

IHF FOCUS: Xenophobia, anti-Semitism and racism; religious intolerance; protection of asylum seekers and immigrants.

In a 28 December 2000 press statement, the German Section of Amnesty International criticized the German Government for its continued lack of a consistent human rights policy, with the main focus on preventing human rights violations. According to the organization, the Government made human rights subsidiary to economic and geo-strategic interests and largely ignored domestic problems in its yearly report.

At the same time, Amnesty International welcomed the establishment of an independent Human Rights Institute to conduct research and give political advice, and commended the Government's efforts to establish the International Criminal Court and promote human rights in development policy. Amnesty International did welcome the adoption of regulations on the export of war and armament equipment, but noted that the regulations did not guarantee the end of such exports and expressed disappointment at Germany's failure to meet transparent and consistent arms export principles based on human rights.¹

Xenophobia, Anti-Semitism and Racism

Anti-Semitism and racism remained a serious problem in Germany in 2000. The number of racially motivated criminal acts committed by extreme rightist groups increased by about 50 percent from 1999, i.e. from 10,000 to 15,000. In December 2000, the German Federal Criminal Bureau (*Bundeskriminalamt*) registered 638 acts committed by such groups; a further 216 acts were registered as xenophobic. Thirty-seven persons were injured. The criminal acts included destruction of property, threats, attacks on individuals, breaches of the peace and attacks with explosives. The figures were published by the conference of the German Interior Ministers.²

◆ On 10 June, three skinheads attacked Alberto Adriano (from Mozambique) in

Dessau (Sachsen-Anhalt). Adriano had been living in Germany for 12 years, was married to a German woman and had three children. The perpetrators hit and kicked him so brutally that he died in hospital three days later. Two of the skinheads were only 16 years old.³

In the last three months of 2000, 496 anti-Semitic crimes were committed, including 11 cases of physical ill-treatment, one case of arson, one case involving a breach of the peace, 42 cases of damage to property, 22 cases of disturbing the death and 400 other crimes. Only 31 perpetrators had been apprehended as of early February 2001.⁴

In proportion to the population, by far the largest number of violent incidents were recorded in the so-called new Federal States, i.e. the former East Germany. It appeared that the authorities there were very often not in a position to deal appropriately with such incidents.

In August 2000, following the meeting of the Interior Ministers of the Federal States, German authorities initiated measures to reduce the activities of extreme rightist groups. After a lively public discussion about the nature of the German National Democratic Party (NPD, *Nationaldemokratische Partei Deutschlands*), the Government asked the Federal Constitutional Court on 30 January 2001 to ban the NPD on the grounds that it denounced the Constitution; was hostile towards or ignored democracy and human rights; was intolerant of persons with different opinions and also towards aliens; had adopted a totalitarian party program; had perceived close relations to National Socialism; and was anti-Semitic, anti-pacifist, revisionist, militant and ready to resort to violence. Moreover, it systematically tried to gain power through its network, agitation, and indoctrination (particularly of the youth) and by threatening its political opponents.⁵

The NPD served as a political umbrella organization for skinhead and Nazi demonstrations and other assemblies, which often escalated into violent incidents.

In September, Federal Minister of Interior Otto Schily banned the German division of the international skinhead organization "Blood and Honour" and its youth organization "White Youth". The organization had violated Article 5 of the Law on Associations by holding activities against the constitutional order and inter-ethnic understanding.⁶

Despite the recommendations of the UN Committee on the Elimination of Racial Discrimination that Germany adopt a comprehensive Anti-Discrimination Law and introduce a mechanism for the implementation of the Convention in Germany, this had not happened by the end of 2000. Nor did Germany make a declaration to guarantee refugees and minorities access to individual appeal procedures regarding discrimination and to claim compensation.

Religious Intolerance

On 19 December, the Federal Constitutional Court handed down a fundamental decision about the question of granting religions the status of a corporation under public law; Jehovah's Witnesses being the religion in question. The Jehovah's Witness community had appealed to the Constitutional Court to contest the decision of Berlin's Federal Administrative Court, which had refused to grant them the status of a corporation under public law. In contrast to the decision of the Federal Administrative Court, the Federal Constitutional Court held that the granting of public corporation rights to religious associations must not be made dependent upon their special loyalty towards the State. Such a requirement would infringe upon the law on religions and the ideological neutrality of the State.⁷

The Federal Constitutional Court referred the case back to the Federal Administrative Court in order for a renewed decision to be made.

