

ECRI

European Commission against Racism and Intolerance
Commission européenne contre le racisme et l'intolérance

CRI (2004) 23

European Commission against Racism and Intolerance

Third report on Germany

Adopted on 5 December 2003

Strasbourg, 8 June 2004



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

For further information about the work of the European Commission against Racism and Intolerance (ECRI) and about the other activities of the Council of Europe in this field, please contact:

Secretariat of ECRI
Directorate General of Human Rights – DG II
Council of Europe
F - 67075 STRASBOURG Cedex
Tel.: +33 (0) 3 88 41 29 64
Fax: +33 (0) 3 88 41 39 87
E-mail: combat.racism@coe.int

Visit our web site : www.coe.int/ecri

TABLE OF CONTENTS

FOREWORD	5
EXECUTIVE SUMMARY	6
I. FOLLOW-UP TO ECRI'S SECOND REPORT ON GERMANY	7
INTERNATIONAL LEGAL INSTRUMENTS.....	7
CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS.....	8
- Citizenship law	8
CRIMINAL LAW PROVISIONS	9
CIVIL AND ADMINISTRATIVE LAW PROVISIONS.....	10
SPECIALISED BODIES AND OTHER INSTITUTIONS	11
EDUCATION AND AWARENESS RAISING	13
RECEPTION AND STATUS OF NON-CITIZENS	13
- The situation of non-citizens.....	14
- The situation of asylum seekers and refugees	16
- Persons with tolerated status	18
- General climate concerning non-citizens.....	19
ACCESS TO PUBLIC SERVICES	20
- Education.....	20
- Housing.....	20
EMPLOYMENT	21
VULNERABLE GROUPS	22
- Jewish community.....	22
- Muslims.....	22
- Roma/Sinti	23
- Visible minorities	23
- Women victims of trafficking.....	23
MEDIA	25
CONDUCT OF LAW ENFORCEMENT OFFICIALS	25
MONITORING THE SITUATION.....	27
II. SPECIFIC ISSUES	28
RACIST, XENOPHOBIC AND ANTISEMITIC VIOLENCE.....	28
BIBLIOGRAPHY	34

Foreword

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

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.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 5 December 2003 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

Executive summary

Since the publication of ECRI's second report on Germany, progress has been made in a number of the fields highlighted in the report.

The implementation of the amendments to the citizenship legislation, which entered into force on 1 January 2000, has resulted in the acquisition of German citizenship by a number of long-term residents and by children born in Germany. An Immigration Bill has been prepared and is currently being discussed in Parliament. The Bill reflects a gradual shift towards Germany's perception of itself as a country of immigration, whose duties include the promotion of an integrated society. The German authorities have also adopted a more multi-dimensional approach to fighting racist, xenophobic and antisemitic violence. Alongside measures to counter the activities of right-wing extremists, such approach includes measures to address conditions prevailing in German society as a whole, which underlie such violence. This is done, *inter alia*, by means of funding of local initiatives aimed at promoting the consolidation of a democratic civil society. Some initiatives have also been taken, notably in the fields of employment and education, aimed at improving the situation of minority groups and at countering racial discrimination. Furthermore, anti-discrimination legislation is being drafted and is planned to be adopted in 2004.

However, in spite of the initiatives taken, racist, xenophobic and antisemitic violence continues to constitute an issue of concern for ECRI in Germany, affecting particularly asylum seekers, members of the Jewish communities, Roma and Sinti. Members of visible minority groups appear to be particularly susceptible to such violence. Further efforts are needed to ensure that non-citizens and persons of immigrant background enjoy genuinely equal opportunities in all fields of public life as the rest of the population of Germany. In this respect, an adjustment of the legal framework to combat racism and racial discrimination is still necessary. Progress is still needed in the field of recognising the positive role of immigration, as reflected, in part, in the stigmatisation of immigrants, asylum seekers and refugees in public debate. Antisemitism and Islamophobia, and prejudice and discrimination *vis-à-vis* visible minority groups and Roma and Sinti continue to pose serious challenges.

In this report, ECRI recommends that the German authorities take further action in a number of areas. It recommends, *inter alia*, that measures be continued and intensified to effectively counter racist, xenophobic and antisemitic violence. It recommends that further progress be made in shaping immigration and integration policies which reflect the positive role of immigration and the fact that immigrants constitute an integral part of German society. ECRI also recommends that legislation against racism and racial discrimination be made more comprehensive and be implemented more effectively, notably in order for the racist dimension of offences to be brought more into light. In order to improve equal access and opportunities in such areas as employment, education and housing for minority groups, ECRI recommends the adoption of further initiatives, including in the field of legislation. It furthermore formulates recommendations aimed at ensuring that the rights of asylum seekers and persons with tolerated status in Germany are thoroughly respected.

I. FOLLOW-UP TO ECRI'S SECOND REPORT ON GERMANY

International legal Instruments

1. In its second report on Germany, ECRI recommended that Germany make the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), enabling individuals and groups of individuals to file petitions before the Committee for the Elimination of Racial Discrimination (CERD). ECRI also recommended that Germany ratify Protocol No. 12 to the European Convention on Human Rights (ECHR) and the European Convention on the Legal Status of Migrant Workers. ECRI furthermore recommended that Germany sign and ratify the European Convention on Nationality, the Revised European Social Charter and the European Convention for the Participation of Foreigners in Public Life at Local Level.
2. ECRI is pleased to note that Germany made the declaration under article 14 of the ICERD in September 2001. Protocol No. 12 to the ECHR has not yet been ratified by Germany, although ECRI notes that work is underway with a view to ratification. The European Convention on the Legal Status of Migrant Workers, which Germany signed in 1977, has not yet been ratified. ECRI notes the signature by Germany, in February 2002, of the European Convention on Nationality, which, however, has not yet been followed by ratification. Germany has not yet signed the Revised European Social Charter, although ECRI understands that work with a view to possible signature is underway. Work is also reported to be underway with a view to signature of the European Convention for the Participation of Foreigners in Public Life at Local Level. The German authorities have stated, however, that the provisions contained in Chapter C of this instrument, which concern the attribution of eligibility and voting rights to foreign residents, will not be applied.
3. ECRI notes that, in January 2003, Germany signed the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. It also notes that Germany has not yet signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Recommendations:

4. ECRI recommends that the German authorities ratify as soon as possible Protocol No. 12 to the ECHR. It also recommends that the German authorities ratify the European Convention on Nationality and the European Convention on the Legal Status of Migrant Workers. ECRI furthermore reiterates its call for signature and ratification by Germany of the Revised European Social Charter and of the European Convention for the Participation of Foreigners in Public Life at Local Level. It recommends that the German authorities apply the provisions contained in Chapters A, B and C of the latter instrument. ECRI recommends that the German authorities ratify the Additional Protocol to the Convention on Cybercrime and that they sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Constitutional provisions and other basic provisions

- *Citizenship law*

5. Against the background of the considerable proportion of long-term residents and persons born in Germany amongst the non-citizen population of Germany, and in the population of Germany generally, in its second report ECRI welcomed the amendments to the Nationality Law, that entered into force on 1 January 2000, as a positive step towards simplifying the acquisition of German nationality by these categories of persons. The amendments notably reduced the length of residence necessary to apply for naturalisation. They also established that children born in Germany to foreign parents become German citizens automatically if at least one parent has been living legally in Germany for eight years with an authorisation of residence (*Aufenthaltsberechtigung*) or for three years if in possession of an unlimited residence permit (*unbefristete Aufenthaltserlaubnis*). In its second report, ECRI also noted that non-citizens wishing to acquire German nationality continue, apart from certain exceptions, to be obliged to renounce their former nationality. In addition, ECRI noted that children entitled under the amendments to German nationality at birth, and who have thereby acquired two nationalities, have to opt for one of the two nationalities before the age of twenty three. ECRI therefore invited the German authorities to consider a more flexible approach to dual nationality. ECRI furthermore invited the German authorities to examine the practical application of the criteria for naturalisation (which include sufficient knowledge of the German language, a commitment to the Basic Law, a clean criminal record and the ability to provide for maintenance) and to address any problems of arbitrary or discriminatory application.
6. Since the entry into force of the amendments, over 500,000 persons have acquired German citizenship through naturalisation (approximately 186,000 in 2000, 178,000 in 2001 and 155,000 in 2002). ECRI notes that, in comparison with the three years prior to the entry into force of the amendments, this represents an increase in naturalisations of 56% per year. In addition, approximately 41,000 children born in Germany to foreign parents automatically became German citizens in 2000. This figure was approximately 39,000 in 2001. ECRI welcomes these developments. It notes, however, that a considerable proportion of non-citizens who fulfil the residency requirements to obtain naturalisation still live in Germany without German citizenship. Turkish nationals are particularly represented within this group of persons, although they also constitute around 40% of the persons who have obtained naturalisation. A particularly important factor limiting the take-up of German citizenship by this group of persons appears to be the requirement of renouncing previous citizenship. Retention of previous citizenship is permitted only in specific cases, including: refugees; citizens of countries whose citizenship legislation does not permit renunciation of citizenship; and, under conditions of reciprocity, citizens of the European Union (EU). The German authorities have stated that, in the framework of the general objective of promoting an integrated society, priority is currently being given to the integration measures contained in the Immigration Bill¹, rather than to re-opening the debate on dual nationality.

