

ECRE COUNTRY REPORT 2002: GERMANY

ARRIVALS

1. Total number of individual asylum seekers who arrived, with monthly breakdown and percentage variation between years:

Table 1:

Month	2001	2002	Variation +/- (%)
January	7,583	7,762	+2.4
February	6,220	5,771	-7.2
March	7,251	5,697	-21.4
April	6,182	6,019	-2.6
May	6,941	5,346	-23.0
June	6,609	5,664	-14.3
July	8,093	5,947	-26.5
August	9,138	5,780	-36.7
September	8,000	6,286	-21.4
October	8,764	6,568	-25.1
November	8,006	5,510	-31.2
December	5,576	4,694	-15.8
TOTAL	88,287	71,127	-19.4

Source: Federal Office for the Recognition of Refugees (BAFl).

2. Breakdown according to the country of origin/nationality, with percentage variation:

Table 2:

Country	2001	2002	Variation +/- (%)
Iraq	17,167	10,242	-40.3
Turkey	10,869	9,575	-11.9
FRY	7,758	6,679	-13.9
Russian Federation	4,523	4,058	-10.3
Afghanistan	5,837	2,772	-52.5
Iran	3,455	2,642	-23.5
Vietnam	3,721	2,340	-37.1
India	2,651	2,246	-15.3
Syria	2,232	1,829	-18.1
Algeria	1,986	1,743	-12.2
<i>Others</i>	28,088	27,001	-3.9
TOTAL	88,287	71,127	-19.4

Source: BAFl.

Comments: The number of asylum applications continues to decline. The decrease mostly concerns refugees from Iraq (6,925 fewer in 2002 than 2001) and Afghanistan (3,065 fewer).

3. Persons arriving under family reunification procedure: 326,250.

This is a cumulative figure from 1996 to 2000, including family members of migrants in Germany. Data indicating refugee arrivals is unavailable.

Source: Visa statistics of German embassies.

4. Refugees arriving as part of a resettlement programme:

Germany has no agreement with UNHCR regarding the reception of quota refugees. In a so-called 'coalition agreement' the new government stated that Germany would be willing to offer UNHCR a quota of 500 refugees each year.

5. Unaccompanied minors *under 16*: 873 (2001: 1,075).

Table 3:

Rank	2002	2001	2000	1999
1	Afghanistan (138)	Afghanistan (196)	Afghanistan (184)	Afghanistan (216)
2	Vietnam (83)	Vietnam (98)	Turkey (68)	FRY (120)
3	Angola (76)	Turkey (62)	Sierra Leone (62)	Sierra Leone (83)
4	Ethiopia (57)	Guinea-Conakry (59)	Vietnam (47)	Vietnam (71)
5	Iraq (55)	Sierra Leone (57)	<i>Unknown</i> (46)	Turkey (67)
6	Turkey (46)	'Africa' (55)	Iraq (44)	Syria (58)
7	India (37)	Ethiopia (50)	Ethiopia (39)	Pakistan (50)
8	Syria (29)	Iraq (49)	Syria (35)	Sri Lanka (42)
9	Iran (25)	Angola (41)	FRY (34)	Eritrea (35)
10	China (24)	Syria (41)	Sri Lanka (32)	Iran (34)
<i>Others</i>	303	367	355	341
TOTAL	873	1,075	946	1,117

Source: BAFl.

RECOGNITION RATES

6. The statuses accorded as an absolute number and as a percentage of total decisions:

Table 4:

Status	2001		2002	
	First instance		First instance	
	Number	%	Number	%
No status awarded	55,402	51.7	78,845	60.6
Recognition (Article 16a: Constitutional Law)	5,716	5.3	2,379	1.8
Convention status (Section 51.1: Aliens Act)	17,003	15.9	4,130	3.2
Statutory Temporary Suspension of Deportation (Section 53: Aliens Act)	3,383	3.2	1,598	1.2
Other decisions	25,689	24	43,176	33.2
TOTAL	107,193	100	130,128	100

Source: BAFl.

Comments: The above figures indicate the lowest recognition rate since asylum statistics began to be collated in 1985. The proportion of asylum seekers receiving one of the three protection forms decreased significantly in 2002. Of the 130,128 dossiers processed in 2002, refugee status in accordance with the fundamental right of asylum (Article 16a of the Constitution) was granted in 2,379 cases, that is 1.8% of the total number processed. In practice, constitutional asylum, or 'big asylum', is of little relevance since only those asylum seekers who enter the country by air or sea may claim this fundamental right.