In its decision, the Federal Constitutional Court also emphasized the equality of religions. In particular, the Court emphasized the equality of opportunity for all religious associations by establishing in its judgment that no excessive requirements are to be set for religious associations endeavouring to obtain public corporation status.⁸ Jehovah's Witnesses had been applying for corporation status under public law for years. Opponents had cited the community's "enmity" towards the State due, for example, to its refusal to participate in public elections or to perform military service.

The Rheinland-Pfalz Superior Court (OVG) held in November that the German Unification Church (Moon community) was permitted to contest an immigration order prohibiting its leader's entrance into the country. According to the judge, if a religious community's foreign spiritual leader is refused entry into Germany, the right to practice religion freely is not automatically excluded in advance. The OVG declared that the Unification Church's lawsuit was permissible, but at the same time it left appeal open to the Federal Administrative Court in Berlin because of the unprecedented significance of the matter.⁹

The Unification Church was registered as an association in 2000, thereby uniting its German members with the worldwide religious community.¹⁰

Protection of Asylum Seekers and Immigrants

In 2000, 87,564 individuals sought political asylum in Germany, a number that decreased by 17.4 percent from 1999. Asylum was granted to 3 percent of all applicants, 7.9 percent received a deportation order and 29 percent of the claims were not considered due, for example, to the withdrawal of asylum claims by the applicants.¹¹

The main problems regarding asylum seekers in Germany included: the Government's failure to guarantee protection to individuals who were not persecuted by a

state or quasi-state actor; airport procedures that raised doubts about the thoroughness of the investigation; long periods of custody for asylum seekers; forced deportations that sometimes involved misconduct by law enforcement officials; and insufficient protection for unaccompanied children.

Germany still failed to fully implement the recommendations of the UN and other international organizations (particularly the Geneva Convention and the rulings of the European Court of Human Rights), meaning that Germany could no longer be regarded as a "safe third country."

The Government's decision in spring to open the German labour market to computer experts from non-EU states raised criticism by human rights NGOs in light of the remaining employment ban for asylum seekers.¹² Fortunately, the Federal Government decided in December that asylum seekers and persons allowed to stay on specific grounds (*geduldet*) should be granted a work permit following a waiting period of one year of legal stay in Germany. The new regulation came into force on 1 January 2001. On this basis, some 85,000 aliens are allowed to work legally.¹³

Under Article 56v of the Act on Asylum Procedures, asylum seekers were obliged to apply for special permission to leave the often-small residence assigned to them. The permission was often not granted.¹⁴

The social benefits that asylum seekers received instead of social allowances had not been adapted to the increased living costs since 1993, when the Act on Benefits for Asylum Seekers came into force. The so-called amounts for basic benefits fell significantly below the standard social allowances.¹⁵

Persecution by Non-Governmental Actors

In 2000, asylum seekers coming from civil war countries such as Afghanistan could hope for protection in Germany after the Federal Constitutional Court cancelled the jurisdiction of the Federal Administrative Court on Afghanistan on 10 August.

According to the Federal Constitutional Court, the Federal Administrative Court had "denied petitioners the right to asylum because of extremely narrowly interpreted wording on the appearance of quasi-state persecution, completely equating political with state or quasi-state persecution." The Court added that "it had exaggerated the requirements on the presence of political persecution" prescribed by Article 16(1) of the Constitution.¹⁶ The Federal Administrative Court had been of the view that an organization in power is only capable of political persecution if it is based on completely stabilized territorial power.¹⁷

Until that decision, the new German Government had followed a policy of refusing 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 have been in power for years and occupy most 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.

Forced Deportations

The deportation of numerous individuals to their countries of origin in many cases resulted in their arrest, torture, ill-treatment and other persecution. In its 22 June report, the Foreign Ministry corrected, on some points, its previous assessments of the dangerous return situation of Kurdish asylum seekers. For example, the Ministry re-assessed the dangers to families and friends resulting from the political activities of Kurdish refugees in exile and no longer the family's penal liability if returned to Turkey. However, according to Pro Asyl, the report still failed to understand the dramatic experience of Kurdish returnees.¹⁸

◆ Abdülhalim Nayir, a Kurd, was deported from Germany in February 1999. Upon his

arrival in Izmir, he was immediately arrested at the airport, tortured, detained and charged - but later acquitted. He had been pressured to denounce his family members and friends as Kurdish activists and - under threat of death - forced to cooperate with the notorious Anti-Terror Forces. He managed to return to Germany, but was arrested and denied access to the asylum procedure - although there was evidence of his torture and detention in Turkey. The authorities stated that during the first asylum procedure Nayir had not been able to give sufficient proof of persecution against him.¹⁹

A discussion on the use of inhuman methods to forcibly deport people continued in 2001. Throughout the 90's, law enforcement officials had used adhesive tape to close the deportees' mouth or put something in their mouths to stop them from screaming; bound their legs and arms and placed helmets on their heads allegedly to protect them from physical injury and to prevent the deportees from biting the law enforcement officials.

