

# Germany

**IHF FOCUS: Peaceful assembly; ill-treatment by law enforcement officials; religious intolerance; intolerance, xenophobia, racial discrimination and hate speech; citizenship; protection of asylum seekers and immigrants.**

Major concerns involved the treatment of aliens, both by German authorities and extreme nationalist groups. New regulations on the status of foreigners who had been living for many years in Germany (*Altfallregelung*) brought about improvements for many aliens, but these changes were deemed disappointing by human rights organizations. Excessive use of violence during forced deportations of unsuccessful asylum applicants raised grave concerns, as did the rise in racially motivated violence, particularly in the eastern federal states, and the response of authorities. Germany also failed to fulfill UN recommendations regarding its reservations to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child. Other concerns included ill-treatment by law enforcement officials, and restrictions on the right to peaceful assembly and religious tolerance.

## Peaceful Assembly<sup>1</sup>

In a case dating back to 1995, the Munich Administrative Court in January 1999 ruled illegal the Bavarian police ban on demonstrations in July 1995, during the visit of the Chinese President Jiang Zemin. The court stated that the local government had to respect the freedom to demonstrate. At that time, the police had parked a bus between the visiting politician and the demonstrators who had a permit for their assembly, in such a way that it significantly reduced the protest's effect. The Ger-

man section of Amnesty International filed a suit against violations of the right to demonstrate, fearing that the same tactics would be used also in the future. The local government tried to justify the action as a protective measure on behalf of the visiting politician.

During Zemin's visit to Germany in 1995, many cities restricted the right to public assemblies.

## Torture, Ill-Treatment by Misconduct Law Enforcement Officials

■ According to Amnesty International, police officers in Heldrungen, Thuringia shot dead a tourist on 27 June. The 62-year-old man from Cologne, referred to in the German press as Friedhelm B., was reportedly on a walking holiday in Saxony and Thuringia. He stayed overnight in a hotel in the town of Heldrungen. Four plainclothes police officers from the town of Nordhausen came to the hotel late in the evening of 27 June in response to a telephone call from an employee of the hotel, who, after seeing a crime program on television about a wanted murderer, claimed that a person of the same description was in the hotel. At around 11P.M. the owner of the hotel reportedly knocked on Friedhelm B.'s hotel room door while the four police officers hid from the man's direct line of sight. There was reportedly a struggle between the police officers and the guest, who, after closing his hotel room door, was shot at through the door by two of the police officers. The two police officers were suspended from duty. A special police detachment arrived approximately 70 minutes later and broke down the hotel room door to find the man lying dead on the floor. Only then did the police officers call for an ambulance, which reportedly

<sup>1</sup> Based on Amnesty International German Section, "ai gewinnt Prozeß gegen bayerische Staatsregierung – Urteil stärkt das Demonstrationsrecht," press release, 22 January 1999.

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arrived at around 2 A.M. Amnesty International was informed that an investigation into the fatal shooting of Friedhelm B. had been initiated.<sup>2</sup>

## Religious Intolerance

The status of non-Christian religions – Islam as well as the so-called sects – varied greatly in different federal states. The German constitution provided freedom of religion, but in practice various religious groups enjoyed different privileges on the basis of whether or not they enjoyed the status of a juridical body. Several minority religious groups have applied for this status but have not achieved it – a fact on which much minority criticism was focused also in 1999.

While the discussion surrounding the work of the German Federal Parliament's Enquete Commission on "so-called sects and psycho-groups" seemed to be largely forgotten by some of the government of the federal states, action against minority religious groups was also taken in 1999.

