

IHF FOCUS: torture and ill-treatment; right to a fair trial, arbitrary detention and prison conditions; free media and information; respect of private life; discrimination, racism and xenophobia; asylum seekers and refugees.

Several developments in Germany in the course of 2005 raised concern in terms of the protection of basic human rights. Public debate whether to permit the use of torture in the fight against terrorism continued, and reports of ill-treatment by the police continued to be received. In addition, restrictions on detainees' rights and living conditions in prisons fell partly short of international human rights standards. Further, the right to privacy was restricted by measures such as telephone tapping, and the freedom of the media was violated in several cases. The spread of right-wing extremist ideas was worrisome, in particular as more and more young people felt attracted by them. The situation of asylum seekers and refugees did not improve markedly because of flaws in the new immigration law.

The German government published its seventh Human Rights Report, which for the first time also included a strategy for its implementation. The strategy, however, however it did not pass parliament. Also, the human rights policy of the German government was not evaluated in the report.¹

Basic rights were increasingly restricted in the fight against terrorism. From the human rights point of view, not only single measures arouse concern but the fact that a growing number of restrictions were introduced without thorough consideration of their implications for individuals' fundamental rights as well as the overall impact of the sum of specific measures. For example, the Federal Constitutional Court (*Bundesverfassungsgericht*) considered the amendment to the Air Safety Act (*Luftverkehrsgesetz*), which allowed the government to order the air force to shoot down a hijacked civilian aircraft if in danger

of being used as a weapon. The bill was passed in 2004 with reference to 11 September 2001 and other terrorist acts. On 15 February 2006, the court struck down the law by finding it incompatible with the fundamental right to life and with the guarantee of human dignity for innocent passengers on an aircraft.²

Human Rights Watch filed charges in Germany against the then Uzbek minister of the interior when he was receiving medical treatment in the country in December. He was thought to be responsible for torture and egregious human rights violations in Andijan in May 2005 and had previously been denied entry into the EU. While German legislation permits investigations for crimes of universal jurisdiction no matter where the crimes were committed, a decision of the federal public prosecutor whether to follow up charges was pending when the minister left the country.³

On the European level, the EU Commission initiated legal proceedings against Germany because of a violation of the EU Directive 95/46/EG on data protection. Also, the EU Directives on Equality were not transposed into national law. By the end of 2005, Germany had also failed to accede to several important European human rights instruments: it had not ratified the European Convention on the Legal Status of Migrant Workers, Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Protocol No. 12 to the European Convention on Human Rights (ECHR) including the general Anti-Discrimination Rule. Further, the Revised European Social Charter and the European Convention for the Participation of Foreigners in Public Life at Local Level had not been signed.⁴

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On the international level, Germany failed to submit obligatory periodic reports under the Convention on the Elimination of All Forms of Racial Discrimination, due in 2000, 2002 and 2004. Germany also failed to sign many important international human rights instruments.⁵

Torture and Ill-Treatment

By the end of 2005, Germany had not signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was passed by the UN General Assembly in 2002. Besides the delay, there was criticism on the planned implementation of the national preventive mechanism. The national commission, which is to monitor several hundred institutions, is to be staffed with four members serving in an honorary capacity and an insufficiently small secretariat.⁶

The need for preventive mechanisms against ill-treatment was confirmed by a ruling against Germany by the European Court of Human Rights (ECtHR). The applicant had allegedly received treatment at various medical and psychiatric institutions against her will from an early age on. On 16 September, the court found that in the applicant's case article 5 (right to liberty and security) and 8 (right to privacy) of the ECHR had been violated. The ruling underlined that abuses should also be prevented by effective pre-emptive mechanisms.⁷

In public debates, torture was no longer categorically objected to, provided it prevented crimes, such as terrorist attacks. Furthermore, in its fight against terrorism, Germany flouted the absolute international ban on torture and ill-treatment.⁸

◆ German officials interrogated detainees who were held in prisons where international human rights standards were violated. Security officers questioned Murat Kurnaz who was detained in Guantánamo, and members of the Federal Criminal

