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Foreign nationals, enemy penology and the criminal justice system

By Liz Fekete and Frances Webber

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Foreign nationals, enemy penology and the criminal justice system

By Liz Fekete and Frances Webber

Sensationalist headlines about foreign criminals – from dark and swarthy Middle-Eastern terrorists, Albanian rapists, sexual predators from Africa, to the Roma swindlers and tricksters from eastern and central Europe – now dominate European newspapers. In response to such stories, politicians have set targets for the removal of foreign national prisoners and the belief has grown that deportation is a reasonable and proportionate way to guarantee public security against a foreign enemy. But behind the media stories lies another reality – a hidden reality which relates to the lives of those ‘foreigners’ who are increasingly being swept up in Europe’s deportation drive.

In fact, those ‘foreign criminals’ targeted for deportation are less likely to be serious crooks and dangerous sexual predators of modern folklore and more likely to be poor migrants and asylum seekers arrested for immigration crimes such as travelling on false documents, working illegally or other administrative offences relating to immigration laws. They may be Roma on the move from persecution in eastern and central Europe and arrested on the streets of western Europe for such serious threats to public order as begging or homelessness. They may even be second- or even third-generation immigrant youth, the children and grandchildren of guest workers, who are listed as foreign nationals within prison statistics and swell the ranks of Europe’s prison population (they do not have citizenship, even though they were born in Europe, because of blood-based citizenship laws). They may also be among the growing number of young adults who came to Europe as children, refugees from countries like Sudan, Somalia, Rwanda and the former Yugoslavia, but were given no support to deal with the trauma they had experienced and, as juveniles, drifted into a life of delinquency or vagrancy. They may also be refused asylum seekers.

Could it be that behind governmental resolve to deport more foreign nationals who commit crimes, lies another agenda and purpose? In a world where increasing numbers of people are being displaced, and where the possibilities to migrate for work are greater than ever before, western European governments are seeking to establish just which migrant workers, third country nationals and so-called ‘virtual nationals’ (ie people who have lived in Europe during their formative years but for one reason or another do not have citizenship) gain rights to permanent settlement. The obverse of this is that citizenship and settlement is denied to or withdrawn from whole categories of people who come to be seen as an unwanted residual population to be disposed of like toxic waste.

This article focuses on the gradual creation of a separate criminal justice system for aliens, characterised by harsher sentencing and prison segregation as well as the ultimate punishment of deportation following a prison sentence (double punishment). Separation, segregation and expulsion are new penal principles passed off by politicians as a proportionate response to the menace of foreign criminals. But the laws and measures we outline below are actually disproportionate, authoritarian and fly in the face of modern penal policy that holds that punishment should be tailored to the individual, should fit the crime, and should be geared towards the rehabilitation of the offender. This creation of a separate and harsher criminal justice system represents a major extension of the xeno-racist systems that have emerged since the early 1990s from asylum policy as well as since September 11 from the war on terror. As the criminologist Susanne Krasmann has observed, the very concept of the ‘enemy’ is ‘indeterminate and might well be extended eventually without limits’.¹ What we are now seeing is the extension of this category from asylum seekers and terror suspects, to foreigners and aliens *per se*.

The limits of European law

For the past forty years, the European Court of Human Rights has been adjudicating on deportation of foreign nationals from the countries of the Council of Europe and deciding on the circumstances in which it breaches rights enjoyed in the host state. Although states have historically insisted on their sovereign right to control immigration, which includes expulsion of those they deem undesirable, the growth of international human rights law following the second world war imposed limits on these sovereign rights, as it was recognised that respect for universal human rights, including rights to freedom from torture or inhuman punishment,

and to respect for family and private life, must by definition be enjoyed by all, regardless of nationality.

In a 2001 case, the judges set out factors to be considered by states wishing to deport foreign national criminals:

‘the nature and seriousness of the offence committed by the applicant; the length of the applicant’s stay in the country from which he is going to be expelled; the time elapsed since the offence was committed as well as the applicant’s conduct in that period; the nationalities of the various persons concerned; the applicant’s family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple’s family life, whether the spouse knew about the offence at the time when he or she entered into a family relationship, and whether there are children in the marriage, and if so, their age. Not least, the court will consider the seriousness of the difficulties which the spouse is likely to encounter in the country of origin, though the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself exclude an expulsion.’²

In a later case two further criteria were added, ‘the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled, and the solidity of the social, cultural and family ties with the host country and with the country of destination.’³

In a number of cases in the 1970s, the Court ruled that young people born in a European country or raised there, having been brought as children from their country of origin, could not lawfully be deported, even if they had committed serious offences, if deportation cut them off from their families in the host state and if they had no real ties in their country of nationality.

‘Deportation from a country in which a person has lived from birth or from childhood constitutes an interference with his private and personal sphere where it entails ... the separation of the person concerned from his essential social environment, his emotional and social circle, and his family.’⁴

Some individual judges went further, expressing the opinion that a host state is responsible for the social integration of immigrants and their children who have accepted ‘for reasons of [economic] convenience’, so that:

‘where such social integration fails, and the result is anti-social or criminal behaviour, the State is also under a duty to make provision for their social rehabilitation instead of sending them back to their country of origin, which has no responsibility for the behaviour in question and where the possibilities of rehabilitation in a foreign social environment are virtually non-existent.’⁵

The Council of Europe’s Committee of Ministers recommended that after a certain period of residence foreign nationals should be protected from deportation, and that:

‘After twenty years of residence, a long-term immigrant should no longer be expellable.

Long-term immigrants born on the territory of the member state or admitted to the member state before the age of ten, who have been lawfully and habitually resident, should not be expellable once they have reached the age of eighteen;

Long-term immigrants who are minors may in principle not be expelled.’⁶

But European governments have been unwilling to follow these recommendations, and in most of the member states of the Council of Europe, second-generation immigrants may be deported on the ground that they have been convicted of a criminal offence. However, eight member States (Austria, Belgium, France, Hungary, Iceland, Norway, Portugal and Sweden) have provided in their laws that second-generation immigrants cannot be deported on the basis of their criminal record or activities. Apart from Iceland and Norway, this protection is not confined to those who were actually born in the host country but also applies to foreigners who arrived during childhood (varying from before the age of three in Austria to before the age of fifteen in Sweden). But too often, the law affords inadequate protection, or is honoured in the breach. And the European Court of Human Rights has not pressed governments to adopt the recommendations. Most of the Court’s judges take the view that deportation is a legally and socially acceptable response to crime by foreign nationals, even those who have lived in the host state during their formative years, who have been called ‘integrated aliens’ or ‘virtual nationals’.⁷

When it comes to EU nationals (as opposed to foreign residents from outside the EU) European free movement law allows for the expulsion of an EU national in much more limited circumstances – ie the person must constitute a genuine and serious threat to public order, public security or public health. There is no automatic expulsion for an EU national or member of his or her family who is convicted of a criminal offence; for such a person it must be proved that the person poses a special risk to public order. As we shall see, this aspect of the law is increasingly coming under challenge by western European governments seeking to expel Roma from the new accession states.

Challenges to double punishment

Another way deportation has been challenged in the European Court of Human Rights has been to focus on its character as double punishment (this is not a legal term). Double punishment, as understood by advocacy groups, means that, when two people carry out a crime and one is a foreigner, they both serve the same sentence in prison but the foreigner is then detained for deportation, while the national of the country concerned goes home to his family. In the debate about crime committed by foreigners, what is generally overlooked is that, not only are foreign offenders treated at least as harshly as a country's own citizens when it comes to criminal penalties (the demographer Pierre Tournier has shown that in France, depending on the charges, the probability of being sentenced to prison is between 1.8 to 2.4 times higher for a foreigner than for a French citizen)⁸ - but also, for the foreign offenders, deportation is frequently imposed as an additional punishment. Deportation is, moreover, often a far greater punishment than a period of imprisonment, since it breaks up families and disrupts the whole tenor of life, while making rehabilitation in the host country impossible. Deportation means having to start again in a society which was left years ago, or sometimes never known.

Following Dutch immigration minister Rita Verdonk's 2006 populist call to deport all foreign criminals regardless of the seriousness of the offence committed,⁹ campaigners in the Netherlands issued a challenge to the double punishment principle at the European Court of Human Rights. However, in the case of *Uner v Netherlands*, the Court ruled that 'a decision to revoke a residence permit and/or to impose an exclusion order on a settled migrant following a criminal conviction in respect of which that migrant has been sentenced to a criminal-law penalty does not constitute a double punishment; States are entitled to take measures in relation to persons who have been convicted of criminal offences in order to protect society'. Deportation was a preventive, not a punitive measure and thus even second-generation 'migrants' born or brought up in Europe could be deported if necessary.¹⁰

Such a ruling was also a blow to campaigners in France, where restrictive nationality laws have resulted in many young people who are not citizens despite being born or brought up there, falling foul of the French penal code that allows for interdiction from French territory (removal and a ban on return, the French equivalent of deportation).¹¹ In fact, campaigning against double punishment was so strong in France that in 2003 Nicolas Sarkozy, as interior minister, announced a reform to the penal code to abolish double punishment. 'Someone who has spent his childhood in France or has founded a family here should not be subjected to a second penalty, that of expulsion to the country of nationality and being cut off from his family,' he said.¹² But the reform, supposedly designed to protect migrants, has in fact changed little.

The emergence of enemy penology

These challenges at the European Court of Human Rights were reactions against harsher deportation policies in member states from the 1990s onwards, as pressure grew for reforms of immigration law to allow for greater numbers of deportations, not just of refused asylum seekers but of foreign national offenders too, even if such deportation policies breached international law. Much of this pressure came from extreme-Right movements and the anti-immigration lobby, that began to make 'foreign crime' a central electoral issue. But pressure also came from the police, who began to classify certain crimes on the basis of ethnicity and from the media, which made sensationalist headlines out of dubious police crime statistics.

The forcible repatriation of second- and third-generation migrant youth has long been a campaign objective of the far-Right and neo-Nazi fringe. But the first intimations that such policies (in relation to foreign nationals who commit crimes) could become mainstream, came in 1998 in Christian Social Union (CSU)-controlled Bavaria. Germany had never considered itself a country of immigration, and its blood-based

citizenship laws meant that young Turks born in the country were not German citizens but had to apply for citizenship when they reached the age of eighteen. In the Bavarian state elections that preceded the federal elections of the same year, the CSU highlighted the issue of foreign crime in Bavaria, the state with one of the lowest crime rates in the whole of Germany. In apparent ignorance of the Nazi principle of *Sippenhaft* (kin liability whereby relatives of criminals were held responsible for their crimes and punished equally), it called for the deportation of entire immigrant families where under-age members were found guilty of offences, even if the offenders or their parents were born in Germany. Less than a week after the Bavarian government proposed new anti-foreigner measures and called for the compulsory repatriation of immigrants whose children were found guilty of crimes, the authorities in Munich gave a Turkish couple, who had lived in Germany for thirty years, an ultimatum to leave Germany with their son Mehmet, then aged 13, who had a string of convictions for juvenile offences. The teenager, born in Germany, was said to represent a 'massive risk to public security and order' and his parents were accused of failing to provide adequate supervision. Amidst much fanfare, the CSU announced that it was seeking the introduction of a new law to allow for the deportation in extreme cases of the families of foreign offenders under the age of 18, justifying the parents' deportation on the ground that they had purposely failed to bring up their children properly.

After the election, the furore surrounding Mehmet's case died down. Mehmet was eventually deported to Turkey, but his parents were allowed to remain in Germany. The Bavarian authorities would have been advised that their attempt to deport the whole family was a form of collective punishment and illegal under international law. However, the Bavarian CSU, as well as the Swiss People's Party, which is also trying to reintroduce the notion of kin liability into the law (see below), could have drawn comfort from a strand of academic thought that gave legitimacy to the introduction of separate principles for foreigners within the legal system. In 1985, the Hamburg-based criminologist Günther Jakobs wrote of the need to introduce a separate 'criminal law for enemies', (*Feindstrafrecht*), for notorious delinquents who, since they were incorrigible, had 'forfeited their status as citizens' and should be denied normal legal guarantees, but instead combated and excluded, if not extinguished, since they represented a fundamental threat to society.¹³ His work was based on the idea of a fundamental divide between citizens (subject to the rule of law) and non-citizens (not legal subjects and therefore non-persons in the eyes of the law). One implication of this, subsequently seized on by the far Right, was that foreign offenders, who were in fact non-citizens, should be treated differently to German citizens on the grounds that their lack of affiliation to the nation posed a grave threat to Germany and justified their classification as 'criminal enemies'.

It is impossible to understand how Jakobs' classification scheme, with its rigid distinction between 'us' and 'them', could gain currency, without relating it to the equally rigid distinctions that run through Germany's post-war approach to migration, as well as its citizenship and naturalisation laws. In Germany (and the same is true of Austria) the principle of *jus sanguinis* (citizenship by descent – literally blood) meant that the children of Turkish guest workers, for instance, were not automatic citizens even if they were born in Germany. Well into the new millennium, the German federal government was still insisting that Germany was not a country of immigration. It followed from this that it had neither an immigration policy nor an integration policy, but rather a 'foreigners' policy' (*Ausländerpolitik*). It is precisely the dominance of foreigners' (or aliens') law that provided the space whereby *Feindstrafrecht* could become a catchword in the German security debate. Many second- and third-generation youth of a migrant origin did not have citizenship either by birth in Germany or by naturalisation. For those young people with a criminal record, naturalisation would be virtually impossible, and without citizenship they were extremely vulnerable to the growing clamour for deportation. The German security debate began to distinguish between young white Germans and young people of migrant origin. German youths who joined the neo-Nazi scene and carried out criminal violence against migrants could be rehabilitated, but second and third generation young people of migrant origin who had fallen into crime should be deported. The tendency was to see juvenile delinquency as a problem located primarily if not exclusively within the migrant family and culture, so that the correct way to deal with it was to send these children back like unwanted waste to the country of their parent's birth, even if the children did not speak the language and had scant connection there.