■ On 1 July, the committee on legal affairs of the Berlin parliament decided not to rent any public premises in the capital to religious or ideological associations "with conflict potential," or to "psycho market offerers."<sup>3</sup>

In this case, and some others, labeling some religious groups "dangerous" appeared to be the way to circumvent the constitutional guarantees for religious freedom. This happened despite the fact that the Enquete Commission in its 1998 recommendations was not able to confirm the assumed "danger" presented by "so-called sects and psycho-groups."<sup>4</sup>

Jehovah's Witnesses had their complaint pending in the Constitutional Court in Karlsruhe against the decision of the Federal Administrative Court not to grant them status as a juridical body.<sup>5</sup> The court was expected to decide on it in mid-2000.<sup>6</sup>

## Islam<sup>7</sup>

The problematic status of Islam – the third largest religion after the Catholic and the Protestant Churches – was reflected in the attitudes of authorities towards the instruction of Islam in state schools. One factor hindering progress in this field was the absence of a centralized Islamic body to be recognized as a religious body according to constitutional provisions, but rather many, partly disagreeing, Islamic groups. As a result, Islam did not enjoy the privileges of those religious communities which had juridical status.

Generally, there seemed to be consensus in favor of Islamic religious education in

<sup>2</sup> *Amnesty Internal Concerns in Europe, July–December 1999.*

<sup>3</sup> *Abgeordnetenhaus von Berlin, Drucksache 13/4185, "Mitteilung – zur Kenntnisnahme – über keine Nutzung von Einrichtungen, an denen das Land Berlin unmittelbar oder mittelbar beteiligt ist, durch konfliktträchtige religiöse bzw. weltanschauliche Organisationen oder Psychomarktanbieter, Berlin, 12 October 1999.*

<sup>4</sup> *Gerhard Besier, "No Room for Small Religious Communities. Berlin Wants to Refuse Public Premises to Ideological Organizations and Suppliers to the 'Psycho-market'," Die Welt, 7 August 1999, distributed by Human Rights Without Frontiers, 20 September. See also IHF Annual Report 1999.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Human Rights Without Frontiers, 12 April 2000.*

<sup>7</sup> *Based on Süddeutsche Zeitung, "Koran Lessons: the Discussion about Islamic Lessons Actually Concern the Status of the Religion," 17 June 1999, distributed by Human Rights Without Frontiers, 3 August 1999.*

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schools, but the forms of instruction varied greatly among the federal states. For example, in North-Rhine-Westphalia regular lessons were given during school hours in the German language and according to German syllabuses by German-speaking Muslims. In Baden-Württemberg, Schleswig-Holstein and Saarland, the Turkish consulate provided teachers giving religious education as part of voluntary native language lessons. In Bavaria, on the other hand, teachers from Turkey were employed to give instruction and supervise the teaching materials.

The issue sparked lively discussion also in other federal states, but no universally acceptable solution was found. The Baden-Württemberg model was strongly criticized by some Muslim associations because of the strong element of state control, and the Bavarian model was criticized by some Germans on grounds of its Turkish influence. The ministries of education and cultural affairs blamed the lack of centralized negotiation partners among the Islamic groups for the failure to develop a consistent national policy. As a result, many Muslims preferred to send their children to Koranic schools whose contents and teachers were not being subject to state supervision.

Organized Muslim groups became increasingly vocal in the search for new solutions. In Hesse, for example, the Islamic Religious Body of Hesse (IRH), an association of Muslims with different tendencies, applied and was granted recognition as a religious body. However, the membership of some conservative Islamic groups such as Milli Görüs in the IRH, who insisted on wearing a headscarf and promoted polygamy remained a matter of contention.

In November 1998, the Turkish Islamists attained recognition as a religious body before the higher administrative court in Berlin, and planned to start giving Islamic instruction in the school year 1999-2000. A number of other Islamic associations had filed a suit for recognition as religious organizations and their cases were pending.

There were, however, xenophobic voices, also among politicians, against Islam.