4,130 persons (3.2%) received so-called 'small asylum' in accordance with Section 51.1 of the Aliens Acts, which has been modelled on Article 33 of the 1951 Convention. This constituted only around a fifth of the proportion of asylum seekers granted this status in 2001 (15.9%). Furthermore, 1,598 persons (1.2%) were granted recognition based on Section 53 of the Aliens Act (pertaining to

complementary forms of protection and impediments to deportation based on the UN Convention Against Torture and the European Convention on Human Rights), around a third of the rate in 2001 when 3.2% of processed cases received this status.

These figures concern decisions made in the first instance only, and include cases of 'family asylum'.

7. Refugee recognition rates (1951 Convention, other forms of protection and rejections: as an absolute number and as a percentage of total decisions) according to country of origin:

Table 5:

Country of origin	TOTAL	Article 16a*	Section 51.1*	Section 53*	Rejections	Other
Iraq 2001	16,353	598 (3.7%)	9,508 (58.1%)	48 (0.3%)	5,346 (32.7%)	853 (5.2%)
Iraq 2002	12,439	459 (3.7%)	2,432 (19.6%)	73 (0.6%)	8,323 (66.9%)	1,152 (9.3%)
Turkey 2001	14,558	1,184 (8.1%)	931 (6.4%)	123 (0.8%)	7,742 (53.2%)	4,578 (31.4%)
Turkey 2002	14,804	1,055 (7.1%)	583 (3.9%)	119 (0.8%)	8,307 (56.1%)	4,740 (32.0%)
FRY 2001	11,267	23 (0.2%)	32 (0.3%)	230 (2.0%)	3,584 (31.8%)	7,398 (65.7%)
FRY 2002	50,558	24 (0.05%)	7 (0.01%)	404 (0.8%)	25,470 (50.4%)	25,088 (49.6%)
Russian Federation 2001	4,485	81 (1.8%)	567 (12.6%)	81 (1.8%)	3,206 (71.5%)	550 (12.3%)
Russian Federation 2002	4,493	46 (1.0%)	337 (7.5%)	57 (1.3%)	3,354 (74.6%)	699 (15.6%)
Afghanistan 2001	11,601	2,746 (23.7%)	4,486 (38.7%)	2,189 (18.9%)	1,006 (8.7%)	1,174 (10.1%)
Afghanistan 2002	1,164	12 (1.0%)	12 (1.0%)	266 (22.9%)	7 (0.6%)	867 (74.5%)
Iran 2001	4,795	395 (8.2%)	406 (8.5%)	23 (0.5%)	2,957 (61.7%)	1,014 (21.2%)
Iran 2002	3,743	264 (7.1%)	251 (6.7%)	29 (0.8%)	2,177 (58.2%)	1,002 (26.8%)

Source: BAFl.

Comments: *See table 4 above for details of statuses granted.

The recognition rate decreased in the year 2002 for Iraqi refugees, the main reason for which was the establishment of northern Iraq as a so-called 'internal flight alternative' by the German Foreign Ministry.

RETURNS, REMOVALS, DETENTION AND DISMISSED CLAIMS

8. Persons returned on safe third country grounds: No 2002 figure available.

According to constitutional law, 'safe third countries' are the Member States of the European Community as well as other European countries - currently Norway, Poland, Switzerland and the Czech Republic - that adhere to the provisions of the 1951 Geneva Convention and the European Convention on Human Rights.

There were 54,054 rejections at German borders in 2001 (52,227 in 2000). Of these, the figures pertaining to three 'safe third countries' that are not party to the Dublin Convention were as follows:

- Poland: 15,293;
- Czech Republic: 10,774;
- Switzerland: 20,287.

Source: Annual Reports of the Federal Border Police (2000 and 2001).

