

1. Germany - Poland - Ukraine: The Domino Effect

1. The second outer ring surrounding Fortress Europe

In the early 1990s, when the wall surrounding Western Europe was being extended to include Central and Eastern Europe, there was already talk of a domino effect, according to which Germany's eastern neighbours would gradually pass on the pressure and their type of border regime to the next states in line. The system of readmission agreements and other inter-state arrangements made this a predictable trend. The domino effect has now entered the real world: the Polish government is now passing on to the Ukrainian government a modified form of the know-how and the pressure it itself receives from the European Union (EU), the Schengen treaty states and, in particular, the Federal Republic of Germany.

The pressure brought to bear by Western European states must be viewed against the background of an economic divide which - across a short geographical distance of approx. 750 km - is one of the most striking in Europe. Between Germany and Ukraine, the wage differential is 100 : 1, and between Germany and Poland still a hefty 10 : 1. The border regime Germany/Poland and Poland/Ukraine defines specific levels of commuter migration and regulates the informal low-wage labour markets on which declassed refugees and migrants depend. The new border regime and the amended legislation on aliens not only cement the economic hierarchy between states; in view of the expansion of the "grey" to "black" labour markets in all countries, they also produce a spectrum of exploitation forms and, as in Poland in 1996, lead to an "illegalization" of people from more distant countries.

Since neither Poland nor Ukraine are members of the European Union or among the Schengen treaty states, the ministries in charge in Germany and other EU countries seek other, and often, less formal and more direct ways of exerting influence. This is the main subject of the present chapter.

Let us commence with the expansion of the German government's sphere of operations up to the border between Poland and Ukraine. According to Germany's ministers of the interior, Poland's border with the former Soviet Union has become a "criminal geographical area", which they observe "with concern", visit, and put on the agenda of the conference of Germany's interior ministers.¹ Having spent DM 120 million between 1993 and 1996 to finance material and equipment along Poland's western border and to create a Polish administrative system for refugees and for deportation, the next item on the German government's agenda is the financing of equipment for the next peripheral ring. Following a fact-finding tour of the eastern Polish border between 24 and 27 November 1996 by the Ministers of the Interior of the German states of Brandenburg and Mecklenburg-Western Pomerania, viz. Alwin Ziel and Rudi Geil, along with the state secretaries of Berlin and Saxony, the representative of Brandenburg's Bureau of Investigation, who went along for the trip, summed up: "Until the collapse of the Soviet Union, Poland's eastern neighbour itself ensured the inviolability of its borders. Today that power is no longer present there. (...) Rough forest terrain [on the eastern Polish border] offers traffickers in illegal immigrants and criminal organizations the best

¹ Minister of the Interior, State of Mecklenburg-Western Pomerania, press office, press release dated 27 November 1996, no. 357. Cf.: Brzostowski, Andrzej: *Innenminister reist nach Polen. Gemeinsam gegen grenzüberschreitende und Organisierte Kriminalität*, in: Info 110 3/1997.

conditions for going about their 'business'. (...) All those who illegally cross that border will one day find their way into the territory of the EU - unless they are rejected at the EU's outer borders.² This is the justification given for Germany's right to take future action at advisory and financial levels along the second outer ring of Fortress Europe. Specifically, it is also a matter of smashing international escape routes. Three of these are known: the "northern route" through the Baltic, the "eastern route" from Belarus or Ukraine to Poland or the Slovak Republic, and the "southern route" via Romania.

The first visible changes were noted in the control of Poland's eastern border in 1996. The Polish border police operating there now have "mobile rapid response groups", helicopters of the Kania type and CO₂ measuring instruments for detecting people hidden in truck containers. How effective this equipment has already been, is difficult to tell. An officer at the police bureau responsible for crime prevention commented on the introduction of the CO₂ measuring instruments as follows: "I wouldn't be so sure that trafficking in illegal immigrants can be checked this way. The eastern channel [i.e. the escape route via Moscow or Kiev to Poland] is still being developed. And there's too much money at stake there for the smuggling gangs to waive this business. It is more likely that they will bribe customs officers and border guards."³ In 1996, a total of 60,000 people⁴ either were not allowed into Poland or were seized when attempting an illegal crossing of the border into Poland. However, this total does not indicate how many people were detained at the various sections along the border.

The function of the Polish-Ukrainian border is being transformed by the incipient western orientation of Ukraine. So far, the border's main function has been to mark the spheres of influence of the Polish and Ukrainian states. Now it is becoming an advance bulwark of Germany's and the EU's refugee policy, so that it is helping control migration. Relative to Ukraine, Poland is being assigned a function as bridgehead of the Western European states, although the relationship suffers from a grave historical burden.⁵ Following the collapse of the Soviet Union, however, Poland was also the first state to recognize the independence of Ukraine, and there is already talk of a "strategic

² Brzostowski, op cit.

³ Wprost, 6 October 1996. The shutting-off process is progressing, and there are various methods of illegal entry, as is shown by a report in the *Gazeta Wyborcza* dated 12/13 April 1997: 23 Afghans crossed the Ukrainian-Polish border in a helicopter with two Polish pilots and were seized in the border area.

⁴ In 1996, the Polish border police rejected 47,672 people at the border and seized over 15,000 on the grounds of attempted illegal border crossing. Of the people seized, an equal number came from Afghanistan, Iraq, Sri Lanka, India, Pakistan and China (3,364) as came from Romania, the Republic of Moldova and Armenia (3,303). [Cf.: Polish Border Guards: Chosen Topics on Combating Illegal Migration by the Polish Border Guards. Background paper. Manuscript. Regional seminar on illegal migration, organized by IOM Helsinki, Kiev, 27 to 28 January 1997.]

