

Dr. Jochen Menzel
terre des hommes Germany,

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National Coalition
for the implementation
of the UN Convention
on the Rights of the Child

Remarks on the "Initial Report of the Federal Republic of
Germany submitted in accordance with Article 44 of the Con-
vention on the Right of the Child"

Alien Minors and Minor Refugees

Annex II of the report: the declaration of reserve, part IV

By the declaration in the annex of the report the German Government tries to suspend the legal force of Art.22 and other provisions as far as alien minors are concerned. The director of the Asylum and Aliens Law Department in Bonn once called the declaration a "reservation". A reservation however - and any other declaration, too - that is incompatible with the object and purpose of the Convention shall not be permitted, Art.51 par.2. Some German experts on international rights therefore are of the opinion that the declaration is null and void. The status and relevance of the declaration should be clarified. That is fundamental for the rights of alien minors in Germany.

Nr.25,27,28 of the report / Art.7 of the Convention

Alien minors having incurred punishment often are deported after having completed their sentences. They are deported to the country of their nationality, even if they are born in Germany, have attended school in Germany, have got friends and relatives only in Germany and don't know precisely the language of the country of their nationality.

Nr. 45 / Art.9

I was informed that in Hamburg unaccompanied minor refugees having been arrested for deportation were not allowed to call up their lawyers or their social workers or even their guardians.

Nr. 46-50 / Art.10

Here the declaration of reverse of the Federal Government is important (cited in Nr.50). The Law on Aliens does not provide a right to a reunification of a minor with his/her parents in any case - for ex-

ample not during a asylum procedure, even if this takes years, and not, when the minor is granted asylum in Germany and only his/her parents could come to Germany. Sometimes a reunification is only at discretion of the Aliens Authority - for example when sufficient accomodation is not available or the parents cannot provide for the child from their own.

Nr.52 / Art.20

As far as unaccompanied minor refugees are concerned this "special protection and assistance" is not guaranteed at least for juveniles of 16 and 17 years of age. They rarely get a guardian. As a rule they are treated as adults in any scope - with all consequences, especially in regard to accommodation and lack of adequate social care.

Nr.65 / Art.23

Children of asylum seekers are not entitled to full health services. The "Law on Social Assistance for Asylum Seekers" provides for medical help only in cases of "acute illness and pain" and does not - as a rule - ensure that asylum seekers will be supplied with equipment to meet special needs (eyeglasses, wheelchairs a.s.o.).

Nr.68 / Art.26, 27

Children's allowance ("Kindergeld") and maternity benefits ("Erziehungsgeld") are no longer granted to aliens holding only a temporary residence permit (Aufenthaltsbefugnis) or a toleration permit (Duldung) or to asylum seekers.

Nr.74 (last sentence) / Art.26, 27

Asylum seekers children get less money, less food and less health care than Germans who get social assistance do. The "Law on Social Assistance for Asylum Seekers" of 1993 reduced the level of support and largely replaced cash grants by in-kind assistance. The food often is of poor quality and the families have to spend their pocket money (80 DM/month) for a better nutrition of the children.

Nr.75 letter a and b 79 / Art.28 29

In several federal states of Germany schooling is not compulsory for asylum seekers children and unaccompanied minor refugees. Where they have a right to attend school, they sometimes have to wait for months to get a place. In some federal states vocational education is hardly available for minor asylum seekers, and if, the minors often loose their right to financial social assistance (e.g. in Hamburg).

Nr.82 / Art.31

Contrary to the Initial Report (Nr.82, line 6) alien pupils being asylum seekers are not allowed to join in a class trip. Asylum seekers must not leave the area of the local authority for aliens. The pupils have to stay in the cramped accomodation for refugees.

Nr.83 / Art.22, 26, 27

Contrary to the Initial Report (Nr.83, line 16,17) the social welfare assistance for children of asylum seekers is reduced in comparison to the social treatment of a German. (See Nr.65,74)

Nr.84 / Art.22

The appointment of a guardian often takes months, sometimes a year - even if it is in the best interest of the child to return to his/ her parents as quickly as possible. The statutory guardians sometimes have 50 and more children to care for. They are overburdened and often know little about the rights of aliens and about the asylum procedure. 16- and 17-years-old refugee children rarely get a guardian at all, though e.g. they are not competent by law to engage the services of a lawyer.

Nr.85 / Art.22

Without taking the declaration of reverse into consideration (see above) the new law on aliens and the new law on asylum procedure contravene Art.22 of the Convention:

1.

Any alien entering Germany from a "safe third state" is stopped and sent back by the border police - regardless of a political persecution or of any other reason for the flight. All countries bordering Germany are regarded as "safe third states".

This "safe third state"-provision also applies to minors, although minors under the age of 16 years cannot, by law, apply for asylum. The border police examine neither the reasons nor the mental or physical condition of a person fleeing nor - in the case of minors - whether the needed care will be assured by a child welfare agency. When a minor has come by plane with a transit stop in a "safe third state", he or she is placed into the next plane to return - without an information to the airport social service.

2.

Refugees arriving in Germany by plane directly from a "safe country of origin" or arriving without a passport are to be held and accommodated at the airport - guarded by armed police and behind windows locked up. Their cases are subjected to fast processing, within two days.

No exceptions are made for unaccompanied minor refugees. On

arrival, regardless of possible trauma, disorientation, lack of understanding or need for assistance, minors immediately undergo fast hearings on their asylum application. The accommodation at the airport in Frankfurt / Main is not at all appropriate to the needs of (especially female) minors.

3.

According to the new law on asylum procedure asylum seekers must adhere to the strict regulations governing the procedure and must provide full cooperation. Asylum application may be denied if these formal rules are not fulfilled or if the application is not substantiated or contradictory. These provisions also apply to minors. No account is taken of minors' ignorance, inexperience or nervousness when dealing with government officials.

4.

Not only the new laws but also the local authorities for aliens contravene Art.22 of the Convention - one example:

Though the new law on asylum procedure regards a 16 years old minor as competent only for the asylum procedure, the authorities for youth welfare and for social assistance in Hamburg are treating these minors as adults in any other scope too. That means that as a rule these minors do not get the expensive special assistance and accommodations according to their age. That is the reason why local authorities perform age assessments, when they do not believe the age, the minor has indicated. These assessments are based either on the way the minor looks or on X-raying the minors palm regardless of the minors will.

I was informed of different cases in Bremen where minor asylum seekers are accused of indirekt wrong recording by appointing an age the authority officials did not accept.

Nr.103, 105 / Art.37

Alien minors between 14 (at least 16) and 18 years of age are put into deportation detention. In Hamburg alien minors who have to leave Germany are asked, whether they will leave voluntarily. If they say they want to stay in order to finish their education, they are arrested, sometimes even handcuffed.