¹ See below, Reception and status of non-citizens.

7. No reliable statistical data are available to the German authorities on the amount of unsuccessful applications for naturalisation or on the grounds on which such applications are rejected. Reasons for refusal are, however, always provided in writing and negative decisions can be, and are in practice, appealed. ECRI has not been made aware of any initiatives aimed at examining the application, in practice, of the criteria for naturalisation in order to identify any possible patterns of excessively restrictive application of such criteria or of direct or indirect discrimination. It has, however, received reports that these criteria, and notably those referring to knowledge of the German language and to the ability to provide for maintenance, are sometimes applied in an excessively restrictive manner.

Recommendations:

8. ECRI encourages the German authorities in their efforts to facilitate acquisition of German citizenship by long-term residents and persons born in Germany. It recommends that the German authorities continue public debate in view of the adoption of a more flexible approach to dual nationality. This could include, as suggested in ECRI's second report, measures to raise the awareness of the general public about the number of individuals already holding multiple nationalities and to challenge the perception that considerable benefits flow from such a status. ECRI furthermore encourages the German authorities to examine the application, in practice, of the criteria for naturalisation in order to address any possible patterns of excessively restrictive application of such criteria or of direct or indirect discrimination on grounds of race, colour, religion, nationality and national or ethnic origin.

Criminal law provisions

9. The German authorities have informed ECRI that, since the latter's second report, the criminal law provisions in the areas covered by ECRI's mandate that have been most frequently applied are those contained in Section 130 of the Criminal Code. This Section prohibits incitement to hatred and violence against segments of the population (§ 130.1), including through dissemination of publications or broadcasts (§ 130.2), and the approval, denial or playing down of the genocide committed under the National Socialist regime (§ 130.3), including through dissemination of publications (§ 130.4). Other provisions frequently applied are Section 86a of the Criminal Code, which prohibits the dissemination and use of symbols of unconstitutional organisations, and Section 86, which prohibits the dissemination of propaganda of unconstitutional organisations. There have also been cases of application of Section 85 of the Criminal Code, which prohibits the continuation of the activities of an organisation that has been banned.
10. Section 46 of the Criminal Code contains a list of circumstances to be taken into account in determining punishment, which includes, in a general way, the motives and the aims of the offender. The racist motivation of an offence may therefore be taken into account in this context and the German authorities have reported that there are cases where stricter sentences have been handed down in consideration of the racist motivation of the offenders. As already noted in ECRI's second report, in the case of murder, the Federal Supreme Court regards racism as an aggravating circumstance. ECRI notes, however, that,

contrary to the recommendation it made in its second report, German criminal law does not explicitly provide for the racist motivation to be taken into account as a specific aggravating circumstance in sentencing.

11. More generally, non-governmental organisations active in the field of combating racism and racial discrimination note that, while German criminal legislation contains comprehensive provisions to counter many of the activities of extreme right-wing organisations and their members, as well as to ban the organisations themselves, existing legislation is not always geared towards bringing to light the racist dimension of offences.
12. In its second report, ECRI stressed the need to train law enforcement officials, prosecutors, judges and lawyers on the legal provisions in force to combat racist, xenophobic and antisemitic crimes. ECRI has been informed that the fight against racism and racial discrimination has featured prominently in the training programmes of academies for judges, prosecutors and other legal professions. Non-governmental organisations report that while progress in the use of existing criminal law provisions by the different actors involved in the criminal justice system can be noted in certain *Länder*, in other *Länder* this is not the case.

Recommendations:

13. ECRI recommends that the German authorities keep under close review the effectiveness of the existing criminal law provisions in the areas covered by ECRI's mandate. It encourages the German authorities to examine the extent to which existing criminal legislation enables the criminal justice system to bring to light the racist dimension of offences. In this respect, ECRI draws the attention of the German authorities to its General Policy Recommendation No. 7², which contains a list of acts that ECRI considers national legislation should penalise. ECRI recommends in particular that the German authorities explicitly provide in law that racist motivation constitutes an aggravating circumstance of all offences.
14. ECRI recommends that the German authorities continue and intensify their efforts to train law enforcement officials, prosecutors, judges and lawyers on the legal provisions in force to combat racist, xenophobic and antisemitic crimes and ensure that this is done in all *Länder*.

Civil and administrative law provisions

15. In its second report, ECRI recommended that Germany consider the adoption of specific anti-discrimination legislation in key fields of life, such as housing, education, health, employment and provision of goods and services in order to supplement the constitutional guarantee of equality contained in Article 3 of the German Constitution. It noted that this question was being examined in the framework of the European Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC), and hoped for a swift and successful conclusion of this process.

² CRI (2003) 8: ECRI General Policy Recommendation N°7: National legislation to combat racism and racial discrimination.

16. Although no specific anti-discrimination legislation has been adopted yet, the German authorities have informed ECRI that work is well underway with a view to submitting draft legislation to Parliament in 2004. Such draft legislation will consist of a package of measures which aim to transpose, *inter alia*, the European Council Directive 2000/43/EC and the European Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. The German authorities have stated that they intend to propose two sets of legal measures, one covering the general civil law aspects of discrimination which will apply to all key fields of public life, and one covering employment and vocational training. The grounds of discrimination that will be covered by the general civil anti-discrimination legislation are not clear at present.
17. ECRI draws the attention of the German authorities to its General Policy Recommendation No. 7, which contains detailed recommendations on the provisions that ECRI considers should feature in an effective body of national civil and administrative legislation against racial discrimination. Although ECRI is not aware of the details of the draft legislation that is being prepared, in this General Policy Recommendation ECRI addresses many of the issues that have been raised by national non-governmental organisations with respect to the draft. In particular, these issues include: the need to ensure that anti-discrimination legislation apply to all public authorities as well as to all natural legal persons, both in the public and in the private sectors; the need to place public authorities under a duty to promote equality and to prevent racial discrimination; the need to provide for a shared burden of proof between the alleged victim and discriminator; and the need to ensure that organisations which have a legitimate interest in combating racism and racial discrimination, are entitled to bring cases to the competent judicial bodies. ECRI would also like to stress that, in its General Policy Recommendation No. 7, it recommends that the law explicitly prohibit discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin.

Recommendations:

18. ECRI encourages the German authorities in their efforts to adopt anti-discrimination legislation in all key fields of public life and hopes that the necessary work with a view to submitting draft legislation to Parliament will be finalised effectively. ECRI encourages the German authorities to ensure that, in examining the different options, the need to grant the highest level of protection to victims of racial discrimination is taken into consideration. In this context, ECRI strongly recommends that the German authorities take into account its General Policy Recommendation No. 7, notably as concerns the areas highlighted above.

Specialised bodies and other institutions

19. In its second report, ECRI recommended that Germany establish at the Federal level a specialised body to combat racism and racial discrimination, which would be competent, *inter alia*, for assisting victims of racism and racial discrimination in pursuing their complaints.

20. The German authorities are examining the question of the establishment of such a body in the framework of the discussions concerning the adoption of anti-discrimination legislation³. In its General Policy Recommendations, ECRI has provided detailed guidance as to the status, role and functions that it believes should be attributed to these national specialised bodies. ECRI would like to stress in particular the recommendations made in its General Policy Recommendation No. 2⁴ concerning the need to ensure the independence and accountability of such bodies. It would also like to stress that, in its General Policy Recommendation No. 7, ECRI recommends that the competence of national specialised bodies include: assistance to victims; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society; and promotion of policies and practices to ensure equal treatment.
21. In its second report, ECRI welcomed the work carried out by the Federal Government's Commissioner for Foreigners' Issues and by commissioners or foreigners' councils established at the level of the *Länder* and of the municipalities. It encouraged the German authorities to address the difficulties encountered in the functioning of such bodies and provide them with adequate resources.
22. Since ECRI's second report, in accordance with the new approach also reflected in the Immigration Bill⁵, the Federal Government's Commissioner for Foreigners' Issues has been re-named Federal Commissioner for Migration, Refugees and Integration. At the level of the *Länder* and of the municipalities, however, ECRI notes that, since its second report, some commissioners or foreigners' councils have been closed down or merged with bodies with other competences.

