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## ANNUAL REPORT 1999

### Germany

#### IHF Focus:

Torture, ill-treatment and misconduct by law enforcement officials; religious tolerance; protection of ethnic minorities; protection of asylum seekers and immigrants

Reports about ill-treatment and humiliation of individuals by police officers remained at the center of human rights concerns in Germany. The fact that most complainants were asylum seekers or immigrants strongly suggested that the misconduct was racially motivated.

The slow pace of the asylum procedure was criticized by the UN Committee for Economic, Social and Cultural Rights. On the positive side, the new government of Chancellor Gerhard Schröder, in power since November 1998, soon suggested improvements in the Citizenship Law and the possibility of dual citizenship. Other human rights concerns included intolerance towards minority religions, and discrimination against the Roma and Sinti.

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

In the past few years, human rights NGOs received numerous allegations about ill-treatment by the police that particularly occurred at the time of arrest and during detention. Most of the victims have been foreigners.

In May the UN Committee against Torture (CAT) discussed the second periodic report by the German government on its compliance with the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment. The CAT expressed concern about the large number of reports of police ill-treatment it had received and the results of a study commissioned by the Conference of Ministers of Internal Affairs in 1994, which had concluded that police abuse of foreigners was a more substantial problem than just "a few isolated cases." The CAT regretted that so few cases of alleged incidents of ill-treatment by the police - especially of persons of foreign descent - were prosecuted and perpetrators convicted. It also noted that there existed "certain open-ended legal provisions" permitting under some circumstances a reduction of the legal guarantees of those detained by the police. These provisions, for example, permitted the police to refuse permission to a detainee at a police station to notify a relative of his/her arrest. 1

The CAT recommended that both internal disciplinary measures against offending police officers and the external prosecutorial and judicial measures be significantly strengthened to ensure that in future all police officers accused of ill-treatment would be brought to justice. Furthermore, it recommended that criminal procedures be open to subsidiary prosecution by the victims of ill-treatment, that civil procedures for damages be made more widely applicable and possible, and that the length of the investigation of complaints of police ill-treatment be shortened. Other recommendations proposed that police and immigration officers receive compulsory training in human rights issues and the Convention against Torture, as well as in conflict management and ethnic minority issues, and that detainees be informed in written and in a language they understand about their rights. 2

Between May 1997 and April 1998, Amnesty International received reports from asylum-seekers who claimed that they had been subjected to cruel, inhuman and degrading treatment by officers of the Federal Border Police during attempts to deport them from Düsseldorf airport.

- Algerian asylum-seeker Khebil L. reported that he was beaten several times by five police officers in February at Düsseldorf airport in order to get him on board the airplane that was to take him to Algeria following an extradition order. As he refused to get on the plane, two of the officers reportedly attacked him verbally, then took him in a police car to an out-of-the-way area of the airport, where they used physical violence against him. Two civilian bystanders saw the incident and told the officers to stop. Khebil L. said he was hit three or four times at the airport and later at the police station.

- On 3 March Ebezina C. was taken to a Düsseldorf police station and later to Düsseldorf airport for deportation. More than eight policemen reportedly punched and kicked him, and insulted him verbally. 3

Investigations into police brutality were slow and only in exceptional cases were abusive police officers convicted:

- In April Algerian asylum seeker Nasr B. applied for a judicial review of the prosecuting authorities' decision to reject his complaint of ill-treatment. Nasr B. alleged that Berlin police officers had violently twisted his arm, pushed him to the ground, kicked him and subjected him to racist abuse after he had protested to them about being falsely accused of stealing a car. According to medical evidence, Nasr B. suffered a fracture of the arm, swelling and abrasions of the face, and bruising of the jaw. The prosecuting authorities had rejected the complaint on the grounds that the officers were obliged to employ force because Nasr B. had sworn and spat at them and refused to comply with their order to move off. 4

