

# Fortress Europe?

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'Fortress Europe?'- Circular Letter is the organ of Platform 'Fortress Europe?' and of the GENEVA GROUP - Violence and Asylum in Europe.

The 'Platform' is an informal international network concerned with European harmonisation in the fields of internal security, policing, justice, data protection, immigration and asylum and its effects on fundamental rights and liberties. It is associated with the European Civic Forum.

The GENEVA GROUP - Violence and Asylum in Europe came into being in 1993 at a conference organised by the University of Geneva. The Group wishes to contribute to international multidisciplinary discussion on the right to asylum and its interaction with other developments in society.

The objective of the Circular Letter is to offer a forum for mutual information, analysis and critical debate among experts and lay people, scholars and practitioners. The Circular Letter is published 10 times a year. It offers a selection of news, comment and messages based essentially on the contributions of its readers.

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### EUROPEAN UNION

#### "PARTICIPATION IN A CRIMINAL ORGANISATION" SOON A CRIME IN ALL EU-MEMBER STATES?

The Justice and Home Affairs (JHA) Council has come very close to political agreement on a draft Joint Action, through which all Member States would commit themselves to make "participation in a criminal organisation" an offence under their national legislation. If adopted, the Joint Action would provide for the punishment of people who have not committed any specific offence but are found guilty of having contributed by their behaviour to the "general activities" of a "criminal organisation".

The proposal to make participation in a criminal organisation an offence in all EU-member states was first made in an "Action Plan for the Fight against Organised Crime". This was drawn up by a High Level Group of police experts created by the EU-Council at Dublin in December 1996 (see CL No.51, p.7). The Action Plan was approved by the member states' governments at the Amsterdam EU Summit in June. As early as July, a K.4 subgroup had drawn up a first draft Joint Action.

The following overview and analysis is based on a more recent confidential draft, from October, that was made available to your editor in French only. Therefore, our translations into English of some of the terms used in the French document may not be identical with the official English wording.

#### What is a "criminal organisation"?

An introductory statement to the draft Joint Action stresses the need to strengthen cooperation between the EU-member states to fight against organised crime, "in particular" regarding serious forms of crime such as drug trafficking, smuggling of immigrants, money laundering, as well as "other acts of violence" threatening a person's life, physical integrity or freedom, or "creating a collective danger for persons".

Article 1 §1, section one of the draft defines "criminal organisation" as follows:

"A structured organisation of more than two

persons, established in time and acting in concert with a view to commit crimes or offences punishable by deprivation of liberty or a detention of a maximum of four years at least, by using, notably, intimidation, threat, violence, fraudulent practice or corruption".

The following section appears to significantly extend the crimes and offences aimed at in the first section to include all forms of crimes under the remit of Europol or listed in the annex to the Europol Convention, provided the offences concerned are punishable by at least four years of imprisonment.

According to Article 1 §2 a criminal organisation also exists, whenever the purpose of the organisation is to commit crimes and offences as a means to "obtain material benefits" or to "influence improperly the operation of public authorities".

### What is "participation"?

According to Article 2, each member state "commits itself to see to it" that one or both of the following behaviours be punishable:

1. The behaviour of any person who intentionally and in knowledge of the purpose and the general criminal activity of the organisation - or of its *intention* to commit the offences concerned, participates actively in the activities of a criminal organisation, *even when this person does not participate in actually carrying out the offences concerned, and even when the offences concerned are not actually committed*. Also a person who participates in "other activities of the organisation" [i.e. lawful activities!] shall be punishable provided his knowledge of the fact that his "active participation" contributes in a "significant way" to the realisation of the purposes and the general criminal activity of the organisation.
2. The behaviour of any person consisting in having concluded an agreement with one or more persons with a view to engage in an activity, if implementing the agreement would amount to committing a crime or offence, *even when the person does not participate in actually carrying out the above activity*.

Member states may choose to make one or both of the above two behaviours an offence under their national law and shall mutually assist each other to the largest possible extent in dealing with the offences concerned.

Article 3 states that legal persons shall be punishable too.

According to Article 4, each member state shall make sure that persons who have shown the behaviours described in Article 2.1 or 2.2, on its territory, can be tried regardless of the place where the organisation is based or carries on its criminal activities, or the place where the "activity" described in Article 2.2 is taking place.

### JHA Council close to agreement

According to Luxembourg's Minister of Justice, Marc Fischbach, the JHA-Ministers came "very close to an agreement" on the draft Joint Action at their meeting of 4-5 December in Brussels. Indeed, Ministers do not appear to disagree on fundamental aspects of the draft. Spain is opposed to limiting the crimes defining a criminal organisation to merely offences punishable by at least four years imprisonment and maintains that the limit should be 12 months instead (as stated in the EU Convention on Extradition, signed in 1996).

Belgium wished to limit the offence to organisations using intimidation, threats, violence, fraudulent practice

or corruption; but this request was not approved. Regarding the extension of the offence of "participation" to people who in the context of their professional activities (lawyers, accountants...) act intentionally, and are aware that their participation contributes to the "general activities" of a criminal organisation, Denmark proposed to add "in a significant way"; but, Spain considers this too restrictive.

Sources: Projet d'Action Commune relative à l'incrimination de la participation à une organisation criminelle dans les États membres de l'Union Européenne (non-dated, no reference number); Agence Europe, 5.12.97; see also: 'Crime of opinion in Portugal - The trial of Natercia Campos', case study examining the use of §288 Portuguese Penal Code on "criminal associations", CEDRI, 1989.

### Comment

No matter the final outcome of this round of squabbling, the vagueness of some of the key definitions in the draft Joint Action will remain, and thus the risk of opinions and mere intentions becoming punishable offences throughout the European Union.

The intention with the Joint Action may be a good one - to clamp down on the Mafia and other criminal organisations operating on an international level, and to fight against terrorists and their logistic support networks throughout Europe. But the definitions of the criminal behaviours the Joint Action aims against are vague and ambiguous. The wording of the whole draft is involved, as often, when the EU-member states with their very differing legal cultures try to "harmonise" or "approximate" their national laws.

The result of this sort of "approximation" - often obtained through political horse trading and compromising - is all too often legislation marked by an appalling lack of precision, and therefore open to interpretation. Precisely because of their vagueness such texts tend to suit the politicians - the Justice ministers from the various member states who are under constant pressure to demonstrate unity in strengthening European cooperation in the fight against crime. The more vague a text, the less ministers will hesitate to approve it. At home they will adapt their interpretation of its content in such a way that it suits their legal-political agenda, while at the same time appearing compatible with the national legal culture.

From a constitutional point of view, however, vague legislation is bad legislation, as it undermines the certainty of law and fosters arbitrariness.

The ongoing negotiations on the draft Joint Action on participation in a criminal organisation once again highlight this problem. A considerable number of EU-member states have so far refrained from making membership or other forms of participation in a criminal organisation a punishable offence under their criminal law. A general reticence against making this type of behaviour an offence is grounded on the concern that this could undermine the rights of the defence and lead to people being sentenced on "guilt by association" grounds, and for their intentions rather than for their acts.

Sweden is one of the countries where the JHA Council's plans to make participation in a criminal organisation an offence in all member states began to draw some concern among the very restricted circle of MPs, jurists and journalists who had a chance to read the draft Joint Action. But, officials from the Ministry of Justice soon succeeded in reassuring the public by contending that the planned Joint Action would not require any change of the Swedish criminal law (in which the offence of participation in a criminal organisation does not exist). According to the Government, the criminal behaviours aimed at by the

Joint Action are already punishable in Sweden as "instigation" of a crime or as "conspiracy".

Comforting as it might sound to Swedish ears, this ministerial interpretation for home use of the Joint Action does not stand up to scrutiny. First of all, instigation of a crime is already a classical offence under the criminal law of all EU-member states. Consequently, there would be no need to decide a Joint Action by which all member states commit themselves to see to it that an already punishable behaviour becomes a punishable behaviour...

#### **A catch-all offence**

As a matter of fact, there is a fundamental difference between the offences of "instigation of a crime" and "participation in a criminal organisation".

The term Instigation applies to a person inciting a perpetrator to commit a specific crime - both the instigator and the perpetrator must act with premeditation. Thus, a direct and causal relation must be established between a specific criminal act, the person carrying it out and the instigator who wants the crime concerned to be committed. Moreover, the specific criminal act concerned must actually have been committed, or at least attempted. A person merely approving of, or contributing in some way or another to "general criminal activities or purposes", cannot be prosecuted for instigation. But, the wording of the draft's Article 2.1 and 2.2, involved as it is, strongly suggests that he can be charged with "participation in a criminal organisation".

This is actually the very purpose with making participation an offence. Interestingly, in a number of countries, e.g. Germany, the Netherlands and Portugal, provisions to this respect were originally introduced with a view to clamp down on radical political groups and their assumed supporters and sympathisers.

#### **Abstract character of targeted criminal behaviour**

The danger with these provisions lies with the abstract character of the targeted criminal behaviours. "Criminal (or terrorist) association" articles (such as the notorious §129a in the German penal code or §288 in Portugal) are not aimed at specific crimes (e.g. homicide, bomb attacks, kidnapping, car-theft, immigrant smuggling...) but at the assumed members and supporters of "associations" having as an objective the exercise of crimes. The punishable offence lies, therefore, in a *general intention* without any need to establish a direct link between an individual defendant and a specific crime.

Here lies the danger: how can one legitimately establish the existence of criminal or terrorist intentions which, according to jurisdiction in some member states, can be expressed merely in the "approval of violence"?

According to a constitutional approach to law, there cannot be crime without the established existence of both of the following elements: criminal intent and the actual carrying out of a criminal act, or at least the (in some way materialised) attempt. In the case of specific crimes, such as homicide, this rule is easy to apply. The intention alone of killing your mother in law is not punishable as long as it is not accompanied by at least an attempt. Death brought about without intent to kill does not constitute murder.

#### **"Criminal intentions"**

Things become more complicated in the case of crimes where the intention is in itself the punishable offence, as with articles covering "criminal organisations". Proving the existence of a "criminal thought", when no direct, causal link between an individual and a specific concrete criminal act can be established, is no easy task. To nevertheless try to do so almost automatically involves indulging in speculations and malevolent interpretations as regards the accused person's knowledge of an "organisation's" activities, and the extent of his involvement. This leaves the door open to the arbitrary.

It lies in the nature of things that "criminal organisations" seldom have statutes or formal membership. Instead, we are mostly dealing with informal associations of people. Moreover, criminal associations may overlap with perfectly lawful organisations recruiting their members in the same social or political environment or scene. This makes it difficult to establish not only the very existence of such an "organisation", but also a person's "membership" or "participation" - in particular, when the person concerned has not himself engaged in any specific criminal activity.

At which point in time has a specific criminal organisation begun to exist. From what moment on and from what degree of knowledge, approval and support can a person be considered a member? And last but not least, how can a person terminate his membership in a criminal organisation... when formal membership does not exist?

Obviously, clear answers to the above questions would make it impossible to sentence people who have not been implicated in the preparation or carrying out of specific criminal acts.

#### **When incriminating others replaces the truth**

Jurisdiction in Germany, Portugal and Spain shows that the judiciary has found ways to circumvent the problem by replacing the precise definition and proof of a defendant's alleged criminal behaviour by another criterion: that of the willingness (or refusal) of the defendant to cooperate with his prosecutors. The "repenting witness" or "grass" (defendant turned state witness) who, through his true or (often) false statements, contributes to the conviction of his co-defendants, thereby provides proof of his innocence or at least of his active repentance. The defendant, who remains silent because he cannot, or does not want to, incriminate others, demonstrates his "approval" of the criminal or terrorist organisation concerned. He will thus be found guilty, the lack of evidence being replaced by his evident lack of cooperation.

