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Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Germany is dated 7 February 1997 (published in March 1998). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to Germany took place on 23-26 October 2000. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the German national authorities for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the German national liaison officer whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 15 December 2000 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Over recent years, Germany has taken a number of steps which are relevant to combating racism and discrimination, including ratification of several important international legal instruments, amendments to citizenship legislation to facilitate the acquisition of citizenship by long-term residents and children born in Germany and measures to improve the enforcement of criminal legislation aimed at racist and antisemitic crimes.

However, Germany is a society in which serious incidents of racially motivated violence occur. This means that issues of racism, antisemitism, xenophobia and intolerance are yet to be adequately acknowledged and confronted. The existing legal framework and policy measures have not proven to be sufficient to effectively deal with or solve these problems. Of deep concern are the situation of and attitudes towards those who are considered as "foreigners", insufficient measures of integration and the lack of recognition of the possibility that German identity may also be associated with other forms of identity than the traditional one.

In the following report, ECRI recommends to the German authorities that further action be taken to combat racism, antisemitism, xenophobia and intolerance in a number of areas. These recommendations cover, inter alia, the need to ensure that the legal framework aimed at combating these phenomena is adequate and effective; the need to identify barriers and problems of discrimination in key fields of life such as housing, education and employment; the need to recognise Germany as a country of immigration and the positive contribution made by individuals of foreign origin; the need to acknowledge the possibility of different forms of identity existing alongside German identity; the need to recognise the connection of racist, xenophobic and antisemitic violence to more general problems of racism, antisemitism and intolerance and to take multifaceted action against this serious problem.

SECTION I: OVERVIEW OF THE SITUATION

A. International legal instruments

1. Germany has ratified most of the relevant international legal instruments in the field of combating racism and intolerance. ECRI welcomes the ratification by Germany of the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities, as suggested by ECRI in its first report. ECRI also welcomes Germany's signature of Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and it hopes that ratification will follow as rapidly as possible. Furthermore ECRI is pleased to learn that the German government is preparing to sign and ratify the European Convention on Nationality, and encourages a rapid finalisation of this process. ECRI also urges the German authorities to ratify the European Convention on the Legal Status of Migrant Workers and to sign and ratify the Revised European Social Charter and the European Convention for the Participation of Foreigners in Public Life at Local Level.
2. ECRI reiterates the recommendation made in its first report that Germany should make a declaration under Article 14 of the Convention for the Elimination of All Forms of Racial Discrimination, recognising the competence of the Committee for the Elimination of Racial Discrimination (CERD) to accept individual complaints. It is felt that this possibility would be a useful tool in the fight against racism and intolerance in Germany.

B. Constitutional provisions and other basic provisions

3. The Constitution of Germany establishes the fundamental principle of equality before the law and provides that no one may be disadvantaged or favoured on the basis of sex, parentage, race, language, homeland or origin, faith or religious or political opinions (Article 3). It also provides for the banning of associations, the purposes of which conflict with criminal laws or which are directed against the constitutional order or the concept of international understanding (Article 9(2)). Furthermore political parties which, by reason of their aims or the behaviour of their adherents, seek to impair or abolish the free, democratic basic order, shall be declared unconstitutional by the Federal Constitutional Court (Article 21(2)). In the post-war history of Germany two parties have been declared unconstitutional under this article, however, in light of the recent racial violence and harassment, the German authorities have submitted a request to the Constitutional Court to declare unconstitutional the National Democratic Party of Germany (NPD), contending that it pursues racist and anti-democratic actions and policies¹.
4. Land Constitutions also provide diverse guarantees in the areas of ECRI's interest. Certain Land constitutions include guarantees of equality and non-discrimination that repeat or complement Article 3 of the Federal Constitution. The Länder may not, however, derogate from the guarantees provided at the federal level.

¹ See *Issues of Particular Concern, Racist and Antisemitic Violence and Harassment*

- **Citizenship law**

5. Approximately 9% of the population living on the territory of Germany (mostly migrant workers, but also political refugees) do not have German citizenship, despite the fact that many have spent all or most of their lives in the country and are likely to remain. As ECRI noted in its first report, in 1991 and 1993 the German authorities amended the nationality law allowing for a possibility for certain categories of non-German immigrants to be naturalised upon request. These changes, however, resulted in only a slight increase in naturalisation applications. The new coalition government which came to power in autumn of 1998 promised further reform of the 1913 nationality law and, accordingly, in July 1999 passed an Act to Amend the Nationality Law, which became effective on 1 January 2000.
6. ECRI considers that this Act is a positive development moving in the direction of simplifying the acquisition of nationality by long-term residents, as ECRI recommended in its first report. In this respect ECRI notes with interest that the period of residence required for a foreign national adult to be entitled to naturalisation has been reduced from fifteen years to eight years. Furthermore this entitlement to naturalisation may be extended to spouses and minors even if they have not lived in Germany for eight years. ECRI also notes with interest the fact that the new Act provides the right for children born in Germany to acquire German nationality as of right, "if one parent has had his or her habitual residence in Germany for eight years and has had a residence permit for three years or has the right of unlimited residence."
7. ECRI requests the German authorities to review their position with respect to the acquisition of dual nationality. Non-nationals wishing to acquire German nationality, apart from certain exceptions, continue to be obliged to renounce their former nationality. Those children now entitled to German nationality at birth and who will have thereby acquired two nationalities, will have to opt for one of the two nationalities before the age of twenty three. ECRI again draws attention to the fact that there is a general trend amongst European States to move towards a more flexible approach as regards the issue of dual nationality and that such approach is in accord with the European Convention on Nationality. Moreover ECRI believes that efforts should be made by public officials to de-dramatise this issue in the public arena, as concerns appear to correspond more to psychological constructions than to the actual situation. For example, information should be provided about the number of individuals already holding multiple nationalities by virtue of having bi-national parents or acquiring German nationality automatically due to their descent. The prevalent myth that considerable benefits flow from such a status should also be challenged by facts.
8. German Nationality Law specifies a number of requirements that all individuals applying for naturalisation must meet. These include sufficient knowledge of the German language, a commitment to the Basic Law, a clean criminal record and the ability to provide for maintenance (claiming social welfare does not prevent naturalisation as long as the situation is beyond the claimant's control). ECRI believes that such criteria although not in themselves discriminatory might potentially lend themselves to arbitrary and discriminatory application. The German authorities are encouraged to give consideration to these potential problems.

