dutch police detectives visited numerous squatted houses in Amsterdam and other Dutch cities and strongly warned the occupants against accommodating foreign guests during the Summit. The two detectives particularly encouraged people to ring them if they had "problems with Germans". The occupants (whose squats have been legalised by the authorities), were told that non-compliance with the above instructions could entail their immediate eviction.

It is further established that fingerprints and photographs of arrested and deported people were not only taken by the Dutch

police. The German police took photographs and fingerprints from their nationals upon arrival at home and told them they would be charged for "disturbance of the peace". According to some accounts from Italians sent back to Italy by train, German police escorted the train during the entire route through Germany and made an attempt to take photographs and fingerprints of some of the people on the train. According to the same sources, Italian authorities were put under strong pressure from the Netherlands and Germany to arrest their returned nationals upon arrival in Italy, but refused to do so. The above has however not been confirmed by any independent source.

Hitherto there is no official confirmation of any formal structures of international police cooperation, such as Schengen or EDU/Europol, being involved in police action before, during and after the Summit. The Dutch authorities have so far chosen to neither confirm nor deny specific suspicions expressed by activist circles of extensive registration of protesters in the Schengen Information System. In the Danish parliament, *Enhedslisten* (the Red-Green Alliance) has put a written question to the Government. The MPs want to know whether Danish authorities passed information to Europol, Interpol or Dutch authorities, whether EDU/Europol was involved in the police operations, and what will happen with the fingerprints and photographs of the 29 Danes arrested without grounds in Amsterdam.

Sources: 'EUROTOP Amsterdam - Complaints Book on Police Conduct during the Amsterdam Summit', Amsterdam, July 1997, Autonoom Centrum, Jansen & Janssen, Prisoner Support Group; Ritzaus press agency reports, 17 and 18.6.97; our correspondents in Italy, Denmark, Sweden and Switzerland.

See also 'Opinion' in this issue, p.16 .

ASYLUM/IMMIGRATION, FUNDAMENTAL RIGHTS, JUSTICE AND POLICE, - AN OVERVIEW OF THE AMSTERDAM TREATY

The following is a somewhat desperate attempt to give an intelligible overview over some of the barely intelligible contents of the Amsterdam Treaty, agreed at the Euro-Summit of Amsterdam on the night of 17 June 1997. Please note that this summary is not based on the final treaty text, which is to be formally adopted in October. Since squabbling between the member states on important items of the Treaty began immediately after the end of the Summit, some changes might still occur.

Fundamental rights

Section I of the Amsterdam Treaty (on 'Freedom security and justice') begins with essentially symbolic statements of the Union's commitment to "general principles" such as "liberty, democracy, respect for human rights and fundamental freedoms". However, the idea of EU accession to the European Convention on Human Rights (ECHR) has not been realised. Instead the Treaty merely says: "The Union shall respect fundamental rights, as guaranteed by the [ECHR]". This creates the odd situation that the legal protection of individuals against breaches of fundamental rights by the Union is inferior to protection against breaches by its member states, all of whom are signatories of the ECHR.

A procedure is introduced, both in the TEU (Treaty on European Union) and the TEC (Treaty establishing the European Community), which - at least in theory - provides that the Council may exclude a member state until further notice from certain rights under the treaties, including the right of voting in the Council, where a "serious and persistent" breach of the aforementioned general principles has been established. The proposal to initiate a procedure aiming merely to determine the existence of a breach by a member state, must be made by one third of the member states and approved unanimously by the EU Council (meeting of the Heads of State or Government). The decision to suspend the rights of the member state concerned is taken by the Council, acting by a qualified majority.

A "Declaration to the Final Act on the abolition of the death penalty" merely "recalls" the protocol to the ECHR providing for the abolition of the death penalty, and notes that since the signature of this Protocol in

1983, "the death penalty has been abolished in most of the Member States of the Union and has not been applied in any of them".

From 1999, the EC Data Protection Directive will apply to processing of personal data by EU institutions and an independent supervisory body shall monitor the correct application of data protection rules. However, bodies within the Justice and Home Affairs framework are not covered. This means, for example, that Europol's handling of personal data will remain outside the scope of the new supervisory body.

A Protocol attached to the TEC provides for the abolition - at least in practice - of the right for citizens of an EU member state to seek asylum in another member state (We will cover this item in the next CL).

Free movement of persons, asylum and immigration

A new Title on "Free movement of persons, asylum and immigration" is introduced in the TEC. Thus, formally, the above items are now dealt with within the Community Law framework of the "first pillar". However, during a "transitional period" of 5 years after the entry into force of the Amsterdam Treaty, the Council shall act *unanimously* and the right of proposal is shared by the Commission and the member states. The Council shall "consult" the European Parliament EP). Jurisdiction of the European Court of Justice (ECJ) is limited to preliminary rulings upon request of a national Court, against whose decisions there is no legal remedy under national law, the Council, the Commission or a member state.

After the 5 year transitional period, aspects of immigration and asylum policy will be subjected to the qualified majority rule, if and only if the Council decides so by *unanimous* vote and after consulting the EP. In this event, the areas or parts of areas concerned would be governed by the procedure referred to in Article 189b of the TEC, which provides for a stronger say for the EP. The right to propose legislation would be limited to the Commission and the scope of ECJ jurisdiction would be extended.

However, Article H(2) of the revised TEC unequivocally states: "In any event, the Court of Justice shall not have jurisdiction to rule on any measure or decision (...) relating to the maintenance of law and order and the safeguarding of internal security".

Finally, rulings of the ECJ on a question of interpretation of the new Title or of acts of the Community institutions based on this Title shall not apply to judgements of national courts against which there is no national legal remedy.

The Council shall adopt, within the first five years, a number of "measures" with direct legal effect in the member states in the fields covered by the new Title. But due to the requirement of unanimity, this is unlikely to lead to any major changes. Exceptions to the requirement of unanimity are made only for certain measures in respect of visa policies.

The UK, Ireland and Denmark are not bound by the provisions of the new Title and the so-called Schengen *acquis*, which covers, inter alia, the same areas as the new Title, is incorporated into the framework of the European Union. All this only adds to the extraordinary complexity of decision-making procedures established by the new Title.

Police and judicial cooperation

Judicial cooperation (in criminal matters) and police cooperation will continue within the prevailing intergovernmental framework of the "third pillar" (Title VI of the TEU). This means that all decisions, except measures implementing Conventions, require unanimity. The amended Title VI significantly extends police cooperation. Europol is given *quasi*-operational powers. Among others, it shall be enabled to "facilitate and support", and to "encourage the coordination and carrying out" of specific investigations by the "competent authorities" of the member states. Europol shall take part "in a support capacity" in joint teams of the member states carrying out operational actions. Moreover, Europol shall be allowed to "ask" the competent authorities of the member states to "conduct and coordinate" their investigations in specific cases.

Items of judicial cooperation in criminal matters, named in the revised Title VI, include:

- improved cooperation in relation to proceedings and enforcement of decisions;
- facilitating extradition (already very much facilitated by the Convention on Extradition);
- measures establishing minimum criteria for the approximation of the member states' legislation with respect to offences in the fields of "organised crime, terrorism and drug trafficking".

New instruments of decision-making are introduced. They are:

- "Common positions" defining the approach of the Union to a particular matter, i.e. non-binding general policy statements.
- "Framework decisions". They have no direct legal effect in the member states, but shall be binding upon them as to the result to be achieved (this format is likely to be used, for example, for the approximation of criminal law).
- "Decisions" for any other purpose within the scope of Title VI, excluding, however, any approximation of legislation of the member states. They are "binding and shall not entail direct effect".

In addition to this, the Council may continue to establish Conventions. Member states shall begin the ratification procedures within a time limit set by the Council.

Early suggestions at the IGC for the removal of the K.4 Coordinating Committee of senior officials with a view to smoothen the prevailing cumbersome process of preparing JHA decisions have not been heeded. Thus, it will probably be up to the Council to decide possible changes regarding the lavish bureaucratic structures under the K.4 Committee.

The EP shall be "consulted" before the adoption of "framework decisions", "decisions" and Conventions. No consultation is provided for with regard to "common positions".