Enemy penology continues to shape the debate about juvenile delinquency in Germany, as evidenced by the Christian Democratic Union's (CDU) attempts to make foreigner crime the central issue in the January 2008 Hesse regional elections. It was a deeply xenophobic campaign, with the then CDU state premier,

Roland Koch, issuing a six-point plan to fight crime, stating that 'zero tolerance of violence should be an integral part of our integration policy' and that foreign youths sentenced to one year or more in prison should be deported. He went on to criticise Germany's 'strange sociological understanding' of violent members of ethnic minority groups.¹⁴ The CDU federal Chancellor Angela Merkel claimed, on the basis of dubious crime statistics, that 43 per cent of all violent crimes in Germany were committed by people under 21, almost half of whom were from an immigrant background. This led to a headline in the *Bild* newspaper 'Young foreigners more violent than young Germans'¹⁵ and almost daily news stories about 'foreign' repeat offenders with long criminal records. The Migrant Welfare Forum was amongst groups that condemned the CDU's 'tactical populism' and warned that the debate on youth criminality was stirring up prejudices and dividing society. Former Social Democrat Chancellor Gerhard Schröder accused the CDU of 'race-baiting' and bias. 'Young German right-wing radicals commit an average of three violent crimes per day – most of them against people of another skin colour. You don't hear anything about that from Mr Koch or Ms Merkel,' he said.¹⁶

A new baseline for deportations

The German precedent was one of the first examples of overt electioneering around the foreign crime issue. But it has been repeated again and again across Europe, most notably in the 2007 Swiss general election where the Swiss People's Party (SVP, a partner in the coalition government) campaigned for the expulsion of foreign families by issuing a poster that showed three white sheep kicking a black sheep against a backdrop of the Swedish flag.

In European country after country, the law has changed to establish a new baseline for deportations, resulting in an exponential increase in the number of foreign nationals being expelled following a prison sentence. One of the harshest laws seems to exist in the Netherlands, a country whose approach to immigration has been scarred by xenophobic and populist politicians from Pim Fortuyn and Hirsu Ali to the VVD's Rita Verdonk, and now the arch-Islamophobe Geert Wilders. Before 2002, the law was strict enough - a foreign resident could be expelled if he or she had been convicted of a crime punishable by a one-year prison sentence. But a law introduced in 2002 allowed for the deportation of foreign residents who had been sentenced to one month in prison or one month of community work. As a result, the number of foreigners expelled has doubled in eight years, with 1,475 people expelled in the first eight months of 2009, compared to 859 in the entire year 2000.¹⁷

Other countries which have adopted a harsher approach include Sweden and the UK. In fact, liberal Sweden seems to have been the first to tighten its law as far back as 1994, so that foreign citizens could be deported as a result of 'serious' criminal activity if convicted of an offence carrying any form of prison term (immediate or suspended) and if there was, in addition, a risk of any form of continued criminality, or if a court activated a suspended sentence. (Prior to that a foreign prisoner could be deported if found guilty of an offence punishable by a one-year jail sentence.)¹⁸ Statistics provided by the criminologist Lisa Westfelt show that between 1994 and 2004 the number of deportees doubled, and there were five times as many deportations during this period as in the mid-1980s. Although in 2004 the numbers declined, in 2006 the number of deportees was higher than at any point during the period up until the turn of the century. In addition, deportation was used disproportionately against long-term residents in Sweden from countries with poor human rights records, war and other conflicts.¹⁹

In the UK, the number of deportations following a criminal conviction has increased five-fold since 2005, from 1,000 in 2005 to 5,400 in 2008.²⁰ Since the so-called 'foreign prisoners scandal' of April 2006 (in which the government's failure to consider deporting 1,000 foreign nationals on their release from prison led to the resignation of the home secretary Charles Clarke), the law has been tightened dramatically. Before the 'foreign prisoners scandal', a large number of factors were weighed in the balance before deporting someone, including their age, the length of residence, their family and other ties, compassionate circumstances and the likely impact of their deportation on others. But emergency measures introduced immediately after the scandal, in July 2006 - described at the time as 'a quick fix that fans the flames of intolerance' - created a presumption in favour of deportation in cases of criminal conduct, and in 2007 parliament passed the UK Borders Act, which provides for automatic deportation of anyone convicted of specific offences or sentenced to 12 months' imprisonment, unless deportation would breach the proposed deportee's human rights, or would be contrary to EU law or the Refugee Convention.

When the provisions of the Criminal Justice and Immigration Act (2008) eventually come into force in the UK, they will set another frightening European precedent in that any foreign national convicted and sentenced to two years or more, or convicted of an offence specified as serious, who cannot be deported because deportation would breach their human rights, can be designated as having a 'special immigration status'.²¹ And in a frightening echo of the kin liability principle, this 'special immigration status' also strips the offenders' family of immigration status. Indeed, the whole family can be refused the right to work, access to benefits and to social housing, can be subjected to curfew, electronic monitoring, dispersed from their habitual residence and will receive only the barest minimum of support, probably in the form of vouchers.

The legal situation in Switzerland also seems set to change following the vigorous campaign for a referendum on deportation of foreign criminals launched by the anti-immigration SVP, which is a key element in the ruling coalition. It was in the run-up to the 2007 general election that the SVP launched its campaign to raise the 100,000 signatures necessary to force a referendum in order to introduce into the penal code measures that would allow for the deportation of the entire family of a convicted criminal under the age of eighteen. There was consternation in parliament, as critics pointed out that if the law was passed, it would be the first such law in Europe since the Nazi practice of *Sippenhaft*. By February 2009, the SVP had collected 210,000 signatures and in response to the pressure from the SVP a new Aliens Bill was introduced into parliament that aims to establish precise criteria as to when a residence permit could be withdrawn from a foreign offender. Under the proposed legislation, foreigners sentenced to two years imprisonment or more, or having accumulated the equivalent prison sentences over a period of ten years, would have their residence permit rescinded and therefore be liable for deportation. In less serious cases, the draft Bill allows the authorities to judge for themselves whether to withdraw the residence permit of the person concerned.²²

The French penal code has always allowed for interdiction from French territory via an order imposed by a judge in a criminal court or correctional tribunal in addition to the main penalty (imprisonment or a fine), if the defendant is a foreign national.²³ These powers are additional to those of prefects, who may expel foreign nationals sentenced for more serious crimes, on the ground that they present a serious threat to public order. Historically, interdiction was an order imposed by judges almost automatically for even minor infractions, particularly for immigration irregularities, hence the strong campaigns in France around double punishment. The Foreigners' Law protects certain categories from prefectural expulsion orders but until Sarkozy's 2003 reform, the powers of judges to impose interdiction were unlimited. Nevertheless, as migrant groups have pointed out, the 2003 law²⁴ does not 'abolish' double punishment, since only certain migrants benefit, and even for them protection is not absolute and a judge can make an interdiction order even against someone in a protected category provided adequate justification is given. In the dossier *Livre noir de la double peine*,²⁵ a number of human rights groups brought together compelling evidence demonstrating that long-term resident foreign nationals, and those with French partners and children, were still facing deportation following prison sentences. One of those subjected to double punishment despite a law which purports to protect those who entered France as children was Nzuzi, a 19-year-old Congolese national who was given three-year interdiction orders in October 2004 and again in August 2005, despite having lived in France with his parents, brothers and sisters since the age of six.²⁶

The 2006 dossier contained statistics which showed that, while the number of judicial interdiction orders imposed on foreigners convicted of crime dropped by around five per cent in the two years following the 2003 reforms, the number of returns to the frontier ordered by prefects rose dramatically - by almost a third, and the number of expulsion orders also rose by over ten per cent. Furthermore, a December 2008 report by GISTI²⁷ points to the 'small print' in the 2003 law which has limited its use - the foreigner must prove continuity of residence over the entire period, which is extremely difficult in many cases; it protects spouses of French nationals but not partners, and not those who married or had children after committing the relevant offence, which severely weakens its guarantees. The report also describes a troubling expansion of judicial double punishment since 2006, when the law was toughened again. Now, over 100 infractions can attract interdiction. Even convicted foreigners who retain their liberty lose their right to a residence document and are returned to the frontier. Occasionally interdiction is used as the main penalty, and in such cases it can be implemented from the day it is ordered. And this penalty of 'banishment' can be used against all categories of foreigners, including refugees.

New deportable offences of unemployment and ‘failure to integrate’

Not only is the number of deportations for criminal offences increasing, but also the notion of what actually constitutes crime is changing. The extreme Right now campaigns for deportation for the new crime of ‘failure to integrate’, with unemployment also proof of this grave offence. In Austria, for instance, the Freedom Party (FPÖ) campaigns for the deportation of foreigners who refuse to integrate, defining the ‘unintegrable’ as criminals as well as long-term unemployed immigrants from different cultures, adding that the numbers contained in these two categories had now crossed ‘the threshold of the unacceptable’.²⁸

In some countries, the campaigns of the extreme Right have already resulted in changes in the law. This has happened in Italy, where the Northern League (NL) emerged in a very strong position following the Italian general election of March 2008. Immediately on coming to power, prime minister Silvio Berlusconi played to NL demagoguery by describing foreigners who were jobless as ‘an army of evil’ and called for the formation of special camps in which they could be interned. The newly-elected former fascist mayor of Rome also played to penal populism, promising to expel 20,000 immigrants from the city whom he claimed had been released into the community after serving prison sentences.²⁹ As is often the case in Italian politics, not all these ugly fascist-style threats were realised. Nevertheless, in July 2009, a new security law (Law no 94/2009) was passed which contains many new provisions regarding the legal status and the everyday life of migrants in Italy.³⁰ It includes an amendment tabled by the Northern League that allows for the introduction of a points system-based residence permit. Under this, all those applying for a resident permit must sign an ‘agreement of integration’ (*accordo di integrazione*), agreeing to reach specific objectives of integration during the period of duration of the residence permit. Each applicant has a certain number of points at his/her disposal, and the loss of all the points causes the loss of the residence permit and the expulsion from the national territory. (Asylum seekers, refugees, people with permits for family reunion and with long-term residence permits are excluded from this provision.) The human rights group EveryOne believes that the new permit-based residence permit will massively increase the power of local authorities and government agencies to act in an arbitrary way and ‘will inevitably lead to abuse of office by the authorities and the public institutions, blackmail and other forms of discrimination against foreigners in Italy’.³¹

It did not take a campaign by the extreme Right to change the law in the UK. There, the Borders, Citizenship and Immigration Act 2009 is the first step in creating a points-based system of settlement and citizenship, in which, according to government proposals, points will be deducted for ‘failure to integrate’, ‘anti-social behaviour’, or ‘active disregard for UK values’, resulting in denial not only of citizenship but also of residence rights.³²

The evolution of separate penal and policing policies

Much of the extreme Right’s rhetoric is aimed at specific categories of migrants and motivated by Islamophobia and anti-Roma racism. So when the extreme Right calls for more deportation of foreign nationals (and the stripping of citizenship from dual nationals is its latest campaign pledge), what it really has in its sights is the forcible repatriation of ‘virtual nationals’ to Muslim regions of the world as well as the Roma from eastern and central Europe, including other EU member states. All these categories are over-represented in Europe’s overcrowded prisons. The fact that this is so speaks volumes about the reluctance to bring about racial equality in Europe – the abject failure to integrate Roma communities, the massive discrimination against black and Muslim youth that throws young people into a life of delinquency and fails to provide any meaningful rehabilitation which means they end up brutalised within the criminal justice system. (Compare this with the massive amount of money that went into special rehabilitation and exit projects for white Germans who drifted into the neo-Nazi scene.)

In fact, the drive to change the law to bring about more deportations is all the more frightening as it comes at a time when Europe’s prisons are full to bursting and those in power are desperately seeking ways to deal with overcrowding and to drive down the cost of incarceration. Prison statistics on ‘foreign nationals’ are hard to decipher, given the legacy of blood-based citizenship laws and the growing complexity of immigration and asylum laws. In the UK, foreigners make up one in eight of the prison population, we are told.³³ In thirteen Council of Europe jurisdictions over 30 per cent of all prisoners are foreign nationals, and

in five of those countries the proportion is over 50 per cent.³⁴ While, in Italy, foreigners – both legal and illegal residents – make up 8 per cent of the Italian population, they comprise 38 per cent of the prison population, state EveryOne, citing statistics provided by the Department of Prison Administration.³⁵ What better way to drive down costs, than to expel the foreigners? Antonio Manganelli, chief of Italian prisons, says that in some prisons the number of immigrants totals 60, 70 and even in some cases 90 per cent. Fifty-four per cent of the female prison population (both Italian and foreigner) are Roma women, even though Roma women in Italy comprise 0.09 per cent of the total population.³⁶

Another example of anxiety about overcrowding and cost comes from France, where around 35,000 foreigners were held on remand in 2008 at a cost of €190.5 million, according to the Court of Auditors.³⁷ Of this total, 14,411 were expelled by force. The French state paid an average of €13,200 per foreigner detained and expelled (€5,500 excluding expulsion).

Prisons

It comes as no surprise to learn, therefore, that many criminologists, drawing on Jonathan Simons' observation that those in power often 'deploy the category of crime to legitimate interventions that have other motivations',³⁸ suggest that the true purpose of the foreign national crime debate is to use deportation as an instrument to drive down prison numbers. They are concerned that a separate prison system will be set up for foreign national prisoners. Already there are signs that this is developing in the UK, where a secret agreement between the Ministry of Justice, the National Offenders Management Service (NOMS) and the UK Border Agency (UKBA) has been drawn up in order to concentrate foreign national prisoners (including those on remand) in a small number of prisons, so as to make it easier to deport them when they complete their sentences.³⁹ HMP Canterbury (Kent) and Bulwood Hall (Essex) are to be used exclusively for foreign national prisoners, and six other 'hub' prisons were identified where foreign prisoners are concentrated. Another thirty-five prisons ('spoke' prisons) may also take foreign national prisoners. A protocol sets out how UKBA will operate within these prisons.