In May three Brandenburg police officers were convicted on 12 separate counts of ill-treatment of Vietnamese detainees in their custody in 1993 –1994. The officers received prison sentences of 10-24 months, suspended for three years. According to the findings of the Frankfurt /Oder Regional Court, the officers had punched and kicked the detainees and subjected them to humiliating and degrading treatment - in some cases by forcing them to undress before assaulting them. A fourth officer was found guilty of failing to intervene, and was fined by the court. The presiding judge criticized the police witnesses for lying in order to protect their colleagues. The prosecution proceeded at an extremely slow pace and four of the accused were acquitted in September 1997. At least

two Vietnamese witnesses were deported to Vietnam before the trial started. Attempts to organize their return for the purpose of giving testimony were abandoned after the Federal Ministry of the Interior expressed concern that the two men might use this opportunity to claim asylum.<sup>5</sup>

## Religious Tolerance

The German constitution provided guarantees for freedom of religion. However, in practice various religious groups enjoyed different privileges on the basis of whether they were registered as juridical persons or not. Moreover, the Catholic and the Lutheran Churches enjoyed the so-called church taxes that the state levied for them from their members. Several minority religious groups have criticized the state for being reluctant to grant this status to some groups, such as the Jehovah's Witnesses, even if they fulfilled the requirements set by law.

Similarly to other western European states, a lively debate continued in Germany on "sects" and "cults." The media often played an important role in labeling minority religions as dangerous and harmful. A network of information centers – established mainly by the majority Catholic and Lutheran churches but openly supported by the authorities – were in operation to advise individuals about the dangers of "sects." Federal states have issued booklets listing "dangerous" "sects," which also cite court decisions that justify the right of the state to issue these warnings.

In May 1996 an Enquete Commission was set up to carry out investigations into "sects and psycho groups." Its task was to look neutrally into the problems and conflicts that arise in relation to such groups, but not to put individual groups or their beliefs to the test.<sup>6</sup> Of the several similar European commissions, the German commission was the first one to approach the "sect issue" from the viewpoint that it was the state's responsibility to protect its citizens against illegal or unfair practices of "cults" and "psycho groups".

However, the setup and the operation of the commission soon became a target of heavy criticism. Some small independent Protestant churches charged that the methods of the commission amounted to harassment, vandalism, and threats.<sup>7</sup> Moreover, the commission was criticized for consisting largely of sect-watchers and supporters of the two majority churches rather than objective experts, leaking information on witnesses' statements to the yellow press and the courts, stripping the "sects" in question of the right to make statements to the commission, ignoring reports compiled by experts, and, finally, the failure to come up with any evidence about the real dangers of such groups. <sup>8</sup>

The Church of Scientology has been under strict scrutiny:

- In June 1997 German officials put Scientology under surveillance by different Federal Constitutional Protection Offices, domestic security agencies, on the grounds that the group's beliefs and aims were anti-democratic. The government charged that Scientology was a for-profit organization that aimed at bilking its members. In late 1998 the authorities prolonged surveillance although no illegal actions had been discovered by then.

Given the negative publicity during its operation and the controversial interim report issued in January, the final report of the commission and the accompanying press

release were less negative than it had been feared. The commission even recommended to stop using the terms "cult" and "sect" because of their negative connotations and to replace them by more neutral terminology. 9

In some cases, Muslims have faced intolerant attitudes regarding the organization of Islam classes (in Berlin) and in building places of worship (in Munich).

- In November 1998 local politicians protested the construction of a Turkish-Islamic Culture Center near the old Catholic Church "Maria Schutz" in Pasing, western Munich. The chairman of the local district planning committee claimed that the chimneys - which, according to the builders, were simple ventilation facilities at the front of the building – were "minarets in disguise." The protest resulted in the interruption of the construction of the chimneys and the planned two rosettes in the façade until the city planning committee had checked if the details had been approved in the original plan. The initial plan with a 36-meter high minaret was rejected by local authorities. In Munich, there are some 75,000 Muslims but only one "real" mosque with a minaret and a dome-shaped roof. In addition, there are some 25-30 sites of prayer in normal houses. 10

## Protection of Ethnic Minorities

### The Roma and Sinti

In December the UN Committee for Economic, Social and Cultural Rights considered Germany's third report on its compliance with the ICESCR. It expressed concern about the plight of the Roma and Sinti in Germany and about the observance of their rights to housing, education and employment, and called for immediate remedial policies and measures to fight discrimination.11

- In the night of 18 October an arson attack was carried out on the house of a Roma family in Frankfurt/Fechenheim. According to information from Roma Union, ten small children lived in the house. It was the immediate removal of the fire-brand by an occupant that prevented a disaster. The family had already before experienced hostility from parts of the majority population, who wanted them to leave the area.12

