APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Germany.

ECRI wishes to point out that the analysis contained in its second report on Germany, is dated 15 December 2000, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Germany to engage in a process of confidential dialogue with ECRI on its draft text on Germany and a number of her comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the German governmental authorities expressly requested that the following observations on the part of the authorities of Germany be reproduced as an appendix to ECRI's report.

OBSERVATIONS PROVIDED BY THE GERMAN AUTHORITIES CONCERNING ECRI'S REPORT ON GERMANY

"Introduction (Executive summary)

The statements (2nd paragraph)

*- "that issues of racism ... are yet to be adequately **acknowledged**" and*

*- the existing legal framework and policy measures have not proven to be sufficient to effectively **deal with** these problems"*

are much too sweeping and do not reflect the actual situation in Germany.

The tasks of combating racism, anti-Semitism, xenophobia and intolerance have been recognised and acknowledged in Germany in time. Numerous actions have been taken on various levels. These actions are set out in detail in the opinion given by the German NLO to ECRI in August 2000. Particularly 1 refer to pp. 3 ff. (prevention of xenophobia, racism, extremism, and violence), pp. 15 f. (actions in the fields of school education and further training), pp. 16 ff. (police training), pp. 19 f. (awareness- raising), pp. 21 ff. (improvement of educational and professional

training opportunities), pp. 25 ff. (media coverage), pp. 28 f. (actions in the housing sector), pp. 29 ff. (fight against racist and anti-Semitic behaviour).

A government that is not aware of a certain problem would not take so many measures. That this has been the case is admitted by the report more than once (e.g. in the first sentence of the Executive summary). In this respect the report is inconsistent.

To reproach the German government for having taken insufficient measures which had not allowed "to deal with" the problems implies the accusation that, in general, all its actions had been inappropriate. Even measures which do not immediately solve a problem may not be prejudged as ineffective.

*The conclusion drawn in the 2nd paragraph that Germany only takes **"insufficient measures of integration"** is another inadmissible and too sweeping statement. Even if actions to promote integration are not always a hundred per cent success, there is no justification for calling them insufficient. Again I refer to the aforementioned list of actions set out in the opinion of the German NLO given in August 2000.*

1. Number 8

The assertion that statutory naturalisation criteria potentially lend themselves to a discriminatory practice of naturalisation must be rejected emphatically. Obviously the report has not been aware of the fact that the Federal Republic of Germany is a state governed by the rule of law which is capable of organising administrative processes properly. The competent authorities are bound by General Administrative Regulations when applying the existing legal provisions, and they are subject to the supervisory control of their superior authorities. The relevant General Administrative Regulation was adopted by the Federal Ministry of the Interior on 13 December 2000 and entered into force on 1 February 2001. It consists of 79 standard pages, in other words it is a very detailed regulation, which ensures that the relevant laws are applied properly. Moreover, the decisions of the competent authorities are subject to judicial supervision through an independent administrative jurisdiction. These precautions should dispel any suspicion of possible unauthorised action or arbitrariness.

2. Number 20

Contrary to what has been stated in the report, the airport procedure is part of the proper asylum procedure. It is not a "pre-procedure" before the actual asylum procedure. It is not true that "shortened delays of this procedure increase the possibility that an individual will be returned". Adjudicators sitting alone, who are not bound by instructions, carefully and thoroughly examine every asylum application. Under § 18a of the Asylum Procedure Act, the person applying for asylum shall be given the right to judicial relief. The access to court proceedings is ensured. Since 1998, persons applying for asylum with the border authorities at the Airport

Frankfurt/Main have the opportunity to get legal advice from self-employed lawyers free of charge. The costs are borne by the State.

In line with its purpose the airport procedure is applied primarily to asylum applicants who enter the country from a safe third country, in order to prevent that the relevant regulations are circumvened by entries by air. In these cases, a decision on asylum application can generally be taken without undue delay. In the majority of cases such an early decision is impossible due to various reasons, so that for the time being the person concerned enters the country and is subjected to the "ordinary" asylum procedure. According to the airport statistics for the year 2000, 997 persons have lodged an asylum application with the airport authorities at the Airport Frankfurt/Main, which is the most affected airport. 615 out of these 997 persons have entered the country directly and have been subjected to the "ordinary" asylum procedure, and 382 persons have been subjected to the airport procedure.