Recommendations:

23. ECRI encourages the German authorities in their efforts to establish a specialised body to combat racism and racial discrimination at national level. ECRI strongly recommends that the German authorities take into account its General Policy Recommendations No. 2 and No. 7, notably as concerns the areas highlighted above.
24. ECRI recommends to the German authorities to continue to ensure that the Federal Commissioner for Migration, Refugees and Integration is provided with adequate resources to carry out its tasks. ECRI also recommends to the German authorities to support the continuation of work of the commissioners or foreigners' councils established at the level of the *Länder* and of the municipalities, including by ensuring that adequate resources are available to such bodies and that any extension of their competences do not result in reduced attention being paid to issues related to migrants, asylum seekers and refugees.

³ See Civil and administrative law provisions.

⁴ CRI (97) 36: ECRI General Policy Recommendation n° 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

⁵ See below, Reception and status of non-citizens.

Education and awareness raising

25. In its second report, ECRI underlined the importance of including human rights education in school curricula. It also stressed the need to ensure that materials in use in schools contain information on the diversity of German society, presented in a manner that encourages appreciation of this diversity.
26. ECRI welcomes the fact that one of the main tasks of the Institute for Human Rights, established by the German authorities in March 2001, is to work to promote human rights education in Germany. As concerns human rights education in schools, however, ECRI notes that, although a recommendation of the Federal authorities exists aimed at introducing human rights education in the school curricula of all *Länder*, only a small number of *Länder* have so far followed this recommendation in practice. As a result, in schools in most *Länder* human rights are only taught in the form of specific projects, some of which do, however, focus more specifically on issues of racism and racial discrimination.
27. Another recommendation of the Federal authorities aims at introducing intercultural education in the school systems of all *Länder*, not as a separate subject, but as a crosscutting approach to all subjects. Generally, it has been reported to ECRI that work has been carried out in all *Länder* to introduce this approach as a crosscutting theme for different subjects. However, it has also been brought to ECRI's attention that materials currently in use in German schools do not always reflect the diversity of German society. In addition, work aimed at developing the intercultural competence of teachers, educators and, more generally, of the school communities, has reportedly been limited.

Recommendations:

28. ECRI recommends to the German authorities that they ensure that human rights education is introduced as a compulsory subject in all levels of schools throughout Germany. It also recommends that the German authorities monitor the extent to which intercultural education is concretely integrated into everyday practice in German schools, including by ensuring that materials in use in German schools reflect the diversity of German society. ECRI also calls for further measures to improve the intercultural competence of teachers, educators and the school communities.

Reception and status of non-citizens

29. In its second report, ECRI focused extensively on the situation of the non-citizen population of Germany, which makes up approximately 9% of the total population of the country. ECRI noted that, in spite of the considerable number of non-citizens who have been living in Germany for a long time or even from birth, there was a reluctance by Germany to consider itself as a country of immigration. ECRI noted that persons of immigrant origin, including those who are second or third generation born in Germany, tended to remain "foreigners" in German statistics and public discourse. The usage of the term "foreigner" still seems in fact to encompass, in many cases, even people who possess German nationality. In its second report, ECRI noted that German policies concerning these persons had been to a large extent shaped by a guest-worker approach,

whereby immigrants were perceived primarily in terms of their utility value. As a result, the duty of integrating into German society had rested heavily on the immigrant population itself, as integration measures had not been a priority, while possibilities for integration were in turn negatively affected by the sometimes precarious residence status held by these persons.

30. In recent years, the shift, already noted in ECRI's second report, whereby the German authorities and public opinion leaders had begun speaking of Germany as a country of immigration, has become more pronounced. ECRI stresses the importance of this change of approach, as it considers, as mentioned in other parts of this report, that the problems of racism and racial discrimination are closely connected to the place and role of immigrants and persons of immigrant origin within German society and to the public perception by German society of this part of its population. This trend towards a comparatively more positive recognition of the role of immigration for Germany has also been reflected in the preparation of a draft Bill "to Control and Restrict Immigration and to Regulate the Residence and Integration of EU citizens and Foreigners" (Immigration Bill). Adopted by the Federal Parliament, but rejected by the Federal Council in June 2003, the Immigration Bill is at present being examined by a Mediation Committee of the Federal Parliament. Although non-governmental organisations have underlined that a number of provisions contained in the Immigration Bill are a cause for concern, there appears to be a general agreement to the effect that the Bill points in the direction of recognising the role of immigration in German society and of recognising the duty and responsibility of the State to promote integration.

Recommendations:

31. ECRI encourages the German authorities to make further progress in shaping immigration and integration policies which do not consider immigrants primarily in terms of their utility value and which recognise the positive role of immigration and the fact that immigrants constitute an integral part of German society.

- The situation of non-citizens

32. In its second report, in view of the emotional and psychological benefit that the presence of family members provides and of the importance of this for successful integration, ECRI suggested that consideration be given to raising the age of children falling under the scope of family reunification and to facilitating visits from family members living abroad. ECRI regrets to note however, that the Immigration Bill lowers the age limit of children who are allowed to join their parents already in Germany from 16 to 12 years, and provides that this limit will be of 18 years of age only for the children of refugees and newly arrived high-skilled workers. More generally, ECRI notes that Germany has made a declaration to the United Nations Convention on the Rights of the Child to the effect that the Convention cannot be interpreted as restricting either the right of Germany to pass laws and regulations about the entry of aliens and the conditions of their stay or its right to differentiate between citizens and foreigners. It has been reported to ECRI that this declaration effectively restricts the practical enjoyment of the rights of the child in Germany.

-
33. As already noted in ECRI's second report, non-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 and that carries a minimum prison sentence of three years. Although persons under the age of 21 enjoy a greater degree of protection from expulsion, it has been pointed out that youth who have been born in Germany or have spent most of their lives in the country, may be subject to expulsion.
34. In its second report, ECRI recommended that Germany grant certain political rights to non-citizens who are long term residents, such as the right to vote in local elections. ECRI notes that EU citizens are still the only non-German citizens to whom eligibility and voting rights in local elections are granted.

Recommendations:

35. ECRI recommends to the German authorities to ensure that the right to private and family life and the rights of the child are fully respected for all persons residing in Germany, including non-citizens. It reiterates its call for measures to facilitate reunification of children with their families and to facilitate visits from family members living abroad. In this respect, ECRI considers that the maximum age of children falling under the scope of family reunification, which is currently 16 years, should not be lowered but should instead be raised to 18 years of age for all children. ECRI recommends to the German authorities to ensure that no expulsion order is served on foreigners in violation of their private and family life and rights of the child.
36. ECRI recommends that Germany grant eligibility and voting rights to long-term non-EU residents in local elections.
37. The Immigration Bill introduces for the first time an integration programme for newcomers, administered by the Federal and *Land* authorities. Persons newly arrived in the framework of family reunification and labour immigration, as well as refugees, that cannot prove basic knowledge of the German language will have a right and an obligation to participate in an integration course. The course will focus primarily on the German language, but also on other aspects such as German culture and history. Persons already living in Germany will not be required to participate in such courses and will only be allowed to participate if the capacity of the course permits it. Participation in the course will constitute a factor to be taken into account in the decision on the extension of the residence permit of the person concerned. Non-governmental organisations and representatives of immigrant communities have reported to ECRI that the programme responds, at least in part, to a demand from immigrant communities. However, they have expressed reservations on the issue of sanctions for non-participation in the integration course and have pointed out that exceptions must be allowed for persons who are in special or vulnerable situations.

Recommendations:

38. ECRI recommends to the German authorities to ensure that any integration course for newcomers that may be established is adapted, as much as possible, to the special circumstances of each individual person, including his or her level of education, professional competence, age and health status. ECRI furthermore recommends that the German authorities ensure that a high standard of training is provided in all *Länder*, including, as necessary, through guidelines, monitoring mechanisms, training of educators and transmission of best practices between different *Länder*. The German authorities are also strongly encouraged to monitor the effects of sanctions and to take any corrective measures as necessary, including their suppression.