By making a declaration to this effect any member state can accept preliminary jurisdiction by the ECJ with respect to the validity and interpretation of framework decisions and decisions, as well as on the interpretation of conventions. Provided such a declaration is made by a member state, the ECJ will give a preliminary ruling upon request of a Court of that state (This provision has been taken from the Protocol to the Europol Convention on the role of the ECJ).

The ECJ shall also rule on disputes between the member states regarding the interpretation or application of measures decided by the Council. However, another provision crucially restricts the competencies of the ECJ: it shall have no jurisdiction to review "the validity or proportionality" of operations carried out by the police or other law enforcement agencies of a Member State" or of measures with regard to "the maintenance of law and order and the safeguarding of public security".

Closer cooperation - "Flexibility"

General clauses inserted in the common provisions of the TEU provides the possibility for member states to establish "closer cooperation" between them, within the institutional and legal framework of the Treaties. Such closer cooperation is authorised provided it comprises "at least a majority" of member states. When the Council addresses measures implementing "closer cooperation", all 15 members of the Council take part in the deliberations, but only member states participating in "close cooperation" are allowed to vote.

Conditions for closer cooperation are specified in Title VI of the TEU (Article K.12). "Closer cooperation" of a group of member states must be authorized by the Council, acting by a *qualified majority*. An exception to this rule is made only if a member state objects to a request for "closer cooperation" for "important and stated reasons of national policy". In this event, the matter is referred to the European Council for decision by unanimity.

Other member states can at any time join an existing agreement on closer cooperation, provided the Council (here consisting only of the member states party to the "closer cooperation"!) decides by qualified majority to "hold [the application of the member state concerned] in abeyance". In this case, a new deadline shall be set

for reconsideration of the application.

Significantly the above rules do not apply to the "closer cooperation" of 13 member states within the Schengen framework. Article K.12 (5) states: "This Article is without prejudice to the provisions integrating the *Schengen acquis* into the framework of the Union. This indicates that the incorporation of Schengen actually entails the creation of an additional institutional and normative framework of decision-making in the area of Justice and Home Affairs - along side the frameworks established by the new Title on asylum and immigration, the Title on Police and Justice cooperation, and "closer cooperation". (The implications of Schengen incorporation will be addressed in a later CL).

Sources: Draft Treaty of Amsterdam, Brussels, 19.6.97, CONF/4001/97 CAB, limite; Migration News Sheet, No. 172/97-07; Statewatch, May-June 97; 'Justice in Europe', Issue 2/97, by JUSTICE, UK; Paris: Le Traité d'Amsterdam: un pétard mouillé, FIDH, Paris, June 1997; 'The Treaty of Amsterdam: a mixed result', Amnesty International, EU Association, Brussels, 26.6.97.

JHA COUNCIL APPROVES RULES ON EUROPOL ANALYSIS-FILES

At its meeting of 26-27 May in Brussels, the Justice and Home Affairs (JHA) Council more than twenty proposals without debate. With respect to Europol, the Ministers agreed upon the rules applicable to analysis-files and to a protocol on the privileges and immunities of the Europol officials. The Council further adopted a Joint Action on cooperation in the fields of public order and security and approved a report extending the draft Convention on mutual assistance in criminal matters to cover the use of undercover agents and other "modern" investigation methods.

Europol analysis files

The Council has finally adopted the implementing rules applicable to Europol's so-called analysis files. Work on the draft had been repeatedly delayed because of strong public criticism in a number of countries of provisions authorising the storage of highly sensitive personal data regarding the race, political opinion, health, and sexual behaviour not only of criminals but also of persons not suspected of any offence.

Despite this criticism, this possibility is maintained in the final draft now adopted by the Council. Thus, regarding possible witnesses, victims and informants, the aforementioned types of data may be stored and processed, provided there is "reason to assume that they are required for the analysis [of the role of the person concerned]". A number of additional safeguards have been included in the final draft aiming at restricting to a minimum the storage of sensitive personal data. However, one can doubt their effectiveness in practice, since no procedure of authorization or external to Europol is provided for.

Privileges and immunities

"Political agreement" was reached on a "Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and employees of Europol". Among other things, the

Protocol provides for:
- Immunity from legal process for liability in respect of unauthorised or incorrect data processing.
- Inviolability of Europol's archives;
- Immunity of members of the organs and the staff of Europol in respect of "words spoken or written, and of acts performed by them, in the exercise of their official functions. Such immunity continues even when the person has ceased to work for Europol. "All their official papers and documents and other official materials are inviolable".

Waivers of immunity are theoretically possible under the Protocol. The Director of Europol shall waive immunity of staff members in cases where "the immunity would impede the course of justice and can be waived without prejudice to the interests of Europol". If a judicial body of a member state considers that abuse has occurred, the Europol body responsible for waiving immunity shall "consult" with the judicial authorities concerned to determine whether an abuse occurred. If no agreement is reached, the JHA Council "shall unanimously decide on the modalities according to which they shall be settled". This seems to imply that Europol's own organs, and, possibly, the Council can refuse a waiver of immunity without any involvement of a court.

Reservations to the Protocol are not possible. The Protocol is, however, subject to ratification by the parliaments of the member states.

The extraordinary extent of immunities under the Protocol was questioned even by the German Minister of Justice, Edzard Schmidt-Jortzig in an interview accorded to *Süddeutsche Zeitung*. He said he agreed to the Protocol only as a provisional solution during a "transitional period". Upon his request, a clause was added at the last minute to the Protocol, stating that the rules on immunity must be amended whenever the powers of Europol are being extended and that the European Court of Justice shall have some form of jurisdiction as soon as the powers to carry out its own investigations are conferred upon Europol.

EUROPOL/EDU budget increased by 20 per cent

The JHA Minister agreed to the EDU budget for 1998, amounting to 6.86 million ECU. This sum does not include the 3.26 million for the development of the Europol Computer System. The system will not be ready for use before 2000. This makes it necessary to find an "intermediary solution" enabling Europol to start work at the earliest possible date.

The formal adoption of the Protocol was postponed to a later JHA meeting.

Draft Convention on mutual assistance in criminal matters

The Council noted that work on the Convention was progressing. It approved a report extending mutual assistance under the draft Convention to include "modern methods of cross-border investigation" (including e.g. controlled deliveries and under-cover agents) and "the lawful interception of satellite-based telecommunication". Under the Convention, member states are to commit themselves to introducing national law authorising the use of the above "modern methods". Cross-border controlled deliveries (deliveries under secret surveillance by the police) will be authorised not only with respect to illegal drugs trafficking but also all other types of goods.

Joint Action on public order and security

The Ministers quietly adopted a Joint Action on cooperation in the fields of public order and security. The Joint Action (doc 8164/97 Enfopol 117 and 8012/97 Enfopol 111) provides for cooperation in connection with events, such as "sporting competitions, music concerts, demonstrations and road blockades", attracting many people from several member states.

Police cooperation will take place in three forms:

1. Information exchange prior to events on groups of a "certain size" that are planning to enter another member state to participate in a particular event and which could disturb public

order and security.
2. Exchange of police liaison officers with the task of "advising and assisting" the authorities hosting an event.
3. Annual meetings of the chiefs of the "national authorities responsible for public order and security", where matters of common interest are to be discussed.

In addition to this, joint "exercises" in preventing public order disturbances will be held.

This little publicised Joint Action is likely to seriously undermine the right of demonstration in the whole EU and to open wide the door to extensive political policing. In this respect, the recent police operation at the Amsterdam Summit was ominous, indeed (see in this CL: 'Mass arrests at the Amsterdam Summit, p.1, and 'Opinion', p.16).