9. ECRI notes that the debate over nationality reform is ongoing and hopes that this discussion leads to further positive developments with respect to the possibility for acquisition of nationality by individuals born in Germany and those who have been long-term residents. ECRI also draws attention here to the relationship between legislation in the area of nationality and attitudes toward individuals of foreign origin discussed in detail in Section II of this report².

C. Criminal law provisions

10. The German Criminal Code contains provisions aimed at combating racism and intolerance. The Criminal Code complements Constitutional legislation prohibiting certain associations and parties by penalising the continuation of their activities (Sections 84 and 85). The dissemination of propaganda and use of the symbols of unconstitutional organisations is also prohibited. (Section 86). Furthermore the Criminal Code contains very comprehensive provisions aimed at hate speech and the approval, denial or playing down of the genocide committed under the National Socialist regime (Section 130). Such crimes committed via the medium of the internet may also be prosecuted. In the case of killing, the Federal Supreme Court regards racism as an aggravating motive (Section 211). The Criminal Code also penalises the crime of genocide (Section 220a).
11. In its first report, ECRI noted that the German authorities adopted firmer measures to combat racial violence in the wake of the arson attacks in Mölln and Solingen. These measures included improving police methods for monitoring and combating violent right-wing extremists, police surveillance of right-wing groups, banning of several neo-Nazi organisations and investigations by the federal prosecutor on attacks against members of minority groups. Despite such efforts, racially motivated and antisemitic crimes continue to be a serious problem in Germany. The German authorities are considering additional measures to more effectively combat this problem. The present report addresses this issue in Section II³. In light of the importance of effectively implementing legislation, ECRI stresses that law enforcement officials, prosecutors, judges and lawyers, should be given the necessary training to enable the successful application of legal provisions aimed at combating racist and antisemitic crimes.

D. Civil and administrative law provisions

12. As indicated by ECRI in its first report, the principle of non-discrimination is contained in different laws and regulations dealing with specific aspects of civil and administrative law. However, there is a lack of specific anti-discrimination legislation at the federal level against racial discrimination in key fields of public life, such as housing, education, health, employment and the provision of goods and services. ECRI takes note of the fact that the constitutional guarantee of equality covers these fields, however it believes that this guarantee would be strengthened by supplemental legislation in specific fields. ECRI considers that such legislation could

² See *Issues of Particular Concern, The challenge of integration, Racist and antisemitic violence and harassment*

³ See *Issues of Particular Concern, Racist and antisemitic violence and Harassment*

not only provide an avenue of redress for individuals who are victims of discrimination, but may also serve an important educative and awareness-raising function as well as enabling problems of discrimination to be revealed.

13. In some countries the introduction of a single body of anti-discrimination legislation covering discrimination in several fields of life and providing for effective enforcement, has proved a valuable tool. ECRI notes that the Ministry of Justice is examining this question in the framework of the new European Council Directive on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. ECRI hopes for a swift and successful conclusion of this process and, as will be discussed below⁴, stresses the fundamental role that an independent specialised body on combating racism and intolerance could play in supervising the implementation of this legislation.

E. Specialised bodies and other institutions

14. The Federal Government's Commissioner for Foreigners' Issues addresses issues relating to foreigners in Germany. Its tasks include: involvement in relevant Federal legislative initiatives; requesting information about instances of possible discrimination by public bodies; promoting the integration of foreigners permanently residing in Germany; hearing the concerns of foreigners living in Germany and providing them with advice and acting to combat xenophobia and develop understanding amongst different groups. The majority of Länder and many municipalities have also nominated commissioners or foreigners' councils with varying tasks and competences. These different representatives also meet in order to exchange information and experiences. ECRI believes that these commissioners and councils perform an important function in the area of combating racism and intolerance and encourages the German authorities to pay due respect to their advice and recommendations in the area of their expertise, while at the same time evaluating the effectiveness of their work. It also encourages the authorities to address the difficulties encountered in the functioning of such bodies and provide them with adequate resources.
15. ECRI notes with regret that at present Germany still lacks at national level a commission or ombudsman able to accept individual complaints and assist victims in pursuing these complaints. As set out in its general policy recommendation No 2, ECRI attaches great importance to the establishment and functioning of independent specialised bodies at national level for combating racism and intolerance. ECRI encourages the German authorities to draw inspiration from its policy recommendation in order to create such a body, in accordance with the general principles and guidelines set out in ECRI's general policy recommendation. ECRI considers that the establishment of such an institution should also be examined within the context of the possible adoption of anti-discrimination legislation, in view of the central role it could play in supervising the implementation of such legislation.