Such agreements create a separate penal policy for foreign national prisoners, one based not on rehabilitation but on arbitrary-decision making, indefinite detention and deportation. It creates discrimination within prison as foreign prisoners have fewer rights than citizen prisoners and are subjected to greater punishments. It is a system that smacks of xeno-racism (institutionalised racism against foreigners) as it establishes separate systems for asylum seekers and foreigners. It seems that we are going back in time, to the time of the Aliens' Law – not integration or even immigration policy, but foreigners' law – the parameters of which are control of movement as well as the ultimate exclusion of banishment and deportation.

Today, foreign prisoners in the UK frequently remain in jail for months, sometimes years after their sentences are served. Not only those fighting deportation, but prisoners who accept deportation are forced to serve a longer sentence as on their release date they remain incarcerated while those in authorities make the arrangements for their repatriation. The London Detainee Support Group, which over a period of twenty months studied the situation of 188 long-term detainees (most of whom were from Somalia, Iraq, Iran or Algeria and had been imprisoned for minor offences, often relating to immigration) found that hundreds of rejected asylum seekers and foreign prisoners were being held in immigration detention and simply forgotten. Only 18 per cent of those studied were repatriated, with a quarter set free and over half - 57 per cent - held without the slightest idea of when they would be released or repatriated. In one documented case, a man had been locked up for eight years before being repatriated.⁴⁰

Frustration over lengthy incarceration waiting for deportation, or fear of deportation itself, leads to mental health problems and attempted suicide. One man, Jamaican Kingsley Williamson, committed suicide after being taken from an open prison to a closed prison; he was believed to be depressed at the prospect of a long wait for deportation.⁴¹ Another man, 33-year-old Ukrainian Aleksey Baranovsky, committed suicide at HMP Rye Hill after learning that though he was eligible for parole he would be deported upon his release. It is believed he feared he would be killed by the Russian mafia if deported to Ukraine.⁴²

And there is further evidence of discrimination against foreign prisoners in the UK. Procedures for dealing with applications for parole, transfers to lower category prisons, or release on temporary license are all different to those for UK nationals, in that the UKBA must be consulted beforehand. The situation is such

that in 2006 the Chief Inspector of Prisons drew attention to the 'systemic failures, at all levels, in the support, care and management of foreign national prisoners'. She warned that a 'national strategy for managing foreign national prisoners should not begin and end with the question of ... deportation.'⁴³

Policing

Alongside the new drive towards a separate penal policy, comes the expansion of immigration policing, as well as the establishment, in some countries, of special squads to hunt down and deport foreigners for the purpose of immigration control and deportation.

Spain's largest police trades union (SUP) rejects the blurring of its crime prevention role and immigration control. 'In the pursuit of criminals there are no distinctions of race, sex or any other personal or social circumstances, such as whether they are Spanish citizens or foreigners', it states. In contrast, the Spanish government sees the way forward as setting up a special brigade for the expulsion of foreign criminals (Brigada de Expulsiones de Delincuentes Extranjeros - BEDEX) as a measure to prioritise the deportation of repeat or violent offenders. The brigade, it was announced in September 2008, would operate under the borders and foreigners' police and would be used to pursue 'foreign criminals who re-offend or who are especially violent, including terrorists, gang-members or those committing crimes of domestic violence.'⁴⁴ But according to Andalusian lawyer Diego Boza, the government's reasoning for the formation of BEDEX was fundamentally flawed from the outset. Spanish criminal and immigration law already allowed for the deportation of persistent and dangerous offenders and those convicted of serious crime will have to serve their sentence before there is any question of deportation. Boza believes that the government is not being honest about the true function of the brigade, that will be used to deport people arrested for minor criminal offences such as travelling without a ticket, where a judge accepts deportation in lieu of a prison sentence or a fine. In such cases, the brigade is taking a sledgehammer to crack a nut. 'Such cases don't justify the creation of a special deportation brigade.' He added, 'It appears that the aim is to link immigration and crime.' It is a view with which another lawyer Miguel Angel Muga concurs, 'Deportation is not the solution, you are sending a message to society that criminals are foreigners and that there's no principle of equality for nationals and foreigners.' He believes that the new unit will be used 'to deport people' whom the authorities 'consider not integrated because they commit crimes, and as an answer to prison overcrowding.'⁴⁵

Already, the suspicions of legal experts have been reinforced by the facts on the ground. SOS Racismo Madrid, CEAR Madrid and other anti-racist, migrant and refugee support groups, have protested at the increasing number and frequently abusive stops and searches and detention of foreigners in Madrid, particularly around colleges, near migrant NGO offices and at certain Metro stations. An internal note from the Madrid chief of police with precise instructions on weekly quotas of arrests and prioritised nationalities confirm suspicions of targeting. Interior minister Alfredo Pérez Rubalcaba acknowledges that police ID controls and arrests are based on skin colour, nationality or appearance and contribute to the criminalised image of foreigners, particularly Moroccans, who are a particular target.⁴⁶

One of the by-products of the hysteria over foreign nationals and crime is that it gives legitimacy to government attempts to expand the size and functions of the immigration police. Immigration policing is one of the fastest growing sectors of policing – and also one of the least accountable and transparent. The UKBA's officials, for instance, have seen their policing powers massively extended in the past decade, so that they now have all the powers of police without any of the safeguards or accountability. Seven and a half thousand of them have been organised into regional teams, which compete aggressively over the number of arrests and deportations they can achieve.⁴⁷

Despite Italy having one of the largest police forces in Europe – 324,000 officers in 2006, roughly double the size of Britain's – the latest Security Decree outsources policing to the community by authorising the formation of citizens' patrols to fight crime. Given the current hysteria about foreigners and crime, the human rights organisation EveryOne is quite right to point out that such groups could quickly turn into vigilante patrols and organise manhunts for illegal immigrants. James Goldston, head of the Open Society Justice Initiative, described the Italian state's 'outsourcing' of its 'security responsibilities' as 'deeply alarming'. 'Italy has a fundamental problem with human rights, perhaps more than any other nation in Western Europe.'⁴⁸

Administrative xeno-racism – who is under threat?

It only remains to look a little more closely at the different categories of foreign national prisoners under threat of deportation and the different systems for their separation and segregation within the criminal justice system.

Asylum seekers and immigration offenders

We have already seen the creation of a separate judicial system for asylum seekers, but within that there are different administrative systems in the detention estate for those convicted of a criminal offence (this increasingly includes immigration offences). Hence, in Cyprus, under the Aliens and Immigration Law, asylum seekers and immigration offenders convicted of a criminal offence (and disproportionately this includes offences like illegal work) are considered 'prohibited immigrants'.⁴⁹ As such, they are immediately re-arrested once they have served a prison sentence and taken to an immigration removal centre for deportation. If they are asylum seekers, the deportation order is suspended but not the detention order, and so they remain in detention for the whole period of their asylum application, a process that could take years. Persons with international protection under refugee law are treated in a similar way, and once in detention are put under regular psychological pressure to sign a statement expressing their 'wish' to return to their country, irrespective of their refugee status. The situation in Italy is similar. The new Security Decree makes it a crime to be an illegal immigrant. This means that anyone who arrives without the correct documents could find himself immediately detained and prosecuted, no matter what the situation that prompted him to migrate - a flagrant breach of Article 31 of the Refugee Convention to which Italy is a signatory.

Under the US's federal system, where power is devolved to individual states, 'the expanded war on crime' argues Jonathan Simon, 'has created numerous opportunities to govern like a prosecutor'.⁵⁰ The same observation could be made of many of Europe's federal states, particularly in Germany (witness the role of Roland Koch in the Hesse regional elections) and Austria. Another example of a separate system, this time for 'suspected criminal asylum seekers', comes from the extreme-Right controlled Austrian province of Carinthia. It was the late Jörg Haider who introduced a special regime for 'suspected criminal asylum seekers', arguing that it was necessary to protect the public in Carinthia. This regime involved isolation from the local community in a specially converted former children's home situated in a secluded pasture in the mountains of southern Austria at an altitude of about 3,900 feet. The current Carinthian governor Gerhard Dörfler of the BZÖ (Alliance for the Future of Austria) had sixteen asylum applicants transferred to the facility in autumn 2008, claiming that they all had criminal convictions. According to the Klagenfurt public prosecutor's office, however, six of them had no criminal record whatsoever. The sixteen fled en masse back to Klagenfurt in December 2008, complaining that medical and psychological care had been lacking at the detention centre and the nearest doctor was seventeen kilometres away. 'The whole thing sounds strongly like banishment,' said Heinz Patzelt, head of Austria's chapter of Amnesty International. 'There's no place for that in a modern system with a rule of law.'⁵¹

With governments setting targets for the removal of foreign nationals and refused asylum seekers, it is axiomatic that the undocumented will be among the most vulnerable to segregation and removal. But the extreme Right's call for more and more asylum seekers to be criminalised for having no documentation has now entered legal regimes across Europe, despite the fact that Article 31 of the Geneva Convention states that it is not a crime to cross international borders without the correct papers, if your purpose is to seek asylum. In the UK, a 2004 law created the offence of arriving without documents, which attracts a prison sentence of up to two years, and arguments that the law violated the Refugee Convention were rejected by the courts.⁵² In a crackdown on the undocumented, there were 10,750 arrests of foreigners working without valid papers in 2007, and using false documents to work is frequently treated by the courts as seriously as offences of theft, despite the fact that the work is generally minimum-wage – and on occasion, those convicted have been ordered to repay their paltry wages in addition to facing deportation as criminals.⁵³

In the run-up to the Norwegian elections in September 2009, the Progress Party campaigned for the detention of all asylum seekers who lack identity papers (this would mean detaining around 17,000 people a year). The Swiss former SVP justice minister introduced a law in 2006 which denied undocumented asylum seekers the right to have their claims examined on the merits.⁵⁴ These are highly controversial laws, which

treat as criminal some of the most vulnerable people in society, and which violate the principles of the Refugee Convention. The drive to criminalise the undocumented even extends to the criminalisation of solidarity with them. A 2002 EU Directive requires member states to criminalise both illegal immigration and assisting illegal entry.⁵⁵ In Italy, the law against assisting illegal entry is being used against fishermen who rescue migrants adrift at sea. And when, in August 2009, 73 Africans drowned in the Mediterranean after drifting at sea without rescue the Northern League repeated its calls for a tougher stance towards 'illegal immigrants'. The five survivors, picked off the Italian island of Lampedusa, said that a dozen fishing boats passed by but only one answered their calls, throwing them food but refusing to rescue them. A TV poll conducted soon after the tragedy found that 71 per cent of those surveyed believed that the five survivors of the tragedy should be put on trial as illegal immigrants.⁵⁶

Roma

One particular concern of campaigning groups is that the new laws are a targeted measure for controlling the now legal movement into western European countries of long-persecuted and impoverished Roma communities from new accession states such as Romania. New proposals, such as that to turn begging into a criminal offence, are seen to be targeted at the Roma and as a means of legalising their deportation from one EU state to another. As previously noted, EU nationals (as opposed to foreign residents from outside the EU) are protected from automatic expulsion from another EU state, although the law does allow for deportation in particular circumstances, where the proposed deportee constitutes a genuine and serious threat to public order, public security or public health. Some member states, like Denmark, are attempting to lower the threshold of what constitutes such a threat in order to expel Roma. Others are just ignoring EU guarantees. Italy led the way, unsuccessfully, in this respect, when it summarily attempted to expel Romanian Roma following a moral panic about foreign crime. The European Commission issued an immediate challenge.⁵⁷

In fact, the current situation of Roma in Italy is utterly bleak. One of the first acts of Berlusconi's new government was to establish a national census, including the fingerprinting, of the Roma population living in camps, which many saw as a prelude to a policy of mass deportation. Since then Security Decree (Law 773B) was brought in, which brings in a register of the homeless and criminalises anyone obliging children to beg, and more and more Roma are being targeted for arrest and deportation. There is also concern that the citizens' patrols made legal by the Security Decree (see above) will be used to hunt down Roma for deportation.

But Italy is not alone. The Danish police also have their eye on the Roma. The Danes are seeking to test EU law to determine whether they can expel Romanian nationals arrested and convicted for relatively petty crimes, in the face of the restrictions on deportation contained in the Citizens' Directive.⁵⁸ The test measure is regarded as aimed at Romanian Roma accused of shoplifting, pick pocketing and swindling the public through gambling games. Instead of issuing them with fines for unauthorised gambling, the police authorities now intend to have them arrested, tried and sentenced for fraud, in the hope this would subsequently enable their expulsion from Denmark.

Juveniles and young adults of migrant origin

Each country decides who can be deported on the basis of the seriousness of the offence and the length of the prison sentence. The objectives of the extreme Right are to drive down to an ever-lower threshold the tariff and the seriousness of offences which warrant deportation. The extreme Right's relentless campaigning then leads to a competition between the mainstream parties as to which can be the harshest towards foreign criminals, singling out juveniles and young adults of migrant origin or asylum background. These are the most vulnerable of all. Having either been born in Europe, or lived most of their lives here, they have the most to lose from the relentless drive towards more deportations.⁵⁹ We have already noted the campaign by the Christian Democrats in Hesse, who sought to make crime perpetrated by young foreigners the central election issue in the January 2008 German regional elections and campaigned for the deportation of foreign youth sentenced to one or more years' imprisonment. But in Austria, too, the Alliance for Austria's Future is campaigning for a special commission to investigate 'immigrant crime'. If successful, then no doubt it will be followed by yet more pressure on the government to set a lower threshold for deportation, of juvenile

offenders particularly those from the former-Yugoslavia or from Turkey.

