



March 8, 2004

**WRITTEN COMMENTS  
OF THE EUROPEAN ROMA RIGHTS CENTER  
CONCERNING GERMANY  
FOR CONSIDERATION BY THE  
UNITED NATIONS HUMAN RIGHTS COMMITTEE  
AT ITS 80<sup>TH</sup> SESSION, MARCH 16, 2003-APRIL 3, 2004**

Germany is a party to the major international covenants on human and minority rights.<sup>1</sup> The German Government states in its report to the Committee (hereinafter "Government Report") that "Basic and human rights form the cornerstone of the German system of government."<sup>2</sup> The German government has elsewhere stated that "human rights protection is implemented without distinction between Germans and non-Germans", "German human rights policy aims at the worldwide assertion and securing of the full range of civil, political, social and cultural human rights" and "human rights policy begins at home".<sup>3</sup> For the purposes of the current review, the German government has reiterated that "Effective human rights policy starts at home."<sup>4</sup>

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<sup>1</sup> Germany ratified the International Covenant on Civil and Political Rights of 16 December 1966, the International Covenant on Economic, Social and Cultural Rights of 19 December 1966, the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966, the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, and the Convention on the Rights of the Child of 20 November 1989. Germany is also party to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987. The Council of Europe's Framework Convention for the Protection of National Minorities of 1 February 1995 entered into force on 1 February 1998 and the Council of Europe's European Charter for Regional or Minority Languages was ratified by Germany in September 1998 and it entered into force on 1 January 1999.

<sup>2</sup> United Nations Committee on Civil and Political Rights, International Covenant On Civil and Political Rights, Fifth Periodic Report: Germany, CCPR/C/DEU/2002/5, 4 December 2002 (hereinafter referred to as "Government Report"), para. 3, p.10.

<sup>3</sup> Prinzipien der deutschen Menschenrechtspolitik, available at: [http://www.auswaertiges-amt.de/www/de/aussenpolitik/menschenrechte/mr\\_inhalte\\_ziele/index\\_html](http://www.auswaertiges-amt.de/www/de/aussenpolitik/menschenrechte/mr_inhalte_ziele/index_html)

<sup>4</sup> Government Report, para. 6, p.11.

The European Roma Rights Center (ERRC)<sup>5</sup> is concerned however that for a number of reasons, Germany's compliance with the International Covenant on Civil and Political Rights (ICCPR) is called into question due to the very problematic situation of Sinti and Roma<sup>6</sup> in Germany. In the pages that follow, the ERRC has summarised a number of its concerns with respect to the treatment of Sinti and Roma in Germany in areas of relevance to the Covenant. Following a short introduction on Sinti and Roma in Germany including information on very problematic administrative status provided by German authorities to many foreign Roma, this submission includes subsections on:

- Arbitrary Limitations on the Recognition of the Sinti and Roma Minority in Germany
- Forcible Expulsion of Roma from Germany
- Arbitrary Limitations on Freedom of Movement
- Arbitrary Limitations on the Rights to Freedom of Expression and Assembly
- Violence and Other Cruel and Degrading Treatment of Roma
- Failure to Provide Sufficient Legal Protections against Racial Discrimination

The written comments that follow do not purport to constitute a comprehensive survey of the human rights situation of Sinti and Roma in Germany, nor does the present submission aim to provide comments as to all issues arising in Germany of relevance to the rights secured under the Covenant. The modest ambition of this document is solely to provide the Committee with information arising from some areas of documentation undertaken by the European Roma Rights Center as concerns Sinti and Roma in Germany and the ability of Sinti and Romani individuals in Germany to realise rights secured under the Covenant.

### Sinti and Roma in Germany

There are no reliable figures regarding the total size of the Sinti and Roma population in Germany and estimates vary widely. The Government recently provided an estimate of up to 70,000 German Sinti and Roma.<sup>7</sup> Some Sinti and Roma leaders put the number between 150,000 and 200,000. Roma and Sinti live in all of the German states (*Länder*), with many Romani individuals living in larger western German cities as well as in Berlin. Current estimates indicate that during the 1990s, up to 100,000 of the Roma in Germany were not German citizens, although the actual number of Roma in Germany who are foreigners is

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<sup>5</sup> The European Roma Rights Center (ERRC) is an international public interest law organisation that monitors the situation of Roma in Europe and provides legal defence in cases of human rights abuse. Since its establishment in 1996, the *ERRC* has undertaken first-hand field research in more than a dozen European countries including Germany, and has disseminated numerous publications, from book-length studies to advocacy letters and public statements. *ERRC* publications about the situation of Roma in Germany, as well as additional information about the organisation, are available on the Internet at <http://www.errc.org>.

<sup>6</sup> There is increasing consensus among communities traditionally referred to as "Gypsies" in Europe that the preferred term for this minority group is "Roma". However, in Germany a number of groups, particularly those with longer histories on the territory of present-day Germany or in areas of pre-World War II Europe where the German language was spoken extensively, have emphasised that they comprise a separate group - Sinti. This submission respects this usage and therefore uses the terms "Sinti and Roma" and "Roma and Sinti".

<sup>7</sup> First Report submitted by the Federal Republic of Germany under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, 1999 ACFC/SR (2000)001 (hereafter "State FCNM Report"), p. 10. Accessed on the web at < [http://www.coe.int/T/e/human%5FRights/Minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29/2%2E%5FMONITORING%5Fmechanism/3%2E%5FState%5Freports/ACFC\\_SR\(2000\)001%20E%20state%20report%20Germany.asp#TopOfPage](http://www.coe.int/T/e/human%5FRights/Minorities/2%2E%5FFRAMEWORK%5FCONVENTION%5F%28MONITORING%29/2%2E%5FMONITORING%5Fmechanism/3%2E%5FState%5Freports/ACFC_SR(2000)001%20E%20state%20report%20Germany.asp#TopOfPage) > (last accessed on 5 January 2004).

currently declining rapidly, due to ongoing forced expulsions being carried out by German authorities.

Among Roma who are foreigners in Germany, the majority are Roma from southeastern Europe. Included in this group are a number of persons who may be refugees in the sense of the 1951 Convention relating to the status of refugees, but the majority of whom have not been actually recognised as refugees, owing primarily to restrictive practices by German authorities in the application of refugee law. A large number of Roma in Germany do not possess German citizenship, or even a durable or meaningful residence status. Taken as a whole, the Sinti and Romani community is an immensely diverse group of people, including persons with links to German culture as long as 600 years, persons who fled slavery in Romania during the 19th century, and recent migrants and refugees from Central and Eastern Europe, arriving after World War II or at various times since. Some Sinti and Roma in Germany are itinerant or nomadic. The Romani community includes German citizens, nationals of other European Union States (who as a result of European Union rules have a more privileged legal status than persons coming from non-EU States), recognised refugees and long-term residents.

Two types of administrative status prevalent among Sinti and Roma in Germany are of particular cause for concern:

(i) Instances of the phenomenon of statelessness have been reported among Sinti and Roma in Germany from after World War II until recent years.<sup>8</sup>

(ii) Many factually long-term and very long-term resident Roma in Germany hold only a temporary status called "tolerated" ("duldung"). A "duldung" is not a residence permit -- it is merely a stop on expulsion, and it must be renewed at very frequent intervals, in some instances after only several weeks.<sup>9</sup> Members of the same family are often provided with "duldung" status different periods of time, meaning that a head of household may be almost constantly queuing for renewal of the status for various members of family.<sup>10</sup> The "duldung" status frequently includes restrictions on freedom of movement, access to employment and various forms of social protection, although provisions vary from state to state within the Federal Republic of Germany. ERRC

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Citizenship laws in Germany were until 1999, based solely on descent and included no provision for the acquisition of citizenship through birth on German territory and cases of statelessness were reported regularly. For example, *Pogrom*, the periodical of the Göttingen-based human rights organization *Gesellschaft für bedrohte Völker (GfbV)*, recently reported the case of Ms Kraus, a Romani woman born in the Sudetenland, in today's Czech Republic, in the early 1940s. At the end of World War II, she and her family were expelled from Sudetenland by the Czechoslovakian authorities, along with millions of ethnic Germans. According to the *GfbV*, Ms Kraus received German citizenship after World War II. In the 1980s, however, she was ordered by the German authorities to give up her German papers and was instead issued a document certifying her as stateless. Her possession of a German passport was, according to the *GfbV*, not considered sufficient evidence of her German citizenship.

<sup>9</sup> A number of international monitoring bodies have expressed concerns at the treatment of non-citizens in Germany. For example, the UN Committee against Elimination of Racial Discrimination has expressed concerns about absence of any protection accorded to populous *de facto* minority groups resident in Germany for longer periods of time (see CERD/C/338/Add.14, 10 August 2000). The Council of Europe's European Commission against Racism and Intolerance (ECRI) noted that around nine percent of the entire population (c. 7,000,000 persons) do not have German citizenship and called for regularisation of status of long-term foreign residents (see Council of Europe's European Commission against Racism and Intolerance, Second Report on Germany, adopted on 15 December 2000 and made public on 3 July 2001 (Hereinafter "ECRI Second Report on Germany"), p. 9).

