

**IMPLEMENTATION OF THE HELSINKI ACCORDS**

# **HUMAN RIGHTS AND DEMOCRATIZATION IN UNIFIED GERMANY**



**Prepared by the Staff of the  
Commission on Security and Cooperation in Europe  
Washington, DC**

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**Commission on Security and Cooperation in Europe  
237 Ford House Office Building  
Washington, DC 20515**

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## FOREWORD

The Commission on Security and Cooperation in Europe (the Helsinki Commission) was established by the U.S. Congress in 1976 to monitor and report on the implementation of the decisions of the Conference on Security and Cooperation in Europe (CSCE), a multinational diplomatic process that embraces issues from military security to economic and environmental cooperation to human rights and humanitarian affairs. To this end, the Commission pursues specific concerns at CSCE meetings, holds congressional hearings, leads delegations to CSCE countries, and publishes reports. The Commission has focused special attention on the implementation of human rights agreements by what was once the Soviet Union and the countries of East-Central Europe, as well as reviewing human rights questions raised with the United States.

The Commission's most recent comprehensive report on the implementation of human rights commitments in Eastern Europe was prepared in 1988, at a time when the CSCE community was still immersed in the difficult decades of division characterized by the Cold War. The report which follows, reflecting the sea changes which have occurred since then, is part of a series of reports seeking to bring the Commission's examination of human rights and democratization in this region up to date.

In some of the countries under examination in this series, the human rights situation is now as good as or better than in some Western CSCE states. In such cases, the reports will focus more heavily on the problems associated with transition to democratic government and market economies. Furthermore, given the overall progress being made in a number of former communist states, the Commission will be watching closely to see if there is any need to include them in future implementation reports.

Until fairly recently, the Commission's primary emphasis has been on basic human rights, such as freedom of expression, freedom of religion and freedom of movement. These rights were viewed as the essential first tier of fundamental freedoms which had to be addressed by the former communist countries before their commitment to the broader obligations of the CSCE's human dimension, such as free and fair elections or the rule of law, could be taken seriously.

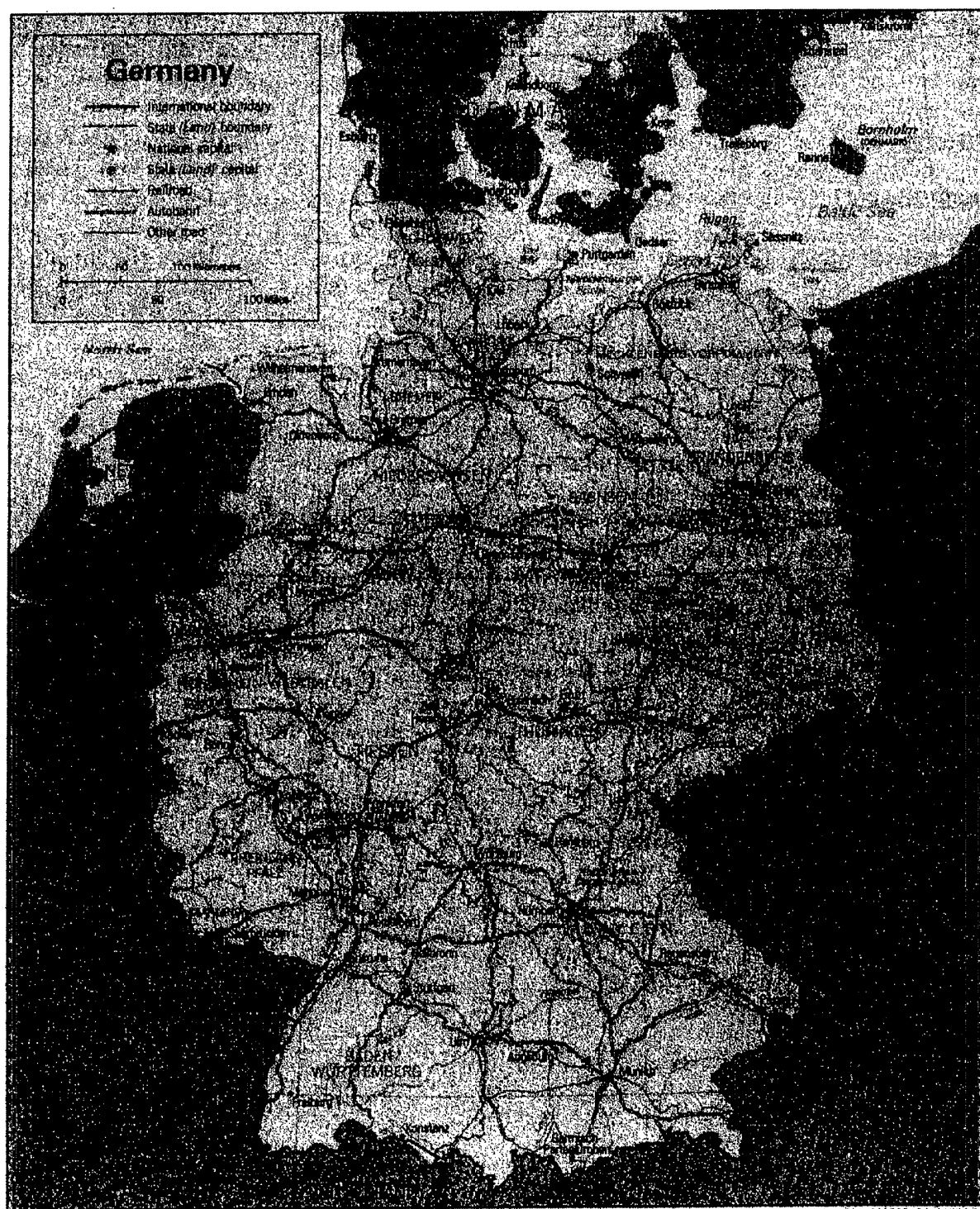
The collapse of communism in 1989 changed the human rights situation in this region dramatically. With improvements in traditional areas of concern, such as political prisoners, religious repression and freedom of movement, these issues ceased to be the primary concerns driving the human rights debate within the CSCE process. At the same time, however, the post-communist era ushered in a new set of human rights dilemmas which had been rigidly contained by totalitarian rule. To a great extent, these problems are related to (re-)emergent nationalist passions and ethnic conflict, but are complicated and exacerbated by a lack of well developed democratic political systems and free market economies.

In addition to an examination of human rights problems, both pre- and post-communism, this series of reports attempts to address new challenges faced by the CSCE community: issues such as removing the injustices communism stamped on societies; establishing processes for free elections, independent judiciaries, and democratic institutions; and resolving the social and political problems which emerge in the process. More egregious abuses, such as the atrocities associated with war crimes and crimes against humanity, are also considered a critical part of the new human rights agenda in the CSCE. Finally, these reports consider the difficulty states face in implementing fundamental CSCE principles, including the equal right of peoples to self-determination, the inviolability of frontiers and the peaceful settlement of disputes, in the unsettled new world order.

In the past few years, the CSCE participating States have placed considerable emphasis on the adoption of new commitments. The many new human rights standards that have been incorporated into CSCE documents are, unquestionably, essential to raise the level of accountability and to help keep the emerging democracies on the paths they have now chosen. At the same time, however, it must not be forgotten that actual implementation of commitments is the bedrock on which the CSCE must ultimately rest. Without implementation in fact, the amassing of new commitments on paper will serve little positive purpose. This series of reports is designed to assess the degree to which implementation has been achieved in the new democracies of East-Central Europe and, by so doing, to measure their true respect for CSCE commitments.

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## INTRODUCTION AND SUMMARY

While this Helsinki Commission report on Germany's implementation of CSCE human dimension commitments forms part of a series reviewing implementation in the formerly communist countries of East-Central Europe, it is necessarily unique and atypical. The Commission's most recent review of human rights implementation, undertaken in 1988, examined the former German Democratic Republic (GDR) -- at that time among the most repressive and ostensibly secure of the communist regimes -- together with the other Warsaw Pact states. This current implementation review, intended to update the scenario in view of the dramatic changes that have occurred in Europe since 1988, will begin with the GDR as a communist state, describe its revolutionary transition to democracy and a market economy, and then examine the situation as it currently exists in the context of a unified Germany. In the process, the report will consider both the particular challenges in the five eastern *Laender*, or states, and the strains of unification felt throughout. It will also consider human dimension issues not directly related to unification -- for example, the debate over the right to asylum and the ongoing, deeply disturbing violence against foreigners.

On the one hand, the post-communist experience of the German Democratic Republic has been utterly singular. While revolutionary leaders in Czechoslovakia, Poland, and Hungary won elections and assumed the reins of power, the most prominent political movement to have emerged from the East German revolution, *Alliance '90*, managed only 3 percent of the vote in the 1990 GDR elections. As East German writer Stefan Heym noted, "Those who wanted a better GDR carried out the revolution, but those who do not want a GDR at all are the ones who won the election." While other countries in the region celebrated independence and a newfound sense of national identity, the GDR bid farewell to existence and was wiped off the map like an unsightly stain.

And yet, the singular experience of East Germany may foreshadow trends for the region as a whole. Being absorbed into Western Europe's economic and political structure was what many of the other East-Central European countries thought they wanted; but the difficulties of adaptation and adjustment that the former East Germany is facing must now give pause to those other countries, as they continue their transition to democracy and a market economy. And contemporary pan-German concerns like the rise of the extremist right, violent intolerance and xenophobia, and the rights of minorities, migrant workers, and refugees, are increasingly European problems: issues that blur the distinction between east and west, much as the wall that once symbolized Europe's division is now merely open and undefined ground.

The human dimension challenges covered by this report, then, fall into two general categories: those connected to the process of de-communization in eastern Germany, and those connected to the process of promoting tolerance and unity, not just among Germans, but toward all persons living within Germany's borders. Clearly both sets of issues are profoundly linked to the ongoing struggle to define status and identity in the vastly changed--and changing--environment that Germany represents today.<sup>1</sup>

## BACKGROUND

On March 18, 1990, in the first completely free elections in post-war East-Central Europe, the citizens of the German Democratic Republic (GDR) cast an unequivocal vote for pluralism and the rule-of-law by electing a new government of pro-democracy reformers, many from former governing parties and some from newly-created opposition parties and movements. The vote also completed the repudiation of the discredited Communist Party (known as the Socialist Unity Party or by its German acronym SED).

The election was also a plebiscite on unification, the issue which came to dominate the campaign in the weeks after the November 9, 1989 breaching of the Berlin Wall at the Brandenburg Gate. The destruction of the quintessential symbol of the division of the two Germanys and Europe itself apparently led many Germans in the East and the West to believe that unity within the near future was indeed possible. Many West German politicians, most notably Chancellor Helmut Kohl, fanned this hope into a fervent desire, so that by March 18, 1990, unification was a certainty and at issue were simply the timing and conditions for achieving it. Indeed, unification or "Kohl-inization" fever conquered almost all of the GDR political spectrum, including the Party of Social Democracy (PDS, the SED's refurbished successor).