In practice, the use of this scheme has led to dangerous criminals, convicted of serious crimes, being set free on the grounds of their cooperation with justice. Their co-defendants, not found guilty of crime other than participation in a criminal organisation, are often sentenced to long imprisonment in their stead.

The adoption of the draft Joint Action by the JHA-Council would entail the risk of the above jurisdiction, inspired by Inquisition (rather than constitutional principles) quickly spreading over the whole of Europe.

N.B.

## **GERMANY JOINS EUROPOL... DESPITE STRONG RESERVATIONS FROM JUDICIAL MAGISTRATES**

**The German Federal Parliament has ratified the Europol Convention despite strong reservations of no lesser than the Federal Prosecutor General, Germany's largest association of judicial magistrates and the Conference of the Data Protection Commissioners.**

Germany's participation in Europol was approved by the *Bundestag* (lower house) in October and by the *Bundesrat* (the parliamentary assembly made of representatives of the *länder*-governments) in November.

In the *Bundestag* the bill, supported by the Christian-Democrats (CDU/CSU) but contested by their liberal junior coalition partners of the FDP and by the Greens and the ex-communist PDS, passed thanks to the abstention of the Social-Democrat (SPD) group. In the *Bundesrat*, the *Länder* governed by red-green coalitions (SPD-Greens) voted against ratification, while those governed by the SPD were divided.

The ratification of the Convention does not come as a surprise in the country whose government has long been considered the driving force behind the setting up of Europol. What is surprising is that the planned ratification somewhat suddenly met with massive criticism from very influential circles in the weeks preceding the vote.

### **Major judges' and public prosecutors' association warns against Europol**

In September, Rainer Voss, the president of *Deutscher Richterbund* (Germany's largest association of legal magistrates, representing over 14,000 judges and prosecutors) warned against ratification in an interview with the newspaper *Süddeutsche Zeitung*. Voss said the EU needed a European police, but not in the proposed form. In its present conception, he said, Europol "breaches with our understanding of democracy" since the Convention provides neither for sufficient democratic scrutiny nor for a satisfactory control of the judiciary of the member states over Europol. Referring, among others, to the controversial protocol establishing immunity from criminal prosecution for Europol officials, Voss said it was "completely wrong" to set up Europol first and to address the fundamental question of the agency's democratic legitimacy later. He, moreover, censured the lacking competencies of the European Court of Justice and the European Parliament and stressed "it is high time

to wake up and create the democratic structures for this Europe. After all, in a democracy we cannot say: let's abolish democracy for two years and set up dictatorship, and when after two years we have done everything we couldn't have achieved otherwise, we will reintroduce democracy". Voss called on the governments of the member states to begin with creating a European penal procedure system before setting up a European police. "The ratification of the Europol Convention should not take place before it is clear who controls Europol", the president of *Deutscher Richterbund* concluded.

### **Federal Prosecutor General deplors lack of judicial control**

Also, Germany's Federal Prosecutor General, Kay Nehm, criticised the lack of judicial control over Europol. In an interview with the public German Radio station *Deutschlandfunk* he said it was "unfortunate" that police, rather than judiciary, were the driving force behind European unity in the fields of criminal prosecution and investigation. Nehm said a control of

the police through courts and public prosecutors was absolutely indispensable in protecting fundamental rights and liberties.

### **Data protection commissioners voice serious objections**

The standing Conference of German Data Protection Commissioners (*länder* and federal) repeatedly objected to the registration provided for by the Europol Convention of sensitive personal data (including the data of persons not suspected of any criminal behaviour) in Europol's computerised data bases.

The non-governmental organisation for data protection, *Deutsche Vereinigung für Datenschutz*, (DVD) called on the parliament not to ratify the Convention, stressing among other things that elastic and vague data protection rules in the Convention put citizens at risk of getting caught in "the computer network of a super-agency". DVD further emphasised the fact that Europol can refuse to disclose information to applicants on their own data without having to motivate such a decision, and without any possibility for a complaint before a court.

Sources: *Süddeutsche Zeitung*, 22.9.97; *Frankfurter Rundschau*, 21.10.97, 5.11.97; press release of Claudia Roth, Green MEP, 7.11.97.

## **DATA SECURITY SCANDAL: SENSITIVE SIS-FILES FOUND AT RAILWAY STATION**

**Two Belgian officials with access to the Schengen countries' common police and security data base, SIS, are being detained on suspicion of having leaked thousands of highly sensitive personal records from the Schengen Information System (SIS) to circles involved in organised crime. A print copy of SIS-data was found on a railway station in Gent, Belgium in November. The incident has further fuelled longstanding concern about data security and data protection in the SIS. Both the Schengen Secretariat and the Belgian authorities are trying to conceal the scandal from the public.**

According to Josef Colbin, assistant prosecutor at the public prosecutor's office in Brussels, the data files found at a place accessible to the public at the Gent railway station concerned one single person registered in the SIS for criminal search. But, the Belgian police seized additional secret files - originating from the SIS - at a house search in the home of a civil servant working at the the Ministry of Justice.

The man was arrested on 3 December and is being detained pending further investigation together with two other suspects - a staff member of the Belgian SIS-SIRENE office and a private acquaintance.

According to preliminary investigation, the main suspect was paid by organised crime circles for providing them with information stored in the SIS. Quoting a spokesman of the Belgian Schengen Secretariat, the news agency Reuters reported that several thousands of secret personal files had been sold to criminal gangs.

In the meantime, officials in Belgium and on the Schengen level are trying hard to play down the significance of the incident as regards data protection and security in the SIS. "The matter is about bribery with international ramifications rather than lacking electronic data security", prosecutor Colbin told the Danish newspaper, *Politiken*. A spokesman for the Schengen Secretariat referred journalists asking for

information on the case to the Belgian authorities, claiming the leak had nothing to do with Schengen and the SIS, but was a "purely Belgian problem". In his turn, director van Rie of Belgium's General Police Support Service is refusing to comment on the case, referring to a Court decision prohibiting any further disclosure of facts relating to the leak.

The leak in the SIS has provoked widespread dismay and consternation. The Danish Minister of Justice, Frank Jensen says the leak is "unacceptable" and has requested a report from his Belgian colleague at the Schengen Executive Committee's meeting of 15 December. Alex Turc, the French president of Schengen's data protection board, the Joint Supervisory Authority (JSA), called an extraordinary meeting for 12 December. Mr Turc said he was "very concerned" about the incident but also pointed out that the mandate of the JSA is limited to the supervision of the central support unit of the SIS (C-SIS) in Strasbourg. The JSA has neither the means nor the competence to check the correct application of data protection and security regulations on the level of the national SIS units (N-SIS). A leading legal expert in the field of electronic data processing and professor at the university of Copenhagen, Peter Blume calls the leak a "scandal" and a "gross breach of security in the SIS". He says the incident shows that "one is obviously unable to control the use of one of the most sensitive data registers existing".

Sources: Klassekampen, 29.11.97; Information, 3.12.97, 4.12.97; Politiken, 4.12.97; Reuters, 15.12.97.

## Comment

That sensitive personal files from the SIS, Europe's largest and most advanced electronic data base in the field of criminal search, public order and security, can be found lying around in a railway station, the most public space one can imagine, is a scandal indeed. But for those who have followed the setting up and steady extension of the SIS, the leak does not come as a surprise.

Already in 1995, direct access to the SIS was possible from more than 30,000 computer terminals. In 1996, more than 60 different authorities (in the then 7 countries implementing the Schengen Convention) had direct full or partial access to the SIS. The setting up of the SIRENE network for the exchange of "supplementary information" (relating to search requests in the SIS) is likely to have further widened the circulation of sensitive information.

As late as March 1997, the Schengen countries own data protection body, the JSA, in its first annual report, warned against the barely controllable extent of data storing, processing and exchange enabled by the SIS and the "complementary" SIRENE network (see CL No.51, p.10). Among other things, the JSA expressly criticised the fact 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, but also to change their content in such a way that the operation cannot be traced.

After the embarrassing discovery at the Gent railway station, the Schengen officials and ministers in charge will obviously try to appease public concern by announcing a plethora of technical and legal measures preventing leaks in the future. However, some scepticism as to the effect of such measures is called for. As a matter of fact, the real scandal is not the individual leak that occurred in Belgium. The real scandal is the very concept of the SIS as a literally boundless trans-national register not only for criminal search but also for pro-active purposes of maintenance

of public order and state security. As long as such a register exists, leaks will continue to occur.

Another disquieting aspect of the story is the question of the responsible authorities attempting to hush up the incident. The leak was first revealed by Portuguese television and not by Belgian mass media. This suggests that the Belgian authorities intended to conceal the scandal.

We may draw the conclusion from the above that it is easier for organised criminal circles to obtain information from the Schengen Information System, than for the public to obtain information on the state of Schengen cooperation.

But this is, of course, a purely Belgian problem...

N.B.

## AUSTRIA AND ITALY: FULL SCHENGEN-MEMBERS. GREECE, STILL IN THE WAITING ROOM

**The Schengen Executive Committee has agreed on a step by step integration of Austria and Italy into full Schengen cooperation to be completed by 1 April 1998. The full integration of Greece was once again postponed and shall be decided upon in the second half of 1998 at the latest. Decisions to this respect were taken by the Schengen the Ministers in October in Vienna, after a lengthy period of squabbling between the countries forming Schengen's hard core and the newcomers.**

Germany, above all, and, less vocally, even France have repeatedly expressed concern about the newcomer states' ability to protect their external frontiers against illegal immigration. Austria, Italy and Greece all have long external borders which are difficult to control.

A July meeting in Austria between Prime Minister Romano Prodi, Chancellor Helmut Kohl and Austrian Premier Viktor Klima appeared to clear up many German concerns over the security of Italy's and Austria's non-EU borders. Significantly, Greece was not even invited to that "mini-summit".

The Executive Committee's decision of October to grant Austria and Italy full membership not at once, but in a step by step way, reveals that Germany is still uncomfortable with the idea of abolishing controls at its borders with its southern Schengen-neighbours.

Under the agreement reached in Vienna, Austrian citizens may travel without passport control to any other Schengen state, as from 1 December, provided, however, they travel by air. At land, checks at Austria's borders with Germany and Italy will be dropped as from 1 April 1998.

The only concession made to Greece was its full participation in the SIS as from 1 December. According to a spokesman of the Austrian Interior Minister Schlögl, the Greek representative in the Executive Committee had at first threatened to block the decisions pertaining to Austria and Italy, if a positive decision was not taken at the same time with regard to Greece. Italy then proposed the compromise formula that finally brought about agreement.

### Austrian clamp-down on migrants

To Austrian government circles the Executive Committee's decision came as a relief. In the year preceding the decision, the German Land of Bavaria repeatedly and loudly claimed that its security was endangered because of allegedly deficient Austrian border controls. The Bavarian accusations triggered a range of Austrian police and customs operations at its Eastern and Southern borders, aimed at demonstrating

the country's ability to clamp down on illegal immigrants.

### **Man-hunt in the Austrian land of Carinthia**

The most spectacular operations took place in the Austrian land of Carinthia which borders on Slovenia and Italy.

In a May prelude to this activity, the Carinthian police arrested 95 Kurdish immigrants hidden in a Croatian container truck. According to the police, they were on their way to Bavaria.