⁴ See *Specialised bodies and other institutions*

F. Reception and status of non-citizens**- *The situation of non-citizens***

16. Germany is a country where there are a large number of non citizens, mostly former guest workers and their descendants, on its territory who constitute a sizeable minority group⁵. In its first report ECRI suggested that the German government consider improving the situation of non-citizens by further facilitating more frequent visits from family members living abroad, and by considering the possibility of raising the age limit for children falling under the scope of family reunification from 16 to 18 years of age. The German authorities have facilitated visits by older foreigners who were once employed in Germany, however there have been no further changes in the direction suggested by ECRI. In addition, requirements for getting a visa and especially the implementation of issuing visas for those who want to visit Germany are reported to be a serious problem in certain foreign missions of Germany. In this respect, ECRI notes that a decree issued to embassies in March 2000 contains rules and instructions concerning the issuing of visas and focuses mainly on a speeded-up and transparent visa issue practice that takes due account of the legitimate interests of visa applicants. As concerns unification with a spouse, this right depends on the strength of the person's title to stay in Germany. Thus it is available to those who have been granted asylum or those with a permanent right to stay in Germany, however other cases are decided on an individual basis. Applications for family reunification are considered by the authority for foreigners at the Länder level who not only check the title, but also whether the applicant in Germany makes an adequate living and possesses sufficient living space. ECRI stresses the emotional and psychological benefit that the presence of family members provides and the importance of this for successful integration.
17. ECRI reiterates the opinion expressed in its first report that the integration and participation in society of non-citizens who are long-term residents may be improved by according them certain political rights, such as the right to vote in local elections. Such practice has been adopted in some other European countries for third-country nationals. According local voting rights to non-citizens who are long-term residents would also encourage an engagement on the part of German political parties to take the interest of non-citizens fully into account.
18. According to German law, youth who are not German citizens may be expelled from Germany if they commit a crime that is considered to be an infringement or threat to public safety and security. A crime may only be considered as such if it carries a minimum prison sentence of three years. It has been pointed out that youth who have been born in Germany or have spent most of their lives in the country, may fall within the scope of the law. Young persons under the age of 21, however, have a greater degree of protection from expulsion. ECRI recalls in this connection international norms concerning the respect for private and family life.

⁵ For further discussion of this issue see *Issues of Particular Concern, The challenge of integration*

- ***The situation of refugees and asylum seekers***

19. ECRI expresses concern over reports of deportations of people at risk of human rights violations in their countries of origin, contrary to the principle of non-refoulement and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. ECRI draws particular attention to reports of cases of Roma and other minorities from Kosovo who are being forcibly deported despite assurances by the Federal authorities that no minorities will be sent back against their will. ECRI notes in this context that a special service point has been established at the Federal Agency for the Recognition of Foreign Refugees to assist the competent authorities in clarifying uncertain cases.
20. According to German asylum procedures there are special airport procedures applying to asylum seekers who enter from countries listed as safe countries of origin or those who are not able to prove their identity by a valid or surrogate passport. This procedure takes place before an asylum seeker enters the ordinary asylum procedure outside of the airport building. It has been pointed out that the shortened delays of this procedure increase the possibility that an individual in risk of human rights violations will be returned. ECRI stresses the importance of ensuring that all applicants have sufficient time to prepare their case effectively and full access to legal council. Furthermore ECRI stresses that asylum seekers should not be treated as criminals, and that any measures taken with regard to such persons should reflect this approach.
21. ECRI also draws attention to a procedure of "pre-field control" practiced at some German airports, whereby for planes arriving from certain destinations, the German airport authorities check passports and visas of passengers at the exit to the plane before the ordinary control inside the building. The German authorities explain that such checks occur in the case of flights arriving far from the airport building in order to be certain of the flight and destination from which individuals arrive. ECRI voices its concern that this procedure is not sufficiently transparent and presents the possibility of arbitrary decisions.
22. Concern has also been raised about the length of time taken to process asylum applications under the asylum procedure and about the poor living conditions of asylum seekers while their application is pending. In May 1997 a ban was initiated barring asylum seekers who entered the country after 15 May 1997 from the labour market; this regulation was repealed in December 2000 and substituted by an amendment of the regulation on work authorisation stating that asylum seekers who have legally stayed in Germany for one year or whose stay has been tolerated for one year may be given access to the labour market if no privileged worker from Germany or abroad is available for the job. Asylum seekers have great difficulties finding work due to the legislation establishing that employment must first be offered to Germans, European Union citizens or those individuals with permanent residence permits, before it may be offered to those with a weaker residence title, such as asylum seekers. The social benefits to which asylum seekers are entitled have also been reduced. ECRI considers that the Federal authorities should examine this situation in different parts of the country and ensure that asylum-seekers are not left in a destitute condition while awaiting the examination of their asylum claims. In this

connection, ECRI stresses that such poor conditions may reinforce prejudice, stereotypes and hostility towards such individuals.

- ***General climate concerning non-citizens***

23. ECRI is concerned at the negative climate prevailing in some segments of German society concerning individuals of foreign origin. ECRI deals with this particular aspect in Section II of this report⁶. However, ECRI registers here its concern at the impact of this situation on policies in the area of immigration and asylum, and the corresponding effect of these policies upon perceptions and behaviour toward Germans of foreign origin.

G. Access to public services

- ***Access to housing***

24. There are reports of instances of discrimination of foreigners and members of minority groups in the housing market. ECRI recalls its general policy recommendation No 1 in which it called on governments to initiate research into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing. In this respect it is important that a system of monitoring be established whereby it will be possible to identify problems of discrimination, and develop measures to address these problems. ECRI also believes, as discussed earlier in this report⁷, that it would be beneficial if civil and administrative legislation addressing discrimination in the housing market were introduced and effectively implemented.