The backdrop to the astonishing chain of events unfolding in the GDR during the latter half of 1989 was the relentless hemorrhage of East Germans to the Federal Republic of Germany (FRG). The GDR through 1988 and the first half of 1989 had remained closed and repressive, restricting fundamental freedoms of speech, press, religion, assembly, and travel. Information was controlled and dissent was punished. With the assistance of its feared and pervasive security apparatus, the *Staatssicherheitsdienst*, or Stasi, East German citizens were kept under the State's firm hand and watchful eye.

Beginning in the summer of 1989, however, an alarming situation developed as growing numbers of East Germans staged sit-ins in West German diplomatic missions and embassies in East Berlin, Budapest, Prague and Warsaw. The Hungarian government's decision to open its border with Austria permitted tens of thousands of East Germans to escape to the West, generating a near crisis atmosphere on both sides of the border as leaders realized the potentially destabilizing effect the exodus could have in both countries. Those who left tended to be the young and skilled, the lifeblood of any society. Their mass departure to pursue the better life offered in the West blatantly discredited the GDR's communist system and leadership.

Compounding the impact of the hundreds of thousands of people literally voting with their feet was the sound of the voices raised by those who chose to stay in order to confront the corrupt regime of Erich Honecker. The huge demonstrations in southern industrial centers such as Leipzig, Dresden, and Karl Marx Stadt (now, again, Chemnitz), and the massive rallies in Berlin, especially during the October 1989 visit of Soviet General Secretary Mikhail Gorbachev for the country's 40th anniversary, shook the regime to its very roots.



In the end, the combination of ever-growing dissent at home and the massive emigration of those who refused to wait for change undermined the morally bankrupt SED regime with breathtaking rapidity and seeming inexorability. Gorbachev's role in speeding Honecker's demise cannot be overlooked. His decision to deny support to the hard-line regime of Honecker and to issue some harsh criticism behind-the-scenes gave a green light to would-be reformers in the Party, as it did in several other East-Central European countries as well. Opposition movements, including New Forum and Democracy Now, formed in the fall of 1989 and grew increasingly bold and effective in their demands for change.

Honecker, who had ruled the country since 1971, was forced out in October 1989 and replaced by Egon Krenz. In November 1989, the entire GDR Council of Ministers resigned, calling on the parliament to choose a new government; on November 17, Prime Minister Hans Modrow named a new 28-member cabinet with 11 non-communist members. Also in November, GDR authorities opened the gates of the Berlin Wall, breaching the symbolic divide between East and West. On December 1, 1989, the parliament abolished the constitutional provision granting the SED the leading role in the state, and Krenz resigned two days later along with the Politburo and the Central Committee. On December 7, 1989, roundtable talks between the SED, political parties, and opposition groups began. The participants agreed to hold elections for the national parliament on May 6, 1990. At an emergency SED Congress later that month, the SED changed its name to the Party of Democratic Socialism, and selected Gregor Gysi as its new leader.

Angered by the government's failure to act on its December 1989 promise to dismantle quickly the state security police, hundreds of East Germans stormed Stasi headquarters on January 15, 1990, smashing windows, breaking furniture, and destroying files. One week later, Prime Minister Hans Modrow invited opposition leaders from the nine groups participating in the roundtable to join the government, saying this was the only way he could maintain stability in the country. The opposition agreed in principle to cooperate if an emergency situation in the country warranted such a measure.

On January 29, 1990, opposition groups and the communist-led government agreed to form a new coalition government of "national responsibility," to take office in early February, and to move the GDR's first multi-party national elections forward to March 18, 1990. The law regulating the elections was passed by the GDR parliament on February 20, 1990. It provided for a 400-seat parliament with a 4-year term of office and a system of proportional representation with no minimum required percentage threshold.

Yet while East Germany's path toward free multi-party elections may have resembled that of other countries in revolutionary East-Central Europe, the outcome of those elections and the implications they held for the future were rather distinct. The elections established, for one, the merging of West and East German politics, as West German parties and politicians contributed heavily to the East German campaign. The poor showing of Alliance

'90, a coalition of the left-leaning opposition movements that had driven the revolution, reflected the tension between the revolutionary spirit and courage that had made the elections possible, and the quite ordinary consumerism and thirst for stability that ultimately motivated many who voted. And the electoral success of the Christian Democratic Union, which had campaigned, with significant help from its western counterpart, on a platform of rapid unification, presaged the end of the German Democratic Republic.

*Economic and monetary union* took place on July 1, 1990, with Bonn accepting a one-to-one exchange rate for the East German Ost Mark and the West German Deutsche Mark. Huge transfers of resources from West to East began immediately thereafter, transfers intended to stabilize, subsidize, and reconstruct the moribund eastern economy and infrastructure. All of this paved the way for what Chancellor Kohl dubbed a "day of joy": on August 23, 1990, the East German legislature formally voted to dissolve their country and join West Germany.

The United States, Great Britain, France, and West Germany had agreed in Ottawa on February 12, 1990, that the two Germanys should first decide on the process of unification, and then the four victorious World War II powers would discuss with German representatives the unified state's relations with Europe. The Soviet Union also consented to this "2 + 4" arrangement. With the strong support of the United States, unification, following the completion of the "2 + 4" negotiations, took place on October 3, 1990, with the first all-German elections scheduled for December 2, 1990.

Unification occurred more rapidly than many, even the most enthusiastic Germans, may have been prepared for. Chancellor Kohl, who had spurred the process with his promises that no one would be worse off as a result, soon found himself under fire from both East and West as the very real political, economic, and, perhaps most pernicious, social costs began to sink in.

East Germany brought almost nothing from its system into the new union, accepting instead virtually every aspect of West Germany's constitutional and legal framework. Suddenly, easterners found themselves relegated uneasily to the sidelines as westerners came to occupy leadership positions in public administration, universities, and other civic institutions, as well as to make rapid inroads into the eastern German market. Dieter Dettke of the Friedrich Ebert Foundation had warned at a Helsinki Commission hearing in April 1990,

Unification is bound to make the values, life styles, and work habits of the Federal Republic of Germany prevail. There are not many GDR achievements worth standing up for in the unification process. It is a psychological problem for the GDR population to deal with a situation of temporary inferiority. It calls for a lot of understanding on the part of West Germany -- business, government, and others, the media for instance -- to strike the proper balance.

Unfortunately, the bitter pejoratives that began to creep into German discourse -- *Jammerossi*, meaning whining easterner, and *Besserwessi*, meaning know-it-all westerner -- quickly made plain that the balance was hard to achieve.

In fact, over time, some eastern Germans began to wonder whether their hasty rejection of 40 years of East German tradition and structure had been wise. Already in mid-1990, a newly-elected trade union secretary at the second largest heavy machinery plant in the former GDR told author Dirk Philipsen,

I think we need to look out for ourselves. In fact, we should have done that all along. You see, in the opinion of West Germans pretty much everything we've done, everything we've had here, was somehow wrong, or at least deficient. In their eyes we are basically all failures, whether it was our fault or not. I don't think that's correct, and I certainly don't think it's fair. I am not going to let them steal my whole past, and I don't want to be a second-class citizen for the rest of my life.<sup>2</sup>

Compounding the challenge of fitting in to the modern capitalist society the former East Germans had accepted was the burden of confronting the legacy of the communist regime they had left behind. The six million files the repressive Stasi had compiled through its surveillance and harassment of East German citizens hung over society like an angry cloud. Everyone knew the Stasi had maintained an active presence, but most did not fathom how far its tentacles had reached. Opening the Stasi files promised to be painful, yet some argued that society could only move forward by coming to terms with its past. The parliament, which debated the issue following German unification, ultimately decided in favor of controlled disclosure of the files. The divisive revelations they contained have provided one more element of the tremendous psychological burden eastern Germans have had to bear in the years since 1989.

The West, too, was unprepared for the strains that unification brought in tow. By the fall of 1992, Chancellor Kohl was admitting serious errors in his policy and seeking approval for a range of measures including tax increases, spending cuts, and wage restraints to finance the now patently immense cost of rebuilding the eastern part of the country. As Marian Gibbon, a Bosch Fellow who lived and worked in both western and eastern Germany in 1992, concluded,

Promised that unification would simply be a matter of tearing down barbed wire and signing several treaties, western Germans were not prepared for the reality of raised taxes, rising inflation, slowed economic growth and a government preoccupied by matters in the east. Nor were they prepared for Stasi files, neo-Nazi youth, tattered buildings and Trabants. All factors have destroyed the easy sense of order to which western Germans had become accustomed and have even woken ghosts of post-War ruins, Nazi past and collaboration with reprehensible government regimes. Westerners had finally

reached a point in the late 1970s when these ghosts were truly being laid to rest. Given the years of work that they put into rebuilding, both economically and socially, it is no wonder that they would rather not go through this process again.<sup>3</sup>

Thus Germany, which in the hazy euphoria of 1990 had seemed poised on the verge of a glorious and harmonious future, was by 1992 in a serious funk. Both domestically and in its relations with the rest of the world, unified Germany had lost the sure footing to which West Germany had grown accustomed.

Politically, changing voting patterns indicated the dissatisfaction many Germans felt for their elected officials. In April 1991, Chancellor Kohl's CDU was swept out of office in his home state, Rhineland-Palatinate, for the first time since the establishment of the FRG. In regional elections in 1992, far-right parties were able to make gains in Baden-Wuerttemberg and Schleswig-Holstein; not only did their party platforms appeal to racial prejudices, but also to westerners' frustrations with the perceived prominence of the east in national policy priorities. Easterners, meanwhile, were growing increasingly cynical about a system they felt scorned and patronized them, rather than serving their interests. A series of political scandals that rocked the Kohl government in 1992-93 have forced the resignation of several prominent officials and underscored the unsteady position of the German leadership.

In foreign policy, united Germany has found itself a reluctant varsity player, trying to salvage European Community (EC) unity while privately blamed by many for rushing the EC into recognizing Croatia and Slovenia and thus precipitating the Yugoslav crisis; anxious to prevent further bloodshed in the former Yugoslavia while tortured about the prospect of lending German troops to United Nations efforts; hosting hundreds of thousands of refugees and asylum seekers, while grappling with a terrifying and persistent show of violence and hostility against them.

Indeed, the question of violence against refugees, asylum seekers, people of Turkish origin, members of the Jewish community, and others perceived as different or foreign has become perhaps the single greatest crisis the government has faced since unification. Refugee hostels besieged by thugs while local residents stand by or even cheer; long-term Turkish residents and their families dying in firebombings; young men with shaved heads, hands raised in Nazi salutes, faces contorted with hatred; these, to the shock and dismay of many, are among the images associated with Germany in the 1990's.