9. Persons returned on safe country of origin grounds: Figures unavailable.

10. Number of applications determined inadmissible: Figures unavailable.

11. Number of asylum seekers denied entry to the territory: Figures unavailable.

12. Number of asylum seekers detained, the maximum length of and grounds for detention:
Figures unavailable.

13. Deportations of rejected asylum seekers: 30,423 (2001: 27,051; 2000: 35,443; 1999: 32,668).

These figures include the deportation of all aliens, not just asylum seekers, by air. Deportations were conducted from the following German airports in 2002:

- Frankfurt: 9,043;
- Düsseldorf: 5,119;
- Munich: 3,103;
- Berlin: 2,552.

The main destination countries were the Federal Republic of Yugoslavia (4,916 persons) and Turkey (4,531 persons).

Source: Annual Reports of the Federal Border Police (2000 and 2001) and *Pro Asyl*.

14. Details of assisted return programmes, and numbers of those returned:

No information was provided.

15. Dublin Convention practice comments:

Germany received 8,649 requests for transfers from other states under the Dublin Convention, and accepted 7,005 of them, resulting in 3,312 persons actually being transferred. Germany attempted to transfer 4,729 persons to other signatory states, 3,387 of which were accepted, resulting in 2,058 persons being transferred pursuant to the Dublin Convention.

15.1 Dublin Convention practice:

Table 6:

	Total number of requests presented by Germany to other Dublin States	Total number of requests addressed to Germany by other Dublin States
Requests presented	4,729	8,649
% of requests in total number of applications	6.6	12.2
Requests accepted	3,387	7,005
% of requests accepted in requests presented	71.6	81.0
Requests refused	-	1,472
% of requests refused in requests presented	-	17.0
Requests under Article 9	-	-

Source: BAFl.

15.2 Requests by country:

Table 7:

Country	Number of requests presented by Germany to other Dublin states	Number of requests addressed to Germany by other Dublin states
Austria	*838	201
Belgium	486	567
Denmark	115	416
Finland	27	182
France	712	752
Greece	262	39
<i>Iceland</i>	-	5
Ireland	3	24
Italy	1,013	256
Luxembourg	6	82
Netherlands	686	684
<i>Norway</i>	95	2,267
Portugal	61	6
Spain	203	39
Sweden	189	2,488
United Kingdom	33	817

Source: BAfI.

Comments: *Without requests presented by Bavarian border police to the *Bundesasylamt* in Vienna. *Italics* refer to non-EU countries.

SPECIFIC REFUGEE GROUPS**16. Developments regarding refugee groups of particular concern:***Afghanistan and Iraq*

From 17 November 2001 until 23 May 2003 the Federal Office for the Recognition of Refugees (BAfI) suspended all decisions on asylum applications by Afghan refugees. Similarly, in response to the outbreak of war in Iraq, the Federal Minister of Interior, Otto Schily, directed BAfI to suspend asylum proceedings for applicants from Iraq, and requested that all federal states refrain from deporting rejected asylum applicants to Iraq. Later in May 2003, the Interior Ministers representing the German Federal Republic and individual German states decided that asylum seekers from Iraq and Afghanistan should be returned as rapidly as possible. At the time of writing, however, deportations to Iraq and Afghanistan are still suspended.

Kosovo

The Committee of Interior Ministers has declared itself against permanent entitlement to residence for minorities from Kosovo. In a resolution passed in a meeting on 6 December 2002 in Bremen, the Committee appealed to those concerned to return voluntarily. According to the resolution, the deportation of those of Serbian origin is suspended for the time being, while the deportation of those of other ethnic origins shall only be effected gradually and with the prior consultation of the United Nations administration in Kosovo (UNMIK).

On 31 March 2003 the Minister of Interior and UNMIK stated in a 'Memorandum of Understanding' that the forced return of certain minority groups (Gorani, Turks, Bosniaks and Torbesh) is possible. In the case of Ashkali and Egyptians an individual examination by UNMIK is required, while Serbs and Roma are so far excluded from deportation. In total, around a thousand persons are to be deported.

Around 2,100 refugees returned voluntarily to Kosovo during 2002, while about 3,400 were deported forcibly (mostly ethnic Albanians). There are approximately 33,000 non-Albanian Kosovars in Germany, predominantly Roma (21,500), Ashkali (6,300) and Egyptians (1,000), who mostly hold 'toleration' status. Some 12,500 Kosovars received a two-year residence permit pursuant to a regulation adopted in 2001 allowing those having resided in Germany for six years, and been employed for two years, to apply.