Besides, the same or similar procedures are also applied to entries by air by other states within and outside the European Union, for example by Austria, Belgium, France, the Netherlands, Spain and Australia, the United States and Switzerland.

In Germany asylum seekers are not criminalised only because they have lodged an asylum application, or because they have entered the country illegally for the purpose of lodging an asylum application.

In its judgement of 14 May 1996 the Federal Constitutional Court has expressly stated that accommodation in the airport transit area for the duration of the airport procedure neither constitutes deprivation of liberty nor restriction of liberty.

If the phrase "asylum seekers should not be treated as criminals" refers to the fact that in rare individual cases measures restricting the liberty of a person are ordered so as to safeguard the deportation of persons who are required to leave the country and whose asylum application has been finally rejected, the following should be noted:

Measures to restrict the liberty of foreigners who are required to leave the country can become necessary in individual cases. In particular this is case if these foreigners are not willing to leave the country voluntarily, or if they try to thwart measures to end residence, for instance by destroying their travel documents, or if it must be feared that these persons go underground. During an ongoing asylum procedure asylum applicants shall not be taken into custody on grounds related to the asylum procedure.

3. Number 21

We deny that visual checks of travel documents at the exit to the plane immediately after its landing are "not sufficiently transparent and present the possibility of arbitrary decisions".

The Federal Border Police (BGS) is a police authority which is committed to basic principles under the rule of law. The BGS takes its decisions under the law in force and according to the principles of the rule of law. It is not the aim of visual checks of documents to influence measures related to laws on foreigners or asylum matters. It merely allows a reliable passenger/airline reconciliation and thus allows to identify the airline which would be responsible for a return. At the same time it is possible to determine from which state a passenger who wishes to enter the country originates.

The ICAO Convention regulates the obligation of a state to readmit persons who have entered another state by air coming from the territory of this state and who are not in possession of the documents (e.g. passport, visa) required for entry into the other state.

The ICAO Convention may only be applied if the place of departure is known and if prima facie evidence can be furnished to the other state. Pre-checks on the airfield at the plane's exit, for example, help to determine the place of departure.

4. Number 27

The fact that the unemployment rate among foreigners is above that among the general public may not necessarily be put down to discrimination. The main reasons for the higher unemployment rate among foreigners are their training and language deficits and the fact that foreigners are usually recruited by particular branches of the economy which are especially dependent upon the economic activity. With a view to improving the chances of integration, the Federal Government has elaborated an overall language concept. It is an important cornerstone of this concept to integrate foreigners who have been granted a permanent residence permit into the language programme within three years after their first entry into Germany. For this project the Federation has provided DM 319 million in 2000 alone.

Often it is a very complex task to examine whether educational degrees obtained in different countries may be compared. Reliable results require a careful examination of every individual case. In Germany, educational degrees obtained abroad are recognised on the basis of expert opinions given by the Secretariat of the Standing Conference of Ministers of Education and Cultural Affairs of the Länder. The recognition of an educational degree will be denied, if the actual qualification and skills of the person concerned are below what is reflected by the title of the degree. This divergence is often due to a different language usage.

5. Number 33

The Federal Ministry of the Interior has noted accusations according to which foreign nationals experienced ill-treatment and misconduct of staff members of the Federal Border Police and other police forces. In all cases investigations have been initiated. As far as the accusations have been substantiated, the competent public prosecutor

has been informed, who has to decide on his own responsibility about further proceedings. In many cases investigations by the public prosecution are closely related to the return of persons required to leave the country by air, who, in some cases, have used physical force to put up resistance to public officers. In order to enforce a return, the Federal Border Police is allowed to take coercive measures against the returnee. According to the opinion of the Federal Border Police, there are frequently indications to suggest that people claim they have been attacked by police officers only to compel the authorities to prolong their residence (e.g. as a witness in a court proceedings).”