<sup>10</sup> Mihok, Brigitte, *Zurück nach Nirgendwo. Bosnische Romaflüchtlinge in Berlin*, Berlin 2001, p. 76.

researchers in Germany, Romania and successor states to the former Yugoslavia have met with numerous Romani individuals who had had no administrative status in Germany other than a "duldung" for periods sometimes longer than ten years.

There are no publically available figures on the total number of Roma who are in possession of the "tolerated" status in Germany. The total number of "tolerated" persons is, however, growing overall: in 2001, the number of persons with "tolerated" status was approximately 233,000. In 2002, the number rose to around 227,000, of whom 146,838 had been living in Germany for at least five years and 78,487 for more than ten years respectively. Figures for 2003 are not yet available.<sup>11</sup> The fact that over 200,000 persons reside in Germany for very long periods of time with no form of legal residence casts a very unpleasant light on the contention of the authors of the Government Report that "Promotion of integration for all immigrants living in Germany permanently and lawfully is considered by the Federal Government to be a most important contribution towards the prevention of xenophobia, racism and discrimination."<sup>12</sup> The arbitrary exclusion of many tens of thousands of persons from the ability to procure a legal residence permit would seem not only to disqualify them for eligibility for integration, but also to set such persons outside the privileged circle of those to whom the government's commitments in the field of combatting racial discrimination extend.

The repeated provision of extremely short-term "duldung" status has effectively prevented tens of thousands of third-country national Roma in Germany from integration in Germany, although such persons may have given birth to children in Germany (and those children may be enrolled in and regularly attending German schools) and have formed extensive real and factual ties to Germany. In many cases, the children of such persons may speak only very limited Serbian or Romanian, if they speak Serbian or Romanian at all, and their language of primary education is German. Persons provided with the "duldung" status and their children may labour under extreme conditions of stress due both to the ever-present threat of expulsion from Germany, as well as very frequent interaction with the often hostile public officials responsible for allocation of the "duldung".<sup>13</sup> As such, long term use of the "duldung" may itself constitute a form of cruel and degrading treatment as banned under a number of international human rights instruments, including the Covenant at Article 7.<sup>14</sup> In addition, there are widespread and plausible allegations that Roma are more likely to be provided with a "duldung" (rather than a more durable status including the progressive accrual of rights) than non-Romani third country nationals, in violation of

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<sup>11</sup> Migrationsbericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration im Auftrag der Bundesregierung, December 2003, p.51, available at: [http://www.integrationsbeauftragte.de/download/Migrationsbericht\\_2003.pdf](http://www.integrationsbeauftragte.de/download/Migrationsbericht_2003.pdf)

<sup>12</sup> Government Report, para. 331, p.83.

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Many Roma in Germany report that officials responsible for prolonging the "duldung" are frequently very rude, and that generally a component of the process includes sharp discussions with officials including questions such as "Why haven't you left yet?" and "What are you still doing in Germany?"

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Germany is bound by a number of international law provisions banning cruel and inhuman or degrading treatment or punishment, including but not limited to those provided under Article 7 of the International Covenant on Civil and Political Rights, Article 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 3 of the European Convention on Human Rights.

Germany's commitments banning racial discrimination, including but not limited to the International Convention on All Forms of Racial Discrimination (ICERD).<sup>15</sup>

There is a high degree of anti-Romani sentiment in Germany.<sup>16</sup> A poll conducted in 1992 by the Allensbach Demoscopic Institute indicated that 64 percent of Germans had an unfavourable opinion of Roma – a higher percentage than for any other racial, ethnic or religious groups.<sup>17</sup> A survey conducted in 1994 by the EMNID Institute indicated that some 68 percent of Germans did not wish to have Sinti and Roma as neighbours.<sup>18</sup> A 1995 poll conducted in German schools indicated the presence of strong anti-Romani attitudes even among the younger generation: 38 percent of students in Western and 60.4 percent in Eastern Germany expressed negative attitudes toward Sinti and Roma.<sup>19</sup> There is no indication that attitudes toward Sinti and Roma have improved in recent years.

Media and others frequently propagate anti-Romani sentiment, often through coded references to Roma. The Council of Europe's European Commission Against Racism and Intolerance (ECRI) noted in its Second Report on Germany: "Stigmatising prejudices about Roma and Sinti are reportedly perpetuated by some media, particularly by naming alleged perpetrators of crimes as Roma or Sinti without such mention being required for understanding the reported incident."<sup>20</sup> During the years 1997 to 2000 the Central Council of German Sinti and Roma<sup>21</sup> yearly lodged about 30 to 45 complaints on defamatory and offensive reporting about Roma in the media. In 2003, the number of such complaints came to more than 50.<sup>22</sup> Media frequently use coded references to Roma such as "Landfahrer" ("vagrants") and "mobile ethnische Minderheit" ("mobile ethnic minority"), apparently in order to circumvent criminal code bans on incitement to hatred of groups.

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<sup>15</sup> The CERD has explicitly instructed States Parties to the ICERD "to take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin." (CERD, Discrimination against Roma: 16/08/2000, General Recommendation 27, article 1, para 5). Germany has recently reaffirmed its commitments to eliminating all forms of racial discrimination on a number of occasions, including *inter alia* in 2001, when in the context of the World Conference Against Racism in Durban, South Africa, it made the declaration under Article 14 of the ICERD, making possible complaints by individuals before the UN Committee on the Elimination of Racial Discrimination.

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On anti-Romani sentiment in Germany, see especially Tebbutt, Susan, ed., *Sinti and Roma: Gypsies in German-Speaking Society and Literature*, New York and Oxford: Berghahn Books, 1998.

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Seventeen percent had an unfavourable opinion of Muslims; of Indians, 14 percent; of guest workers, 12 percent; of dark-skinned persons, 8 percent, and of Jews, 7 percent. Cited in G. Margalit, "Anti-Gypsyism in the Political Culture of the Federal Republic of Germany: A Parallel with Anti-Semitism?" Accessed on the web at <<http://sicsa.huji.ac.il/9gilad.htm>>, (last accessed on 9 April 2002).

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Cited in D. Strauss, "Anti-Gypsyism in German Society and Literature" in Tebbutt, S., p. 89.

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Information from Sebastijan Kurtisi of the Roma Union Grenzland, OSI Roundtable Meeting, Hamburg 8 April 2002. See also B. Orthmeyer, E. Peters, D. Strauss, *Antiziganismus – Geschichte und Gegenwart deutscher Sinti und Roma*, Wiesbaden: HeLP, 1998.

<sup>20</sup> ECRI Second Report on Germany, para. 30, p.13.

<sup>21</sup> The Central Council of German Sinti and Roma (Zentralrat deutscher Sinti und Roma) is an umbrella organisation of a number of Sinti and Romani organisations in Germany.

<sup>22</sup> Open Society Institute, EU Monitoring and Advocacy Program (EUMAP), Minority Protection, Report on the Situation of Sinti and Roma in Germany, Budapest 2002 (hereinafter referred to as "EUMAP Germany Report"), available at: [http://www.eumap.org/reports/2002/content/09/276/2002\\_m\\_germany.pdf](http://www.eumap.org/reports/2002/content/09/276/2002_m_germany.pdf) p. 153; see also Deutsche Presseagentur (dpa), 5 December 2003.

Anti-Romani sentiment has a long history in Germany. Official policies of persecution and expulsion began soon after the arrival of the first Romani groups on the territory of today's Germany in the late Middle Ages. These policies continued in the succeeding centuries<sup>23</sup> and anti-Romani policies were pursued to the extreme during the Nazi era, when Sinti and Roma were targeted for extermination under racial policies.<sup>24</sup> Sinti and Roma activists note that hundreds of thousands of Sinti and Roma were killed throughout Europe during the Holocaust, as a direct result of the policies of the Hitler government. Those who survived the genocide were subjected to continued harassment and humiliation at the hands of the police and other authorities, as a number of pre-war anti-Gypsy laws and institutions remained in force.<sup>25</sup> The genocide of Sinti and Roma was acknowledged officially in 1982. However, even after this, Roma and Sinti were frequently treated as "second-class victims".<sup>26</sup>

Sinti and Roma who possess German citizenship are recognised as a national minority by the German government. Apart from raw issues such as expulsion and threat of expulsion, however, it is difficult to clearly separate the problems faced by Roma and Sinti citizens on the one hand and foreign Roma on the other, given the prevalence of anti-Romani sentiment in Germany and the tendency of German officials and members of the public at large to treat citizen and non-citizen Sinti and Roma as "Gypsies", regardless of citizenship.