- ***Access to education***

25. ECRI notes that children of migrants and immigrants are over-represented at lower secondary schools and special schools for under-achievers and correspondingly under-represented at intermediate and grammar schools. There is also a higher than average drop-out rate amongst these groups of children. ECRI suggests that these issues be further investigated and addressed. In particular, the authorities are encouraged to examine the role of discrimination in selection processes as well as during the school year. Indirect or hidden discrimination might occur at all stages of the selection process, thus special efforts may be necessary to identify discriminatory barriers. Stereotypes and prejudices of teachers may also have a negative impact upon the performance of minority children. In addition, ECRI believes that further measures should be taken to assist children with a mother tongue other than German to participate fully and successfully within the school system. In this respect, ECRI notes interesting initiatives being carried out in certain schools at the level of the *Länder* and municipalities such as preparatory courses, mother tongue education and the teaching of German as a second language. ECRI considers that it would be beneficial to further extend and integrate successful programmes into the mainstream activities of schools throughout the country. In addition, the German

⁶ See *Issues of Particular Concern, Racist and antisemitic violence and harassment*

⁷ See *Civil and administrative law provisions*

authorities might consider different types of pro-active measures aimed at promoting the participation of migrant and immigrant children at all levels of the school system, such as special information programmes for parents.

26. As concerns vocational training, in the last five years there has been a decrease in the participation of foreigners in the dual vocational system. Furthermore amongst vocational students who do not obtain their final vocational certificate, non-Germans significantly outnumber German citizens. The German authorities have expressed their concern over these problems. ECRI encourages them in the efforts to address these issues and calls attention in this context to the recommendations it made in the previous paragraph with respect to examining and addressing problems of discrimination and providing special language training.

H. Employment

27. ECRI is concerned about disproportionately high levels of unemployment amongst individuals of foreign origin. Such individuals reportedly encounter particular difficulties in gaining access to the labour market. ECRI notes that the German authorities have undertaken a variety of measures aimed at assisting these individuals in integrating into the labour market, including a language training programme. However, the German authorities are urged to further investigate the barriers for entry into the labour market in order to take effective measures to address these problems. ECRI believes that indirect and direct discrimination frequently play a large part in explaining this phenomenon. For example, factors such as discriminatory job requirements and prejudices and stereotypes on the part of employers about individuals of a different ethnic background may negatively impact upon their opportunities for employment. In the case of newcomers, it has been reported that arrangements for recognition of education and professional experience are rather complex preventing certain individuals from obtaining employment in their field.
28. ECRI has also received reports of discriminatory practices with respect to rates of remuneration of migrant workers in certain sectors, particularly the construction industry. Such workers may be in a vulnerable situation when claiming their rights, despite the existence of minimum wages and a state supervision mechanism. Although remedies do exist, such as involving Works Councils, further measures appear to be necessary. It might prove beneficial to promote further dialogue between the different social, political and economic actors involved, in order to stimulate the adoption of new initiatives and strategies in the field of the fight against discrimination in employment.
29. Although legal measures alone cannot suffice in successfully countering discrimination in employment, ECRI considers that adequately implemented legal provisions play a paramount role and hopes therefore that developments will lead to comprehensive antidiscrimination legislation in this field covering all phases of the employment process. ECRI stresses in this connection that facilitating the burden of proof of the employee is an important tool in making antidiscrimination legislation in this area effective, and urges the authorities to consider this possibility with respect to new legislation to be enacted in this field.

I. Vulnerable groups

This section covers certain minority groups which may be particularly vulnerable to problems of racism, discrimination and intolerance in the country in question. It is not intended to provide an exhaustive overview of the situation of all minority groups in the country, nor to imply that groups not mentioned face no problems of racism and discrimination.

Attention is also drawn to Section II of this report where the situation of migrant workers is addressed.

- ***Roma/Sinti community***

30. Members of Roma and Sinti communities face serious social disadvantage and are confronted with prejudice and discrimination in such fields as employment, housing and education. Stigmatising prejudices about Roma and Sinti are reportedly perpetuated by some media, particularly by naming alleged perpetrators of crimes as Roma or Sinti without such mention being required for understanding the reported incident. In addition, racist attacks and harassment against members of this community, discussed in detail in Section II of this report, have also been reported. The fact that the Roma and Sinti have been officially recognised as a national minority, in response to requests from Roma and Sinti organisations, is an important positive step in improving their situation. ECRI considers, however, that further efforts are needed in this respect and draws the attention of the German authorities to its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies. Furthermore ECRI stresses the important role of various opinion leaders, including politicians and the media, in consistently speaking out against racist views about this community and striving to replace them with more impartial information reflecting the positive contribution of the Roma and Sinti to German society.

- ***Jewish community***

31. The issue of antisemitism remains a sensitive one in Germany, which there is a hesitation amongst the majority population to confront in the public sphere. ECRI is concerned over an increase in antisemitism and violent attacks aimed at the Jewish community in recent years. There have been many instances of desecration of Jewish gravestones reported and there have been recent bomb attacks which seem to have been aimed at Jewish victims. The problem of antisemitic violence is discussed in further detail in Section II of this report⁸. ECRI stresses the role to be played by the various opinion leaders in society, be they politicians, religious groups, the media or civil society, in consistently speaking out against any manifestations of antisemitism and in taking action to ensure that their own bodies present an unambiguous and consistent stand against this phenomenon. In particular, misportraying or attempting to capitalise on issues which tend to raise public expressions of antisemitism, such as the issue of recent Jewish immigration into Germany and compensation for Nazi era slave labourers, should be avoided. Instead the responsibility and value to Germany in re-establishing its Jewish community

⁸ See *Issues of Particular Concern, Racist and antisemitic violence*

should be emphasised. Furthermore accurate information about the issue of slave labour and compensation should be disseminated.

