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**Notes accompanying oral statement on regulations affecting refugee
minors in the Federal Republic of Germany**

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INTERNATIONAL FEDERATION TERRE DES HOMMES
Statement before the Commission on Human Rights - March 1995

Notes accompanying oral statement on regulations affecting refugee minors in the Federal
Republic of Germany :

1) The Convention on the Rights of the Child (CRC) was ratified by the Federal Republic of Germany on November 14th, 1991. In a Declaration of Ratification, the German Federal Government stated that the laws enacted complied fully with the CRC and fulfilled the Human Rights obligations the government had entered into. The Declaration went on to emphasize that -

"none of the clauses contained therein may be interpreted as imposing any form of restriction on the right of the Federal Republic of Germany to enact laws or decrees dealing with foreigners entering the country or imposing conditions on their -rights of residence, nor on its ability to differentiate between German subjects and foreign nationals."

Even if this declaration is not construed as imposing reservations on the intentions of CRC Article 31, it does represent reservations on CRC Article 22 concerning the protection of refugee children. It asserts the German Federal government right to enact legislation regarding foreigners or refugees which may not be in accordance with the CRC, no matter how hostile to children such legislation may be. CRC Article 51, paragraph 2, states that reservations "which are act in accordance with the purpose of this agreement are not permitted. We agree with some German human rights experts (Huber, Peach) who are therefore of the opinion that the German Declaration of Ratification is null and void.

2) CRC Article 22 requires the signatory states to about the necessary measures required to "ensure that a child seeking the legal status of a refugee ... is to receive the protection and humanitarian aid he requires to take advantage of his rights as stipulated in this agreement, independent of whether or not he is accompanied by his parents or any other person". The stated aims of government efforts are to be protection, aid and reuniting the family. "If the parents or any other related family members cannot be found, the child is to be guaranteed the protection granted to any other child which for any reason has been permanently or temporarily taken out of his or her family environment, in accordance with the principles laid down in this agreement." In addition, CRC Article 20 gives "the right to the special protection and support of the state for children an their own. When selecting the type of care needed, "the desire to provide continuity for the child's education as well as his ethnic, religious, cultural and linguistic origins are to be given appropriate consideration".
centre. In the meantime she had agreed to leave the country voluntarily.

Sources : Letters from FURTHER EDUCATION SCHOOL 20; correspondence from the Hamburg Office for Foreign Residents, July 8, 1994, to the school's Headmistress; testimonies by the girl's guardian E. Wedell; Hamburg Evening News (Abendblatt), June 13, 1994.

5) Airport proceedings:

Frankfurt, 1994 :

On September 25th, 1994, at the Frankfurt Airport, a matter, S.N., from Afghanistan, who had qualified for asylum, was waiting for the arrival of her sons, A., age 14, and H., age 16. The boys, however, were not allowed to join their mother. Because of a decree by the German Home Office, they were kept under guard for a night in a room without windows at the Frankfurt airport. The "hearing" on the reasons why they had fled their country was held the next day, without their mother being present, nor the lawyer, who was not informed of the proceedings until it was too late. As the Federal Border Police doubted the ages they had been given by the boys, they were subjected to X-rays of their wrists at the airport clinic. The doctor who examined them came to the conclusion, based on the X-rays, that the true age of the boys was 16 and 13.

As a result of the pressure applied by the lawyer, they were eventually granted permission to enter the country. However, although the Afghan Embassy had in the meantime provided birth certificates for the two boys which confirmed their ages to be as claimed by both the boys and their mother, the Federal Border Police claimed that the boys were old enough to be subjected to a hearing (the minimum legal age in this case is 16). They were sent to refugee accommodations, but their mother managed to intercept them.

Sources : W. Dietrich, lawyer, Munich; G. Petasch, Frankfurt Airport Social Services; newspaper publications : Frankfurter Rundschau, October 5, 1994; Süddeutsche Zeitung, October 10, 1994.

Comment : Other young refugees in similar situations, but unable to avail themselves of outside assistance, have been put on the next available flight back to their countries of origin.

6) Establishing the Age of a Child

Hamburg, 1993 :

The official guardian of a Romany minor had not yet had time to apply for asylum for the child in his care. The minor had been granted permission to stay in the country for a short period (the Authority in charge of foreign residents had made a note stating that they would not carry out their legal obligation to have the child departed). The boy went to the Authority's office to request that the permission to stay be extended. His fingerprints were taken. The civil servant

on

Sources : Correspondence between Terre des Hommes Germany and the Hamburg-Harburg local authorities, 2nd to 15th April, 1994.

Comment : There are at least 100 unaccompanied refugee minors in Hamburg with no accommodation. They live, more or less, on the streets.

[Home](#)

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