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TITLE: GERMANY HUMAN RIGHTS PRACTICES, 1994
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GERMANY

The Federal Republic of Germany is a constitutional, parliamentary democracy. The head of the Federal Government, the Chancellor, is elected by the lower house of Parliament. The powers of the Chancellor and of the Parliament are set forth in the Basic Law (Germany's Constitution). The 16 states enjoy significant autonomy, especially as concerns law enforcement and the courts, education, the environment, and social assistance.

Law enforcement is primarily a responsibility of state governments, and the police are organized at the state level. The jurisdiction of the Federal Criminal Office is limited to international organized crime, especially narcotics trafficking, weapons smuggling, and currency counterfeiting. Police forces are well trained, disciplined, and mindful of citizens' rights. However, there were isolated instances of police abuse of prisoners, particularly foreigners, in several cities, including Berlin, Hamburg, and Leipzig.

Germany's highly advanced economy affords its residents a high standard of living. During 1994 the economic situation in eastern Germany improved significantly as adjustment to the market economy quickened. While there continued to be substantial numbers of workers in the east who were unemployed, underemployed, temporarily employed or in training programs, or retiring early, each of these categories decreased. Unemployment in the east continued to affect women

disproportionately more than men. Unemployment in the west eased notably during the latter half of the year.

The Basic Law provides extensively for the free exercise of individual rights, and various laws provide recourse against racial and ethnic intolerance. The Government enforces these provisions. However, violence or harassment directed at foreigners continued to occur. Official data show that the number of violent offenses by rightwing extremists decreased by over one-third in the first 11 months of 1994 compared with the same period in 1993. Rightwing extremist violence, having risen sharply in 1991 after German unification, peaked in 1992 and has since been declining. Still, attacks on property or persons numbered about five times higher in 1994 than in 1989, and foreigners were the victims somewhat more often than not.

Anti-Semitic incidents increased but remained low in absolute number. Most involved graffiti or distribution of anti-Semitic materials. Especially notorious was a firebombing which significantly damaged the Luebeck Synagogue; this was the first attack on a synagogue in Germany since the end of World War II.

The overwhelming majority of the perpetrators of attacks on foreigners or anti-Semitic acts were frustrated, apolitical youths and a small core of neo-Nazis. All the major political parties and all the highest officials of the Federal Republic denounced violence against foreigners and anti-Semitic acts, as did hundreds of thousands of citizens in public demonstrations.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom from:

a. Political and Other Extrajudicial Killing

There were no reports of political or extrajudicial killing by agents of the Government. Police claimed that their shooting and killing of a 16-year-old Kurd in Hannover, in the course of arresting him for putting up posters of the banned Kurdish Workers Party, was accidental; but the family's lawyer insisted the police were negligent. Some murders occurred among rival factions of Iranians, Kurds, Turks, and other foreign nationals; the federal and state authorities sought to find and prosecute the perpetrators of such crimes, and pressed charges in several trials.

b. Disappearance

There were no reports of abductions or secret arrests by governmental or police authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Police in Hamburg, Leipzig, Berlin, and several smaller cities were accused of mistreating foreigners. In Hamburg, the state Interior Minister resigned, and 27 policemen were under suspension pending further investigation of such charges. During 1994 as many as 51 Berlin police were suspended; and courts sentenced one policeman to a 3-year prison term, fined another, and placed two on probation, for mistreating a Vietnamese asylum-seeker. Some foreign residents charged that Berlin authorities are reluctant to investigate fully such

charges of abuse.

Generally, however, authorities throughout Germany responded swiftly to accusations of police brutality, and punished officers found guilty of it. Berlin's Chief of Police complained publicly about the overcrowding and other poor conditions under which rejected asylum-seekers are being held in detention awaiting deportation (see Section 2.d.).

d. Arbitrary Arrest, Detention, or Exile

To make an arrest, police must obtain a judicial warrant. By the day after arrest, police must bring the suspect before a judge and lodge a charge. The court must then either issue a warrant stating the grounds for detention or order release.

