

HF FOCUS: torture, ill-treatment and police misconduct; conditions in detention facilities; right to privacy; freedom of movement; intolerance, xenophobia and racial discrimination; asylum seekers; women's rights.

The human rights situation in Germany in 2001 showed some improvements but also raised concerns in certain fields. The risk of violent demonstrations provoked the Government to deliberate controversial forms of detention and restrictions on freedom of movement; and xenophobia and racial discrimination remained high on the agenda. The Anti-Terror Laws curtailed the right to privacy and the rights of asylum seekers; and trafficking in women remained a serious problem.

Notwithstanding, human rights received increasing political attention. On 9 March, the politically independent Institute for Human Rights was founded in Berlin to collect information and documentation, carry out research, advise the Government and authorities on policy issues, and participate in initiatives for education and international cooperation.¹ Moreover, the German Government sped up its effort to establish a Global Criminal Code of International Law, which would provide for the prosecution of worldwide human rights violations.² In addition, the Committee on Human Rights and Humanitarian Assistance of the Lower House of Parliament (*Bundestag*) was highly active, organizing, *inter alia*, a hearing on torture and ill-treatment by the police. The bills and motions of the Committee drew increasing public interest on human rights issues.³

Torture, Ill-treatment and Police Misconduct

There was continuous concern about reports of ill-treatment and misconduct by law-enforcement officials. According to the European Commission against Racism and Intolerance (ECRI), the discrepancy between reports of police misconduct and the results of criminal proceedings remained high.⁴ In the first six months of 2001, two trials took place concerning police ill-treatment.

◆ In April, the Rottweil District Court (*Landgericht*) upheld the convictions of two police officers who had been charged with the ill-treatment of a 28-year-old man in the town of Rottweil in February 1999. They were given suspended prison sentences of nine and 14 months, respectively.

◆ In May, the Munich's District Court convicted two police officers for beating two detainees. The offence was committed during Munich's October Festival in 1998.⁵ The appeal trial took place in 2001: the officers received suspended sentences of 18 and 10 months, respectively.

Germany failed to submit its third report on torture and conditions in detention facilities under Article 19(1) of the UN Convention against Torture. During a hearing of the Committee of Human Rights and Humanitarian Assistance of the Lower House of Parliament on torture and ill-treatment, the experts emphasized that international human rights standards could only be set if existing agreements were met, and that delays in their implementation would weaken the standards of international law and its development.⁶

Conditions in Detention Facilities

The plan to use metal cages to detain anti-nuclear demonstrators was met with public concern, and critics voiced doubt about whether such a form of detention was in accordance with international standards.

The plan to use metal cages was initiated after mass demonstrations and arrests during the March transportation of nuclear waste from France to Gorleben, in Lower Saxony. The fear of violent riots and the lack of detention capacities led police to consider the use of metal cages as a last resort for those persons arrested. According to media reports, the cages were 6 by 4 metres large and over 2.25 metres high.

Ultimately, the authorities of Lower Saxony decided not to use the mobile custody cells and ensured that if the cages were to be used at a later stage, they would be placed out of public view and in empty buildings.⁷

Right to Privacy

The right to privacy was endangered by the Second Anti-Terror Law, which was adopted in December 2001 and came into force in January 2002, as well as by the use of screening methods in the search for terrorists.

The search for terrorists targeted specific groups of people in a potentially discriminatory way and restricted their right to privacy (*Recht auf informationelle Selbstbestimmung*). In order to ensure the most effective and successful search for terrorists, the method entails screening and empowering the police to check and compare personal data registered in electronic databases (*Rasterfahndung*). On the basis of certain criteria, people were subjected to systematic controls. In particular, young men between the ages of 25 and 30 who were studying natural science or technical subjects and who had no criminal records were checked on a regular basis. The screening was used several times before the year 2001, and although the steps were hardly successful, their use remained widespread until March 2002.⁸

The use of coded biometrical elements in passports facilitated the abuse of people's private data. The Second Anti-Terror Law allows the authorities to register and use human characteristics mathematically. Consequently, it is possible to use fingerprints or other biometrical elements to identify people more precisely – again, violating the right to privacy on the grounds of reducing the threat of terrorist activity.

In addition, the law expands the powers of the German Criminal Federal Bureau and the Criminal Bureaus of the States to retrieve personal information from credit institutions, airlines, and communication

services, once again endangering the privacy of people's personal data.⁹

In addition to the Second Anti-Terror Law, the issue of whether to introduce a central DNA-archive for all men raised concern about further intrusion into privacy. The archive was designed to deter people from committing sexual crimes, to identify offenders and convict perpetrators more quickly. Critics noted that DNA archives could be easily abused, and that their use in general would violate people's right to be considered innocent before charges have been brought against them. The establishment of the DNA-archive was proposed after a young girl was sexually abused and killed, and, paradoxically, the archive gained large public support. Although the discussion eventually faded out, concern remained about possible further violations of the right to privacy.¹⁰

Freedom of Movement

In order to prevent violent demonstrations at the G-8 summit in Genoa on 20-22 July, freedom of movement was restricted in Germany. Suspected left-wing extremists were not allowed to cross the border or to board a bus or a train to Italy. Such measures violated not only Article 11 of the German Constitution, but also Article 18 of the 1957 European Economic Community Treaty and international standards on the freedom of movement. Authorities were unable to refute accusations of placing arbitrary restrictions on the fundamental right to free movement.