■ Christian Social Union (CSU) representative Max Strehle (Augsburg) caused an upset when submitting to the Munich committee of Municipal Questions and Internal Security an amendment requesting a modification of the Bavarian building regulations, so that “the Christian, western character of Bavaria does suffer unreasonable disturbance by the erection of Islamic mosques and minarets and by the Islamic call to prayer.” Strehle called upon the government “to use every legal possibility within the framework of the constitutionally confirmed freedom of celebrating religion” in order to bring about a change. The amendment led to heated debates on the right to religious freedom.<sup>8</sup>

## **Intolerance, Xenophobia, Racial Discrimination and Hate Speech<sup>9</sup>**

Xenophobia and racism appeared to be on the rise in Germany. In proportion to the population, by far the largest number of violent incidents were recorded in the so-called new federal states, i.e. former East Germany. Moreover, the authorities there appeared to be playing down the problem. The IHF believed that the negligence of eastern law enforcement officials towards racially motivated violence had its roots at

<sup>8</sup> “An MP Wants to Impede Mosques and Minarets, Max Strehle Applied for an Amendment to the Building Regulations, *München Merkur*, 29 January 1999, distributed by Human Rights Without Frontiers, 5 March 1999.

<sup>9</sup> Unless otherwise mentioned, based on *Antifaschistische Aktion, Ethnische Säuberungen in Berlin und Brandenburg 1998–1999, 1999.*

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least in part in the inappropriate training of police officers during the socialist era. In the western part of Germany, where racially motivated incidents also occurred in great numbers, the police had clearly developed experience over a long period enabling them to react appropriately.

The UN Committee on the Elimination of Racial Discrimination recommended in 1997 that Germany, under articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopt a “comprehensive Anti-Discrimination Law” and introduce a mechanism on the implementation of the Convention in Germany. This had not happened as of the end of 1999. Nor did Germany make a declaration under article 14 to guarantee refugees and members of minorities access to individual appeal procedures regarding discrimination and to claim compensation – a concern also expressed by the UN Committee under article 6 of the convention.<sup>10</sup>

In 1998-1999, the local NGO *Antifaschistische Aktion* collected information on hundreds of cases in which extreme rightist youth groups targeted verbally or physically dark-skinned or other foreigners, insulting them and attacking them with baseball bats or other weapons, beating them or setting foreign-owned small enterprises, particularly snack bars and restaurants, on fire.

Between January and the end of June 1999, *Antifaschistische Aktion* recorded over 70 racially-motivated violent attacks against individuals in Brandenburg (a new federal state) alone. This figure was three times higher than the number published by the Ministry of Interior. The Center for Democratic Culture (*Zentrum für Demo-*

*kratische Kultur, ZDK*) estimated that, in reality, the number of racist incidents was nine times higher than the official figures due to unreported cases.<sup>11</sup>

■ On 20 February, an arson attack was carried out on a Turkish snack-bar in Neuruppin (Brandenburg). The two-story house was destroyed in the blaze.

■ On 20 April, the birthday of Adolf Hitler, some 20 Germans walked through the streets of Cottbus (Brandenburg) shouting Nazi slogans. The police did not intervene until the demonstrators started to damage property and attack passers-by. Three of the perpetrators were arrested.

■ On 29 September in Frankfurt an der Oder (Brandenburg), an Indian asylum seeker was attacked by some 15 Germans in front of a supermarket. Several of them beat the man so severely that he had to seek medical care. One suspect was later sentenced for drunken and disorderly behavior. The court did not consider the incident had been racially-motivated in character.

The police appeared to play down the problem, often claiming that the attacks were not racially motivated unless there was very clear evidence to that end, such as perpetrators shouting racist slogans and identifying themselves directly as extreme rightists. *Antifaschistische Aktion* claimed that the police in Berlin systematically refused to report such incidents to the press – with the exception of the most spectacular cases – although the city was a center for right-wing violence. Also the city council spokesperson stated that there were no problems with the right-wing scene in Berlin. Such statements appeared to stem from concern about repercussions in the

<sup>10</sup> *Pro Asyl, “15 June 1999 – 30th Anniversary of the Convention against Racial Discrimination,” press release, 14 June 1999.*

<sup>11</sup> *Antifaschistische Aktion, “To Be Is to Be Noticed,” Ethnic Displacements in Berlin and Brandenburg in 1998/1999, 1999.*

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local economy if right-wing centers were represented in the media in a negative light. At the same time, public funding for NGOs aiming to help racially targeted foreigners was cut.