Police Office (*Bundeskriminalamt*) interrogated the German citizen Mohammed Haidar Zammar in Syria. There was strong concern that both detainees were ill-treated and tortured. The German minister of the interior supported the procedure, on condition that such interrogations supported the purpose of providing the security service with relevant information on terrorist organizations.⁹

◆ In a retrial on the terrorist attacks of 11 September 2001, the Hamburg Court of Appeals (*Oberlandesgericht*) deemed admissible on 14 June 2005 evidence, which had potentially been obtained through torture. The statements were given to the court by the US intelligence service and summarized interrogations of three terrorist suspects, who were held at unknown locations. The federal public prosecutor supported the use of information provided by intelligence services in trials against terrorist suspects.¹⁰

While several cases of ill-treatment by the police were reported in 2005, German authorities failed to implement mechanisms for preventing police misconduct. They did not set up an independent complaints commission and there was no system to maintain and publish uniform statistics. In 2004, fire-arms against suspected criminals were used 63 times, which was an increase from previous years (2003: 44; 2002: 42). Nine people died as a consequence of the use of fire arms by police officers.¹¹

◆ On 7 January 2005, Laye-Alama C. from Sierra Leone died in police custody at the headquarters in Bremen after having been forced to take an emetic. The 35-year-old was arrested on suspicion of drug trafficking. To bring up any suspected drugs from his stomach possibly swallowed in advance, police officers and a medic made him drink the medicine. A stomach probe was inserted to speed up the process. The

arrestee lost consciousness and died. The minister of the interior of Bremen denied any responsibility of the police and argued that drug dealers had to bear the risk of such treatment. A similar case in Hamburg in 2001 had already revealed the risks in the induced vomiting procedure. On 23 November, the ECtHR held a hearing on the forced administration of emetics in Germany. The decision was still pending at the end of 2005.¹²

Ill-treatment in the German army was also reason for concern. The District Court (*Landgericht*) of Münster accepted charges against nine military instructors after several recruits had been beaten and ill-treated with electric shocks during an exercise of hostage taking in the summer of 2004.¹³

Right to a Fair Trial, Arbitrary Detention and Prison Conditions

The then minister of the interior suggested the imposition of pre-emptive custody against terrorist suspects for the purpose of preventing terrorist attacks. The mechanism should be used as last resort if suspects were regarded as imminent danger to the public also in the absence of definite evidence of probable terrorist offences. His successor in office confirmed that suspects who had close links to terrorist organizations should be arrested. The ministers' proposals were criticized because any arrest without criminal evidence would violate fundamental legal safeguards against arbitrariness.¹⁴

The Federal Constitutional Court in two rulings criticised the length of pre-trial custody. On 8 December, the court ruled that a suspect who had been in pre-trial detention for eight years had to be released. It stated that the failure of the government to provide the judicial system with adequate personnel and other necessary resources did not justify the extended custody. The ruling gave rise to concern as

the court had already decided on the case in October and had declared the duration of the custody illegal but the subordinate Regional Court of Appeals (*Oberlandesgericht*) Düsseldorf had failed to follow the ruling. In another case in February, the Federal Constitutional Court had already criticized the duration of pre-trial detention as appeal proceedings had not been accelerated adequately.¹⁵

The Federal German Supreme Court (*Bundesgerichtshof*) restricted the use of a law by which the time in prison for convicted offenders could be extended shortly before their release and without any provision in the original verdict (*nachträgliche Sicherungsverwahrung*). On 11 May, the court decided that the detention could only be extended if each inmate's case was regarded individually. Statistical data in favor of extension was not sufficient to impose an extended prison term. In a second ruling on 26 November, the court prohibited the use of the sanction in the absence of additional information on the inmate's personality. General disobedience during the prison term did not justify the sanction, according to the court. Critics also noted that inadequate psychological reports on the inmate's personality flawed legal rulings as there were no standard criteria for deciding on whether an offender posed an imminent danger to the public.¹⁶

The Upper House of the Federal Parliament (*Bundesrat*) passed a bill to tighten criminal law for young offenders but it did not pass the Lower House of Parliament because of the parliamentary elections in September 2005. Under the new regulations, juveniles between the ages of 18 and 20 are to be treated like adults. Also, young offenders subject to criminal law for minors could be sentenced to up to 10 to 15 years in prison. Moreover, juveniles and minors sentenced to at least a five-year term for minor offences will be subject to retrospective safety detention.