In late August, 350 Carinthian Gendarmes carried out "Operation Network", a large-scale raid, aimed against illegal immigrant workers. In one night, some 2,000 foreigners were identity-checked; many of them after being torn out of their beds. The operation resulted in the arrest of 5 illegal immigrants...

One week later, again in Carinthia, border police and Gendarmerie, using modern night-sight devices, tracked down and surrounded a group of 30 unarmed Romanians who were preparing to cross the green border with Slovenia in the area of Gailitz. But apparently, something went wrong. Most of the immigrants escaped in the dark night. One police officer was thrown to the ground by an immigrant run-away. The officer shot and seriously wounded the man, allegedly in "self-defence". Six women surrendered to the police.

The regrettable incident in no way slowed down the ongoing operation. The following days, a whole company of gendarmerie, supported by a helicopter and dogs carried out what the Carinthian authorities themselves called a "large-scale man hunt". As if a war had broken out, the authorities dramatically called on the population not to "fall into panic when seeing a foreigner" and to report "suspects" to the police.

Reacting to public criticism of the operation, the deputy head of the regional government, Michael Ausserwinkler, said: "The gendarmerie acted correctly and are merely fulfilling their duty, imposed by Schengen, to protect our external frontiers".

The police operations at the Austrian borders are accompanied by alarmist media reports of a threatening and unprecedented mass influx of refugees. In example, the Carinthian daily newspaper, *Kärntner Tageszeitung*, quoting "unofficial information from top level Austrian government authorities", claimed only days after the man-hunt that about 20,000 people were waiting in Sarajevo alone for an opportunity to escape to Western Europe and, in particular, Germany. Recent incidents involving migrants in Carinthia were only the tip of an iceberg, the newspaper warned.

### **Austro-Hungarian relations at a strain**

Austria's Schengen membership is also putting strain on the country's relations with Hungary.

Austrian authorities' efforts to improve controls at its eastern frontiers have lead to traffic jams and long waiting times at the Austro-Hungarian border. Already in March the Hungarian government complained about the situation at the borders which threatened to affect the country's tourism industry. Moreover, Hungary is unhappy with recent Austrian restrictions for the

Hungarian work force.

After a meeting with Hungarian Deputy Prime Minister Gabor Kuncze, in late October in Budapest, the Austrian Interior Minister, Karl Schlögl, said Austria was keen to help Hungary boost its border guard and stop illegal immigrants. "Hungary is currently in the lucky position of being a transit rather than a target country for illegal immigrants. But Austria, Germany and Italy are targets", Schlögl said. The Minister said a lot of illegal immigrants were arriving in Austria through the Hungarian border and added that "Hungary will probably be more interested in introducing stricter border controls with the improvement of the economic situation".

When the Hungarian Deputy Prime Minister pointed out that Austria handed over 1,600 illegal migrants to Hungary under a two-year-old readmission agreement, Schlögl replied dryly that Hungary had refused to readmit 400 illegal migrants between May and August 1997 alone. He added that problems usually occur when the illegal migrants are undocumented. "They are increasingly coming from Asia, Afghanistan, Pakistan, or even Africa. Of course, Hungary's interest to take them back will be slim".

"Our most important goal is that when Hungary becomes an EU member, it should be able, and mature enough, to implement the Schengen procedure as quick as possible", Schlögl continued. He stressed that in one year (1996) Austria had spent 3 billion Schillings (more than 288 million dollars) on high-tech equipment and deployed 5,000 more border guards to be able to come up to Schengen standards. The equipment included a carbon-dioxide detector, which enabled Austrian border guards to find 50 percent more illegal immigrants hidden in trucks than before.

Sources: Neue Zürcher Zeitung, 8.10.97, 13.3.97, 15/16.3.97; Kärntner Tageszeitung, 28 and 29.8.97; AFP, Budapest, 29.10.97; Report by Heinz Froněk, Asylkoordination, 2.9.97; European Voice, 18-24.9.97.

## **SCHENGEN IMPLEMENTATION IN THE NORDIC COUNTRIES POSTPONED DUE TO COMPUTER PROBLEMS**

The Nordic countries had originally hoped to join Schengen cooperation in 1997. According to the prevailing time table, Sweden, Denmark and Finland were to fully apply the Schengen agreement in 1999. The new postponement is due to the limited capacity of the Schengen Information System, and is expected to delay Schengen implementation by at least a year.

This means that the abolition of internal border controls in the countries concerned will be delayed accordingly.

The announcement of the postponement has caused some irritation in Scandinavia, especially since no binding time-limit for the begin of Schengen application has been given. The prevailing uncertainty is causing problems for Customs and air traffic authorities, which find it hard to adapt to the new Schengen procedures without being given a deadline.

In Sweden, the airports of Stockholm, Gothenburg and Malmö are currently being converted for an approximate 600 million Swedish crowns in order to be able to separate "Schengen" passengers from non-Schengen passengers.

It is even more unclear, when the two Nordic non-EU states, Norway and Iceland, will join Schengen, since the integration of Schengen into the Amsterdam Treaty requires new negotiations on the two countries' position in such a framework of cooperation.

Source: Svenska Dagbladet, 8.10.97

## **CENTRAL AND EASTERN EUROPE**

### **EVOLVING TRAGEDY...EUROPEAN ROMA**

**With shouts of "to the Gas Chambers" and "we'll kill you all" come the despicable imagery of Nazism and the horrors it bespoke. Pogroms, concentration camps, and abhorrent visions of the worst kinds of institutionalized bigotry and abuse are quickly remembered, but the disturbing context of that remembrance is in the way these nightmarish aberrations are being widely pursued in many parts of Europe today.**

**From Greece to Ukraine, a darkness has again descended over a significant European population. Scapegoating and victimization of Roma peoples in Albania, Bulgaria, Czech Republic, Greece, Hungary, Poland, and Ukraine has reached levels not witnessed since WWII.**

In Ano Liosia, Greece, municipal authorities have recently "resettled" the local Roma population of approximately 100 families. The Roma report that officials pursued this resettlement with only a few hours notice to residents and threats of violence. Roma with local residence permits were promised living conditions superior to that they presently possessed.

#### **A policy of resettlement**

Of the original 100 Roma families, a total of 25 were "resettled" in an encampment adjoining a municipal parking lot; the remaining Roma were ordered away - the original Roma homes were levelled. The new housing lacked running water; the sanitary facilities provided for the 124 people were 4 public toilets. Within several days of this relocation, a wire fence was erected about the encampment and armed guards placed at the only opening.

Activities of the nature described call into question the violation of Protocol 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Consequent violation of private and family life then call into question Article 8 of the ECHR, and the further discriminatory climate that came to be fostered raises compliance issues as regards both Articles 3 and 14 as well. Greek Prime Minister Simitis received an NGO communication on the Ano Liosia problem May 23rd, 1997.

In Transcarpathian Ukraine reports of "special troops for controlling Gypsies" have emerged, as well as documentation of an official pursuit of "ghettoisation" and "camps concentrated" for Roma. The European Roma Rights Center (ERRC), an

international NGO monitoring the rights of Roma and providing legal representation in cases of human rights abuse, pursued Transcarpathian fact-finding missions in 1996 and 1997, documenting the both widespread and systemic abuse.

#### **Documenting the abuse**

In Transcarpathia, the level of police violence perpetrated against the Roma Community is reported in extreme terms. The ERRC reports systemic failure in according Roma due process in the courts, and through such, spawning both a coercive and abusive criminal justice system. In spite of the Government's much vaunted claims of Roma capacity for the redress of such police abuse within the framework of the existing legal system, the ERRC found no evidence of such.

Documented problems facing Transcarpathian Roma include education, "land redistribution", forced registration and fingerprinting, mass raids on communities for monitoring purposes, mob violence against Roma communities, the aforementioned lack of due process in the courts, and sexual violence by individual police officers. Many of these issues are repeated in varying degrees throughout the range of Roma geographic "flashpoints" within Europe.

Regular releases of ERRC news and activities appear to have portrayed the deepening Roma crisis in a timely and factual manner. The ERRC is centrally located on the Continent in Budapest, Hungary. The Chairman of their Board of Directors is Andras Biro of Hungary, and the Board also includes members from Romania, UK, USA, Germany, Bulgaria, France, the Czech Republic, and Spain. Given the sensationalism and bias the majority of traditional news sources have exhibited, ERRC updates have proved of particular value in developing an accurate perspective on the issues at hand.

#### **Officially sanctioned violence**

Presently, the perspective on Roma generated by our information is that of systemic patterns of disenfranchisement, discrimination and abuse. These concerns appear to mar Roma communities in an unbroken band from Greece to Ukraine. Repeated accounts of mob violence against individual Roma and Roma communities are commonplace; the latter are historically known as Pogroms. Equally common is the theme of police inaction as regards the perpetration of violence against Roma, with a notable exception to this "rule" being when the police themselves are the perpetrators, which then raises the issue of the degree to which these baseless police attacks are "officially sanctioned".

On February 2, 1997, under the orders of the Director of Interior Affairs for the town of Pazardjic, Bulgaria, a contingent of "masked policeman" from a special police unit attacked the Roma quarter of town. In the process of this attack 60 Roma were reported beaten or clubbed, and damage to Roma property was extensive. Typifying the nature of the Police violence, "with shouts and curses" a married couple in their 60's was beaten with clubs all over their heads and bodies...without explanation. The head of the Quarter's police station was reported as providing an eyewitness account of police attacking innocent Roma. Similar incidents were reported as having occurred in 1992 and 1994. On January 17, 1997 in Sofia, Bulgaria, a similar police rampage occurred in the Facultea section of town, with indiscriminate abuse and beating of Roma again being documented.

Many of these violent outbursts confronting Roma appear to be a function of the extreme volatility of their living environment; an old and natural product of

scapegoating minorities during difficult social or economic circumstances. Given the existence of this undercurrent of aggravated tension, the extreme nature of both individual and collective violence against Roma is better appreciated.

### **An explosive climate of hostility**

In letters to the General Prosecutor of Poland dated July 3rd 1997, and August 25th, 1997, the ERRC highlighted the effects of simmering tensions upon the treatment of Roma. The August 25th letter addressed the case of 15 year old Robert Pawlowski of Wodzislaw Slanski, Poland.

According to subsequent reports, young Pawlowski was kicking a trash can when he was approached by police. Panicking, Pawlowski ran for the nearby apartment of an aunt with Officer Bogdan Szulinski following him, and catching him at his aunt's door. Robert Pawlowski's aunt, Danuta Balasz, heard the commotion outside her door and opened it in time to see Officer Szulinski push young Pawlowski down the stairs and beat him. Upon hurrying downstairs to her nephew, Ms. Balasz discovered him lying on the ground bleeding heavily from the head. The young man was taken to a hospital in Jastrebie where he was operated on that night. He was hospitalised for a month, and it is reported he will never fully recover from the head injuries he sustained...including a broken skull and brain damage.

In a pattern repeated throughout the region of Roma abuse, the police deny using any violence against young Pawlowski, and claim he "fell and hit his head" by the building entranceway. Attempts to secure justice have met with what can be described as indifference at best, and the prosecutor who had previously declined to pursue the case had been again restored to it as of the last reports.

Acts of both individual and collective violence against Roma are repeatedly met with a decided lack of prosecutorial zeal, thereby encouraging future transgressions. On June 11th, 1997 such an attack took place in the town of Wiebodzice, Poland, and involved a mob of from twenty to fifty mostly masked people chanting slogans such as "Poland for Poles" and "We don't want Gypsies here". Despite numerous and repeated complaints, no one from the prosecutor's office appeared willing to address the attacks...again, effectively denying Roma the protection of law.