There is no preventive detention. If there is evidence that the suspect might flee the country, police may detain the suspect for up to 24 hours pending a formal charge. The right of free access to legal counsel has been restricted only in the cases of terrorists suspected of having used contacts with lawyers to continue terrorist activity while in prison. Only judges may decide on the validity of any deprivation of liberty. Bail exists but is seldom employed; the usual practice is to release detainees unless there is clear danger of flight outside the country. There is no exile.

e. Denial of Fair Public Trial

Trials are public. The Basic Law assures due process and prohibits double jeopardy. The judiciary is free of government interference. There are no political prisoners.

In the trial of a neo-Nazi leader charged with inciting violence because of his denial of the Holocaust, the court's decision provoked widespread criticism for its apparent sympathy for the accused's ideology. In explaining why it handed down only a suspended sentence, the court extolled the accused's integrity and showed understanding for his motivations. The presiding judge was temporarily removed from his seat "for continuous health problems."

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Basic Law provides for inviolability of the home, and the authorities respect these provisions. Prior to forcibly entering a home, police must obtain a warrant from a judge or, in an emergency, a public prosecutor. For electronic surveillance of telephone lines or monitoring of mail, police must obtain a court order.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Basic Law, an independent press, an effective judiciary, and a functioning democratic political system combine to ensure freedom of speech and the press. There is no official censorship. However, Nazi propaganda and that of other proscribed organizations are illegal. Statements endorsing Nazism are also illegal.

Newspapers and magazines are privately owned, with some

companies controlling a significant part of the market. The major radio and television networks and stations function as corporations under special public laws; they are governed by independent boards made up of representatives of churches, political parties, and other organizations. Alongside this system, commercial television and radio have become increasingly important since the late 1980's. The former East German broadcasting outlets have been integrated into an all-German system.

b. Freedom of Peaceful Assembly and Association

The law provides for free exercise of the rights of assembly and association, and the authorities respect these provisions. Organizers of demonstrations must first obtain police permits, and may be asked to pay a deposit to cover repair of any damage to public facilities. Permits are routinely granted. When demonstrators have not obtained permits, police have exercised restraint, showing concern primarily for the functioning of public facilities and for public safety.

The Basic Law permits banning political parties found to be "fundamentally antidemocratic." A 1950's ruling by the Federal Constitutional Court outlawed a neo-Nazi and a Communist party. State governments may outlaw only organizations that are active solely within their state. If a group's activities cross state lines, the Federal Government assumes jurisdiction.

Four far-right political groups, not organized as political parties, were banned in late 1992. The Kurdish Workers Party (PKK), along with 35 subsidiary organizations, was banned in 1993. Also in 1993, the Federal Government asked the Constitutional Court to ban the far-right Free German Workers' Party; the Court's decision is still pending. Several extremist parties are currently under observation by the Office for the Protection of the Constitution (BFV, the internal security service), although such monitoring may not by law interfere with the organizations' continued activities. The BFV reported that 42,000 people belonged to far-right organizations in 1994, of whom some 5,600 were considered violence-prone.

c. Freedom of Religion

The Government fully supports religious freedom. Most of the population belongs to the Catholic or Protestant Churches. These denominations and the small Jewish community hold a special legal status as corporate bodies under public law, giving them, for instance, the right to participate in a state-administered church tax system. The Government subsidizes church-affiliated schools and provides religious instruction in schools and universities for those belonging to the Protestant, Catholic, or Jewish faith.

Members of the Church of Scientology continue to complain of harassment such as being fired from a job or expelled from (or not permitted to join) a political party. Scientologists continued to take such grievances to court. Musician Chick Corea, a Scientologist, was permitted to appear in a government-subsidized concert hall in the state of Hesse only after an agreement with local officials that he would not proselytize during his performance.

d. Freedom of Movement Within the Country, Foreign

Travel, Emigration, and Repatriation

German citizens are free to move anywhere within the country, to travel abroad, to emigrate, and to repatriate, without restrictions that violate human rights.