#### Arbitrary Limitations on the Recognition of the Sinti and Roma Minority in Germany

Germany has ratified a number of international laws securing the rights of minorities. In addition to the guarantees provided at Article 27 of the ICCPR, Germany ratified the Council of Europe's Framework Convention for the Protection of National Minorities in 1997. This entered into force on February 1, 1998. Germany has also ratified the Council of Europe's European Charter for Regional or Minority Languages in September 1998, which entered into force on January 1, 1999.

Worryingly, however, the German government has repeatedly stated that where Sinti and Roma are concerned, it regards minority protections in Germany -- including those secured under Article 27 of the Covenant -- as applying only to those Sinti and Roma who are citizens of Germany. Indeed in its report to the Committee it has reiterated this position<sup>27</sup> This limitation is at odds with the Committee's position as to the scope of the Article 27

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<sup>23</sup> On the persecution of Sinti and Roma in Germany from the 15<sup>th</sup> century, see, I. Hancock, "Gypsy History in Germany and Neighbouring Lands: A Chronology Leading to the Holocaust and Beyond," in D. M. Crowe, and J. Kolsti, eds., *The Gypsies of Eastern Europe*, Armonk, NY: M.E. Sharpe, 1991, pp. 395-396; Over 120 specific "anti-Gypsy" laws were passed between 1551 and 1751; see S. Tebbutt, ed., *Roma and Sinti: Gypsies in German-Speaking Society and Literature*, Oxford: Berghahn Books, 1998, p. 2.

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On the Holocaust of Roma and Sinti, see I. Hancock in Crowe and Kolsti, above; D. Kenrick and G. Puxton, *Gypsies under Swastika*, Hatfield: University of Hertfordshire Press, 1995; R. Rose, ed., *The Nazi Genocide of the Roma and Sinti*, Heidelberg: Documentation and Cultural Centre, 1995; S. Milton, "Holocaust: The Gypsies" in W. S. Parsons, I. Charny and S. Totten, eds. *Genocide in the Twentieth Century*, New York, London: Garland Publishing, 1995, pp. 209-264.

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EUMAP Germany Report p.149.

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See Reemtsma, Katrin, *Sinti und Roma. Geschichte, Kultur, Gegenwart*, Munich 1996, p. 124-136; see also Kuder, Renate, *Recent Trends in German Ethnic Politics: the Sinti*, MA thesis presented to the International Studies programme of the Graduate School of the University of Oregon, June 2000, p. 24.

<sup>27</sup> Government Report, para. 373.

protections. In General Comment 23, the Committee states: "[...] the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, [...]. A State party may not, therefore, restrict the rights under article 27 to its citizens alone."<sup>28</sup>

### Forcible Expulsion of Roma from Germany

According to a number of pronouncements by high-level officials, Germany is now by policy expelling a number of non-nationals settled long term in the Federal Republic, including a very disproportionate number of Roma. In mid-April 2003, Ms Jelena Markovic, Deputy Minister on Human and Minority Rights of Serbia and Montenegro, told an OSCE Human Dimension Meeting on Roma and Sinti:

"Germany will send back more than 50,000 of our citizens. More than 80% of the persons to be sent back from Germany are Roma."

Forcible expulsions of Romani foreigners are currently on-going. The overwhelming majority of foreign Roma currently being systematically expelled from the Federal Republic of Germany come from the former Yugoslavia (or one of its successor states) or Romania, or were born in Germany to Roma from ex-Yugoslavia or Romania. Roma are being directly targeted for expulsion by German authorities. According to an October 25, 2003 article in the Belgrade daily newspaper *Politika*, more than 4000 Roma were expelled from Germany during one month in 2003, and in total 12,000 Roma had been expelled from a number of Western European states, the overwhelming majority expelled from the Federal Republic of Germany. Current expulsions of Roma are the latest in a series of expulsions from Germany of Romani foreign nationals taking place since 1989.<sup>29</sup>

In recent months, the *ERRC* has undertaken extensive field research into the issue of forcible expulsions of Roma from Germany to countries including Romania and Serbia and Montenegro, independently as well as in co-operation with partner organisations. A non-exhaustive list of cases documented by the *ERRC* follows:

- According to testimony provided to the *ERRC* and Belgrade-based partner organisation *Minority Rights Center (MRC)* on August 20, 2003, Mr Sre?ko Alijevi?, a 45 year-old Romani man, his wife and daughter Anita went to Germany approximately 12 years previously, where they received the "duldung" status. While in Germany, Mr Alijevi? and his wife had two more children, Milena and Ana, 8- and 6-years-old respectively at the time of their expulsion. Mr Alijevi? and his wife had jobs in Germany and their children attended school. In the spring of 2003, they applied to extend their residence permits. At around 3:00 AM on an unspecified night in the middle of June, the family awoke to a loud

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<sup>28</sup> United Nations Human Rights Committee, General Comment 23. The rights of minorities (Article 27), 8 April 1994, para. 5.1.

<sup>29</sup> Very high-profile expulsions of large numbers of Roma took place in the early 1990s to Romania and Macedonia. These expulsions generated such significant debate domestically and were of such questionable legality that they were both accompanied by large sums of development aid to Romania and Macedonia. More recently, in the late 1990s and early 2000s, German authorities have expelled Bosnian Roma, following the cessation of hostilities in Bosnia as a result of the Dayton Peace Agreement.

banging at their door. Mr Alijevi? opened the door and several police officers entered their flat, telling them to pack their belongings and come with the officers because the family was "going back to Serbia". According to Mr Alijevi?, he, his wife and Milena and Ana packed what they could, took the money they had and left with the officers. They were brought to an airport in a van and a few hours later were expelled from Germany via Düsseldorf airport to Belgrade.

- According to the Belgrade-based human rights organisation *Humanitarian Law Center (HLC)*, Mr M.P., a Romani man originally from Belgrade, was expelled from Germany together with his wife T.P. and three children M.P., R.P. and D.P. on April 23, 2003. Mr M.P. and his family left Belgrade in 1999 after their house was destroyed in a flood. Four years later, as Mr M.P. was queuing to collect his social welfare payment from the German authorities, two men in civilian clothing reportedly approached him and asked him to come with them to the airport, as he was being expelled from Germany. He did so. At the airport, Mr M.P. met his wife and children and another sixty-seven citizens of Serbia and Montenegro, all of whom were deported on the same airplane to Belgrade. Almost all of the personal belongings of Mr M.P. and his family were reportedly left in Germany.
- On February 12, 2003, Mr S.R., a 17-year-old Romani youth from the town of Smederevo, near Belgrade, testified to the *ERRC* that he arrived to Germany in 1993, when he was seven years old, together with his family. All of the family's children attended school in Germany. Early in the morning on an unspecified date in January 2003, a social worker accompanied by police officers in plain clothes arrived at the flat where Mr S.R.'s family lived. The officers told the family that they would be expelled to Serbia and that they had to pack their belongings within 30 minutes. After the family packed, they were taken to an airport and expelled from Germany to Belgrade. According to Mr S.R., there were only Romani persons on the flight on which they were expelled. The family now lives in Smederevo, in a very old house, together with their grandparents. The family arrived without money, and none of the family members were employed as of December 11, 2003. Six-year-old I.R. and L.R., the two younger sisters of Mr S.R., were born in Germany and do not possess any personal documents. None of the children of the family had, as of the date of the *ERRC* interview, continued their education in Serbia, as they did not speak Serbian adequately.
- Mr B.H. from Novi Pazar, in the Sandžak region of southwestern Serbia, arrived in Germany in 1991. According to his testimony to the *ERRC* on February 11, 2003, on an unspecified date in December 2002, police officers accompanied by a social worker arrived at his flat and ordered he and his wife to pack their belongings in fifteen minutes or less. They were then brought to an airport and expelled from Germany. Mr B.H. told the *ERRC* that in the village of Blaževo near Novi Pazar, where he lived at the time of the *ERRC* interview, that there were 200 Romani persons who had been deported from Western Europe since September 2002, and that there were new arrivals every week. Mr B.H. told the *ERRC* that approximately 40% of the community are children younger than 15. Most of them did not speak Serbian, as they were born and raised in Western Europe. Some of the Roma in the community were without one or more personal documents and therefore would likely be refused state-provided social assistance, as well as to be denied a number of other services necessary for the realisation of fundamental social and economic rights.