- Two days after its unveiling, the memorial for the Roma and Sinti who were murdered during the Nazi regime was damaged in Magdeburg. Unknown persons stole a ceramic plate with the name of a holocaust victim. This was one of 50 ceramic plates on which the names and dates of birth and death of Roma and Sinti had been inscribed by members of the parish of the Magdeburg cathedral. According to the police, a politically motivated offence could not be ruled out.13

The Central Committee of Sinti and Roma complained about a special registration in Bavarian police files, which used "Sinti/Roma" in their questioning forms for supposed culprits. There was also a column "Gypsy" in the forms for the description of unknown culprits. The committee charged that the description of persons on the basis of external characteristics led to stigmatization and could create hatred against the minorities within the police force. In other German federal states this practice of registration had been stopped following protests.14

In April the Chairman of the Central Commission of the German Sinti and Roma, Romani

Rose, demanded that the federal government and the governments of the individual German states recognize German Romani as a minority language. There are some 150,000 Sinti and Roma in Germany who speak German and German Romani as a mother tongue.15

The plight of Roma refugees from Bosnia-Herzegovina raised concern. For example, in Berlin the number of Bosnian refugees had dropped to approximately 14,500 as of January 1999, but ethnic Roma refugees – particularly the large number of Roma from the Serb-controlled so-called Republika Srpska - remained in Berlin. Faced with intense hostility in the Republika Srpska and cut off from many development projects in Bosnia, they had literally nowhere to go. Despite a relatively positive approach of the new German government towards refugees and immigration issues, the 1996 decision of the interior ministers of the German states that all Bosnians must return back home was not amended. 16

Semsija Omerovic, a 23-year-old Roma woman from Bosnia and her three children have struggled for years against their forced return to Bosnia-Herzegovina. She arrived in Germany in 1991 from Bijelina (Republika Srpska), an area where Bosnian Serb paramilitaries killed or expelled most non-Serbs who had not already fled, and occupied many Roma houses. Omerovic, as most refugees from Bosnia-Herzegovina, received the status of "tolerated" (Duldung) in Germany, which is accorded by German authorities and excuses from deportation for periods of between one month and several years. The Omerovic family has three children, all born in Berlin, one of them attending a German school. Beginning in 1997, the authorities began processing the cases of Semsija Omerovic and her husband separately, evidently under the conviction that they were not a family. Since April 1997 Semsija Omerovic and the three children have faced deportation, which, however, was put on hold following her appeal. Despite that fact that she won the appeal in court, authorities did not to extend her "tolerated" status. In October 1998 she received four "border crossing permits" and a statement that she and her three children could be deported at any time. A few days earlier, her husband had received "tolerated" status for six months. Semsija Omerovic did not leave Berlin, because she had no place to go in Bosnia. The conditions in her Serb-controlled hometown Bijelina had not changed, offering Roma no opportunity for a safe return. On the basis of written medical testimony that one of her children could not travel due to his medical condition (he had bronchitis and an inflammation of his thyroid glands) Semsija Omerovic was issued a two-month "tolerated" status. In December the whole family registered for a collective return project organized by the Foreigner Representative Office of the Berlin Senate. However, the project was entirely in the planning stage, and it was feared that the Omerovic family would have to face deportation. 17

### Protection of Asylum Seekers and Immigrants

The UN Committee on Economic, Social and Cultural Rights expressed its concern about the status of asylum seekers in Germany, especially with regard to the length of time taken to process their applications for refugee status and with regard to their economic and health rights pending the final decision. The Committee requested the government take immediate measures - legislative or otherwise - to address and redress the situation of the various categories of asylum seekers. It also suggested that the applications of asylum seekers be processed expeditiously and that refugees be accorded health, economic and educational rights in accordance with the ICESCR.18

Women were particularly affected by the practice of the federal government and the Administrative Courts to deny asylum or the principle of non-refoulement on the basis of sexual offences such as rape even if the perpetrators were government employees like police officers. In addition, female genital mutilation was not considered a reason for political asylum despite the fact that the federal parliament in June denounced it as a human rights violation.