Organisations that deal with the rights of young people at risk of criminality warn that such a climate brings dangers. In particular there is the danger, as recognised by Spanish anti-racist organisations, that the foreigners law will be used to combat the problem of 'juvenile delinquency'.⁶⁰ (An internal note from the Madrid police chief justifies the use of the Foreigners Law to combat the 'delinquent problem'.)⁶¹ Such policies also raise fundamental questions as why so many young people of foreign origin are over-represented in youth offending statistics and incarcerated in youth detention centres. When it comes to young people from an asylum background, many of whom may have come to Europe as unaccompanied children and whose lives have been shaped by incredible hardships, the question becomes more pertinent still. For criminalisation, and subsequent deportation, is the end-product of a system of discrimination, separation and exclusion that started from the moment they entered European territory, as exemplified by the experiences of young people who ended up at the unaccompanied minors' unit in Deba, Spain. Foreign unaccompanied children with behavioural problems have been sent to Deba since February 2009. Most have criminal charges pending. In March 2009, a group of children accommodated at the centre brought an action for ill-treatment and neglect before a judge at Donostia. SOS Racismo intervened to seek better care for the children, who were left with no educational activities. There were no drug rehabilitation programmes. The children were miles from anywhere and were given nothing to do. The situation is the same in other centres. Quite a few of the children did not return to the Deba centre and, without funds, sought a life of crime. Local media reported daily on their criminal activities, using inflammatory language which fed popular racism. For the authorities, which accuse SOS Racismo of interference, the answer was to increase security and to deport the 'delinquent ten per cent who re-offend'. But SOS Racismo's Peio Aierbe pointed out that the problem lay in the lack of proper reception facilities for young asylum seekers, who need both educational and emotional help and support, and it was there that the minors who ended up in Deba were failed. Unaccompanied children are still being placed in bed and breakfast hotels and drug use is still not being tackled.⁶²

Similar problems exist in the UK, where young refugees and asylum seekers have also been failed by the system, that has made little attempt to bring about their integration into society. Here, the courts have, on occasion, overruled the Home Office's decision to deport such young adults for minor criminal offences, as well as issuing legal rulings against the Home Office's attempts to strip young adults of their refugee status if found guilty of a whole range of offences.

In June 2009, the Court of Appeal held that regulations issued by the Home Office authorising deportation of refugees for relatively minor offences were illegal. A legal challenge was brought by a Serbian national, EN, who was a child when he arrived in the UK and was granted refugee status. When he was sentenced to 12 months in a young offenders' institute for burglary, the Home Office told him they proposed to deport him despite his status as a refugee, and the Asylum and Immigration Tribunal dismissed his appeal. The Court of Appeal allowed EN's appeal and sent his case back to be reconsidered.⁶³

The Refugee Convention declares that those recognised as a refugees should not be sent home unless they are convicted of a 'particularly serious' crime, and are a danger to the community of the country in which they live. In 2002, parliament passed the Nationality Immigration and Asylum Act, section 72 which deemed as a 'particularly serious crime' any offence attracting a punishment of two years' imprisonment or more, or any offence specified in Home Office regulations. The Specification of Particularly Serious Crime Regulations, issued in 2004, listed hundreds of offences, from genocide and hijacking to theft and criminal damage (which could be stealing a milk bottle or scratching the paintwork of a car) as 'particularly serious crimes'. The Act and the regulations attracted criticism from human rights and refugee lawyers, who argued that only those convicted of the most serious offences, such as rape and murder, should lose the protection of the Refugee Convention, and their criticism was accepted by the Parliamentary Joint Committee on Human Rights in its 2004 report.⁶⁴ In its June 2009 ruling, the Court of Appeal said that these trivial offences could not rationally be considered 'particularly serious' and struck down the regulations as unlawful. The judges made the further point that even an offence carrying two years' imprisonment may not be 'particularly serious' - so that the presumption imposed by the section could be rebutted by the proposed deportee, like the further presumption that he or she represented a danger to the community. A presumption which could not be rebutted would, they said, not be compatible with the Refugee Convention.⁶⁵

SA, a Sudanese refugee who came to the UK in 1986 aged nine, drifted into drugs in his early twenties,

and was convicted of a large number of petty offences. In 2006 he was convicted of theft, for which he received a six-month sentence. He received a notice from the Home Office saying that he had committed a particularly serious crime and was a danger to the community, and that he was to be deported to Sudan despite his refugee status and his twenty years in the UK. Following the Court of Appeal ruling in 2009, his case is to be reconsidered by the Home Office.⁶⁶ But for others the ruling comes too late.

SA is one of a growing number of young adults who were given no or inadequate help with coming to terms with horror, displacement and adjustment when they arrived as refugee children, and who are now being criminalised and threatened with deportation. Many are Somalis, Sudanese and Rwandans who lost many family members in circumstances of the utmost brutality and who have never been helped to come to terms with their loss. AK is a Rwandan refugee who came to the UK aged ten in 1998 having witnessed the brutal killings of close relatives. His mother, a lone parent of three children, was herself severely traumatised, but neither she nor any of the children were given help or support to deal with their trauma. The boy was mocked at school for his African accent and drifted into truancy and later, crime. Over a two-year period he terrorised the neighbourhood, and at sixteen, he was sentenced to four and a half years in a young offenders' institute for wounding and robbery. In 2007, the Home Office served him with a deportation notice. At his appeal, neighbours and others who had formerly been terrorised by him came to court to describe how he had changed into a respectful young man. Despite this evidence of rehabilitation, the Tribunal rejected his appeal and he was deported to Rwanda,⁶⁷ where he has no living relatives, even though he has a case pending at the European Court of Human Rights.

These young adults should have been caught in their formative years by the social services; their emotional and behavioural problems should have identified them as 'youth at risk', and greater attempts should have been made to give them a sense of belonging and integrate them in society. But the European-wide drift towards what criminologists refer to as 'penal populism' suggests that 'youth at risk', if they come from migrant background, are seen merely as unwanted and residual population and their treatment within the criminal justice system takes on 'increasingly warehouse-like or even waste-management-like qualities'.⁶⁸ In the Netherlands, OcaN (Overlegorgaan Caribische Nederlanders) is concerned that penal populism and the drive towards ever-greater numbers of deportations is now influencing government policy towards 'youth at risk' if they happen to come from a migrant background. After the government set up an electronic database on Caribbean youth at risk, known as the Antillean Reference Index (Verwijsindex Antillianen) OcaN issued a legal challenge, arguing that not only was the database discriminatory, as it registered information on young people on the grounds of ethnicity, thereby treating every Antillean child as a potential criminal, but it established a dangerous precedent in that once established the database could be generalised to deal with young people from other communities of foreign origin.⁶⁹ OcaN's warning that the database could then be used to justify special measures such as deportation, was soon realised. In 2006, the Dutch interior minister Rita Verdonk introduced legislation for the 'admission and expulsion of Arubans', aimed at making it easier to deport young Dutch juveniles of Caribbean origin. Although the law had to be dropped (it was illegal), the debate on 'criminal foreign youth' continues, with the local authority in Rotterdam accused of pioneering harsh measures justified, in part, by a report by criminologist Marion van San entitled 'Criminal behaviour of Antilleans in Rotterdam'. On the basis of forty interviews carried out with Antillean youth, van San implied that they these youth of Caribbean origin suffered from a kind of collective disturbance and that addiction to the trappings of glamour was leading them to adopt a criminal lifestyle.⁷⁰

Across Europe, these numbers of 'youth at risk' increase daily. These are the same youths who swell the ranks of the unemployed, who line the streets of the deprived inner cities and suburbs and see no future in a Europe characterised by growing wealth and accelerating poverty. Sporadic rebellions by such youth have long been a feature of life in the UK, Belgium and France, but now in Denmark and Germany too there are signs of growing unrest. For these youths, many of whom are beginning to turn towards what is perceived as a ghetto Islam, or ideas of Black Power, the threat of deportation is real. Those arrested in riots and disorders will also find themselves bundled out of the Europe that left them to live a life of discrimination and hopelessness to a country they know no more. The French 2003 law against double punishment provided no protection from expulsion by prefects on serious grounds of public order - which is why in November 2005, two years after 'abolishing' double punishment, Sarkozy was telling prefects to expel 120 young foreigners convicted of involvement in the civil unrest which exploded in the banlieues in October of that year. A young Malian, given

a four-month suspended sentence, was the first to be expelled, in February 2006, under a three-year interdiction order, despite an advisory opinion from local magistrates saying that the young man was not a danger to society, had all his family in France, and could not live a decent life in Mali, where he had no future.⁷¹

When proportionality is thrown out of the window, European governments run the risk of introducing laws that are not only authoritarian but draw on the legal precedents of our darkest past.

References

- 1 Susanne Krasmann, 'The enemy on the border: Critique of a programme in favour of a preventive state', *Punishment & Society* 2007; 9; 301.
- 2 *Boultif v Switzerland* (2001) 33 European Human Rights Reports (EHRR) 50.
- 3 *Uner v Netherlands* (2006) ECHR 46410/99. As these quotes show, the primary relationship protected by the Court is that of spouses or civil partners and their children. But once children reach adulthood, their relationship with their parents and siblings is not deemed so worthy of protection and will 'only exceptionally' prevent deportation. (*Advic v UK* (1995) 20 EHRR CD 125.) Thus a juvenile offender might be protected by his family ties from deportation at 16 or 17 but not at 18 or 20 unless he can show exceptional physical or emotional dependence.
- 4 Judge Marcuillo in *Nasri v France* (1995) 21 EHRR 458.
- 5 Judge Morenilla in *Nasri v France* above. This was however a minority view, and neither governments nor judges, whether national or in the European Court, are prepared to attribute any responsibility at all for a young person's criminality to the host state where he was educated and socialised.
- 6 Recommendation (2005) 15 CMCE, Council of Europe Committee of Ministers.
- 7 The judges do not accept that 'virtual nationals' should be equated with nationals for purposes of protection from deportation. The Court has held that deportation of foreign nationals is not necessarily unlawful even for those who have spent most of their childhood in the host country, if their offences are sufficiently serious.
- 8 Cited in Loic Wacquant, 'Suitable enemies: Foreigners and immigrants in the prisons of Europe', *Punishment & Society* 1999; 1(2); 215.
- 9 De Fabel van de illegaal 75, March/April 2006.
- 10 *Uner v Netherlands*, footnote 3 above. Mr Uner came to the Netherlands from Turkey at the age of twelve to join his father. In his early twenties he was convicted of three violent offences culminating in manslaughter, for which he was sentenced to seven years' imprisonment. He was deported at the end of his sentence despite reports indicating that he was fully rehabilitated. He had a Dutch partner and two Dutch children, no longer spoke Turkish and had no connections there apart from an uncle. Psychiatric evidence showed that separation from his children caused depression.
- 11 Interdiction from French territory is an order which may be imposed by a judge in a criminal court or correctional tribunal in addition to the main penalty (imprisonment or a fine), according to the French penal code, if the defendant is a foreign national.
- 12 The law of 26 November 2003 provided that if someone convicted of crime entered France before the age of 13 years, or had lived in France for 20 years, or had lived in France for 10 years and was married to a French person for 3 years, or is the parent of a French child, he or she should not normally be subjected to a banning order.
- 13 We are indebted to Susanne Krasmann for drawing our attention to Jakob's work. See Krasmann, 'The enemy on the border', op cit, for an outline of Jakob's ideas.
- 14 For a full outline of the Hesse campaign, see IRR *European Race Bulletin*, no. 63, Spring 2008.
- 15 As cited in *Deutsche Welle* 7 January 2008.
- 16 As cited in *Deutsche Welle* 9 January 2008.
- 17 Statistics cited in *Expatica News* 28 August 2009.
- 18 Courts were also required to consider possible impediments to the enforcement of a deportation order, such as the individual being at risk of the death penalty, corporal punishment, torture or persecution if he or she was deported, and to consult with the Swedish Migration Board on such impediments.
- 19 We are grateful to Lisa Westfelt for allowing us to see the English-language summary of her PhD dissertation. See Lisa Westfelt, *Migration som straff? Utvisning på grunder brott 1973-2003 med focus påflyktingskyd*.
- 20 'Immigration and asylum statistics released', Home Office press release 24 February 2009.