Other items
- Approval of an "explanatory report" in respect to the Convention on Extradition, signed last year. According to an official Danish note, it was agreed during the negotiations on the draft Convention to draw up an explanatory report (after the signing of the Convention!) "in which the contents of the various provisions are specified". This amounts to an implicit admission by the JHA Ministers that they have signed a Convention they did not understand. Indeed the Convention is so "flexible" (with a lot of "opt-in" and "opt-out" clauses) and vague that it is unintelligible and practically not applicable in its present form.
- Adoption of a Resolution on unaccompanied third-country minors (under the age of 18). This (non-binding) Resolution establishes a number of guidelines allegedly in the interest of unaccompanied children. Among other things, it provides that minors applying for asylum may be sent back to their country of origin or to a "safe third country" provided it is established that they will be correctly taken in charge.
Unaccompanied minors who do not seek asylum may be turned away at the border.
- Signing of the EU Convention on Corruption.
- Decision on the exchange of information concerning assistance for the voluntary repatriation of third-country nationals.
- Approval of CIREA reports regarding developments in the fields of asylum and immigration policies in the member states and the situation in "refugee-producing" countries.
- Agreement of measures implementing the Dublin Convention, which was finally ratified by Ireland in May.

Sources: Notes by the Danish Ministry of Justice and the Aliens Board regarding the JHA-meeting of 26-27.5.96; Agence Europe reports, 27, 28, 29.5.97; Joint Action on cooperation in the fields of public order and security, doc 80/12/97 ENFOPOL 111, and 8164/97 ENFOPOL 117, 20.5.97; Protocol on the Privileges and Immunities of Europol.

HIGH LEVEL GROUP PRESENTS "ACTION PLAN" AGAINST ORGANISED CRIME

At the Dublin Summit in December, the European Council commissioned a 'High Level Group' (HLG) of senior police officials from member states with drawing up a plan of action against organised crime. The plan was presented in March and approved by the Amsterdam European Council. Among other things, the HLG recommends a further significant enlargement of Europol's competencies as well as "joint action" aimed at making it an offence in all member states to "participate" in a "criminal organisation". In the opinion of the High Level Group, these and many other far-reaching policy objectives should be realised before the end of 1999.

Since the Action Plan is about "organised crime", some attempts are made in the introduction to define the evil in question. Thus, we are told by some of Europe's most high-ranking police officers that criminal behaviour "no longer is the fact of individuals only, but of organisations that pervade the various structures of civil society, and indeed society as a whole", and, moreover, that "Internet and electronic banking" are "extremely convenient vehicles" for committing crime and laundering money". We further learn that "the major driving force behind organised crime is the pursuit of financial gain" and the ensuing "need to launder the profits thereafter". In view of such low level phrase-mongering one can only note that the "high level" police officials are not very clear about the threat they seem determined to combat. In the absence of any useful definition, they note that in order to tackle organised crime, you have to "know your enemy" and "agree on the characteristics which make it both dangerous and, hopefully, vulnerable". Very true, indeed.

Criminal law approximation through "Joint Action"

The fact that the HLG does not seem to "know its enemy" does, however, not prevent it from recommending stringent measures to combat it. The Action Plan lists a number of political guidelines which are specified later in the text in operational terms. Among other things the plan recommends that the Council adopt a Joint Action aimed at making it an offence under the law of each member state for a person present on its territory, "to participate in a criminal organisation, irrespective of the location in the Union where the organisation is concentrated or is carrying out its criminal activity". The Council should further examine other areas where an approximation or harmonisation of member states' laws could best contribute to combating organised crime.

Significantly, the HLG does not recommend Conventions, but instead Joint Action as the appropriate instrument for achieving "approximation" in the above fields. The reason for this seems obvious: conventions must be submitted to national parliaments for ratification, which in many cases has proven to be a time-consuming exercise. Joint actions are not subjected to this minimal form of democratic debate and scrutiny, and can be realised far more quickly.

The catch-all offence of "participating in a criminal organisation"

It is suggested in the Action Plan that the offence of "participation in a criminal organisation" could consist in the behaviour described in Article 3, §4 of the Convention on Extradition signed by the member states in September 1996 (see CL No.45, p.2). According to this provision, the offence of participating in a criminal organisation consists in a behaviour contributing to the commission of a number of types of serious crime, including politically motivated crimes, by a group of persons acting with a common objective, even when the person concerned is not personally taking part in actually carrying out the crimes in question.

For the time being, in a number of member states participation or membership in a criminal organisation is not a punishable offence. In countries such as Germany, Spain, Portugal, and other countries, where it is an offence, the relevant provisions have repeatedly drawn strong criticism because of their catch-all character, which has time and again led to people being investigated, and sometimes sentenced, without their having engaged in any concrete criminal activity.

It lies in the nature of the targeted organisational structures, that they usually are clandestine, lack any formal membership status, and often partly overlap with perfectly legitimate organisations. Consequently, in practice, it often proves difficult to clearly define at which point in time and through which concrete behaviour membership or "participation" in an alleged criminal organisation actually begins and - just as

important - where it ends. As trials against alleged supporters of ETA in Spain, the IRA in the UK and Ireland and the "Red Army Faction" in Germany show, there is a serious risk of innocent people being sentenced on the basis of arbitrary concepts of "guilt by association".

Ironically, the most recent demonstration of the elasticity of the term "criminal organisation" was made at the EU summit in Amsterdam, when Dutch police preventively arrested hundreds of non-violent anti-EU protesters for alleged membership in... a "criminal organisation" (see article in this issue, p.1 and p.16).

Speed up adoption and ratification of "essential" Conventions

All finalised European Conventions relevant to the fight against crime should be ratified before the end of 1998 by all member states, the Action Plan emphasises. This affects 8 Council of Europe conventions (on, among others, mutual assistance in criminal matters, extradition, customs cooperation, fight against drugs and suppression of terrorism) and 6 EU conventions, including the Convention on Extradition (target date: 1998) and the Europol Convention (target date: end of 1997).

With regard to extradition, the Action Plan particularly urges the member states to ensure at the national level that extradition requests can be dealt with "in the most simple and expeditious manner". Above all, they shall ensure that "the right of asylum is not abused to avoid justice by offenders involved in serious crime".

A legal basis for "modern investigative methods"

The Naples II draft Convention on customs cooperation and a draft Convention on mutual assistance in criminal matters should be finalised by the end of this year. The latter convention should render the reservations made to the corresponding Council of Europe Convention "superfluous". The HLG further recommends "reconsideration of the requirement [under the Council of Europe Convention] of double criminality". According to the principle of double criminality, a requested state must grant assistance to the requesting state only if the offence concerned is punishable also in the requested state. To depart from this principle, as recommended by the HLG, would amount to weaken the rights of the accused.

Regarding the latter convention, the Action Plan says that a legal basis should be created for "the trans-boundary application of certain modern investigative methods, such as controlled delivery, deployment of undercover agents and the interception of various forms of telecommunication".

Coordination and centralisation of policing at the national level

Time and again the Action Plan advocates centralisation and coordination as an effective means of combating crime. It proposes that "competent law enforcement agencies" in each member state coordinate their actions at the national level, share information and act in a concerted manner. For this purpose, "multidisciplinary integrated teams" should be set up, "specifically in the area of organised crime" (The idea of multidisciplinary teams seems to be drawn from a German creation of the late 80s, the KGT (*Koordinationsgruppe Terrorismusbekämpfung*: Coordination Group for the Fight against Terrorism). The KGT comprises representatives of all authorities involved in the fight against terrorism, including the customs, the secret services and the military intelligence service).

The HLG further proposes that each member state designate a body with "overall responsibility for the coordination of the fight against crime". This body would at the same time constitute a "single contact point" for mutual assistance between the member states, providing access to all national law enforcement agencies responsible for the fight against organised crime. In the opinion of the HLG, the Central National Units of Europol (NCBs), the Interpol National Central Bureaux,

and the Schengen-member states' SIRENE bureaux should all be brought together in these single central national contact points, whose role would be to serve as an "interface in bringing competent authorities in the Member States and the Commission into contact with each other rapidly".

In order to render cooperation between the various national coordination bodies more effective, the member states and the European Commission are to "identify mechanisms for the collection and analysis of data" so as to obtain a picture of organised crime in each member state, according to common standards of assessment. Information is to be organised in such a way that it is "readily accessible for investigation and prosecution at the national level and can be effectively used and exchanged with other Member States".