Their prison term could be extended shortly before their release for the purpose of prevention, although the original verdict did not mention this kind of reservation.¹⁷

The proposed amendments were criticized because the danger of recidivism by young offenders is much higher after having been in prison than after having served a suspended sentence. In particular, the holding of offenders under 18-years-of-age for one month in detention facilities (*Jugendarrest*) was criticized. In Berlin, the likelihood of arrested minors committing further offences was at 70%. Conditions in a closed home for young offenders in Hamburg were an additional cause for concern. Since its opening in 2003, 12 minors out of 16 who had stayed in the home for more than four months committed further offences after they had been released.¹⁸

Conditions in German detention facilities sometimes fell short of international standards:

◆ According to the Palatinate Regional Court of Appeals (*Pfälzisches Oberlandesgericht*), strained conditions did not justify any arrest that would violate the inmates' human dignity. In January, the court handed down a ruling against the detention of two men who were held in an 8 m² cell. In another case on prison conditions in Baden-Württemberg, the Federal Constitutional Court confirmed the regional court's decision. The court upheld the appeal of an already deported former inmate who had been detained with two other prisoners in a 8 m² cell. The District Court (*Landgericht*) Mannheim had rejected the claim and stated that the high ceiling of the room guaranteed the inmates sufficient oxygen.¹⁹

◆ In May, two corrections officers were suspended from duty because of discriminatory behavior. A 29-year-old officer had prepared a Klu-Klux-Clan hood. In the presence of his colleague, he put on the hood

in front of a US Afro-American inmate to scare him. The inmate informed the US consulate about the incident. Yet the case only became public after the inmate's lawyer informed the director of the prison about the incident.²⁰

Free Media and Information

On 5 September, the Kurdish newspaper *Özgür Politika*, published in Germany, was banned. The Ministry of the Interior blamed the newspaper for supporting the Kurdish organization PKK, spreading propaganda and mobilizing new members for the organization. According to the ministry, the newspaper violated the Law on Associations (*Vereinsgesetz*) by being a danger to the protection of the state. With 10,000 copies per day, *Özgür Politika* was one of the most widely read newspapers for Kurds in Western Europe. The German Union of Journalists (*Deutsche Journalisten-Union*) complained that the proceedings were disproportionate because there had not been any criminal proceedings against the publisher, the management or the editors before. On 18 October, the Federal Administrative Court (*Bundesverwaltungsgericht*) lifted the ban saying that its reasoning was not justified by the German Law of Associations.²¹

Investigations against the magazine *Cicero* violated the right of the press to confidentiality of journalistic sources and were not in accordance with the principle of proportionality. On 12 September, the editorial office of the magazine and the private house of one of its journalists were searched by the police. The journalist had published confidential documents in an article on terrorism in April 2005. The investigations were aimed at revealing the person within the Federal Criminal Police Office who leaked the information to the journalist. The then minister of the interior supported the investigations.²²

The German intelligence service (*Bundesnachrichtendienst*) kept journalists under surveillance to obtain information on their sources of information. Until 2003, the service observed a journalist who had published a critical in-depth analysis on the intelligence service.²³

Respect of Private Life

The European Commission initiated legal proceedings against Germany because of violation of the EU Directive 95/46/EG on data protection. In July, the European Commission criticized that the independence of data protection authorities in charge of monitoring the private sector was not always ensured. Despite the pending EU proceedings, the government of Lower-Saxony decided in May to restrict its data protection officer's field of activity by transferring the monitoring authority for the private sector to the Ministry of the Interior.²⁴