- On May 22, 2003, Mr Miroslav Amzi?, a 45-year-old Romani man living in Kruševac, Serbia, testified to the *ERRC/MRC* that he, his 8-year-old daughter Bogdana and 6-year-old son Darko were forcibly expelled from Germany on October 6, 2002. According to Mr Amzi?, at 6:00 AM, police officers went to their flat and told them that they were being sent back to Serbia. Mr Amzi? reportedly informed the officers that he had a pending appeal against the expulsion order so they should not expel them. Mr Amzi?'s lawyer reportedly provided the officers with the same information by telephone and offered to fax the documents to the police. The officers informed Mr Amzi?'s lawyer that their flight was scheduled for 1:40 PM, but at 10:20 AM, Mr Amzi? and his children were escorted onto an airplane bound from Berlin to Belgrade and forcibly expelled from Germany. During the expulsion, Mr Amzi?'s and his children were separated from his wife Snezana and eldest daughter, 18-year-old Mirjana, who remained in Germany as of December 4, 2003.
- Ms I.B., a 34-year-old Romani woman from the southern Serbian city of Niš, informed the *ERRC/MRC* that she, her 36-year-old husband Sema and her 17-year-old son Igor were deported in October 2002, after living in Berlin for eight years. As she told the *ERRC/MRC* on March 6, 2003, when she, her husband and their son went to renew their residence permits at a police station in Berlin on an unspecified date in October 2002, officers told them they had to leave Germany in three days. According to Ms I.B., her husband was taken into custody without any explanation. The following day, police officers arrived at the flat of Ms I.B. at around 11:00 AM and told her and her son to pack and come with them. The officers took them by van to the Düsseldorf airport, where they joined Ms I.B.'s husband. At the airport, police officers confiscated all of the family's personal documents and issued them a one-way travel document stamped "expelled" (*abgeschoben*). The family is currently banned from entering Germany for five years.
- Mr E.J., an 18-year-old Romani man from Leskovac, Serbia, testified to the *ERRC/MRC* on February 21, 2003, that he and members of his family were expelled from Germany in 2002, despite having been in the Federal Republic for approximately ten years. Mr E.J. testified to the *ERRC* that he and members of his extended family – Mr S.J. (46), Ms R.J. (40), T.J. (14), and C.J. (8) – applied for asylum in Germany in 1992 and were granted permission to stay, which entitled them to gainful employment. Approximately one year later, this was replaced with the so-called status of "duldung". The family was accommodated in the municipality of Dormagen, in western central Germany. Mr E.J. attended and graduated from primary school in Germany. On August 28, 2002, five or six police officers arrived at their flat at around 3:00 AM. Ms R.J., Mr E.J.'s mother, opened the door and the officers entered and started yelling at once: "Come on, get up, you are going to Yugoslavia today!" Mr E.J. reported that the family had not received any prior information about their expulsion from Germany. The family was told to pack one bag per family member, though they had many more valuable things to take. The officers entered Mr E.J.'s room, told him to start packing, asked to see his documents and told him to explain to his brothers that they should also get ready. Mr E.J.'s 8-year-old brother C.J., who was born in Germany, started crying and saying that he did not want to go. When the siblings went into the living room, they saw the officers placing handcuffs on their father and pulling him, though he did not resist. C.J. reportedly started crying again and one of the officers began to yell at him, "Come on, stop crying, do that in your country!" Mr S.J. then became ill and vomited. The officers detained the family and brought Mr E.J., his mother and his brothers to the airport in a van where they were separated. Officers brought Mr S.J. to a hospital where he was given a sedating injection. After three hours, Mr S.J.

arrived at the airport. According to Mr E.J., at the airport, awaiting expulsion to Serbia and Montenegro were about fifty Romani families and two ethnic Serbian families. They were then expelled from Germany. The family arrived in Belgrade without any money, where they reportedly had to sell some of their possessions in order to buy tickets to go to Leskovac. Two days after the family arrived in Leskovac, Mr S.J. had a heart attack and soon afterwards had another one. The family did not have money for food and medicine. Both T.J. and C.J. spoke hardly any Serbian at the time of the *ERRC* interviews. They had attended school while in Germany but neither of them had attended school in Serbia at the time of the interview.

- Ms S.P., a 36-year-old Romani woman from the southern Serbian town of Niš, described her August 2002 expulsion to the *ERRC/MRC* on February 21, 2003, in Niš. Together with her sons, 17-year-old Dalibor and 15-year-old Dejan, she lived in Berlin for around twelve years. At around 5:30 AM on August 28, 2002, Ms S.P. and her sons awoke to a loud banging on the door of their apartment. After Ms S.P. opened the door, two police officers asked the family to come with them. According to Ms S.P., the officers pulled the sleeves of her shirt. Immediately after the family got dressed, they were taken by police van to the Düsseldorf airport. The family was given a one-way travel document stamped "expelled", and a German border official reportedly told the family that they were banned from entering Germany ever again. All of the family's personal documents were left in Germany, as they had not been given any time to gather any of their personal belongings. Ms S.P. told the *ERRC/MRC* that she had not been able to find employment since her expulsion to Serbia and Montenegro.
- According to the testimony of Mr Ramiz Hazirovi?, a 40-year-old Romani man from Niš, he was forcibly deported from Germany to Serbia on July 3, 2002. Four plain-clothed police officers came to his home and told Mr Hazirovi? that he had fifteen minutes to get ready because he was being expelled to Serbia. Though he agreed to go with the officers, Mr Hazirovi? was handcuffed and taken to a police station in Düsseldorf by van. After around four and a half hours while handcuffed at the police station, Mr Hazirovi? was taken to the Düsseldorf airport and flown to Berlin from where he was expelled to Serbia with a number of other Roma. Soon thereafter, Mr Hazirovi?'s wife, Ms Keribana Zumberovi? and their three children, 8-year-old Murat, 7-year-old Ajsa and 5-year-old Slobodan, voluntarily returned to Serbia. According to Ms Zumberovi?, German authorities stated that she would be given 700 Euro for the journey and would receive additional money upon arrival in Belgrade. Ms Zumberovi? reported, however, that the family did not receive any money and that she and the children were not allowed to bring their passports with them when leaving Germany.
- On June 19, 2003, Mr David Stojanovi?, a 43-year old Romani man, testified to the *ERRC/MRC* that he, his wife Snezana and 15-year-old son Ivan were deported from Berlin after having lived there for twelve years. A number of police officers came to their house and brought them to a police station. According to Mr Stojanovi?, after the family arrived at the police station they were placed in detention in Berlin for ten days. The family's 2,000 Euro was reportedly confiscated by officials, and they were also forced to pay 65 Euro per day while in detention. Additionally, the jewellery of the family was confiscated by German officials and during expulsion procedures, officials stamped into their passports a ban on entry into the European Union.

- In October 2003, in contravention of Germany's obligations under Article 23 of the Covenant, Berlin authorities expelled from Germany two pregnant Romani women to Belgrade.<sup>30</sup> Both women had been living in Germany since 1991. One was married to a German national while the other has a German partner.<sup>31</sup> The situation was aggravated as both had to leave children under the age of 7 behind in Germany. Already during remand pending deportation, the families had been separated, in one case for more than two months.
- On January 1, 2004, authorities in the town of Ladenburg reportedly expelled members of a Romani family to Serbia, in the process separating wife and husband, due to the fact that the wife had not yet secured a passport for which she had applied at the time German authorities decided to implement the expulsion.<sup>32</sup>

German officials have also undertaken expulsions of Roma from countries other than Serbia and Montenegro in recent years. For example, according to testimony by 52-year-old Mr Marin Mogos to the *ERRC* and partner organisation *Aven Amentza*, on March 7, 2002, at approximately 4:30 AM, fourteen armed German police officers forcibly took Mr Mogos, his 19-year-old daughter Gabriela and his 18-year-old son Gheorghe from their home in Wiesbaden to an airport in Munich and expelled them to Romania. This took place despite the fact that the family had applied for asylum in Germany and had not yet received a final decision in the asylum application. The family had been in Germany continuously since 1990. From 1990, they had given up their Romanian passports and declared themselves stateless. From 1997, they had possessed the status "tolerated" (*geduldet*). Since 1998, the family has had an application pending before the European Court of Human Rights in connection with the refusal to that date of German authorities to grant them asylum in Germany and the concomitant threat of expulsion. In January 2002, their application for renewed "tolerated" status was rejected and they were issued an order to leave Germany by January 31, 2002. During forcible expulsion on March 7, 2002, Mr Mogos was reportedly not permitted to telephone his lawyer and the officers also threatened him with guns and handcuffed him. Upon arrival at the Otopeni Airport in Bucharest at around 11:45 PM, Police Major Cristian Fugaciu and four other officers met and detained them. An officer of Romania's Passport Division informed the family that they would be held in the Transit Zone until they signed documents stating they would voluntarily enter Romania and accept Romanian citizenship. He also threatened that they would not receive any food, medicine or legal assistance. At approximately 1:00 AM on March 8, 2002, Mr Mogos's 49-year-old wife Anisoara and their 16-year-old daughter Dorina were also expelled to Romania and joined the family in detention at the Otopeni Airport. According to Ms Mogos, at the airport in Germany, she was handcuffed and bodily searched by female officers while fully naked, and was also only allowed to use a toilet with the door open. On March 8, 2002, at approximately 8:30 AM, the Mogos family was transferred to a building in the Transit Zone at the Otopeni Airport. The Mogos family has refused to accept Romanian citizenship and lived in the transit zone of the Otopeni Airport beginning in March 2002. They were still living in the transit zone of Otopeni airport as of December 2003. As a result, they have missed a number of domestic hearings in

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<sup>30</sup> Press release of the Berlin Refugee Council, October 17, 2003.