J. Monitoring the situation in the country

32. It is difficult to obtain reliable data about the situation of minority groups living in Germany. ECRI considers that the collection of reliable and comparable data broken down by ethnic origin could help better assess and evaluate the situation and experiences of the various minority groups living in Germany in different fields such as employment, housing, education, etc. This should be done in accordance with European laws, regulations and recommendations on data protection and protection of privacy and the principle of freedom of declaration. In addition, ECRI considers that further efforts could be made to assess the effectiveness of various measures already undertaken to combat racism and intolerance and to establish the real situation as regards discrimination and racism. ECRI highlights the existing good practice of carrying out opinion polls involving members of minority populations to ascertain how they perceive levels of discrimination and intolerance, and it expresses its hope that this practice will be continued.

K. Conduct of certain institutions

33. ECRI continues to be concerned by reports of ill treatment and misconduct by law enforcement officials at the time of arrest, during detention and in prisons, particularly involving individuals of foreign origin. There are also worrying reports of alleged ill-treatment by border guards responsible for deportations. ECRI notes that criminal proceedings are pursued against officers accused of acts in violation of the Criminal Code and that an internal investigation procedure into complaints also exists. However, there is a wide discrepancy between reports of excesses and the results of criminal proceedings and internal investigations of complaints, which find a relatively small number of complaints to be valid. ECRI repeats its recommendation that Federal and local police authorities should intensify their efforts to make certain that the ranks of the police at grass-roots level respect the fundamental human rights of persons belonging to minority groups. Any reports of ill-treatment should be rigorously examined and perpetrators punished. In this respect ECRI considers that an independent body should be charged with the task of enquiring into all cases of ill-treatment by police officers, especially of members of minority groups. This body should preferably operate on a local and regional level in close co-operation with representatives of the minority communities concerned, reporting back to an appropriate central body. An annual report on the findings, conclusions and recommendations of that central body should then be published.
34. Special efforts should also be made to improve relations between police and minority groups. ECRI welcomes the attitude of the police to take steps in this direction. The basic training of police in all of the *Länder* and at the Federal level includes respect for the basic law and human rights. ECRI considers that it would be beneficial in improving relations with minority groups if initial and ongoing training also included awareness raising about issues of racism and discrimination. Such training could include an examination of the manner in which unwitting prejudice, ignorance, thoughtlessness and racist stereotyping on the side of police officers result in attitudes, behaviour and practices which disadvantage people belonging to minority

groups. ECRI is also pleased to learn of a desire within the German police force to increase the representation of members of minority groups. It may also prove helpful in this regard to investigate if there are discriminatory barriers preventing members of minority groups from entering the police force and to take positive steps to overcome such barriers. ECRI notes that a number of *Länder* have undertaken special measures, such as language training, so that members of these groups may successfully qualify for entry into the police force. ECRI encourages the German authorities to intensify such efforts, repeating successful measures throughout the country.

L. Media

35. ECRI is concerned at reports that some media in Germany promote negative stereotypes and prejudices about individuals of foreign origin and ethnic minority groups, contributing to a climate that is hostile to these individuals, as discussed in Section II of this report⁹. On the other hand, insufficient coverage is paid to the ordinary activities of these individuals as residents and participants in German society. ECRI notes that the Press Code adopted by the Press Council contains anti-discriminatory guidelines, and encourages the German media more generally to consider codes of self-regulation and to undertake special training in multi-ethnic reporting.
36. The media has played an important role in recent months in bringing the problem of racist and antisemitic violence to the forefront of German public debate. Regrettably some media simplify these crimes to problems of juvenile delinquency or frustration in the Eastern part of the country, neglecting to place the events in a broader context of racism, antisemitism and intolerance. ECRI welcomes the efforts of other media to explore these underlying problems as well as the broader causes of the violence. Such efforts are essential in drawing the attention of the German public and officials to the more complex nature of this problem. The responsibility of media professionals in this area is discussed in further detail in Section II of this report¹⁰.
37. ECRI is concerned about the steep rise in numbers of racist internet sites originating in Germany, while noting the efforts of internet service providers to combat racist and xenophobic material spread by computer-based means. Approximately 400 organisations of service providers in Germany have adopted a voluntary self-control mechanism, including a hotline where complaints can be communicated and the possibility for sanctions against members who spread racist and xenophobic materials. This body serves a remedial (having sites withdrawn), preventive and educative function.

⁹ See *Issues of Particular Concern, The challenge of integration, Racist and antisemitic violence*

¹⁰ See *Issues of Particular Concern, Racist and Antisemitic Violence*

SECTION II: ISSUES OF PARTICULAR CONCERN

38. In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Germany, ECRI would like to draw attention to the challenge of integration and the problem of racist and antisemitic violence and harassment.

M. The challenge of integration

39. According to the Central Register of Foreigners¹¹, approximately 8.9% of the population in Germany consists of migrants. This figure largely comprises individuals who moved to Germany to fulfil the needs of the German labour market as "guest workers" and their families. In 1999 approximately 16.4 % of the "migrant population" were refugees and asylum seekers. Approximately 22.3% of the migrant population were born in Germany, 67.8% in the under 18 age group. At the end of 1999, 32% of the total migrant population had lived in Germany for twenty years or longer, 40% for more than 15 years and 52% for more than 10 years. It should be noted that the average length of stay of migrant workers is higher than these statistics at first reveal since the numbers include a relatively large influx of asylum seekers and refugees over the last decade and the short "length of stay" of migrant children born in Germany.
40. Despite these relatively large numbers of migrants in Germany and the length of time that these people have spent in the country, Germany has not considered itself to be a country of immigration. These individuals, even those who are the second or third generation born in Germany, remain migrants or foreigners in German statistics, public discourse and life. The concept and usage of the term "foreigner" seems sometimes to encompass an even larger group of the population, also including those minorities who have lived for many generations in Germany. This conception has been represented in legislation in the area of nationality, where until the recent changes, children of migrants born in Germany were not granted automatic nationality in contrast to those individuals outside the country of German descent who according to the jus soli principle have an automatic right to nationality.
41. Demographic trends in Germany (a decreasing population) and the needs of the labour market motivated Germany to open its doors to these migrants, the largest group (2.2 million) originating from Turkey. Policies and attitudes towards these individuals have been governed by a "guest worker" approach, whereby they are perceived primarily in terms of their utility value. Accordingly, these individuals, despite making Germany the focus of their lives, often have a precarious residence status, which, besides those problems of discrimination they face, affects their possibilities for integration and participation in German society. Furthermore the duty has been on the non-nationals themselves to fit into German society, and integration measures have not been a priority. This approach has sometimes resulted in a separation of migrant communities from the rest of the population, in problems learning the German language and in other social difficulties. Such a situation also