### **Roots of discrimination**

Varying "explanations" of anti-Roma sentiments have been extended with their being a commonality on several key themes. Perhaps foremost among these is the petty crime many Roma become involved with in order to secure bare necessities (food, clothing, etc.). News media often will highlight the "sensational aspects" of these circumstances; thus feed anti-Roma feeling. Further, as a fairly visible minority (as with Afro-Americans in the USA), they are easily "targeted" by extremist elements (ie, skinheads, ultra-nationalists, etc) seeking scapegoats for perceived problems. This combination of factors has often made the Roma the focus of Community Rage (ie, Pogroms) vs. Community Help.

In the USA, the 1960's saw Afro-American Civil Rights movements flourish, and the subsequent growth of Afro-American political power enabled their successful encouragement of the American Government's pursuit of "anti-poverty programs". These programs provided job, educational, and social benefits for the disadvantaged, thus combatting the high unemployment and crime which had preceded them, and which similarly exists in Roma communities today

(unemployment rates of 70-90% are not uncommon). A large and affluent Afro-American middle class is today the result, and cuts in the "anti-poverty programs" have been repeatedly followed by increases in social problems (crime, drug abuse, joblessness, etc.).

A common thread of joblessness and poverty runs through Roma communities; in most flashpoint areas, "special" Roma educational programs had evolved which served to perpetuate the lack of job and social skills...paralleling the "American experience". Highlighting the difficulties Roma peoples face in addressing their public policy issues in general, and education in particular, Mr. Rumyan Russinov, Director of Monitoring in the Human Rights Project (a Roma Rights NGO headquartered in Sofia, Bulgaria), speaking at the European Parliament in Brussels, urged the Commission of the European Union and its Member States to make the Roma/Gypsies Community and its needs an item of policy.

In his speech, Russinov specifically called for political representation for Roma/Gypsies at the European level, and the establishment of Roma/Gypsy sensitive media and educational establishments. Creating these media and educational structures would provide both a much needed public and policy voice, and an educational basis for a true integration of Roma/Gypsy peoples within Europe.

Quoting the Brussels Declaration by the members of the Roma/Gypsies Roundtable, "Support for the Roma/Gypsies people from the European Union has hitherto been confined to symbolic project promotion that has reached only a small minority of Roma/Gypsies people and has been limited to a few areas. That situation will have to change if the integration and basic welfare of Roma/Gypsies people in Europe are to be secured."

### **Scapegoating a minority**

In contrast, given the present difficult economic milieu of many Roma flashpoints, and the apparent complicity of local governments in Roma abuse, a portion of violence against Roma may be examined in the context of an officially fostered "relief valve" for community tensions. Significant in a number of geographic areas is the confiscation of Roma land and housing, with its subsequent transfer to "majority" local residents taking place following an explosion of Community violence against Roma.

Documented in a June 1997 ERRC report, Roma in the central Albanian town of Berat were systematically "evicted" from flats in the center of town by groups of ethnic Albanians. As a consequence of the "violent evictions", all of those Roma interviewed were living on a mud flat at the town's periphery. In the Czech Republic, presently what many believe to be the most "severe circumstances" exist for Roma in this context, as well as virtually all others.

### **Racism and the Czech Republic**

In a September 1997 report published in POSTMARK Praha 190, State and Extremist "terror" used against Czech Roma included evictions from their homes by right-wing councils in North Bohemia, as well as neo-Nazi sponsored street violence and Pogroms resulting in 28 Roma deaths. The report stated many Roma homes have also been firebombed, and others attacked by gangs. Prominent in reported street marches was the chant "Gypsies to the Gas Chambers!". particularly disturbing is the Czech Justice System's apparent response to these challenges to the most basic of human rights.

August 1997 saw a judge in the East Bohemian town of Hradec Kralove dismiss charges of racially



motivated violence against neo-Nazis who had threatened to throw four Roma children from a train. The stated reason for the dismissal was that as both Czechs and Romany "belong to the same Indo-European race" their conduct could not have been racially motivated. Yet, Czech prosecutors have brought charges against Roma in the town of Louny alleging that five Roma who insulted and attacked police officers called to a disturbance at their flat were involved in "racially motivated" crime under the very same law.

Given the circumstances of these legal interpretations, an agenda other than unbiased Justice begs examination. In a vein complimenting the racial violence against Roma, reportedly the Courts have repeatedly ignored discrimination against Roma by local authorities. In one noteworthy case, a number of Roma families were evicted from flats they occupied in the city of Usti nad Labem, and with their legal leases confiscated, they were put on a train to Slovakia. Their complaint to the court was not heard for three and a half years, during which time they lived in parks and abandoned garages.

### **The first enforced mass statelessness since WWII**

Recalling more of the perverse excesses of the 1930's, in 1993 with the peaceful division of Czechoslovakia, a law on citizenship in the Czech Republic went into effect. Subsequently, information both leaked and freely provided by Czech officials indicates that racial motivation may have influenced the new law. Specifically, indications are that some of those drafting the legislation saw it as a means of removing Roma from the Czech Republic. Since this law went into effect, approximately 100,000 Czech Roma have effectively been made "de facto stateless as a result". This act constituted the first enforced mass statelessness in Europe since WWII.

Presently, "stateless" Czech Roma are deprived of a host of benefits available to any Czech citizen. Aside from social benefits, these individuals have difficulty receiving permanent residence, and cannot vote or run for Office. Moreover, aside from the disenfranchisement of social and political assets, reports indicate these stateless individuals are often expelled from the Country for "committing" any crime whatsoever.

As reported by the Prague based NGO Tolerance Foundation, 663 "Slovak citizens" (the new designation provided stateless Roma) were sentenced to expulsion by Czech courts in the period from January 1, 1993 to June 30, 1996. Tolerance Foundation reports that of the first 120 cases they were able to document, 118 were Roma. One such expulsion was included as part of the sentence for the theft of approximately five US dollars worth of sugar beet; this was quashed by the Czech Supreme Court in May 1997.

### **Roma crisis...born of political change**

Again paralleling the 1930's when Nazism first scapegoated and persecuted minorities, and then stripped them of their rights and citizenship, the developments of recent years as regards the Roma are quite disturbing. A common thread which appears to unite many Roma people, while substantiating the view that the present wave of anti-Roma activity was spawned as a result of societies in a state of social or economic crisis, is that "before 1989, we were people; after the changes we were forced to become Roma" (from ERRC Nato Statement July 10, 1997).

As with other European flashpoints of recent years, the changes in both the political and economic structures of many countries appear to have created

upheavals which unleashed long buried prejudices. Discrimination across the spectrum of everyday life appears all too typical, running from being served in a restaurant and finding a job, to the most basic of human rights.

In an account which apparently typifies the experience of many, one Czech Roma related in Postmark Praha that "Under the 'totalitarian regime' I worked hard for 15 years at the waterworks, followed by 4 years at the Nova Hut steelworks. Under 'democracy' I don't have a job. I'm on social security of 58 US dollars a month. It's impossible to live on that." From "humanitarian" sources offering help to victims of Czech flooding in July of 1997, the newspaper ads advising the victims on how to obtain help were reported as including the disclaimer "but not gypsies". In a bizarre twist to the American experience of racism, many Czech shops and restaurants are reported to post signs refusing to serve "Blacks" (Roma). Evidence indicates a pervasive web of anti-Roma activity which is particularly severe in the Czech Republic.

### **In search of refuge**

In August of 1997, thousands of Czech Roma sought political asylum in Canada on the grounds of racial persecution. On October 20th, 1997, approximately 200 Roma people from Slovakia and The Czech Republic appeared in Dover, UK, and claimed refugee status. The UK is reportedly attempting to accommodate the existing refugees, while seemingly trying to discourage additional asylum seekers as well as involvement in what is apparently being viewed as a Czech/Slovak domestic issue.

A report from November 2, 1997 relates the dispatching of Pavel Bratinka, the Czech Republic's minister in charge of minorities, to London for talks with Home Office Minister Mike O'Brien. Bratinka's Prague office was noted as the source of this information, which went on to relate that Czech President Vaclav Havel had just warned that the "flood of Czech gypsies seeking asylum in Britain could force the European Union to bring back visa restrictions against Czech nationals".

Authorities in Dover are reported to have sought financial assistance from the British government. Statements quoting an additional arrival of up to 800 refugees noted that this has been the Channel Port's "single biggest ever influx of asylum seekers".

Jack Rodgers

Sources: ERRC Releases March 21 - August 25, 1997 (Contact: ERRC, P.O. Box 10/24, 1525 Budapest; Fax: +36/1 1382727); reports by Tony Goldman, 20 and 27.10.97; AFP, Prague, 30.10.97; Roma Rights in FOCUS, July-August, 1996; OBEKTIV February-May 97, June-September 97; POSTMARK Praha 190, September 97.

## SWEDEN

### SWEDISH SECURITY POLICE ACCUSED OF POLITICAL POLICING: THE LEANDER CASE

The case of Torsten Leander, who lost his job in 1979 after having been declared a "security risk" has triggered a debate in Sweden on the role of *Säpo*, the Swedish security police. The recent disclosure of Leander's *Säpo* -file appears to confirm long-standing suspicions that the security police is registering people on the grounds of their political opinion. But the government is resisting calls for a full inquiry into *Säpo's* surveillance activities. Is the Leander case "history", as the government claims?

In 1979, young Torsten Leander was dismissed (without notice) from his job as a carpenter at the Swedish Marine's Naval Museum in Karlskrona. The only explanation given to Leander was that he was being considered a "security risk" by *Säpo* - the Swedish security police. Leander had no possibility to seek legal remedy against his sudden dismissal since *Säpo* denied him access to his own file. Therefore, his lawyer, Dennis Töllborg, filed a complaint to the European Commission for Human Rights (EComHR) in Strasbourg. Töllborg argued that Swedish authorities had denied his client a fair hearing and thereby breached Article 13 (right to legal remedy) of the European Convention on Human Rights (ECHR). The Leander case eventually ended up at the European Court for Human Rights (ECourtHR).

#### European Court of Human Rights dismisses the case

Against the will of the complainant, the Court decided to extend its deliberations to the question of whether *Säpo's* general registration practice was in compliance with the Convention (Articles 8 and 10) or not. Thereby, an issue of little interest for Torsten Leander came into the focus of the Court's deliberations; specifically, was the Swedish vetting system and its extent "strictly necessary" for maintaining national security, and was vetting carried out in accordance with the law? In essence, two factual circumstances were decisive for the outcome of the case.

For the first, Leander claimed that the extent of vetting in Sweden was far beyond what was necessary, let alone "strictly necessary" in the interest of national security. While refusing, on alleged national security grounds, to give any detailed figures, the two representatives of the Swedish government refuted Leander's claim of more than 100,000 vetting procedures being carried out in Sweden every year as exaggerated and stated that personnel controls did not amount to "anywhere near this figure". The government representatives refused to answer lawyer Töllborg's question whether Leander had been sacked due to his leftist opinions, by referring to national security.

For the second, the Swedish government representatives also refuted as "certainly not correct" Leander's claim that a provision in the Swedish ordinance on personnel control actually prohibits the communication of any substantial information to the vetted person concerned.