Boosting Europol

Europol will be integrated into this activity. It will also act as an intermediary in developing closer cooperation with the EU's transatlantic partners, as well as Russia and Ukraine. More generally, the HLG recommends that Europol be authorised to "cooperate and liaise with third countries and international organisations". In addition to this, Europol should be enabled to:

- "facilitate" and "support" specific investigative actions by the respective competent national authorities, among others by Europol officials participating "in a support capacity" in joint investigation teams of the member states;
- "ask" the competent authorities of the member states to conduct investigations and "draw the attention of one or more Member States to the importance of having certain matters investigated" (Formally, member states would not be obliged to take action as suggested by Europol, but in practice it is likely to prove very difficult for the competent national authorities concerned to refrain from fulfilling the wishes of the Union's central and most well-informed police body);
- be "instrumental" with respect to the collation and the exchange of information regarding "suspicious financial transactions", by, among other things, running a system to be created for exchanging information concerning suspected money-laundering at the European level (to this end, the Europol Convention would have to be supplemented with a provision permitting this);
- seek access to the Schengen Information System (SIS) or its European successor (the European Information System, EIS).

Judicial control no big issue

The HLG does not express itself on the legal implications of the proposed massive extension of Europol. It merely notes that the Council will have to assess whether the development of the role of Europol requires amendments to the Convention.

While the Action Plan is specific and sets short time limits as far as measures are concerned which aim at strengthening police cooperation under the *de facto* leadership of Europol, it is remarkably reserved with regard to the crucial question of how to ensure an acceptable standard of judicial control over the proposed extended police structures. Judicial cooperation needs to be brought to a level comparable to police cooperation, otherwise there is a risk of "distortion of the system", the HLG quite correctly notes. However, the only action recommended is an "in depth study" of the problem. The study should "examine the place and the role of judicial authorities in their relations with Europol, in step with the enlargement of Europol's competencies". In particular, it should address the question of whether today's ad hoc network of judicial cooperation should in the long term be transformed into a more permanent structure. The target date set for the "in depth study" is mid-1998.

Commonplace talk on root causes of crime

The central item of finding ways to prevent crime by social measures is only superficially

addressed in the Action Plan. "Socially weak groups are vulnerable to the perspective of a criminal career", it says. EU structural funds such as the European Social Fund and URBAN should be used to "prevent large cities from becoming breeding grounds for organised crime". In the view of the HLG, those funds can help "those most at risk of exclusion from the labour market and thus alleviate the circumstances that could contribute to the development of organised crime". This is a tiny step in the right direction. Indeed, a comprehensive plan of action against unemployment and other forms of exclusion on the rise in the EU would certainly be a more successful way to fight against crime, be it "organised" or not, than continually extending an expensive police apparatus. However, the main focus of the measures recommended in the Action Plan does not suggest that a corresponding re-orientation of anti-crime policies can be expected soon.

Source: High Level Group Action Plan to combat organised crime, Brussels, 9.4.97, 6276/4/97 Rev 4 Limite JAI 7.

SCHENGEN

SCHENGEN DATA PROTECTION AUTHORITY: NO PHONE NUMBER, NO SECRETARIAT, NO POWERS

The first activity report of the Schengen countries' common data protection authority, the Joint Control Authority (JCA) confirms what many have feared: the control authorities have no powers to sanction violations of data protection rules, its independence is constantly put into question, its efforts to carry out its task are often obstructed by various Schengen bodies, its budget is low, its staff small. As the various European and international structures of police and security cooperation and information exchange are steadily growing and linked up with each other, the prospects of effective data protection seem ever bleaker.

"We are a little body, with two representatives from each country, we have no secretariat, we do not even have a phone number. According to the text of the convention [Schengen Implementing Agreement: SIA] we do not either have anything to threaten with when we discover that somebody is breaching the agreements". This is how Georg Apenes, the head of Norway's data protection authority, describes the working conditions of the JCA.

Mr Apenes's comment on the Schengen countries' police data bases is no more enthusiastic: "My impression is that, in our eagerness to catch the big sharks, we are getting ourselves equipment reminiscent of a drag net for shrimp fishing".

The Norwegian data protection commissioner's views seem to be widely shared by his colleagues in the other Schengen countries. Despite its diplomatic wording, the first activity report of the JCA mirrors considerable irritation.

A constant struggle for independence and a sufficient budget of its own

The JCA describes its activity report as "an unfinished report on

a step by step negotiation with the Member States aimed at establishing in practice the independence and authority of [the JCA] which watches over the respect of the rights of persons whose data are being exchanged". According to the report, since the application of the SIA in 7 member states in March 1995, the JCA concentrated its "main effort" on obtaining guarantees with respect to its independence, as well as on encouraging cooperation between national data protection bodies in order to enable the exercise of the right to obtain information, and on supervising the central support unit (C-SIS) of the Schengen Information System (SIS) in Strasbourg.

Already in October 1995, the JCA demanded that it be assigned a budget of its own to enable it to carry out its tasks in total independence. After a month of waiting the JCA was given a negative answer by the Schengen Central Group (this powerful body of high officials can be described as the Schengen correspondent to the EU "third pillar" K.4 Committee). In April 1996, the JCA presented a draft budget amounting to 4,250,000 Belgian francs. Among others the budget plan included such modest items as setting up a secretariat and a register of the JCA's files, hiring meeting premises, and employing a translation service. Another important item concerned sufficient financial means for calling in external experts for carrying out control tasks. Only after lengthy examination by various Schengen bodies was the draft budget finally approved "in principle" by the Schengen Executive Committee (Committee of Ministers), but its amount was drastically reduced to 2,839,950 Belgian francs. Among others things, the travel expenses of the data protection commissioners to their annual meeting in Strasbourg were cancelled. No wonder then, that "due to a number of, above all, financial problems", the JCA's first activity report covers two years instead of one as initially planned.

Documents denied, control of C-SIS interrupted by French security guards

The JCA has time and again met with a remarkable lack of cooperation from the various Schengen bodies and national authorities. It seems that some Schengen bodies show little esteem for the JCA's control activities. Among other things, since 1995, the JCA repeatedly and insistently requested a number of documents which are essential for the understanding and application of the SIA and the operation of the SIS. According to the report it often met with considerable difficulties in trying to obtain some of these documents in time. "In spite of its complaints" the JCA is still waiting for some of them, "particularly those of the Steering group and the Permanent Working Party".

The JCA's lack of authority was particularly highlighted through an incident in October 1996. An investigation group of computer experts mandated by the JCA visited the premises of the C-SIS in Strasbourg in order to carry out a comprehensive monitoring operation in accordance with the tasks of the JCA. The check operation was broken off after only three days, when French security officials ordered the expert group to leave the premises. The French authorities justified this *manu militari* expulsion by claiming that only the members of the JCA and not external experts mandated by the JCA were entitled to carry out such checks. The immediate consequence was that the JCA investigators had "too little time to check a large number of documents and data", in particular since they were not allowed to make copies of the files in question for later examination outside the C-SIS centre. Thus, a thorough check of the C-SIS never took place.

The French action drew a sharp reaction from the JCA which resulted in a number of meetings between the JCA and the Central Group, at which the JCA also discussed "other problems encountered in its efforts to carry out its tasks in a satisfactory way". Since the JCA, according to the SIA, has no authority to force any changes of

practice, it will be interesting to see whether the Schengen Central Group and the Executive Committee take into account any of the JCA's complaints

Mention is made in the report of observations by various national data protection authorities. The French data protection commission pointed to difficulties encountered in seeking to carry out effective checks in the N-SIS (national unit of the SIS) on whether data originating from other member states have actually been entered for purposes in accordance with the prevailing rules or not. German data protection commissioners complained that there were problems regarding the application of Article 103 of the SIA. This Article states that a record of every tenth communication of personal data must be kept in the system for a certain period in order to enable later checks by the data control authorities. The German data protection authorities also claimed that, in flagrant violation of Article 102 SIA, personal data from the SIS that should have been deleted after the conclusion of a search were transferred to various national registers for other purposes.

All these observations give rise to serious concern. They indicate that some of the most instrumental provisions of the SIA aimed at enabling data control and protection are actually not effective in practice.