<sup>31</sup> In its General Comment on Article 23 of the Covenant, the Committee stated: "[...] the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in co-operation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons."

<sup>32</sup> Rhein-Neckar-Zeitung, January 2, 2004.

their application for asylum in Germany. In addition, police officers have physically abused them on at least one occasion. The case calls seriously into question Germany's compliance with a number of the provisions of the Covenant, most notably Article 13.

In addition, Germany has on a number of occasions forcibly expelled Roma to Kosovo, despite serious concerns that persons considered "Gypsies" in Kosovo are persecuted in the province.<sup>33</sup> In addition to cases documented by the *ERRC* and partner organisations,<sup>34</sup> officials of intergovernmental organisations in Kosovo state that they are aware of a number of instances in which the German government has expelled Roma to Kosovo in recent years. Further, Mr Enver Indi?, president of a local Roma association in Bujanovac, southern Serbia, told the *ERRC* on February 21, 2003 that, as of that date, in the Bujanovac region there were around one hundred Roma from Kosovo who had been expelled from Western Europe -- Germany in particular -- to Kosovo and then fled Kosovo for a second time.

In a number of instances, forced expulsions have had a broader impact on the ability of many Roma to realise fundamental rights. For example, in one case, due to the engagement of a Romani woman from Serbia in the western German town of Gelsenkirchen, a number of

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<sup>33</sup> Roma, Ashkalia and Egyptians suffered a campaign of ethnic cleansing by ethnic Albanians in Kosovo beginning in 1999, resulting in the displacement within or expulsion from Kosovo of tens of thousands of persons, as well as "disappearances" (of persons now presumed dead), gang rape, and mass destruction or confiscation of property. Today, Kosovo remains an extremely unsafe place for persons regarded as "Gypsies". To date, according to UNMIK and OSCE officials, no prosecutions of perpetrators of racially motivated crimes against Roma, Ashkalia or Egyptians have ever taken place, either in connection with the events of 1999 or for any of the extremely serious incidents taking place subsequently. A Parliamentary Assembly of the Council of Europe recommendations specifically urges that expulsions of Roma from Kosovo not take place in the current circumstances: "the Assembly recommends that the Committee of Ministers [...] urge the members states of the Council of Europe hosting Roma from Serbia and Montenegro, including Kosovo, to ensure that [...] there are no forced returns of Roma originating from Kosovo neither to Kosovo, nor to Serbia and Montenegro, as long as the security situation in Kosovo does not allow for returns of Roma" (see "Forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states" (Doc. 9990)).

<sup>34</sup> For example, the *ERRC/MRC* interviewed Ms R.S. on January 6, 2003, in Bujanovac, a southern Serbian town near the border with Kosovo. Before the ethnic cleansing of Roma from Kosovo in 1999, Ms R.S., a 33-year-old Romani woman, lived in the town of Kosovska Kamenica, in northeastern Kosovo. In 1999, together with her husband Mr L.S. and their young son P.S., she fled to Cologne, Germany, where she applied for asylum and received the so-called "tolerated" status. According to Ms R.S., on September 12, 2002, her family's permit of toleration was prolonged until January 15, 2003. However, around at 4:00 AM on November 21, 2002, the family awoke to loud banging on their door. They opened the door to meet six police officers in plain clothes who told the family that they would be sent back to Kosovo and that they had ten minutes to pack all their belongings. The officers told the family that they could pack around twenty kilograms of luggage per adult and some clothes for P.S. They also told the family that they should not speak in the Romani language. According to Ms R.S., this unexpected early morning visit deeply frightened her family, especially the little boy who reportedly could not stop crying. Ms R.S. also stated that the officers took away her mobile phone card and 4,000 Euro in cash, only letting the family keep 600 Euro. The officers then took the family in a police van to the airport in Düsseldorf, where the family boarded a Montenegro Airlines flight to Priština at around 2:00 PM. According to Ms R.S., the rest of the passengers on the plane were all ethnic Albanians; the family did not dare speak Romani as they feared for their safety lest they be recognised as Romani. The only documents they had were one-way travel documents that they were given by the police officers, dated November 8, 2002, which Ms R.S. understood to mean that their expulsion had been prepared well in advance of the actual act. Ms R.S. stated that the family never received any information to the effect that they had to leave Germany. Upon arrival at the Slatina airport in Priština, a man and a woman, who did not identify themselves, took the family by van to a local bus station, where the family boarded a bus to Gnjilane, and continued by taxi to their previous place of residence in Kosovska Kamenica. In Kosovska Kamenica, the family found their former home looted and damaged. Having no shelter and fearing for their safety, the family decided to leave Kosovo and cross the border to the south Serbian town of Bujanovac, where the *ERRC/MRC* interviewed Ms R.S. Ms R.S. stated that P.S. was traumatised by the expulsion experience, had experienced nightmares since the expulsion and had developed a fear of unknown adult men. At the time of the interview, both Ms R.S. and her husband were unemployed and did not receive state-provided or other assistance. According to *ERRC* findings, many of the Kosovo Roma deported to Kosovo have fled Kosovo again and currently reside in poverty in southern Serbia.

Romani children from the wider Romani community in Gelsenkirchen were enrolled in local schools and provided with educational assistance. The woman at issue was reportedly expelled however, together with her family, in autumn 2003.<sup>35</sup>

Even where foreign Roma expelled from Germany may not face the explicit threat of imminent racially motivated violence in their country of origin, Roma expelled from Germany to eastern European countries and their children will find it difficult to impossible to realise a range of fundamental rights, including the right to education, the right to an adequate standard of living, and the right to the highest attainable standards of physical and mental health. In a number of instances, due to a lack of personal documents, Romani parents expelled from Western Europe may be barred from claiming social welfare assistance as well as from voting and standing in elections, rights fundamental to participation in a democratic society. Expelled Roma are much more likely than other persons to be homeless.

Although details vary to some extent from case-to-case, the foregoing is sufficient to establish that German authorities currently have very little regard for Germany's international law obligations when the individuals at issue are foreign Roma. Insofar as according to the pronouncements of Deputy Minister Markovic cited above, four out of every five Yugoslav citizens slated for expulsion from Germany are Romani, despite the fact that Roma comprise not more than 8% of the general population of Serbia and Montenegro and are also reportedly not significantly over-represented among nationals of Serbia and Montenegro in Germany generally, the German expulsions of Romani children and their families give rise to the concern that racial discrimination may have significantly infected expulsion and other procedures at issue, in contravention of a number of binding international law obligations to which Germany is a party, including but not limited to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Rights of the Child, and the European Convention on Human Rights. Moreover, officials of international organisations currently involved in the government of Kosovo have told the *ERRC* that on a number of occasions, German officials have made statements acknowledging that they target Roma for expulsion.<sup>36</sup>

The expulsion of Roma factually settled long-term in a given country and concomitant concerns arising from the issues raised above calls serious into question Germany's compliance with the individual provisions of the Covenant, in particular at minimum Articles 2, 7, 9, 10, 13, 14, 17, 23, 24 and 26. Such expulsions, particularly when undertaken systematically and on a scale such as that of current German efforts further gives rise to concerns under a range of other international law instruments, including but not necessarily limited to Article 3 (prohibition on cruel and inhuman or degrading treatment or punishment) and Article 8 (right to privacy and family life) of the European Convention on Human Rights. The collective expulsion of aliens is further banned under Article 4 of Protocol 4 to the European Convention.

It is further difficult to detect any trace of evidence that German authorities at present weigh the best interests of Romani children of foreign origin when deciding on administrative measures about them, calling into question Germany's compliance with core principles of the

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<sup>35</sup>

Westdeutsche Allgemeine, October 11, 2003.

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According to one UNMIK official, while meeting with German officials in 2003, one reportedly stated, "You have to understand, the Germans will never accept the Gypsies. They cannot stay in Germany."