■ Following an attack on the Jewish cemetery at Berlin-Weissensee on the German National Day on 3 October, authorities called it a politically motivated rather than an anti-Semitic incident.<sup>12</sup>

Some politicians expressed openly racist opinions.

■ In the context of the 1999 election campaign for the House of Representatives, Mr. Schönbohn (CDU), then senator of the Interior in Berlin, declared that some parts of Berlin could no longer be counted as belonging to Germany because of their large non-German population.

## Citizenship

A new law to replace the 1913 law on citizenship was adopted in May and came into force on 1 January 2000. Its grants entitlement to naturalization to foreigners who have legally resided in Germany for at least eight years (formerly 15 years); to underage foreigners who were born in Germany and whose parents have legally resided in Germany for at least eight years and have an unlimited residence permit for at least three years; and foreign spouses of German nationals having three years legal residence in Germany. The basic condition for naturalization of all the above-mentioned individuals is the fact that they are able to support themselves and have no criminal record.

<sup>12</sup> *Antifaschistische Aktion*, "Brochüre über ethnische Säuberungen in Berlin und Brandenburg," 11 October 1999.

<sup>13</sup> *Citizenship passed along blood lines, as opposed to 'jus soli', citizenship accorded to anyone born on state territory.*

<sup>14</sup> *Amnesty International German Section*, "amnesty international zieht zum Tag des Flüchtlings Bilanz: Nach einem Jahr rot-grün kaum Fortschritte in der Flüchtlingspolitik," 30 September 1999.

The new government of the Social Democratic Party (SPD) and the Green Party intended to allow aliens to hold dual citizenship instead of being forced to give up the previous national allegiance altogether. However, during the run-up to the elections in the federal state of Hesse, the Christian Democratic Union (CDU) initiated a public campaign against dual citizenship, to prevent the change of the German principle of 'jus sanguinis'<sup>13</sup>. In all Germany, 5 million signatures against dual citizenship were collected. In Hesse, the campaign led to the victory of the CDU against the governing red-green coalition. As a result of the changed majority in the second chamber (*Bundesrat*), the new law had to be amended, leaving the principle of possibility of dual citizenship but under much more limited conditions.

## Protection of Asylum Seekers and Immigrants

The main problems regarding asylum seekers in Germany were the refusal of the government to guarantee protection to individuals who had not been persecuted by a state or quasi-state actor; the inadequate accelerated procedure at airports; long pre-deportation custody; violent forced deportations; and insufficient safeguards for female asylum seekers as well as unaccompanied children. In addition, the recommendations of UN organs were not fully implemented in 1999. The discrepancies between German practices and the provisions of the Geneva Convention and the European Court of Human Rights rulings was so great that courts in the UK on several occasions declared Germany did not constitute a "safe third country."<sup>14</sup>

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## Persecution by Non-Governmental Actors

In 1999, the new German government did not change the much criticized policy according to which Germany continued to refuse to grant political asylum either on the basis of the Geneva Convention or article 3 of the ECHR regarding *non-refoulement* of victims of non-governmental persecution.

The criteria for defining state or quasi-state actors were so restrictive that they excluded even the Taliban in Afghanistan, although the Taliban had been in power for over three years and occupied more than 80 percent of the country. As a result, individuals fleeing countries such as Afghanistan and Somalia were not offered access to the refugee determination procedure in Germany.<sup>15</sup>