⁵ In past centuries, Poland was long a sort of colonial power in the area of what is now Ukraine. Relations between Poland and Ukraine are still coloured by the events of summer 1943 when, behind the advancing Soviet army, soldiers of the Ukrainian Revolt Army (UPA) entered the southeast of Poland and murdered numerous Poles; the estimates range between 30,000 and 80,000 victims. After the end of World War II, some 500,000 Ukrainians were resettled by 1946, most of them by force, from Poland to what was at that time Soviet Ukraine. In 1947, the approx. 150,000 Ukrainians remaining in Poland were forcefully resettled within Poland to the north and west of the country as part of the Vistula Operation, the official reason for this measure being the ongoing activities of armed Ukrainian groups in Poland's southeast. Cf. article by Gabriele Lesser in *taz*, 20 July 1997.

partnership⁶ between the two countries. In April 1996, the Ukrainian government officially and definitively opted for a cautious political westward orientation toward EU and NATO. This is the context within which German-Polish-Ukrainian cooperation is developing in refugee policy. Before we sketch developments in Ukraine and on the Ukrainian border in the following chapters, this chapter will deal with the impact of Germany's partition policy on the Central and Eastern European regions concerned and on developments in Poland since 1996.

Our analysis is based on experience obtained by FFM staff since October 1996 in the course of visits to prisoners held in custody pending deportation. The picture emerging from conversations and interviews with over 170 prisoners provides not only a representative overview of detention conditions in Poland, but also an insight into arrests in Germany and the day-to-day "redeployment" practice of Germany's Federal Border Police (BGS).

2. International conferences on refugee policy in Central and Eastern Europe

In the first FFM number, which appeared in 1995 already, mention was made of international conferences of ministers at which Western European governments responded to the disintegration of Eastern Europe by initiating and underpinning the creation of a *cordon sanitaire* for Fortress Europe in the so-called Visegrád states.⁷ The development of a new border regime meant more than just a reorganization of the regular police and the border police forces. On the basis of a migration policy, the ministerial conferences determined de facto which states would in future perform buffer functions and which would belong to the new periphery. This impacted on Central and Eastern European state leaders at a time when they were still carving up and distributing the estate of bankrupt Socialism. In this period of radical change, it was the importance of the informal migrant economy for the appropriation and power structures of the new and the old nationalist élites that prevented any rapid advances in repression being made by the various governments. This is why the Central and Eastern European countries were rather hesitant to start with, and why their implementation of the specifications laid down at these conferences proceeded at very different paces.

In the course of the last few years, considerable changes have occurred in the framework of the international conferences in this field. Initially, the Vienna Ministerial Conference (24 to 25 January 1991) and the smaller follow-up meetings - described collectively as the Vienna Process - were of eminent importance. The goal of the Vienna Process was to have Europe-wide political coordination of measures taken to combat illegal entry by migrants to Central and Eastern Europe. After more than 20 meetings of subordinate working groups, this international association faced up to its growing lack of jurisdiction and signs of dissolution and, in September 1994, suggested

⁶ The strategic partnership was publicly mentioned for the first in June 1996 in a talk given on the occasion of a meeting between the Presidents of the two countries, viz. Kwasniewski and Kutchma, in Warsaw. Kutchma quoted Marshal Pilsudski, according to which there can be no independent Poland without an independent Ukraine.

⁷ The governments of Poland, Czechoslovakia and Hungary, at a meeting in Visegrád castle near Budapest in February 1991, resolved closer cooperation in order to show their special status as EC-adjointing countries in the planned EC association. Since then, they have been known as the Visegrád states.

that its mandate be transferred to the Council of Europe (see below). A parallel circle, the Budapest Forum or the Budapest Group had formed at the suggestion of the German government following the Budapest Ministerial Conference (15 to 16 February 1991). The focus of this Forum is on technical questions of material and equipment for border police forces and the development of personal control systems in Central and Eastern Europe. This Forum is also used to arrange for financial support from the European Union (EU) to enhance border systems. Resources have been generously provided, e.g. by the PHARE programme of the European Commission. For the rest, one notable feature is the informal character of the Budapest Forum and the key role played by non-governmental organizations (NGOs) which, like the ICMPD,⁸ live from government contracts, design threat and surveillance scenarios, advise policy makers, and busily arrange the provision of border control technology. Down the years, the Budapest Forum has split up into numerous specialized subgroups. The last ministerial conference organized by the Forum took place in January 1993, again in Budapest, and was attended by representatives of 34 states and organizations. The next ministerial conference of this magnitude is scheduled for September 1997 in Prague.

In this connection, mention should also be made of the involvement of the International Organization for Migration (IOM), an inter-state body that is now financed by 59 governments and by private organizations and sponsors.⁹ It has long since transcended its original remit, viz. to provide refugee travel assistance on behalf of various governments. Today, the IOM not only performs "repatriations" - often resembling soft deportations - but also draws up expertises on developments in migration. Furthermore, it advises governments in Central and Eastern Europe on how to take over Western specifications in migration policy and, at international conferences on "illegal migration", gets government representatives, border police chiefs and consulting firms around one table. For example, the IOM's Helsinki regional office organized a 12-country conference¹⁰ in January at the Ukrainian capital. The subject was the elimination of the eastern passage, i.e. the refugee route leading through Ukraine or Belarus to Poland (see Chapter 2). The question was examined of how controls, searches and the system of readmission treaties could be extended.