On 11 May, the minister of the interior presented the evaluation of the anti-terrorism measures passed in 2002, which had also restricted the right to privacy. According to the assessment, the measures had been successful in uncovering plans of terrorist attacks, and their use was said to have been moderate. The evaluation evoked criticism because it had not been carried out by an independent body and was not transparent, thus making it not sufficiently democratic. Also, the criteria for the evaluation had not been set out in advance.²⁵

The State Parliament of Baden-Württemberg passed a law to provide the Office for the Protection of the Constitution (*Landesverfassungsschutz*) with further means in the fight against terrorism. The office was granted access to data of post offices, banks, telephone companies and airlines. In addition, the right to track mobile phone calls was extended, and people who are employed by institutions relevant

to national security or public supply are now subject to routine checks.²⁶

Phone tapping remained a serious problem, with the number of intercepted calls increasing dramatically. In 2004,²⁷ 29,017 such cases were recorded, showing an increase of no less than 500% since 1995. In 2003, a report by the Max-Planck-Institute for Foreign and International Criminal Law revealed irregularities in the tapping as the police failed to inform individuals about measures taken following the interception. Also, many requests for phone tapping were only examined superficially by the magistrates. In March 2005, the federal commissioner for data protection criticized that the failures mentioned in the report had not been addressed so far.²⁸ There was further concern about telephone surveillance:

◆ On 27 July, the Federal Constitutional Court ruled against the police law of Lower-Saxony, which permitted pre-emptive telephone tapping, stating that it was too broad. According to the court, there was no adequate definition of the people who could be intercepted and of the criminal offences for which the tapping was permitted. In addition, the law did not prevent the police from using private issues discussed by the intercepted parties. Despite the court's decision, the minister of the interior of Lower-Saxony adhered to the idea of pre-emptive telephone tapping in the fight against terrorism.²⁹

◆ In December, the German parliament extended a law, which allowed the opening of mail and the tapping of telephones by customs authorities on grounds of suspicion of a violation of the Foreign Trade and Payments Act, which was due to expire at the end of 2005. The decision to extend the law was worrisome given that the Federal Constitutional Court had declared it illegal in March 2004. The court had criticized the high number of interferences with the right of confidentiality of communications and the transmission of

data, which was particularly worrying as the affected were not informed about the intervention retrospectively. The parliament justified its decision to extend the law stating that it did not want to interrupt on-going surveillance.³⁰

◆ In June, police investigators in Bad Segeberg who conducted a search against an arsonist located witnesses by tracing some 700 mobile phone users who had been close to the scene of the crime. The police measure was criticized for violating the presumption of innocence.³¹

In October, the use of DNA tests in the fight against crimes was extended. The German parliament passed a law to allow the police and the public prosecutor's office to take DNA tests without a judge's approval in cases of imminent danger of further offences during preliminary proceedings. Moreover, the genetic fingerprint of criminals who have repeatedly committed minor crimes can be filed without a judge's warrant. Previously, only offenders of serious crimes had been subject to DNA filing and only by a judge's warrant. During preliminary proceedings, a judge's consent had always been necessary for DNA testing. Critics noted that current tests are sufficient to reveal the sex, as well as possible genetic diseases and ethnic criteria, which could lead to discriminatory police practices. In 2005, the Federal Criminal Police Office had around 389,000 DNA records at its disposal.³²

Discriminatory police practices against specific groups of people were reported with respect to the right to privacy. In Bavaria, North Rhine-Westphalia and Thuringia, police authorities registered homosexual offenders because of their sexual orientation. In Hesse, the minister of the interior recommended electronic shackles for long-term unemployed persons and for drug addicts. According to the minister, this would assist adjustment to regular work and a new life style.³³