International Convention of the Rights of the Child. Indeed, in January 2004, the UN Committee on the Rights of the Child advised the German government to "take all necessary measures to review its legislation and policies regarding Roma children and other children belonging to ethnic minorities seeking asylum in the State party."<sup>37</sup>

Expulsions of Roma to Serbia and Montenegro (including Kosovo) have aroused such significant unease in recent months that a number of European authorities have commented upon them and at least one international body has issued a recommendation specifically on the issue, expressing a broad range of concerns.<sup>38</sup> Indeed, some local and regional German authorities have issued decisions at least temporarily not to expel Roma from Germany: on November 11, 2003, media reported that the Berlin Senate had taken a decision that no persons should be forcibly expelled to Serbia and Montenegro until March 31, 2004. The state of North Rhine-Westphalia similarly imposed a temporary ban on expulsions in December 2003. Nevertheless, such decisions are limited to certain states, and in practice, even in those states where a temporary expulsion ban is in effect, officials have found ways of circumventing such moratoria and implementing expulsions of Roma anyway.<sup>39</sup> Also, police have in some cases undertaken large numbers of expulsions of Roma in the days just before expulsion bans are due to go into effect.<sup>40</sup>

### Arbitrary Limitations on Freedom of Movement

Article 12 of the Covenant states: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." According to German law, freedom of movement is guaranteed only to German citizens.<sup>41</sup> Under current administrative practice in Germany, persons with "tolerated" status in Germany, as well as stateless persons and persons awaiting decisions related to applications for asylum status, may be required not to travel beyond the jurisdiction of a given immigration department. As a result, the majority of non-citizen Roma in Germany have very limited freedom of movement within Germany. Due to the fact that families may live in different administrative areas, Roma are frequently unable to visit family and attend important family functions, such as weddings and funerals, without violating German law. Also, German police have invoked freedom of movement limitations to prevent public gatherings of Roma to

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Concluding Observations of the Committee on the Rights of the Child on Germany's compliance with the Convention on the Rights of the Child, available at: <http://www.ohchr.org/tbrucrc/Germany.pdf>.

<sup>38</sup> Parliamentary Assembly of the Council of Europe recommendation of November 25, 2003 on "Forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states" (Doc. 9990). The Council of Europe had previously sent a field mission to Serbia and Montenegro to investigate the matter.

<sup>39</sup> For example, despite the expulsion stop imposed by the Berlin Senate noted above, Berlin authorities reportedly expelled from Germany a 29-year-old Romani woman Ms P.L. and her four children to Belgrade on December 26, 2003. Ms P.L. had lived in Germany since 1991, and all four of her children had been born in Germany (See *Jungle World*, January 7, 2004).

<sup>40</sup> For example, police in North Rhine-Westphalia undertook massive raids on foreign Romani communities in the state on December 17, 2003, five days before the expulsion stop went into effect, during which they arrested 32 individuals, 22 of whom were expelled from Germany to Belgrade. Eleven of the individuals expelled were reportedly under the age of sixteen. (Newsletter of the Cologne Refugee Council, January 14, 2004, available at: <http://www.koelner-fluechtlingsrat.de/nachrichten/0104.pdf>).

<sup>41</sup> Basic Law of the Federal Republic of Germany, article 11, available at: <http://www.bundesregierung.de>.

protest expulsion policies. For example, on the weekend of October 17-18, 2002, Roma were prevented from travelling by bus to Düsseldorf for a planned demonstration against ongoing expulsions by police aiming to "prevent crimes".<sup>42</sup> Authorities have also in recent years reportedly used violations of freedom of movement limitations imposed on non-citizens as grounds for expulsion.

### Arbitrary Limitations on the Rights to Freedom of Expression and Assembly

Article 19 of the Covenant states: "Everyone shall have the right to freedom of expression; [...]" Article 21 states: "The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law [...]" In accordance with the Covenant, the Basic Law of the Federal Republic of Germany guarantees the right freely to express opinions (Article 5) and the right to assemble (Article 8) as fundamental basic rights.<sup>43</sup> The ERRC is concerned that where Roma are concerned, on a number of occasions in the recent past, Roma have been hindered by authorities from realising these rights.

- For example, during summer 2002, in Düsseldorf, the capital of the state of North Rhine-Westphalia, several hundred Roma primarily from the successor states of the former Yugoslavia demonstrated against expulsions of Roma from Germany. During the protest actions, which lasted several weeks and which in each instance had been announced in advance in conformity with the law, Romani demonstrators often met with arbitrary obstructing action by local authorities. In one case, municipal authorities undertook short-term building operations at the site of a planned and announced demonstration, and police therefore blocked access to the area for reasons of safety. In another case, just before the demonstration started, employees of the parks department arrived in order to work at the assembly place. Ultimately, in the latter case, police intervened in favour of the demonstrators. The mayor of Düsseldorf reportedly stated subsequently in connection with the events that only German citizens have the right to the freedom of assembly.<sup>44</sup>
- In 1990, under the leadership of Rudko Kawczynski, the head of the Hamburg-based umbrella organisation Roma National Congress, Roma organised a march through the state capitals in western Germany to protest policies of expulsion being implemented at the time. In November 1990, persons involved in the march decided to go directly to the offices of the United Nations High Commissioner for Refugees (UNHCR) in Geneva. In order to do so, they had to pass the Swiss-German border. The Swiss border police refused a majority of the Roma entry into Switzerland. Only Mr Kawczynski and several colleagues were allowed to enter. In protest against the refusal, approximately three hundred Roma blocked one lane of the border crossing point for around seven days. In connection with the blockade, police in the town of Lörrach pressed charge against Mr Kawczynski (and only against Mr Kawczynski) on grounds of "obstructing traffic" (Nötigung im Straßenverkehr). In 1992, a county court imposed a fifty-day jail sentence

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For details of the incident, see Die Tageszeitung, October 19, 2002, as well as documentation provided on the Internet website of the NGO ProAsyl (<http://www.proasyl.de>) and Aktion Roma – Hilfe gegen Abschiebung und Diskriminierung (<http://www.krit.de>).

<sup>43</sup> Basic Law of the Federal Republic of Germany, article 5 and article 8, available at: <http://www.bundesregierung.de>.

<sup>44</sup>

Junge Welt, January 4, 2003

on him.<sup>45</sup> The case has been appealed and is currently pending before the European Court of Human Rights.

### Violence and Other Cruel and Degrading Treatment of Roma

In Germany, Sinti and Roma have been targeted for racist attacks and have experienced degrading treatment at the hands of law enforcement officials. German authorities have for the most part failed to provide justice even in the most extreme attacks on Sinti and Roma, such as in the case of the 1992 firebombing of an asylum-seekers hostel in Rostock.

German law enforcement and security officials have engaged in a number of activities with respect to Sinti and Roma which call into question Germany's compliance with core provisions of the Covenant. Until October 2001, the Bavarian police had a special register of Roma and Sinti.<sup>46</sup> In Cologne, apparently as part of a campaign to combat pickpocketing,<sup>47</sup> police have recently undertaken a range of activities targeting minors -- and particularly Sinti and Romani minors including (i) photographing female Romani youths with their undergarments removed, reportedly for the purpose of documenting hygiene;<sup>48</sup> (ii) coercive radiological examinations, apparently to determine the age of the individual, and (iii) interrogation, photographing and fingerprinting, without informing the parents of minors concerned, in violation of German domestic law. Earlier, in April 1995, after an abandoned baby was found, by means of a large-scale police operation, 43 Romani women were reportedly forced to undergo gynaecological examinations in Cologne because the doctor who examined the baby had thought that it had skin complexion typical of Roma and Sinti.<sup>49</sup> In October 2001, in the course of investigation into the attempted hold-up of a petrol station, a special unit of 15 police officers stormed the house of a Sinti family in Rhineland-Palatinate with their weapons drawn, apparently on the basis of no evidence above any beyond the suspected ethnicity of the perpetrators. In the raid, 49-year-old Mr L.S., who suffered from a heart condition, was reportedly forced to the ground and mistreated on the back with knees and a gun. The operation turned out to be a mistake and the police subsequently apologised, although no individuals were disciplined in connection with the incident.<sup>50</sup> Police officers also reportedly physically abused Mr D.N. at his home in Frankfurt in December 2003, after a fight at a local train station, and then later detained him at his home, apparently without a warrant for his arrest.<sup>51</sup> On December 23, 2003, two employees of the NGO Rom e.V. were reportedly insulted, physically abused and then arbitrarily detained in a hostel for asylum seekers in Cologne.<sup>52</sup> Nowhere in the Government's discussion of issues arising under Article 7 or

<sup>45</sup> ERRC Letter to the German Prime Minister, the President of the German Parliament and the President of the Federal Constitutional Court from November 12, 2001 and Jungle World, November 14, 2001.

<sup>46</sup> EUMAP Germany Report, p.128-129.

<sup>47</sup>

See list of methods compiled by three responsible police officers: P. Brunke; R. Hausin; J. Ogradowski, Bekämpfung des Taschendiebstahls in Köln, in: der kriminalist, Magazin des Bundes Deutscher Kriminalbeamter, 2/2003, available at: <http://www.bdk.de/magazin/februar-2003.php>.

<sup>48</sup>

Documentation made available to the ERRC by the Cologne-based NGO Rom e.V.

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See the documentation by the Rom e.V. Köln: "Wir hatten gehofft, daß es in Deutschland keinen Rassismus mehr gibt ...". Dokumentation zur Polizei-Razzia gegen Roma-Frauen am 13.04.1995 in Köln. Cologne 1995.

<sup>50</sup>

Rhein Zeitung online, October 13, 2001.

<sup>51</sup>

Documentation made available to the ERRC by the Förderverein Roma, Frankfurt am Main.