Amnesty International also reported the technique of restraining a deportee in the sitting position by forcing the upper body forward onto, and below, the knees, noting that this technique may impede the breathing of a deportee, especially when great amounts of pressure are exerted and while other restraints are employed at the same time.²⁰ Over the years, there have been several cases of deportees' deaths. The Ministry of Interior decided on a temporary ban on forced deportations following the death of Aamir Ageeb on 28 May 1999. When the deportations resumed, the helmets were no longer used.²¹

Airport Asylum Procedure

In 1999, accommodation premises were built at Frankfurt airport for asylum seekers awaiting airport asylum procedure. The physical conditions, however, remained poor and individuals were held there for intolerably long periods of time - many for several months, leading to ex-

treme psychological and physical pressure. Several people attempted suicide; others were taken for psychiatric treatment.

◆ On 8 May, an Algerian woman who had been living in Frankfurt airport accommodation for seven months awaiting airport procedure, committed suicide. After collapsing physically and receiving acute psychiatric treatment, she saw no way out of the vicious circle.²²

Pre-Deportation Custody²³

On 4 January 2001, the Federal Constitutional Court published a decision regarding pre-deportation custody. The Court informed the lower courts that the authorities had to balance more carefully the interest in deportation and the affected persons' legal right to liberty, holding that if foreigners cannot be deported (and they do not have to justify the reasons for this), they ought - as a rule - to be released from detention pending deportation. For years, many German magistrates had been signing detention orders almost automatically without appropriately examining each case.

Pro Asyl criticized as unconstitutional the length of the maximum duration of pre-deportation detention (18 months) and the execution practice because there were still no legal regulations on the execution of pre-deportation detention. In practice, individuals awaiting deportation in detention often lived in even worse circumstances than criminal prisoners.

Women Refugees and Immigrants

Rape by enemies, genital mutilation, and harsh or inhuman treatment inflicted for breaking strict social and religious rules (e.g. dress regulations) were not accepted as grounds for asylum. Moreover, women saw less changes in the asylum procedure since women-specific persecution was not deemed to be politically motivated. Women's testimony was often not believed, and sexual violence against women was frequently not recognized as a method of

systematic persecution, but seen rather as an individual encroachment.

On 1 June, an amendment to Article 19 of the Law on Aliens came into force, improving the status of foreign female spouses in Germany. In particular, the law ameliorated the situation of foreign women who could now be granted an individual residence permit following a divorce on the condition that they had legally lived in Germany for at least two years. Previously, the minimum length of residence had been four years. Through the amendment, women no longer had to endure an abusive marriage for fear of having to return to their country of origin in case of divorce.²⁴

Minor Asylum Seekers

Germany's reservation to the UN Convention on the Rights of the Child upon ratification in 1992 remained in force throughout 2000. According to the reservation, German asylum law should not be affected by the provisions of the Convention. Germany also failed in 2000 to take the necessary legal measures to bring domestic legislation into line with the Convention regarding the treatment of child refugees.²⁵

Under Article 22 of the Convention on the Rights of the Child, children under 18 years of age enjoy special protection; in particular, they cannot be held in custody. However, German law continued to treat asylum seekers over the age of 16 as adults.

On the basis of the "third country" rule, unaccompanied children continued to be re-

turned from the border without any asylum process, assistance or help, and the accelerated procedure was used on children at airports. Many children between 16 and 18 were taken into custody pending deportation.

Refugees from Bosnia and Herzegovina and Kosovo²⁶

The conference of German Interior Ministers in November decided that approximately 15,000 particularly traumatised persons from Bosnia and Herzegovina may be given right to residence in Germany, which could be prolonged with the possibility of permanent residence. Persons affected by the decision must have been under specialist or psychotherapeutic treatment since at least 1 January 2000. Further, traumatised refugees from Kosovo can receive residence authorization on the basis of individual examinations. The decision required that the Kosovars originate from areas that cannot guarantee specific protection for minorities. According to Kosovo observers, no region in Kosovo can offer such protection. The status of multi-ethnic couples remained unclear.