For ethnic Germans entering the country, the Basic Law provides both for citizenship immediately upon application and for legal residence without restrictions. Persons not of German ethnicity may acquire citizenship (and with it the right of unrestricted residence) if they meet certain requirements, including legal residence in Germany for at least 10 years (5 if married to a German), renunciation of all other citizenships, and a basic command of the German language. Long-term legal residents often opt not to apply; they receive the same social benefits as do citizens, and after 10 years of legal residency they are entitled to permanent residency. Representatives of the Turkish and Roma communities in Germany have criticized the citizenship policy as unjust and discriminatory, and have opposed in particular Germany's policy against dual nationality.

The Basic Law provides for the right of foreign victims of political persecution to attain asylum in Germany. However, since an amendment of the asylum law took effect July 1, 1993, tightening the criteria for granting asylum, applications have dropped sharply. Indications are that applications in 1994 were fewer than in any year since 1989.

Under the tightened criteria, persons coming directly from any country that German officials designate as a "safe country of origin" cannot normally claim political asylum, but can request an administrative review of their applications while in Germany. Persons entering Germany via a "safe third country"--any country in the European Union or adhering to the Geneva Convention--are also ineligible for asylum.

The legislated changes also limited legal recourse against denials of asylum applications. Critics argued that few countries can assuredly be designated as "safe third countries" and that the law unjustly fails to allow applicants to rebut such designations. While the law permits appeals against designations of "safe countries of origin," critics protested that the 48-hour period allotted for hearings is too brief.

Asylum-seekers with applications under review enjoy virtually the full range of civil rights except the right to vote. While less than 5 percent of applicants have attained political asylum, denial does not automatically result in deportation; most rejected applicants are allowed to remain in the country for humanitarian reasons, especially those from the former Yugoslavia.

However, applicants who have been conclusively denied asylum are placed in detention pending deportation; and some police lockups, particularly in Berlin, are overcrowded and/or otherwise seriously substandard. Seven asylum-seekers in the capital were held for several months in cells intended only for very brief detentions. To improve conditions for detainees, Berlin authorities began to use nonprison facilities vacated by departing U.S. military units, and proceeded with construction of a new detention center scheduled for completion in 1995.

Deportation became rather more common, however, due not only to

the amended asylum criteria but also to an agreement with Romania in late 1992 on the return of rejected Romanian asylum-seekers, primarily Roma. Under the agreement, Germany pays all transportation costs and provides financial assistance to Romania to help reintegrate those returning.

Vietnamese asylum-seekers pose a special problem. Since the 1993 amendments of the asylum criteria, only 2 percent of Vietnamese applicants have been granted asylum; but the Government has been unable to repatriate the rejected Vietnamese, because Vietnam requires its returning citizens to hold re-entry visas but has refused to issue such visas to those in Germany.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Under the Basic Law, the Government is elected on the basis of universal suffrage and secret balloting. Members of the Parliament's lower house, the Bundestag, are elected from a mixture of direct-constituency and party-list candidates. The upper house, the Bundesrat, is composed of delegations from state governments. The Basic Law and the state constitutions stipulate that parties must receive at least 5 percent of the vote (or 3 directly elected seats in federal elections) in order to be represented in the federal or state parliaments.

The law entitles women to participate fully in political life, and a growing number are prominent in the Government and the parties, but women are still substantially underrepresented in those ranks. Slightly over 26 percent of the Federal Parliament is female, including its President. Women occupy 3 of 16 cabinet positions. One state minister president is a woman. On the Federal Constitutional Court, 4 of the 16 judges are women, including the Chief Justice. All of the parties have undertaken to enlist more women. The Greens require that women comprise half of the party's elected officials. The Social Democrats have a 40-percent quota for women on all party committees and governing bodies.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Private nongovernmental human rights organizations operate freely in all of Germany, as do international organizations.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The law prohibits denial of access to shelter, health care, or education on the basis of race, religion, disability, sex, ethnic background, political opinion, or citizenship.