Airport arrivals

A procedure is in place that applies only to persons who request asylum at the airport. If an asylum seeker is not refused entry, and if he or she comes from a 'safe country of origin' or does not possess a valid passport or surrogate passport, the airport procedure is adhered to. The Federal Office first conducts a personal hearing. If the Federal Office does not decide that the application is manifestly unfounded, or if it informs the BGS (the federal border police) that it is not able to decide the case within a short time (for example when the case is especially complex or when further investigation is necessary, or if it has not taken a decision on the asylum application within two days after the date of it being filed), the alien is permitted to enter the country. If the Federal Office turns down the asylum application as manifestly unfounded there is no suspensive effect concerning the deportation. Application for an order of suspensive effect is possible as part of the airport procedure if urgent entry to the territory is necessary, thus making it possible to obtain temporary legal protection in this manner. The Administrative Court has to decide on the application within a period of two weeks.

Summary statistics of protected persons resident in Germany

Table 8:

Year	De facto refugees	Convention refugees	Civil war refugees (Bosnia)
1996	500,000	16,000	345,000
1997	360,000	25,000	245,000
1998	370,000	32,000	100,000
1999	423,000	44,000	50,000
2000	370,000	54,000	30,000
2001	361,000	69,000	24,000
2002	415,000	75,000	<20,000

LEGAL AND PROCEDURAL DEVELOPMENTS

17. New legislation passed:

Immigration Act came into force

The Immigration Act (*Zuwanderungsgesetz*), a bill aimed at controlling and restricting immigration, regulating the stay of foreigners and integrating EU citizens and foreigners, was approved in the *Bundestag* and the *Bundesrat* in March 2002. On 18 December 2002 the Federal Constitutional Court upheld complaints of the Federal State governments of Baden-Württemberg, Bavaria, Hessen, Saarland, Saxony and Thuringia. As a result, the Act did not enter into force on 1 January 2003, as originally intended. The coalition resolved on 15 January 2003 to introduce the draft of the Immigration Act once more, and without amendments to the legislative procedure. On 9 May 2003, the German Parliament once again approved the immigration bill that had originally been approved in 2002, yet on 20 June 2003 the *Bundesrat* again rejected the Immigration Act. The Mediation Committee will examine the bill, their task being to reach a compromise wherever there are differences of opinion between the *Bundestag* and *Bundesrat* on a piece of legislation. Mediation proceedings can be instituted both for bills that require *Bundesrat* consent (*Zustimmungsgesetze*) and for those that do not (*Einspruchsgesetze*).

The consequence of these obstacles is that the implementation of German and European immigration policy is blocked. The few positive elements of the failed Immigration Act, namely the recognition of non-State and gender-specific persecution and the introduction of a ruling on 'hardship cases', are at stake. In the Mediation Committee proceedings the proposal of the Government faces 130 restrictive amendment proposals by the Conservatives.

Victims of gender-specific and non-State persecution

The most important changes to note are that the proposal will close the German protection gap. In future, victims of gender-specific and non-State persecution will be entitled to refugee status within the meaning of the 1951 Convention (and Section 51 of the former Aliens Act). The residence status of those refugees holding the so-called 'small asylum' status will be treated equally to those entitled to constitutional asylum (so-called 'big asylum' – see paragraph 6 above). Both groups will initially receive a limited residence entitlement of three years, after which time, and before a permanent residence permit is granted, conditions prevailing in their country of origin will be examined to determine whether they have changed significantly. Under existing law, recognition as a person who is entitled to asylum is to be revoked forthwith if the person no longer meets the necessary criteria.

Family reunification

Children up to the age of eighteen are to be allowed to join their family if the latter are highly qualified persons (who have been granted permission to settle) or recognised refugees. Migrant children up to the age of twelve are to be allowed to immigrate subsequently. There is also some scope for discretion as regards who is to be allowed to immigrate, especially if these persons have a sufficient command of the German language.

Hardship clause

A general hardship clause is implemented in the proposal. In many cases even the aliens offices see the legitimacy of humanitarian requests, yet are bound to execute the corresponding deportations despite any moral dilemma. Whether and how the hardship clause will be implemented in practice remains an open question.