In the first few years after 1989, the Central and Eastern European states did, in fact, hesitate to perform such bulkhead functions, since a number of internal and economic restrictions stood in the way of this dictate. Parallel to growing consultation and greater interlocking between states in recent years, however, the pace of internal assimilation is being forced. With the Polish state now being a candidate for EU membership, it is - in

⁸ International Center for Migration Policy Development, Vienna. See also: Widgren, Jonas: Multilateral Co-operation to Combat Trafficking in Migrants and the Role of International Organizations. In: 11th IOM Seminar on Migration: International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights. 26 to 28 October 1994, Geneva.

⁹ The IOM budget was some DM 400 million in 1996.

¹⁰ This had been preceded by an IOM international conference in Stockholm, 1993. The subject at that time had been how to combat the northern refugee route through the Baltic states. As a concrete result, the conference was followed by a technical cooperation project, i.e. ongoing advice given to the governments concerned for a period of two years (cf. Migration Information Programme. The Baltic Route: The Trafficking of Migrants Through Lithuania. IOM January 1997, and: Cisconf News, vol. 1, issue 3, March-June 1997, p. 6 (publ. by UNHCR, IOM and OSCE/ODIHR). The Kiev conference was attended by representatives of police forces, border guards, state migration departments and NGOs from the following countries: Armenia, Belarus, Canada, Estonia, Georgia, Latvia, Lithuania, Moldova, Poland, Russian Federation, Ukraine and the United States.

its own interest - prepared to take its Western neighbours' refugee policy on board and is trying to demonstrate its successful implementation.

Meanwhile, too, there has been a change in the bulkhead strategy for Fortress Europe. At those first international ministerial conferences in the early 1990s, the focus was on the threat scenarios of a million-fold migration following the breakup of the Soviet Union and the end of the "Iron Curtain". In recent years, police machines have elevated the struggle against so-called organized crime to the status of a leitmotif into which refugee policy, too, is now being fitted. Illegal migration is now being construed as imported crime, so that commercial refugee assistance is categorized accordingly as "organized crime". In line with this police scenario, the risk to internal security must be met by addressing the "criminal geography" and by identifying socially adjusted "control filters". Phenotypical criteria like skin pigmentation, speech, "alien" behaviour and other visible signs of foreign origin are taken as triggers for surveillance, monitoring and investigation. These features become "significant" stigmata that can be used by the police wherever whole regions and populations can be labelled with a racist definition as "cultural areas" and homogeneous "peoples".

Ultimately, an "overall European security zone"¹¹ will be constructed based on the "organized crime" scenario and on the illegalization of migration. This scenario and the matching control vision suggest the growing importance of the social policy dimension. The classification scheme used by the police and the judicial authorities, marking off the citizens of privileged or EU-associated European states, on the one hand, from "illegals", deprived of all rights, on the other, is part of a top-down change in society that has become apparent all over Western Europe in the 1990s.

With a criminological redefinition of offenders ("smugglers and traffickers") and victims (penniless refugees, women forced into prostitution), the police machines and public authorities are trying to use human rights arguments to justify and legitimize their actions, while at the same time recasting them for the purposes of the state and twisting them for repressive ends.

In view of the political and social implications of this model, and in view of its exportability and its bonding power between states, it is proper to speak of a new security concept in Europe proceeding from the Schengen treaty states.

All the same, there is no unitary legal area in "Europe as a whole" in which this concept could be simply and comprehensively employed. The readmission agreements and third-state arrangements numbering well over 100 that now form an overall European scheme of deportation and deterrence are a network of bilateral relationships between a few dozen European countries. They are supplemented by an equal number of bilateral deals providing for formal and informal legal assistance.

Only the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe combine nearly all countries in Europe, but only on such thin legal bases as the applicability of OSCE principles or the European Human Rights Convention. Both institutions look into questions of continental jurisdictions between European political apparatuses. In spite of these institutions' inherent structures, their conferences are always attended by the very same ministers and state secretaries who also get together at ministerial conferences or for the "structured dialogue" (EU conferences with membership candidates). Recently, the Council of Europe, too, has been playing a part

¹¹ See Pitschas, Rainer: *Politik und Recht auf innere Sicherheit in Europa*. In: *Europa der durchlässigen Grenzen*. Schriftenreihe der Polizei-Führungsakademie 1/1997.

in the refugee policy laid down by Western Europe - there will be talk of this later - and, in doing so, is using the human rights discussion in Central and Eastern Europe to suggest minimum asylum standards and is sketching the contours of a European security and legal area.