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- 21** As in Sweden, foreign nationals subjected to a deportation order having served a prison sentence can challenge automatic deportation on human rights grounds. But if the courts state they cannot be removed from the UK, they will fall under the provisions of the Criminal Justice and Immigration Act.
- 22** Critics point out that the law as drafted could also apply to those served with fines as an alternative to a prison sentence. Since 1 January 2007, in the cases of certain offences, a person given a prison sentence of less than one year may have this penalty converted to daily fines, but the Aliens Bill states that those who accept this form of punishment are also liable to expulsion if the total amount of daily fines is equivalent to more than a two-year prison sentence within a ten-year period.
- 23** See text and footnote 11 above.
- 24** See text and footnote 12 above.
- 25** GISTI, LDH, MRAP, CIMADE and ANVP (National Association of Visitors to Prison), *Livre noir de la double peine*, March 2006.
- 26** Another victim of double punishment cited in the report, Chekib was only two when he came to France from Tunisia, and his parents and three siblings are French citizens. He was expelled in 2002 at the age of 25 to Tunisia, where he had no family or ties, did not speak the language and was totally isolated. He was diagnosed with clinical depression in 2004, caused in large part by his extremely difficult living conditions. Following the 2003 legal reforms he applied to return to France, but was refused on the ground that he could not prove he was 'habitually resident' in France immediately before 30 April 2003 - which he could not do because he had obeyed the expulsion order and not sought to re-enter France illegally. Following legal action, the expulsion commission approved abrogation of the expulsion measure, but the interior ministry had done nothing to enable him to return to France by the date of publication of the dossier.
- 27** GISTI, *L'interdiction du territoire français: La double peine judiciaire*, December 2008.
- 28** *Weiner Zeitung* 28 January 2008.
- 29** For a full report on the Italian general election and its aftermath, see IRR *European Race Bulletin*, no 64, Summer 2008.
- 30** *Gazetta Ufficiale* n 170, 24 July 2009. Our thanks to Sara Cerretelli at the Cooperazione per lo Sviluppo dei Paesi Emergenti (COPSE) for helping us understand the complexities of the law.
- 31** See <www.everyonegroup.com>
- 32** Earning the right to stay: a new points test for citizenship, UKBA, 2009. See 'Subject to British values', IRR news service 10 September 2009.
- 33** As cited in *Guardian* 31 May 2006.
- 34** Report of 15th conference of directors of prison administration, 'Overcrowded prisons: looking for solutions', 9-11 September 2009, CDAP(2009)04.
- 35** 'Italy: Police and judiciary persecution is taking place towards foreigners and Roma people', a statement by EveryOne, 5 May 2009.
- 36** *Ibid.*
- 37** As cited in *Migration News Sheet* August 2009.
- 38** Jonathan Simon, *Governing Through Crime: How the war on crime transformed American Democracy and Created a Culture of Fear* (Oxford University Press, 2007).
- 39** 'Service Level Agreement between the Ministry of Justice, the National Offenders Management Service (NOMS) and the UK Border Agency to support the effective management and speedy removal of foreign national prisoners', May 2009, reported in 'Segregating foreign national prisoners', IRR news service, 16 July 2009. A judicial review of this policy is ongoing.
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- 41** *Guardian* 31 May 2006.
- 42** 'The death of prisoner Baranovsky', *Independent* 11 October 2009.
- 43** Her Majesty's Chief Inspector of Prisons, 'Foreign national prisoners: a thematic review', 3 November 2006.
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- 45** Indymedia Estrecho, 'Rubalcaba propone la creación de una brigada policiaca especializada en la detención y expulsión de extranjeros', 26 November 2008.
- 46** See 'Control de la ilegales en Espana', 4 April 2009<<http://traselviaje.blogspot.com/2009/04/control-de-los-ilegales-en-espana.html>>
- 47** See UKBA, 'Enforcing the deal: our plans for enforcing the immigration laws in the United Kingdom's commu-

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- 49** KISA, 'Migrants Detention and ill-treatment in Cyprus, <http://idc.rfbf.com.au/wp-content/uploads/2009/06/kisa-memo_detention-ill-treatment_2505081.pdf>
- 50** Jonathan Simon, *Governing through Crime*, op.cit.
- 51** See *Austrian Times* 7 October 2008, 20 February, 21 October 2009.
- 52** Asylum and Immigration (Treatment of Claimants, etc) Act 2004, s 2; *R v Navabi*, *R v Embaye* [2005] EWCA Crim 2865.
- 53** 'Crusade against the undocumented', IRR news service 5 February 2009.
- 54** His successor intends to abrogate the measure, which violates the Refugee Convention. *Migration News Sheet* October 2009.
- 55** Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence [Official Journal L 328 of 5.12.2002].
- 56** Reuters 17 September 2009.
- 57** The background to events in Italy, as well as a full-list of statements and petitions issued in defence of the Roma can be found in IRR *European Race Bulletin*, no. 64, Summer 2008.
- 58** Directive 2004/38 EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Article 27(2), which states that 'The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society'.
- 59** In October 2009, in recognition of the specific vulnerability to deportation of a generation of migrant children born and raised in Greece, the newly-elected Socialist government introduced a wide-ranging overhaul of immigration policies. It is anticipated that around 200,000 children who are Greek in everything but name will be granted papers and therefore protected from arrest and deportation at the age of eighteen. *Guardian* 22 October 2009.
- 60** Concerns have also been raised in Switzerland over how new aliens' legislation will apply to the children and grandchildren of the original Turkish guest workers who were either born in Switzerland or who have lived most of their lives there. Whereas in the EU, lawfully resident Turkish nationals and their families benefit from some of the same protections as EU nationals, and can only be deported on the same grounds, these protections are of no avail in Switzerland, which is not a member of the EU.
- 61** In the same way that the UK authorities sought to use immigration law to justify the internment of foreign 'suspected international terrorists' who could not be deported because of the risk of torture, while not seeking to intern British suspected terrorists – a stratagem condemned as unlawful and discriminatory by the House of Lords in December 2004 in *A v Secretary of State for the Home Department* [2004] UKHL 56.
- 62** *El Pais* (Basque edition) 13 March 2009, *Diario Vasco* 14 March 2009.
- 63** *EN Serbia v Secretary of State for the Home Department* [2009] EWCA Civ 630, 26 June 2009.
- 64** Parliamentary Joint Committee on Human Rights, 22nd report of session 2003/4, 'The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004', HL 190/HC 1212.
- 65** *EN Serbia*, footnote 56 above.
- 66** Case files.
- 67** Case files.
- 68** Jonathan Simon, op.cit
- 69** OcaN, 'VIA. Making a difference between Dutch and Dutch', 30 September 2008. <www.ocan.nl/Ocan-Nieuws/via-making-a-difference-between-dutch-and-dutch>
- 70** As cited by Jan Tas, 'Government Racism against Antillians' in *De Fabel van de illegal*, no. 69, Autumn 2006.
- 71** 'Le premier émeutier victime de la double peine est malien' *Afrik.com* 3 February 2006, online at <www.afrik.com/article9415.html>

Election focus

A round-up of the impact of extreme-Right and anti-immigration movements in general, provincial and municipal election campaigns from late August to mid-October 2009.

AUSTRIA

Strong gains for Freedom Party in Upper Austria provincial elections

With 15.3 per cent of the vote, the Freedom Party (FPÖ) nearly doubled its share of the vote in the September provincial elections in Upper Austria and now has nine seats in the state parliament. The FPÖ gains came largely at the expense of the Social Democrats, which suffered its worst result since the second world war. The Alliance for the Future of Austria (BZÖ) ran for the first time in Upper Austria, but scored just 2.9 per cent of the vote. (*Guardian* 28.9.09, *Austrian Times Online* 28.9.09)

FPÖ accused of anti-Semitism during election campaign in Vorarlberg

In August, in the run-up to the September election in Austria's westernmost province, Vorarlberg, Dieter Egger, head of the local branch of FPÖ, caused a storm when he insulted Jewish museum director, Hanno Loewy, calling him an 'exile Jew from America'. This prompted Herbert Sausgruber, the existing People's Party (ÖVP) governor of Vorarlberg, to state that he would not consider a coalition with the FPÖ after the provincial elections if Egger did not apologise. The public prosecutor's office also launched an investigation into the comments.

Background

Loewy had criticised a statement by Egger in which he said that voters who did not like the Freedom Party policy of paying family benefits only to native Austrians should be expelled from the country. Loewy compared Egger's threats to the deportation of Jews from Austria, who were then murdered by the Nazis. It was in response to this that Egger declared that 'The Jew in exile from America with his heavily subsidised museum should shut up and not mix in Austrian politics.' FPÖ leader Heinz-Christian Strache defended Egger, saying that he did not regard 'exile Jew' to be an insult. and that Egger had merely pointed out that he did not accept criticism of the FPÖ's campaign from 'citizens of other countries'. According to the head of the Vienna Jewish community, Ariel Muzicant, the tone of the Freedom Party's recent campaign for the EU parliament was directly responsible for a number of anti-Semitic incidents in Austria. (*JTA News* 26.8.09, *Austrian Times Online* 28.8.09)

Anti-Muslim themes emerge as 2010 election mobiliser

State elections are due to be held in Vienna, Burgenland and Styria in October 2010, but already the major themes seem clear.

More deportation of 'foreign criminals'

The leader of the FPÖ, Heinz-Christian Strache, said that the ÖVP interior minister, Maria Fekter, should strip recently naturalised Austrians of their citizenship if they committed a crime. The proposal was originally made by the BZÖ MP Ewald Stadler after armed attackers gunned down Sikh priests in a Vienna temple.

No Turkey in EU

In September, FPÖ MEP, Andreas Mølzer, renewed calls for a halt to negotiations on Turkey's accession to the EU. He argued that 40,000 people had now signed the FPÖ petition against Turkish accession. Mølzer said that MPs from eight EU member states supported the FPÖ's efforts to stop EU accession negotiations, adding that 'Turkey would be indigestible for Europe in terms of politics and population.'

More anti-minaret initiatives

According to Swissinfo, both the FPÖ and the BZÖ have an increased focus on Islam and minarets, with the FPÖ campaigning for a change to the Austrian constitution to allow for minaret bans. Strache adopted the slogan 'Pummerin instead of muezzin' in the most recent Viennese election, stating that the large bell at St Stephen's cathedral should not have to compete against calls to prayers from minarets. In many Länder, the party has called for tighter building regulations, ostensibly to preserve 'local character' with the argument that in Christian Europe 'visible signs of the strength of Islam' should not be permitted. Until now, none of Austria's nine Länder has bowed to the pressure from the extreme Right. (*Austrian Times Online* 14.9.09, *Swissinfo* 11.10.09)

CZECH REPUBLIC

Brno mosque becomes election issue in South Moravia

In the run-up to the 2009 general election (delayed from October following a ruling from the Constitutional Court), a dispute over plans to build a second mosque in Brno emerged as an election issue in South Moravia.

The Brno mosque dispute

The Czech Republic's first-ever mosque was erected in Brno in 1998, but now local Muslims say it is not large enough to meet the local communities needs as the number of Muslims in Brno has increased. During 2008, small neo-Nazi groups such as the National Party (NS) opposed any expansion of the mosque and there were repeated attacks of vandalism on the mosque at Brno. Then, in July 2009, the regional chair of the South Moravian Christian Democratic Party (KDU-ĚSL),

Stanislav Juránek, announced that he opposed the plan and a day later, Cyril Sovoba, the national leader of the KDU-ĚSL publicly backed the statements of the South Moravian chapter, arguing that while freedom of faith was permissible, the demands of Islamists were alarming.

Muslims must adapt to Christian Europe

Svoboda said that he respected traditional Muslims and wanted an open Europe but that newcomers had to respect local traditions, adding that it would help if Muslim countries were open to Christians. The KDU-ĚSL argued that a second mosque would alter the landscape of the city, especially if it were to include a minaret. Furthermore, if Muslims want to continue living in Brno, they should adopt local customs; 'if they feel they cannot freely express themselves' 'they should also feel free to leave'. Christian Democratic Party vice chair, David Macek said that society 'should ask itself whether it wants to stand more on Christian values or other, for example Muslims values'. He added that Christian values had brought huge benefits to Europe and this needs to be maintained.

Islamic Foundation responds

Munib Hasan, the head of the Islam Foundation, said that he wanted to avoid bad relations with the KDU-ĚSL and that the foundation would not insist on the building of a minaret. He pointed out that some of the megamalls built in recent years had destroyed the cityscape much more than a mosque would. When Juránek accused Brno Muslims of not respecting local customs, Hasan replied 'We work, we dress cleanly, we pay taxes and send our children to school, we are loyal to the Czech state; so I don't know what else we can do to adapt.'

Second attempt to ban anti-Roma far-Right Workers Party

In the run-up to the general election, the government sought, for the second time, to ban the far-Right Workers Party (DS). The first proposal was turned down by the Supreme Administrative Court in the Spring, but the government believed that the second attempt would fare better. Prime minister Jan Fisher spoke to the press about growing evidence of rightwing extremism, not just confined to individuals but demonstrating that the whole party were acting illegally.

Mobilising against Roma in north Bohemia

The Workers Party is most active in north Bohemia where it claims to represent 'decent people' against the attacks of what it calls 'unadaptable' Romanies who refuse welfare benefits. They have denied any involvement in or support for the Vitkov fire-bombing of a Roma family's home in April, which left a 2-year-old girl and other family members seriously injured. Czech media reports, which were based on the annual reports of the Workers Party for 2007 and 2008, had alleged that one of the four men arrested for the arson had been a long-standing benefactor of the Workers Party. A spokesperson for the Workers Party said 'The fact he made donations does not mean he had any special links to the party.' (Prague Post Online 5, 26.8.09, *Prague Daily Monitor* 27.2, 16.9.09, Czech Radio 7 6.8.09, Ceske Noviny.cz 28.7.09)

DENMARK

DFP wants integration policy linked to repatriation

In the run-up to municipal elections in November, the Danish People's Party (DFP) threatened to withdraw support for the minority government's budget if its demands for strict limits to family reunification were not met. It also proposed that more grants were factored into next year's budget in favour of municipalities from which foreigners move, in addition to having the state pay all the municipalities' expenses in connection with the repatriation of immigrants. According to the DFP, repatriation should be a part of the country's integration policy. Furthermore, the DFP wants to make it easier to refuse immigrants and refugees social support unless they move from certain areas, in particular areas with a high density of inhabitants from 'a non-Danish cultural background'. The Liberal spokesperson for integration affairs, Karsten Lauritzen, was sceptical about the proposals, stating that municipalities already had extensive powers to withhold social grants, if deemed necessary. (UNHCR Baltic & Nordic Headlines 10.9.09, *Migration News Sheet* October 2009)

Hysteria over Denmark's first mosque in run-up to Copenhagen elections

In the run up to the November Copenhagen municipal elections, and as Copenhagen city council announced its approval for the first mosque in Denmark, the DFP launched a media campaign against the building of mosques. Full-page advertisements were published in several daily newspapers claiming that funding for the new mosque would come in part form 'the terror regime in Iran' and a second mosque planned for the capital would be financed by Saudi Arabia. The *Kristeligt Dagblad* newspaper reprinted the allegations, and DFP MP Martin Henriksen wrote to the justice and integration ministers asking them to stop the project. Integration spokespeople from both the Liberal and opposition Social Democrat parties called for greater transparency when it comes to financing religious projects to ensure religious extremists and radicals were not involved.