Asylum procedures and new regulations applying to repeat applications

In future the individual decision-makers' will be bound to a greater extent by instructions of the former Office of the Federal Commissioner for Asylum Related Matters, with the government hoping that this measure will lead to a more fast-tracked procedure. The Office of the Federal Commissioner for Asylum Related Matters was frequently criticised by lawyers and NGOs in the past. New regulations applying to follow-up application procedures, which are not in accordance with the 1951 Convention, are introduced in the proposal. As a rule, the fact that a fear of persecution was 'manufactured', for example by an individual taking up political activities in exile, should not be taken into account by the 1951 Convention.

Minors/separated children

Germany's reservation to the UN Convention on the Rights of the Child, agreed upon its ratification in 1992, remains in force. According to the reservation, the provisions of the Convention should not affect German asylum law. Minors, once they have reached the age of sixteen, are treated as adults in the asylum procedure. The Independent Commission on Migration to Germany made the following proposal to change these practices: 'In the interests of unaccompanied minors and with a view to forthcoming harmonisation of asylum procedures, young people should not have the capacity to act in asylum proceedings until they have reached the age of eighteen'. Despite this, the new proposal provides for continuation of the old practice.

Freedom of movement

For asylum seekers and beneficiaries of temporary protection freedom of movement remains restricted. They are currently only free to move within the boundaries of the local district to which they have been allocated, although this may be extended to a wider area.

Anti-terror measures

In response to the attacks on the United States in September 2001, the German parliament passed new anti-terror legislation later in the year. The new legislation (so-called 'anti-terror packages I and II') amended numerous laws, including the Aliens Act and other regulations relating to foreigners. German human rights organisations stressed that parts of the anti-terror package may fail the constitutional test of proportionality and legal certainty.

The new provisions provide for more stringent checks on incoming foreigners, including asylum seekers, through the collection of biometric data and by making immigrants' personal data transparent. The anti-terrorism law leads to an expansion of the Central Register for Foreigners, which includes data on visa applicants and non-Germans entering Germany to which police forces will have access. As part of the 'fight against terrorism', Germany amended a law on associations in order to remove the 'religious privilege' that had limited the authority of the government to ban extremist religious organisations. The amendments permit law enforcement officials to control migrants during their residence in Germany, deport 'extremist' foreigners more easily and, in accordance with the exclusion clause (Article 1F) of the 1951 Geneva Convention, exclude persons who have committed certain crimes from the asylum procedure. It was agreed that some of the measures should be applied only for a five-year period before being subject to further parliamentary review.

- Aliens Act:

The amendments made to the Aliens Act stipulate that persons who constitute a threat to democracy and freedom, or to the security of the Federal Republic of Germany; who engage in acts of violence in pursuit of their political objectives; who publicly incite the use of force; or who are members of an organisation that supports international terrorism, shall not be granted entry visas or residence permits and shall be subject to a ban on entering and residing in Germany. In addition, a basis has been created for intensifying cooperation between security agencies and German missions abroad, including improved procedures used by German missions abroad to check the identity of persons applying for visas. The introduction of forge-proof identification cards has been extended to include asylum seekers and persons whose residence is tolerated.

- Asylum Procedure Act:

Through the Asylum Procedure Act a legal basis has been created for making a voice recording that can be used to help determine a person's home region and, as such, assist in identifying him or her. The foreigner in question must be informed in advance that such a recording will be made, thus complying with open data acquisition regulations. The recording is to be made outside the context of the formal asylum hearing. In future, fingerprints and other identification-related information gained in connection with asylum procedures will be preserved for a period of ten years after the date on which asylum decisions become final in order to give security agencies a margin of safety for their investigations. It will be possible to compare fingerprints taken from asylum seekers automatically with fingerprint records archived by the Federal Office of Criminal Investigation.

- Federal Protection of the Constitutional Act:

The Federal Office for the Recognition of Refugees and the aliens offices are obliged to pass on person-related data to the Federal Office for the Protection of the Constitution. The authorities must examine independently whether or not this data transfer is necessary.

- Aliens Central Register Act:

Significant amendments to the Aliens Central Register Act will improve the ability to glean information from the Central Register for Aliens. The visa database, in which only data on visa applications is stored at the present time, is to be expanded into a visa decision file with a view to improving checks on incoming foreigners. Access to personal data will be improved for law enforcement agencies in connection with identity checks so that they will be able to tell instantly whether or not a foreigner is legally resident in Germany. The potential for obtaining information on specific groups of people will be extended in the future to include persons with established residence status. It will also be possible to obtain information on specific groups of people in the case of potential threats. To make the work of the security agencies more effective they are to be provided with automatic access to all information.