One particular concern was the criteria according to which the "extremists" were identified and denied exit from Germany. According to the *Frankfurter Rundschau*, the relevant police files that were used for this purpose included not only people who had not been sentenced for criminal acts, but also those who had been registered during a demonstration. The police and a court justified denying exit by citing a residual risk of violent behaviour by the persons if they were to leave the country.¹¹

Xenophobia and Racial Discrimination

Xenophobia and racial discrimination remained a serious problem in Germany in 2001. In the first six months of the year, the number of xenophobic and anti-Semitic offences increased slightly. Two-thirds of all politically motivated crimes committed in the first half of 2001 were committed by right-wing extremists.¹²

In June 2001, the European Commission against Racism and Intolerance (ECRI) expressed its concern about xenophobia in Germany. According to the ECRI, racial discrimination was no longer a small-scale phenomenon, but dominated the opinion of many young people. ECRI criticized in particular the high number of racially motivated offences in Eastern Germany, as well as the widely spread xenophobic attitudes of the population and the discrimination against foreigners in that part of the country.¹³ Additionally, the UN Committee on the Elimination of Racial Discrimination (CERD) received repeated reports about racist infringements in police stations and about ill-treatment of foreigners by law enforcement officials in Germany. The Committee demanded action against racism and right-wing extremism.¹⁴

◆ In the beginning of January, Cottbus in Eastern Germany became a centre of racially motivated offences. On 1 January, right-wing extremists insulted and terrorized a Jewish couple in front of their house. On 3 January, a Lebanese asylum seeker and a youth from Ukraine were attacked by extremists.¹⁵

◆ During the night of 7 January, the right-wing group *Nationale Bewegung* set a Jewish graveyard in Potsdam (Eastern Germany) on fire. No one was hurt, but the graveyard was destroyed. The group had been responsible for several racially motivated offences before this incident.¹⁶

◆ On 13 January, skinheads attacked and seriously wounded a Greek man in Munich. He was eventually rescued with the help of two Turkish passers-by. The perpetrators

belonged to a group of 15 neo-Nazis who sympathized with the anti-democratic National Democratic Party (*NPD, Nationaldemokratische Partei Deutschlands*).¹⁷

Racial offenders were frequently only sentenced years after the offences were committed. On 20 November, the last trial concerning the 1992 racial riots in Rostock opened. Nine years after a hostel for asylum seekers was burnt down, the last defendants faced charges.¹⁸ Moreover, the prosecutor in the case of a Sudanese asylum seeker, who was killed during his deportation in 1999, made very slow progress in his investigations of police officers.¹⁹

On the positive side, there was increasing concern about xenophobia and growing public resistance to racial discrimination. Grass-roots initiatives against intolerant behaviour were founded and racial offences provoked demonstrations. In Cottbus, more than 10,000 people demonstrated against xenophobia after racial offences were committed. Musicians travelled throughout Germany to appear on stage to "Rock against Racism".²⁰

The German Government also initiated three programs against xenophobia and racism, and in support of victim assistance.²¹ In the first half of the year, the Government, the Lower (*Bundestag*) and the Upper (*Bundesrat*) House of the German Parliament asked the Federal Constitutional Court to ban the right-wing extremist party NPD, citing the party's anti-democratic and anti-human program, and its nationalistic agitation and indoctrination.²² In December 2001, a Bill against Discrimination (*Antidiskriminierungsgesetz*) was drafted, which should facilitate the bringing of legal action against discrimination. According to the draft bill, the victim must not only give evidence of the discrimination, but the perpetrator must also prove his/her innocence.²³

Asylum Seekers

In 2001, 88,287 individuals sought political asylum in Germany, an increase of 12.4% from the year 2000. Most asylum

seekers came from Iraq, Turkey, Yugoslavia and Afghanistan. Asylum was granted to 5.3% of all applicants; 51.68% of all asylum applications were rejected.²⁴

In early 2001, a discussion took place regarding Germany's intention to alter the Asylum Law. While the Christian Social Party (*CSU, Christlich-Soziale Partei*) demanded the abolition of the fundamental right to asylum, the Green Party proposed that the right to asylum be expanded.²⁵ During the last six months of the year, the political debate focused on the Immigration Bill (*Zuwanderungsgesetz*), which affected the right to asylum as well. In Spring 2002, the Bill was passed by the Lower and the Upper Houses of the German Parliament.²⁶

The main problems regarding asylum seekers in Germany included the definition of the term "asylum seeker", the asylum procedure, the deportation of rejected applicants, and the status of minor asylum seekers.