Discrimination, Racism and Xenophobia

The Upper House of Parliament rejected a bill to transpose into national legislation three EU Directives on Equality (2000/43/EC, 2000/78/EC and 2002/73/EC), which aim at providing better methods to fight discrimination. Directives 2000/43/EC and 2000/78/EC should have been transposed already in 2003. Germany also failed to submit three reports under article 9.1 of the Convention on the Elimination of All Forms of Racial Discrimination, which were due in June 2000, June 2002 and June 2004, respectively.³⁴

Xenophobia and anti-Semitism among Germans were worrying. Twenty-six percent of the German population felt resentment against foreigners and Jews in 2005, an increase of 6% compared with 2002. One third stated that they felt like a stranger in their own country because of the increasing presence of Muslims, a development apparently partly attributable to an increasing fear of unemployment as well as social descent.³⁵

Discrimination against Muslim immigrants was justified by the alleged need to better protect democratic institutions from Islamic extremists. In Baden-Württemberg, only immigrants from 57 Islamic countries and people of Islamic creed who applied for German citizenship were interrogated by the immigration office according to a questionnaire on religion, gender relations and terrorism.³⁵

Right-wing extremist ideology was increasingly attractive to young people. According to a study of the Berlin Office for the Protection of the Constitution (*Verfassungsschutz Berlin*), the average rightwing offender was a poorly educated and unemployed man aged between 15 and 24. Extremist groups lured such young men into a feeling of group identity by organizing field trips and political training. In addi-

tion, skinhead music, which was distributed in front of schools, familiarized young people with right-wing ideology. Neo-Nazis tried to spread about 50,000 CDs with extremist music in 2004.³⁷

Police and courts proceeded against extreme right-wing offences:

◆ In March, the Federal German Supreme Court upheld the judgement against the leader of the neo-Nazi music group "Landser"; for the first time branding a music group as a criminal organization. By distributing CDs, the group had incited racial hatred, the court held.³⁸

◆ In June, the District Court (*Landgericht*) Frankfurt/Oder found three neo-Nazis and two female accomplices guilty of grievous rape and bodily harm. According to the public prosecutor, right-wing extremist ideas were one of the motives. On 5 June 2004, the 20 to 29-year-old men had attacked their victim, a 23-year-old unemployed man, on the street. They took him to an apartment where the victim had to take off his clothes, and was kicked and raped with kitchen utensils. He was burnt with an iron and forced to drink oil, dish soap and vomit. One of the perpetrators insulted the victim by calling him a "non Aryan" and "less worth than my dog." The victim fainted several times during the more than two-hour torture. Two of the perpetrators only stopped the third one when he started to stab the victim with a fork and a knife. The seriously traumatized victim was rescued by an emergency operation. The perpetrators stated that they took revenge for the ill-treatment of a girl. Yet according to the public prosecutor, there was no evidence for this statement. During the trial, the perpetrators did not show any remorse.³⁹

Offences against Jewish institutions were reported, with graveyards being desecrated in Hesse and North Rhine-Westphalia, among other things. The threat

by extreme right-wing groups against the Jewish community became obvious in the trial against an extremist group at the Bavarian State Supreme Court (*Bayerisches Oberstes Landesgericht*). The group had planned an upheaval, including murder, and discussed placing an explosive device at the Jewish community center in Munich. The principal defendant was sentenced to a 7-year prison term.⁴⁰

Asylum Seekers and Refugees

28,914 individuals sought political asylum in Germany in 2005, a decrease of 18.8% from 2004 and the lowest number since 1983. Most asylum seekers came from Serbia and Montenegro, Turkey and Iraq. Asylum was granted to 0.9% of all applicants; 58.4% of applications were rejected. 4.3% of the asylum seekers were allowed to stay temporarily on humanitarian grounds and 36.4% of all cases were sorted out differently (e.g. the asylum seeker did not follow up the application). Critics of the procedure noted that the number of recognized asylum seekers contradicted the human rights situations in the refugees' home countries, thus casting doubt on the criteria and adequacy of the asylum procedure. In addition, the status of recognized refugees was increasingly revoked due to political changes in their home countries such as Iraq and Kosovo. Their status was also withdrawn in the process of applying for naturalization or for the immigration of foreign dependents. In 1998, 577 refugees were deprived of their legal status; in 2004, the number of withdrawals was 14,972.⁴¹