A mandate for Europe-wide coordination of refugee policy, such as was created by the above Vienna Ministerial Conference, was to be handed over to the Council of Europe at its 6th Conference on Migration Issues.¹² To this end, nearly all those European ministers whose departments include migration matters met in Warsaw from 16 to 18 June 1996. The discussions followed on from the specifications of the Council of Europe that had emerged since the early 1990s in working groups discussing Western Europe refugee policy. These working groups in particular had, in the previous year, engaged in advance discussions on how the construct of so-called "safe third countries" might be installed in Central and Eastern Europe as well - a development which, in the medium term, cannot fail to lead to a de facto extension of a unitary legal area of deportation and illegalization, since each state will declare its own neighbours to be safe third countries.¹³ In June 1996, the conference of the Council of Europe was the first occasion when a crucial international body looked into these questions. Specifically, the delegates discussed how "illegal entry" can be combatted, and how border surveillance, border material and equipment, and airport controls can be optimized. The security-policy angle was based on the well-known demagogic argument that the "misuse of asylum by illegal immigrants" is increasingly evoking and heightening "xenophobic feelings" in the domestic population.¹⁴ Central and Eastern European states were reminded that, since 1995/96, they can claim legislative and financial aid from the Social Development Fund of the Council of Europe in setting up refugee administrations. Also, they were urged to make use of a multilateral fund set up for the financial and logistic support of countries in Central and Eastern Europe handling deportations.¹⁵ The governments of Poland and the other Visegrád states, now potential recipients of refugees, took up their new positions in the new European order at this conference as intermediaries relative to their eastern neighbours. But they too - the go-between states - were urgently recommended by the conference to "draw their conclusions from the experience gained by Western countries in this area [i.e. refugee and migration

¹² The Migration Conference was attended by ministers from the 39 states of the Council of Europe and from Australia, Belarus, Bosnia and Herzegovina, Canada, Croatia, the United States, the Vatican, and the Federal Republic of Yugoslavia. The integration of legal migrants was as much a subject as was the combating of illegal migration.

¹³ On the European Committee on Migration (CDMH) and on the ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) of the Council of Europe, see: Factual Document on Asylum. Working Document from the Commission Services on Asylum Policy in Preparation of the Ministerial Meeting between the EU and the CEECs on 27 May 1997 within the Context of the Structured Dialogue. 17 March 1997. Annex III. These groups (CDMH and CAHAR) of the Council of Europe work in parallel with the Centre for Information, Discussion and Exchange on Asylum (CIREA) of the EU and with the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC) of the states of the west.

¹⁴ Council of Europe: Recommendation 1278 (1995) on refugees and asylum-seekers in central and eastern Europe. Item 6 vi. e.

¹⁵ Ibid., item 6 iv. Cf. the more detailed explanation in: Iwiski: Report on refugees and asylum-seekers in central and eastern Europe. Council of Europe, ADOC 7368, 6 September 1995, and Salt, John: Current trends in international migration in Europe. 6th Conference of European Ministers responsible for migration affairs. Warsaw, 16 to 18 June 1996.

policy]".¹⁶ Poland as well should at last adapt its legislation and residence controls to meet Western standards. (Similar arguments can occasionally be read in the Polish press: measures must be taken to seal the country off in order to avoid the racist attacks that have occurred in Germany or France.) In view of the memories of the police raids carried out during the National Socialist occupation, and in view of the gap between Socialist state and population in the post-War period, it is not so easy for people there to adopt repressive measures.¹⁷ However, one new control instrument has been approved by the Polish government and, in the meantime, by the Polish parliament, the Sejm, as well. From January 1999 on, new identity cards will be issued with photo and signature entered by laser printing - just like German identity cards. All personal data are also noted in a bar code. The identity card replacement scheme is to be completed by the year 2005.¹⁸

In addition to the ministerial meetings, the conferences of the IOM and the Council of Europe, NATO, too, has begun to take action in coordinating governmental refugee policy - taking particular account of Eastern Europe. In Warsaw, a seminar of the NATO North Atlantic Cooperation Council was held on 16 and 17 September 1996 on the "Economic Aspects of the Impact of Migrations and Refugees on State Security". Unlike the Council of Europe conference, this meeting was also attended by representatives of most of the states that have emerged from the Soviet Union and former Yugoslavia and have not yet become members of the Council of Europe. The background for NATO's interest may be sought in the social policy-based redefinition of military concerns in Eastern Europe. Since 1989, military policy in Central and Eastern Europe has been geared less toward a threat from outside than to domestic-policy issues. With a view to extending its sphere of operations in migration policy, NATO may be exploiting the circumstance that border controls in most Central and Eastern European countries have been a military affair since the time of the Warsaw Pact. In the early 1990s, the military, i.e. conscripts as well as the regular army, were given the job of preventing the illegal entry of migrants and refugees.

3. Cross-border police cooperation and law enforcement in Poland

The agreements signed by Germany with Central and Eastern European countries on "combatting organized and serious crime" have - as is suggested by quite a number of reports - led to unbureaucratic bilateral collaboration in the area of police interrogations, forensic inquiries and other simple investigations. Since the emergent democracies of the former Eastern Bloc have comparatively few sets of rules on cross-border police cooperation, and since Germany is holding out some prestigious control technology as bait, Western authorities are welcome guests in informal contacts under these basic

¹⁶ FAZ, 19 June 1996

¹⁷ Even the FAZ (19 June 1996) points out that "strict residence controls [...] in a country [like Poland] that has just rediscovered its freedom, are not exactly popular". Evidence of this may be seen in the protest note that Jaroslav Moyseyuk, temporary director of the migration and refugee department of the Polish Ministry of the Interior, handed over to the FFM on 10 February 1997. On 11 November 1996, within the scope of a Bonn press conference, the FFM had presented a report on the implications of Fortress Europe for Poland in which - in German - there was talk of September house raids in Warsaw suburbs. Jaroslav Moyseyuk rejected this account, since *apanka*, the Polish word for raid, is associated, in Poland at least, with the period of World War II.