Definition of "Asylum Seeker"

The Second Anti-Terror Law restricts the categories of people who can be considered eligible for asylum seeker status. People who are supporters of an organization that promote international terrorism or who are using violence for political reasons are explicitly excluded from the list.

However, this formulation leads to several problems: The term 'terrorism' lacks a precise legal definition. Arbitrariness in the decisions of who should be considered an asylum seeker is not excluded. Further, information about alleged terrorist activity of the asylum seeker will mostly come from his home country. This results in a conflict of interest between the asylum seeker and the home country. The authorities will then have to decide which information they should trust.²⁷

The Immigration Law is supposed to provide protection from persecution by non-governmental actors or because of sexual violence. The Law corresponds to the Geneva Convention and Article 3 of the European

Convention on Human Rights. It should improve considerably the implementation of international law in this field. However, the law was still only being discussed by the German Parliament in March 2002.²⁸

*Asylum Procedure*²⁹

The airport asylum procedure continued to raise concern in 2001. All asylum seekers who arrived in Germany by plane were obliged to stay at the airport while awaiting a decision on their application. Conditions of detention in the airport remained poor. Moreover, the airport asylum procedure did not provide for personal interviews between asylum seekers and the decision-maker, and legal advice was provided only after the asylum seeker's application was rejected.

Finally, there were no special regulations/provisions for victims of torture. As they were often traumatized and suffered from their experiences, they may not be able to describe the reason for their application in order to conform with procedures. Although the authorities improved their treatment of traumatized asylum seekers, there was still a lack of legal provisions.

Deportation

In 2001, pre-deportation custody remained a problem. Detainees were held for up to 18 months and often had no or very restricted access to legal advice. Social assistance or psychological help were rarely accessible.³⁰

Moreover, the deportation to certain countries caused problems. Several Kurds who were deported from Germany to Turkey were persecuted and tortured there. At least 35 cases of persecuted deportees were reported during the last two years.

◆ The application for asylum of the Kurdish woman "C." was rejected at the end of 1999, and she was deported to Turkey in January 2000. When she arrived at Istanbul airport she was arrested and sexually abused and tortured in custody. After her release she had to give the police her

home address. In May 2000, she was arrested once again, was mistreated and tortured. After her second release, she managed to leave Turkey and applied again for political asylum in Germany. Her request was ultimately accepted.³¹

Deportation to “safe third countries” also remained controversial. Asylum seekers who entered Germany by passing a “safe third country” were immediately rejected and deported to the safe transit country, through which they passed during their flight. However, it was not codified in law that the “safe country” was not allowed to deport the asylum seeker to his home country if she/he were to be persecuted there. Furthermore, the burden of migration was simply shifted to Germany’s neighbouring countries in the East.³²

Minor Asylum Seekers

Germany’s reservation to the UN Convention on the Rights of the Child upon ratification in 1992 remained in force throughout 2001. According to the reservation, German asylum law would not be affected by the provisions of the Convention. Contrary to Article 22 of the UN Convention, Germany did not grant special protection for minor asylum seekers.

Young asylum seekers were not entitled to health care, education or pedagogical support. In addition, young people aged 10 to 15 were held in deportation custody. In Berlin, they stayed in custody for a minimum of two months and sometimes for up to six months. On 13 November, a minor detainee attempted to commit suicide. In addition to the inconsistent periods of detention for young asylum seekers, deportations often took place without qualified persons in charge.³³ Although the Lower House of Parliament passed three resolutions in favour of the UN Convention³⁴, the

German Government rejected any changes to its procedure.³⁵

The Immigration Law will deteriorate the status of young migrants to Germany. According to the law, young people whose parents live in Germany are only allowed to follow their parents to Germany if they are younger than 13. The age was previously 17. Exceptions were made with regard to the language skills of the child and if the family entered Germany together. Nevertheless, this regulation violated Articles 1 and 9 of the UN Convention.³⁶

Women’s Rights

Germany was one of the main markets for trafficking in women. Each year 900,000 million Euro in profits were made. Especially Berlin, a crossroad between Eastern and Western Europe, became a central point in the international business of trafficking in women; 89% of the victims came from Eastern and Central Europe; their average age lay between 18 and 25. Exact numbers were hard to get as a precise definition of the offence did not exist and the number of unreported cases was high. As the demand for cheap prostitutes exceeded by far the number of available women, the range of the offences was expected to increase.³⁷

Trafficked women who tried to make their condition public often suffered from being regarded as illegal and from the dependency on their slave-drivers. They were considered as perpetrators rather than victims. In August, the German Lower House of Parliament proposed a parliamentary motion. It suggested extending the definition for trafficking in human beings, to grant trafficked women a right to stay during a pending lawsuit against traffickers and to protect them if they were persecuted in their home-country.³⁸

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