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

39. In its second report, ECRI noted that asylum seekers are permitted to work after one year of legal stay in Germany. It also noted, however, that the legislation establishing that employment must first be offered to Germans, EU citizens or those individuals with permanent residence permits before it can be offered to persons with weaker residence status, made it particularly difficult for asylum seekers to find a job. ECRI also noted that the social benefits for asylum seekers had been reduced. It recommended to the German authorities to ensure that asylum seekers are not left in a state of destitution. There have been no developments in these areas since ECRI's second report. Although it is reported that the Immigration Bill may in part modify the rules on the order of preference for jobs to be offered, ECRI understands that these changes will not improve the position of asylum seekers on the labour market.
40. ECRI notes that the freedom of movement of asylum seekers in Germany is seriously restricted. Asylum seekers cannot leave the district (*Kreis*) they have been registered in without the authorisation of the Office for Foreigners. However, ECRI has received numerous reports indicating that authorisations are often delayed or denied without valid reasons. ECRI has been informed that the Immigration Bill contains provisions aimed at regulating the discretion of the Office for Foreigners in granting authorisations to leave the district.
41. ECRI notes that not all recognised refugees enjoy full rights to family reunification. At present, there are two categories of recognised refugees in Germany: those who have been granted asylum under Article 16a of the Constitution and those who have been granted refugee status under Article 51 of the Aliens Act. The latter do not enjoy full rights to family reunification as the enjoyment of these rights is subordinated to economic requirements: in practice, if they are dependent on social aid, they cannot bring members of their family into Germany. ECRI has been informed that the Immigration Bill will grant full family reunification rights to all recognised refugees.
42. The number of asylum applications has steadily decreased in recent years. A smaller rate of refugee recognition is also reported from January to August 2003. ECRI notes that persecution by non-State agents and persecution on the basis of gender are not recognised in Germany for the purposes of granting refugee status. However, the German authorities have informed ECRI that the Immigration Bill contains provisions aimed at recognising these circumstances

for the purposes of granting refugee status under the Geneva Convention relating to the Status of Refugees. Although specific training on asylum seekers and refugees is not compulsory for judges of the administrative courts, training courses on these subjects are organised by both the Office of the United Nations High Commissioner for Refugees and the Ministry of Justice.

Recommendations:

43. ECRI reiterates its recommendation to the German authorities to ensure that asylum seekers are not left in a state of destitution, including by allowing them adequate access to work. ECRI also recommends that the German authorities ensure that asylum seekers' freedom of movement is respected. ECRI recommends to the German authorities that they ensure that full family reunification rights are guaranteed to all recognised refugees.
44. ECRI encourages the German authorities in their efforts to ensure that persecution from non-State agents and gender persecution are recognised in Germany for the purposes of granting refugee status under the Geneva Convention relating to the Status of Refugees. ECRI recommends that the German authorities intensify their efforts to provide specific training on asylum and refugee questions to judges involved in the asylum process.
45. In its second report, ECRI expressed concern at reports of cases of Roma and members of other minorities from Kosovo having been forcibly sent back, contrary to the principle of *non-refoulement* and Article 3 of the ECHR. Since ECRI's second report, a Memorandum of understanding has been signed whereby Germany undertakes to suspend forcible returns of Serbs and Roma to Kosovo until 31 March 2004, whereas returns of members of other minority communities may be carried out, in some cases subject to a prior individual screening process.
46. Asylum seekers who come to certain German airports from countries listed as safe countries of origin or who are not able to prove their identity may be subject to the so-called airport procedure. The German authorities report that this procedure applies to a limited number of persons every year (278 in 2001, 298 in 2002). Given the short time-limits applying to this procedure, in its second report ECRI recommended to the German authorities to ensure that all asylum seekers have sufficient time to prepare their cases effectively and full access to legal counsel. The German authorities report that asylum seekers to whom this procedure is applied are offered free advice by a lawyer or may use the services of a lawyer of their own choice. ECRI notes that there are no provisions excluding unaccompanied children from the application of the airport procedure. Furthermore, ECRI notes that, although German legislation provides for a guardian to be assigned to unaccompanied children, there are reports that in some cases guardians have not been appointed or that the guardians appointed were assigned an excessive number of wards.
47. According to German legislation, all children born on German territory have a right to be registered in the civil registers. In order for a birth certificate to be issued, the parents must provide proof of their identity, except in circumstances where this involves excessive difficulties or disproportionate costs. ECRI has

received reports that, in certain *Länder*, Registry Offices have refused to register children born in Germany to undocumented asylum seekers.

Recommendations:

48. ECRI recommends to the German authorities to ensure that no person is forcibly returned to his or her country of origin contrary to the principle of *non-refoulement* and Article 3 of the ECHR. In this respect, it recommends that particular attention be devoted to persons being returned to Kosovo.
49. ECRI reiterates its recommendation to the German authorities to ensure that all asylum seekers, including those to whom the airport procedure is applied, have sufficient time to prepare their cases effectively and full access to legal counsel. ECRI also recommends that unaccompanied children be excluded from the application of this procedure. ECRI encourages the German authorities to ensure effective guardianship in practice to all unaccompanied children.
50. ECRI recommends to the German authorities to ensure that the right of children born in Germany to be registered irrespective of the known or unknown identity of their parents is thoroughly respected in all cases.

- Persons with tolerated status

51. Approximately 227,000 persons live in Germany today with tolerated status (*Duldung*). These include persons who have been recognised as entitled to temporary protection in consideration of the risk of human rights violation that they may face if returned, but also persons that, for one reason or the other, cannot be deported from Germany. Persons who live in Germany with tolerated status do not have a right of abode in Germany and therefore enjoy only limited rights. For instance, they can work only after one year of tolerated stay in Germany. However, the same order of preference for job offers applies to them as described above for asylum seekers⁶, a requirement that renders their employment problematic. ECRI has also received reports that in some cases, work permits have been granted for persons with tolerated status for a very limited amount of hours per week and have not been extended in spite of requests from the employers to this effect. This has resulted in some cases in loss of employment by persons living on tolerated status and in their dependence on social support. As concerns the right to education, children with tolerated status can go to school, but are prevented from accessing vocational training. Furthermore, persons with tolerated status do not enjoy the right to family reunification and are restricted in their freedom of movement.
52. ECRI notes that a considerable number of persons have been living in Germany with tolerated status for a long time, some for as long as 12 years or more, and have, as a result, developed close ties with Germany. In many cases, the children of these persons were born in Germany and have therefore only attended German schools in their lives. In spite of this, these persons remain susceptible to deportation at any time. There are reports of families with well established ties in Germany having been deported, or of families having been separated due to deportation of some of its members.

⁶ See above, Reception and status of non-citizens – the situation of asylum seekers and refugees.

53. The German authorities have informed ECRI that the Immigration Bill provides that persons entitled to temporary protection will be given temporary residence permits. However, for the rest of the persons who are currently given tolerated status, the utmost will be done to expedite deportations. ECRI considers, however, that a solution should be found for those persons who have been living in Germany with tolerated status for a long time. ECRI notes, for instance, that some non-governmental organisations have been campaigning for residence permits to be granted to persons who have been living with tolerated status for five years or longer.

Recommendations:

54. ECRI encourages the German authorities in their plans to grant temporary residence permits to persons entitled to temporary protection. In the short term, however, it recommends to the German authorities to work for a solution which is humane and respectful of human rights for those persons who have been living in Germany with tolerated status for a long time and have developed close ties with Germany.

- General climate concerning non-citizens

55. In its second report, ECRI discussed the impact of immigration and asylum policies, and of the debate around their adoption, on the perceptions and behaviour of the general public in respect of non-citizens, but also in respect of Germans of immigrant origin. In spite of the welcome shift towards a more thorough recognition of Germany as a country of immigration, as mentioned above, ECRI notes that the debate around the adoption of the Immigration Bill and of other measures aimed at countering discrimination has not always been conducive to the promotion of a climate where immigrants, asylum seekers, refugees and persons of immigrant origin are perceived as genuinely equal and desirable components of the German population. It has been reported to ECRI that, in general, even when promoting measures aimed at allowing immigration or at improving the situation of non-citizens and asylum seekers, politicians and opinion leaders have sometimes tended to adopt an ambivalent position *vis-à-vis* the desirability of the presence of immigrants as such in German society.

Recommendations:

56. ECRI reiterates that politicians, journalists and other public figures should take the utmost care to avoid perpetuating hostility or negative stereotypes about non-citizens and members of minority groups. Instead, they should take the lead in denouncing racism and discrimination and in ensuring that non-citizens are perceived as equal and desirable components of German society. ECRI stresses in this regard that it is crucial to the fight against racism and racial discrimination that all political parties and representatives resist the temptation to approach issues related to immigrants, 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.