The conference further decided to give residence authorization to persons from Bosnia and Herzegovina if they have no family members in that country anymore. However, their welfare is to be guaranteed by family members, i.e. the State is not prepared to pay supplementary welfare aid, sickness benefits or nursing allowances.

Endnotes

- ¹ Amnesty International German Section, "Menschenrechtspolitik der Bundesregierung fehlt durchgängiges Konzept," press release, 28 December 2000.
- ² APA, 5 February 2001.
- ³ *Neue Zeit*, 23 August 2000.
- ⁴ Ibid.
- ⁵ Ministry of Interior, "Bundesregierung befragt beim Bundesverfassungsgericht das Verbot der Nationaldemokratischen Partei Deutschlands (NPD)," press release, 31 January 2001.
- ⁶ Ministry of Interior, "Schily verbietet neonazistische Organisation 'Blood and Honor' und 'White Youth'," press release, 14 September 2000.

- ⁷ Based on Watch Tower, "Jehovah's Witnesses Successful in Appeal on Constitutional Grounds," 21 December 2000, distributed by Human Rights Without Frontiers.
- ⁸ Ibid.
- ⁹ *Frankfurter Rundschau*, 10 November 2000, distributed by Human Rights Without Frontiers.
- ¹⁰ Ibid.
- ¹¹ Ministry of Interior, press release, 4 January 2001, distributed by Human Rights Without Frontiers.
- ¹² Pro Asyl, "The Green Card for Computer Specialists is Coming While Asylum Seekers are Seeing the Red One on the Labour Market. Refugees Go on Suffering from Illegal Employment Ban," press release, 4 May 2000.
- ¹³ *Süddeutsche Zeitung*, "Asylwerber dürfen nach einem Jahr Wartezeit arbeiten," 7 December 2000.
- ¹⁴ Pro Asyl, "With a Restricted Freedom of Movement Asylum Seekers Are Harassed. A New Process against Activists of the VOICE. Pro Asyl Demands Right to Freedom of Movement Also for Refugees," press release, 5 February 2001.
- ¹⁵ Pro Asyl, "Also in 2001: Necessary Adaptation of Social Assistance for Subsistence of Asylum Seekers Again Needed. Misery Ordained Instead of Legal Regulation Furthermore," press release, 8 January 2001.
- ¹⁶ Pro Asyl, "Hope for Refugees from Afghanistan and Other Civil War Countries. Federal Constitutional Court Cancels the Jurisdiction of the Federal Administrative Court on Afghanistan," press release, 18 August 2000.
- ¹⁷ Ibid.
- ¹⁸ The German authorities had examined 23 rejected Kurdish asylum seekers who had been deported to Turkey and arrested them, tortured, and ill-treated. According to the results, 12 were recognized afterwards as refugees in accordance with General Convention. Some were allowed re-entry to Germany but could not do it as they served long custodial punishments. Only in one case the allegations of torture were regarded as dubious. (Pro Asyl, "Maltreatment Cases to a Large Extent Confirmed by Authorities and Courts. Foreign Office Corrects Country Report on Turkey," 27 July 2000.)
- ¹⁹ Pro Asyl, "Federal Office Tries to Deport a Tortured Kurd a Second Time," press release, 30 May 2000.
- ²⁰ Amnesty International, "Germany: The Death During Forcible Deportation of Amir Ageeb," EUR 23/004/00, 4 October 2000.
- ²¹ Ibid.
- ²² Pro Asyl, "Algerian Woman Refused Airport Asylum Procedure Hung Herself in the Transit Zone of Frankfurt Airport: Deadly Inactivity of the Home Minister," press release, 8 May 2000; and "Is Inactivity a Special Method in the Federal Ministry of the Interior? Asks Pro Asyl after a renewed suicide attempt at Frankfurt airport. Reproaches against Federal Home Minister 'intolerable and slanderous,'" press release, 16 May.
- ²³ Based on Pro Asyl, "Federal Constitutional Court Ruling on Detention Pending Deportation. Pro Asyl Welcomes Ruling Karlsruhe Reminds Courts of Self-Evident Truths Relating to the Rule of Law," press release, 5 January 2001.
- ²⁴ Ministry of Interior, press release, 2 June 2000.
- ²⁵ Pro Asyl, press release, 4 September 2000.
- ²⁶ Based on Pro Asyl, "Home Ministers Decision on Bosnian Refugees. Despite Serious Defects 15,000 Refugees May Remain. Pro Asyl Calls Upon the Federal States to Interpret the Decision Generously," 27 November 2000.