The above two statements of the Swedish government representatives were pivotal in the case's decision. In 1987, 8 years after Leander was sacked, the Court dismissed the complaint on the grounds that Leander had failed to clearly substantiate that his dismissal was due to his political opinions. The Court

further found that the Swedish National Police Board provided a major safeguard against abusive registration by *Säpo*.

#### Government representatives lied to the Court

In 1990 it became clear that the two Swedish government representatives had deliberately lied to the ECourtHR. A report published by the *Säpo-kommission*, a committee of inquiry into the security police set up by the government, showed that the average number of vetting procedures per year carried out by *Säpo* actually largely exceeded 100,000 most years and amounted to 410,000 in 1989. Moreover, the committee stated unanimously that the Swedish ordinance on personnel control "gives the impression that the main rule is that the controlled person is to be communicated the facts of the case, when the truth is that in practice it is the reverse...".

#### Leander's "crime": leftist opinion

Ten years after the verdict of the ECourtHR, the Leander case is once again drawing public attention. In October 1997, the Swedish government at last approved a renewed request made by Dennis Töllborg, who is now a professor of law at the Gothenburg School of Economics, for disclosure of *Säpo's* Leander file. When Töllborg read the file at the *Säpo* headquarters in Stockholm, he saw all his suspicions confirmed. It showed that Leander had been registered for the first time by *Säpo* in 1970, at the age of 19, because he had been seen selling the *Vietnam-Bulletin*. This was the joint publication of a multitude of organisations participating in Sweden's largest post-war movement, the mass-protest against the US war against Vietnam. "At that time, we all sold the *Vietnam-bulletin*, irrespective our political affiliations", says professor Töllborg. "Even members of the conservative party sold it."

Later entries in Leander's *Säpo* file mentioned items such as his car having been seen parked in front of a hall where a radical left magazine was holding its annual meeting, and his membership in a Marxist party. This apparently sufficed for *Säpo* to regard the young man's employment as a carpenter in a museum open to the public as a national security risk. The file made no mention of the fact that Leander had already been excluded from the marxist party for deviation because of his opposition to the party line. Further, this exclusion existed when he sought the job at the museum.

#### Political snooping widespread

The disclosure of *Säpo's* file on Leander has fuelled long-standing suspicions that the security police have never stopped their practice of registering people on the grounds of their political opinion, although, this is prohibited by law since the 1960s.

Already in 1966, the large circulation (evening newspaper) *Aftonbladet* revealed that *Säpo* had registered around 300,000 persons because of their opinions or their political contacts. The register comprised popular artists and actors, suspected of being communist "sympathisers" - people such as the renowned author and anti-apartheid activist Per Wästberg (because of his contacts with South African politicians in exile in Sweden), and the then leader of the centre-right *Folkpartiet*. *Aftonbladet's* revelations were based on a leak within the security police.

At that time *Säpo* bluntly denied the very existence of any such "political" register, but the scandal led to a reorganisation of the agency and new legislation officially aimed at ensuring a better control of its activities. However, ever since, individual cases have

continuously come to light, suggesting that political registration was actually going on. Whenever public criticism became too loud, the government reacted by setting up commissions of inquiry and proposing minor organisational and legal changes. Most of these measures had no other effect than temporarily improving *Säpo's* poor image in the Swedish public.

### **Calls for a "truth commission"**

The new row around the Leander case has once again led to calls for a thorough inquiry by an independent "truth commission" into the security police, but the Social Democrat government, supported by the largest opposition party, the conservative right *Moderaterna*, is showing reticence. Minister of Justice Leila Freivalds is arguing that the Leander case is history and that legislative and organisational changes following earlier inquiries were a sufficient guarantee preventing abusive registration. "This is pure nonsense", says professor Töllborg. "When *Säpo's* registration of anti-Nazi circles during World War II was revealed in the 1950s, we were told that things were bad in the past, but now everything is fine. We were told the same thing in the 1970s and again in the 1980s. We just cannot go on blinding ourselves to the weight of repetitive evidence".

### **No right to see your own file**

The truth about the Leander file would never have emerged without the long-standing campaign run by the journalist and present Swedish press ombudsman, Pär-Arne Jigenius. For several years, Jigenius had vainly sought access to *Säpo* files concerning a leading figure of Swedish anti-Nazism in World War II. His requests were regularly turned down, since the prevailing law on police registers did not provide for the disclosure of *Säpo* files. But, the government eventually gave in to mounting pressure. According to a new provision in the police registers law in force since July 1996, the government may decide in particular cases to disclose files to individual applicants for the purpose of "scientific research". Consequently, professor Töllborg made a new request for access to the Leander file, which was approved in October.

Töllborg, however, points out that the new provision in no way establishes any right of persons concerned to be granted access to their own files. "It would have been difficult for the government to turn down my request for access to the files", he says, "since, as a scholar, I was entitled to access on scientific research grounds. If Leander had made the request himself, it would very probably have been turned down".

In the meantime the government has decided to grant Mr Leander 400,000 Swedish crowns in satisfaction for moral and economic damage suffered as a consequence of his registration. But, there is growing evidence suggesting that many others had their careers affected by *Säpo's* abusive registration and vetting practices. As long as the two leading political parties continue to obstruct a comprehensive independent inquiry into the records of *Säpo*, the chances for redress are slim.

Sources: Aftonbladet, 2.11.97; Falu Kuriren, 6.11.97; Reports on Swedish TV and radio, November and December 97; "Some hypotheses on significant features of security policing"; by prof. D. Töllborg, Gothenburg, May 1997; interview with prof. Töllborg, 25.11.97; our sources.

## **Comment**

There are two dimensions to Sweden's "snooping affair". One dimension concerns history, the other concerns the situation today; in particular, the current development of pro-active surveillance in Sweden in the context of European police cooperation.

As opposed to e.g. Norway and Switzerland, where investigative commissions have brought much light into these states' snooping activities in the period between the end of World War II and the fall of the Berlin wall, Sweden's political establishment seems very reluctant to cast full light on this dark side of the country's history.

### **Surveillance in the past: cooperation with the German Gestapo and anti-communist witch hunt**

The little that is known - thanks to leaks, scientific research and investigative journalism - is disquieting enough. During World War II, *Säpo* systematically cooperated with the German Gestapo. *Säpo* industriously registered Anti-Nazi activists and extradited Norwegian freedom fighters hiding in Sweden to Germany...while showing little interest for widespread pro-Nazi activities in the country. After the war, and until the late eighties, surveillance measures focussed not only on declared and alleged communists, but also on other political opponents of successive Social Democrat governments.

Immigrants are another group in the focus of *Säpo's* surveillance activities. In recent years, foreigners lawfully residing in Sweden were repeatedly deported or subjected to other severe measures of constraint after having been labelled a "security risk" by *Säpo*. In none of these cases were the persons concerned informed of the specific grounds of *Säpo's* "verdict".

### **Surveillance today: the fight against crime as a pretext**

*Säpo's* practice of snooping on foreigners not suspected of any criminal behaviour is well-documented. But, somewhat remarkably, the question of whether and on what grounds Swedish citizens too are currently being registered has drawn very little debate thus far. Justice Minister Leila Freivalds has repeatedly stated that nobody any longer is being registered "merely" on the grounds of his opinions; that a new Leander case is therefore impossible. Concurrently, Ms Freivalds holds that the very registration of Leander by *Säpo* was in accordance with the law. Indeed, formally speaking, Leander's registration ensued not from his political opinion, but his contacts with political organisations that, from *Säpo's* Cold War perspective, constituted a threat to State security...although they never engaged in any unlawful activities. In other words, Leander was not registered *merely* because of his political opinion.

One should have this in mind in assessing the risk of continued political registration in Sweden and elsewhere.

### **New legislation to provide for the surveillance of non-suspects**

In fact, the Swedish government is currently pushing hard the introduction of new legislation authorising the police (not just *Säpo*) to put under surveillance and register people not suspected of any crime. Before the public, the new powers for the police are being justified with the need to fight against various forms of "organised crime", and in particular the criminal activities of motor cycle gangs, paedophiles, and Nazi groups - all of which have been highly publicised by the Swedish mass media. Sceptics are referred to Sweden's participation in Europol which, according to the

government's interpretation, binds the Swedish police to provide Europol with intelligence concerning persons not suspected of any offence. This includes possible witnesses and victims, as well as contacts and sources of information in connection with a criminal investigation by Europol.

While the Europol Convention does not allow the registration of persons in the agency's registers *merely* on the grounds of their political opinion, belief, race, sexual behaviour or health, it does authorise the registration of such sensitive information, whenever the initial registration of the person concerned has been caused by his assumed relation to criminal suspects and possible future criminals under investigation.

In practice, this is likely to open wide the door to extensive registration of innocent citizens' opinions.

### **Pro-active policing opens the door to political policing**

As a matter of fact, authorising pro-active policing, i.e. intelligence gathering on non-suspects, is tantamount to accepting political policing. There is nothing to suggest that this logic would not apply to Sweden. The difference as compared with the past, is that regular police are gradually being allowed to use extensive preventive intelligence gathering, reserved to *Säpo* and other secret services before.

Comprehensive intelligence gathering by State security agencies, including snooping on politically "interesting" people, is likely to go on as long as states and governments exist. Attempts to prohibit such activities by law, such as the referendum campaign in Switzerland for the abolition of the State security police, are doomed to fail. As long as there are states and governments, there is a market for snooping activities. If these activities cannot be run legally, they are run illegally. What is more, a majority of citizens are probably prepared to accept such comprehensive intelligence gathering in the interest of State security as long as this does not affect their lives and careers. But, they should definitively not accept that innocent people suffer serious punishment-like damage resulting from such registration without knowing why and, as a consequence, without a chance of legal remedy. That is exactly what happened to Torsten Leander. Ironically, Leander learned about the very existence of his *Säpo*-file only by accident. Had the director of the Naval Museum in Karlskrona followed the regulations, Leander would have been subjected to vetting before being employed and simply been denied the job with any need for an explanation. In other words, without the museum director's blunder, there would never have been a "Leander case".

N.B.

### **DEATHS IN CUSTODY...AMNESTY INTERNATIONAL REPORTS ON SWEDEN**

**The following article is based on Amnesty International's report on the circumstances surrounding the death in Swedish police custody of Osmo Vallo, as well as the additional deaths of eleven other individuals in the custody of police or security guards...**

It was the end of May, about 11 at night, when police in the Swedish town of Karlstad were called to investigate a disturbance. Spring had come to Sweden, and apparently 41 year old Osmo Vallo had over-celebrated

its coming - he was reportedly both drunk and under the influence of drugs.

Through his fog of intoxication, Vallo saw two men approaching him...indications are he became apprehensive. The men had a police dog with them. Vallo, apparently feeling threatened at their manner, and uncertain about their identity, was quoted by a witness as asking, "Why are you doing this to me? Can I see your identification badge please?".

Although witnesses later reported that Osmo Vallo was neither violent nor threatening towards the police, their reply to his request for identification was a kick in the back by one of the officers. Apparently stunned by the blow, Vallo began walking towards the entrance of a nearby apartment building, Basnungatan 48. The police dog - which had been leashed - was now set on Vallo by the officers; it proceeded to bite him on his arms repeatedly. Osmo Vallo managed to fend the animal off, and somehow reached the building entranceway. Seemingly desperate, Vallo knocked on doors and begged for help - Amnesty reports that circumstances indicate the only immediate response Vallo received was that the police once again set their dog on him.

