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European Commission Against Racism and Intolerance

First report on Germany

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

The first series of ECRI's country-specific reports² were made public in September 1997. A second series of country-specific reports were transmitted to the governments of the countries concerned in January 1998, and are thus now being made public³.

The following report contains ECRI's analysis and proposals concerning Germany.

¹ The report prepared by the Swiss Institute (ref: CRI (97) 38), covering relevant legislation in member States of the Council of Europe is available from ECRI's Secretariat.

² Reports on Belgium, the Czech Republic, Finland, Greece, Hungary, Iceland, Ireland, Lithuania, Luxembourg, Malta and Poland.

³ Reports on Germany, Liechtenstein, Norway, San Marino, Slovenia and Switzerland.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This second series of reports, for which the procedure was completed by January 1998, will be followed by other series of reports on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

REPORT ON GERMANY⁴

Introduction

After the reunification of Germany, the new Federal Republic was and is faced with a whole range of new challenges: reconstruction of the new federal Länder and completion of the internal unification of Germany; rising unemployment; restructuring of the welfare State. Furthermore, during this period the German population has been shaken by a series of acts of xenophobic violence, including acts perpetrated by the extreme right movement. Thanks to widespread measures put in place by the Federal government, the Länder and almost all the major groups in society, such incidents have been successfully combated, and in the elections of 1994-95, it was clear that xenophobia, racism and extreme right-wing sentiments do not receive any significant political support in Germany. Numerous examples of good practices exist throughout Germany to promote tolerance and mutual respect between different groups. Nevertheless, additional solutions must still be sought to improve the situation, both as regards the legal situation and as regards policy, in order to counteract the manifestations of intolerance which persist in Germany.

Some of the key areas identified by ECRI as meriting particular attention include:

- difficulties experienced by long-term residents as regards legal issues concerning citizenship;
- the development of a comprehensive body of legislation specifically to combat all forms of racism and intolerance;
- the need to monitor and protect the position of asylum-seekers.

⁴ Note: Any development subsequent to 7 February 1997 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

I LEGAL ASPECTS⁵

A. International legal instruments

1. Germany has ratified all the relevant international instruments, with the exception of the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. It is hoped that these instruments will be ratified in the near future. Furthermore, it is felt that favourable consideration should be given to acceptance of Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, recognising CERD's competence to examine individual complaints.

B. Constitutional provisions

- *Law concerning asylum*

2. The broad constitutional rights of asylum which previously existed in Germany meant that Germany accepted between 1991 and 1993 approximately 60-80% of all persons applying for asylum in EU States. The German Parliament passed on 26 May 1993 an amendment to the constitutionally-granted right to asylum, in part to meet the conditions of the Schengen Agreement and Dublin Convention. The situation now is that asylum-seekers coming from a "safe third country" may not invoke the right to asylum under Article 16 a (2) of the Basic Law and are generally to be refused entry. Non-citizens coming from a "safe country of origin" may invoke the right to asylum; however, it is presumed by law that they are safe from persecution in their countries of origin. If the asylum-seeker presents facts which refute this assumption he or she may be recognised as a person entitled to asylum. Safe transit countries and safe home countries are determined by legislation. It is noted that the position of the German authorities on this issue is that the amendment in the asylum legislation has led to a decrease in the number of asylum seekers and that the number of racist attacks and support for extremist right-wing parties has also decreased: the new legislation is cited as contributing to combating racism and xenophobia in Germany. ECRI would however wish to point out that any more restrictive changes in law with regard to immigration and immigrants may also tend to have a negative effect on public opinion concerning non-citizens in general, since this seems to place the burden of problems on the latter. Special attention should be paid to countering any possible negative effects of such changes, through wide information campaigns, public statements from politicians and other public figures and any other appropriate measures.
3. There have been reports of problems related to the implementation of the new asylum law. On 14 May 1996, the Federal Constitutional Court handed down basic rulings in which it dealt in detail with allegations that the speeded-up procedures could result in the refusal of individuals with well-founded fears of persecution, and found that they were inaccurate. According to the German authorities, the current legal situation continues to guarantee that nobody seeking asylum will be deported to a persecuting state, in accordance with the Geneva Convention. ECRI feels that it is crucial to monitor the situation in the light of the new arrangements to ensure that applicants are

⁵ A full overview of the legislation existing in Germany in the field of combating racism and intolerance is provided in the publication CRI (95) 2 rev. prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography).

receiving fair and thorough treatment by officials and that no-one is refused who may face danger or ill-treatment as a consequence of this refusal.