The limits of data protection

The report also addresses some more general and long-term problems facing effective data protection. Thus it notes that the SIA contains satisfactory rules as regards the rights of persons, data security, and the control of the computer system. However, "successive delays regarding the application of the rules have almost resulted in the system, which was steadily upgraded for the sake of efficiency, prevailing upon the application of the principles… This situation was particularly alarming because other European cooperation projects were already developing, in which the requirement of efficiency was asserted in the first line". One may guess that these sentences refer above all to the setting up of the SIS/SIRENE structure (see CL No.49, p.4) and Europol's various data bases.

The JCA reminds us of the fact that "complementary agreements to the SIA" [such as, e.g. cooperation via the SIRENE-structure] will gradually widen the areas of cooperation between the member states. It warns that as soon as information exchange in these new fields does not entail reports in the SIS, the relatively comprehensive and strict data protection rules of the SIA will no longer apply. Instead the national law of the member states involved in an information exchange will apply. This will make it more difficult for persons to claim their rights. Moreover, it results in a greater complexity of the mechanisms for the control of the correct application of relevant rules and comprises a risk of lack of approximation and diverging interpretation of rules between the member states. The report notes that the JCA is not in a position to reduce this risk since its task is mainly limited to supervising the SIS. Outside the SIS it can act only upon request of the member states.

While a guideline has led at least to a certain level of approximation of national data protection legislation, "governments have not agreed to anything similar with respect to intergovernmental police and justice cooperation".

A "legal labyrinth"

The complexity and variety of the rapidly growing network of international structures of police cooperation is a matter of concern for the JCA. Different international instruments that are, formally and legally speaking, not linked to each other, such as Schengen and Europol, each contain their own data protection rules elaborated case by case. "The only choice left to citizens wishing to claim their legal rights is to explore a legal labyrinth", the JCA concludes.

Results of checks and investigations by the JCA

Considering that the JCA, in the first two years of existence, had to concentrate much of its resources on more or less successfully removing the various technical and political obstacles hindering it from carrying out its tasks, it is not astonishing that the report is not very comprehensive as far as the evaluation by the JCA of the current functioning of the SIS and the correct application of the treaties is concerned. Nonetheless the report reveals a number of legal and technical deficiencies.

Data stocks in different national units not identical

The most stunning discovery made by the JCA is that the data stocks in the various N-SIS are not identical. Thus differences in the French and Luxembourg N-SIS were discovered in April 1996, but had still not been repaired by March 1996, when the JCA report was published. In the words of the JCA this situation amounts to a "systematic violation" of Article 92.2 SIA which stipulates that the data stored in each N-SIS shall be identical. The JCA is of the opinion that the proceedings for matching the data stocks of the various N-SIS are far too slow and that matching operations are carried out too seldom. As a matter of fact, the data contents of the various N-SIS are, for the time being, matched against each other only every six months and the matching operation takes several months.

The JCA is of the opinion that too many people have so-called "super user" access to the SIS, enabling them not only to obtain access to any data base of the system (operation system, data bank and net) but also to change their content in such a way that the operation cannot be traced. The trace-functions, designed to enable checks of operations after the fact and to identify the "super-user" concerned are "not being used in a proper manner", the JCA notes. All this is quite remarkable considering the fact that the JCA, the body officially charged with controlling the correct functioning and use of the C-SIS, has hitherto not even been granted "user" access, i.e. direct access to the system without the possibility of altering its contents.

The SIA authorises the copying of data for technical purposes. According to the Norwegian data protection commissioner, Mr Apenes, this has led to a proposal by Schengen bodies to send CD-ROM discs with copies of personal data drawn from the SIS to the member states' foreign representation in order to improve the handling of visa applications. The JCA is currently carrying out a study to assess the possible effects of such duplication of SIS data on data protection and security. Among other things the practice raises questions about the proper up-dating of duplicated information and the safety of sending CD-ROMs to services outside the common Schengen territory.

SIRENE-network outside JCA scrutiny

As its predecessor, the Provisional Authority in charge of data control before the entry into force of the SIA in 7 member states in March 1995, the JCA censures the lack of a particular legal basis in the SIA for the SIRENE-bureaux. The report does not comment on the secret SIRENE manual. This might surprise at first view, but could be explained by the fact that information exchange between the member states through the SIRENE-network is not based on provisions in the SIA but on each member state's national legislation. Consequently, the item is outside the remit of the JCA. The SIRENE-structure must indeed be considered a particularly impenetrable part of the "legal labyrinth" of police cooperation.

Recommendations

The JCA makes the following specific recommendations with respect to the SIS:

- the problem of non-identical data in different N-SIS should be solved within a brief time period;
- privileged ("super-user" account) access to the system should be reduced to a minimum;
- systematic use should be made of the trace function;
- the JCA should be granted access

to the system ("user" account) enabling it to effectively carry out its control task.

More generally, the JCA demands to be given "regular and systematic information" on the development of the Schengen *acquis*, as well as policy objectives and technical changes. In order to ensure effective control of the system, the data protection authorities expect to receive monthly reports on the operation of the C-SIS in Strasbourg. Finally, the JCA insists that it be given swift access to all information and documents which it deems necessary for carrying out its task.

The fact that such basic demands have not been met long ago speaks volumes about the lack of respect the Schengen ministers and their bureaucrats show for data protection, and the downright humiliating treatment the Schengen Group's Joint Control Authority is subjected to. Indeed, the job and the status of today's data protection commissioners are nothing to be envious of.

Sources: Activity report March 1995-March 1997 of the Schengen Joint Control Authority, SCH/Aut-cont(97)27 rev, Brussels, 27.3.97, German version (all quotations from the report are our translations from German); Aftenposten , 6.5.97; Klassekampen, 6.5.97.

PERUVIAN PROFESSOR DENIED ENTRY TO GERMANY DESPITE VALID SCHENGEN VISA

In February, a Peruvian national, Mr Carlos Benavides was denied entry to Germany and his Schengen visa invalidated by German border protection. The German authorities explained their action with reference to state security interests. The ban on entry was later annulled by a Berlin Court, but Mr Benavides is still waiting for information from the German authorities on whether he is registered in the Schengen Information System or not

Mr Benavides is a well-known professor of economics and politician in his home country of Peru. Among other things, he has been a candidate for the post of Mayor of Lima, and has been working for many years with *Deutscher Entwicklungsdienst*, a reputed German development agency which runs projects in Peru.

Sent back to Britain

Early in 1997, Mr Benavides wanted to visit a number of Western European countries. He started his European journey in Oslo, from where he took a plane to Berlin via London. Mr Benavides had been invited to Germany by a number of well-known organisations, including the Union of Teachers and Scientists, GEW. He was in possession of a Schengen-visa issued by the German embassy in Lima. But when Mr Benavides arrived at Berlin-Tegel airport on 21 February, the German Border Protection (*Bundesgrenzschutz*: BGS), denied him entry and invalidated his Schengen visa. Mr Benavides was told that he was denied entry to Germany due to "security considerations". Since he was also told that the ban applied only to Germany, Mr Benavides asked for the permission to travel to France, where his children live. But a BGS officer denied the request, arguing that it was impossible to invalidate a Schengen visa only for Germany. Instead, the BGS decided to put him on the next plane to London, although he had no visa for the UK. Mr Benavides was given no further information neither on the specific grounds for his removal, nor on his right to appeal.

Obviously, the BGS informed the British authorities of the grounds for Mr Benavides' removal. Upon arrival at London-Heathrow airport, British Immigration officers interrogated him for several hours and placed him in the Immigration Detention Centre. It was only thanks to the interventions of British friends that he was not sent back to Peru. After a second interrogation Mr Benavides was finally granted a six month stay permit for the UK.

Secret report from a "friendly" service behind the ban

Inquiries by a German friend and by a Berlin lawyer at various German authorities, including the Federal Interior Ministry, gradually brought to light that

the entry ban against Mr Benavides was based on a report made by the department responsible for State security matters at the BKA (Federal Office of Criminal Investigation) to the German criminal search system, INPOL, and to the SIS (Schengen Information System). According to the BKA, the secret services of a "friendly state" had provided information that Mr Benavides had links with a Japanese(!) terrorist organisation.