As the number of violent incidents in 1991 and 1992 spiralled into the thousands, the lackluster response of the German authorities prompted concern from human rights organizations and angry criticism from the far left, whose representatives recalled the forceful reaction to left-wing terrorism in earlier years. German leaders repeatedly focused on Germany's liberal asylum policy as the root of the problem, a focus that was echoed in some corners of the press. While it was certainly true that Germany's asylum policy had

contributed to the country's disproportionate share of refugees, Germany's lack of an immigration law and its tortuous citizenship procedures for non-Germans contributed to the aura of "other-ness" that made not only refugees but also long-established communities of legally resident foreigners easy targets. Distinct from the asylum issue lay an undercurrent of xenophobic intolerance that motivated anti-foreigner crimes, or sympathy for them. Leadership in devising a policy response to this aspect of the problem has been lacking.

After the November 1992 firebombing in Moelln, in which three long-term Turkish residents of Germany died, Chancellor Kohl took firmer action against the violence, including restricting certain civil and political rights by banning a number of neo-Nazi organizations, arresting some of their leaders, and prohibiting certain salutes, insignia, and rock lyrics. Most dramatic, however, was the impressive response against violence and racism that rose from the German public: hundreds of thousands of private citizens took peacefully to the streets, expressing solidarity with the refugees, migrants, and asylum-seekers, and rejecting the appeals of the far right. Yet despite these developments, the attacks have continued almost unabated, and the Bundestag's May 1993 passage of newly restrictive asylum regulations was immediately followed by a second fatal firebombing, this time in the western town of Solingen, and several days of riots and clashes between angry Turkish residents and the police.

Moreover, the asylum issue is only one detail in the broader picture of Germany's attitude toward foreigners. Of the 6.5 million foreigners currently living in Germany, many are migrant laborers from Turkey, Greece, Italy, and elsewhere, actively recruited by West Germany in the 1960s. While German officials have repeatedly stated that densely populated Germany is not an "immigration nation," the reality is that many foreigners who came to Germany as "guestworkers" decades ago have settled for long periods of time or even permanently, paying taxes to the German state, contributing wealth and labor to the German economy, and educating their children through the German school system. As debates continue on how best to integrate newcomers into German society, prominent spokespersons, including President Richard von Weisaecker and the Head of Germany's Foreigners' Office, Cornelia Schmalz-Jacobsen, have suggested that it is time to reconsider what it means -- and takes -- to be German.

The way Germany chooses to deal with all of these questions -- extremist parties, violence against foreigners, inter-ethnic intolerance, citizenship -- will be carefully scrutinized by other countries in the region, many of whom, as fledgling democracies, are searching for models to follow. Our own country continues to struggle with the complexities that multi-racial, multi-cultural societies present, as events in Los Angeles in 1992 painfully illustrated. Clearly, combating racial, ethnic, and religious intolerance requires constant vigilance and effort. The ability of Germany, the United States, and other established democracies to respond effectively to these kinds of problems will not only test our own societies, but will bear directly on our ability to help emerging democracies and newly independent states confront their own particular challenges.

## THE GDR: 1988-89

### Respect for Human Rights and Fundamental Freedoms

*The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.*

*Principle VII, Helsinki Final Act, 1975*

During the period between the Commission's last human rights implementation review (December 1988) and the revolutionary autumn of 1989, the German Democratic Republic's record remained poor. The state security police, the Stasi, maintained a pervasive and intrusive grip on society, tapping phones, opening mail, and interrogating or detaining individuals on dubious grounds. Western officials and non-governmental organizations estimated that more than 1,000 GDR citizens were in jail on political grounds in 1988-89, despite a 1987 amnesty. Freedom of movement was strictly limited -- indeed, there was an increase in shooting incidents of would-be refugees at the Berlin Wall in early 1989 -- and visitor controls were enforced. Freedom of assembly was equally circumscribed. Freedom of speech was sharply restrained, and public dissent could be punished with imprisonment. The only institutional forum where dissent could be expressed was the Lutheran Church, though it too was at times subject to state censorship.

The GDR government attempted to maintain control of most information within its borders. Print was carefully regulated, and GDR broadcasting stations were state-owned, as were almost all printing and reproduction facilities. The media's prime responsibility was to promote the government and its values, and to denigrate the political, social and economic structures of the West.

The rule of law was not upheld. Persons could be arrested without warrants and held in continued detention without judicial review. According to the U.S. State Department, in most political cases, it took weeks before interested parties were informed of an individual's arrest, and contacts between a defense attorney and his or her client could be monitored and restricted by the prosecutor.

A law passed in December 1988, which took effect on July 1, 1989, gave GDR citizens their first, albeit limited, right to challenge administrative decisions affecting them in civil areas such as travel, emigration, property rights, and applications for building permits or businesses. There was also, over the course of 1988-89, a slight loosening of restrictions in certain cultural areas, including the appearance of previously banned books by GDR authors and the staging of plays with political overtones critical of the socialist system.

## On the Road to Revolution

Despite some limited relaxation of government restrictions, human rights and fundamental freedoms were far from guaranteed for the average East German in 1988-89. Over the course of 1989, however, bolstered by the changes taking place around them, from the opening of the border between Hungary and Austria to the election of Solidarity candidate Tadeusz Mazowiecki in Poland, East German opposition activists, Party reformers, and ordinary citizens grew increasingly emboldened to pressure for change -- or to flee.

The GDR authorities initially reacted to these manifestations with belligerence, brutally suppressing demonstrations or arresting demonstration participants, branding the incipient opposition movement New Forum as "hostile to the state," denying it recognition, and limiting travel to Czechoslovakia in an effort to curb emigration. Despite these repressive measures, the revolutionary tide proved impossible to stem. The demonstrations swelled in frequency and size, the number of opposition movements proliferated while membership in the SED shrank, and the ranks of East Germans who had escaped to the West reached well into the tens of thousands.

Erich Honecker's forced resignation in October 1989 and the opening of the Berlin Wall in November inaugurated the swift and sweeping changes that characterized the heady period prior to the March 1990 elections and ultimately German unification. The desperate concessions offered by the discredited SED, including the creation of a supreme court, the dismantling of party privileges, and relaxed travel restrictions, proved totally insufficient; by the end of November 1989, the entire GDR Council of Ministers had resigned and Prime Minister Hans Modrow had named a new 28-member cabinet with 11 non-communist members. On December 1, 1989, the parliament abolished the constitutional provision granting the SED the leading role in the state, and Honecker's successor Egon Krenz resigned two days later along with the Politburo and the Central Committee.

Roundtable talks between the SED, political parties, and opposition groups began on December 7, 1989. On February 5, 1990, opposition groups and the communist-led government formed a new coalition government of "national responsibility" and decided to move the GDR's first multi-party national elections forward to March 18, 1990. The law regulating the elections was passed by the GDR parliament on February 20, 1990. It provided for a 400-seat parliament with a 4-year term of office and a system of proportional representation with no minimum required percentage threshold. The March 18, 1990, elections, which boasted 93 percent voter participation, resulted in a strong win for the Christian Democratic Union and a guarantee of speedy unification.

## DE-COMMUNIZATION

### Righting the Wrongs of the Past

*[The participating States] are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.*

*Copenhagen Concluding Document, 1990*

*Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligations of public authorities to comply with the law and justice administered impartially. No one will be above the law.*

*Charter of Paris, 1990*

Coupled with the relief of casting away the shackles of communism comes the burden of reckoning with its enforcers, rehabilitating its victims, and restituting the wealth it has wrongfully appropriated. East-Central European countries have dealt with these shared issues variously, and with both mixed intent and result. On the question of secret police files, for example, Germany has adopted a liberal policy that allows each individual to view his or her own file. Romania, on the other hand, has placed the files under lock and key for 40 years. Some of the countries have considered or attempted banning the Communist Party; others have enacted legislation, such as the Czech Republic's *lustrace* law, which aims to screen out former party elites from public positions.

Whatever course a country decides to follow, be it one that seeks to punish, or one that seems to forgive, its compliance with the human rights and rule of law standards reflected in CSCE documents remains important. The highly emotional, and often painful, experience of confronting past tormentors, aggressors, or one's own complicity, however, necessarily renders the process of assessing guilt and responsibility a tricky one. Germany, having already dealt with one totalitarian legacy, entered the process with unique perspective -- and ambivalence.

The two German states had dealt completely differently with the Nazi past which led to the division of their country. The Federal Republic of Germany, allied with the west, officially accepted responsibility for its common German past. Its multiparty, democratic government paid reparations to individual Holocaust victims and to Jewish organizations. In time, relations were established with Israel. The GDR, on the other hand, claimed that because communists themselves opposed and were persecuted by the Nazis, their country was not a successor of the Third Reich, and none of its citizens, let alone the government, bore any historical responsibility whatsoever. Claiming to have purged all former Nazis, it



maintained that anti-Semitism, by definition, could not exist in Socialist society (though simultaneously it disseminated anti-Israel rhetoric and supported a variety of terrorist activities). The GDR paid no reparations for Nazi crimes, and only in the last few years of its existence, when trying to gain favor in the United States, did it begin to change its approach -- a process that was still underway when it collapsed.

Now that Germany is reunited, these widely disparate self-views, with supporters and opponents of previous policies in both parts of the country, complicate the struggle to define the accepted principles of tolerance, individual rights, and responsibility in society. They also make assessing the GDR past, prosecutions for human rights violations, dealing with Stasi files, reparations issues, asylum legislation and immigration policy, more complicated. And if de-communization in most East-Central European countries has been the domain of home-grown democratic forces confronting their former oppressors, in Germany, to some degree, it is West Germany putting the East on trial -- West German laws, West German courts, West German standards, East German defendants. Not surprisingly, some eastern Germans find the process unsatisfying, all the more so as the system has largely failed to prosecute the leaders of the corrupt and immoral East German regime.

Moreover, as the courts and as society struggle to assess the complicity and guilt of East Germans who cooperated with the communist regime, uncomfortable questions have been raised regarding the role of the West German government during the period of detente. GDR President Erich Honecker had been warmly received by Chancellor Kohl in 1987, at a time when the repressive policies of the East German regime were clearly known; one could argue that the policies of detente led West German authorities to work with their East German counterparts in the same pragmatic way that the average East German had worked with the Stasi or the Communist Party. Can one make a moral distinction between the calculated, political actions of the West German authorities, and those of the ordinary East German who wanted his or her children to have a decent future? These kinds of ambiguities make the delivery of justice, and the respect for the rule of law, a terribly complicated endeavor.

### **Secret Police Files**

The dismantling of the dreaded state security police, the Stasi, was one of the primary goals of the opposition movement in East Germany. In the period following the collapse of the Honecker regime, grassroots movements sprang up across the country to prevent the Stasi's voluminous files from being altered or destroyed while a national committee was formed to deal with the issue on a broader scale. The files filled 125 miles of shelves, chronicling in elaborate detail the activities of some six million East German citizens. They promised to reveal countless painful stories of betrayal, and threatened in so doing to weaken the fabric of an already traumatized society. In fact, during the brief tenure of East Germany's only freely-elected government, exposure of secrets contained in the Stasi files ravaged the careers of several prominent East German officials, including, ironically, a number of senior Interior Ministry officials who had been charged with dismantling the

organization. Equally stunning was the revelation that Lothar de Maiziere, East Germany's first and last non-communist Prime Minister, had been a Stasi informer from 1981-89. Following unification, the question of what to do with the files and the incriminating information they contained was prominent on the agenda.