- ***Laws concerning citizenship and status of non-citizens***

4. The German nationality law dates from 1913 and is based on the concept of jus sanguinis. The legislation on nationality was last amended and liberalised in 1991 and in 1993. Given the fact that large numbers of the non-citizens currently living in Germany have spent all or most of their lives in the country and are likely to remain, it would seem that further consideration should be given to simplifying the procedures of acquisition of citizenship by long-term residents. ECRI notes that there have been internal considerations concerning how the nationality law could be amended, and hopes that these considerations may lead to the extension of procedures of acquisition of citizenship as regards the children of non-citizens and second- and third-generation immigrants living in Germany.
5. Furthermore, as a general rule, non-citizens wishing to acquire Germany nationality by virtue of naturalisation are, apart from certain exceptions, obliged to renounce their former nationality. In this connection, it should be noted that there is a general trend amongst European States to move towards a more flexible approach as regards the issue of dual nationality. ECRI considers that the German authorities might review their position in the light of this trend.
6. As regards the legislation concerning the position of non-citizens, the Law relating to Aliens, this was amended in 1991 in order to facilitate the integration of non-citizens legally resident in Germany by setting out more clear-cut legal conditions as regards their residence status. This is a welcome step forward. Further improvements which might be considered include:
 - further facilitating more frequent visits from family members living abroad;
 - the possibility of raising the age limit for children falling under the scope of family reunification from 16 to 18 years of age. In this respect, it is noted that the Federal Government feels that raising the age limit might lead to the growth of a marginalised and jobless group in society and would not be in the best interests of the children themselves.
7. 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 interests of non-citizens fully into account.

ECRI notes that the position of the German authorities is that the acquisition of German nationality is the most appropriate means to ensure the participation of non-citizens who are long-term permanent residents in elections at the local, Land and national level, and in this light encourages the German authorities to continue their efforts to facilitate the acquisition of German nationality.

C. Criminal law provisions

8. The intention to partly or completely eliminate a group belonging to a specific "race" is referred to in the definition of the crime of genocide (Section 220 a Criminal Code). In the case of killing, the Federal Supreme Court regards racism as an aggravating motive so that the act can for this reason be qualified as murder (Section 211 Criminal Code). In 1994, Parliament passed legislation introducing further special provisions on racist acts, for example supplementing the criminal offences of incitement and use of symbols of unconstitutional organisations. A provision was also introduced making the incitement to hatred or to violent or arbitrary acts against a specific race liable to a maximum penalty of three years (Section 130 (2) Criminal Code). Additional measures were taken to ensure effective prosecution of crimes. Beyond these provisions, crimes with a racist motive are currently covered by provisions on violence against persons. The German authorities are encouraged to monitor and stimulate the implementation of the new provisions and to consider additional legal measures, including the possibility of increasing the visibility of racism as a crime.
9. As regards the implementation of criminal law provisions, the German authorities adopted firmer measures to combat violence in the wake of the arson attacks in Mölln and Solingen. These 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. The authorities are encouraged to continue their monitoring and reporting of the results of the prosecution of crimes against members of minority groups and the monitoring and reporting of the types of sentences imposed on those convicted of committing such crimes. Stricter sentencing policies for the perpetrators of racist crimes, as reflected in the long prison sentences handed down by the court in the Solingen arson case, represent a clear statement of the authorities' determination to eradicate such crimes, and convey a strong message to both the general public and to the minority groups living in Germany.