To better prevent terrorist attacks, the then minister of the interior rejected a draft EU directive concerning the deportation of illegal persons. The proposed directive provides for the harmonization of EU-regulations and the limitation of the duration of deportation custody to six months. According to the minister, the regulation under-

mined German laws under which deportation custody can last up to 18 months and abiding by the EU regulation would make it more difficult for German authorities to deport terrorist suspects and to protect the country against terrorist attacks.⁴²

In September, the then minister of the interior restated his plan to establish centres for refugees outside EU borders to fight refugee smugglers and to prevent deadly escapes to Europe. According to the minister, refugees should be placed in centres in Northern Africa while their requests for asylum are assessed. Following a positive screening, the formal asylum procedure would be initiated in EU member countries. The proposal was criticized because rejected asylum seekers would not have access to legal remedy – a well founded argument given that 30 to 60% of all asylum applications in Europe are accepted only on appeal. Moreover, many North African countries would not be able to prevent the refugees from crossing the Mediterranean. The plans would also endanger the *non-refoulement* principle in that rejected asylum seekers could be sent back to countries, which do not respect the Geneva Refugee Convention. Finally, critics considered the proposal to be a way for the European countries to abandon their responsibility for refugee protection and place this burden on the countries in Northern Africa.⁴³

New Immigration Law

Formal improvements in the protection of refugees were implemented when the new Immigration Law (*Zuwanderungsgesetz*) came into force on 1 January 2005. The new law provides for a thorough examination of the cases of asylum seekers who are not granted asylum but are unable to return to their home country. Previously, they had to renew their permit to stay in Germany (“toleration” or *Duldung*) periodically, now such permits can

be transformed into residence permits. The new law also recognizes non-state persecution and gender-specific persecution as a ground for asylum.⁴⁴

Yet, the implementation of the law was cause for concern. As the new law did not explicitly deal with pending cases, people who had lived in Germany for several years on “toleration” had to re-apply for the right to stay. Only very few were granted permanent residence.⁴⁵

“Hardship commissions” (*Härtefallkommissionen*) with the task to decide on the extension of the right to stay in Germany in exceptional cases were only optional institutions and dependent on the goodwill of state governments. Bavaria did not establish a commission at all. In Hesse and Lower Saxony the Petition Committee of the state parliament was transformed into a hardship commission. The state government of Berlin did not follow the recommendation of the commission to stop the deportation of an Angolan who had lived in Germany for more than 10 years.⁴⁶

◆ The Angolan refugee came to East Berlin in 1989. After the German reunification he received a temporary right to stay, which expired in 2002. He stayed in Berlin illegally and was arrested by the police after having been picked up in the metro without a ticket in September 2004. Since then, he had been kept in deportation custody and received medical treatment in hospital because of a serious cardiovascular disease. He was deported in February 2005.⁴⁷

Germany did not grant protection for refugees who faced impending torture or ill-treatment by non-state actors in their home country. This contradicts the ECHR and EU law but also regulations of the new immigration law.⁴⁸

Finally, the new immigration law was also inspired by security concerns and the preventive fight against terrorism. Immigrants and refugees can be deported af-

ter an accelerated procedure if they are perceived to be terrorists or a threat to public security. Yet the new regulation was restricted when the Federal Constitutional Court ruled against the immediate deportation of an *imam* who was accused of hate speech in June. The court underlined that there was not enough evidence of the *imam* being an imminent danger to public security.⁴⁹