Court is denied access to records, approves of complaint

However, both his lawyer and the Berlin Administrative Court seized with Mr Benavides' complaint against his removal from Germany were denied full access to the records. The Administrative Court approved of Mr Benavides' complaint. The Court, inter alia, found that the defendant (the German State) "neither proved nor even otherwise substantiated the presence of any considerable security protection interest", and that it was "impossible to conclude how reliable the allegations of the "friendly service" are", especially since it remained unclear which country's service was being referred to and since it was obviously not the "service" of the complainant's country of origin.

Questioned in France, expelled from the USA

After the Court decision Mr Benavides was finally allowed to travel to Berlin on 7 March, where he obtained a new Schengen visa.

However, his plight was not over. When he continued his European journey to Paris, he was once again interrogated, this time by the French authorities, who casually mentioned that the "friendly" service referred to by the Germans was... the Russian secret service. On his flight back to Peru via an airport in the USA, he was stopped by US immigration officials in the transit hall. They put a stamp on his passport. It read: "Expelled".

File kept in the SIS?

In the meantime, Mr Benavides has requested the Federal Interior Ministry to allow him to examine all files concerning his person held by the BKA or stored in national data bases or the SIS. Furthermore, Mr Benavides demands the deletion of all files with respect to his person as soon as he has been given the opportunity to read them. He also has requested the Federal Data Protection Commissioner to support his application.

Mr Benavides' registration in the SIS has been confirmed by the Federal Interior Ministry. But so far the authorities concerned have not answered the question of whether the approval of Mr Benavides' complaint by the Berlin Court meant the deletion of the report to the SIS.

Sources: Information provided by Wulf Schubert, Hamburg; BKA and BGS records, February 1997; Decision of the Berlin Administrative Court, case no VG 10 A 168.97 (quotations are our translations from German); letter to Federal Interior Minister Kanther, by Wulf Schubert; 9.4.97, Frankfurter Rundschau, 8.3.97.

Comment

The case of Mr Benavides provides an impressive illustration of how Schengen policies can affect not only refugees and other "undesirable" immigrants but even "respectable" people, who have succeeded in overcoming the plethora of economic and administrative barriers preventing "third country" nationals from entering the Schengen territory. The German embassy certainly did not issue a Schengen visa to Mr Benavides without prior thorough examination of his application according to the strict requirements of the Schengen 'Common Instructions for Consulates" (which, inter alia, provide for information exchange between the Schengen member states prior to the issuing of a visa).

Mr Benavides' case shows that not even the possession of the precious Schengen visa is a reliable safeguard against denial of entry to the Schengen territory.

That the measure was soon lifted by a court, shows that judges still can be found in Berlin, but is little comfort. Thanks to his position, the Peruvian professor could count on the help of friends

in Europe and could seek legal assistance. But it must be feared that many other, less privileged "third country" nationals are being denied entry to the Schengen territory on similarly arbitrary grounds, without any publicity and any real possibility for them to seek legal remedy.

Peruvian authorities confirmed time and again that Mr Benavides was not suspected of any wrong-doing in his country of origin, and neither French nor British services found any incriminating evidence against Mr Benavides that might justify a denial of entry.

In spite of all this, Mr Benavides was registered in the SIS. He will probably never know, whether the data concerning him have been deleted or not. Indeed, if one is reported to the SIS in the alleged interest of the security of a member state, no information is given to the person concerned. The same applies to the application made by a German, Mr Wulf Schubert, for access to his own personal files. Since BKA records mention him as a friend and host of professor Benavides, Mr Schubert is concerned that he too might have been reported to the SIS.

Both professor Benavides and Mr Schubert must henceforth reckon with the possibility of their being registered in some national, European, and - considering the US expulsion measure against Benavides - American data base as terrorist suspects or "contacts" of terrorist suspects.

We may soon discover that Schengen is here not only to deter foreign guests but also to intimidate their European hosts.

N.B.

GREECE JOINS SCHENGEN

On 6 June, after several postponements, the Greek Parliament ratified the Schengen Agreements. The Agreements had been signed by the previous 'New Democracy Government back in 1992, and Greece held the status of observer since 1991. In April 1997, two months before the ratification, a law on data protection was passed by the Parliament. The law aims to adapt Greek legislation to the corresponding 1981 Council of Europe Convention on Data Protection and the EU Directive 95/46.

The implementation of the Schengen Agreement in Greece has been scheduled to begin this autumn.

The background of the ratification

Greece's accession to Schengen encountered severe reservations from all sides of the political spectrum, a great part of the Orthodox Church, and the more alert segments of Greek society. Nevertheless, the majority of Greek society remained essentially uninformed, and consequently confused and passive with regard to the contents and effects of Schengen. Neither the Government, nor the opposition parties, nor the mass social, labour, or scientific unions ever instigated a sober public debate, corresponding to the gravity of the issues involved.

This lack of essential information and overall inquiry about the Schengen Agreements was considered by many a deliberate act of the country's political establishment. At all accounts it contributed to a thorough disorientation of the country's public opinion: public attention was monopolised by sensational elements of pure theatricality. One example among many others was the day-long manifestations of public hysteria by throngs of members of religious groups outside the House of Parliament: hundreds of protesters, headed by clerics and monks, wielding icons and crucifixes, blocked the main avenues of downtown Athens, leaving no one in doubt as to their resolute opposition to the alleged "satanic" and "anti-Christ" treaty. The hysteria reached its climax when a policeman left his post to join a group of fanatic demonstrators.

Passions surely did not abate when the Minister of Foreign Affairs dismissed summarily all and anybody opposing Schengen as "undisguised fascists", or when the Minister of Justice hurled a number of ironic remarks at the President of the Athens Bar. Out of a total of 300 Members of

Parliament, eighty (coming from the two biggest parties - the governing social democrat PASOK and the liberal 'New Democracy' in the opposition) absented themselves during the voting: an unmistakable sign to their respective party leadership as to how they feel towards the official pro-Schengen line of their parties.

On the whole, what was dearly missing amid all this show, was a serious in-depth inquiry. The opportunity for an articulated and fact-oriented dialogue and counteraction from the political and social groups opposed to Schengen was lost.

Arguing against Schengen

It is not easy to draw a straight line on the Greek political map, demarcating the supporters of Schengen from the opponents. Apart from the unanimous and absolute rejection of the treaty by the three smaller opposition parties (the 'Communist Party', the 'Coalition of the Left and Progress' and the 'Democratic Social Movement'), a serious rift divided the interior ranks of the two bigger parties. It clearly did not follow any preconceived political lines. However, absence and abstention from voting did not affect the eventual passing of the law and the ratification of the Schengen agreements.

Regarding the arguments put forward during the parliamentary debate, the Schengen supporters generally concentrated on what they see as positive effects of Schengen cooperation with regard to citizens' civil rights and the reinforcement of security along the country's borders, especially regarding clandestine immigration and organised crime. It must be recalled that Greece is the only member state of the EU that lacks a common land border with another EU state. All Greek borders are therefore considered external frontiers of the Union, and for this reason the country is exempted from implementing the controversial Schengen provisions on cross-border police cooperation.

As for the Schengen opponents, they emphasised what they consider the deficient protection of civil liberties in the Schengen framework, as compared to the level of protection provided by the Greek Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

More precisely, the trend in favour of ratification was expressed mainly by the official positions of both the government and the leading opposition party. The governing party's (PASOK) stance, it must be admitted, suffered from a certain amount of inconsistency with respect to its former positions on the issue. Back in 1993, during another term of PASOK government, the then Minister of Justice pointed out to the political staff of the Ministry of Foreign Affairs (which was already then advocating Schengen membership) that the Schengen Implementing Agreement is not only incongruous with clauses of the Greek Constitution, but also hazy in regards to its conformity with the ECHR. In fact, the long-lasting Greek prevarications and the quite extraordinary delay in the ratification procedure is mainly due to the differing assessment of the SIA by the two Ministries involved. However, the new PASOK government under Kostas Simitis quickly put an end to such discussions and opted for quick implementation of Schengen.

Among the ranks of the Schengen opponents one can surprisingly count groups which, in every other issue, would follow diametrically opposed courses. I will try to define somehow the situation prevailing in the anti-Schengen camp.