¹¹ *Statistics from the end of 1999*

tends to reinforce negative stereotypes and perceptions about migrants, while ignoring the many positive contributions these individuals make and could make to German society. ECRI welcomes the efforts undertaken in certain municipalities in this regard, which have devoted resources to special initiatives to assist these individuals and their children in integrating into German society, and encourages the German authorities to emulate them as one possible way of addressing these issues and redressing the situation.

42. ECRI welcomes a recent shift whereby the German authorities and public opinion leaders have begun speaking of Germany as a country of immigration and are considering establishing a comprehensive program of integration. ECRI stresses the importance of such a change in approach. ECRI considers that problems of racism and discrimination are related to the general conception of the place and role of migrants in German society. ECRI is of the opinion that an increased recognition within German society of its diverse composition and of the positive contribution made by individuals of foreign origin would contribute greatly to solving many of the problems of racism and discrimination and to the richness of German society as a whole.
43. A worrying concept which is, at present, prevalent in German debate alongside discussions of integration and immigration is that of the "Leitkultur" (defining culture). This concept reflects a concept of German identity as a fairly homogenous one, and a fear about the effects diversity will have upon the culture and identity. It also reinforces negative stereotypes about other cultures, neglecting the value and important contribution of minority communities within Germany. ECRI urges political parties and public opinion leaders to publicly challenge all such ideas with a more well-informed and realistic portrayal of the role ethnic minorities play in German society, emphasising their positive contribution. ECRI also considers that increased acknowledgement of German society as a society in which various forms of identity can be associated with the traditional German identity would contribute to enabling all the members of German society to enjoy real equality in all fields of life.

N. Racist and antisemitic violence and harassment

44. Racist and antisemitic violence is one of the most pressing and dangerous expressions of racism and intolerance in Germany. There are frequent reports of harassment and attacks, some resulting in death, against members of minority groups, who are afraid to appear in public in certain regions of the country. These attacks are aimed at individuals of foreign origin as well as members of the Jewish community. Visible minorities are particularly susceptible to such attacks. This problem has reached the forefront of public debate in Germany with governmental and non-governmental actors attempting to determine the best way to fight against such crimes. These incidents are mainly carried out by neo-nazi groups or other extreme right groups, the majority by perpetrators between the ages of fourteen and twenty one. German internal security officials have warned that the German "hard right" is becoming better armed and more violent. The *Bundesamt für Verfassungsschutz (BfV)*, Germany's internal security service, has estimated that more than half of the violent right wingers live in the former East Germany. Although only 2% of the Eastern German population is composed of foreigners (as compared to 9% in Germany as a whole) and only 20% of Germans live in this area, approximately half of the racist crimes are committed in the Eastern Länder.

45. This is evidently a complex problem involving multiple interweaved causes. On one level, these causes involve conditions particular to the youth who are perpetrators of these crimes and their local environment. For example, such causes may include factors that generally contribute to juvenile delinquency, reasons some German youth are susceptible to right-wing extremist propaganda and ideology, as well as factors specific to the localities and regions where neo-nazis are active. On another level, these causes may be found in the broader society and the political climate existing therein. For example, such causes may include open and latent racism and antisemitism existing more generally within some segments of German society, a general apathetic attitude towards such phenomena, perceptions promoted in the public sphere about foreigners and their place within German society as well as discriminatory policies and practices which reinforce racism and antisemitism. ECRI believes that in order to effectively combat this problem, it is essential that the factors at different levels are analysed and addressed through a multifaceted approach involving both immediate and longer-term measures.

Legislation and its enforcement

46. As was the case with previous violence¹², one dimension upon which the German authorities are concentrating their efforts is the enforcement of criminal legislation. Relevant authorities at the Federal and Länder levels have been meeting in order to consider this matter. A primary focus is further methods to enable the police to more effectively survey right-wing organisations and act quickly in response to incidents and attacks. A development which has recently been announced is a more active role by the Federal Border Guard (BGS), particularly with respect to the activities of right wing extremists in and around railway facilities. A Federal Border Guard hotline has been established to this end, available countrywide, intended to provide additional information to the BGS about right-wing activities. The BGS are to pass all information gathered to responsible state police authorities and assist state police forces in need of help in dealing with right-wing violence. Consideration is also being given to possible changes of procedural rules enhancing the role of the Federal Prosecutor General in pursuing such cases in order to emphasise their importance. Internet surveillance has also been stepped up, as the German authorities consider that this is an important tool for right-wing groups. ECRI supports the German authorities in these efforts and urges them to continue their search for means to improve implementation of criminal legislation at all levels of the criminal justice system (police, prosecutors, judiciary). ECRI stresses the importance of offering all law enforcement officials the necessary training for an effective application of relevant legal provisions. As mentioned in ECRI's first report, the German authorities should also continue their monitoring and reporting on the results of the prosecution of crimes against members of minority groups and of the types of sentences imposed on those convicted of committing such crimes.