¹⁸ Gazeta Wyborcza, 23 May 1997.

agreements. "Curiously enough, the treaties allow more in the way of police cooperation than the links that have evolved over decades with most Western European countries", says Jörg Wolters, senior officer at Germany's Federal Office of Criminal Investigation (BKA).¹⁹

Against the background of numerous informal cross-border contacts between authorities, the "Agreement on Cooperation between Law Enforcement Authorities and Border Police Authorities in Border Areas" signed by the German and Polish governments on 5 April 1995 can be viewed as a legalization of existing practices. Important "ice breaker functions" - to quote German police jargon - have been performed by the regional agreements between the state police forces of Mecklenburg-Western Pomerania, Brandenburg and Saxony, on the one hand, and neighbouring district police forces in Gorzów, Jelenia Góra and Ziolona Góra, on the other.²⁰ The aim was to have joint German-Polish offices in Frankfurt/Subice, Görlitz/Zgorzelec and Guben/Gubin.

A new quality, viz. an extension to the German police forces' area of operations in the direction of Poland, is the aim of an agreement announced by Manfred Kanther, Germany's Federal Minister of the Interior, in Warsaw on 10 April 1997: "The objects include the setting up of joint investigatory and monitoring groups, the formation of joint operational bodies and command centres, the creation of mixed offices, (...) the establishment of a special border police reporting service for unlawful migration and human trafficking, and the exchange of border police liaison officers."²¹ This would enable German agencies already operating in Poland and other Central and Eastern European countries to considerably extend their radius of action, viz. the Federal Office of Criminal Investigation (BKA) with its OA 31 section ("Trafficking"), the Federal Border Police (BGS) with its central office for combatting illegal entry, and the Federal Office for the Recognition of Foreign Refugees (BAFL).

Individual cases of cross-border cooperation between police forces and prosecutors came to the notice of FFM staff observing court trials in Poland. At a district court trial (file no. 4 Ds 5454/95) against 29 Macedonians, Kosovo Albanians and Poles at Szczecin in May/June 1996, which ended with prison sentences, German border police officers, too, were present in the courtroom. Most of the defendants were seized by the German border police in autumn 1995 and handed over to the Polish border police, who arrested them and initiated inquiries. The basis for this action was Art. 288 of the Polish Criminal Code which, in its former Socialist wording, made it a punishable offence to "leave the People's Republic of Poland without permission", and Art. 276 (in force since 20 November 1995), which provided for draconian sentences as penalties for anyone forming a criminal association, a term which also covers organized assistance in "unlawfully leaving" the country.²² The German border police officers from the

¹⁹ Wolters, Jörg: *Aspekte der internationalen polizeilichen Zusammenarbeit in Ost- und Westeuropa*. In: *Europa der durchlässigen Grenzen*. Schriftenreihe der Polizeiführungsakademie 1/1997, p. 33. The above remarks must be qualified to the extent that sovereignty, cultural and language problems are still the major obstacles to the development of such cooperation.

²⁰ Märk. Oderzeitung, 18 September 1996; Tagesspiegel, 20 September 1996; Märk. Oderzeitung, 20 September 1996; Der Spiegel, 17 February 1997; Stuttgarter Zeitung, 18 March 1997

²¹ Press office of Germany's Minister of the Interior: *Das Bundesministerium des Innern informiert*, Warsaw, 10 April 1997

²² The subject of the trial before the Third Criminal Division of the district court in Szczecin involved some everyday travel by friends, children and grandchildren of the "guest worker"

Löcknitz border police inspectorate - the same agency that had seized the defendants - confirmed that the prosecution in Szczecin was a product of German border police investigations.²³

In the course of multilateral police cooperation, Europol - created from the former European Drugs Unit (EDU) in The Hague - have already had "project teams" with an international composition playing an active role in combatting refugees. These "teams" draw up strategic analyses and carry out concrete investigations in Eastern Europe as well directed against so-called organized crime in the field of "illegal immigration". Investigations and "measures" taken by the EDU against a group of Indian refugees, who were seeking to reach the West via Eastern Europe and had no connection at all with drug trafficking, recently led to 22 detentions.²⁴ These EDU operations are illegal. In recent months, they have attracted parliamentary criticism as well, since they have no statutory bases whatsoever. Finally, there is the press release announcing a trilateral border guard and police coordination group involving Germany, Poland and Ukraine, which is said to have started work in early 1996.²⁵ This group was called into being in order to coordinate "operations against illegal migration from East to West". No details are available about the frequency of their meetings or about their actual jurisdiction.

4. Police Raids in Poland

Roughly since 1996, there have been pinpointed searches for organized refugee groups in Central and Eastern Europe.

At about the same time as the above Warsaw conferences, extensive operations were undertaken by the Polish police and border guards: the arrest of Romanian Romany people, the media-effective burning of their huts and belongings in the middle of Warsaw and their subsequent deportation in July 1996²⁶ launched a series of house searches directed mainly against people from Asian countries. Simultaneously, there was a change in the detention procedures at the eastern Polish frontier, with those arrested being threatened more and more often with direct deportation. As suggested by the statistics, many refugees immediately filed asylum applications. In August alone, the number of applications leapt to 700²⁷ - nearly as many as had been recorded in a whole year until then. From 18 September 1996 on, extensive house searches were carried out in Warsaw suburbs, where refugees in transit had been temporarily housed. Even more extensive operations by police and border guards - ending with a total of 400 to 500 detentions - took place in Wola Przypkowska near Tarczyn on 18 September 1996, in Lomianki on 21 September 1996, Lajski near Legionowo on 28 September

generation now at home in Germany from the former Yugoslavia. Shuttling between Skopje and Berlin, between Pristina and Hanover had never been a problem for the young people, until 1992, when compulsory visas were introduced for stays in Germany.