Women

The law generally treats women's rights as equal to men's, including property and inheritance rights. Women are beset by institutional and attitudinal barriers in some traditionally male fields, but recent court rulings and government programs have helped break down some of the barriers. On September 1 the "Second Law on the Implementation of Equal Rights for Women and Men" took force, mandating that government agencies establish promotion plans for women, appoint officials for

women's issues, and take various other such measures; it also provides more stringent sanctions against sexual harassment in the workplace.

Salaries for women in the private sector tend to be lower than for men in similar jobs. The Labor Ministry has acknowledged that unequal, sex-differentiated pay scales in the private sector violate the Basic Law's ban on gender-based discrimination. Several decisions by the National Labor Court in recent years have been in favor of women who initiated litigation to redress pay inequities. Such inequities are also thrashed out in collective bargaining between unions and firms.

In 1994 the unemployment rate for women in the eastern states continued to climb faster than the rate for men. In that region women now comprise over two-thirds of all unemployed workers, and as of midyear (latest data) the rate of unemployment in the female work force was over 21 percent while the figure was 10 percent for the male work force.

In 1993 the Federal Constitutional Court declared that abortion violates the Basic Law's provision regarding right to life. The Court ruled that first-trimester abortions would not be prosecutable, provided that the women received counseling beforehand and that doctors performed the abortion. It also ruled that the Government could provide assistance for abortion only in cases of rape, mortal danger to the mother, or grave deformation of the fetus. The ruling struck down 1992 legislation which attempted to reconcile the former East Germany's liberal abortion laws with the Federal Government's strict policies. In 1994 the parties in the Parliament were unable to agree on an amended law.

Neither the law nor the authorities condone wife beating or other violence against women. In recent years the Federal Ministry for Women and Youth commissioned a number of studies to gain information on violence against women, sexual harassment, and other matters. Police statistics on rape showed a slight decrease to 5,527 cases in 1993 (latest data) from 5,568 in the previous year.

Children

There is no culturally based pattern of abuse of human rights of children in Germany. The Government nevertheless recognizes that violence against children is a problem requiring its attention. The Ministry for Women and Youth released data in August 1993 (latest available) citing 16,442 reported incidents of sexual abuse and 1,732 reports of other physical abuse of children in the previous year. Officials believe that the numbers of unreported cases may be 10 to 20 times higher. They estimate that in about three-fourths of the cases of sexual abuse against children, the perpetrator is a family member—in one-third, the child's biological father.

In light of these figures, the Ministry for Women and Youth pledged to continue a campaign initiated in 1992 to foster public awareness of the scale of the problem and of its symptoms. The Child and Youth Protection Law stresses the need for preventive measures, and the Ministry has taken account of this in stepping up its counseling and other assistance.

The German Criminal Code was amended in 1993 to further protect children against pornography and sexual abuse. For possession

of child pornography, the maximum sentence is 1 year's imprisonment; for distribution, 5 years. The amendment made sexual abuse of children by German citizens abroad punishable even if the action is not illegal in the child's own country.

National/Racial/Ethnic Minorities

Police data show the number of violent offenses by rightwing extremists decreased by almost one-third in the first half of 1994 compared with the same period in 1993, continuing a downtrend since 1992. As in previous years, most of these offenses (over 56 percent) were directed against foreign residents, but since 1993 there has been a sharper decline in xenophobic offenses (such as beatings of foreigners or arson attacks on asylum homes) than in other kinds of manifestations of rightwing extremist violence; the number decreased by 29 percent in 1993 and by 53 percent in the first half of 1994 compared with the first half of 1993.