¹² See above, *Criminal law provisions*

47. ECRI considers that the fight against this violence could be further improved through defining racially motivated offences as specific offences or explicitly providing for racial motivation to be taken into account as an aggravating factor by the courts. Not only does such a provision provide a framework in which harsher penalties for such crimes will be systematically and consistently delivered, but it also has symbolic importance in stressing that racist violence will not be tolerated. The Land of Brandenburg has prepared a bill intended to enable the prosecution of Germans who put sites promoting racism on the internet from abroad. ECRI welcomes this initiative and hopes that it will be adopted at the Federal level. ECRI also stresses in this context the importance of enacting comprehensive anti-discrimination legislation, discussed earlier in this report¹³. Although not directly aimed at criminal acts, such legislation is essential to fighting the everyday acts of discrimination that are part of a more general climate of racism that underlies this violence.
48. ECRI recalls in this context its general policy recommendation No 1 in which it called on member States to "take measures, including where necessary legal measures, to combat racist organisations... including banning such organisations where it is considered that this would contribute to the struggle against racism". ECRI notes with interest that the German authorities have submitted a request to the Constitutional Court to declare unconstitutional the National Democratic Party of Germany (NPD). ECRI also notes that the German authorities have banned a number of skinhead associations and encourages the authorities to continue to apply with vigilance criminal provisions providing for such action.

Climate of opinion

49. ECRI considers that although a relatively small number of individuals perpetrate racist and antisemitic crimes or actively support extremist groups perpetrating such crimes, a much greater number of people may sympathise with certain of the racist, xenophobic and antisemitic ideas that are a part of the ideology of these groups. As such, these acts may be viewed as an extreme manifestation of a broader climate of racism, antisemitism and intolerance. ECRI therefore believes that in order to effectively address the current problems of harassment and violence, measures need to be taken in an ongoing manner to fight against other manifestations of racism and intolerance and build a climate where members of minority groups are respected and their contribution to German society appreciated.
50. Politicians, journalists and other public figures have a crucial role to play in this regard. They should avoid perpetuating hostility and negative stereotypes about foreigners and members of minority groups. Instead they should take the lead in denouncing racism and discrimination and in ensuring that members of minority groups are perceived as equal and desirable citizens¹⁴. ECRI highlights in this connection the relationship between negative ideas and prejudices expressed about foreigners in the area of citizenship and asylum with racism, xenophobia and intolerance directed towards individuals of foreign origin. ECRI also draws attention

¹³ See civil and administrative law provisions

¹⁴ See also Media section above

to ideas promoted about the place of migrants in German society, discussed in detail above¹⁵. ECRI stresses in this regard that it is crucial to the fight against racist violence and harassment that all political parties and representatives resist the temptation to approach issues related to minorities, migrants, refugees and asylum seekers in a negative fashion in order to gain votes. Political parties and representatives should instead take a firm stand against any forms of racism, discrimination and xenophobia and refuse to adopt policies inspired by such sentiments. The firm stand should be accompanied by a public recognition of the existence of racism, antisemitism and intolerance within German society, which is a necessary first step to actively combating these phenomena and essential to fighting their violent expression. In this respect, ECRI welcomes the creation by the German authorities of "an Alliance for Democracy and Tolerance", intended to be an umbrella for political activities involving political actors as well as actors of civil society and the private sphere. Although discussed in detail below, ECRI registers here its belief that an increased acknowledgment of modern Germany as one in which various forms of identity can be associated with the traditional German identity would contribute to creating a climate where diversity is appreciated.

51. ECRI has observed a tendency amongst German authorities and the media to portray the problem of racist and antisemitic violence and harassment as a problem of former Eastern Germany. ECRI recognises that it is factually accurate that the occurrence of violence is a more serious problem in this part of Germany, and that there are particular conditions in the former East relating to the historical circumstances and transition, which need to be analysed and addressed in order to effectively combat the violence. ECRI stresses however that there are also severe problems of harassment and violence in the Western part of the country. Moreover it emphasises that it is essential that the relatively higher number of attacks in the East does not overshadow the broader causes of violence, such as those discussed above, which are not exclusive to the former East. ECRI has also received reports drawing attention to the manner that the transition occurred and problems of discrimination of Eastern Germans by Western Germans, such as a difference in pay between Eastern and Western *Länder*. This has created amongst some a sense of injustice which influences Eastern German youth and the general climate of intolerance in the area.

Education and awareness raising

52. ECRI emphasises the importance of education and awareness raising measures aimed at German children, youth and the general public, in order to foster values of respect for differences. ECRI notes with interest initiatives in democratic education carried out by the Federal and Regional Centres for political education which include measures aimed at reducing prejudice and xenophobia. ECRI is also pleased to learn about projects aimed at promoting an appreciation of cultural diversity within vocational training in certain *Länder* and encourages the German authorities to repeat successful projects across the country.
53. It is important that from an early age schools strive to break down negative stereotypes and prejudices about individuals of non-German origin and to replace

¹⁵ See above N. *Climate of Opinion*

them with more impartial information about different minority groups as well as an appreciation of the positive aspects of diversity. ECRI notes the willingness on the part of certain *Länder* to continue to develop such educational programmes. The authorities are encouraged to include in such programmes materials focusing on general human rights, the dangers posed by extreme-right parties as well as materials presenting the diversity of German society, in a manner which encourages an appreciation of this diversity. Such materials should not simply be taught as a separate subject or programme, but be incorporated into other subjects at all levels of the education system. ECRI appreciates efforts by the German authorities to teach knowledge of the Holocaust, however stresses that particular attention should be paid to the manner this subject is taught. Careful consideration should be given to presenting these materials in such a manner that children may draw lessons about the dangers inherent in racism and antisemitism and about the harm these events caused for German society as a whole. Teachers should also be provided with special training and teaching materials in the above areas.