### **After "the Commotion"**

The next time witnesses clearly note seeing Osmo Vallo it was after "the commotion" in the entranceway. Vallo was lying on the ground with his hands cuffed behind him; he seemed to be having difficulty breathing. Reports indicate that one Officer, in an apparent state of anger, "kept pushing his foot into Osmo Vallo's left side and shoulder...abusing him and telling him to get up". Witnesses then report this Officer stamped his foot onto the middle of the prostrate Vallo's back, and they "heard a noise as if something inside Osmo Vallo's upper body had cracked". Further, a witness reported he saw an Officer kick Vallo in the head.

The "seemingly unconscious" Vallo was now dragged outside where the Officers "laid him motionless, still face down, on the grass". The Officers realized he was not breathing and called an ambulance - witnesses state that at no time did the Officers attempt to resuscitate Vallo. Shortly, the Officers laid Vallo (still handcuffed and face down) on the back seat of their car and proceeded to the hospital. Despite hospital resuscitation attempts, Osmo Vallo was pronounced dead at 12:20AM, May 31, 1995.

### **Witnesses asked to "keep quiet"**

Several of the witnesses at the 48 Basnungatan apartments were asked by the police to keep quiet about what they had just seen. The first post-mortem examination was performed in June 1995 by Dr. Erik Edston (Department of Forensic Medicine, Linköping), and recorded "39 signs of wounds and bruises on Osmo Vallo's face, arms and legs and dog-bites on various parts of his body".

Quoting Amnesty International's report, there are "great discrepancies between the account of the incident given by eye-witnesses and that of the police". In example, contrary to witness testimony, the police officers claimed that Osmo Vallo seemed "excited and violent" upon their arrival. Further, the Officer's went on to indicate that "although they warned Vallo that they were going to unleash the dog, he tried to kick both police officers and the police dog. As a result, he was bitten by the dog." However, in seeming refutation of their account, in April 1996, both police officers were "convicted of causing bodily injury to Osmo Vallo in connection with their failure to exercise control over the dog and the resulting dog-bite injuries on him."

### **Failure to Provide Key Material**

As investigation into Vallo's death proceeded, the first autopsy reached no conclusion about the cause of death; however, "the complete police investigation, containing the above-mentioned eye-witnesses' statements, was not sent to the Institute of Forensic Medicine in Linköping before the final report was announced". The failure to provide key material and information necessary to properly evaluate the Vallo case is a recurrent theme which, for all intents and purposes, served to effectively obstruct those attempting to accurately assess the true extent and nature of Osmo Vallo's injuries and the cause of his death.

Dr. Göran Sköld and Dr. Robert Grundin, respectively of the Departments of Forensic Medicine in Lund and Stockholm, at the request of the Vallo family assessed the way Osmo's case had been handled. According to Amnesty International, they were denied access to eye-witness reports "that Osmo Vallo had been kicked and stamped upon by the police...nor was any such information given orally".

### **No Disciplinary Proceedings**

Although the two Officers involved in the arrest of Osmo Vallo were convicted of "causing bodily injury" to Vallo, they were fined and remained on duty. No disciplinary proceedings were initiated against them...questions continued to be raised about the circumstances surrounding Vallo's death.

On May 5th, 1997, the Swedish delegation to the UN Committee against Torture testified that "there were doubts as to whether the case had been fully resolved". A second autopsy on Vallo had been performed on January 17th, 1997 by Dr. Göran Sköld, with Dr. Robert Grundin, Prof. Jorn Simonsen (Institute of Forensic Medicine, Copenhagen University), and Prof. Pekka Saukko (Institute of Forensic Medicine Turku Academy, Finland) in attendance. Five rib fractures missed by the first post-mortem were discovered. In a letter dated April 30, 1997, Kurt Roos (Director General of the National Board of Forensic Medicine, Stockholm) stated the arresting Officers' conduct had been "remarkable", and that it "begged the question whether their behaviour was in compliance with their own code of conduct".

### **Postural Asphyxia**

While the first autopsy had reached no conclusions as regards the cause of death, the second post mortem provided a strong basis to conclude that "the probable cause of death could have been postural asphyxia of a person already affected by ethanol and amphetamines or cannabis". Dr. Michael Baden, the noted independent forensic pathologist and New York Medical Examiner, was interviewed by Swedish television's investigative news show "Striptease" as regards his feelings on procedural questions surrounding the case, as well as to the ultimate cause of Vallo's death.

Dr. Baden was extremely critical of the repeated failure to provide complete information regarding Vallo's death to those performing the autopsies, and noted that "the fact that he (Vallo) died right after somebody stood on his back is perfectly consistent with suffocation or traumatic chest compression". Substantiating Baden's contentions as regards Vallo's death, the Amnesty report further notes a memo from the Chairman of the New York Commission of Correction highlighting that procedures similar to those apparently followed by the arresting Officers can lead to "asphyxial death, sometimes in less than 30 seconds."

In May 1997 Regional Public Prosecutor Folke Ljungwall closed the review of the case - the decision was widely criticized. In August 1997, Ismo Salmi, the lawyer acting for the Vallo family, lodged an appeal

with the Prosecutor General requesting him to reconsider the Regional Prosecutor's decision.

### **A Violation of International Treaty**

The Amnesty report concludes by outlining recommendations to both address the Osmo Vallo case and other similar deaths, as well as to preclude the future repetition of these tragedies. In illustrating the severity of this issue, Amnesty notes that - based on the numerous witness statements - it believes the conduct of the two arresting Officers was so egregious as to have "violated Sweden's treaty obligations under international law". Specifically, Amnesty cites violations of the "UN Convention against Torture", the "International Covenant on Civil and Political Rights", and the "European Convention for the Protection of Human Rights and Fundamental Freedoms".

Source: AI Report: Sweden: Osmo Vallo - Action needed to prevent more deaths in custody, AI index: Eur 42/01/97.

## **THE NETHERLANDS**

### **MASS ARRESTS AT AMSTERDAM EU-SUMMIT UNLAWFUL, EXPERT REPORT CONCLUDES**

More than 700 people were arrested and detained by the Dutch police during the EU Summit in Amsterdam in June. Many of them were accused of "participation in a criminal organisation" according to Article 140 of the Dutch Penal Code(see CL No.51, p.1 and p.16). The mass arrests and, particularly, their bizarre legal motivation drew protests in the Netherlands and abroad, and leading Dutch jurists strongly questioned their lawfulness.

Five months later, in mid November, Amsterdam's Chief Public Prosecutor Vrakking announced at last that all charges under Article 140 of the Dutch Penal Code (participation in a criminal organisation) have been dropped. A week later, a committee of experts, mandated by the Amsterdam Municipal Council to inquire into the controversial police operation, presented its report. The report finds all mass arrests during the EU Summit were illegal.

Reacting to the above, a professor of criminal law and criminology at the University of Maastricht, Mr Mols, called for the resignation of public prosecutor Vrakking. Mr Mol's demand was backed by seven other leading Dutch professors of criminal law. On his part, Public Prosecutor Vrakking is not showing any remorse. He said on TV that if there were a EU Summit in Amsterdam tomorrow, he would do exactly the same as in June.

In the meantime, a number of Dutch organisations and individuals, affected by the police operation, have brought a criminal complaint against Mr Vrakking, Amsterdam's mayor, Schelto Patijn, and the chief of the police, for being "leaders of a criminal organisation aimed at deliberately violating basic rights and depriving people of their freedom".

There is still no official answer to the question of whether the personal data of people detained at the Summit have been stored in the Schengen Information System or otherwise been communicated to police abroad, and if so, whether these data have been deleted after the Dutch authorities' decision to drop the charges.

Source: Autonom Centrum, Amsterdam, November 97.

## CROATIA

### GOVERNMENT INVOLVEMENT IN ORGANISED CRIME

**Revelations have surfaced as regards criminal activities pursued by the Croat government, military and police.**

Recently, in his book "Criminal Tale", the Italian Mafioso Felice Maniero accused the son of the President of Croatia, Franjo Tudjman, son of "participating in the illegal arms trade with the Italian Mafia".

Also, estranged Croat politicians have elaborated on an organised crime system existing where there is "a complex network of relations in which a significant part is played by high politics, the military and police". Specific allegations of criminality include involvement with the illegal car trade, arms, narcotics, and prostitution - precisely the forms of crime under the remit of Europol...

Source: AIM Review No. 50, August 1997.

## OPINION

The following article is a contribution from FFM (*Forschungsgesellschaft Flucht und Migration*). This Berlin based non governmental research organisation monitors asylum and migration policies with a particular focus on developments at Germany's eastern border and in the Central and Eastern European countries (CEEC).

This article is an abridged and edited version of the first chapter of a recent FFM publication<sup>1</sup> dealing mainly with the effects of western European asylum and immigration policies on Ukraine.

### EU ASYLUM AND IMMIGRATION POLICIES IN CENTRAL AND EASTERN EUROPE: THE "DOMINO" EFFECT

#### Building Fortress Europe's second outer ring

In the early 1990s, when the wall of isolation surrounding Western Europe was being extended to include Central and Eastern Europe, some observers already warned against a "domino effect". Germany's eastern neighbours, they said, would gradually pass on the restrictive migration and border control policies imposed on them by the West to the next states in line. The system of readmission agreements and other interstate arrangements made this a predictable trend. The domino effect has now become a reality: the Polish government is now passing on to the Ukrainian government the pressure it itself is subjected to from the European Union (EU), the Schengen group and, in particular, Germany.

The pressure exerted by Western European states on the CEEC must be considered against the background of an economic dividing line which - in spite of its limited geographical length of approx. 750 km - is one of the most fateful in Europe. Between Germany and Ukraine, the difference of income is 100 : 1, and between Germany and Poland still a hefty 10 : 1.

The new border regimes and amended legislation on aliens does more than only serve to cement the economic hierarchy between states. In view of the expansion of the "grey" to "black" labour markets in all countries, this also produces a spectrum of exploitation and, as in Poland in 1996, leads to an "illegalisation" of people from more distant countries. Since neither Poland nor Ukraine are members of the European Union or Schengen, Germany and other EU countries seek other, often less formal - but increasingly direct - ways of exerting influence.

#### Defining "criminal-geographical areas"

The German government has gradually been extending its sphere of operations to the Polish-Ukrainian border. According to Germany's Interior Ministers (Federal and *Länder*), Poland's border with the former Soviet Union has become a "criminal geographical area", which they observe "with concern".

The issue has become a regular item on the agenda of the German Interior Ministers' conferences, leading to (among others items) frequent visits of the Ministers and their senior officials to the countries concerned. Further, between 1993 and 1996 Germany spent DM 120 million to finance material and equipment along Poland's western border, and to set up a Polish administrative system for refugee and deportation proceedings.

The next item on the German government's agenda is the financing of equipment for the next "outer wall". In November 1996, Interior Ministers and senior officials from several German *länder* made a fact-finding tour at Poland's eastern border. One member of the fact-finding group summed up his conclusions as follows:

"Until the collapse of the Soviet Union, Poland's eastern neighbour ensured the inviolability of its borders itself. Today that power is no longer present there. (...) Rough forest terrain [on the eastern Polish border] offers traffickers in illegal immigrants and criminal organisations the best conditions for running their 'business'. (...) All those who cross that border illegally will one day find their way into the territory of the EU - unless they are rejected at the EU's outer borders."

This is how Germany justifies planned action at advisory and financial levels along the second outer ring of Fortress Europe. Specifically, the aim is to shut down international refugee escape routes. Three of these routes are well known: the "northern route" through the Baltic, the "eastern route" from Belarus or Ukraine to Poland or the Slovak Republic, and the "southern route" via Romania.