Access to public services

- **Education**

57. As already noted in ECRI's second report, non-citizen children are over-represented at lower secondary schools and special schools for under-achievers -- in Germany as a whole around 14% of these children and 4% of German children attend this latter type of schools. Non-citizen children are also correspondingly under-represented at intermediate and grammar schools. In addition, many more non-citizen children than German children still leave schools without a school-leaving certificate. In its second report, ECRI suggested that these issues be further investigated and the role of discrimination examined in this respect. The German authorities have stated that prejudice and stereotyping constitutes only one of the causes determining the disadvantaged position of non-citizen children in education. Other causes must be sought in language barriers, lack of information on opportunities available, educational background of the parents of the school children and lack of intercultural competence within the school communities. Another factor that seems to play a role is security of status, i.e. the extent to which families of non-citizens can plan their future in Germany. The German authorities also point out that statistics are collected on the basis of possession of German nationality and that therefore the advantaged position of German children in education includes the position of a number of German children of non-German ethnic origin. However, certain *Länder* have started to collect data on the basis of the children's mother-tongue. ECRI has been informed of the initiatives undertaken in several *Länder* in order to provide mother-tongue education to non-citizen children. It has also been informed of the initiatives aimed at improving teaching of German as a second language, including in kindergartens, where non-citizen children are over-represented. ECRI notes in this respect that quality control is being introduced in schools in some *Länder* by way of exams after the second grade. ECRI also notes with interest the initiatives undertaken to improve the educational competence of parents.

Recommendations:

58. ECRI encourages the German authorities in their efforts to improve the position of non-citizen children in schools. It considers that education in German as a second language from kindergarten level upwards is one of the priority areas for action. It stresses, however, that measures aimed exclusively at non-citizen children will not suffice to ensure equality of opportunities of these children in education. In this respect, it strongly recommends initiatives to strengthen the intercultural competence of the school communities through measures targeted at the majority population as well.

- **Housing**

59. Instances of racial discrimination in the private housing market have continued to be reported. ECRI notes that housing is one of the areas that will be covered by the draft anti-discrimination legislation currently under preparation. In its second report, ECRI suggested that research be initiated into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing. The German authorities have informed ECRI that co-operation

between the Federal and the *Land* authorities has been enhanced in order to focus on housing initiatives addressing specific target groups, such as low income groups, among whom non-citizens are often over-represented. The German authorities have also underlined that through the “Social City” Programme, the Federal and *Länd* authorities aim to help districts with obvious deficits in terms of social infrastructure, buildings, jobs available and housing stock.

Recommendations:

60. ECRI recommends that research be carried into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing, in order to inform targeted policy responses to any problems found.

Employment

61. In its second report, ECRI recommended that the German authorities further investigate the barriers encountered by non-citizens and persons of immigrant background for entry into the labour market, and focus in particular on direct and indirect discrimination. Noting reports of discriminatory practices with respect to rates of remuneration of migrant workers in certain sectors, ECRI called for further measures to counter the occurrence of such instances. ECRI finally recommended the adoption of comprehensive anti-discrimination legislation in employment.
62. Since ECRI's second report, the German authorities have initiated a funding programme, Xenos, which combines measures related to the labour market with activities against xenophobia, racism and racial discrimination. Projects funded under Xenos are carried out by a variety of social actors, notably on the local level, and take the form of seminars on intercultural competence, vocational training of members of disadvantaged groups, training of multipliers, development of anti-discrimination policies and mediation mechanisms in companies, etc. 55% of the budget allocated to this programme is earmarked for initiatives in the Eastern *Länder* of Germany and the rest for initiatives in its Western *Länder*.
63. Since ECRI's second report, the role of the Works Councils in combating racial discrimination has been strengthened. The new tasks of the Works Councils include promoting the integration of foreign workers and applying for measures to combat racism and xenophobia at work. The Works Councils are now entitled to deny approval for the recruitment of workers who engage in racist and xenophobic activities and to demand that such workers be dismissed. Employers are also required to report regularly on the integration of foreign workers on their pay roll when holding company meetings. As mentioned above⁷, one set of legal provisions that forms part of the anti-discrimination package of measures to be submitted to Parliament in 2004 will concern employment and vocational training, and will cover discrimination on a wide range of grounds, including those covered by ECRI's work.

⁷ Civil and administrative legal provisions.

Recommendations:

64. ECRI encourages the German authorities to prevent and combat racial discrimination, racism and xenophobia in the labour market. It recommends that the Xenos programme be evaluated, in order to assess its effectiveness, notably as concerns the accessibility of its funds to a wide range of actors of civil society and to a wide range of initiatives. In this respect, ECRI reiterates its recommendation to the German authorities to ensure that the barriers encountered by non-citizens and persons of immigrant background for entry into the labour market are identified in as accurate a way as possible, in order to target funding to initiatives in priority areas. It further recommends that the German authorities evaluate the implementation in practice of the new competences of the Works Councils in the field of combating racial discrimination and promoting the integration of foreign workers.

Vulnerable groups

- ***Jewish community***

65. In its second report, ECRI noted an increase in antisemitism and violent attacks aimed at the Jewish community. Since ECRI's second report, Germany has registered a marked increase in antisemitic propaganda cases. Antisemitic violence against individuals and against property has also been on the rise. Antisemitic letters, telephone calls and threats directed toward members of the Jewish communities and their organisations are also reported to have increased. ECRI discusses the problem of antisemitic violence in further detail in Section II of this report. It notes here, however, that since ECRI's second report, perceptions with respect to contemporary events in the Middle East have contributed to the development of antisemitic attitudes in Germany, sometimes linked with inappropriate associations and expectations placed upon Jewish communities living in Germany concerning events in the Middle East.
66. In its second report, ECRI recommended that particular care should be devoted to avoid misportraying 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. It recommended that, instead, the responsibility and value to Germany in re-establishing its Jewish community should be emphasised – in the last decade, the Jewish community of Germany has increased from around 30,000 to at least 100,000 persons. ECRI notes that, in January 2003, a Convention was concluded between the Federal Government and the Central Council of Jews in Germany, whereby Germany undertakes to support the Council in its activities of social and political integration and in the development of the Jewish community.

- ***Muslims***

67. The German authorities estimate that approximately 3,200,000 persons of Muslim faith live in Germany, 500,000 of whom are German citizens. Non-governmental organisations report that, following the sudden rise in Islamophobia in Germany subsequent to the events of 11 September 2001, this phenomenon has not decreased to a significant scale. Organisations working within civil society to promote integration of Muslims report that they face

suspicious attitudes and discrimination by *Länder* authorities with respect to issues such as opening of places of worship and kindergartens or provision of religious instruction in schools. Muslim women who wear the headscarf are reported to be particularly vulnerable to racism and discrimination, as reflected in reports of insults and harassment and in reports of harassment and discrimination in employment. Furthermore, although the German authorities have underlined that no ban exists on the wearing of headscarves in public schools, it has been reported to ECRI that the enforcement of strict policies against the wearing of headscarves by some schools is effectively preventing Muslim girls from pursuing certain types of education. More generally, Muslim organisations report that efforts by Muslims to integrate into German society are often met with reticence, notably by public authorities and the media.

- ***Roma/Sinti***

68. Members of Roma and Sinti communities continue to face serious social disadvantage and to be confronted with prejudice and discrimination, including in some cases blatant direct discrimination, in such fields as employment, housing and education. Roma and Sinti have also continued to be the victims of racist attacks and harassment, and the subject of racist propaganda on the Internet. Desecration of monuments and activities of extreme-right wing groups around Roma and Sinti memorial sites have also been registered. As mentioned below⁸, some media have contributed to the perpetuation of prejudices about this part of the German population and to their stigmatisation. As noted by ECRI in its second report, Roma and Sinti have been officially recognised as a national minority. In this respect, representatives of some Roma and Sinti organisations stress that progress is still needed in the field of the use of the Romanes language, notably to ensure that teaching of this language in schools is possible in all *Länder*, and in the field of representation of Roma and Sinti in political and institutional bodies. Once again, Roma and Sinti who are not German citizens appear even more vulnerable to problems of racism and discrimination. In many cases, their situation is worsened by their status in Germany, as they often only possess tolerated status⁹.

- ***Visible minorities***

69. Members of visible, and notably black, minority groups are especially vulnerable to certain particularly serious manifestations of racism, such as racially motivated violence and harassment, and to racial discrimination. This group of persons is reported to be disproportionately subject to checks carried out by the police and disproportionately singled out for controls in railway stations and in airports. Although members of visible minority groups who are non-citizens are particularly vulnerable to racism and racial discrimination, Germans of ethnic minority background are also victims of these phenomena.

- ***Women victims of trafficking***

70. The German authorities report a 5% rise in investigations against trafficking in human beings in 2002 in comparison with 2001. All of the 811 identified victims were women. Around 80% of these women came from countries of Central and Eastern Europe and around 5% were minors, between the age of 14 and 17.

⁸ See Media.

⁹ See above, Reception and status of non-citizens – Persons with tolerated status.