The truth about the mosque

The mosque is actually being financed by private donors, two or three of whom are Iranian. The Iranian government is not providing any funding. Although it will have a dome and minarets, there will be no call to prayer so as to avoid disturbing the surrounding working-class neighbourhood. (AFP 9.9.09, Copenhagen Post Online 1.9.09)

Conservatives seek burqa ban

In August, after the Conservative Party's integration spokesperson suggested a total ban on the wearing of the niqab or the burqa in public spaces, a committee to examine the Conservative Party's proposal was set up by the prime minister Lars Lokke Rasmussen. But the justice ministry rejected the idea on the grounds that it would raise all sorts of legal issues vis-à-vis compatibility with the European Convention on Human Rights as well as the Danish Constitution.

Alternatives to ban investigated

It seems that the working party set up by the government will now look into how the wearing of the burqa can be stemmed by other means. 'The burqa represents an oppressive view of women and humanity which the government does not feel has a place in Denmark. So the government has set up a fast-working burqa group to study the issue and I am looking forward to its findings', said justice minister Brian Mikkelsen. (*Migration News Sheet* September 2009, *Politiken* 17.9.09)

FRANCE

Philippe de Villiers may join government

Regional elections are set to be held in France in 2010 and already Sarkozy seems to be attempting to co-opt the extreme-Right opposition into the existing government. In August 2009, hints were made that Sarkozy intended to invite Philippe de Villiers, leader of the Mouvement pour la France (MPF) onto his electoral coordinating committee with rumours that Sarkozy was considering giving him a junior ministerial role. The move was denounced by the League Against Racism and Anti-Semitism (LICRA), which called it a 'back-dated justification' of the 'intolerable racist remarks' de Villiers had made in the past. De Villiers campaigns for low taxes, no immigration, no mosque-building, no gay rights and for policies to encourage and reinforce the traditional family. (*Independent* 26.8.09)

GERMANY

September federal elections take place against anti-foreigner climate

The main issue in the September federal elections, which returned a centre-Right coalition government and saw a sharp decline in voting for the far-Right, was job creation, as economists warned that unemployment could reach five million by late 2011 and German companies cut jobs in reaction to the global crisis. But whereas the question of unemployment and migrant communities did not come to the fore prior to the election, immediately afterwards a major row broke out after Thilo Sarrazin, a Bundesbank director and former SPD finance senator accused Turks and Arabs in Berlin of being, for the most part, 'neither willing to be integrated nor capable of doing so', claiming that they have 'no productive function, other than in the fruit and vegetable trade' and concluding that Muslims' birth-rate posed a threat to Germany.

Voter apathy

The low voter turn-out led some to call for compulsory voting to be introduced. The editor of the weekly *Die Zeit*, Josef Joffe, called the election campaign a farce. 'All in all, we're looking at a campaign that barely fulfils its classical role of accentuating differences and giving voters a clear choice', said Joffe. A survey conducted by Forschungsgruppe Wahlen found that 68 per cent of

respondents felt that the main parties' policies 'differed hardly at all'.

NPD exploits economic climate to promote anti-foreigner message

Neither the National Democratic Party (NPD) nor the German People's Union (DVU) has ever won seats in a federal election. Support for both parties declined, with 681,000 people voting for the two parties compared to 858,000 in 2005 when both parties were joined by an electoral pact. Overall, both parties scored 1.5 per cent of total votes cast. However, in some states, such as Saxony, support spiked at 4 per cent.

The NPD campaigned against immigration using slogans like 'Fatherland, Mother Tongue, Children's Joy' and 'German Work for Germans First'. It called for a special €500 child benefit 'for every German child', and a monthly mother's benefit of €1,000 for 'every German mother'.

Anti-Polish message proves successful in Ucker-Randow

The NPD, campaigning against an alleged 'invasion of Poles' buying and renting homes, resulted in 12.5 per cent of the vote in the municipality of Loecknitz in the Ucker Randow district of Mecklenburg-Upper Pomerania, which borders Poland and where 1,000 residents are Polish citizens. The court ruled that the NPD's campaign election placards declaring 'Stop the Polish invasion' were illegal and an incitement to racial hatred. In early September, the NPD hung more than forty such signs up in the Ucker Randow district. When the local authorities took the placards down, the NPD went to court. While a lower court declared the local authority's action improper, a higher court ruled that the text and picture elements of the NPD placards were an affront to the human dignity of others and posed a danger to public security and order.

Focus on voters of migrant origin

For the first time it was officially acknowledged that nine per cent of voters were of foreign descent. But while figures differ, the fact that at least four million Germans from a migrant background were eligible to vote, made the 'migrant vote' a media issue, with polls being carried out to ascertain which parties the German-Turkish community in particular would vote for. A study by the Berlin-based market research company Data 4U showed that most Germans of Turkish origin would vote for the SPD, followed by the Green Party. Integration policies, unemployment as well as the debate surrounding Turkey's EU membership were key issues for German-Turkish voters, according to the poll. The commissioner for immigrants in Berlin's Schönberg district warned that with almost half of youngsters from a migrant background, more must be done to ensure their participation in political life.

Lack of representation criticised

While fifteen MPs from an 'immigration background' (up four) were elected, groups representing minority communities pointed out that they were hopelessly under-represented in parliament, with neither of the main parties doing anything to improve things over the past four years. Immediately after the election, the former president of the German parliament Rita Süssmuth urged

the new government to nominate immigrants to the cabinet.

More than twenty Germans of Turkish origin campaigned to become MPs, but they were placed far down on the lists of the parties they represented. Özcan Mutlu, campaigning for the Green Party, said that 'unemployment, lack of participation in society and poor education' were the key issues for German-Turks. Research by the Organisation for Economic Co-operation and Development (OECD) suggested that poor language teaching in Germany's education system meant that children from an immigrant background were not doing well. Unemployment was also at twenty per cent, twice as high as the rate of Germans from a non-immigrant background.

Facing racist threats

The NPD was placed under investigation for incitement to racial hatred after sending hate mail to thirty candidates with foreign-sounding names purporting to come from the commissioner for repatriation of foreigners and demanding that they go back to their country of origin within three months. Some of the letters, which stated that foreigners should be excluded from the welfare system and banned from owning land in Germany, were sent to the candidates' home addresses, and one two-page letter contained a 'five-point plan' for moving foreigners 'gradually back to their home countries'.

Banker's anti-Muslim tirades follows election

Berlin state prosecutors are investigating whether Thilo Sarrazin, now a board member of the Bundesbank, can be prosecuted for inciting racial hatred for comments made about Turks and Arabs in an interview published in the culture magazine *Lettre Internationale*. As well as criticising Muslims' failure to integrate economically, Sarrazin added that 'The Turks are conquering Germany just like Kosovars once did Kosovo – through a higher birth rate'. 'I don't need to accept anyone who lives off the state, rejects this country ... and is always producing little girls with headscarves. This is true of 70 per cent of the Turkish and 90 per cent of the Arab population of Berlin.' Only those immigrants who strive for economic success should be welcome; 'the rest should go elsewhere'.

Sarrazin, immediately criticised by the Bundesbank which suggested he should resign, won a flood of popular support for his comments and praise from the NPD which called on the government to appoint him Germany's commissioner on foreigners.

Some SPD members are now calling for Sarrazin, who issued a limited apology, to be expelled from the party with Sebastian Edathy, head of the home affairs committee of the Bundestag lower house, comparing his thinking to that of the Nazis. 'It would be even more of a problem if we let it pass and went back to business as usual' he said. 'That would only give people even more encouragement to say these things. This is ultimately National Socialist ideology we're talking about.'

New unity party formed

In response to Sarrazin's outburst, freelance journalist Vlad Georgescu set up the United Immigrants Party because 'immigrants have become again the target of German racist jingoism among politicians'. (*Deutsche*

Welle 18, 28.9.09, *Guardian* 28.9.09, *The National* (United Arab Emirates) 24.9.09, BBC News Online 23.9.09, *The Local* (Germany) 20, 30.9.09, German Press Agency 28.9.09, Reuters 22.9.09, Inter Press Service 12.10.09)

CDU North-Rhine Westphalia state premier lashes out against Romanians

There were calls for the resignation of the CDU state premier of North Rhine-Westphalia, Jürgen Rüttgers, after he was accused of playing with fire by making racist slurs against Romanians in several speeches during the local election campaign. Extracts of speeches in Münster and Duisburg were posted on YouTube.

Exploiting job insecurity

Rüttgers' comments about Romanian workers were seen as playing to local disaffection, as many workers had lost their jobs when a Nokia mobile phone factory in Bochum closed down, relocating to Romania. 'In Romania, the workers don't come at seven in the morning like they do here in North Rhine-Westphalia, and they don't stay until the factory closes', said Rüttgers, adding that they 'come when they want and go when they want, and that's why they don't get any mobile phones built.' Rüttgers, who was addressing a group of North Rhine-Westphalian workers, then went on to demonstrate his determination to encourage Chinese financial investment in Duisburg. A video posted on YouTube records him saying 'And if we have to, we'll meet some Chinese people in the town hall. And if they still don't want to invest, we'll strangle them until they find Duisburg beautiful.'

Rüttgers, who later apologised if his comments had caused offence, has a history of insulting non-German workers in his speeches. In 2000, he campaigned in the state election utilising the slogan 'Kinder statt Inder' (Children not Indians), in protest at the SPD government's attempts to attract skilled workers from southern Asia to work in Germany's technology sector. The leader of the local CDU defended Rüttgers on the grounds that the 'video unduly shortens the speech and rips Rüttgers' remarks completely out of their context'. (*Deutsche Welle* 5.9.09, Spiegel Online 2.9.09)

Breakthrough for Pro Cologne party

In the municipal elections in North Rhine-Westphalia, the extreme-Right Pro Cologne party achieved 5.4 per cent of the vote. Pro North Rhine Westphalia only achieved 0.6 per cent in the regional vote. (Information from Amadeu Antonio Foundation)

The extreme-Right hate campaign in regional elections

Regional elections held on 30 August in Thuringia, Saarland and Saxony saw losses for the National Democratic Party (NPD), as did the subsequent September regional elections in Brandenburg. The NPD failed to gain seats in the Thuringia parliament and lost votes in Saxony, although it retained its seats there. But the fact that it was elected twice in succession in Saxony was seen as a notable achievement, paving a way for a boost in its state funding. Prior to the election, the NPD was associated with several instances of election violence.

Racist cartoon book

The NPD targeted young voters, publishing 30,000 editions of a comic book, entitled *Ducks versus Chickens*. With its thinly-disguised racist content, it told the tale of a peaceful community of ducks whose life is destroyed by chickens, who seek sanctuary there only to take over and destroy the ducks lifestyle due to high fertility rates, a tendency towards drug abuse, criminality and homosexuality. Political commentators pointed out that Nazi propaganda of the 1930s often used animal metaphors to portray foreigners as the root of all social evils.

Saxony

The NPD's share of the vote in Saxony fell from 9.2 per cent (2004) to 5.6 per cent. But despite this, it still retains seats (it also has 110 representatives at municipal level). It was a significant achievement for, as commentators pointed out, this was the first time a neo-Nazi party was able to re-enter the state parliament. Despite the national party being in financial crisis, the Saxony branch had enough money to run its campaign, producing thousands of placards with slogans such as 'Deport Criminal Foreigners' and 'Stop the Invasion by Poles'.

The NPD was first elected to the Saxony state parliament, which sits in Dresden, in 2004 with 9.4 per cent of the vote. A year after its victory, three MPs resigned the party whip while a fourth was thrown out for making pro-Hitler remarks and bringing a gun into parliament. Since then, it has tried to establish a base in both Dresden and Leipzig as well as smaller towns and villages blighted by unemployment where it has established jobless drop-in-centres and youth groups.

After the election, there was controversy after it emerged that the NPD may be entitled to an additional €100,000 in government regional funds. Each of Germany's main political parties has its own institution that represents and supports its political principles through research and comment, as well as providing stipends for students and other activities. Saxony party funding rules state that if a party is re-elected that it is entitled state money to finance a foundation. As the NPD now meets that criteria, it hopes to gain the necessary finance to transform the running of its Education Centre for Homeland and National Identity, which was set up in 2005, but so far has had little impact.

Brandenburg

Following the breakdown of the pact between Germany's two main extreme-right parties, the NPD and the German People's Union (DVU), that ensured that they avoided fielding candidates against each other in the same elections, both parties stood in the elections for the Brandenburg regional parliament on 27 September. The DVU had held seats in Brandenburg since 1999; in fact twenty-five of the forty-five municipal seats it holds are in Brandenburg.

Thuringia

The NPD only narrowly failed to gain seats in Thuringia, scoring 4.3 per cent of the total vote, which, according to the Amadeu Antonio Foundation, should act as a stark warning to the 'new government in Thuringia that it is high time to become active and initiate a state programme to fight the neo-Nazi movement'.

Saarland

The NPD's share of the vote went down from 4 per cent to 1.5 per cent.

Hate campaign

In Thuringia, the NPD called on Zeca Schall, a black Christian Democrat politician, who had come to Germany from Angola in 1988 and who had appeared in CDU regional election campaign posters, to go home, urging its members in the eastern state to deliver the message to him personally. They added that if he wanted to remain in Germany, he should take on the role of Thuringia's 'Repatriation Commissioner'. Zeca Schall, described by the NPD as a 'token nigger', was placed under police protection.

The CDU lodged a criminal complaint against the NPD. In a statement issued on 13 August, the NPD in Thuringia said that to call Schall a 'Neger' was in no way insulting because the term stems from the Latin word for black, and the party had the 'fundamental human right' to describe reality. In addition, the word 'neger' can mean either 'nigger' or 'negro' in German, according to the user's intent.