Asylum Procedure

Living conditions of asylum seekers in Germany continued to raise concern in 2005. Refugees could not leave their administrative district without permission (*Residenzpflicht*) and were not allowed to work. In Munich, refugees demonstrated against the distribution of food packages. They complained that individual preferences and allergies were not considered and that their monthly pocket money was not sufficient to buy supplementary food. Bavaria, Saarland and Baden-Württemberg provided asylum seekers with food packages. In Bramsche (Lower Saxony), asylum seekers lived in poor living conditions in a deportation center isolated from the rest of the population. It was the largest center in Germany with about 550 people, who were all likely to be deported. The state of Schleswig-Holstein also planned to set up deportation centers in Lübeck and Neumünster. The new immigration law proposed the use of such centers all over the country.⁵⁰

Asylum seekers could be subject to interrogations by officials of their home country - the country they were fleeing from. In Trier, the Algerian consul general visited a center for asylum seekers. The director of the local immigration office arranged a meeting of the Algerian official with refugees from Algeria who were questioned about the reasons for their applications. The case aroused special concern as similar incidents had taken place in Trier al-

ready two years ago when Chinese deportees were interrogated by officials of their home country. In Mühlheim, officials of the Vietnamese Ministry of the Interior met with 300 Vietnamese deportees for the purpose of identification. No lawyers were permitted at the interview. According to German authorities, the procedure was commonplace.⁵¹

Victims of forced prostitution and trafficking in human beings were not granted asylum. They were allowed to stay in Germany for the duration of the legal proceedings against their perpetrators to serve as witnesses. With the exception of those persons who could prove personal danger in their home country, they were deported after the proceedings. The regulation made it difficult to fight forced prostitution and trafficking in human beings as witnesses were rarely willing to speak out.⁵²

Germany's reservation to the UN Convention on the Rights of the Child upon ratification in 1992 remained in force. It denied child asylum seekers from age 16 special protection and made them subject to the adult asylum procedure. Contrary to article 2 of the UN convention, in 2005 child refugees continued to be discriminated against in comparison with non-refugee children; in violation of article 3, the government did not grant the best interest for all children in Germany; and contrary to article 22, Germany did not grant special protection for child asylum seekers. From the age of 16, child refugees were not granted the right to education and to work, could be held in pre-deportation custody and could be deported without any counsel. In particular, about 10,000 minor refugees who had come to Germany by themselves were subject to the procedure.⁵³

Deportation

Pre-deportation custody remained a problem. Deportees were taken into custody although they could not be deported

in the near future and were held there for up to 18 months. Several states did not accommodate criminal offenders and deportees separately. Traumatized and minor refugees were also held in custody. Medical reports on deportees' health conditions did not always meet scientific requirements, so that traumatized refugees were sent back to their home country, contrary to standards requiring a certain level of health prior to deportation. In Berlin, deportees in custody went on hunger strike because of the extension of their detention and ill-treatment by corrections officials.⁵⁴

Refugees were sent back to countries with poor human rights records and where the safety of the returnees was not granted, such as Kosovo and the People's Republic of China:⁵⁵

◆ In November, the UN Mission in Kosovo denied entry to 33 deportees who were sent back to their home country. All of the rejected were members of minority groups who had suffered grave human rights violations in March 2004. After having arrived in Pristina, UN officials asked

the refugees about their minority status. Several Roma and Ashkali were not permitted to enter the country. After a 40-hour trip, the refugees returned to Germany.⁵⁶

◆ After having been sent back to the People's Republic of China, a Chinese refugee was retrospectively recognized as an asylum seeker by the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*). The 30-year-old man was deported with his wife and two children in March. According to the German authorities, he had not been in danger of being persecuted in China. Yet, when arriving in his home country, he was immediately arrested because of being a member of the Falun Gong movement and was sent to a labor camp. His family went into hiding. In November, German authorities withdrew their decision and stated that the asylum seeker was in danger of suffering human rights violations in his home country. Because of health problems the 30-year-old was allowed to leave the labor camp. Yet, he was kept under house arrest and his passport was confiscated.⁵⁷

Endnotes

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- ⁴ Council of Europe, *Council of Europe Treaties*, at <http://conventions.coe.int/Treaty/EN/v3MenuEtats.asp>.
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