#### The rearmament of the Polish border police

The first visible changes in the control of Poland's eastern border appeared in 1996. The Polish border police operating there now have "mobile rapid response groups", deploying helicopters of the Kania type, and carbon dioxide measuring instruments, enabled the detection of people hidden in, e.g. truck containers. In 1996, a total of 60,000 people either were not allowed into Poland or were seized when attempting an illegal crossing of the border into Poland. It is, however, difficult to say whether the use of ever more sophisticated detection devices really contributes to curbing illegal immigration. An officer at the police bureau responsible for crime prevention commented on the introduction of carbon dioxide detectors as follows: "I'm not so sure that trafficking in illegal immigrants can be tackled this way. The eastern channel [i.e. the escape route via Moscow or Kiev to Poland] is still being developed. And there's too much money at stake there for the smuggling gangs to waive this business. It

is more likely that they will bribe customs officers and border guards."

### **The new function of Poland's eastern border**

The function of the Polish-Ukrainian border is being transformed by the incipient western orientation of Ukraine. So far, the border's main function has been to mark the spheres of influence of the Polish and Ukrainian states. Now it is becoming an advance bulwark of Germany's and the EU's restrictive migration and asylum policies. With respect to Ukraine, Poland is being assigned a function as a gatekeeper of Western Europe. This imposed role seems to conflict with Polish-Ukrainian efforts to improve mutual relations. Indeed, after the collapse of the Soviet Union, Poland was the first state to recognize the independence of Ukraine, and there is already talk of a "strategic partnership" between the two countries. In April 1996, the Ukrainian government officially and definitively opted for a cautious political westward orientation towards the EU and NATO. This is the context within which German-Polish-Ukrainian cooperation is developing in the domain of refugee policies.

### **A labyrinth of overlapping structures**

After the fall of the Soviet block, Western European governments responded to the disintegration of Eastern Europe by promoting the creation of a cordon sanitaire for Fortress Europe in the so-called Visegrad states. The development of a new border regime meant more than just a reorganization of the regular and border police forces. According to their objectives in the domain of migration policies, the ministerial conferences determined *de facto* which states would in future perform buffer functions, and which would belong to the new periphery. However, the old and new elites in the CEEC proved rather hesitant to comply with this political dictate on migration by the Western European states as they benefit from the existence of an informal migrant economy. This is why implementation of the measures laid down at a number of international conferences on migration policy proceeded at very different paces.

### **The Vienna Conference**

In the course of the last few years, considerable changes have nonetheless occurred as a result of international conferences in this field. Initially, the Vienna Ministerial Conference (24 to 25 January 1991) and the smaller follow-up meetings - described collectively as the Vienna Process - were of immense importance. The goal of the Vienna Process was to establish Europe-wide political coordination of measures to combat illegal entry of migrants to Central and Eastern Europe. In September 1994, after more than 20 meetings of subordinate working groups, this all too informal inter-governmental structure suggested that its mandate be transferred to the Council of Europe.

### **The Budapest Group**

A parallel circle, the Budapest Forum (or Budapest Group) had formed at the suggestion of the German government following the Budapest Ministerial Conference (15 to 16 February 1991). The focus of this Forum is on technical questions of equipment for border police and the development of personnel control systems in Central and Eastern Europe. The Forum is also used to arrange for financial support from the European Union (EU) to enhance border systems. Resources have been generously provided, e.g. by the PHARE programme of the European Commission.

One particularly notable feature of the Budapest

Forum is its informal character and the key role played by non-governmental organizations (NGOs). These NGOs, like the ICMPD [International Centre for Migration Policy Development, based in Vienna, and headed by Jonas Widgren, a former Swedish senior official and diplomat], live from government contracts, and design threat and surveillance scenarios, advise policy makers, and busily arrange the provision of border control technology.

Down the years, the Budapest Forum has split up into numerous specialised subgroups. The last ministerial conference organized by the Forum took place in January 1993, again in Budapest, and was attended by representatives of 34 states and organizations (see CL No.13, p.1). The next ministerial conference of this magnitude was scheduled for September 1997 in Prague.

### **IOM conference in Kiev on how to block refugee routes**

In this context, mention should also be made of the involvement of the International Organization for Migration (IOM), an inter-state body that is now financed by 59 governments and private organisations and sponsors. It has long since transcended its original mandate - to provide refugee travel assistance on behalf of various governments. Today, the IOM not only performs "repatriations" - often resembling soft deportations - but also provides expertise on developments in migration. Furthermore, it advises governments in Central and Eastern Europe on how to pursue Western specifications in migration policy, and gets government representatives, border police chiefs and consulting firms around one table at international conferences on "illegal migration". For example, the IOM's Helsinki regional office organized a 12-country conference in January at the Ukrainian capital, Kiev. The subject of the meeting was the elimination of the eastern passage, i.e. the refugee route leading through Ukraine or Belarus to Poland. Among other things, the delegates discussed the improvement of various methods for control and search, and the extension of the system of readmission treaties.

In the first few years after 1989, the Central and Eastern European states did, in fact, hesitate to perform such bulkhead functions, since a number of internal political and economic considerations stood in the way of this dictate. As a result of growing consultation and greater interlocking between states in recent years however, the pace of internal assimilation is being forced. With the Polish state now being a candidate for EU membership, it is - in its own interest - prepared to adopt its Western neighbours' migration and asylum policies, and is keen to demonstrate its ability to implement them.

### **The making of a "European security zone"**

Meanwhile, a change has also occurred in the "bulkhead strategy" for Fortress Europe. The first international ministerial conferences in the early 1990s were marked by the threat scenario of a million-fold migration following the breakup of the Soviet Union and the end of the "Iron Curtain". In the meantime, European police and security circles have made the fight against so-called "organised crime" the catch-all leitmotif into which migration and asylum policies are now being fitted. Illegal migration is now being construed as imported crime, so that commercial refugee assistance is categorised accordingly as "organised crime". In line with this police scenario, the alleged threat to internal security must be met by addressing the "criminal geography" and by identifying socially adjusted "control filters". Stereotypical characteristics like skin pigmentation, speech, "alien" behaviour and other visible signs of foreign origin are taken as criteria justifying boundless surveillance, monitoring and investigation methods. These features become "significant" stigmata that can be used by the police wherever whole regions can be labelled with a racist definition as "cultural areas" and entire populations as homogeneous "peoples".

Ultimately, all this aims at developing an "overall European security zone", based on the "organised crime" scenario and on the criminalisation of migration. This scenario and the matching vision of a "control state" suggest the growing importance of the social policy dimension. The classification scheme used by the police and the judicial authorities, marking off a "chosen people" of citizens of EU or EU-associated countries from "illegal" non-Europeans, deprived of all rights is part of a top-down change in society that has become apparent all over Western Europe in the 1990s. With a criminological redefinition of offenders ("smugglers and traffickers") and victims (penniless refugees, women forced into prostitution), the police apparatuses and public authorities are trying to use human rights arguments to justify and legitimise their actions, while at the same time recasting them for the purposes of the state and twisting them for repressive ends. In view of the political and social implications of this model, and in view of its exportability and its bonding power between states, it is proper to speak of a new security concept in Europe, designed by the Schengen states. All the same, there is no united legal area in "Europe as a whole" in which this concept could be simply and comprehensively realised. The readmission agreements and third-state arrangements numbering well over 100 that now form an overall European scheme of deportation and deterrence are a network of bilateral relationships between a few dozen European countries. They are supplemented by an equal number of bilateral deals providing for formal and informal legal assistance. While this cooperation is being run within a multitude of bilateral and international frameworks, including, among others the Organisation for Security and Cooperation in Europe (OSCE), the various meetings are always attended by the very same ministers, state secretaries and senior officials.

### **Council of Europe strategy against xenophobia: hunt refugees**

Recently, the Council of Europe, too, has been playing a part in pushing through restrictive Western European asylum and migration policy objectives - and, in doing so, is using the human rights discussion in the CEEC. A mandate for Europe-wide coordination of asylum and migration policies, as initiated by the above-mentioned

Vienna Ministerial Conference, was to be handed over to the Council of Europe at its 6th Conference on Migration Issues. To this end, nearly all those European ministers whose departments include migration matters met in Warsaw from 16 to 18 June 1996. The discussions followed from the specifications drawn up by Council of Europe working groups since the early 1990s. These working groups in particular had, in the previous year, engaged in advance discussions on how the concept of so-called "safe third countries" might be introduced in Central and Eastern Europe. This is a development which, in the medium term, cannot fail to lead to a de facto extension of a common legal area of deportation and "illegalisation", since each state will declare its own neighbours "safe third countries". The Council of Europe's conference of June 1996, was the first time an influential international body officially addressed these questions. In particular, the delegates discussed ways to combat "illegal entry", and to upgrade border surveillance. This strong focus on policing was officially justified with the well-known argument that the "abuse of asylum by illegal immigrants" is increasingly arousing "xenophobic feelings" in the domestic population. Central and Eastern European states were reminded that, since 1995/96, they can claim legislative and financial aid from the Social Development Fund of the Council of Europe in setting up refugee administration systems. Also, they were urged to make use of a multilateral fund set up for the financial and logistic support of countries in Central and Eastern Europe handling deportations.

### **Poland bows to German pressure**

At this conference, the governments of Poland and the other Visegrad states, now potential recipients of refugees, took up their new positions in the new European order as intermediaries in relations with their eastern neighbours. But they too - the buffer states - were urgently recommended by the conference to "draw their conclusions from the experience gained by Western countries in this field [i.e. refugee and migration policy]". Poland was admonished to at last adapt its foreigner legislation and controls to meet western standards.

In Poland, the memory of the role of the police both during the occupation by Nazi Germany and under the post war communist regime is still alive. This is why the Polish people, so far, have not been keen to approve the introduction of repressive measures. However, one new control instrument has been approved by the Polish parliament, the Sejm. From January 1999 on, new identity cards will be issued (according to the German model) with the photo and the signature of the bearer entered by laser printing. All personal data will also be noted in a bar code; the introduction of the new ID-cards is to be completed by the year 2005.

### **NATO's new interest in asylum and migration issues**

In addition to the ministerial meetings, the conferences of the IOM and the Council of Europe, NATO has also begun to take action in coordinating governmental refugee policy - taking particular account of Eastern Europe. A seminar of the NATO North Atlantic Cooperation Council was held in Warsaw on 16 and 17 September 1996 on the "Economic Aspects of the Impact of Migrations and Refugees on State Security". This meeting was also attended by representatives of most of the states that have emerged from the former Soviet Union and the former Yugoslavia and have not yet become members of the Council of Europe.

The background for NATO's interest may be sought



in the social policy-based redefinition of military concerns in Eastern Europe. Since 1989, military policy in Central and Eastern Europe has been geared less to a threat from outside than to domestic-policy issues. With a view to extending its sphere of operations to migration, NATO may be taking advantage of the fact that border controls in most CEEC have been a military affair since the time of the Warsaw Pact. In the early 1990s, the military were in charge of preventing the illegal entry of migrants and refugees.