Election violence

■ In Hamburg, a 44-year-old black British man, who was visiting Germany with his family, was attacked by three NPD members who beat him and sprayed pepper spray into his eyes after he tore up one of the party's leaflets which called for a ban on immigration. The NPD members were arrested on suspicion of causing grievous bodily harm in a racially-motivated incident.

■ In Mecklenburg-Vorpommern, where the NPD have held seats in the regional parliament since 2006, its parliamentary leader, Udo Pastörs, was charged with inciting racial hatred following an NPD rally in the city on 26 February where he labelled Germany a *Judenrepublik* ('Jews Republic') and described Germany's Turkish minority as 'semen cannons' overwhelming the country with their offspring. (German Press Agency 24.8.09, Agence France Presse 24.8.09, *Irish Times* 26.8.09, *Daily Mail* 24.8.09, *Searchlight* September, October 2009, *Deutsche Welle* 27.8.09, Spiegel Online 2.9.09, *Migration News Sheet* September 2009)

Muslim association contests Bonn elections

On 30 June, the Alliance for Peace and Fairness was formally launched in Bonn to contest the German capital's municipal elections. The initiative was started by the Muslim Council in Bonn, and highlights issues of integration. 'We don't want immigrants to be talked about – but, rather to be talked to – so they can participate in discussions about integration', said chairman Haluk Yildiz. The Alliance has been criticised in some quarters for being a Muslim political party. (*Deutsche Welle* 27.8.09)

GREECE

New hope for migrants as Socialists gain power following divisive election campaign

Hopes were high for more humane and just asylum and

immigration policies following victory for the centre-left Pasok party in the October general election and immediate reforms to immigration policy by its newly created citizens' protection ministry. But in the run-up to the election, the Popular Orthodox Rally (LAOS) sought to make illegal immigration and the 'Turkish threat' central issues. At the same time, the centre-Right ruling coalition sought to respond to the growing surge of migrants on its islands and tensions in Athens by authorising police sweeps for 'illegals', with crime in the capital blamed on migrants. Against the backdrop of hunger-strikes and demonstrations in a detention camp on Mytilene, the capital of Lesbos, the centre-right government floated the idea of detaining 'illegals' in disused military facilities before being swept from office.

LAOS sets out anti-immigration, anti-Turkish themes

At a press conference called during a visit to the western port city of Patras, LAOS leader George Kratzaferis said that Turkey was having a 'free for all' in Thrace and called on the EU to assume responsibility for guarding its borders from the 'Turkish threat' as well as guarding all Greek borders from illegal immigrants. According to delegates from Greek NGOs, attending the OSCE Human Rights Implementation Meeting in Warsaw, a mosque in Western Thrace was set on fire on 2 September but the incident was not reported in the media.

Immigration crackdown leads to major human rights abuses

According to Human Rights Watch, the Greek authorities conducted a large-scale crackdown between June and August 2009, arresting hundreds of migrants across the country, evicting them from run-down dwellings in Athens, bulldozing a makeshift camp in Patras, and detaining new arrivals on the islands. There was also an increase in summary expulsions of migrants, with unaccompanied children amongst those taken secretly at night and illegally expelled by Greek police who forced them across the Evros River into Turkey.

Migrant dies following police immigration raid

On 26 September, as the centre-Right government stepped up arrests with successive police sweeps in Athens, it was reported that Mohammad Atif Kamran, a 25-year-old Pakistani migrant living in the Athens neighbourhood of Nikaia, died following a raid of his home and a period in police custody. According to the noborders network, witnesses claimed that the Pakistani man had been dragged out of the house semi-conscious, and that his head had been repeatedly banged against the stairway. Although he was released without charge two days later, he did not go to hospital, as he had no documents, and died ten days later on 10 October. Demonstrators staged an occupation of Nikaia town hall in protest.

Major overhaul of asylum and immigration policy protects children

On 21 October, the newly-elected Socialist government announced that as part of a wide-ranging overhaul of immigration policy that includes the formation of the citizens' protection ministry, a generation of migrant children who were born and raised in Greece, but never

officially recognised will be granted Greek citizenship. Around 200,000 young people who have, up till now, lived a life in limbo and vulnerable to deportation when they reach the age eighteen, will, it is estimated, benefit from the reform. 'These are children whose parents are from Africa, Asia and countries like Albania who are enrolled at schools across Greece but have no papers whatsoever. In Europe this is unique' said prominent anti-racist campaigner Petros Papaconstantinou. Other reforms will ensure that unaccompanied children held in overcrowded, detention centres will be released and that more minorities will be encouraged to join the police. 'This country can no longer go on being a hell for migrants' said Michali Chrysochoidis, the minister in charge of the newly created citizens' protection ministry. As Greece's high court launched an investigation into the death of Mohammad Atif Kamran, Chrysochoidis also warned that 'arbitrary behaviour by the police will not be tolerated'. (Athens News Agency 28.9.09, *Observer* 27.9.09, Human Rights Watch press release 16.10.09 correspondence from no borders 12.10.09, *Guardian* 22.10.09, Agence France Presse 21.10.09)

NETHERLANDS

PvV downgrades 2010 municipal elections in favour of national strategy

Local elections are due in the Netherlands in March 2010 but Geert Wilders has embarked on a strategy of maximum security and minimum risk, by fielding candidates for his Freedom Party (PvV) in just two cities, the Hague and Almere, while prioritising the 2011 legislative and provincial elections where the 75 members of the upper house of the Dutch parliament are elected through the provincial government. Critics point out that the PvV has very few qualified candidates to run in local elections, and that disagreements could well emerge at a grassroots level over party policy – a situation that Wilders wants to avoid by maintaining maximum control over the party. Wilders acknowledged publicly that the PvV does not have enough good candidates that he could vouch for and that he is anxious to avoid a repeat of the 'LPF fiasco', a reference to the internal struggles of the party of populist politician Pim Fortuyn that led to its impotence when it joined the government after Fortuyn's assassination in 2002.

Headline grabbing immigration questions tabled

In the last week of July, the PvV grabbed the headlines when Sietse Fritsma, a PvV MP and former immigration officer sent a total of 79 questions to twelve government departments demanding information on the costs and benefits of non-Western immigrants to the Netherlands over the past five years and a projection of what they will cost and contribute to society. The tax service was asked to ascertain how much less tax immigrants pay because they are unemployed or in low-paid work; the education ministry asked to detail how much it spent on immigrant pupils because, according to the PvV, they have the highest rate of school non-attendance. The PvV also claimed that immigrants visit their doctors more often because they have more health prob-

lems due to the fact that children are born from marriages between family members.

In October, Wilders called for the integration minister, Eberhard van der Laan to be charged under an 1855 law that states that ministers have to abide by the constitution and provide information when asked. Van der Laan provided the PvdV with thirty pages of raw data in response to its immigration questions, but refused to translate the information into the 'cost-benefit' analysis framework that the PvdV sought. 'We do not keep accounts on the value of human beings', he stated.

Tax on veil proposal makes the news

Speaking in the Lower House, Wilders called for a tax on the wearing of the veil, stating that headscarf-wearing women must first apply for a permit to wear one and then pay an annual fee of €1,000. The measure will only apply to Muslims and not to Christian women who wear a veil and the money collected from the headscarf fees would be used to finance women's emancipation programmes, said Wilders.

Rita Verdonk's party flounders

It is predicted that the party of former immigration minister Rita Verdonk, Proud of the Netherlands (TON) will be wiped out in the municipal and provincial elections, as support for the TON has shifted to the PvdV. (NRC 17.8.09, *Earth Times* 8.3.09, *Searchlight* September 2009, *Volkskrant* 22.7.09, *Migration News Sheet* April, October 2009)

New Dutch Muslim Party formed

The Dutch Muslim Party (NMP) announced that it will run for seats in the Netherlands' three largest cities, Amsterdam, the Hague and Rotterdam. In Amsterdam, it will also run for seats in the new municipalities of Almere and Noordoostpolder. The NMP sees itself as a Muslim version of the Christian Democrats, campaigning for traditional family values, as well as improving the image of Islam and pushing for more Muslim cemeteries and banking systems in the Netherlands. The NMP was founded by Henny Kreeft, a convert to Islam who was previously active in liberal left parties. (Radio Netherlands 3.8.09)

NORWAY

Islamophobia and anti-asylum sentiment in run-up to general election

Norway's September 2009 general election saw the return of the Labour Party, with areas with large immigrant populations voting largely for the governing party. But the Progress Party (FrP), which sought to make asylum and minority policy, particularly towards Muslims, key electoral issues, got its best-ever result, gaining 22.9 per cent of the vote (up 0.8 per cent) and three more seats (from 38 to 41). Concerns about racism in Norway are such that in March 2009 the European Commission Against Racism and Intolerance (ECRI) published a report warning that Islamophobia was on the rise and highlighting the increasingly aggressive rhetoric of FrP. In August, the FrP published a 101-point

programme which outlined the policies, mainly on asylum and immigration, it would introduce should it gain power.

A boost in the opinion polls in the earlier part of the year was largely attributed to the FrP's manipulation of a public debate about whether female Muslim police recruits should be allowed to wear the hijab as part of their uniform. The growth of the FrP, which likes to present itself as the 'new labour party', is seen as a particular threat to the Labour Party. The Labour Party was accused of attempting to respond to the threat posed by the FrP, by taking on some of its themes, particularly around failures within the asylum system

FrP denounces 'sneak-Islamisation'

At the FrP party conference in February, leader Siv Jensen said that Norway was facing the threat of 'sneak-Islamisation'. She argued that the 'reality is that a kind of sneak-Islamisation of this society is being allowed', adding that if the Progress Party gets to govern Norway, 'we will enforce Norwegian law and Norwegian rules. We are not going to allow special demands from any single group in society.'

The FrP produced a list of special measures that it claimed Muslims had requested to accommodate to their religious sensitivities and traditions – such as changes to police uniform, halal food for Muslim prisoners, as well as demands made by the Muslim parents of teenage girls for separate schools for boys and girls.

Siv Jensen's conference speech

Jensen singled out the wearing of the hijab as more proof that Norway was undergoing 'Islamisation by stealth'. In her conference speech, Jensen compared Oslo to the notorious Rosengard neighbourhood of the Swedish city of Malmö, where she claims Sharia law has taken over completely. She also referred to an article in *Aftenposten* about a police raid on the Alfredha Islamic Centre and a Kurdish club, during which smuggled goods were discovered and made reference to sex-segregation in swimming classes at an Oslo school. But after the newspaper visited the Møllergata school, where separate swimming and gym classes are practised, the head teacher explained that the policy had nothing to do with Islam, but had emerged as a custom in the school as girls 'felt run over by the boys in gym classes'. When more Muslim students registered at the school, the practices continued. When asked if she felt that the practice contributed to 'sneak Islamisation', she replied that 'the most important thing is that the students learn to swim'.

National debate over clothing of Muslim police officers

The background to the debate around the hijab was the case of mother of three, Keltoum Hasnaoui Missoum who, in Autumn 2008, petitioned for the right to wear the hijab if she was accepted as a police recruit. Missoum had previously worked as a security guard but lost her job when she decided to wear the hijab. As she wanted to become a police officer, she wrote to the Police Academy, which referred her to the Ministry of Police Affairs. In February 2009, the justice ministry announced that it would support a proposal made by police chief Ingelin Killengreen to allow Muslim police recruits to wear the hijab should they so chose.

According to Killengreen 'we think that it is necessary to recruit widely and develop a police force which reflects all classes in society, regardless of beliefs and ethnicity, which is more important than demanding a neutral uniform.' However, objections were immediately made by Arne Johannessen, the head of the police trades union, as well as politicians from political parties (including members of the governments own Labour Party). Shortly afterward, the *Dagbladet* newspapers invited readers to participate in an opinion poll on the issue and reported that within 24 hours 89 per cent of respondents had opposed the plan. At the beginning of March, justice minister Knut Storberget withdrew the proposal and went on two-weeks sick leave, which had to be extended.

On International Women's Day in March, Syrian-born Sara Azmeh Rasmussen staged a much publicised protest, burning a headscarf at a demonstration in Oslo.

Hijab debate increased FrP support

Before the debate on the women's police uniform, the Progress Party had been somewhat isolated in public debate. But an opinion poll published in February suggested that its support had leapt six points to 29.4 per cent. The *Christian Science Monitor*, while reporting on the whole hijab debate, points out that 91 percent of Norwegians belong to the Evangelical-Lutheran Church.

Progress Party on asylum

The FrP's 101-point programme released in August included proposals to close down the Immigration Appeals Board, tighten the country's asylum policy, delay the enforcement of the new Aliens Act, work towards more closed reception centres, establish detention centres for persons deemed a threat to national security. Its stated goal was to reduce the number of new asylum seekers per month from about 1,000 to 100, and to deport persons with unfounded claims within 48 hours.

■ In July 2009, the FrP suggested establishing Norwegian reception centres in African countries to which African asylum seekers would be transported on arrival in Norway. The countries selected would be those that received Norwegian development aid. Other political parties described the proposal as unrealistic and irresponsible.

■ In September Siv Jensen made a statement suggesting that Oslo was being 'flooded by criminal asylum-seekers who are selling drugs and raping girls without criticism'. Jensen rejected the objections of Norwegian People's Aid about the statement.

■ During debate about asylum policy, Jensen said that asylum seekers who did not have documents should not be given protection and that all asylum seekers who lacked documentation should be imprisoned. The Director General of the Norwegian Directorate of Immigration, Ida Borresen, criticised politicians who made such claims, saying that travelling with identification documents could be dangerous and nine out of ten asylum seekers actively participated in clarifying their identity.

Other parties take on FrP's themes

In the last days before the general election, a party leader debate about asylum policy took place in which

the Conservative Party leader Erna Solberg blamed the Labour Party for the increase in the number of asylum seekers as its current policy gave the impression that it is easy to get a residence permit in Norway.