Since late 1993 officials and courts have generally dealt with extremist crimes more vigorously than previously. In December 1993 a court convicted two arsonists for a fatal attack in Moelln and gave them the maximum sentences--life imprisonment for one, and 10 years for his juvenile accomplice.

After the most notorious incident in 1994, a rampage on May 12 in Magdeburg in which at least fifty youths chased five Africans through downtown streets and beat them while bystanders did little or nothing, the perpetrators were arrested, tried, and sentenced to even longer prison terms than the prosecution had requested. Also in Magdeburg, a court gave four youths 9- to 24-month jail terms for 1991 attacks on foreigners and political activists.

A court sentenced two participants in the 1993 attack on U.S. athletes in Oberhof to jail terms of 32 and 12 months, respectively, without parole; for four others it ordered probation or community service.

Three of the four suspects in a Berlin assault on a Ghanaian national, who was stabbed and thrown from a moving streetcar, were released; although the remaining detainee retracted a confession, he remains jailed.

In another case, three young men accused of assaulting a Ghanaian in a street car in Halle in March were given jail terms of 2 to 4 years.

In Potsdam, in a case of abuse of an Angolan worker and denial of his liberty, a court sentenced two of the three defendants to 4 and 2 years, respectively, the latter with added community service; the third, who was the apparent instigator of the offense, hanged himself in jail.

At year's end, authorities were still investigating the firebombings of two private Turkish organizations in Baden-Wuerttemberg. Also continuing was the court trial of the alleged perpetrators of a fatal 1993 arson attack in Solingen.

Perpetrators of rightwing violence were predominantly young, male, and low in socioeconomic status, often committing such acts while inebriated. As in the past, most acts of violence against minority groups were committed spontaneously. Also as in the past, there was evidence that neo-Nazi groups were

making efforts for greater coordination among themselves.

In addition to voicing condemnation of the violence, the Government recommended tougher anticrime legislation and law-enforcement measures, as well as measures aimed at the societal roots of extremist violence and other crime. In the eastern states, governments introduced several model social and educational programs designed to counteract the root causes of xenophobia and intolerance, and they undertook efforts to reinvigorate enforcement of laws against violence by extremists. For such projects, however, state governments have thus far allocated only limited funds in their tight budgets.

Although police in the eastern states continued to become better versed in the federal legal system, better trained, and more experienced, by year's end they had not yet achieved the standards of effectiveness characteristic of the police in the rest of Germany. However, they did score greater success in combating rightwing violence, in part due to special task forces created in many states. For example, after neoNazis in more than 30 cities were denied permission to hold gatherings to commemorate the death of Rudolf Hess, there was concern that some neo-Nazi groups might nevertheless stage such rallies, as one had succeeded in doing in Fulda in 1993; but state and federal authorities cooperated closely, deployed police in force, and succeeded in completely preventing demonstrations.

Sinti and Roma leaders accused the Government of discriminatory behavior in failing to designate Sinti and Roma as a national minority (similar to the status accorded ethnic Danes and Sorbs) and of a generally hostile attitude toward them.

Religious Minorities

Anti-Semitic acts increased, with 937 incidents reported in the first 9 months of 1994. The worst was the firebombing of the 100-year-old synagogue in Luebeck on March 25. Police investigation led to quick arrest of the alleged perpetrators, who at year's end were awaiting trial.

Over 90 percent of anti-Semitic incidents involved graffiti, the distribution of anti-Semitic materials or the display of symbols of banned organizations. There were three cases of bodily injury and 42 cases of monument desecration. In July, for example, 22 skinheads vandalized the former concentration camp at Buchenwald, but police were able to apprehend all the perpetrators before they left the scene. A federal court ordered retrial of two youths who had been acquitted in October 1993 of a charge of arson in the September 1992 burning of the Jewish barracks at the former Sachsenhausen concentration camp. There were further incidents of vandalism at the Sachsenhausen site in 1994.