## III-Treatment During Forced Deportations

From 1991, inhuman methods to carry out forced deportation were registered. They included using adhesive tape to close the deportees' mouth or putting something into it to stop them screaming and binding their legs and arms. Over the years, in at least seven cases, such measures have led to the death of a deportee. Nevertheless, none of the officials who used inhuman and potentially fatal methods to carry out deportation were brought to justice. According to the organization International Physicians for Social Responsibility (IPPNW) in Frankfurt, forensic physicians ignored scientific medical results regarding the danger of suffocation, and sudden in-custody deaths. Pro Asyl noted that since 1993 (when the asylum law was

amended) more than 30 people in pre-deportation detention have committed suicide, apparently at least partly due to fear of deportation.<sup>16</sup>

■ A Guinean national, Ibrahim Kourouma, alleged he was ill-treated by police officers at the Köpenick detention center for asylum seekers and by officers of the federal border police at Schönefeld airport in Berlin on 7 April. Kourouma alleged that when he refused to board the vehicle to be transported to the airport, he was forced into it by six or seven police officers who, during the drive, hit him on the head and body. One officer is said to have grabbed him by the neck and to have violently hit his head against the vehicle. Kourouma said that at the airport his treatment became worse after he refused to board the airplane. A doctor who treated him in Berlin on the 10 April stated that Kourouma had a number of injuries that correlated with his description of the events at Schönefeld airport.<sup>17</sup>

■ On 28 May, a Sudanese national, Aamir Ageeb, died during his forced deportation from Frankfurt airport to Khartoum, probably in connection with actions by officers of the federal border police. Ageeb's arms and legs were bound by the officials because he had resisted deportation, and a helmet was placed over his head to protect him. On the airplane the police officers allegedly forced the detainee's head between his knees, keeping him in this position for some time. When the helmet was removed from Ageeb's head, the police officers noticed that he had stopped breathing.<sup>18</sup>

■ Fathelrahman Abdallah, a Sudanese national, was scheduled to be deported from

<sup>15</sup> *Ibid.*

<sup>16</sup> *Pro Asyl, "Anniversary of Kola Bankole's death - IPPNW and Refugee Organization Pro Asyl Criticize Ignorance of the Responsible Persons," press release, 30 August 1999.*

<sup>17</sup> *Amnesty International Concerns in Europe January-June 1999.*

<sup>18</sup> *Ibid.*

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Germany by the Bavarian authorities on 31 May. According to Abdallah, he was twice ill-treated by officers of the federal border police at Frankfurt airport on 27 October 1998 and 12 November 1998 during the attempted deportations. On the second occasion a hood was reportedly placed over his head and the lack of oxygen caused him to panic and almost faint. As he resisted deportation, a police officer punched him in the genitals. As a result, Abdallah struggled so alarmingly for breath that police officers took him off the plane to the airport clinic. Back at the Nuremberg center, Abdallah was found to be in a state of severe shock. A medical report stated that the attempted deportation and ill-treatment at the airport had caused severe re-traumatization in the victim, indicating that he had been previously tortured. He had always claimed that he was a victim of electroshock torture in Sudan for being an active member of Sudan's opposition but this claim had been initially rejected by the authorities. Later he was granted another appeal.<sup>19</sup>

## Temporary Ban on Deportations

The Ministry of Interior decided on a temporary ban on forced deportations following the death of Aamir Ageeb.<sup>20</sup> However, on 29 May, Interior Minister Schily canceled the deportation ban despite the fact that the investigation into Ageeb's death had not been concluded.<sup>21</sup> At the same time, the minister gave regulations on the treatment of resisting deportees emphasizing the principle of "no deportation at any price." The regulations prohibited any methods that could cause physical or mental danger to the deportees.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Pro Asyl, "Home Secretary Schily Cancels Deportation Ban: Pro Asyl and IPPNW Demanding Independent Commission of Inquiry," press release, 28 June 1999.*

<sup>22</sup> *Amnesty International German Section, op.cit.*

## Status of Long-Term Refugees in Germany (*Altfallregelung*)

On 19 November, the German government made a long overdue decision at a conference of the interior ministers on the treatment of rejected asylum seekers who had been living in Germany for years without the status of political refugees.