The governing Labour Party, as well as the opposition Conservatives, had attempted to respond to the threat posed by the FrP, by tightening asylum rules, despite earlier pledges not so to do. It has proposed new legislation which would, amongst other things, make it a punishable offence for organisations or individuals to help illegal immigrants in Norway. Prime Minister Jens Stoltenberg also promised to cut the number of asylums seekers reaching Norway.

In a pre-election debate, Conservative Party leader Erna Solberg stated that she would adopt a tough stance if elected so as to bring down the number of asylum-seekers per year from 17,000 to 5,000.

Senior Labour Party minister criticises party

In September, Labour Party Minister of Foreign Affairs Jonas Gahr Støre criticised fellow party members in Oslo for statements in which paperless asylum-seekers were claimed to always have dishonest intentions. Minister Støre also criticised Labour Party member and the head of the Police Union Arne Johannessen for the latter's statement that the police are facing 18,000 criminal, drug-dealing asylum seekers.

Controversial rhetoric on Islam

While senior Labour Party members called for a fight against radical Islam, the former prime minister and Labour Party leader, Thorbjørn Jagland, called it an unnecessary fight that would only lead to confrontation. But the Norwegian Police Security Service (PST) disagreed with Jagland's assessment that radical Islam did not represent a significant threat to Norway.

New 'immigrant' party formed

A new political party, the Independent Labour Party, led by Ghufoor Butt, a Norwegian of Pakistani origin, put forward nineteen candidates for the general election with the aim of being a new voice in parliament for immigrants. Butt accused Norwegian politicians of neglecting immigrant issues and argued for separate nursing homes for Norwegian nationals and immigrants on the grounds that Norway's nursing homes have failed the migrant elderly, and integration is non-existent. The party has been criticised for its views on homosexuality, but Butt says he was misquoted. (*SAMAA News* 27.4.09, *Aftenbladen* (English language version) 26.9.08, *Islam in Europe Online* 24.2.09, *BBC News Online* 20.4.09, *Norway Post* 5.3.09, *Searchlight* April 2009, *Christian Science Monitor* 20.3.09,

UNHCR Baltic & Nordic Headlines 11-13.7.09, 19.8.09, 16.9.09, 27, 28, 29, 31.8.09, 9-10, 11-14, 20, 24. 9.09, October 2009, *Migration News Sheet* March 2009)

The impact of general election on asylum policy

The new coalition government adopted a stricter asylum policy and concerns are mounting that it is set to launch a new immigration ministry, separate from the Ministry of Labour and Social Inclusion, under the leadership of the current state secretary Libe Rieber-Mohn who has a reputation for a tough approach to asylum. Meanwhile, Self-help for Immigrants and Refugees (SEIF) criticised

the new Aliens Act which makes it a crime, punishable by up to three years in prison, to help hide people from the Norwegian authorities. Libe Rieber-Mohn says the new law is meant to target those who hide refugees (sic) in large numbers, but she does not rule out using it against those helping people due to their personal convictions.

Norwegian People's Aid criticises potential asylum-policy trade-off

After the elections, there was speculation that the Socialist Left Party would concede to a tougher asylum policy in exchange for no drilling for oil in the Lofoten region during their next four years in government. In response, the Secretary-General of the Norwegian People's Aid stated that it would be indecent to use persons fleeing persecution as trade in negotiations.

Former Labour MP launches seven-point programme

A seven-point programme for tougher immigration and integration measures, launched by the former Labour MP Saera Khan, was welcomed by the Progress Party spokesperson for immigration affairs. (UNHCR Baltic & Nordic Headlines 20-25, 26. 9.09, 1.10.09)

Scaremongering hate and the Swiss referendum on minarets

The Swiss government is deeply concerned that the 'Stop Minaret' movement, backed by the Swiss People's Party (SVP) and the small ultra-conservative Federal Democratic Union (EDU) may win a national referendum on a minaret ban on 29 November 2009. If the referendum is passed, the Swiss constitution will be amended to add the line, 'the construction of minarets is prohibited'.

Ever since May 2007, when the SVP and EDU launched its campaign to force a national referendum of the issue the climate in Switzerland has been tense. But in the run-up to the national referendum in November the Swiss Commission Against Racism made strong criticisms of an SVP poster in favour of the ban, describing the images deployed as constituting a defamation of the country's peaceful Muslim population and a threat to public peace. The SVP responded by issuing a statement attacking the Commission's lack of 'democratic legitimacy' and accusing it of playing 'the role of censor, comparable to the Communist states and the Third Reich'.

Threatening campaign poster condemned

The poster depicted a woman wearing a burqa against a background of a Swiss flag upon which several minarets resembling missiles were erected. According to SVP parliamentarian Ulrich Schuler, minarets are 'symbols of a desire for power, of an Islam which wants to establish a legal and social order fundamentally contrary to the liberties guaranteed in our constitution'. The Commission Against Racism said that the posters 'feed prejudices, are over-simplistic and present Islam overall in an unfavourable manner'.

City authorities divided

Cities around Switzerland reacted differently to the poster. The authorities in Basel were the first to ban the display of the posters in publicly-owned spaces, utilising a law against spreading racist ideologies or classing groups by ethnic, religious, cultural or physical characteristics. The city authorities in Lausanne, Montreux, Fribourg and Yverdon-les-Bains followed Basel's lead. Lausanne municipal authority banned the posters on the grounds that they portrayed 'racist, disrespectful and dangerous images'. 'The limits of free expression have been exceeded this time' said local councillor Olivier Français. Yverdon-les-Bains, in canton Vaud, said the posters presented an 'unacceptable amalgamation of people of Muslim faith and potential terrorists'. But the Geneva authorities ruled against banning the posters on the grounds of freedom of speech, and canton St Gallen said it saw nothing discriminatory in the poster.

The chairman of the organising committee for the anti-minaret campaign, Walter Wobmann, told the Swiss news agency SDA that it planned legal action against the cities and towns that banned the poster, possibly on the basis of a freedom of speech violation.

Media outlets take action

One of Switzerland's major media groups, Ringier, refused to publish the poster-image while another major media group Tamedia said it would leave the decision as to whether to publicise the poster-image down to individual publications. The *Tages-Anzeiger* and *20 Minuten* which are in the group, will not carry it.

Background to the referendum

Even prior to the SVP poster campaign, there had been heated and angry debate in parliament over the divisive nature of the national referendum. But even though in March 2009, the House of Representatives voted 129 against 50 against the initiative, the majority of parliamentarians rejected the centre-left call to declare the initiative invalid. During parliamentary discussion, the initiative was described, variously, as irresponsible, 'an insult for Muslims', 'scaremongering' and a 'campaign to instigate hate'. Rightwing politicians from the SVP countered by slamming Islamic values as incompatible with Christian ideals and Swiss democratic principles, adding that Muslim extremists would use mosques for criminal activities. Jasmin Hutter (SVP) justified the initiative on grounds that Islam was intolerant and repressive towards women. Another SVP politician Walter Wobmann said 'Minarets, muezzins and Sharia law have to be seen in the same context'.

Campaign in Langenthal

Already there is something of an unofficial ban on minarets as, ever since the campaign for a referendum was launched, local authorities have feared giving planning permission for any minaret construction. The Stop Minaret campaign intervened to stop the construction of a minaret in Langenthal, a provincial town halfway between Bern and Basel, where eight per cent of the population are Muslim. It registered a complaint with the canton, claiming that the proposed new mosque, with a dome and minaret, would amount to an 'ideological intrusion'. The regional canton of Bern, which has approved the plan, is being pressurised into rescinding its decision. The SVP believe that this would comprise an important victory in the run-up to the November referendum.

Campaign in Wangen

The inauguration of a mosque with a minaret in the small town of Wangen also brought protests from the 'Stop Minaret' Movement. It accused the town's Muslim community of having links with the right-wing Turkish extremist group, the Grey Wolves.

Has government campaign come too late?

The Federal Government launched a campaign against the anti-minaret initiative in mid-October stating that such a ban would violate the Swiss Constitution, endangers religious harmony and would do nothing to diffuse 'Islamic fundamentalist theories'. The Federal Minister of Justice and Police, Eveline Widmer-Schlumpf said that a ban would provoke 'incomprehension and would tarnish the image of Switzerland, which could have unfortunate repercussions on the security of Swiss institutions and our economic interests'. (*Independent* 15.8.09, *Swissinfo* 6.9.09, 7.10.09, *Middle East Online* 8.10.09, *Migration News Sheet* October 2009, *CNS News* 19.10.09)

Review: The crime of solidarity

By Frances Webber

The full 92-page booklet is at present available only in French*, which is a great pity, since its pages are packed with information about the manifold ways in which immigration control imperatives have been prioritised over humanitarian aims and imposed on institutions and individuals, and the criminalisation of those who oppose this encroachment.

The study arose from the observation by the Human Rights League that increasing numbers of French citizens were being arrested for opposing the forced removals of undocumented migrants. Tunisian journalist Sihem Bensedrine and Swiss lawyer Marco Ziegler spent eight days in France in March 2009 investigating, meeting and taking testimonies from professional bodies, trade unions, lawyers, activists as well as ministerial, prosecutorial and local government representatives. The context was the creation, in May 2007, of a new ministry in charge of immigration, integration, national identity and co-development, a priority of which was to mobilise the police and gendarmerie in the fight against irregular immigration. Rules for the entry and stay of migrants were revised at least five times, with rights of

family reunion and settlement restricted, new targets for expulsion were imposed, and the 1938 law against assisting illegal entry or stay was vigorously applied without regard for humanitarian motive.

The report is arranged in five sections: legal and administrative pressures on individuals active in protecting migrants' rights; restrictions to which migrant rights organisations are subjected at ports and detention centres; pressures on institutional and voluntary sector actors in contact with foreigners; pressures on state law enforcement officials; and the particular situation of Calais.

The immigration minister denies that any activist from a humanitarian association rendering assistance to a foreigner in distress has ever been charged. The report sets out details of a number of cases of NGO staff and activists arrested and detained for doing just that. It details arrests and convictions of activists protesting at forced deportations, sometimes on charges of interference with air traffic or rebellion, ie disobedience to orders from a police officer or gendarme. Those arrested are routinely subjected to handcuffing and degrading body searches. Air France pilots have even been threatened by the border police (PAF) when they have refused to carry bleeding or distressed deportees.

Each year, over 17,000 people are charged with 'rebellion' or with 'outrage', the offence of insulting an official in the exercise of his or her duty, which carries six months imprisonment for a first offence and twelve months for a second. Of this number, several are arrested defending migrants' rights or protesting at ill-treatment. The lesser offence of slander of public officials has also been used against those who make official complaints against the police - a development which has caused grave concern to the national body responsible for investigating complaints, which says the practice undermines its ability to function.

Next, the report describes the growth of information gathering and collation which threatens solidarity: attempts by the security services to create files on those visiting immigrants in detention, so far, warded off by protests from human rights groups; the collection of immigration status information on schoolchildren, queried by the UN Committee on the Rights of the Child. A June 2008 decree giving police massive powers to gather information on individuals and groups who may threaten public order, and on individuals who seek or obtain any significant political, institutional, economic, social or religious role, was withdrawn following widespread protest. But a ministerial circular for prosecutors on anarcho-autonomous movements included references to organisations supporting migrants such as RESF, SOS and GISTI, accusing them of incitement for their involvement in demonstrations of support for sans-papiers - which in GISTI's case led to severe



funding problems.

Migrant support organisations are also facing obstruction in their work in detention centres and airports, described in the second section of the report.

The third section describes pressures on statutory and voluntary institutions, including organisations running hostels for homeless people, whose workers face harassment and sometimes arrest when lodgers are arrested as sans-papiers; pressures on hospital staff and arrests at hospitals and even at primary schools; pressures on public sector employers and inspectors, charged with weeding out sans-papiers.

The fourth section recounts the mounting pressure on those responsible for upholding law and order - including judges, prosecutors, police and prefects - to prioritise irregular immigration, through the use of performance indicators such as statistics on arrests, convictions and expulsions, seriously compromising the independence of these bodies and (in the case of the judiciary) threatening the principle of separation of powers which is at the heart of the rule of law.

The report's final section, on Calais, refers to the paradox that, while the priority in the rest of France is expulsion, in Calais it is preventing migrants from leaving for the UK. It describes in detail the harassment of the groups and individuals involved in providing basic welfare to the migrants in their sand-dune shanties. In its conclusions, the authors reflect on the hostile climate for human rights and their defenders, the schizophrenic attitude to humanitarian groups, often stigmatised and criminalised for carrying out precisely those activities for which they receive public funding, and the weakening of the protections afforded by government watchdogs. Detailed recommendations round off this important and timely report.

Délit de solidarité: stigmatisation, répression et intimidation des défenseurs des droits des migrants. Observatoire pour la protection des défenseurs des droits de l'Homme (OMCT), June 2009.

* A copy of the full report (in French) is available at:

<http://www.omct.org/pdf/Observatory/2009/Rapport_de_mission_France_110609.pdf>

A summary of the report (in English) is available at:

<http://www.omct.org/pdf/Observatory/2009/obs_mission_report_France_eng.pdf>

The IRR European Race Bulletin is edited by Liz Fekete and compiled with the help of:
Harmit Athwal, Jenny Bourne, Norberto Laguía Casaus, Rhona Desmond, Mutlu Ergün, Imogen Forster,
Chandra Frank, Margaret Goff, Sofia Hamaz, Kate Harre, Lotta Holmberg, Vincent Homolka, Terese
Jonsson, Simon Katzenellenbogen, Richard Kirkwood, Mieke Kundnani, Richard Oliver, Elliot Perkins,
Nicole Schmiedefeld, Frances Webber and Chris Woodall.

Institute of Race Relations

2-6 Leeke Street
London
WC1X 9HS

Tel: 020 7837 0041
Fax: 020 7278 0623

Email: info@irr.org.uk
Web: www.irr.org.uk