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elsewhere in the Government Report are concerns related to the ill-treatment of Roma or others addressed.

Sinti and Roma have also been targeted for hate crimes by racist vigilantes in recent years. There have been a number of attacks on Roma and Sinti by individuals using incendiary or explosive weapons. Measures undertaken by the German authorities have not provided sufficient protection. During the early 1990s, there was a very high level of racially motivated crime in Germany, with a number of Sinti and Roma falling victim to racist attacks. During the latter half of the 1990s, the number of acts of violence against Roma and Sinti dropped. But in the year 2000, the number of xenophobic and racist attacks dramatically increased.<sup>53</sup> This development has continued, and there was an increase in such attacks in 2002 as well.<sup>54</sup> Sinti and Roma have been among the victims of such attacks. For example:

- On August 1, 2000 in the town of Döbeln in the state of Saxony, three males reportedly threatened a group of Roma. During the confrontation one of the perpetrators pulled out a firearm. Fortunately no one was wounded. Police officers arrested the offenders.<sup>55</sup>
- In the evening from Saturday, September 16th to Sunday, September 17, 2000 in Plötzky in the state of Saxony-Anhalt, a group of Nazi skinheads attacked the caravans of Sinti and Roma with many children among them. In the course of the attack, the interior of the caravans was destroyed. The police arrested four suspects, age 14 to 22.<sup>56</sup>
- On July 30, 2001, unknown perpetrators attacked the caravans of about 40 Roma on a campground in Wildau in the state of Brandenburg with firebombs. The police could not capture the perpetrators, but excluded an extreme right-wing background of the attack.<sup>57</sup>
- In the night from July 23 to July 24, 2003 in Tischenreuth in the state of Bavaria, three young men committed attacked on a Sinti family's caravans with incendiary devices. The Sinti family narrowly escaped serious injury. After a prolonged investigation, the offenders were arrested. Police investigators however did not recognise racial animus in the attack.<sup>58</sup>
- On August 20, 2003, a number of racist skinheads attacked a group of Sinti and Roma in Gernsdorf, Saxony with firebombs. The attack was preceded by threats by the owners of the neighbouring gardens.<sup>59</sup>

International documenting bodies have noted that reasons for the persistence of racially-motivated crime in Germany should not be sought merely with reference to the existence of a small group of extremists, but should be seen in the context of persistent xenophobic public

Testimony to the ERRC, February 2004.

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<sup>53</sup> International Helsinki Federation for Human Rights (IHF), Intolerance, Xenophobia, Racial Discrimination, Hate Speech, Report 2002, Germany, at: <http://www.ihf-hr.org/documents/index.php>.

<sup>54</sup> Verfassungsschutzbericht 2002, p. 32-33, available at: <http://www.bundesregierung.de/Anlage485492/Verfassungsschutzbericht+2002.pdf>

<sup>55</sup> Frankfurter Rundschau, August 23, 2000.

<sup>56</sup> Frankfurter Rundschau, September 18, 2000.

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Die Tageszeitung, July 31, 2001.

<sup>58</sup> Süddeutsche Zeitung, July 25, 2003.

<sup>59</sup> Jungle World, August 27, 2003.

sentiment.<sup>60</sup> Roma and Sinti often speak of the fear of violence they experience in the public space in Germany.

Due to the high level of concern aroused by Neo-Nazi violence in Germany as a result of the specific historical context of right-wing extremism in Germany, the German government has stated that it regards combating right-wing extremist violence as a priority.<sup>61</sup> However, it is of concern that police authorities in Germany tend to regard a crime as racially motivated only if racial animus has been rendered very explicit at the moment the crime is being committed. Also, there are worrying indications with respect to the ability of the German criminal justice system to bring justice in the case of racist hate crimes. In one very egregious case, with respect to hate crimes taking place in the period August 22-26, 1992 in the city of Rostock, during which several hundred racist skinhead vigilantes ultimately set fire to a hostel in which Romani and other asylum-seekers were living, accompanied by the cheers of a large number of onlookers, court proceedings were not completed until mid-2003, and resulted only in very mild sentences, most of which were suspended. Although there had been originally approximately 260 arrests and investigations into the actions of over 300 persons, prosecutors reportedly only succeeded in bringing charges against 32 individuals. No public officials were convicted in relation to the complete failure to protect the individuals targeted in the attacks. By the time verdicts were handed down in relation to the attacks, most of the victims were no longer in the country, because they had been forcibly expelled to their countries of origin.<sup>62</sup>

The government's approach in its discussion of matters arising under Article 26, the area in which it has chosen to present law and policy issues related to combating "right-wing extremism, xenophobia and intolerance" is worrying for several reasons. In the first place, the government devotes extensive energy to describing actions under the heading "Initiatives against xenophobia", whereunder programs against "xenophobia", "right-wing extremism", "intolerance" and "anti-Semitism" are described. This list is noteworthy for the near complete absence of action to acknowledge and address racism and racial discrimination. Indeed, point (b) under "Initiatives against xenophobia" concerns "Promotion of integration", a fact which gives rise to the concern that Germany authorities may believe that a primary reason for anti-foreigner sentiment in Germany is foreigners themselves. Finally, the Government Report has provided very little information as to numbers and frequency of racially motivated crimes, individuals or groups targeted, and government success in prosecuting such acts.<sup>63</sup>

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<sup>60</sup> ECRI Second Report on Germany, para. 49, p. 19.

<sup>61</sup> The Government Report states that a primary focus of its human rights work is "[...] the decisive approach to right-wing radical, xenophobic and anti-Semitic violence." (See Government Report, para.11).

<sup>62</sup> On events in and proceedings related to the 1992 attacks in Rostock, see Antifaschistisches Pressearchiv und Bildungszentrum Berlin e.V. (apabiz), Monitor, no. 6, July 2002, p.1-2; Evangelischer Pressedienst (EPD), August 23, 2003; International Helsinki Federation for Human Rights (IHF), IHF Annual Report on Human Rights Violations 2003 (Events of 2002) - Germany, available at: <http://www.ihf-hr.org/documents/index.php>; Jungle World, August 21, 2002; Süddeutsche Zeitung June 18, 2002; Die Tageszeitung, August 2, 2003.

<sup>63</sup> Among the only data presented in the Government Report on the issue of racially-motivated criminal acts is a presentation of numbers of "Internet websites with right-wing extremist content", but the government provides no information as to what actions it pursued in individual cases or how many persons were successfully prosecuted in connection with such crimes. The full text of the relevant passage follows: "New communication media, in particular the Internet, are being increasingly used by rightwing extremists for the purpose of self-portrayal, for mobilisation and for agitation. Whilst the Federal Office for the Protection of the Constitution counted 330 right-wing extremist homepages in 1999, this number increased to roughly 800 in 2000. Approximately 1,300 homepages with right-wing extremist content were known at the end of 2001. If a homepage indicates content or symbols of unconstitutional organisations constituting public incitement, this is punishable in accordance with sections 86, 86a and 130 of the Criminal Code (cf. in detail paras. 244 et seqq.)."

## Failure to Provide Sufficient Legal Protections against Racial Discrimination

Article 2 of the Covenant places the obligation on the Government "to take the necessary steps [...] to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant". There are concerns however that at present, the German legal regime may not yet be sufficiently elaborated so as to protect individuals in practice from all forms of discrimination proscribed under international law, and in particular under Article 26 of the Covenant.

Due to serious concerns related to discrimination in Europe, and in particular related to the very serious harm of racial discrimination, standards on anti-discrimination law in Europe are currently in a period of dramatic expansion. Germany has not managed to keep pace with these developments, however, and at present German law does not meet European standards:

- Three new Directives of the European Union have provided specific direction as to the scope and dimension of anti-discrimination law in European Union Member States, including Germany. European Council of the European Union Directive 2000/43/EC: "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin"<sup>64</sup> (hereinafter "Race Directive") addresses directly the particularly serious harm of racial discrimination. All three directives are binding on Member States and both European Union and Council of Europe authorities have on a number of occasions instructed states that they regard one comprehensive anti-discrimination law as a superior form of regulation in this area than anti-discrimination provisions scattered throughout various laws.<sup>65</sup> Germany was under deadline to bring the substance of the Race Directive into its domestic law by July 19, 2003. To date, the German government has not yet done so.<sup>66</sup> Many provisions of the Directive have not been incorporated into German domestic

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" (Government Report, para. 338, p.85).