### **Cross-border police cooperation and law enforcement in Poland**

The agreements signed by Germany with Central and Eastern European countries on "combatting organized and serious crime" have led to "unbureaucratic" bilateral collaboration regarding police interrogations, forensic inquiries and other simple investigations. The emergent democracies of the former Eastern Bloc have comparatively few regulations on cross-border police cooperation. This is why Western authorities are welcome guests under these "unbureaucratic" arrangements. This is particularly true for Germany which is holding out some prestigious control technology as bait. "Curiously enough, the arrangements [with the CEEC] allow more in the way of police cooperation than the links that have evolved over decades with most Western European countries", says Jürg Wolters, a senior officer at Germany's Federal Office of Criminal Investigation (BKA). Against the background of numerous informal cross-border contacts between authorities, the "Agreement on Cooperation between Law Enforcement Authorities and Border Police Authorities in Border Areas" signed by the German and Polish governments on 5 April 1995 can be regarded as a legalisation *a posteriori* of existing practices.

### **Joint German-Polish police offices**

Important "ice breaker functions" - to quote German police jargon - have been performed by the regional agreements between the state police forces of Mecklenburg-Western Pomerania, Brandenburg and Saxony, on the one hand, and neighbouring district police forces in Gorzów, Jelenia Góra and Zielona Góra, on the other. They aimed at setting up joint German-Polish police offices in Frankfurt/Subice, Görlitz/Zgorzelec and Guben/Gubin.

On 10 April 1997, the German Federal Interior Minister, Manfred Kanther announced the conclusion of an agreement with Poland. "The objects include the setting up of joint investigatory and monitoring groups, the establishment of joint operational bodies and command centres, the creation of joint offices, (...) the establishment of a special border police reporting service for unlawful migration and human trafficking, and the exchange of border police liaison officers." This would enable German agencies already operating in Poland and other Central and Eastern European countries to considerably extend their range of action. The agencies concerned are the Federal Office of Criminal Investigation (BKA) with its OA 31 section ("Trafficking"), the Federal Border Police (BGS) with its central office for combatting illegal entry, and the Federal Office for the Recognition of Foreign Refugees (BAFL).

Individual cases of cross-border cooperation between police forces and prosecutors have come to the notice of FFM staff observing court trials in Poland (see: *Asylum seekers returned by Germany, jailed in Poland*, CL No.45, p.5).

### **EDU/Europol active in eastern Europe**

In the course of multilateral police cooperation, EDU/Europol in The Hague has already set up "project teams" with an international composition playing an active role in combatting refugees. These "teams" draw up strategic analyses and carry out concrete investigations not only in the EU, but also in Eastern Europe, with these being directed against so-called organised crime in the field of "illegal immigration". Investigations and "measures" taken by the EDU against a group of Indian refugees, who were seeking to reach the West via Eastern Europe (and had no connection at all with drug trafficking), recently led to 22 detentions. The lawfulness of such EDU operations is questionable; in recent months, they have attracted parliamentary criticism.

Finally, according to press reports, a trilateral border guard and police coordination group involving Germany, Poland and Ukraine started work in early 1996. This group was created in order to coordinate "operations against illegal migration from East to West". No details are available about the frequency of the group's meetings or about its actual mandate and powers.

### **Police Raids in Poland**

Roughly since 1996, systematic search operations for organised refugee groups are being conducted by police in Central and Eastern Europe. At about the same time as the above-mentioned Warsaw conferences, extensive operations were undertaken by the Polish police and border guards. The arrest of Romanian Roma people, the media-effective burning of their huts and belongings in the middle of Warsaw - and their subsequent deportation in July 1996 - formed the prelude to a series of house searches directed mainly against people from Asian countries. Simultaneously, detention procedures at the eastern Polish frontier have been changed, leading to a sharp rise in immediate deportations. Official statistics suggest that this resulted in many arrested people immediately filing asylum applications.

In August 1996 alone, the number of applications leapt to 700 - nearly as many as had been recorded in a whole year until then. From 18 September 1996 on, extensive house searches were carried out in Warsaw suburbs, where refugees in transit had been temporarily housed. At the same time, even bigger operations by police and border guards - ending with a total of 400 to 500 arrests - took place in several other towns throughout the country. Apart from a few exceptions, the state authorities no longer accepted asylum applications - as FFM was able to establish later - or they misled the detainees as to their applications.

Still, people from other continents do not yet generally have to reckon with checks on city streets, in subways, buses and trains, on construction sites or at other workplaces. The police raids, which continued ever since September 1996, clearly concentrate on the above Warsaw suburbs. They mainly target Roma people and people from other continents. In transit, the latter are often dependent on commercial traffickers which is one more reason why they are targeted more quickly by international searches. Unlike these particularly exposed groups, Eastern European commuter migrants do not have to reckon with checks, let alone sanctions. They may enter legally or quasi-legally - CIS nationals do not require a visa to enter Poland, but do need an "invitation" which can be bought on the black market. If they exceed their legal length of stay, they do not run any serious risk. The obvious reason for this lies in the economic importance of these migrants, and particularly the hundreds of thousands of small traders, who mostly come to Warsaw via Ukraine.

The present situation in Poland may be summed up briefly as follows: Although the Polish government is presently seeking to demonstrate its ability to act against the "illegal" transit refugees, it is still a good way short of introducing blanket or dragnet like search practices. Indeed, such measures do not fit into economic policy calculations yet and, in view of the Polish people's notion of the state, it is hard to imagine the introduction of so obviously German-inspired policing methods in the foreseeable future.

### **Normal detention and custody pending deportation in Poland**

At present, the following circumstances can lead to people being taken into custody: searches by police or border guards in residential areas; checks in areas near borders (illegal border crossing); re-deportation from Germany, handover of refugees to Polish border guards. Custody can be followed by completely different measures taken by the police or prosecuting authorities: unconditional release; release with an "administrative visa" stamped in the passport (order to leave the country); deportation or transit deportation by border guards to an Eastern European neighbour within 48 hours; custody pending deportation, followed by deportation or release; detention awaiting trial, criminal proceedings, imprisonment for illegal border crossing.

The decisions taken by specific authorities often look arbitrary; as a rule, expressing a desire to apply for asylum is no protection against custody. Sometimes, the decision on custody or release is taken against the background of tactical investigations. In our visits to prisons and to detention centres for people awaiting deportation, we noted that Southern Europeans tend to be regarded as involved in organised crime, whereas custody pending deportation appears to be the fate mainly of migrants and refugees from other continents. At present, there are 25 detention centres with a total of 425 places for people awaiting deportation. The construction of the centres was financed by the German government. Since September 1995, legal and de facto preconditions have been in place for a maximum three months' custody pending deportation, and full use has been made of the custody option since the police raids in September 1996.

### **Polish authorities mislead asylum applicants**

In general, prisoners who apply for asylum when or after they are taken into custody have no written evidence of their application, so that they must fear deportation.

On 16 and 17 October 1996, FFM staff visited and interviewed a total of 122 people held in custody pending deportation in three Polish deportation centres. It turned out that all 122 detainees except one were men from Asian countries. 101 had been arrested in one major raid near Warsaw in mid-September 1996. 21 of those visited had been returned by Germany in accordance with the readmission agreement. According to the police authorities in charge, only six of the 122 detainees had applied for asylum, although all 122 assumed that they had filed an application. What actually happened was that the interpreter present (during the 5 to 15 minute interrogations of the detainees at the public prosecutor's office) had presented them an order for custody pending deportation written in Polish, but told the detainees that this was an application for asylum.

The fact that we heard such accounts in several deportation units, and that they agreed even in details, suggests that the refugees were being deliberately misled by the state authorities. None of the detainees was aware of the nature of the detention (custody

pending deportation); nobody had notified them of their rights of appeal. No support organizations are available to look after them; apart from the wardens, there are no contacts with Polish nationals.

Besides the public prosecutors, responsibility for the prison situation lies with the Warsaw Refugee and Migration Office. This is the Polish office that accepts, processes and decides on applications for asylum. By the time of our visit, no representatives of this office had been in touch with the detainees at the deportation units we visited. Nor had the UNHCR, which has an office in Warsaw, been seen in the deportation units we visited...although many of the refugees had sent letters to the organisation asking for help.

After FFM went public with the above findings at a press conference in Bonn, Warsaw immigration authorities announced that the detainees we interviewed would be registered as asylum seekers. According to the information available to FFM the visited detainees were set free in December 1996 or transferred to refugee facilities after the expiry of three months' custody.

### **Refugees harassed by German border police**

Detainees returned to Poland from Germany complained they had been harassed by German border police because they were unable to state which countries they had travelled through. For the border guards, such information on travel routes is important, since it enables them to return the individuals concerned to Poland or the Czech Republic in accordance with "safe" third-state arrangements. One detainee who was arrested and returned to Poland by German border police in September told FFM: "They [the border guards] wanted to know where we had come from and what route we had taken. I told them that we had come with seven people in a truck. They asked whether we had crossed a river. I answered that I hadn't seen any river. Then they wanted me to sign a piece of paper. They said it was what I had stated. I couldn't read it, because it was in German. I said that I didn't know what was written there. They then threatened to beat me if I didn't sign".

### **Readmission agreements and deportations from Poland: the "domino effect"**

The Polish government has concluded readmission agreements with the following CEEC: Belarus, Bulgaria, Croatia, Czech Republic, Hungary, Moldova, Romania, Slovakia and Ukraine. These agreements enable not only the readmission of the above countries' own nationals seized in Poland without a residence permit, but also citizens of third states who travel through those countries and then through Poland as transit countries.

In spite of the deportation practice from Poland to its eastern neighbours, Polish laws do not yet contain the EU schemes of "safe third country" and "manifestly unfounded" asylum applications. Only when the new Polish Foreigners Act is passed - it may come into force on 1 January 1998 - will Ukraine become a so-called safe third country for Poland; although, the Ukrainian government has not signed the Geneva Convention. The "Domino" deportations - already taking place from Germany via Poland to Ukraine - will then have a solid legal basis in Poland. To ensure smooth deportation, regional cooperation agreements are being concluded between Interior Ministries, establishing direct lines of communications between neighbouring border police forces.

In 1996, 3,285 people were deported from Poland, i.e. 53 % more than in 1995 (306 people were taken by plane directly to their various countries of origin). In

1996, Polish border guards deported 1,860 people to Ukraine (484 Ukrainians and 1,376 third country nationals).

### **Only one third of returnees from Germany succeeded in filing an asylum application in Poland**

In 1996, one third of all refugees returned by Germany to Poland (third-state nationals) were re-deported by the Polish authorities to Poland's eastern neighbour states or via Warsaw airport to their countries of origin.

A further one third of all third country nationals returned by the German border police to Poland succeeded in filing an application for asylum in Poland - 1,391 refugees expressed their wish to apply for asylum directly to the Polish border guards, and 305 to the authorities in charge in Warsaw.

The fate of the remaining one third returned by the German border police to Poland is unknown. It could only be traced using the statistical material relating to refugees from more than one dozen different countries of origin. Official figures for 1996 suggest what happened, e.g., to the Armenians and Moldovians following their arrest.

Of the 1,010 Armenians who were seized in Poland on the grounds of having illegally crossed a border (682 following their return by the German border police; 328 in a wave of arrests by the Polish border police): 87 were refused asylum in Poland; a total of four were recognized; 130 went underground during the proceedings; 15 Armenians were deported to Belarus and 75 to Ukraine. Of 1,067 Moldovians seized on the grounds of having illegally crossed a border (848 after being returned by German border police; 219 in a wave of arrests by Polish border guards): one refugee was granted asylum; 14 went underground during the asylum proceedings; 442 were deported to Ukraine.

FFM, Berlin

1. FFM Heft Nr. 5, Ukraine: Vor den Toren der Festung Europa: Die Vorverlagerung der Abschottungspolitik; Berlin-Göttingen 1997, ISBN 3-924737-40-1.

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