On November 15, 1991, the united, federal German parliament approved a law permitting citizens to see their files. As Hans Joachim Gauck, the Protestant clergyman and activist who became custodian of the Stasi archive, explained,

If Parliament had rejected the law granting people access to their files, I would have left this job . . . That would have been a way of telling people from eastern Germany that we were too immature to handle these truths, that the Government would make this decision for us. That is not the right message to give people who are getting their first taste of democracy after living under dictatorship continuously since 1933.<sup>4</sup>

The law stipulated, however, that journalists could be penalized for using information from the files they received from unofficial sources. Representatives of the German media protested this move, claiming the restrictions were unconstitutional. On the one side, government authorities alleged that the Stasi files were by definition unreliable, and that the government was obliged to protect citizens from the personal and professional devastation that could result from publication of false information. On the other, spokespersons like Ingrid Koeppel, an eastern German activist, maintained that only through full public access could Germany "work through its past."<sup>5</sup>

Mr. Gauck's Berlin-based federal agency and its 14 regional offices across the former East Germany began accepting applications from Germans who wished to see their Stasi files on January 2, 1992, the day the relevant law took effect. The law also empowered government agencies to request background checks on their employees. According to a New York Times article written one year later, "These checks have resulted in the dismissal of thousands of judges, police officers, schoolteachers and other public employees in eastern Germany who once informed for the Stasi."<sup>6</sup>

Beyond these purges, however, there are few policy measures the government has pursued to deal with past Stasi abuses. The legal system is unable to provide remedies to victims of Stasi activities; as scholar Thomas R. Rochon has pointed out, "A firm legal basis for prosecuting Stasi activities has also been hard to find. Unlike the genocidal policies of the Nazi regime, the claim cannot be made that telling the secret police about the activities of a friend, neighbor, or colleague is a violation of international law." West German law made it punishable for East German agents to spy on West or East German citizens, but the five-year West German statute of limitations renders prosecution under these terms near impossible. As a consequence, the government has been obliged to prosecute officials of the former regime for transgressions of East German law, rather than questioning the morality of those laws in the first place.<sup>7</sup>

It cannot be denied that the opening of the Stasi files has had deep and agonizing effects on eastern German society. From well-respected dissident Vera Wollenberger, who learned with horror that her own husband had betrayed her, to Gerhard Riege, a member of the Bonn parliament who hanged himself after it was reported that he had been a Stasi informer, countless lives have been profoundly affected. Some eastern Germans bitterly allege that they have become victims of a zealous western German witch-hunt, masquerading as healthy self-purification, whose ultimate intent is to promote feelings of inadequacy and mistrust among eastern Germans and to remove them from positions of power and authority.

A high-profile example that helps to explain such feelings is the case of Manfred Stolpe, member of the Social Democrats (SPD) and Minister-President of the state of Brandenburg. Stolpe, the only easterner and only SPD member to be elected as minister-president of one of the five new *Laender*, was perhaps the most promising individual to emerge in eastern public life after unification. A senior lay official in the Protestant Church in the former GDR, he had helped gain the release of many individuals from prison and had actively assisted many East German citizens to leave the country. These opposition credentials were tarnished, however, when Stolpe confessed in January 1992 to several decades of regular and extensive contacts with the Stasi -- though he claimed he had never been an informer. Despite support from fellow church officials and most of the political spectrum in the former GDR, he was immediately condemned by the Christian Social Union, and later the Green Party, a partner in his own governing coalition, which called for his resignation.

In April 1992, the Gauck commission produced a report which concluded that Stolpe had been an important Stasi informer on the church for many years. A special commission in the state legislature in Brandenburg was established to investigate the allegations. Through the storm, Stolpe has tenaciously clung to his post, maintaining that one had to work with the Stasi in order to work against them, and that those who did not live under the East German system can not properly understand the compromises it demanded. According to press reports, polls show that he is still admired by his constituents and that he is likely to win re-election next year.

While the Stasi files have largely been viewed as an eastern albatross, recent revelations have made life uncomfortable for western politicians and public figures as well. In July 1993, Bernd Schmidbauer, coordinator of intelligence agencies for Chancellor Kohl, announced that a list was going to be handed over to prosecutors containing the names of some 2,000 western Germans alleged to have spied for the Stasi. With important elections just around the corner, accusations have flown that the files are being leaked to the press for political purposes. Chancellor Kohl, however, has denied this charge, issuing a statement that any Stasi material containing allegations about West Germans who spied for the GDR will be "dealt with solely in accordance with the law."<sup>8</sup>

Cases like these, with their manifold ambiguities, may have contributed to the results of a recent poll, which indicated that two-thirds of Germans, including 65 percent of eastern

Germans, support the idea of an amnesty for Stasi informers.<sup>9</sup> And yet, closing the files, or providing a blanket amnesty, may ultimately prove unsatisfying for a population which suffered at the hands of the secret police and its lackeys for so many years. The true delivery of justice, in this context, is elusive.

### **Trials of Communism: Erich Honecker vs. Berlin Border Guards**

Indeed, important attempts to deliver justice have been stymied or suspended more than once. In March 1991, to the surprise and fury of many, former President Erich Honecker escaped to the then-Soviet Union -- ignoring a warrant for his arrest on charges of ordering border guards to shoot East Germans trying to escape to the West. After a long and complicated set of negotiations among the Germans, the Russians, and the Chileans (in whose Moscow Embassy Honecker had eventually sought refuge), Honecker was brought back to Germany for trial in July 1992.

Meanwhile, a related set of prosecutions had been undertaken at the other end of the chain of command. In June 1991, four former East German border guards were arrested in the shooting of the last East Germans who tried to flee before the Berlin Wall collapsed. The trial awakened painful memories of the period after World War II, when the issue of responsibility for following the orders of an immoral regime was equally pertinent. It also aroused passionate arguments on both sides, from those who believed that the state had an obligation to hold East German criminals responsible, no matter where they fell in the hierarchy, to those who suspected the government was trying to make scapegoats out of "the little people because it is incapable of punishing the big guys."<sup>10</sup>

On January 20, 1992, Judge Theodor Seidel pronounced 27-year old former border guard Ingo Heinrich guilty of manslaughter and sentenced him to three and a half years in prison. Andreas Kuhnpast, also 27, was given a two year suspended sentence for attempted manslaughter, while two other defendants were acquitted. The ruling set a major precedent, as it established for the first time that West German criminal law and basic human rights norms and standards could be applied to events that took place under East German law. At the time of the conviction, press reports indicated that prosecutors were preparing charges against more than 300 other guards.

Erich Honecker's forced return to Germany in July 1992 reactivated his own prosecution, on 49 counts of manslaughter and 25 counts of attempted manslaughter related to the deaths of East Germans who were trying to flee to the West. Berlin authorities based the charges on three grounds: that Mr. Honecker had exceeded his powers under East German law; that he broke international laws, including the U.N. Convention on civil rights; and that he violated basic human rights. His trial, along with five other high-ranking Communist Party officials (Willi Stoph, 78, former Prime Minister; Erich Mielke, 74, longtime chief of the Stasi; Heinz Kessler, 72, a former Defense Minister; Fritz Streletz, 66, Kessler's former deputy; Hans Albrecht, 72, Communist Party chief in a border district where several would-be refugees were killed) was set to begin in the fall.

The legal, political, and moral complexities, however, were apparent. First of all, Honecker and his cohorts could not be punished for the manifold injustices that characterized East German society, but only for individual violations of the law. Despite the charges against him, there was no hard evidence to prove that Honecker had issued a shoot-to-kill order along the border. Second was the question of legal frameworks. According to the German Unification Treaty, criminal offenses committed in the GDR could only be prosecuted if they were also punishable under GDR law. In its conviction of the border guards, Judge Seidel had ruled -- and the Supreme Court later upheld -- that the deadly use of firearms by the border guards contravened the universal human right to life and freedom of movement and was therefore illegal, even under GDR law. The same legal bridge needed to be established for the Honecker trial. Also complicating the process was the memory, played up in the press, of Honecker being received with honors in 1987 by the same authorities that now sought to brand him a murderer. Given these factors, some wondered whether the trial was merely a sop for the public's desire for revenge.

The trial opened on November 12, 1992, with the six former officials specifically charged in the deaths of 13 East Germans killed as they tried to escape to West Germany. It had to be immediately postponed, however, due to the absence of defendant Willi Stoph, who had suffered a heart attack. At the end of the second session, Mr. Honecker, himself terminally ill with cancer, reported weakness and had to be taken to a hospital. The judge eventually decided to drop both Mr. Stoph and Mr. Mielke, who had cardiac ailments, from the trial. By January 1993, it appeared that Mr. Honecker too would be relieved from the trial, and on January 12, the Berlin Constitutional Court dropped the manslaughter charges and lifted the arrest order, paving the way for Mr. Honecker to spend the end of his life with his wife and daughter in Chile. Thus what might have been Germany's most significant court case since the Nuremberg trials was concluded prematurely and without resolution.

Mr. Honecker's release drew mixed reaction from Germans and the international community alike. According to one media report, polls taken in eastern Germany indicated that by January 1993, 39 percent of eastern Germans opposed the Honecker trial, and nearly two-thirds thought it had become a "show trial."<sup>11</sup> But others undoubtedly shared the view of The Washington Post, which noted in a January 18, 1993, editorial:

People seek understanding of the upheavals in their lives and, perhaps, validation for some part of their sufferings. Excessive attention to historical symbolism that results in unfairness to the individual on trial is, of course, the definition of a show trial -- an unquestioned abuse. The freeing of Mr. Honecker suggests the opposite mistake, a blindness to the demands of justice in the individual as well as the historical sense. Mr. Honecker not only caused people to be shot at the Berlin Wall but caused that wall to be built. He shaped and ran the country from which so many people were moved to escape. With his release and the permission granted him to leave Germany in comfort, the message is now sadly jumbled. . . The awkward impression lingers that for the German -- still primarily West German -- court, sensitivity

to the human rights of the defendants is most acute for those at the top of the pyramid.<sup>12</sup>

Erich Mielke's trial is still underway, though not for crimes committed as head of the Stasi, but rather for the killing of two policemen in 1931. Heinz Kessler and two of his colleagues from the GDR Defense Council are still being tried for their role in the murders of would-be refugees fleeing East Germany, and have requested that Honecker be returned to Berlin to testify, though Honecker's lawyer has reported that Honecker is too ill to comply.