- Associations Act:

Following the elimination of 'religious privilege', the amendments to the Associations Act are aimed at supplementing the government's ability to fight extremist organisations with foreign links. Amended and expanded options for prohibiting foreigners' associations will make it possible to prevent associations of this kind established in Germany from supporting organisations that advocate violence or terrorism. The ban that exists on the public use of symbols of prohibited organisations will also be made more effective.

18. Changes in refugee determination procedure, appeal or deportation procedures:

The departure centres (*Ausreisezentren*) house rejected asylum seekers who cannot be sent back to their countries of origin since they lack travel and identity documents. In order to be able to deport these people, the possibility of detention pending deportation was created. The disadvantages to the State are that it requires a judicial order, and has a limited duration of eighteen months. If there exists no realistic chance of the deportation order being completed such detention is to be ended immediately, otherwise it assumes the character of illegal preventative detention. However, the new centres can circumvent these limitations. The authorities can in fact compel rejected asylum seekers to live in these camps for an unlimited period until their 'voluntary departure' or forcible deportation.

Seven facilities have been established at Minden-Luebbecke in North-Rhine-Westphalia, Trier in the Rhineland-Palatinate, Halberstadt, Bramsche and Oldenburg in Saxony-Anhalt, Braunschweig in Lower Saxony and Fürth in Bavaria. Some 727 people were sent to the model projects at Minden-Luebbecke, Braunschweig, Oldenburg and Ingelheim (now closed), for which statistics are available until April 2002. Of these 727 persons, 381 (52.4%) went underground, 16 (2.2%) left the country 'voluntarily' and 62 (8.5%) were deported.

The centres were originally only intended for single men, but entire families and unaccompanied minors are now to be found in these camps. In practice, living in these departure centres means a complete ban on undertaking work, and freedom of movement is limited to the city or district in which they are registered. Social security benefits are drastically reduced and not paid in cash but goods in kind, and only the most essential medical assistance is available, and only then with official permission. The meagre pocket money to which asylum seekers are entitled under the asylum legislation is either withheld from the outset or is threatened to be withheld at weekly case hearings due to alleged 'non-cooperation' with the authorities.

19. Important case-law relating to the qualification for refugee status and other forms of protection:

United Nations Committee Against Torture (CAT)

In a decision made on 30 April 2003, the United Nations Committee Against Torture (CAT) has declared the pending individual appeal of a Kurd seeking asylum in Germany to be admissible. In October 2001, after having hesitated for seventeen years, the German government finally recognised

the authority of the Committee in accepting such individual appeals according to Article 22 of the UN Anti-Torture Convention. The applicant had asserted that upon forced return to Turkey he would be at risk of becoming a victim of torture according to Article 3 of the UN Convention.

Federal Constitutional Court rules on rejected asylum seekers

The Federal Constitutional Court has published its ruling on rejected asylum seekers who are under a legal obligation to leave the country, but who cannot be deported to their home countries due to a lack of valid travel documents. According to the Constitutional Court, aliens offices are obliged in these cases to issue toleration certificates to these persons, even if they refuse to cooperate in obtaining travel documents. Furthermore, the court has pointed out that these rejected asylum seekers must not be prosecuted for illegally residing in Germany. The ruling overturned a decision by the Bavarian Highest District Court, and upheld the complaint of a rejected asylum seeker from Syria who could not be deported due to the authorities being unable to obtain valid documents. As the man had not been granted a toleration certificate, he was sentenced to a four-month prison sentence for illegal residence in Germany (Ref: 2BvR 397/02).

Federal Constitutional Court: detention pending deportation only permissible with court ruling

The Federal Constitutional Court has ruled that foreign nationals can generally only be detained for the purpose of deportation if there has been a court decision. In principle, a court ruling has to be obtained before the beginning of a detention; in cases where this is not possible, a court ruling must be submitted immediately. In its ruling, based on one of the 'essential civil liberties', the Federal Constitutional Court sustained the appeal of a Gambian national. In 1999 the man had been detained overnight by German police without a court ruling, and deported the following morning. The court rejected statements by police authorities arguing that they had been unable to contact the judge responsible for the detention hearing at the time of the arrest.