The conference decided on the prompt return of Kosovo refugees, beginning in early 2000 and to be completed by the end of the year. It also decided to put an end to the continued presence of a number of unsuccessful asylum seekers in Germany and established a committee to look at how to speed up the deportation of those without documents or whose countries of origin had refused to take them back. It emphasized that ungrounded asylum claims of primarily economic refugees should not lead to their stay in the country for long periods. In exceptional individual cases, particularly families and single parents with children, who had entered Germany before 1 July 1993 and were fully integrated into German society, would have privileged treatment and could receive a residence permit due to be renewed every two years. From the right to residence were excluded individuals who, for example due to their own failure, had no IDs, who had given up their citizenship, submitted several asylum applications over an extended period of time, those who had gone into hiding in the meantime or who had deliberately delayed the extension of their residence permit. A successful applicant had to have a permanent job to support the family and be eligible for health insurance, had to have appropriate housing and no record of serious crimes. School-age children had to fulfill their educational duties.<sup>22</sup>

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Local human rights NGOs described the conference's decisions as greatly disappointing. The decisions excluded from the right to residence the majority of the potential beneficiaries, including refugees from the Federal Republic of Yugoslavia, Bosnia-Herzegovina and Turkey, as well as from Algeria, Afghanistan and Somalia because many of the asylum seekers from the latter three countries were not persecuted by state actors.<sup>23</sup> The NGOs criticized the decisions for not being based on humanitarian grounds but rather on considerations of how to restrict as far as possible the number of persons to qualify for the right to residence.<sup>24</sup> Also, the decisions restricted family reunification.

Pro Asyl estimated that instead of the c.20,000 favored persons foreseen by the interior ministers, a final figure of less than 5,000 individuals would be able to obtain a legal residence permit.<sup>25</sup>

## Agreements with Algeria<sup>26</sup> and Turkey<sup>27</sup>

German and Algerian officials made an agreement that as of 1 June, Algerian security forces would carry out the deportations of rejected Algerian asylum seekers from Germany. According to Pro Asyl, the German government was preparing deportations of Algerians, despite the fact that the human rights situation remained disastrous in Algeria and the danger of "disappearances", arrests, torture and extrajudi-

cial executions upon return was significant. Recently, no more than 1.7 percent of asylum applications by Algerians had been accepted.

In late 1999 and early 2000, the German and Turkish authorities intensified their cooperation on the *refoulement* of asylum seekers from Turkey. On 9 November, a committee of senior civil servants from Germany and Turkey met in order to clarify procedural matters in the context of the consultation procedure agreed in 1995, according to which German authorities would return Kurds, who were suspected of having participated in criminal offences in connection with the PKK in Germany. The *refoulements* would be carried out on the condition that the Kurds would not face criminal proceedings or execution in Turkey.

■ Hüseyin Ayhanci had unsuccessfully claimed for asylum in Germany in November, but was returned to Turkey on 28 January 2000. Upon his arrival, he was allegedly severely tortured at Istanbul airport. After his release he at first went to Mardin and then to Izmir. On 28 January 2000, three civilian members of the Anti-Terror Department reportedly abducted him, insulting him as a terrorist and threatening to kill him, holding a pistol to his head. After massive intimidation, Ayhanci was allegedly taken to a building where he was tortured systematically and cross-ex-

<sup>23</sup> Amnesty International German Section, "Asyl: Geplante Altfall-Regelung eine große Enttäuschung," press release, 17 November 1999.

<sup>24</sup> Pro Asyl, "Ruling of Old Cases Disappointing," press release, 10 November 1999.

<sup>25</sup> Pro Asyl, "Ruling of Old Cases: More Exclusion Clauses than Substance. Interpretation Problems will Burden Jurisdiction," press release, November 1999.

<sup>26</sup> Based on Pro Asyl and Algeria Watch, "Pressing appeal to the Federal Ministry of the Interior: The Agreement between Germany and Algeria Has to be Cancelled!", 31 May 1999.