### Restitution of Property

*[The participating States] will endeavor to achieve or maintain . . . the right to prompt, just and effective compensation in the event private property is taken for public use.*

*Bonn Concluding Document, 1990*

One of the most contentious issues in east-west German relations since 1989 has been compensation for property confiscated under the totalitarian regime. Before the deadline closed on December 31, 1992, hundreds of thousands of claims for property lost before 1945 or after 1949 had been filed with the central land registry, each one requiring weeks or months to process. Working through the tremendous backlog has been delayed still further by a fire at the registry in April 1993, which is estimated to have destroyed thousands of pre-war records.

The German unification treaty specifies that property claims in the east are to be resolved under the principle "return instead of compensation." This principle does not apply to commercial properties, whose former owners can claim only monetary compensation, but rather to former homeowners. This has meant, in effect, that eastern German residents of single-family houses have themselves borne much of the cost of compensation -- suddenly threatened with eviction as former homeowners and their descendants file claims for the return of their property.

The social downside of the "return instead of compensation" principle was tragically brought to light in the spring of 1992, when two eastern Germans whose homes had been reclaimed hung themselves in desperation and protest. Critics allege that the restitution of property seized by the post-war communist dictatorship is not uniformly justified, and that the claimants in many cases are descendants of the original owners and have never actually lived in the properties in question. Press reports suggest that the intent of such claimants is often to renovate and resell the houses, rather than to live in them.

Issues of property restitution are additionally complicated by a series of claims in the former GDR and East Berlin for Jewish property which was confiscated by the Nazis. In the decade before the collapse of the GDR, the U.S. government had been pressing the

issue of Jewish claims in parallel with claims for American property in Germany at the end of World War II.

Many of the American claims go back well before the war. The GDR position, however, was to deny that it was a successor state to the Nazi regime, and therefore to resist accepting any responsibility for these claims until it became clear that the only chance for receiving Most-Favored-Nation trade status and access to American markets -- perceived by the Honecker regime as the only hope for the disintegrating GDR economy -- was politically dependent on resolving both sets of claims.

In the "2 + 4" talks that restored German sovereignty, the United States insisted that remaining Jewish claims against the GDR be treated in unified Germany according to the practice of the Federal Republic. That principle was incorporated into the treaty language. Those claims, therefore, are different from claims against property seized by the Soviets during and after the war, and seizures by the GDR regime.

Many cases of compensation and restitution, which have hindered business development and property sales in East Berlin, and have actually forced people from their residences, are linked to the Nazi past as well as to the GDR past. In an atmosphere of tension and east-west difference within Germany, these issues inflame the situation. They are presently the subject of proposed legislation in the *Bundestag*, which promises to be controversial.

The delay in resolving ownership questions has placed not only a psychological burden on eastern Germans, who fear loss of their homes, but also a drag on investment and development in the east. Privatization was so hampered by competing claims on ownership that a new law was passed in early 1992 allowing investors to take precedence over the claims of former owners if they could prove that they would secure or create jobs or improve competitiveness better than the former owner. A newspaper report in March 1992 noted:

No one has investigated precisely just how much money is being blocked in the new *Laender* through restitution claims. Rough estimates suggest DM100bn, excluding follow-up investment. That is not unrealistic. There are more than 40,000 homes in Berlin-Mitte which are being claimed by previous owners. The Jewish Claims Conference against Germany has laid claim to 3,000 plots in prime locations. There are more than 96,000 applications for the return of real estate lodged with the Berlin office for the regulation of property ownership open to doubt. Only 1,700 cases have been cleared up. Berlin's Finance Senator, Elmar Pieroth, makes no secret of his displeasure. He said that "a half of Berlin was involved."<sup>13</sup>

## **ADJUSTING TO DEMOCRACY**

### **Screening the Civil Service<sup>14</sup>**

The unification treaty established the legal employment relationship between the Federal Republic of Germany and civil servants of the former GDR, including provisions by which former GDR civil servants could be deemed unfit for employment by the unified German civil service. Based on these regulations, a system of review was established in each of the states of the former GDR. Extensive questionnaires were prepared to obtain information about civil servants, including employment history, political memberships and positions, Stasi-related activities, and personal information. All civil servants were required to complete a questionnaire. The questionnaires were submitted to local personnel review commissions, which in some cases, conducted a private "hearing" of the person under review. After the hearing, the commission usually made a recommendation to the appropriate ministry and then informed the candidate of the decision.

Helsinki Watch, which monitored the de-communization process in Germany in 1992, concluded that the process of reviewing the political and professional integrity of civil servants often surpassed the bounds of what could be considered proper inquiry. The Human Rights Watch World Report for 1993 noted:

Many employees have been dismissed without ever having been accused of any specific misconduct. Instead, most have been found unsuitable for continued employment in the civil service simply because they held political party or government positions under the previous system. No serious effort has been made to provide evidence that an individual carried out his or her duties in a manner that was repressive, unethical or criminal in nature. Instead, the assumption has been made that any employee who held his position over an extended period of time must have satisfied Party dictates and these dictates were inherently abusive.<sup>15</sup>

While the desire to cleanse or purify the civil service is understandable, an overzealous approach may prove less than democratic. Large-scale dismissals perceived to be based solely on political affiliation may have a chilling effect on freedom of speech or association, especially among a population accustomed to repression of dissent.

### **Establishing an Independent Judiciary**

East Germany acquired a democratic judicial framework overnight by acceding to West Germany and adopting its legal system. This has meant, however, that eastern German judges and lawyers have had to learn an entirely new criminal code, as well as a new set of laws, legal ethics, and standards. Some 50 percent of the eastern German judiciary has been pushed into early retirement, many because of links to the Stasi; others



have had to undergo substantial retraining. This has left many gaps in the judicial structure of eastern Germany, which have been filled by western substitutes.

The relationship between the western and eastern judges is understandably tense. Both sides are aware of the teacher-student relationship, an inequality compounded by the fact that the western judges, like all civil servants, are better paid. While these problems are presumably transitional, they reflect the general difficulties of unification. In addition, as scholar Thomas R. Rochon writes:

[The training of new judges] has created widespread suspicions about the quality of justice. In the new states, it is reported that many people do not want their cases heard by a judge who served in the GDR, because the holdover judiciary is viewed as biased and incompetent. Sending judges to the new states has also created a shortage of personnel in the old territory of the Federal Republic.<sup>16</sup>

## Women

*The participating States recognize that full and true equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law. They recognize that the full development of society and the welfare of all its members require equal opportunity for full and equal participation of men and women. In this context they will . . .*

*-- encourage measures effectively to ensure full economic opportunity for women, including non-discriminatory employment policies and practices, equal access to education and training, and measures to facilitate combining employment with family responsibilities for female and male workers; and will seek to ensure that any structural adjustment policies or programmes do not have an adversely discriminatory effect on women.*

*Moscow Concluding Document, 1991*

Among the most deeply affected by communism's collapse and the process of German unification have been east German women. These women, 80-90 percent of whom worked outside the home in the former East Germany, now make up nearly two-thirds of that region's unemployed, and are twice as likely to lose their jobs as men.<sup>17</sup> The closing of state-run kindergartens, day care centers and youth clubs, combined with the loss of generous maternity and sick leave policies and state subsidies for single parents, has also increased the pressures on women -- especially at a time of tremendous economic dislocation and uncertainty. As one German psychologist noted, "The self-image of [East German] women has totally changed . . . Their whole system of values has vanished -- the security they had is gone."<sup>18</sup>

In 1992, reports began to surface that some eastern German employers were demanding sterilization from female employees. While these allegations were not verified,

medical professionals and women's counselors did confirm that an increasing number of eastern German women were opting for sterilization -- probably as a result of the losses in services and protections described above. The battle over the abortion law, one of the few pieces of the East German system that had been carried into the unified Germany, reflected the difficulties and high emotions involved in reconciling the two traditions.

West Germany had long been regulated by one of Europe's most restrictive abortion laws, which allowed first trimester abortions only with physicians' approval. East Germany, on the other hand, had provided state-funded first trimester abortion on demand since 1972. In June 1992, the German parliament adopted a compromise law for the unified country, permitting first trimester abortions if the woman declared that she was in a state of distress and went through official counseling, and later abortions only with certification from a physician that continuing the pregnancy posed a threat to the mother's life, or that the unborn child had serious medical problems.

On May 28, 1993, however, the Federal Constitutional Court determined that the compromise measure had violated a constitutional guarantee protecting a fetus's life. Until the parliament can draft a new law, the court has ruled that most abortions are illegal, but that no punishment will be imposed on a woman who has a first trimester abortion, provided she attends counseling designed to persuade her to bear the child. Women's advocates from both east and west have decried the decision as a tremendous setback for German women. One newspaper commented, "Twenty years of abortion on demand within the first trimester in eastern Germany were wiped away without much ado. The item in the unification treaty that served as a sign of hope for women in the East as well as the West, that is the adaptation of the abortion law to a social and political reality, was decided in one stroke of a pen. What resulted was the reduction of women to a birthing vessel; third persons are to decide on her well-being and suffering, are to decree yes and no on life."<sup>19</sup>

With regard to educational and employment opportunities in general, the U.S. State Department's Human Rights Report for 1993 noted that young women throughout Germany experience difficulty in gaining access to training in some traditionally male fields, and that salaries for women in the private sector tend to be lower than salaries for men in similar jobs. It also noted, however, that the government was taking steps to draw attention to and remedy these inequities. In fact, the unification process may have had a positive influence in some of these areas. In January 1992, for example, the Federal Constitutional Court struck down a ruling dating back to 1949 that prohibited night work for women. The lack of similar legislation in the former East Germany may have influenced the timing of the decision.

## Elections

CSCE commitments with regard to elections refer to the standards required for a free and fair contest. The East German elections of March 18, 1990, were judged to have met those standards. It is interesting to note, however, that one of the few issues which tested

the definition of a free, multi-party election -- the Electoral Commission's decision to ban the far-right West German Republican Party from running candidates -- reflected concerns that have since materialized.

The electoral law specifically excluded "parties or political associations that express hatred against denominations, races, and peoples that engage in military propaganda or baiting for war from the elections." A companion law on political parties and associations also prohibited the formation of an East German Republican Party. When Helsinki Commission staff who were observing the elections raised the issue of restricting electoral participation, the Electoral Commission at first denied that it limited the democratic process. While the Electoral Commission acknowledged that the restriction might be perceived as paternalistic, by not trusting the voters to reject the Republicans' message at the polls, it insisted that East Germany's special history made it necessary, and that there was practically unanimous support for this restriction. An unspoken third point may also have figured prominently in East German thinking; namely, in light of the intense international scrutiny focused on the election, officials scrupulously sought to keep the lid on skinheads, incipient Republicans, and other hate groups that could revive foreign fears of a resurgence of Nazism in the GDR.