Airport procedure: asylum seeker threatened with the death penalty rejected incorrectly in Germany

Davinder Pal Singh Bhullar was deported to India after seeking asylum in Germany in January 1995. After being deported Bhullar was taken into custody at Delhi airport and held in connection with a car bombing in 1993 in which twelve people were killed and twenty-nine injured. During his imprisonment Indian police extracted a confession of involvement, allegedly under torture, although the confession was later retracted. It was solely on the basis of this confession that Bhullar was convicted and sentenced to death under the Terrorist and Disruptive Activities (Prevention) Act. In October 1997 a German court ruled that his deportation had violated Article 3 of the ECHR.

Bhullar was sentenced to death on 29 August 2001. He appealed against the death sentence in December 2001, but a three-member bench of the Supreme Court of India rejected the appeal. This was not a unanimous decision, because the senior of the three judges found the accused not guilty and directed that he should be released. Indeed in cases of a split decision, the death penalty is generally not handed down. A review petition was filed in the Supreme Court in December 2002, questioning the legitimacy of the rejection of Bhullar's appeal, but was heard by the same three judges, who upheld their original decision. It was again a majority decision, with the same senior judge expressing dissent. Mr Singh Bhullar filed a petition to the Supreme Court on 16 January 2003, which has not yet been considered by the court. If this last legal remedy fails, there is a risk that the death sentence might be enforced immediately.

According to Amnesty International and *Pro Asyl*, this is the first case in which a refugee is threatened with the death penalty after having been rejected due to an incorrect asylum decision in Germany. The case of Mr. Singh Bhullar shows the structural defects of the German airport procedure, whereby decisions on life or death are made through summary procedures under detention-like conditions.

20. Developments in the use of the exclusion clauses of the Refugee Convention in the context of the national security debate:

For the first time the exclusion clause of the 1951 Convention is echoed in German Law. Beforehand, exclusion had only been permissible 'if, for serious reasons, the alien is to be regarded as a risk to the security of the FRG or constitutes a risk to the general public (...) or he/she has been sentenced to a prison term of at least three years for a crime or a particularly serious offence'. Article 1F of the 1951 Convention – the exclusion clause – was added to Section 51 of the Aliens Act. This has the potential to result in violation of the principle of 'first inclusion, then exclusion', and may also lead to its abuse in future decisions.

See also paragraph 17 above.

21. Developments regarding readmission and cooperation agreements:

In 2002 Germany signed readmission agreements with Albania, the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia (now Serbia and Montenegro).

THE SOCIAL DIMENSION

22. Changes in the reception system:

In May 2002 new asylum accommodation was opened at the Frankfurt Rhine-Main airport. The facility is located in a remote part of the airport in the immediate proximity of the sewage plant, and replaces 'Building C183', which had for some time been the target of much criticism. On 15 May 2002 the asylum seekers interned at the airport were re-accommodated in the new building. It has a capacity of a hundred persons, with up to four persons accommodated in each room.

Pro Asyl criticises the opening of the new accommodation as an 'architectural concession on continuation of a structurally unfair airport asylum procedure', during which applicants have extremely shortened legal deadlines. German NGOs have demanded the abolition of this unacceptable procedure for many years. A particular issue is that of the so-called 'long-term staying persons', who, after their asylum application has been turned down, are often detained at the airport for months.

23. Changes in the social welfare policy relevant to refugees:

See paragraph 17 above.

24. Changes in policy relating to refugee integration:

With regard to anti-discrimination legislation, Germany still has no specific legislation concerning discrimination on racial or ethnic grounds. The German Government failed to implement the related EU Directive until June 2003, and the Ministry of Justice is still drafting the new anti-discrimination law.

After ten years, a German court finally sentenced three extreme right-wing activists for their participation in a racist attack against foreigners' accommodation in Rostock. The attack took place on the night of 24 August 1992.

25. Changes in family reunion policy:

See paragraph 17 above.

OTHER POLICY DEVELOPMENTS

26. Developments in resettlement policy:

There were no significant developments in resettlement policy in 2002.

27. Developments in return policy:

There were no significant developments in return policy in 2002.