Prosecutions are carried out in Germany on the basis of the provisions of the Criminal Code that prohibit trafficking in human beings. It has been noted, however, that the current provisions only prohibit trafficking for purposes of sexual exploitation, and that therefore trafficking of human beings for other purposes, such as forced labour or services, are not covered by these provisions. In this respect, ECRI notes that the German authorities are currently drafting a bill aimed at extending the scope of the provisions of the Criminal Code that prohibit trafficking in human beings to include trafficking for the purpose of labour exploitation. Non-governmental organisations active in the field of assisting women victims of trafficking have highlighted the need for the establishment in each *Land* of an institution to protect and counsel victims of trafficking. They have also pointed out the need to ensure that all measures taken in respect of women victims of trafficking equally benefit all such victims irrespective of countries of origin.

Recommendations:

71. ECRI reiterates, in this context, its recommendations made in different parts of this report, as it considers that their implementation will be beneficial to countering manifestations of racism and racial discrimination targeting all minority groups vulnerable to racism and racial discrimination mentioned in this section.
72. ECRI recommends to the German authorities to continue and intensify the efforts to address all manifestations of antisemitism in Germany. In this respect, 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.
73. ECRI recommends to the German authorities to take steps to effectively combat and prevent racism and discrimination *vis-à-vis* Muslims in Germany. In this respect, it draws the attention of the German authorities to its General Policy Recommendation No. 5¹⁰, which proposes a range of legislative and policy measures governments can take to this end.
74. ECRI recommends that further steps are taken to improve the situation of Roma and Sinti in Germany in order to combat and prevent racism and racial discrimination *vis-à-vis* this part of the German population. ECRI draws once more the attention of the German authorities to its General Policy Recommendation No. 3¹¹, which proposes a range of legislative and policy measures governments can take to this end.
75. ECRI encourages the German authorities in their efforts to combat trafficking in human beings and particularly women. It recommends that the German authorities consider ways to enhance the assistance currently provided to victims of trafficking, including through the establishment of specialised

¹⁰ CRI (2000) 21: ECRI General Policy Recommendation n° 5: Combating intolerance and discrimination against Muslims, European Commission against Racism and Intolerance.

¹¹ CRI (98) 29: ECRI General Policy Recommendation n° 3: Combating racism and intolerance against Roma/Gypsies, European Commission against Racism and Intolerance.

institutions in each *Land*. It also encourages the German authorities to ensure that all measures taken in respect of women victims of trafficking equally benefit all such victims irrespective of countries of origin.

Media

76. In its second report, ECRI noted that some media had promoted negative stereotypes and prejudices about individuals of immigrant origin and ethnic minority groups, contributing to a climate that is hostile to these individuals. It noted that the Press Code adopted by the Press Council contained anti-discrimination guidelines, and encouraged the German media generally to consider codes of self-regulation and to undertake special training on reporting in a diverse society.
77. It has been reported to ECRI that the situation in this respect has not improved. In particular, ECRI notes that some media reports have continued to reveal the ethnic origin of perpetrators of crimes and suspects without this information having an objective relevance to the facts reported. The Central Council of German Sinti and Roma reports that, in 2002, it has unsuccessfully submitted to the Press Council 45 complaints relating to this issue.

Recommendations:

78. ECRI invites the media profession to devote particular attention to the need to ensure that reporting does not perpetuate racist prejudice and stereotypes and also to the need to play a proactive role in countering such prejudice and stereotypes. To these ends, ECRI considers that the adoption, where necessary, and the implementation of codes of self-regulation may be useful tools. It is also important to ensure that media professionals are equipped with special training on reporting in a diverse society. Finally, ECRI stresses that a stronger representation of persons of immigrant background in the media profession could positively affect the image of persons of immigrant background reflected by the press.

Conduct of law enforcement officials

79. Since ECRI's second report, non-governmental organisations monitoring the conduct of law enforcement officials in Germany have registered a decrease in the number of allegations of police ill-treatment and excessive use of force they have received. ECRI remains nonetheless concerned at the fact that a considerable proportion of these allegations still come from non-citizens or members of ethnic minority groups. ECRI also remains concerned at allegations, albeit appreciably fewer, of ill-treatment and excessive use of force against foreign nationals subject to deportation orders, both in the context of pre-deportation detention and during actual deportations. ECRI finally notes reports that members of visible minority groups are disproportionately subject to police checks¹².

¹² See above, Vulnerable groups – Visible minorities

80. In order to prevent the occurrence of any such instances, in its second report, ECRI recommended that all efforts be deployed in order to ensure that any such allegations are rigorously examined and perpetrators punished. In this respect, ECRI recommended in particular the setting up of an independent body entrusted with the investigation of all allegations of ill-treatment by police officers. ECRI furthermore recommended that training of law enforcement officials include training to raise the awareness of these officials to issues of racism and direct and indirect racial discrimination. Finally, ECRI recommended that the German authorities intensify their efforts to ensure representation of members of minority groups in the police.
81. Although ECRI has been informed that mediation bodies composed of police officials and members of civil society have been established in some *Länder*, no independent body entrusted with the investigation of allegations of ill-treatment by police officers has been set up since ECRI's second report. In this respect, ECRI notes reports that it is still very difficult to file a successful complaint of police ill-treatment due to different factors, including the excessively long duration of the investigations, a certain reluctance of some public prosecutors to file charges against the police and the incidence of counter-charges which may dissuade victims of ill-treatment from seeking redress.
82. As concerns persons subject to deportation orders, ECRI notes that following the death of one such person in May 1999, the Ministry of Interior issued guidelines regulating deportations. ECRI has also learnt with interest that, in North-Rhine Westphalia, a forum of officials of the Federal border police and of members of non-governmental human rights organisations has been established to monitor the carrying out of deportation orders.
83. ECRI notes that some *Länder* focus extensively in both initial and in-service training aimed at equipping police officers with the necessary intercultural competence, as well as awareness raising on issues of racism, antisemitism, xenophobia and racial discrimination. It has been reported to ECRI, however, that the situation as concerns provision of training on these subjects varies widely according to *Land*. The German authorities have reported that special training is provided to Federal Border Police officials entrusted with carrying out deportation orders.
84. In some *Länder*, persons of immigrant origin are considerably represented among the applicants for posts in the police. However, the German authorities report that the success rate of this group of applicants is relatively low. For instance, only 66 out of 910 applicants of immigrant background were offered positions in the Berlin police force in 2000.

Recommendations:

85. ECRI reiterates its call for the establishment of an independent body entrusted with the investigation of allegations of ill-treatment by police officers. ECRI furthermore recommends that the initiatives undertaken in some *Länder* to establish structures entrusted with monitoring the carrying out of deportation orders be reproduced throughout the territory of Germany. ECRI recommends to the German authorities to consider the introduction of a system of registration in connection with police checks that enables individuals to document how frequently they are checked, in order to identify possible patterns of direct or indirect racial discrimination.
86. ECRI recommends to the German authorities to ensure that training in intercultural competence and training to raise the awareness of law enforcement officials of the issues of racism and direct and indirect racial discrimination is provided to police throughout the territory of Germany. ECRI strongly recommends that the German authorities continue their efforts to provide adequate training to Federal Border Police officials entrusted with carrying out deportation orders in order to ensure that deportations take place in full respect of human rights and human dignity.
87. ECRI reiterates its call for measures to ensure adequate representation of members of minority groups in the police. These measures should include the identification of barriers preventing members of minority groups from entering the police force and the adoption of targeted measures to overcome such barriers.

Monitoring the situation

88. In its second report, ECRI suggested that the collection of data broken down by ethnic origin could help the German authorities to better assess the situation of the various minority groups living in Germany in different fields of life, such as employment, housing and education. ECRI stressed that 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.
89. The German authorities have stated that the collection of this type of data is not permitted by international agreements binding on Germany nor would it be in conformity with its post-World War II policy in this respect. The German authorities have also stated that members of minority groups, and notably of some national minorities, are not in favour of having this type of data collected. While ECRI has registered a cautious approach to collecting this type of data from some German non-governmental organisations, other organisations, notably representing visible minority groups, believe that this type of data is essential to elaborating policies against racism and racial discrimination and to evaluating their effectiveness.
90. ECRI has also received reports of police practice in some *Länder* to collect data on the ethnic origin of perpetrators or suspects, without obtaining the consent from the persons concerned or without the persons concerned even being informed of the collection of this information.