D. Civil and administrative law provisions

10. Germany possesses no special legislation at federal level against racism and racial discrimination in public life, since the legislature considers the constitutional guarantee of equality before the law, provisions against incitement to racial hatred contained in the criminal code and the existing general legal provisions sufficient to avoid racial discrimination. Some relevant provisions do exist, such as Section 75 of the Works Constitution Act which requires the employer and the works council together to monitor whether all persons employed in the enterprise are treated justly and equitably and that nobody is discriminated against on account of their descent, religion, nationality, origin or sex. Section 30 of the Code of Social Law (I) guarantees equal treatment of all persons residing in Germany concerning social benefits. Other legislation in the field of insurance and restaurant services also covers the equal treatment of everybody. There does not appear to be much case-law demonstrating the use of general legal provisions in penalising discrimination. ECRI notes that previous attempts to introduce bills containing special legislation against racism have not been successful, partly because they were considered impossible to implement and partly because a more comprehensive solution was planned⁶. It is felt that consideration might be given to enacting a comprehensive anti-discrimination law at federal level, covering fields such as the public and private

⁶ Cf. CRI (95) 2 rev. (see bibliography).

provision of housing, employment and access to services, which would underline Germany's commitment to combating racial discrimination.

E. Specialised bodies

11. Germany possesses a Federal Commissioner for Foreigners' Affairs which assists and advises the government in matters concerning non-citizens in Germany, is involved in relevant legislative initiatives, deals with complaints, requests or suggestions of German and non-German individuals, provides information and supports relevant initiatives. A draft bill before Parliament provides that the position of this Commissioner be laid down in the Aliens' Act and the tasks described in detail. Several Länder also possess such Commissioners, and a growing number of municipalities have also nominated commissioners or foreigners' councils with varying tasks and competences. It is hoped that those Länder which do not as yet possess such specialised bodies will set them up, and that co-ordination and exchange of experience is ensured between the various commissioners already in place.

II POLICY ASPECTS

F. Education and training

- *School education and further education*

12. The German school system promotes a policy for the integration of children from minority groups and for mutual understanding between people of different cultures. Stress is put above all on the integration of children and young people from minority groups using pilot schemes covering the whole spectrum of education from kindergarten to university, and it is felt that such initiatives should be systematically studied and reproduced when successful. One well-received campaign has been the "Fairness and Understanding" Campaign. Further efforts need to be made to inform and educate young people in particular, since this age-group is often vulnerable to the propaganda of extreme right-wing movements. Measures which continue beyond general schooling to professional training and further education should be widened and strengthened.
13. The Federal Ministry of Labour and Social Affairs promotes programmes specifically aimed at female non-citizens, introducing them to the German language and encouraging them to participate in vocational training measures. Since women from minority groups often face particular problems in a new society, such measures are to be commended.
14. Concerning minority groups with special status in Germany, it is noted that the Danish Schools Association is responsible for school and kindergarten work of the Danish minority in the north of Schleswig-Holstein. The legislation on education in Saxony and in Brandenburg safeguards the learning of the Sorbian language.

- *Police training*

15. Particularly since the reunification of Germany, certain NGOs have expressed concern over alleged ill-treatment of detainees, particularly those of non-German origin, by police. Although a series of measures have been taken which have led to some improvement in the situation, including a research project on "Police and foreign nationals" which led to a resolution and new initiatives of the bodies of the Conference

of Interior Ministers, there are still some difficulties concerning police training, above all in the new Länder. Efforts in this field should be continued and intensified, both in order to ensure effective protection against violence for members of minority groups, and to combat any misconduct on the part of police officers. Federal and local police authorities should intensify their efforts to make certain that the ranks of the police at grass-roots level also respect the fundamental human rights of persons belonging to minority groups. Any reports of ill-treatment should be rigorously examined and perpetrators punished. The German authorities are encouraged in their determination to investigate cases of wrongful behaviour on the part of police officers on all levels of the law enforcement authorities and to impose the relevant sanctions as defined in criminal law and disciplinary law.