²³ See Frankfurter Rundschau, 5 July 1996, article "*Statt Stempel im Paß Abschiebung in den Knast*"

²⁴ Storbeck, Jürgen: *Entwicklungstendenzen bei Europol*. In: *Europa der durchlässigen Grenzen*. Schriftenreihe der Polizei-Führungsakademie 1/1997, p. 85

²⁵ New Europe, 15 October 1995

²⁶ Polityka, 27 July 1996

²⁷ Ministry of the Interior and Administration, Department for Migration and Refugee Affairs: *Asylum Seekers in Poland*. (The Number of Decisions, Countries of Origin.) Unofficial Estimate. Manuscript. Regional seminar on illegal migration, organized by the IOM Helsinki, Kiev, 27 to 29 January 1997.

1996, and at the Legionowo railway station on 30 September 1996.²⁸ Apart from a few exceptions, the state authorities no longer accepted asylum applications - as we were able to establish later - or they misled the detainees as to their applications. Still, people from other continents do not yet generally have to reckon with checks on city streets, in subways, buses and trains, on construction sites or at other workplaces. The police raids, which continued after those in September, have their obvious focus on the above Warsaw suburbs. They mainly target Romany people and people from other continents. In transit, the latter are often dependent on commercial escape agents, which is one more reason why they are targeted more quickly by international searches. Unlike these specifically endangered groups, Eastern European commuter migrants do not have to reckon with checks, let alone sanctions. They may enter legally or quasi-legally - CIS nationals do not require a visa to enter Poland, but do need an "invitation" which can be bought on the black market - and if they exceed their legal length of stay, this type of illegality is no great problem for them: The economic importance of the migrants and the hundreds of thousands of small traders, who mostly come via Ukraine to Warsaw and the huge market at the Dziesiciolecia stadium, was mentioned in our first FFM number already. The present situation in Poland may be summed up briefly as follows, therefore: In our view, the September raids in the year 1996 show that the Polish government, in the aftermath of the international Warsaw conferences, is seeking to demonstrate its ability to act in combatting the illegalized transit of refugees. All the same, it is still a good way short of full ground coverage or dragnet-like practices. Such measures do not fit into economic policy calculations yet and, in view of the mentality of state and society in Poland, cannot be feasibly based on the "German model" in the foreseeable future.

5. Normal detention and custody pending deportation in Poland

The news of the 1996 September raids prompted us to take stock of the detention situation as it affects refugees in Poland. The following circumstances can lead to people being taken into custody at present:

- searches by police or border guards in residential areas
- checks in areas near borders (illegal border crossing)²⁹
- redeportation from Germany, handover of refugees to Polish border guards

Custody can be followed by completely different measures taken by the police or prosecuting authorities:

- unconditional release
- release with an "administrative visa" stamped in the passport (order to leave the country)
- deportation or transit deportation by border guards to an Eastern European neighbour within 48 hours
- custody pending deportation, followed by deportation or release
- detention awaiting trial, criminal proceedings, imprisonment for illegal border crossing³⁰

²⁸ Warsaw Voice, 29 September 1996; Gazeta Wyborcza, 1 October 1996; Gazeta Stoieczna, 1 October 1996; Wprost, 6 October 1996.

²⁹ Some 15,000 people were seized because of illegal border crossing in 1996.

The decisions taken by specific authorities often look arbitrary. As a rule, expressing a desire to apply for asylum is no protection against custody. Sometimes, the decision on custody or release is taken against the background of tactical investigations. In our visits to prisons or units for people kept in custody pending deportation, we noted that Southern Europeans tend to be confronted with the construct of organized crime, whereas custody pending deportation appears to be the fate mainly of refugees from other continents.

At present, there are 25 units for people kept in custody pending deportation with 425 places, construction being financed by the German government.³¹ Since September 1995, legal³² and de facto preconditions have been in place for max. three months' custody pending deportation, and full use has been made of the custody option since the police raids in September 1996. Four of these custody units are operated by border guards,³³ and 20 by district police forces in their main buildings.³⁴ There is one special deportation prison ("Guarded Camp") situated near the Warsaw airport at Lesznowola near Grójec, managed by the Radom district police.

Since October 1996, FFM staff have visited some 170 people held in custody pending deportation, viz. in Elblag, Konin, Pila and Lesznowola, and we published the reports on the custody situation in the first three of these centres on 11 November 1996 (see below). Lesznowola, in view of its proximity to Warsaw airport, is a special deportation prison and is described briefly in what follows. Located on the guarded terrain surrounded by a three-metre-high fence are two renovated former barrack buildings (cost of the conversion: DM 1.5 million), in which 150 people are being housed at present. As a guarded camp, Lesznowola is considered by the letter of the law governing aliens to be a softer form of custody pending deportation. In reality, this means that pregnant women and nursing mothers, too, as well as children accompanying their parents are detained there. Detainees report that the prison regime is very restrictive. Although the prisoners have freedom of movement inside the building, access to the courtyard is confined to one hour a day. This is a major problem

³⁰ We researched the situation in the prisons of Stargard Szczecinski, Goleniów and Kamien Pomorski. The sentences for this offence according to the amended Art. 288 of the Polish Criminal Code, March 1997, varies between a fine and two years' imprisonment and, where a border is crossed by an organized group, from one month to three years (cf. *Gazeta Wyborcza*, 26 March 1996). The central criminal records in Poland's Ministry of Justice contain 1,281 convictions in 1995 under this Article, compared with a total of 3,994 in the years 1993-95. Since March 1997, assistance in an illegal border crossing has explicitly been an offence punishable with three months' to five years' imprisonment. For commercial assistance from an escape agent (as a regular source of income) the sentence is one to 10 years.