Indeed, when looking at elections in unified Germany today, the issue is not their preparation and administration, but rather, who's winning, and why. Politicians and pollsters were shocked by the strong gains of the extremist far right in regional elections in April 1992; the Republicans garnered 10.9 percent of the vote in the western state of Baden-Wuerttemberg (up from 1.0 percent in 1988), and the German People's Union, which had campaigned with the slogan "Germany should stay German," won 6.3 percent in the western state of Schleswig-Holstein (up from 0.6 percent in 1988). More recently, in March 1993, the Republicans made significant gains in local elections in the western state of Hessen, taking 8.3 percent of the vote as opposed to less than 1 percent in 1989. Equally troubling was the reduced voter turnout; only 67 percent for the Hessen elections, a post-war low.<sup>20</sup>

A combination of factors contributed to these results, including dissatisfaction with the mainstream parties, resentment of raised taxes and general economic decline, and a heightened animosity toward the steady stream of asylum seekers and refugees that continued to flow across Germany's borders. Yet whatever the reasons, the growing legitimacy of the far right is deeply troubling. On the one hand, it presents the clear possibility that aggressive extremist groups are drawing justification and inspiration from these parties, even if the party leaders themselves disavow any connection with or support for anti-foreigner violence. At the same time, the far right's growing popularity may encourage Chancellor Kohl and the ruling CDU, who face 19 elections in Germany in 1994, including two federal elections and votes in the five eastern states, to try to appeal to those constituencies, rather than preach a solid message of tolerance and respect for diversity. Some view the revised asylum procedures as evidence this is already occurring. Finally, the results portend brewing tension and possible conflict in urban centers like Frankfurt on the

Main, a city that is home to some 170,000 disenfranchised foreigners, where the Republicans won 9.3 percent of the vote.

## PROMOTING TOLERANCE

*Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.*

*Copenhagen Concluding Document, 1990*

*We [the CSGE Heads of State or Government] express our determination to combat all forms of racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds.*

*Charter of Paris, 1990*

*[The participating States] commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property.*

*Copenhagen Concluding Document, 1990*

*[The participating States] will consider taking appropriate measures within their constitutional framework and in conformity with their international obligations to assure to everyone on their territory protection against discrimination on racial, ethnic and religious grounds, as well as to protect all individuals, including foreigners, against acts of violence, including on any of these grounds. Moreover, they will make full use of their domestic legal processes, including enforcement of existing laws in this regard.*

*Helsinki Concluding Document, 1992*

### Violence Against Foreigners

The dramatic and horrifying surge in violence against foreigners in Germany (and to a lesser, but equally reprehensible degree, against the Jewish community, homosexuals, the disabled, and others perceived as different) has posed perhaps the single greatest human dimension challenge for the government since the collapse of the Berlin Wall. This violence -- 4,587 xenophobic crimes in 1992, as compared to 2,462 in 1991 and 246 in 1990 -- has attracted particular attention and concern both domestically and abroad because of the heavy proportion of attacks carried out by those who hold extreme right-wing views. Of the 2,285 acts of right-wing violence in 1992, 90 percent were directed against foreigners,<sup>21</sup> not only asylum seekers and refugees, but also long-term foreign residents of Germany, such as the eight Turkish women and children who died in firebombing attacks in the western cities of Mœlln and Solingen. It may be true that, because of its Nazi past, Germany is judged more harshly than other countries which are host to xenophobic aggression. Yet many

observers also believe that, precisely because of this past, Germany has a particularly urgent obligation to respond.

Many explanations for the violence have been suggested, from the dramatic rise in asylum seekers and refugees throughout Germany, to the growing influence and appeal of the extremist far right in Europe as a whole, to the loss of structure and security in the east, to the frustration and alienation of youth, especially in the east. Generous observers tend to view the phenomenon as aberrant and temporary, sure to recede as the east becomes prosperous and as the flow of asylum seekers is stemmed. Harsher critics maintain that it is dangerous to rationalize heinous acts of violence, and that linking this violence to other factors obfuscates the central issue: deep-seated racial intolerance.

Whatever its cause, strong consensus exists both within and without Germany that the violence has reached drastic proportions and needs to be stopped. Tactics for confronting this challenge, however, have varied -- both regionally, politically, and over time. The German government's response prior to the November 1992 firebombing in Moelln was largely connected to asylum; means were sought to reduce the number of foreigners entering Germany, to speed processing of asylum seekers already present, and to restrict the asylum provisions in the constitution. Following the Moelln attack, greater attention was given to law enforcement, as well as to banning a number of neo-Nazi organizations, arresting some of their leaders, and prohibiting certain salutes, insignia, and rock lyrics.

Slow to emerge from the highest levels of German leadership, however (with the notable exception of President Richard von Weisaecker), was a readiness to treat the issue of xenophobic hostility in its own right, as a problem that neither resulted from nor was limited to asylum seekers; or a visible show of solidarity with the victims of xenophobic crimes. Chancellor Kohl's September 2, 1993, cabinet statement on right wing extremism and violence, for example, referred to the increasing number of violent attacks by right wing groups as "a mounting threat to our internal security" and "an attack on our democratic system," but never directly mentioned who the victims of these attacks have been. Rather than describing the chilling impact the violence has had on Germany's long-established foreign communities, he lamented the fact that right wing extremists "are doing great harm to our country's reputation and dignity."<sup>22</sup> Clearly, more work will be necessary to address the latent anti-foreigner sentiment that continues to smolder in Germany. As Hans-Ludwig Zachert, president of the Federal Crime Office, noted in June 1993, "We must discard our picture of anti-foreigner violence as something committed by fringe groups . . . [anti-foreigner crimes] are a reflection of society. They come from the people, from the middle of society."<sup>23</sup>

While the violence is not solely an eastern phenomenon, a greater proportion of incidents has occurred there relative to the overall population. Two of the most dramatic and sustained assaults against refugee centers took place in the east (Hoyeswerda in September 1991, and Rostock in August 1992). In each case, skinheads, cheered by local residents, waged a five-day assault on a refugee hostel and its inhabitants, while the police

failed effectively to intervene. In each case, the violent attacks achieved their desired ends - the foreigners were evacuated from the neighborhood. The failure of the police to protect the besieged foreigners, and the failure of the federal government to investigate fully the reasons for police inaction, prompted deep concern from the human rights community.

Helsinki Watch, in its October 1992 report "Foreigners Out," sharply criticized the German authorities for having permitted explosive situations like these to exist in the first place:

[The federal government] disregarded warnings that East Germany was too burdened by its own problems to take on responsibility for asylum seekers and assigned asylum seekers to the East long before the necessary infrastructure had been created. In their eagerness to reduce the strain on West Germany by transferring asylum seekers to the East, the German government failed to make a realistic assessment of the ability of local authorities to protect foreigners.<sup>24</sup>

At the same time, the Helsinki Watch report remarked on the inadequacy of the police response, noting, "The German government has also failed to investigate adequately the response of the police and local officials and to take the necessary disciplinary measures to address police failure. Repeatedly referring to police response as primarily the responsibility of the states, the federal government has failed to live up to its obligations under international law to protect persons against mob violence and discriminatory treatment," and, "It has been slow to recognize the weakness of the East German police and their need for backup, additional training and modernized equipment."<sup>25</sup> Interviews conducted by human rights groups and journalists suggested that at least some of the police and local officials sympathized with the skinheads in Rostock, including the state Interior Minister, Lothar Kupfar, who was ultimately forced to resign.

The upsurge in xenophobic violence has also included numerous assaults on Jewish sites, memorials, and individuals. According to Ignatz Bubis, head of the Central Council of Jews in Germany, more than 160 of Germany's some 50,000 Jews emigrated from Germany in 1992 -- more than twice the number of the previous year. Some members of the Jewish community have also criticized the German authorities for showing greater leniency toward right-wing extremists than toward those who demonstrated or used violence to oppose such extremism. The swift and vigorous intervention of the Rostock police in October 1992, when 46 French Jews who were taking part in a demonstration against the German-Romanian repatriation agreement were arrested and detained for several days, contrasted sharply with the failure of the police to protect the besieged refugee hostel in Rostock just two months before.

While German government officials strongly condemned the violence in Rostock and elsewhere, they also concurred that the number of asylum seekers should be limited. Efforts to amend the constitution to this end had been strongly opposed by the opposition Social

Democrats, but as the violence reached crisis proportions, agreement was finally achieved. The December 1992 compromise included a number of important components: asylum seekers from EC countries or countries that have signed the Geneva Convention on Refugees or the European Human Rights Convention will have no right to asylum in Germany; any refugee passing through a "safe third country," which includes all of Germany's neighbors, will not have the right to asylum; war refugees will be handled separately from asylum seekers; and, the *Bundesrat* (upper house of parliament) will approve a list of "safe countries" from which no political persecution is deemed to occur, and from where no applications for asylum will be considered.

The agreement on the asylum law was generally recognized as necessary and appropriate. Germany had taken in some 440,000 asylum seekers in 1992 alone -- far more than the rest of Western Europe combined -- and its resources and generosity were wearing thin. While a number of human rights groups criticized various aspects of the compromise, especially the concept of "safe countries," domestic opposition to the plan was muted. The firebombing in Moelln, however, made it patently clear that measures beyond border controls would be needed to stem the violence. That attack, which occurred on November 23, 1992, in the western German state of Schleswig-Holstein, resulted in the deaths of three long-term Turkish residents of the Moelln community, and shattered illusions that the anti-foreigner sentiment was limited to asylum seekers or reflected purely eastern German attitudes. Many observers viewed Moelln as a turning-point in the German government's response to the crisis.

The handling of the Moelln attack showed reinforced vigor and commitment. For the first time, the Federal Prosecutor took control of the investigation instead of leaving it to local authorities. Moreover, the case was treated as triple murder, rather than manslaughter, as in previous attacks. Two suspects were arrested within 10 days, and they subsequently confessed to the murders. The zeal with which the case was pursued may have been bolstered by a set of measures established by the ministers of the interior of the federal government and the states just prior to the Moelln incident, all designed to combat xenophobic and anti-Semitic violence. The measures included establishment of special police units that could be deployed at short notice; establishment of an interagency task force; reinforcement of police efforts, including assignment of undercover agents to infiltrate extremist groups; development of a special police data base to improve the exchange of information; placement of emergency telephones at asylum seekers' residences; banning groups and neo-Nazi symbols that incite hatred or violence; investigation of the connection between skinheads and right wing groups and parties; and investigation and possible bans of music and music groups that propagate xenophobia and anti-Semitism.<sup>26</sup> Statistics in December 1992 indicated that police were picking up the pace of their investigations of right-wing crimes.