16. The police response to attacks on members of minority groups seems to have improved considerably over the past two years. Nevertheless, many minority groups still seem to feel that they cannot rely on the police for protection. A comprehensive strategy should be implemented to build mutual trust and understanding between the law-enforcement authorities and members of minority groups. This could include more sustained police training, information for minority groups, and a range of initiatives on a local scale designed to improve community relations. The recruitment of police officers from minority groups as contact partners particularly in regions with a high concentration of residents from minority groups is noted as a positive practice which may improve the confidence of minority populations in the police.

- ***Awareness raising***

17. The campaign mentioned in paragraph 12 continued in 1996 and will continue in 1997. A new computer game and a new version of the brochure "That's enough - Stop violence" have been issued. The Campaigners have worked together with the Association of German Sports Offices.

In addition, numerous other actions have been carried out to inform the population, such as a campaign of the Federal Press Office, relying on TV spots, posters and advertisements and so on.

G. Employment

18. It is felt that equal opportunities policies may prove of value in preventing discrimination in the labour market. Measures have been put in place to improve the employment prospects of young people from minority groups, co-ordinated by the "Co-ordination Panel on Foreign Employees" of the Federal Ministry of Labour and Social Affairs, and the positive steps to improve education and vocational training opportunities for people from minority groups should be broadened. In the public sector, posts should be open to non-citizens as far as possible and public services should set an example by applying equal opportunities policies in their personnel management.

H. Media

19. It has been suggested that the media has tended to give priority to reports concerning violent racist attacks or incidents, rather than to the more positive aspects of the presence of minority groups in Germany and to showing that living together within the society is the norm. While it is important that racist incidents are brought to the attention of the public, care should be taken not to "glamourise" such racist behaviour

which might have the effect of encouraging further manifestations. The media profession might be encouraged to consider whether more emphasis might also be placed on positive incidents.

20. There is some concern over the spread of racist or xenophobic material by computer-based means of communication, which allow racist groups to reach new audiences and communicate with groups in other countries. ECRI notes that general rules for "multi-media" are presently underway both on the federal and Länder levels and are expected to be adopted in 1997. ECRI welcomes this progress, stressing that solutions to such problems must be sought not only on a national but particularly on a European level. Germany is a contracting party to the European Convention on Transfrontier Television, Article 7 of which prohibits the dissemination of said material by transfrontier TV broadcasting.

I. **Other fields**

- ***Housing***

21. Members of minority groups still experience problems in finding housing, both for economic reasons and because of discrimination. Public agencies have housing policies aimed at socially-disadvantaged groups. In addition to legislative measures to combat discrimination in access to accommodation, further measures might include urban policies targeted to deal specifically with problems faced by minority groups, particularly in densely-populated areas, and closer monitoring of the extent to which the housing needs of minority groups are being met by the public and private sectors.

- ***Racial violence and harassment***

22. ECRI responds with concern to the acts of extreme racial violence and harassment and manifestations of anti-Semitism witnessed in Germany over recent years, particularly in the Eastern part of the country. Such crimes have generally been committed by juvenile delinquents searching for easy scapegoats. Public and political outrage at such attacks has been strongly voiced. Incidents of severe violence seem to have abated : the German authorities are encouraged to maintain their vigilance and to continue to respond promptly and decisively to cases of racist violence and harassment.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the German authorities on 13 July 1994.

ECRI accepts no responsibility for the data below.

Non-citizen population (December 1995): 7.17 million in August 1996 (8.77% of total population, including Turkish (2.01 million), former Yugoslavia (1.35 million), EU states as a whole (1.8 million) 50,000 declare themselves members of Danish minority, 50,000 -70,000 declare themselves members of Sorbian minority, 50,000-70,000 regard themselves as Gypsy/Roma. 219,000 ethnic Germans or German citizens came to settle in Germany in 1993 from the states of South Eastern and Eastern Europe and other parts of the former Soviet Union. The figures for 1994 are 222,600, 218,000 for 1995 and 177,751 for 1996.

Population: 81.8 million (1 August 1996). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography).

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This bibliography lists the main sources consulted during the examination of the situation in Germany: it does not cover all the various sources of information (media, contacts within the country, national NGOs etc.) which were utilised.

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