People with Disabilities

By law, anyone who is physically or mentally disabled is entitled to assistance to avert, eliminate, or improve the disability, prevent a deterioration of it, or alleviate its consequences and secure a place in society (particularly in the workplace) according to his or her abilities. The authorities respect the rights of the disabled. The social system provides medical and financial benefits for persons who are or become disabled. The Government offers them vocational training, and it offers grants for employers who hire the handicapped.

Severely disabled persons may be granted special benefits, such as tax breaks, free public transport, special parking facilities, and exemption from radio and television fees.

The Federal Government has established guidelines for attainment of "barrier-free" public buildings, and for modifications of streets and pedestrian traffic walks to accommodate disabled persons. While it is up to the individual states to incorporate these guidelines into building codes, all 16 states now have access facilities for the handicapped.

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Section 6 Worker Rights

a. The Right of Association

The right to associate freely, choose representatives, determine programs and policies to represent workers' interests, and publicize views is recognized and freely exercised. Some 39 percent of the total eligible labor force belongs to unions. The German Trade Union Federation (DGB) represents 85 percent of organized workers, and participates in various international and European trade union organizations.

The law provides for the right to strike, except for civil servants (including teachers) and personnel in sensitive positions such as members of the armed forces. In the past the International Labor Organization (ILO) has criticized the Government's definition of "essential services" as overly broad. The ILO was responding to complaints about sanctions imposed on teachers who struck in the state of Hesse in 1989 and, earlier, the replacement of striking postal workers by civil servants. A combination of privatization and decisions by the Federal Labor Court may resolve at least some of the specific issues in a manner acceptable to the ILO.

b. The Right to Organize and Bargain Collectively

The Basic Law provides for the right to organize and bargain collectively, and this right is widely exercised. Due to a well-developed system of autonomous contract negotiations, resort to mediators is uncommon. Basic wages and working conditions are negotiated at the industry level and then are adapted, through local collective bargaining, to particular enterprises.

In 1994 some firms in eastern Germany refused to join employer associations, or withdrew from them, and then bargained independently with workers. Likewise, some large firms in the west withdrew at least part of their work force from the jurisdiction of employer associations, complaining of rigidities in the centralized negotiating system. The law mandates a system of works councils and worker membership on supervisory boards, and thus workers participate in the management of the enterprises in which they work. The law thoroughly protects workers against antiunion discrimination.

Germany has no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The Basic Law prohibits forced or compulsory labor, and there were no known violations.

d. Minimum Age for Employment of Children

Federal law generally prohibits employment of children under age 15, with a few exceptions: those aged 13 or 14 may do farm work for up to 3 hours per day, or may deliver newspapers for up to 2 hours per day; those aged 3 to 14 may take part in cultural performances, albeit under stringent curbs on the kinds of activity, number of hours, and time of day. The Federal Labor Ministry effectively enforces the law through its Factory Inspection Bureau.

e. Acceptable Conditions of Work

There is no legislated or administratively determined minimum wage. Wages and salaries are set either by collective bargaining agreements between industrial unions and employer federations or by individual contracts. Covering about 90 percent of all wage- and salary-earners, these agreements set minimum pay rates and are legally enforceable. These minimums provide an adequate standard of living for workers and their families. The number of hours of work per week is regulated by contracts that directly or indirectly affect 80 percent of the working population. The average workweek for industrial workers is 36.9 hours in western Germany and about 40 hours in the eastern states.

An extensive set of laws and regulations on occupational safety and health incorporates a growing body of European Union standards. These provide for the right to refuse to perform dangerous or unhealthy work without jeopardizing employment. A comprehensive system of worker-insurance carriers enforces safety requirements in the workplace. This system now applies in the eastern states, where lax standards and conditions under the Communist regime created serious problems. The Labor Ministry and its counterparts in the states effectively enforce occupational safety and health standards through a network of government organs, including the Federal Institute for Work Safety. At the local level, professional and trade associations--self-governing public corporations with delegates both from the employers and from the unions--oversee worker safety.

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