<sup>27</sup> Based on Pro Asyl, "Home Secretary Schily Intensifies So-Called Consultation Procedure on Deportations to Turkey: From Now on More Deportations if Turkey Agrees not to Persecute?" press release, 10 January 2000.



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amined on his alleged activities and the structures of the Kurdish exile opposition in Germany.<sup>28</sup>

## Pre-Deportation Custody

Individuals awaiting deportation were often held for months in custody in humiliating conditions, despite the fact that they had not committed a crime. Under mental pressure, several attempted suicide or went on hunger strike.<sup>29</sup>

## Woman Asylum Seekers

On 9 July, the German parliament amended article 53 of the law on foreigners to include systematic rapes and other serious forms of sexual violence as a reason to grant asylum to women. It explicitly noted that persecution that is addressed specifically against women should be taken into account better than in the past.<sup>30</sup> However, Pro Asyl criticized this decision for not bringing any actual improvements as, by law, Germany only granted asylum to victims of governmental or quasi-governmental actors. It also stated, that the proposed amendment to article 53(6) focused mainly on the protection of witnesses of sexual violence and still required that there existed an individual, concrete danger of the repetition of violence should the woman be sent back to her country of origin.<sup>31</sup>

The decision appeared to result from pressure by e.g. an April hearing in Munich on the fate of female asylum seekers<sup>32</sup> that had required better protection of female asylum seekers. It noted that, in addition to general human rights violations, women asylum seekers were subjected to specific forms of human rights violation: rape in prison and detention facilities or by soldiers in war zones; threats that stem from the denial to abide by (often religiously motivated) roles and practices which humiliate women and deny their basic rights (e.g. in Iran and Afghanistan); sexual ill-treatment and female sexual mutilation or even ritual killings; persecution due to the activities of their husbands or other family members. The hearing also noted that authorities often did not believe women's testimonies, played them down as "private matters," while many women were unable to talk about the traumatic experienced they had recently undergone or were ashamed to talk about them (e.g. in cases of rape).<sup>33</sup>

■ A woman called Mariem, of Ethiopian origin and a member of an opposition party, was arrested while handing out political leaflets. While in prison, she was reportedly raped and ill-treated by several guards. German authorities did not believe her statements because she bore no physical marks of ill-treatment it, being "only" mentally affected. Her asylum claim was rejected.<sup>34</sup>

<sup>28</sup> Pro Asyl, "Press Release: A New Kurd Heavily Tortured after Deportation: Pro Asyl and Lower Saxony Refugee Council Demand Fundamental Revision of the Human Rights Politics Towards Turkey," press release, 8 February 2000.

<sup>29</sup> Pro Asyl, "Tag des Flüchtlings Nach einem Jahr Rot-Grün – Asylpolitische Negativbilanz!", 30 September 1999.

<sup>30</sup> Allgemeine Verwaltungsvorschrift zum Ausländergesetz, Beschluss des Bundesrates vom Juli 1999, BR-Drucksache 350/99 (Auszug).

<sup>31</sup> Pro Asyl, "Umsetzung des Koalitionsvertrags in Bezug auf einen besseren Schutz verfolgter Frauen," briefing paper, 14 October 1999.

<sup>32</sup> Refugio München, "Bleiberecht: Warum Frauen bei uns Asyl suchen und nicht finden," (The Right to Stay – Why Women Seek but Cannot Find Refuge Among Us.), 19 April 1999.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

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Consequently, the Munich hearing required, among other things, that European standards for the protection of asylum seekers be integrated in German law; that the rulings of the European Court of Human Rights be binding also for Germany; and that sexually motivated violence be included as grounds for *non-refoulement* <sup>35</sup>.