Recommendations:

91. ECRI reiterates its recommendation to the German authorities to improve their monitoring systems by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin, and to ensure that this is done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

II. SPECIFIC ISSUES

Racist, xenophobic and antisemitic violence

92. As already mentioned in its second report, ECRI considers racist, xenophobic and antisemitic violence as one of the most dangerous expressions of racism and a priority area for action in Germany. There continue to be reports of attacks, some resulting in death, against members of minority groups, including asylum seekers, members of Jewish communities, Roma and Sinti. Members of visible minority groups are reported to be particularly susceptible to such attacks. As a result, there are areas in Germany where persons belonging to these groups are afraid to appear in public. Non-governmental organisations and representatives of minority groups report that racist, xenophobic and antisemitic violence constitute a concrete threat for these persons in many regions of the Eastern *Länder*, but also in a growing number of areas in the Western *Länder*. Although the data for 2003 are not yet available at the time of writing, since ECRI's second report and until 2002, racist, xenophobic and antisemitic violent attacks have unfortunately been increasing.
93. The attacks are mainly carried out by members of more or less organised right-wing extremist groups, including neo-Nazi and skinhead groups. The Federal Office for the Defence of the Constitution (*Bundesamt für Verfassungsschutz*), which monitors, *inter alia*, the activities of the members of these groups, indicates that while the number of potential right-wing extremists has been slowly but steadily decreasing since 1998, the number of potential right-wing extremists willing to use violence has continued its upward trend -- the estimate for the year 2001 is 10,400 persons. The German authorities link these developments to the relatively weak success of the politically organised extreme right and to the parallel increasing popularity of the skinhead movement. Non-governmental organisations report that neo-Nazi, skinhead and other groups resorting to racist, xenophobic and antisemitic propaganda enjoy increasing popularity, especially, although not exclusively, in the Eastern *Länders*. This success is linked to the development of a youth culture made of music, comics and video games that propagates racist theories and glorifies violence against minority groups, and that has permeated the local communities, including their schools, pubs, stadiums, discotheques and other public places.
94. In its second report, ECRI considered that the problem of racist, xenophobic and antisemitic violence was not only linked to conditions particular to the youth who are perpetrators of these crimes, but was also favoured by other, more

general conditions prevailing in German society as a whole. These include: perceptions about non-citizens and their place within German society; the incidence of racial discrimination in everyday life; and the latent racism, xenophobia and antisemitism existing more generally in other segments of the population of Germany. ECRI therefore recommended that, in order to ensure an effective response to the phenomenon of racist, xenophobic and antisemitic violence, the German authorities adopt a multi-dimensional approach, which would include, alongside measures to counter the activities of right-wing extremists, measures to address the more general facets of the problem. In this respect, ECRI notes with interest the “Report on Ongoing and Planned Measures and Activities of the Federal Government Aimed at Combating Right-wing Extremism, Xenophobia and Violence”, issued in May 2002. This report reflects a more comprehensive approach involving not only measures aimed at offenders and their social environment, but also initiatives to promote human rights, strengthen civil society and foster integration of the different segments of German society, and particularly of its population of immigrant origin.

Recommendations:

95. ECRI encourages the German authorities in their efforts to take a more comprehensive approach to the phenomenon of racist, xenophobic and antisemitic violence, that does not focus exclusively on the activities of right-wing extremists. ECRI believes that an effective response to racist, xenophobic and antisemitic violence in Germany also requires efforts to address other causes underlying this violence which may be found in society as a whole. As highlighted in other parts of this report, these causes include: perceptions promoted in the public sphere about non-citizens (including asylum-seekers and immigrants) and their place within German society; the incidence of racial discrimination in everyday life; and the existence, more generally, of racist, xenophobic and antisemitic prejudice within society.
96. In its second report, ECRI recommended that the German authorities support local initiatives involving different segments of local communities and aimed at promoting a democratic civil society which rejects racism, xenophobia and antisemitism. As part of their Programme of Action “Youth for Tolerance and Democracy – Against Right-wing Extremism, Xenophobia and Antisemitism”, the German authorities have initiated three funding programmes for concrete local initiatives. These are: Xenos, which is covered in another part of this report¹³; Entimon, which aims at strengthening democratic culture with a view to combating violence and right-wing extremism throughout Germany; and Civitas, which aims at combating right-wing extremism in the Eastern *Länder* of Germany. ECRI welcomes these developments and the fact that a considerable number of projects have already been funded under these programmes. Non-governmental organisations have stressed, however, that in practice it is not always possible to access funding under these programmes, especially for local grass-root organisations which are often the closest to manifestations of racist, xenophobic and antisemitic violence. They have also underlined that successful strategies to overcome these problems require sustainable financial commitment, and have expressed worries, in this respect, over the uncertainty of long-term funding of local projects.

¹³

See Employment.

97. In its second report, ECRI emphasised the importance of education and awareness raising measures aimed at children, youth and the general public, in order to foster values of respect for differences. ECRI noted initiatives in the field of democratic education carried out by the Federal and Regional Centres for political education, which included measures aimed at reducing prejudice and xenophobia. The German authorities have informed ECRI that, since ECRI's second report, the Federal Agency for Civic Education has focused extensively on initiatives against right-wing extremism.

Recommendations:

98. ECRI recommends that the German authorities continue and intensify their support to local initiatives aimed at strengthening democratic civil society and at equipping local communities against right-wing extremism and, more generally, against racism, xenophobia and antisemitism. In this respect, it encourages the German authorities to consider ways to ensure that local grass-root organisations that can make a difference in the local communities have reasonable access to funding in practice. It also strongly encourages the German authorities to ensure that the financial commitment to the fight against right-wing extremism and, more generally, against racism, xenophobia and antisemitism allows the funding of long-term local initiatives, in order to ensure their effectiveness.
99. ECRI encourages the German authorities to ensure that initiatives aimed at countering right-wing extremism and racist, xenophobic and antisemitic violence continue to constitute a priority in the activities of the Federal and Regional Centres for Political education.
100. In its second report, ECRI encouraged the German authorities to continue to search for means to improve the implementation of existing criminal legislation to combat right-wing extremism and, more generally, racist, xenophobic and antisemitic violence. It also recommended that the German authorities continue their monitoring on the results of the prosecution of crimes against members of minority groups and on the sentences imposed on those convicted of these crimes.
101. As mentioned above¹⁴, the provisions of the Criminal Code most frequently applied against members of extreme right-wing groups are those prohibiting incitement to hatred, those prohibiting approval, denial or minimisation of the genocide committed under the National Socialist regime, and those prohibiting the use of symbols of unconstitutional organisations and the dissemination of their propaganda. In its second report, ECRI suggested that the fight against racist, xenophobic and antisemitic violence could be further improved by 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. This aspect has already been addressed by ECRI in this report¹⁵.

¹⁴ Criminal law provisions.

¹⁵ Criminal law provisions.

102. In most cases, the responsibility for prosecuting criminal offences committed by right-wing extremists, including acts of racist, xenophobic and antisemitic violence, lies with the *Land* authorities. The German authorities have informed ECRI that the initiatives that had already been taken at the time of ECRI's second report to enhance the involvement of the Federal Border Police in relation to activities carried out by right-wing extremists have since continued and yielded positive results. These initiatives included the establishment of a hotline managed by the Federal Border Police to which people can report extreme right-wing activities, threats and violent crimes, as well as patrolling and checks around railway facilities. In addition, since ECRI's second report, members of the Federal Border Police have been called to supervise demonstrations by right-wing groups. In its second report, ECRI noted that consideration was also being given to changing the procedural rules to enhance the role of the Federal Prosecutor General in pursuing cases of right-wing violence in order to emphasise their importance. The authorities have informed ECRI, however, that it was concluded that this was not necessary.
103. The German authorities have informed ECRI that, in 2001, the Parliament made available financial means to compensate victims of right-wing extremist attacks. The Federal Public Prosecutor General at the Federal Supreme Court is responsible for dealing with applications from victims and for determining the amount of the compensation to be granted. Such compensation constitutes a voluntary payment to which applicants have no legal right. Non-governmental organisations have noted, however, that more needs to be done for the victims of racist, xenophobic and antisemitic violence, not just in terms of compensation, but also in terms of concrete activities to rehabilitate them, and in the field of academic research, where studies reportedly tend to focus exclusively on the perpetrators of racist, xenophobic and antisemitic violence, but hardly on the victims.
104. The State Security Division of the Federal Office of Criminal Police analyses and compiles nation-wide statistics on politically motivated crimes. Since ECRI's second report, the German authorities have reviewed the definition of politically motivated crimes. This definition now includes racist, xenophobic and antisemitic offences. More specifically, according to the new definition, which has applied since January 2001, an offence is also considered as politically motivated if the circumstances of the offence or the attitude of the perpetrator indicate that it was committed against an individual on the basis, *inter alia*, of the victim's nationality, ethnicity, race, skin colour or religion and that the offence is causally connected to these factors or directed for such reasons against an institution or an object.