³¹ See answer of the Federal government to a Minor Interpellation in the Bundestag by the member Ulla Jelpke, Printed Paper 13/6030 dated 21 November 1996.

³² Art. 16.1 of the Poland's Foreigners Act, as amended on 24 March 1995 (in force since September 1995), provides for custody pending deportation: If it proves impossible to transport a foreigner directly to the border, and if there are reasonable grounds for fearing that the foreigner might escape execution of the deportation arrangements, the public prosecutor may order detention in a guarded camp until the decision can be implemented. Art. 16.2: If there are reasonable grounds for fearing that the foreigner will not submit to the internal rules and arrangements of the guarded camp, he can be held in custody pending deportation until the decision on deportation can be implemented.

³³ In Jelenia Gra, Nowy Szcz, Szczecin and Wabrzych.

³⁴ In Biala Podlaska, Bielsko-Biala, Chem, Elblag, Gdansk, Jaworzno, Katowice, Konin, Lublin, Nowy Szcz, Opole, Ostrolek, Pila, Piotrków, Trybunalski, Suwaki, Torun, Tychy, Warszawa I, Warszawa II, Wroclaw.

particularly for families with children. There are no facilities for individual cooking, and gastric and intestinal disorders are common.

In general, prisoners who apply for asylum when or after they are taken into custody have no written evidence of their application, so that they must fear deportation. On our visits, the police officers who had custody of the detainees we visited produced lists of detainees with a special column indicating whether a particular detainee was an asylum seeker or not. With few exceptions, they were listed explicitly as non-asylum seekers - although the questioned prisoners themselves believed that they had filed an application. Since the Polish authorities were unwilling to give any explanations for this contradiction in spite of several requests, we resolved to go public with a detailed report on the impact of Fortress Europe on Poland and about the situation in the deportation prisons we visited. The following excerpts may be quoted from the statement published on the occasion of the press conference that the FFM held with Claudia Roth and Ulla Jelpke in Bonn on 11 November 1996:

"On 16 and 17 October, we were able to visit a total of 122 people held in custody pending deportation in three Polish deportation units (Konin, Pila and Elblag). We spoke with them for a total of 17 hours without the presence of the police. Summarized, the situation was as follows:

"1. All 122 detainees were men from Asian countries (Bangladesh, Afghanistan, Pakistan, India, Sri Lanka - one exception: a detainee from Liberia). 101 of those visited were detained in a major raid carried out near Warsaw on 18/19 September. 21 of those visited had been deported from Germany by the German border police in accordance with the readmission agreement.

"2. According to the police agencies in charge, only six of the 122 detainees had a possibility of filing an application for asylum (three Tamils, two Afghans and one Liberian), although all 122 assumed that they had filed an application. The translators present during the 5- to 15-minute interrogations at the public prosecutor's office had presented an order for custody pending deportation written in Polish, stating that this was in fact an application for asylum [...]. The fact that we heard such accounts in several deportation units that agreed even in details suggests that the refugees were being misled by the state agencies.

"3. None of the detainees was aware of the nature of the detention (custody pending deportation). Nobody had notified them of their rights and protest options. No clergy or support organizations are available to look after them. Apart from the wardens, there are no contacts with Polish nationals. The police agencies in charge have no interpreters.

"4. Besides the public prosecutor's offices, responsibility for the prison situation lies with the Warsaw Refugee and Migration Office. This is the Polish office that accepts, processes and decides on applications for asylum [...]. By the time of our visit, no representatives of this office had been in touch with the detainees at the deportation units we visited.

"5. Nor had the UNHCR, which has an office Warsaw, been seen in the deportation units we visited, although many of the refugees had sent letters to the organization asking for help. Owing to incomplete addresses, some of these letters were returned to sender."

Following the press conference, representatives of the Warsaw Refugee and Migration Office announced that the detainees we interviewed would be included in their lists as asylum seekers. As far as the FFM was able to find out, the visited detainees were set

free in December 1996 or transferred to refugee facilities after the expiry of three months' custody.

On a later visit to detainees in Lesznowola, too, we encountered similar contradictions as regards their applications for asylum. However, very shortly after our visit, there was an asylum hearing for the detainees we had visited.

It must be added that detainees redeported to Poland from Germany spoke of infringements by the German border police. They had been threatened because they were unable to state which countries they had travelled through. For the border guards, such facts are important, since they enable them to redeport the refugees to Poland or the Czech Republic in accordance with third-state arrangements. One detainee told us during our visit to Pila on 17 October 1996: "We were arrested in Germany on 17 September [1996], and were in Poland on 20 September. [...] They [the border guards] wanted to know where we had come from and what route we had taken. I told them that we had come with seven people in a truck. They asked whether we had crossed a river. I answered that I hadn't seen any river. Then they wanted me to sign a piece of paper. They said it was what I had stated. I couldn't read it, because it was in your language. I said that I didn't know what was written there. They then threatened to beat me if I didn't sign. [...] One officer came with the holy book of the Muslims and said I was to swear on the Koran that I had told the truth."