#### Persecution by Non-Governmental Actors

One of the main problems regarding political asylum was the fact that German authorities refused to grant political asylum either on the basis of the Geneva Convention or by implementing article 3 of the ECHR regarding non-refoulement to victims of non-governmental persecution. As a result, Algerians fleeing Islamic fundamentalist violence did not enjoy protection, nor did Afghans escaping the Taliban militia because Germany had not recognized the Taliban power in Afghanistan.<sup>19</sup>

According to the NGO Pro Asyl, the practice to limit the term "refugee" on mere governmental persecution restricted the original meaning of the term in the Geneva Convention. In addition, German authorities did not feel obliged to abide by the jurisdiction of the European Court of Human Rights. The following successful case was exceptional.

- In April the European Court for Human Rights admitted a complaint by Mr. Sarialtun and his family, originating from Turkey. The family had been denied asylum in Germany and deportation for the father was pending despite the fact that he had been imprisoned and tortured in Turkey. However, German authorities judged that there would be no concrete and real risk for Mr. Sarialtun and his family to return to Turkey. Following the decision of the European Court, Germany did not wish to continue the case before the Court and granted the family a residence permit. <sup>20</sup>

#### Deportation

Some rejected asylum applicants faced serious problems when returned to their country of origin.

- On 15 January Mehmet Ali Akbas was deported to Turkey after his application for asylum was rejected. Upon his arrival in Istanbul, he was detained for about nine hours and interrogated. He was released under the condition that he would immediately leave Istanbul. Akbas reportedly went to his relatives and was again arrested, interrogated and tortured for eight days. The security forces accused him, for example, of having taken part in the occupation of a Turkish consulate. He was released after he agreed to cooperate with Turkish officials. A public health officer certified the injuries he had suffered under torture, including abrasions and bruises, from which it took him 15 days to recover. Mehmet Ali Akbas' wife and children had gone underground in Germany after the deportation of the father. In February the mother suffered a miscarriage because she was afraid to seek medical treatment at a hospital. On 13 May a physician of the German embassy in Ankara confirmed that Mehmet Ali Akbas had been tortured, and he was allowed to return to Germany.<sup>21</sup>

By law, foreign youths, who had committed a punishable act could be deported without having ever lived in the country of their parents' origin or having any specific ties to that

country:

- In November German authorities refused to prolong the residence permit of a 14-year-old youth of Turkish origin and deported him without his parents to Turkey. The youth had committed a series of crimes at an age at which he was not yet liable to punishment, and again a robbery when he was 14 years old, for which he was sentenced to one year in prison and deportation.<sup>22</sup>

Despite a wave of protests, German authorities stated that there were no plans to amend the law to prevent similar cases in the future.

### Church Sanctuary

The restrictive German asylum policy led churches to offer "sanctuary" to refugees whose asylum and residence applications had been turned down. This activity resulted in an escalating conflict between the state authorities and the churches. Refugees in "sanctuary" protection were moved from one church to another to protect them from deportation. While there was no legal basis for such protection by the churches, many church leaders stated that their actions were morally legitimate. In 1998 in more than 90 cases, 334 persons were protected by the churches, most of the individuals being Kurds. Kurds were denied asylum after the German Foreign Office had declared in March that "there is no general persecution of Kurds in Turkey, only of the guerrillas of the Kurdish Workers' Party." <sup>23</sup>

On several occasions officials entered churches by force and detained asylum seekers:

- In July police raided a church community center where Kurdish deserter Abdul Mena Duzenli had taken refuge with four members of his family, including his pregnant wife. The next day they were taken to Frankfurt airport and deported. This act resulted in two thirds of North Rhine-Westfalia's Protestant bishops signing a declaration that called for an end of the deportation of Kurdish refugees to Turkey, and the recognition of their status as a persecuted group.<sup>24</sup>

### Smuggling of Refugees and Immigrants 25

In the first nine months of 1998 German authorities seized 30 percent more illegal immigrants and more immigrant smugglers than in all of 1997. According to the Ministry of the Interior, the figures were boosted by both a greater influx of refugees and more effective control.

Former Interior Minister Manfred Kanther helped push through a new border security standard for the so-called Schengen countries. On the other hand, the increasing control and, at the same time, a greater number of individuals hoping to find refuge in Germany increased the profits of an industry of professional, illegal transport bands.