Recommendations:

105. ECRI encourages the German authorities in their efforts to search for means to improve the implementation of existing criminal legislation to combat right-wing extremism and, more generally, to combat racist, xenophobic and antisemitic violence. It highlights, in this respect, the continuing need for training of law enforcement officials on such legislation. ECRI reiterates that a legal provision explicitly providing that racist motivation constitutes an aggravating circumstance of all offences would help bring to light the racist dimension of offences, including acts of violence.
106. ECRI recommends to the German authorities to continue and intensify their efforts in order to address the position of victims of racist, xenophobic and antisemitic violence. Such efforts should include meaningful compensation, but also concrete initiatives to rehabilitate victims as well as academic research in this field.
107. ECRI strongly encourages the German authorities in their efforts to monitor racist, xenophobic and antisemitic crimes and, within these, violent crimes.

108. In its second report, ECRI noted that the German authorities had submitted a request to the Constitutional Court to declare unconstitutional the National Democratic Party of Germany (NPD). It also encouraged the German authorities in their ongoing efforts to ban right-wing extremist associations. ECRI notes that the Constitutional Court has blocked the banning of the NPD on grounds that the Government's case rested on the actions of NPD members who had been shown to be agents of the German intelligence service. ECRI notes that, subsequent to an appeal lodged against it, the ban sought by the Federal government with respect to the German branch of the *Blood and Honour* organisation and its youth organisation *White Youth* has become final in June 2001. The German authorities have stated that this ban has weakened the right-wing extremist hate music scene. ECRI welcomes this development. It notes, however, that the right-wing extremist hate music scene still constitutes a very important area of concern of many non-governmental organisations working against racist, xenophobic and antisemitic violence in Germany. ECRI has also been informed by the German authorities that, since ECRI's second report, a considerable number of smaller right-wing extremist associations have been banned by the *Land* authorities.

Recommendations:

109. ECRI encourages the German authorities in their efforts to ban political parties and other organisations which resort to racist, xenophobic and antisemitic actions and propaganda. As a preventive measure, ECRI recommends, in conformity with its General Policy Recommendation No. 7, that the German authorities consider enacting legislation to withdraw public financing from organisations that promote racism, xenophobia and antisemitism. ECRI furthermore recommends that special efforts be deployed to counter the right-wing extremist hate music scene.

110. In its second report, ECRI highlighted the need to counter racist, xenophobic and antisemitic acts committed through the Internet and welcomed initiatives taken by the German authorities in this area. Since ECRI's second report, members of right-wing extremist groups are reported to increasingly make use of the Internet. The Federal Office for the Protection of the Constitution estimates that the number of homepages run by German right-wing extremists has risen from 330 in 1999 to 1,300 today. The German authorities report that they have taken initiatives aimed at promoting self-regulation among Internet Service Providers and set up a hotline that can be utilised by users, *inter alia*, to complain about the presence of racist, xenophobic and antisemitic content. The German authorities have also informed ECRI of the initiatives they have taken in order to enhance international co-operation to counter racist, xenophobic and antisemitic content in the German language hosted by foreign Internet Service Providers. The German authorities also report that in North Rhine-Westfalia, Internet Service Providers based in that *Land* have been made responsible for the illegal content they host. While this measure is reported to have resulted, for the most part, in the spontaneous removal of such illegal content by the service providers, in some instances court cases are also reported to have been initiated.

Recommendations:

111. ECRI recommends that the German authorities intensify their efforts in order to counter racist, xenophobic and antisemitic activities on the Internet. In this respect, it draws the attention of the authorities to its General Policy Recommendation No. 6¹⁶. ECRI encourages the German authorities to promote on a national scale initiatives taken at *Land* level which have proved successful in countering racist, xenophobic and antisemitic activities on the Internet.

¹⁶ CRI (2001) 1: ECRI General Policy Recommendation N° 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, European Commission against Racism and Intolerance.

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 (2001) 36: Second report on Germany, European Commission against Racism and Intolerance, Council of Europe, July 2001
2. CRI (98) 22: Report on Germany, European Commission against Racism and Intolerance, Council of Europe, March 1998
3. 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
4. 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
5. 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
6. 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
7. 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
8. CRI (2001) 1: ECRI General Policy Recommendation N° 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, European Commission against Racism and Intolerance, Council of Europe, December 2000
9. CRI (2003) 8: ECRI General Policy Recommendation N°7: National legislation to combat racism and racial discrimination, European Commission against Racism and Intolerance, Council of Europe, December 2002
10. CRI (98) 80 rev: Legal measures to combat racism and intolerance in the member States of the Council of Europe, European Commission against Racism and Intolerance, Council of Europe, 2000
11. ACFC/SR (99) 17: Report Submitted by Germany pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, Council of Europe, February 2000
12. ACFC/INF/OP/I(2002)008: Opinion on Germany, Advisory Committee on the Framework Convention for the Protection of National Minorities, Council of Europe, March 2002
13. Comments of the Government of the Federal Republic of Germany on the Opinion of the Advisory Committee on the Report of the implementation of the Framework Convention for the Protection of National Minorities in the Federal Republic of Germany, July 2002
14. ECRML (2002) 1: European Charter for Regional or Minority Languages: Application of the Charter in Germany, Report of the Committee of Experts and Recommendation of the Committee of Ministers, Council of Europe, December 2002
15. CPT/Inf (2003) 20: Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 15 December 2000, Council of Europe, March 2003

16. CPT/Inf (2003) 21: Response of the German Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Germany from 3 to 15 December 2000, Council of Europe, March 2003
17. Sixth Report of the Government of the Federal Republic of Germany on its Human Rights Policy in the Context of Foreign Relations and Other Areas of National Policy, period covered: 1 January 2000-31 March 2002, Federal Foreign Office, June 2002
18. Jahresbericht 2002, Deutsches Institut für Menschenrechte (*Annual Report 2002, German Institute for Human Rights*)
19. Bericht der Beauftragten der Bundesregierung für Ausländerfragen über die Lage der Ausländer in der Bundesrepublik Deutschland, September 2002
20. Preis Soziale Stadt 2002, Dokumentation, GdW Berlin 2002
21. Gesetz zu dem Vertrag vom 27. Januar 2003 zwischen der Bundesrepublik Deutschland und dem Zentralrat der Juden in Deutschland – Körperschaft des öffentlichen Rechts, 10 August 2003, Bundesgesetzblatt Jahrgang 2003 Teil I Nr. 40,
22. Act to Control and Restrict Immigration and to Regulate Residence and Integration of EU Citizens and Foreigners (Immigration Act) of 20 June 2002
23. Migration und Asyl in Zahlen, Bundesamt, July 2003
24. Verfassungsschutzbericht 2002, Bundesministerium des Innern
25. Report on Ongoing and Planned Measures and Activities of the Federal Government Aimed at Combating Right-wing Extremism, Xenophobia, Anti-Semitism and Violence pursuant to Subpara. 21 of the Resolution by the German Bundestag of 30 March 2001 (Doc. No. 14/5456)
26. Entwicklungen im Rechtsextremismus : Die Bedeutung des Antisemitismus im aktuellen deutschen Rechtsextremismus, Bundesamt für Verfassungsschutz, September 2002
27. Structuring Immigration, Fostering Integration, Report by the Independent Commission on Migration to Germany, July 2001
28. CERD/C/338/Add.14: Fifteenth periodic reports of States parties due in 1998: Germany, August 2000
29. CERD/C/304/Add.115: Concluding observations of the Committee on the Elimination of Racial Discrimination: Germany 27/04/2001
30. The Situation of Roma in Germany, Open Society Institute 2002
31. Anti-discrimination Legislation in EU member States: A comparison of national anti-discrimination legislation on the grounds of racial or ethnic origin, religion or belief with the Council Directives: Germany, EUMC, Vienna 2002
32. Anti-Islamic reactions in the EU after the terrorist acts against the USA, Reports on Germany, 12 September-31 December 2001, EUMC
33. Attitudes towards minority groups in West and East Germany, Eurobarometer 2000, EUMC, Vienna 2001
34. Germany: A Briefing for the UN Committee on the Elimination of Racial Discrimination, Amnesty International, February 2001, AI Index: EUR 23/001/2001
35. Country Reports on Human Rights Practices for 2002 – Germany, US Department of State, March 2003
36. International Religious Freedom Report 2002 – Germany, US Department of State, October 2002
37. Antisemitism worldwide 2001/2 – Germany
38. “Unease in the Global Village: German Language Racism on the Internet“, Rebekah Webb for the Consultative Council of Jewish Organisations, Discussion Paper Six, World Conference against Racism, Durban 2001
39. Migration News Sheet, Migration Policy Group, various issues 2002-2003
40. European Race Bulletin, Institute of Race Relations, various issues, 2000-2003