6. Readmission agreements and deportations from Poland

The Polish government has concluded readmission agreements with the following Central and Eastern European countries: Belarus, Bulgaria, Croatia, Czech Republic, Hungary, Moldova, Romania, Slovakia and Ukraine. These agreements enable not only "one's own" nationals to be taken back if they have been seized in Poland without a residence permit, but also citizens of third states who travel through those countries and then through Poland as transit countries.³⁵ In Lithuania's case, the redeportations are carried out on the basis of treaties governing "good neighbourliness and friendly relations". In spite of the deportation and redeportation practice from Poland to its eastern neighbours, Polish laws do not yet contain the new Schengen legal termini "safe third country" and "manifestly unfounded" applications for asylum. Only when the new Polish Foreigners Act is passed - it may come into force on 1 January 1998 - will Ukraine become a so-called safe third country for Poland, although the Ukrainian government has not signed the Geneva Convention. Domino deportations, already a reality - from Germany via Poland to Ukraine - will then have a solid legal basis in Poland.

To ensure smooth deportation processes, regional cooperation agreements are being concluded between ministries of the interior, so that there are direct lines of communications between neighbouring border police forces.³⁶

In 1996, 3,285 people were deported from Poland, i.e. 53 % more than in 1995. 306 people were taken by plane directly to their various countries of origin.³⁷ In 1996,

³⁵ Only the Polish-Bulgarian agreement does not provide for citizens of third states to be readmitted. See Kaczyski: Readmission agreements concluded by Poland. In: Polish-German Seminar on International Law. Cracow. 4 - 10 May 1997.

³⁶ Cf. the Antimigration Convention between Poland and Ukraine dated 4 October 1996.

³⁷ These and the following data from: Polish Border Guards: Chosen Topics on Combatting Illegal Migration by the Polish Border Guards. Background paper. Manuscript. Regional seminar on

Polish border guards deported 1,860 people to Ukraine, viz. 484 Ukrainians and 1,376 people from other countries.³⁸

In 1996, one third of all refugees redeported by the German police guards to Poland who had used Poland as a transit country during their flight (*third-state nationals*) were again redeported by the Polish authorities to Poland's eastern neighbours or via Warsaw airport to their countries of origin, most of them within 48 hours of being arrested³⁹ - after 48 hours they would have had to be produced to the public prosecutor's office in order to have their detention extended.

On 27 June 1997, there was a serious accident in one of these rapid domino deportations. A Polish police bus that had taken 17 refugees from Germany's border police was involved in an accident near Ropczyce in Rzeszow district after a 14-hour non-stop trip from the German border in the direction of Ukraine. The driver, apparently suffering from fatigue, left the road. Two refugees died, and most of the rest were injured by loose metal braces on the loading surface. The bus was a truck fitted out with make-shift benches.⁴⁰

A further one third of all people from other countries redeported by the German border police to Poland succeeded in filing an application for asylum in Poland: 1,391 refugees expressed their wish to apply for asylum directly to the Polish border guards, and 305 to the authorities in charge in Warsaw. The fate of the remaining one third redeported by the German border police to Poland is unknown. The figures available from the authorities for the year 1996⁴¹ suggest what happened, e.g., to the Armenians and Moldovians following their arrest: 1,010 Armenians were seized in Poland on the grounds of having illegally crossed a border (682 following redeportation by the German border police, 328 in a wave of arrests by the Polish border police). 87 were refused asylum in Poland; only four were recognized; 130 went underground during the proceedings. 15 Armenians were deported to Belarus, 75 to Ukraine. 1,067 Moldovians were seized on the grounds of having illegally crossed a border (848 after redeportation by Germany's border police, 219 in a wave of arrests by the Polish border guards). One refugee was granted asylum; 14 went underground during the asylum proceedings; 442 were deported to Ukraine. The fates of these domino deportations can be traced using the statistical material for refugees from more than one dozen different countries of origin.

illegal migration, organized by IOM Helsinki, Kiev, 27 to 28 January 1997 - Direct deportations to the various countries of origin by plane: India: 171; Bangladesh: 49; China: 44; Turkey: 16. Smaller groups were deported to other countries.

³⁸ Of this total, 442 came from Romania, 349 from Moldova, 168 from Bulgaria, 59 from China, 75 from Armenia, 22 from the Russian Federation, 20 from Turkey, 17 from Azerbaijan, 15 from Iraq, 209 from other countries.

³⁹ 9,655 persons were redeported to Poland by German border guards in 1996. Of this total, 4,848 were so-called third-state nationals from Germany and 61 third-state nationals who were first deported from other countries to Germany and then further redeported to Poland. The Polish border police applied for administrative visa from the district in charge against 1,769 of the 4,848 redeported persons, i.e. an expulsion, and produced 602 redeportees to the public prosecutor's office for the purpose of pronouncing custody pending deportation. The Polish authorities redeported a total of 1,453 of the 4,848 redeportees. The largest group of the redeportees from the Federal Republic of Germany in 1996 were people from Moldova (848), followed by Armenians, then Afghans and refugees from Sri Lanka.

⁴⁰ Gazeta Wyborcza, 28 June 1997; Rzeczpospolita, 28 June 1997

⁴¹ Polish Border Guards, op. cit., and Ministry of the Interior, Office for Migration and Refugee Affairs: Poland: Statistical Data on Migration 1990-1996. Warsaw, May 1996.