- In July seven Kosovo Albanians were killed and 21 injured when the driver of their truck, a suspected Czech smuggler, tried to evade German border guards and crashed.

- In October police near Munich discovered 75 Kosovo Albanians who attempted to illegally enter the country. They were packed so tightly into a truck that some of them just narrowly had escaped suffocation. All were deported.

It was a common practice for smugglers to rent a vehicle in which they could cram as many refugees as possible to increase their profits. They charged each foreigner about DM 1,500 (approximately US\$900) just for crossing the German border. Summing up all costs, in practice a journey from Kosovo to Germany could amount to about DM 6,000 (US\$3,600) per person.

### New Draft Law on Citizenship

In late 1998, when the new government coalition took office, it declared that a new law should replace the 1913 law on citizenship. The law should contain the following provisions: Granting entitlement to naturalization to foreigners who have legally resided in Germany for at least eight years (formerly 15 years), to underage foreigner who have lived the last five years in Germany with at least one parent - who holds an unlimited residence permit - in an family-like structure, foreign spouses of German national following three years of legal residence in Germany when a conjugal community has existed at least for two years, and to citizens who are born to foreign parents in Germany if one parent was born in Germany or moved to Germany prior to his/her 14th birthday and holds a residence permit. The basic condition for naturalization of all the above-mentioned individuals would be that they are able to support themselves and have no criminal record. In addition, the government stated that it intended to allow aliens to hold dual citizenship instead of being forced to give up the previous national allegiance altogether. 26

### FOOTNOTES:

1. Concluding Observations of the Committee against Torture: Germany, 11/5/1998.
2. Ibid.
3. Amnesty International Concerns in Europe, January – June 1998.
4. Ibid.
5. Ibid.
6. Press release of the German Parliament Enquete Commission "So-Called Sects and Psycho Groups", 29 May 1998.
7. "Religious Groups Challenge Growing Intolerance in Belgium," statement by Christopher H. Smith, 19 May 1998.
8. Statement by Hans Apel, professor of economics at Rostock University and former federal minister; Gerhard Besier, professor of contemporary church history at Heidelberg University; Niels Birbaumer, professor of medical psychology at the Universities of Tübingen and Padua; Martin Kriele, professor of constitutional law at Cologne University; Hermann Lübbe, professor of philosophy at Zurich University; Erwin K. Scheuch, professor of sociology at Cologne University, June 1998; and "Twenty-First Century Challenge to Religious Liberty in Europe", presentation by Norbert Kirsch at the Conference organized by the Rutherford Institute, Paris, 2-3 August 1997.
9. Intervention by Human Rights Without Frontiers at the OSCE Implementation Meeting in Warsaw, 26 October 1998.
10. Article by Monika Mailer-Albang and Bodo-Klaus Eidman, Süddeutsche Zeitung, 17 November 1998. Translated and distributed by Human Rights Without Frontiers.
11. Concluding Observations of the Committee on Economic, Social and Cultural Rights, Germany, 04/12/98, E/C.12/1/Add.29.



12. RNN Newsletter, 5 November 1998.
13. RNN Newsletter, 24 November 1998.
14. RNN Newsletter, 27 August 1998.
15. Roma Rights, spring 1998, International Roma Rights Center.
16. Information from the European Roma Rights Center, March 1999.
17. Ibid.
18. Concluding Observations of the Committee on Economic, Social and Cultural Rights, Germany, 04/12/98, E/C.12/1/Add.29.
19. PRO ASYL aktuell, October 1998.
20. Ibid.
21. Soll ich meines Bruders Hüter sein? Fünf Jahre neues Asylrecht. Gedenken an Flüchtlinge, die schutzlos blieben oder durch Abschiebung zu Schaden kamen. Eine Dokumentation der Konferenz der Ausländerreferentinnen und Ausländerreferenten der Gliedkirchen der EKD und ihrer Werke, June 1998.
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23. Worldnews, Inter Press Service, 2 July 1998.
24. Ibid.
25. Based on article by Jyothi Kanics, Global Survival Network, 10 November 1998.
26. Mare Balticum, No. 7, January 1999, the Commissioner of the Council of the Baltic States on Democratic Institutions and Human Rights, Including the Rights of Persons Belonging to Minorities.