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Available at: [http://europa.eu.int/comm/employment\\_social/news/2002/jan/2000-43\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2002/jan/2000-43_en.pdf)

<sup>65</sup> For example, in its second report on the Czech Republic, ECRI told the Czech government "ECRI urges the authorities urgently to consider the establishment of a comprehensive anti-discrimination law which would cover all fields of life, inter alia education, employment, housing, access to public services and to public places" (see ECRI Second report on the Czech Republic Adopted on 18 June 1999 made public on 21 March 2000, available at: [http://www.coe.int/T/E/human%5Frights/Ecri/1%2DECRI/2%2DCountry%2Dby%2Dcountry%5FApproach/Czech%5FRepublic/Czech\\_Republic\\_CBC\\_2.asp#TopOfPage](http://www.coe.int/T/E/human%5Frights/Ecri/1%2DECRI/2%2DCountry%2Dby%2Dcountry%5FApproach/Czech%5FRepublic/Czech_Republic_CBC_2.asp#TopOfPage)). Similarly, in its Second Report on Greece, ECRI advised the Greek government as follows: "ECRI stresses that the introduction of a single and comprehensive body of anti-discrimination legislation covering discrimination in all fields of life and providing for effective enforcement, has proved a valuable tool in many countries. It encourages the Greek authorities to consider introducing such a body of legislation under the aegis of a single department charged with responsibility for overseeing and monitoring the effectiveness of such legislation." (see ECRI Second report on Greece, Adopted on 10 December 1999 made public on 27 June 2000, available at:

[http://www.coe.int/T/E/human%5Frights/Ecri/1%2DECRI/2%2DCountry%2Dby%2Dcountry%5FApproach/Greece/Greece\\_CBC\\_2.asp#TopOfPage](http://www.coe.int/T/E/human%5Frights/Ecri/1%2DECRI/2%2DCountry%2Dby%2Dcountry%5FApproach/Greece/Greece_CBC_2.asp#TopOfPage)). Also, in its Second report on Hungary, ECRI advised, "[...] it is ECRI's opinion that the introduction of a body of anti-discrimination law covering all fields of life should be seriously considered by the Hungarian authorities as a possible way of improving the legislative framework in this field." (see ECRI Second Report on Hungary, Adopted on 18 June 1999 made public on 21 March 2000, available at: [http://www.coe.int/T/E/human%5Frights/Ecri/1%2DECRI/2%2DCountry%2Dby%2Dcountry%5FApproach/Hungary/Hungary\\_CBC\\_2.asp#TopOfPage](http://www.coe.int/T/E/human%5Frights/Ecri/1%2DECRI/2%2DCountry%2Dby%2Dcountry%5FApproach/Hungary/Hungary_CBC_2.asp#TopOfPage)). Similarly, in January 2004, the European Union delegation in Slovakia stated members of the Slovak government that it regarded one comprehensive anti-discrimination law as superior to an approach placing anti-discrimination bans at various instances in Slovak domestic law.

law.<sup>67</sup> It is particularly noteworthy that the German government has tabled a number of drafts of an anti-discrimination law, but it has not yet managed to adopt any of these draft bills into law.<sup>68</sup> Indeed, there has been little if any progress at all with respect to government efforts to adopt an anti-discrimination law (described in the Government Report at paras. 367-369) since the Government Report was submitted in November 2002.

- In 2000, the Council of Europe opened for signature Protocol 12 to the European Convention on Human Rights, a provision which, once in effect, will provide a comprehensive ban on discrimination on a number of grounds in the exercise of any right secured by law. To date, Germany has not yet ratified Protocol 12.
- The Council of Europe's Revised European Social Charter includes anti-discrimination provisions with respect to the exercise of a number of social and economic rights. Germany has not yet ratified the Revised European Social Charter.

The failure of German authorities to adopt adequate legal provisions to ensure that individuals have recourse to justice when their right to equal treatment is violated is of particular concern in light of the fact that racial discrimination against Sinti and Roma has been identified as a serious problem in Germany. In its review of Germany, the European Commission against Racism and Intolerance (ECRI) expressed concern that: "Members of Roma and Sinti communities face serious social disadvantage and are confronted with prejudice and discrimination in such fields as employment, housing and education."<sup>69</sup> Also, the Advisory Committee of the Council of Europe's Framework Convention for the Protection of National Minorities concluded, ""The Advisory Committee, nevertheless, notes that children of Roma/Sinti, migrants and immigrants are over-represented at lower secondary schools and special schools for under-achievers and correspondingly under-represented at intermediate and grammar schools."<sup>70</sup> Other studies indicate segregating forces at work in the education of Sinti and Romani children.<sup>71</sup> Roma and Sinti have on a number of occasions recently reported discrimination in the provision of public services.<sup>72</sup> Reports in the German press have noted

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<sup>66</sup> For an analysis of the current state of anti-discrimination protections afforded by German law, see: European Monitoring Centre on Racism and Xenophobia, *Anti-discrimination Legislation in EU Member States. A Comparison of national anti-discrimination legislation on the ground of racial or ethnic origin, religion or belief with the Council Directives, Germany, Vienna 2002*, available at: <http://eumc.eu.int>.

<sup>67</sup> Elements of the Race Directive not yet incorporated into German law include the principle of the reversal or easing of the burden of proof, the concept of victimisation, the right to legal action by an association and the definition of direct or indirect discrimination. Also, there is no independent institution established a body for the promotion of equal treatment, as specified by the Race Directive.

<sup>68</sup> The Ministry of Justice planned to introduce the main elements of the Race Directive as Law on the Prevention of Discrimination in the Private Sector with the character of a sub-chapter into the Civil Code. Following criticism however, in February 2002, a revised draft was published (available at: <http://www.nrwgegendiskriminierung.de/de/docs/pdf/ADG-Entwurf-BMJ.pdf>). This draft however was subsequently withdrawn. A new draft has reportedly been discussed, but to date none has been made public (on drafting efforts to 2002, see Selbmann, Frank, "The Drafting of a Law against Discrimination on the Grounds of Racial or Ethnic Origin in Germany – Constraints in Constitutional and European Community Law", European Centre for Minority Issues, Flensburg 2002).

<sup>69</sup> ECRI Second Report on Germany, para 30, p. 13.

<sup>70</sup> Advisory Committee of The Framework Convention for the Protection Of National Minorities Opinion on Germany adopted on 1 March 2002, ACFC/INF/OP/I(2002)008, Article 6, para. 36.

<sup>71</sup> See for example Widmann, *An den Rändern der Städte*, p. 172.

<sup>72</sup>

According to reports, in January 2003, a Sinti man from Düsseldorf wanted to rent two rooms in a reputable hotel in Berlin. According to his statement, he was not allowed to do so, on the grounds that he was a "Gypsy". (See *Die Tageszeitung*, January 28, 2003 and *Jungle World*, March 5, 2003). Also, in July 2001 a swimming

service providers expressly acknowledging undertaking racial discrimination.<sup>73</sup> Romani non-citizens in Germany are excluded by law from access to a number of social welfare benefits and services necessary for the realisation of certain fundamental economic and social rights.

### Recommendations

In light of the above, the urges the Committee to recommend that the German Government undertake the following measures:

- Discontinue the use of regulatory systems for non-citizens which provide no legal residence in Germany; implement a legal regime for individual establishment providing for the progressive accrual of rights by non-citizens, as well as the possibility for acquiring German citizenship within a reasonable period of factual residence;
- Without delay, provide all persons with "duldung" status who have factually resided in Germany for a period of five years or more with a durable long-term residence status ensuring access to all relevant social protections and the full range of services required for realising fundamental economic and social rights;
- Review and amend policies and practices related to forced expulsion to ensure that they are not racially discriminatory, and that they do not violate other rights guaranteed under international law;
- Without delay, remove all arbitrary limitations on the recognition of Sinti and Roma as minorities in Germany;
- In conformity with the requirements of the Covenant, ensure that all Covenant rights, including freedom of assembly and freedom of movement are ensured to all persons in practice, regardless of citizenship or the lack thereof, or country-of-origin;
- Investigate any and all allegations of degrading treatment of Roma and Sinti by police and other public officials, as well as by non-state actors; ensure that police and other investigating authorities do not apply overly restrictive standards on proving racial animus in connection with criminal acts, so that where racial motivation is at issue, it is recognised in all instances as such;
- Without delay, adopt a comprehensive anti-discrimination-law, incorporating all elements of the European Union anti-discrimination directives;
- Without delay, ratify Protocol 12 to the European Convention on Human Rights.

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club in Offenbach, Hesse, proclaimed a general ban on use of the facilities by Roma and Sinti. The operator of the outdoor swimming pool reportedly justified the decision with supposed long-term conflicts he had with a group of Roma. The swimming club chairman reportedly told journalists, "We don't want any Gypsies in the swimming pool." (see Frankfurter Rundschau, August 15, 2001). In another case reported in 2001, a family of German Sinti rented a bungalow from a private landlord, but concluding signing the contract, the landlord tried to terminate the lease on grounds that he "had been deceived as to the nationality of the tenants" (Documentation provided to the ERRC by the NGO Förderverein Roma, Frankfurt am Main).

<sup>73</sup> A hotel owner reportedly refused to rent a conference room to the non-governmental organisation *Landesverband der Sinti und Roma Hamburg*. He justified his behaviour with reference to "frequent problems" he had with Sinti (Hamburger Abendblatt, December 22, 2003).