Engagement at the local level

54. Activity at the local level, involving youth, individuals of foreign origin, ethnic minorities, actors of civil society and local authorities is essential to the fight against racist and antisemitic violence. ECRI notes with interest activities in a number of municipalities where there is cooperation amongst these different actors in order to take a stand against racism and intolerance and take measures to combat this phenomenon. ECRI is also pleased to learn of a number of multifaceted civil society initiatives, involving education and local empowerment, and it encourages the local authorities to continue their co-operation and support of such initiatives. ECRI considers that it is important to involve actors in different sectors of society and concerned communities in the development and carrying out of initiatives.

BIBLIOGRAPHY

This bibliography lists the main published sources used during the examination of the situation in Germany : it should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

1. CRI (98) 22: Report on Germany, European Commission against Racism and Intolerance, Council of Europe, March 1998
2. CRI (96) 43: ECRI general policy recommendation n°1: Combating racism, xenophobia, antisemitism and intolerance, European Commission against Racism and Intolerance, Council of Europe, October 1996
3. CRI (97) 36: ECRI general policy recommendation n°2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, European Commission against Racism and Intolerance, Council of Europe, June 1997
4. CRI (98) 29: ECRI general policy recommendation n° 3: Combating racism and intolerance against Roma/Gypsies, European Commission against Racism and Intolerance, Council of Europe, March 1998
5. CRI (98) 30: ECRI general policy recommendation n°4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, European Commission against Racism and Intolerance, Council of Europe, March 1998
6. CRI (2000) 21: ECRI general policy recommendation n° 5: Combating intolerance and discrimination against Muslims, European Commission against Racism and Intolerance, Council of Europe, April 2000
7. CRI (98) 80 : Legal measures to combat racism and intolerance in the member States of the Council of Europe, ECRI, Strasbourg, 1998
8. ACFC/SR (99)17: Report Submitted by Germany Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, received 24 February 2000
9. CPT/Inf(99)10 [EN] (Part 1): Report to the German Government on the visit to Frankfurt am Main Airport carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe, May 1998
10. CPT/Inf(99)10 [EN] (Part 2): Observations by the German Government in response to the report of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Frankfurt am Main Airport, Council of Europe, May 1998
11. European Social Charter – Committee of Independent Experts – Conclusions XIV-1-Vol. 1 (Council of Europe Publication)
12. A/53/44: Concluding Observations of the Committee Against Torture – Germany, (United Nations), May 1998
13. CERD/C/304/Add.24: Concluding Observations of the Committee on the Elimination of Racial Discrimination – Germany, (United Nations), April 1997
14. E/C.12/1/Add.29: Concluding Observations of the Committee on Economic, Social and Cultural Rights – Germany, (United Nations), December 1998
15. Annual Report of the Office of the Protection of the Constitution, Federal Ministry of Interior, 1999
16. Facts and Figures on the Situation of Foreigners in the Federal Republic of Germany, Federal Government's Commissioner for Foreigners' Issues, June 1999

17. 15th Report of the Federal Republic of Germany pursuant to Article 9 on the International Convention on the Elimination of all Forms of Racial Discrimination, 7 June 2000
18. Information supplied by the German authorities on issues arising directly out of ECRI's first report
19. Ministry of Interior comment concerning ECRI's first report
20. Response of the German authorities to ECRI questionnaire, December 1994
21. Survey of the Policy and Law Concerning Foreigners in the Federal Republic of Germany, The Federal Ministry of the Interior, March 1998
22. US Department of State "Germany Country Report on Human Rights Practices for 1999", February 2000
23. Amnesty International, Report 2000: Germany
24. Amnesty International, Report 1999: Germany
25. European Foundation for the Improvement of Living and Working Conditions, Preventing Racism at the Workplace – Germany, Working Paper No: WP/95/43/EN
26. International Helsinki Federation for Human Rights, Annual Report 1999 on Germany
27. IRR European Race Bulletin, No. 31, Nov. 1999
28. Pro Asyl, German Asylum Policy After the Change of Government, Autumn 1998
29. Statewatch, September-October 1999, (Vol. 9 no. 5)
30. "World Racism Report 1998", Anatolian Science and Technology Strategies Research Institute, September 1999
31. Cohen, Roger, "New Xenophobia Alarms Germany: Silence Abets Anti-immigrant Attacks, Foreign Minister Asserts", New York Times Service, 28 August 2000
32. Hooper, John, "German Prosecutor Steps up War on Racist Crimes", The Guardian, 23 August 2000
33. Kahane, Anetta, Fighting Racism and Anti-Democratic Nationalism, RAA
34. Beck, Marieluise, "Guest Commentary: Combating Xenophobia", Deutschland Magazine, 5/2000
35. Wild, Tammy, « Christian Democrats play race card in Germany », Searchlight Magazine, March 1999
36. Doomernik, Jeroen, "The effectiveness of integration policies towards immigrants and their descendants in France, Germany and the Netherlands", International Migration Papers 27,
37. Geiger, Klaus F., « Le débat actuel sur le code de la nationalité en Allemagne », Regards Croisés France-Allemagne, N0 1223 – Janvier-février 2000
38. Gunter, Hoffman, "Strategies against Right-wing Extremism", Deutschland Magazine, 5/2000-11-24
39. Radtke, Frank-Olaf, "Institutional Discrimination. A theoretical approach to organizational forms of exclusion", International Conference at European Research Centre on Migration and Ethnic Relations, April 1998
40. Reitz, Jeffrey G.; Frick, Joackim R.; Calabrese, Tony; Wagner, Gert C; "The institutional framework of ethnic employment disadvantage: a comparison of Germany and Canada", Journal of Ethnic and Migration Studies, Vol. 25, No. 3: 397-443, July 1999
41. Von Münch/Kunig, Grundgesetz, vol. 1, 4th ed., Munich