Since late November 1992, four extreme right groups have been banned: the Nationalist Front, the German Alternative, the Alliance of German Comrades, and the National Offensive. In mid-December 1992, the Interior Ministry announced that agreement



had been reached with the 16 state ministries to keep the Republican Party under close observation to determine whether its activities should be classified as anti-democratic. Also in December, the ministry began proceedings under Article 18 of the constitution to revoke some civil rights from Heinz Reisz and Thomas Dienel, two men believed to be leading neo-Nazi activists. While this clause had never been successfully invoked in the past, officials such as chief federal prosecutor Alexander von Stahl maintained that its symbolic effect was important: "It's a way for the state to say that someone has gone so far that he no longer deserves to have the full rights of a citizen in our society . . . they become second-class citizens."<sup>27</sup> In addition, the German government has outlawed the sale, manufacture, and distribution of materials from at least five neo-Nazi rock bands whose songs advocate violence and racism.

These efforts by the German government illustrate the difficult choices states confront as they endeavor to meet their CSCE commitments. A state determined "to combat all forms of racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone" may choose, as in Germany, to clamp down on basic civic and political liberties such as freedom of speech and association. Yet such measures may also serve to drive the hate groups underground, making martyrs of their leaders while failing to counter effectively their message. Bans on speech and association have the added risk of exploitation and abuse; measures taken today to "safeguard" democracy may be used to limit democracy in the future.

It seems clear that Germany's course of action reflects the determination to marginalize or eradicate groups perceived as extremist or threatening to the established order. While understandable, especially given Germany's past, this determination can lead the government to engage in discriminatory policy. Members of the Church of Scientology, for example, have protested harassment in the form of firings, expulsion from political parties, and discriminatory treatment from local and state authorities, solely based on their affiliation with Scientology. Indeed, in one recently publicized case in which the state of Baden-Wuerttemberg broke off contract negotiations with jazz musician Chick Corea upon learning that Mr. Corea was a Scientologist, state officials explained quite unapologetically to the Helsinki Commission that "The position that Baden-Wuerttemberg takes toward Scientology is shared by all other German States . . . We judge the practices of Scientology in a very critical manner," and "Neither would we engage in a contractual agreement with an artist who is either radically to the left or radically to the right because we feel that it would be bad advertising for the State of Baden-Wuerttemberg."

Other initiatives to combat violence and promote tolerance have been undertaken as well, by government authorities and by private organizations. The Federal Office for the Problems of Foreigners, headed by the outspoken Cornelia Schmalz-Jacobsen, has mounted public relations campaigns and organized efforts to assist the integration of foreigners. Some states have devoted resources to youth clubs and programs run by social workers in order to give potential aggressors more positive outlets for their energies and frustrations. Leaders in the business community, including Daimler-Benz, Robert Bosch, and Lufthansa, have

appealed publicly to their workers and to consumers to show tolerance and reject xenophobia. Ethnic organizations have tried to offer support and counsel to members of their communities, and to work with local and state officials to promote dialogue. Over the winter of 1992, numerous candlelight vigils and protest marches were organized by private citizens to demonstrate solidarity with the foreigners and to reject the use of violence.

The new asylum regulations were passed by the German parliament at the end of May 1993, to go into effect on July 1. On May 29, however, just days after the law had been passed, a neo-Nazi firebombing in the western city of Solingen claimed the lives of five long-term Turkish residents. Public sorrow and outrage turned violent, as angry protesters smashed shop windows, looted and clashed with the police. The German government condemned the attack, launching a vigorous investigation and offering a reward for information leading to the arrest of the arsonists. Yet Chancellor Kohl's decision not to attend the memorial service for the Solingen victims was bitterly received; critics pointed out that in fact the Chancellor had not visited a single asylum seeker's residence where foreigners had been attacked. Many alleged that by linking the rise in violence to the need for reform of asylum regulations, the German authorities had conveyed the impression that they shared the extremists' goals, even if they differed with their means. Some observers concluded that the timing of the Solingen assault was a signal from the extremist right: restrictions on asylum would only be the first of their violent demands.

### **Prosecution for Xenophobic Assaults**

Criminal prosecution is the responsibility of the state governments in Germany. According to federal authorities, more than 12,000 investigations of right-wing extremist and xenophobic crimes were launched in 1992. Nearly 60 percent of these were "propaganda" offenses, such as incitement to racial hatred. In the same period, legal proceedings were completed in over 10,000 cases, some of which had begun earlier. The courts sentenced 1,500 criminal offenders for extremist or xenophobic crimes; of these, 61 received sentences of more than two years.<sup>28</sup>

Part of the reason the sentencing for individuals convicted of extremist or xenophobic crimes has tended to be relatively light is that many perpetrators are under 21 and therefore tried within the juvenile justice system, which places more emphasis on re-education than punishment. The judge is likely to focus on the family backgrounds of the defendants, their employment situation, and their future prospects. Disciplinary measures taken are designed to address the conflicts that caused the individual to break the law. The fact that many defendants are first-time offenders, and that often they were under the influence of alcohol during the assault, also contributes to the relative leniency of the sentencing.

In the first major prosecution of the Rostock riots, for example, the courts, on March 3, 1993, sentenced an unemployed 22-year old easterner to two and a half years in prison for throwing a firebomb at the police. The defendant claimed he had drunk nearly a full bottle of whiskey prior to the assault. More troubling than the light sentence was the fact

that of all the Rostock defendants tried to that point, none had been charged with assaulting a refugee. The only charges brought against them were disorderly conduct or assaulting police officers. Critics, including the Rostock official responsible for dealing with foreigners, claimed that the police were not aggressively seeking evidence against the rioters, even though some rioters had been clearly photographed during the assault.<sup>29</sup> According to news reports, authorities ultimately investigated 456 people in connection with the riots. Most charged received suspended sentences; 32 individuals were sentenced to prison terms, the longest of which was three years.<sup>30</sup>

The firebombing in Solingen reinforced the links between right-wing extremism and anti-foreigner violence, and reinvigorated efforts to prosecute criminals. With more than 100 anti-foreigner crimes committed in the two weeks following Solingen, Interior Minister Rudolf Seiters called for harsher penalties for perpetrators of anti-foreigner crimes and preventive detention for right-wing militants suspected of repeated attacks. Chancellor Kohl, in his June 16 parliamentary address on xenophobia, said he favored loosening restrictions on the exchange of data between prosecutors in different states, as well as improving the pay, staffing, and resourcing of police.

## ASYLUM AND REFUGEES

*[The participating States] emphasize the importance of preventing situations that may result in mass flows of refugees and displaced persons and stress the need to identify and address the root causes of displacement and involuntary migration;*

*Recognize the need for international cooperation in dealing with mass flows of refugees and displaced persons;*

*Recognize that displacement is often a result of violations of CSCE commitments, including those relating to the Human Dimension.*

*Helsinki Document 1992*

The debate on asylum has proved to be one of the most difficult, divisive, and emotional issues Germany has faced since unification. From espousing the most liberal asylum policy in Europe, it has joined the growing number of European countries that are shutting their doors to newcomers. Under the current policies, virtually the only chance for an individual to secure asylum in Germany is to arrive by air, directly from his or her home country, with evidence of persecution in hand.

In addition to revising its asylum regulations, Germany has negotiated a series of bilateral agreements with its neighbors regarding the return of refugees and rejected asylum-seekers that come from or through those countries. Perhaps the most controversial among these is the German-Romanian agreement that went into effect on November 1, 1992, by which thousands of Romanian citizens are to be repatriated to Romania. In describing the agreement to the public, the German Minister of the Interior indicated that the majority of these Romanians are Roma (Gypsies), creating the impression that the ethnic and cultural identity of these individuals were important factors in the decision to deport them. The Minister of the Interior also implied, misleadingly, that a German humanitarian assistance program that had been planned long before was in some way connected to the repatriation agreement. In fact, the program, to help build three job retraining centers, will probably be inaccessible to the Roma community that most needs the assistance.<sup>31</sup>

A report prepared by a working group of non-governmental human rights and Roma cultural organizations in Romania alleged that a number of the Romanian citizens repatriated had been denied the full range of appeals available to them, or had been mistreated by the German police, and cautioned that the insistence on identifying the Romanians as Roma had fed into the climate of discrimination against Roma in general.<sup>32</sup> Paradoxically, heightened discrimination against Roma in other countries could encourage even more Roma individuals to flee to Germany, or elsewhere, in response.

Germany has negotiated similar agreements with many of its eastern neighbors, raising concerns about possible "refugee dumping" on financially-strapped and inexperienced countries ill-equipped to process and protect large numbers of refugees. In at least one

case, Germany has agreed to pay a total of 120 million marks (\$76 million) in 1993 and 1994 to help house and feed refugees, improve border security, and process asylum applications in the transit country.<sup>33</sup> The international ramifications of Germany's new policy are already apparent, as its neighbors -- anxious to avoid drowning under the potential flood of rejected asylum-seekers -- scramble to negotiate their own repatriation agreements eastward.

The changes in the asylum policy do appear to be having the desired effect of reducing the number of asylum applications in Germany. The number of asylum seekers reportedly fell by a third in July 1993, the month the new regulations went into effect, and some 1,100 asylum seekers were turned back at the German-Polish border in July on the grounds that their claims were "manifestly unfounded." Some skeptics remain concerned, however, that the drop in the numbers is misleading, and that the new policy merely discourages would-be asylum seekers from applying. In other words, some believe that an unintended side-effect of the new asylum regulations will be to increase the number of illegal aliens in Germany. For this reason, among others, increasing numbers of policy-makers and experts are calling for the development of an immigration law, which would offer an alternative legitimate route into Germany.

### Citizenship

As the tragic assaults in Moelln and Solingen made clear, reducing the number of asylum seekers did little to address the concerns or promote the well-being of Germany's millions of legally resident foreigners. Germany's adherence to the principle of *ius sanguinis* -- the notion that nationality is determined by blood rather than place of birth -- has hindered full integration of the many long-term or permanent foreign residents of Germany and their families. While even resident foreigners will readily acknowledge that holding German citizenship will not make them belong in the eyes of neo-Nazi extremists, they also believe that the ability to participate fully in German public life is a critical component of integration. This is especially important for second and third generation immigrants, many of whom were born and raised in Germany and know no other home.

The current laws, as amended in July 1993, grant the right to naturalization for foreigners between the ages of 16 and 23 if they have legally resided in Germany for eight years, have attended school in Germany for six years, renounce or lose their previous citizenship, and have not been convicted of a major felony. Foreigners older than 23 who have legally resided in Germany for 15 years have the right to naturalization if they renounce or lose their previous citizenship, have not been convicted of a major felony, and are able to support themselves and their family. The rules are different for ethnic Germans who enjoy the right of return from Russia and parts of Eastern Europe, as well as for victims of Nazi persecution. These individuals have an automatic right to citizenship. Partly as a result of the asylum explosion, however, the German government has introduced a system of annual quotas to keep ethnic German immigration at a manageable level.