## Child Asylum Seekers

When Germany ratified the UN Convention on the Rights of the Child in 1992, it made a reservation that German asylum law should not be affected by the provisions of the convention. In 1995, the UN Committee for the Rights of the Child recommended that Germany delete this reservation as "unnecessary." Moreover, seven years after the ratification the convention, Germany had failed to take the necessary legal measures to bring domestic legislation into line with the convention regarding the treatment of child refugees.<sup>36</sup> A 30 September federal parliament motion requesting the withdrawal of the reservations to the UN Convention and the introduction of an examination procedure of the child compatibility of all laws, as well as the Social Democratic Party (SPD) resolutions on this issue in December, failed to bring changes in government policies regarding child refugees.<sup>37</sup>

According to Pro Asyl, following the ratification of the UN convention, the situation for child refugees in Germany deteriorat-

ed: the priority has been the implementation of foreigner and asylum laws, rather than the well-being of the subjects of these laws. As a result, Germany has violated the Convention on the Rights of the Child.<sup>38</sup>

■ The 15-year-old Eritrean girl Sara A. was the first child to be kept in detention after the official opening of special premises for children at Frankfurt airport. Later, on the basis of a decision of the Interior Ministry, she was allowed to leave the airport to be transferred to a clearing-house in Frankfurt, where further steps were to be taken according to the aliens and youth welfare laws. The Federal Office for the Recognition of Foreign Refugees and the Administrative Court of Frankfurt had turned down the application for asylum of the first-aid attendant recruited for the Ethiopian-Eritrean border war as "clearly unfounded."<sup>39</sup>

There were some 6,000–10,000 child refugees staying in Germany in 1999. They had fled as a result of war, civil war, political persecutions or other threats for their existence and were as a result extremely traumatized and vulnerable.

Children who were under 18 years of age enjoyed special protection under article 22 of the Convention on the Rights of the Child. However, German law treated asylum seekers over the age of 16 in the same way as adults, while the UN convention provided for special protection for the children until the age of 18. Under the

<sup>35</sup> *Ibid.*

<sup>36</sup> Heiko Kauffmann (Pro Asyl), "Kinder Auf der Flucht: Kinderflüchtlinge in der Bundesrepublik Deutschland," 1999.

<sup>37</sup> Pro Asyl, "Pro Asyl Criticizes Interior Minister Schily: Rights of the Child Don't Allow Delay, Cancellation of the Reservations and Adjustment of the German Laws May not Fail Because of the Rigid Veto of an Individual," press release, 23 February 2000.

<sup>38</sup> Heiko Kauffmann, *op.cit.*

<sup>39</sup> Pro Asyl, "Airport Asylum Procedure: Interior Ministry Dismisses 15-year-old Eritrean Girl from Internment at Frankfurt airport, Pro Asyl Welcomes the Decision and Demands Exclusion of Unaccompanied Children from the Airport Asylum Procedure, 19 November 1999.

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convention, unaccompanied children should be provided with the same protection afforded to any other children forced temporarily out of family surroundings (article 22.2); their well-fare should be a priority (article 3.1); and their well-being and development should be guaranteed (article 6.2). Article 37 stated that, as a matter of principle, children should not be held in custody.<sup>40</sup>

Despite the above guarantees, on the basis of the “third country” rule, unaccompanied children have been returned from the border without any asylum process, assistance or help and the accelerated procedure was being used on children at airports. During the procedure, the children had to stay within the transit area of the airport in conditions unsuitable for children. Untrained airport officers tended to estimate the children’s age as over 16 in order to make the procedure easier. In October, specific premises were prepared for child asylum seekers at the Frankfurt airport. However, the premises were inadequate for the accommodation of children and could not offer any special psycho-social support for traumatized children. Many children between 16 and 18 were taken into custody pending deportation. Children who were already integrated into German society were returned to their country of origin in cases where the political situation had changed in that country.<sup>41</sup>

<sup>40</sup> *Ibid.*

<sup>41</sup> Heiko Kauffmann, *op.cit*; Pro Asyl, “Airport Asylum Procedure: Interior Ministry Dismisses 15-year-old Eritrean Girl from Internment at Frankfurt Airport , Pro Asyl Welcomes the Decision and Demands Exclusion of Unaccompanied Children from the Airport Asylum Procedure,” 19 November 1999.