28. Developments in border control measures:

There were no significant developments in border control measures in 2002.

29. Other developments in refugee policy:

See paragraph 17 above.

POLITICAL CONTEXT

30. Government in power during 2002:

Since the 1998 election, the Social Democrats have governed in coalition with the Greens. The general election of September 2002 saw the coalition retain a slight majority.

31. Governmental policy vis-à-vis EU developments:

In the Council's negotiations, the federal government has stood out in attempting to establish European asylum directives on the basis of restrictive German asylum and immigration rights. Progressive directives, on the other hand, are regularly blocked at negotiations in Brussels. Friction in diplomatic relations is becoming accepted. German NGOs and UNHCR have called on the federal government to make the adaptation of the directive on qualification of refugee status possible by withdrawing German reservations. This would require strong intervention on the part of the chancellor and the foreign minister. Chancellor Schroeder made clear, however, that German legislation is of utmost importance, hence Germany will first decide on the new Immigration Act, and on this basis Europe will be able to finalise negotiations on the qualification directive and associated asylum procedures.

The Minister of the Interior, Otto Schily, wishes to create an immigration law - falsely labelled by Schily 'the most modern in Europe' – in this manner, thus accepting the failure of the EU harmonisation process. Despite the fact that among the EU Member States it is no longer disputed that victims of non-state and gender-specific persecution are covered by the 1951 Convention the CDU/CSU wants to hold to German practice, which is not in accordance with international law.

Germany has been obstructing negotiations particularly with regard to the issue of taking into account 'non-state actors' in attributing complementary protection. Recognition as a beneficiary of complementary protection status is based on international human rights agreements, especially the European Convention on Human Rights. In the respective EU proposal, and in accordance with the established ruling of the European Court on Human Rights, a non-expulsion principle will also be effected if there is a danger of torture and inhuman treatment by non-state actors. The German practice stands in contradiction to the established ruling of the European Court and the common practice of European states, by excluding victims subjected to violence by non-state actors from complementary protection.

However, in mid-2003 Germany withdrew this reservation on non-state persecution, recognising that the 1951 Geneva Convention also protects victims of non-state persecution. The alternative interpretation, previously represented stubbornly by Germany alone within European negotiations regarding the refugee definition, is no longer applicable. This change resulted from a document of the Council (Justice and Home Affairs) of 4 March 2003 in which it is made clear, although with considerable delay, that the German reservation can no longer be extended to this issue.

A further aspect of German reservations in this domain pertains to social rights and integration. There are presently still around eight German reservations intended to prevent granting forms of protection. The EU proposal intends for beneficiaries of complementary protection to be granted access to welfare programmes, whereas Germany wishes to delete the respective passage of the proposal and regulate only basic securing of livelihood. It is planned to allow persons to take up gainful employment immediately after the recognition of their status as beneficiaries of complementary protection, yet Germany demands that access to the employment market is to remain solely at the discretion of Member States. According to the EU proposal, refugees shall also be given access to adequate integration programmes: again Germany wishes to replace this obligation with a non-committal phrasing. There is no practical argument for this in light of the fact that those concerned should also be integrated into the society of the host state. Family members of refugees and beneficiaries of complementary protection, who do not qualify for this status themselves, should have the same rights. Germany has submitted a reservation and wants the regulation to be effected only as a discretionary provision for persons granted complementary protection.

32. Asylum in the national political agenda:

In October 2002 Wolfgang Daschner, the Vice-President of Frankfurt-am-Main police, allegedly ordered a subordinate officer to use force against a criminal suspect believed to have been involved in the abduction and ransoming of an eleven-year-old boy. The aim was to elicit information regarding the whereabouts of the boy, the son of a prominent German banker, whom the police believed still to be alive. When it came to light in February 2003 the episode unleashed a disturbing debate questioning the absolute prohibition of torture in modern-day Germany. Despite the absolute prohibition of torture and ill-treatment in the German Constitution, as well as in domestic and international law, there ensued an intense public debate about whether there were any circumstances in which torture could be permissible in Germany. While many leading politicians and representatives of civil society, including the German Police Trade Union, were quick to rebuff the very notion, others were not so inclined. In particular, a number of regional political leaders stated publicly that they could envisage exceptions to Germany's ban on torture. See also paragraph 17 above.