Enumerating political forces, one encounters the three parliamentary opposition parties:

- the hard-liner 'Communist Party of Greece' (5.4% and 11 seats in the recent 1996 elections), whose absolute rejection of Schengen is in line with its staunch rejection of anything that has to with the EU;
- the broad-spectrum leftist 'Coalition of the Left and Progress' (5.12 % and 10 seats), which, notwithstanding its pro-European orientation, is outspoken in its criticism of the problem of the social and democratic deficit

in the EU; and finally,
- the 'Democratic Social Movement'(4.4% and 9 seats), a recently founded party, headed by an ex-PASOK minister and collecting mainly voters dissatisfied with Prime Minister Simitis' increasingly pronounced "centre-left" course. This party also fought furiously against Schengen membership, without being "anti-European" by definition.

A top force in the anti-Schengen block is the Greek Orthodox Church, both in its official persona and in the guise of a collection of "para-ecclesiastical" organisations, that is groups of militant religious people. The Holy Synod of the Christian Orthodox Church of Greece and the Holy Directorate of the Monasteries of Mount Athos emphatically protested in their respective encyclical letters against the dangers of human rights abuse, denouncing especially the perceived undermining of the Christian Orthodox identity of the majority of the Greek people. Religious people's arguments aimed mainly at the stop put by the EU to the registering of citizens' profession of faith (a hitherto normal administrative practice) in the planned new identity cards. Another reason for religious outrage is that the new identity cards is said to contain the "diabolical Number of the Beast" (666), concealed under a bar-coded number. Obviously, all this has nothing to do with Schengen.

Since the ratification of Schengen, protests, whatever their origin, have been dwindling.

Only time and practice will show how well-grounded both the hopes and fears concerning Schengen are. And - who knows? - maybe the practical experiences of the implementation of the agreements will provide a new opportunity to start an open, to-the-point and in-depth discussion on the effects of Schengen on Greek society.

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POLAND

POLAND SEEKS EU SUPPORT IN STRENGTHENING EASTERN BORDERS

Poland is confronted with growing problems of border protection. According to a Polish memorandum sent to the EU member states and the European Commission, the problems are linked to "a serious increase in border crimes", with which Polish border police are unable to cope effectively because of "an insufficient technical and logistics capability".

Poland an entry door for "illegal immigration" to the EU

Poland's borders were crossed by 262 million people and 80 million vehicles in 1996. According to the memorandum, 111,000 people crossing the Polish border illegally were detained in the period from 1991 to 1996, while it is estimated that about the same number probably crossed the border without being detected. Most of the persons detained lately are said to originate from Asian and African countries, and were on their way to the EU.

Poland is currently making strong efforts to upgrade its border and other security controls, but the Government is asking for EU support in order to ensure that these upgrades remain in line with EU requirements and developments.

Move EU border controls to Poland?

The memorandum suggests transferring some EU border controls to the borders of Poland with Belarus and Ukraine. The proposal is in conformity with ideas already discussed within the EU in its discussion of Justice and Home Affairs cooperation with Central and Eastern European countries seeking EU membership. The memorandum further suggests relocation to the Eastern Polish borders of some border equipment rendered obsolete within the EU when border controls were scrapped between members of the Schengen group. Poland proposes that its proposals be discussed by a joint Polish-EU commission.

Source: Euro-East No. 54, April 1997.

GERMANY

ASYLUM SEEKER ACQUITTED IN LüBECK ARSON TRIAL

A Criminal Court has acquitted the 21 year old Lebanese asylum seeker, Safwan Eid, of the charge of arson in a hostel for asylum seekers in Lübeck that caused the death of ten persons, including several children, in the night of 18 january 1996 and left many others severely injured (see CL No.46, p.3) But the main suspects, four young German right-wing extremists, are still going free.

The president of the Court found that there was no evidence proving Eid's responsibility for the crime.

There is, however, no doubt that the fire was caused by arson, since inflammable substances had been spread in the building.

Poor arguments of the prosecution

The public prosecutor had based his charge against Eid, who was a resident of the hostel, on three pillars: the testimony of a rescue worker, J.L., who claims that, on the night of the fire, he heard Eid say: "We did it"; expert reports localising the starting point of the fire in the second floor of the hostel; and, finally, transcripts of recordings obtained by bugging Eid's cell during his detention on remand. According to the public prosecutor, the recordings contain a "confession" of Eid.

The Court refused to admit the transcripts as evidence, and the various experts on fires heard by the Court failed to agree on the starting point of the fire. Thus the only remaining "evidence" consisted in the witness account of the rescue worker, whose trustworthiness was seriously undermined at an early stage of the investigation, when his friendship with a Nazi activist was revealed.

In this uncomfortable situation, the public prosecutor had no other choice but to plead acquittal himself.

Charge against Eid a plot of the prosecution and the police?

The fact that, after a trial lasting 9 months, one of the worst cases of arson in German post-war history has not been solved throws an unfavourable light both on the prosecution and the criminal investigation department of the Lübeck police. Already in June 1996, an international committee of eminent jurists expressed strong criticism over the "lack of balance and objectivity" shown by the prosecution in investigating a number of suspects. Mr Eid's lawyers accused the public prosecutor of bias and

arbitrariness against their client. They reiterated widespread suspicions that the police and the public prosecutor did not thoroughly investigate a group of suspect young German Nazis and tried to incriminate Eid instead, because, in view of the strong anti-German sentiments triggered by the Lübeck arson, they regarded a young foreigner as the "ideal" perpetrator.

Statements before the Court made by a number of plain-clothes detectives of the Lübeck criminal investigation department revealed a series of astonishing failures, inexplicable "mishaps" and grave omissions that affected the collection of evidence in an irreparable way. Such revelations were not suited to contradicting the lawyers' theory of a veritable plot of the prosecution and the police aimed at the conviction of Eid.

Sources: Neue Zürcher Zeitung, 1.7.97; our sources.

Comment

21 year old Safwan Eid has finally obtained the first class acquittal most independent observers of the investigation and the trial predicted long ago. However, immeasurable damage has already been done. For more than a year, the prosecution authorities and much of the German media suggested to the public that the perpetrator of the arson was likely to be found among the former occupants of the hostel, that is the victims. This perception management obviously contributed to spreading further anti-foreigner and racist sentiments among the population. In such a climate, it was easy for the authorities to coldly reject the demand of a number of organisations and personalities, including the courageous mayor of Lübeck, Michael Bouteiller, that all surviving victims of the arson be granted permanent residence in Germany on humanitarian grounds. And it allowed the social democrat government of the state of Schleswig-Holstein to start an administrative procedure against the social democrat mayor of Lübeck, who, moved by the arson, supported a call for civilian disobedience against the government's repressive asylum policies.

Finally the most serious consequence of the scandalous misconduct of the investigation is that the real perpetrators of the arson are still going free.

No wonder then that Nazi attacks have continued in Lübeck in 1997. Unknown perpetrators painted swastikas on the house of the German author, Günther Grass, and on a church, and at the end of June, an arson attack was carried out against a parish hall. There is evidence hinting at "punitive action" by Nazi circles aimed at Lübeck intellectuals and clergymen known for their commitment to the cause of asylum seekers. High time for the Lübeck police to find an "ideal" suspect. Why not an anti-racist pastor or priest, this time?

N.B.

OPINION

POLICE OPERATION AT AMSTERDAM SUMMIT: A TEST RUN OF POLITICAL POLICING IN THE EU?

The right to demonstrate is formally guaranteed in all Western democracies. This is all the more important since street demonstrations are one of the few means left to average people who are not part of the political or media establishment to express opinions and to draw public attention. It lies in the nature of demonstrations that they are often perceived as a "disturbance" by governments and other power holders, simply because they tend to render visible popular discontent with official policies. However, since this sort of disturbance has no acknowledgeable ground in a democracy for preventing people from demonstrating, authorities tend to emphasise another sort of disturbance connected with demonstrations - that is loud noise in public places, traffic perturbations, and the risk of rioting. All this goes under the catch-all term of disturbance of "public order and security". An assumed majority's right to normality is put against minorities' right to demonstrate.

Nobody will reasonably question the authorities' right and duty to act strongly and with all means of the law against demonstrators who deliberately cause damage to persons and things. But such action should be clearly restricted to individuals who actually *have* committed or are committing such offences. To prohibit demonstrations or to randomly arrest demonstrators for preventive purposes only is not acceptable in a democratic society.