Discussion has intensified in recent months over the need to change the long-standing law to reflect current realities. Johannes Rau, Minister-President of North Rhine-Westphalia and leader of the Social Democrats, stated before the parliament in June 1993, "I think whoever lives here permanently, wherever he may have come from, is not a guest here but a citizen. They have the same rights and same obligations as all citizens. We have to put an end to the lie that immigration has nothing to do with us."<sup>34</sup> Cornelia Schmalz-Jacobsen, federal commissioner for foreigners since November 1991, has declared, "Germany needs to make concrete offers: naturalization, dual citizenship, decisive steps toward integration. We are a country of immigrants and we must act in accordance with this fact. Playing hide-and-seek with reality is senseless."<sup>35</sup> Even Chancellor Kohl, in his June 1993 address on xenophobia, acknowledged that the nationality law needed to be amended. Germany's actions on this issue are likely to be subject to close scrutiny, as the question of citizenship is pressing in many of the newer democracies in the CSCE community.

## CONCLUSIONS AND OUTLOOK

Unification has offered Germany tremendous opportunities, re-establishing its role as the anchor of Europe, the center of the continent. It has also presented tremendous responsibilities and challenges. The burdens of unification, coupled with the rise of extremist parties, violence against foreigners, and inter-ethnic intolerance, have shaken the confidence of the people and weakened the hands of their leaders. It is clear that in the heady days of 1989-90, both western and eastern German authorities vastly underestimated the time, resources, and support -- financial, technical, psychological, and moral -- needed to complete unification. It is also clear that, since the process of unification began, they have been slow to respond to the realities the new Germany, and the new Europe, impose. If today's picture reflects in part the cost of those miscalculations, it also reflects the general state of transition and uncertainty experienced in many European countries. Germany's role, as leader and model, is all the more critical in this context.

The process of de-communization in eastern Germany, while necessary and desired, has perhaps been imbalanced: too hard on the rank and file, and too lenient on the commanders. Though the rule of law has been firmly established, it is not clear to most eastern Germans that justice has been served. Meanwhile, the social costs of the transition to democracy and a market economy, from the sudden curbs on eastern women's reproductive freedom to the anxieties produced by restitution questions, continue to fuel tensions between east and west, and to hamper true unification. What some have called *die Mauer im Kopf* -- the wall in the head -- will clearly take years to dismantle. As long as unification is perceived as humiliating and heartless by easterners, and costly and thankless by westerners, national unity will elude all Germans and political instability will be one unfortunate result.

Indeed, the next six months, as the country moves toward the election cycle of 1994, will be a critical period for Germany's political leadership. Voter alienation and discontent provide fertile ground for scapegoaters and xenophobes; observers both within and without Germany will be examining closely the willingness and effectiveness of the mainstream parties' ability to counter extremist rhetoric with a message of tolerance and mutual respect.

The strong criticism levied over the government's sluggish response to the rise of violence against foreigners has subsided in recent months, though the number of far-right attacks in the first half of 1993 was over 1,000, including eight deaths. On the one hand, people recognize that the government is taking good faith measures, particularly in the area of law enforcement, to combat the violence. More bleak, perhaps, is a sense of helplessness and resignation expressed by some German social workers, resident foreigners, and minority advocacy groups, who fear that no number of candlelight vigils or protests or prosecutions will alter the attitudes that inspire aggressive intolerance. Even after the firebombing in Moelln, polls indicated that some 15 percent of Germans sympathized with the slogan

"Foreigners Out!," and some 12 percent showed "understanding for extreme-right tendencies because of the foreigner problem."<sup>36</sup>

A member of the Helsinki Commission staff who visited Berlin in May 1993 discussed these issues with representatives of various ethnic organizations as well as the Head of Berlin's Foreigners' Office, Barbara John. These individuals, all of whom are engaged on the front lines of the struggle against intolerance and discrimination, offered many suggestions toward a comprehensive approach to the problem, some of which are already being realized at least in part: measures should be taken to address the root causes of xenophobic violence, as well as to punish its perpetrators in the aftermath; efforts to re-educate hate crimes offenders should be matched by efforts to teach children from the early stages of primary school to respect and appreciate diversity; integration of legally-resident foreigners should be as prominent a priority as rejection or expulsion of illegal ones; efforts to limit the number of unfounded asylum claimants should be complemented by a strong and public defense of the asylum system in general and the humanitarian principles it was designed to uphold; and, improved pay, resources, and staffing of police should include a commitment to recruit from minority communities, and to provide sensitivity and diversity training. Effectively implementing such proposals, however, will require sustained resources and significant political will.

Institutional measures to promote equality and integration, including easier procedures and requirements for naturalization, the possibility of dual citizenship, and the granting of voting rights for resident foreigners in local elections, are increasingly advocated by prominent political figures and officials, including Foreign Minister Klaus Kinkel, the head of Germany's Foreigners' Office, Cornelia Schmalz-Jacobsen, the head of Germany's Jewish community, Ignatz Bubis, and leading member of the Social Democratic Party Johannes Rau. The establishment of an immigration law that would permit an alternative legal channel for foreigners and their families to establish permanent residence in Germany is also gaining support. Terminology, too, may need to be re-examined, as the words "foreigner" and "guestworker" hardly seem appropriate to describe a person of Turkish, Greek, or Italian origin who has lived and worked in Germany for 30 years -- and whose taxes are currently paying for the reconstruction of the east. The way Germany chooses to deal with these issues will be carefully scrutinized by other countries in the region, many of whom, as fledgling democracies, are searching for models to follow.

As many analysts and commentators have already noted, unification has forced Germans to redefine and reassert their status and identity. Some suggest, as a consequence, that xenophobia is not a problem that has to do with foreigners, but rather an expression of the problems Germans are having with themselves. This conclusion, however, risks veiling the reality that the victims of xenophobia are most certainly foreigners, and that whatever problems Germans may be having with themselves, it is foreigners who are bearing the bruises and scars. Ultimately, as Germany continues its journey toward the 21st century, it will need to consider a German identity that embraces CSCE standards of mutual respect, understanding, cooperation and solidarity among all persons living on German territory,



without distinction as to ethnic or national origin or religion. It will need to accept, as will CSCE countries as a whole, that multi-ethnic, multi-cultural societies are our destiny, and to be proud of the rich and diverse communities, cultures, and traditions that Germany already has to offer.

## ENDNOTES

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2. Dirk Philipsen, *We Were the People* (Durham and London: Duke University Press, 1993), p. 351.
3. Marian Gibbon, "Putting the Pieces Together Again," Occasional Paper for the American Council on Germany (Washington: August 1992).
4. *The New York Times Magazine*, "East Germans Face Their Accusers," Stephen Kinsler, April 12, 1992, p. 52.
5. *The Washington Post*, "Bonn Closing Books, Opening Controversy," November 13, 1991.
6. *The New York Times*, "Germans Anguish over Police Files," February 20, 1992.
7. Thomas R. Rochon, "The Wall Within: Germans Cope With Unification," *German Unification, Problems and Prospects*, Gaines Post, Jr., Editor (The Keck Center for International and Strategic Studies, Claremont, CA: 1992), pp. 32-35.
8. *Sueddeutsche Zeitung*, "Kohl: 'No Party Policy Deals' With Stasi Files," August 11, 1993 (as translated in FBIS, August 12, 1993, p. 15); *The Washington Post*, "Cold War Spy Files Roil German Politics," August 12, 1993.
9. *Reuters*, "Germans Want Amnesty for Stasi Spies, Survey Says," August 11, 1993.
10. *The Washington Post*, "On Trial for Death at Berlin Wall," September 10, 1991.
11. *The Washington Post*, "Berlin Court Drops Case Against Honecker," January 13, 1993.
12. *The Washington Post*, "Mr. Honecker's 'Human Rights'," January 18, 1993.
13. *The German Tribune*, "Changes called for as property ownership issue remains a major handicap," March 20, 1992.

14. The Commission is grateful to Holly Cartner, Staff Counsel to Helsinki Watch, for significant background assistance on this and other aspects of the de-communization process in Germany.
15. *Human Rights Watch World Report 1993: Events of 1992*, Volume II, Human Rights Watch (New York: December 1992), p. 220.
16. Thomas R. Rochon, *loc. cit.*, p. 40.
17. *Ibid.*, p. 42.
18. *The Washington Post*, "With Unity, There Also is Worry," September 9, 1992.
19. *Leipziger Volkszeitung*, May 29, 1993; as reported in *The Week in Germany*, "The Abortion Decision," June 4, 1993, p. 3.
20. "Final Election Figures," Berlin DDP in German 2221 GMT, March 7, 1993, as translated in the Foreign Broadcast Information Service (FBIS), March 8, 1993, p. 8; *The Washington Post*, "German Far-Right Gains in State of Hesse," March 8, 1993.
21. Karen E. Donfried, "Germany: Right-Wing Violence," Congressional Research Service (CRS) Report for Congress, March 29, 1993.
22. Chancellor Helmut Kohl, "Cabinet Statement on Rightwing Extremism and Violence," September 2, 1993 (as distributed by the German Information Center, *Statements and Speeches*, Volume XVI, No. 11).
23. *Frankfurter Allgemeine*, "BKA: 'Xenophobic' Attacks 'Reflection of Society'," June 16, 1993, as translated in FBIS, June 17, 1993, p. 20; *The Washington Post*, "Kohl Urges Germans to Show Foreigners Some Kindness," June 17, 1993.
24. *Foreigners Out: Xenophobia and Right-Wing Violence in Germany*, Helsinki Watch (New York: October 1992), p. 1.
25. *Ibid.*, p. 2.
26. "Focus On . . . Rightwing Radicalism in Germany," German Information Center (New York: February 1993), p. 7.
27. *The New York Times*, "Germany to Try to Revoke Rights of 2 Neo-Nazis," December 10, 1992.
28. "Kohl Addresses Bundestag on Xenophobia," as translated in FBIS, June 17, 1993, p. 15; *The Washington Post*, "Germany Unable to Stem Flood of Attacks on Foreigners," August 28, 1993.

29. *The New York Times*, "Germans Sentence Anti-Foreign Rioter to 2 1/2 Years," March 4, 1993.
30. *Reuters*, "German Port Marks Anniversary of Racist Attacks," August 23, 1993.
31. "Most Favored Nation (MFN) Status for Romania: The Current Human Rights Situation," International Human Rights Law Group (Washington, DC: August 1993), p. 15.
32. "Report on the consequences of carrying into effect the 'Romanian-German Convention regarding the taking over of Romanian and German citizens,'" prepared by Nora Costache, Secretary General of the "Aven Amentza" Foundation, Work Group for Observing the Romanian-German Convention (distributed at the CSCE Human Dimension Seminar on Migration, Including Refugees and Displaced Persons; Warsaw, Poland, April 1993).
33. *Reuters*, "Germany, Poland Sign Agreement to Curb Refugee Flow," May 7, 1993.
34. "Rau Speaks for SPD," as translated in FBIS, June 17, 1993, p. 21.
35. "...Rightwing Radicalism in Germany," *loc. cit.*, p. 10.
36. *Der Spiegel*, "After Moelln, A Shocked Nation," December 7, 1992, as translated in FBIS ("Poll Results Change After Moelln"), December 8, 1992, p. 18).