No right to demonstrate without a right to disturb

Authorities have to accept that a certain degree of "disturbance" is inherent in the right of demonstration. After all, the very purpose of demonstrations is to get the public's attention. To restrict demonstrations to areas out of sight of the public and to expect protest marchers to behave as if they were on a shopping tour amounts to depriving demonstrations of any sense.

Nor can one hold all participants of a demonstration responsible for the excesses of some hooligans without this resulting in a de facto abolition of the right to demonstrate.

Participants in a big protest march cannot be expected to show the discipline of a flock of sheep that you can drive into a fenced-in pasture in the morning and bring back to the pen at sunset. Protest marches tend to attract young and lively people. Even if one does not approve of the behaviour of young activists, one should never forget that they are less a threat to democratic society then indifferent conformists, whom the Swiss author Gottfried Keller already in the 19th century characterised as follows: "They never smash street lamps, but neither do they ever light any lamps".

Police misconduct a regular feature of summits

Governments hosting important international events quite regularly react with moral panic to the possibility of street protest. At occasions such as Olympic Games and political summit meetings, the host governments consider any disturbance as a threat to the official show of harmony and unity which characterises such events irrespective of their outcome. In coping with such situations, authoritarian regimes usually resort to a range of "cleansing" operations: they decree emergency regulations, carry out preventive mass-arrests among regime critics and generously put a "conference centre" in some cordoned-off suburb at the disposal of the foreign attendants of "alternative" events - at a safe distance from the place of the official event and out of sight of the media .

It is unfortunate, to say the least, when the authorities of a European country reputed for its democratic and liberal tradition resort to similar methods in their eagerness to prevent "disturbances". If this happens at an EU-Summit with a strong symbolical significance for the whole of Europe, this is a bad omen indeed for the future of civil liberties and democracy in the European Union.

To be fair, Amsterdam is not the first European host city of a Summit, where police resorted to random arrests and ill-treatment of protesters. It also speaks in favour of the Dutch authorities that apart from a young man who had his arm broken, no protester seems to have been seriously injured. This contrasts positively with other international summits in Munich, Lyons and Berlin. However, on those occasions, the security forces were dealing with groups of protesters who actually did resort to violence.

A dangerous precedent

The novelty with the police operations around the Amsterdam Summit, is, on the one hand, their purely pro-active character and, and on the other, their astounding legal motivation and the participation of foreign police. For the first, hundreds of demonstrators were arrested before anything happened and after nothing had happened. After several days of demonstrations and protest marches drawing tens of thousands of people, all the damage done consisted in little more than some broken flag-poles and windows, destroyed flower beds, and a police car turned on the side. To our knowledge, not one police officer was injured. Neither does the police's own list of objects seized from more several hundred people arrested suggest a strong inclination to violence among the protesters. The "weapons" found consisted of 14 knives (mostly pocket knives), 1 awl, 4 screw drivers, 1 gas alarm revolver with a number of gas cartridges and 3 teargas aerosol-sprays.

For the second, random arrests of hundreds of people, including passers-by, were based on the alleged suspicion of "membership in a criminal organisation". The use of this offence obviously served a double purpose. On the one hand, it enabled the immediate arrest of people who had not committed any other, more concrete offence justifying such a measure. It thereby allowed the police to clear the street of "disturbing" elements pending the end of the EU summit. On the other hand, and this is maybe the most disquieting aspect, through reference to the offence of "membership in a criminal organisation" the police was authorised to make use of extensive investigation techniques and to collect comprehensive personal data, far beyond what is allowed in normal

criminal investigations. The big question is what is going to happen to these data, in particular if the persons concerned are not convicted or even formally charged. Considering the strong presence of police from other EU member states in Amsterdam and the general European context, the question is particularly relevant.

European cooperation in the field of public order and security

Improving cooperation both in maintaining "public order and security" and in the fight against "organised crime" has been a constant priority on the agenda of both the Schengen countries and EU Justice and Home Affairs cooperation. Thus, for example the Schengen Information System (SIS) is mainly an instrument "to maintain public order and security, including State security" (Article 93, Schengen Implementing Agreement, SIA). Article 99.3 SIA authorises reports of persons to the SIS for the purpose of so called "discreet surveillance" and "specific checks". People registered in the SIS according to this provision are not suspected of any specific offence but are regarded by the reporting national police or intelligence services as interesting from a public security point of view. People reported on the above grounds are denied any information about whether or not they are registered. With respect to the Amsterdam events it cannot be excluded that Dutch authorities report persons arrested to the SIS and exchanged the personal data collected at their arrest (including photographs and fingerprints) with police and security authorities in other Schengen member states via the SIRENE-network. If we assume that other member states decide to proceed the same way with personal data of "undesirable" political activists, the SIS/SIRENE structure will quickly develop into a powerful instrument for the observation of the movements and behaviour of people innocent according to the law, for the purposes of political policing.

There is more. Less than a month before the Amsterdam police operation, the Justice and Home Affairs (JHA) Council adopted a proposal - incidentally from the Dutch presidency - for "joint action". The Joint Action provides for cooperation in connection with events, such as "sporting competitions, music concerts, demonstrations and road blockades", attracting many people from several member states (see article on JHA Council meeting in this issue, p.6).

Strikingly similar projects are currently being discussed within the Schengen framework. A draft Handbook on police cooperation in the field of public order and security (SCH/1 (97) 36 rev 3, 15.5.97) by the Schengen "Working Group Police and Security" also names the types of events listed in the aforementioned JHA document, but is more specific. Thus, it expressly states that cooperation can also relate to the movements and activities of groups, "irrespective of their size", which "may pose a threat to public order and security". Information exchange is to be improved through the use of a standardised procedure. Questions in a "checklist" in the annex to the document relate to the estimated number of people participating in the event in question, the nature and composition of participating groups, their motives and intentions, their gathering places and times, their travel routes, their means of transport, etc. Furthermore the handbook provides the design of joint ad hoc "operational centres" to be set up in the member state hosting a particular event. This implies that at a next Summit, besides the police of the hosting country, police from other member states could officially be part of the police command structure in charge of maintaining public order and security at the event in question.

Fight against "organised crime" a pretext for the surveillance of political activists?

In recent years the need to fight against "international organised crime" has been used as a pretext for gradually extending the powers of the police, introducing new types of offences and legitimising almost boundless gathering of personal data. The fight against "organised crime" has been the main argument justifying the creation of Europol and of a barely overseeable number of often overlapping structures of police and security cooperation. The public was told that this legal and police re-armament was directed against criminal organisations of car thieves, immigrant smugglers, drug dealers, paedophiles and terrorists. Nobody listened to the persistent warnings of civil liberties circles that such poorly defined terms as "criminal organisation", "organised crime" and "membership" in such an organisation opened wide the door to arbitrary infringements on the fundamental rights and liberties of innocent people. The Amsterdam events are not likely to diffuse such concern. They show that in the EU,

the mere expression of political dissent can indeed lead to your being treated as a presumed member of a criminal organisation, with all the ensuing consequences ranging from pro-active observation, computerised storage, processing and exchange of sensitive personal data, to arbitrary detention and removal from an EU member state.

Recent Schengen and JHA documents appear in a new light against the background of the Amsterdam events:

Take, for example, the EU Convention on Extradition signed last year. It provides, among other things, for the "automatic" extradition of a person on the grounds of contribution to or membership in a criminal organisation, without the need for any evidence indicating that the person concerned personally committed any offence (see CL No. 45, p.2).

Take the High Level Group's recent proposal for "joint action" to the effect that all EU-member states would commit themselves to make membership in a criminal organisation an offence under their national law (see article on the HLG, p.7 in this issue).

In view of the above the established involvement of foreign police liaison officers in the Amsterdam events and the eargerness shown by the police of several member states to collect as much information as possible on arrested people is even more disquieting. Was the police action against the protesters at the Amsterdam Summit an advance test-run of emerging European structures of police and justice cooperation? Is this the "area of freedom, security and justice" established by the Amsterdam Treaty?

N.B.

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