

Abstract

The fiftieth anniversary of the Universal Declaration of Human Rights provides an opportunity to scrutinize the policies of wealthier countries towards refugees and asylum seekers. Although Germany is host to two-thirds of all individuals seeking asylum in European countries, it is now taking a hard line with respect to asylum policies. This article examines the forces behind these policies which, contrary to their rationalization, do not save "tax money," but actually make life for the recipients as difficult as possible. Studies of asylum hearings show that clues indicating past trauma or torture of asylum seekers are often ignored. In addition, the administrative procedures required for the provision of health care to refugees and asylum seekers have resulted in inflated bureaucracy and excessive costs, all the while providing only third class medicine. International NGOs and human rights organizations must put pressure on governments to live up to the promises of the UDHR.

Le 50ième anniversaire de la Déclaration Universelle des Droits de l'Homme est un moment opportun pour analyser la politique des pays les plus riches à l'égard des réfugiés et demandeurs d'asile. Bien que l'Allemagne accueille les deux tiers des personnes cherchant asile en Europe, elle opte pour une ligne dure en matière de politique d'asile. Cet article examine les forces en jeu derrière ces politiques qui n'économisent pas l'argent des contribuables, mais qui rendent la vie des bénéficiaires aussi difficile que possible. L'étude des entretiens avec les demandeurs d'asile montre que les preuves des traumas ou tortures qu'ils ont endurés sont souvent ignorés. Les procédures administratives nécessaires pour dispenser des soins sont devenues bureaucratiques et ont un coût excessif, tout en ne fournissant qu'une médecine de mauvaise qualité aux réfugiés et demandeurs d'asile. Les ONGs internationales et les organisations de droits humains doivent presser les gouvernements à oeuvrer vers les buts visés par la Déclaration Universelle des Droits de l'Homme.

El 50° aniversario de la Declaración Universal de Derechos Humanos es un momento oportuno para analizar las políticas de los países ricos hacia los refugiados/as y candidatos/as al asilo. Aunque Alemania acoge dos tercios de los refugiados/as políticos que buscan asilo en Europa, recientemente está optando por una política más dura. Este artículo examina las fuerzas que se encuentran tras esas políticas. Dichas políticas de asilo no reducen el gasto público en esta área y al mismo tiempo hacen muy difícil la vida de los refugiados/as. Varios estudios de las entrevistas con los candidatos/as al asilo muestran que a menudo se ignoran los traumas o torturas que han sufrido. Los procedimientos administrativos necesarios para proveerles atención en salud se han convertido en algo muy burocrático y excesivamente costoso, sin por ello aportar más que un servicio de tercera clase a los refugiados/as y candidatos/as al asilo. Las ONGs internacionales y las organizaciones de derechos humanos deben presionar a los gobiernos para que respeten los compromisos de la Declaración Universal de Derechos Humanos.

THIRD CLASS MEDICINE: Health Care for Refugees in Germany

Christian Pross

UDHR Article 14

1. *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*
2. *This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

There is little doubt that when the drafters of the UDHR set out its article on the right to asylum, they were haunted by the vision of the millions of refugees that World War II and the Nazi genocide had compelled to leave their homes. The war resulted in the largest wave of refugees in history — 60 million people.¹ Yet many countries rejected political refugees from Germany and the occupied territories and drove them back into the hands of the Nazis. This experience certainly motivated the inclusion of the right to asylum, so that in future wars and conflicts, and in future cases of persecution of minorities, countries would be obliged to provide shelter for political refugees.²

Legal Status and Refugee Conditions in Germany

Correspondingly, the German Constitution of 1949, intending to overcome the heritage of the Nazi state, carries one of the world's most liberal asylum provisions, stating simply in Article 16a: "Politically persecuted persons enjoy the right to asylum." Asylum includes the right to enter the country and apply for asylum; to have one's case heard by the authorities; to have an interpreter present at the hearing; to obtain legal assistance and access to the court if the asylum

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authority rejects one's application; to be accommodated in a refugee camp on arrival; and to receive food, clothing and monthly welfare payments.

Since the adoption of the Constitution, large numbers of individuals from all over the world have sought shelter in Germany. In the 1970s and early 1980s they came from Eastern Europe, Vietnam, Chile, Central America, Lebanon, Sri Lanka and Iran; in the late 1980s and early 1990s a Kurdish population also began to arrive from Iraq and Turkey. Germany has hosted large numbers of asylum seekers, rising from 107,800 in 1980 to 438,000 in 1992, at which time it hosted two-thirds of all people seeking asylum in European countries.³

In response to rising xenophobia after the reunification of Germany in 1990 and championing the slogan "the boat is full," a coalition across party lines in the Bundestag (the German parliament) passed an amendment to the Constitution in 1993 making it difficult for individuals to be granted asylum. Key to this amendment is the so-called "third country rule," which states that anybody who has passed through a "safe" third country on their way to Germany from a home country is not entitled to asylum in Germany. The bulk of asylum seekers in Germany fall under this category because their escape routes generally led through Austria, Poland, the Czech Republic, France or the Netherlands — safe countries bordering Germany where refuge could theoretically have been sought. Only individuals arriving directly from their home country by plane or boat or entering illegally with the help of "tugger gangs" (Schlepperbanden) have a chance of circumventing the third country rule. As a result, the granting of asylum has diminished considerably since 1993.

Victims of the war in former Yugoslavia have been considered exceptions to this rule. In fact, Germany has accepted the largest number of Bosnian refugees (ca. 320,000) of any European country.⁴ However, these individuals have not been granted asylum under Article 16a. Instead, like the refugees who came to Germany from Vietnam and Lebanon in the 1970s and 1980s, they have been accepted as asylees (Kontingentflüchtlinge) under the Geneva Conventions.⁵ As a result, since the Dayton Peace Accord of December 1995, Bosnian refugees have faced increasing pressure to "volun-

tarily" return to Bosnia–Herzegovina. Several thousand Bosnians have already returned voluntarily, and German state governments offer repatriation subsidies to encourage them to do so.⁶ Although relatively few persons have been forcibly repatriated so far, the authorities have created "pressure to return" — as they call it — by, for example, suddenly arresting groups of Bosnians and flying them home under cover of darkness.

Interestingly, in an accord between the Republic of Bosnia–Herzegovina and Germany, traumatized persons who need medical care have been exempted from repatriation until their treatment is complete. Thus, a "traumatized person" has been recognized as a category of person to be granted special protection under international law.⁷ To date, this has generally been followed by immigration authorities in the German states. Thus, if a Bosnian who has been granted asylum status was tortured or raped and is certified by a qualified doctor or psychologist as suffering from post-traumatic stress disorder, the permit to stay may be extended every six months for as long as the treatment lasts. On July 10, 1998, the Berlin immigration authorities deported 75 Bosnians. "By accident," two traumatized persons who had been legally exempted from deportation were among them. Such actions have a retraumatizing effect on many individuals, and spread panic and fear throughout the Bosnian community.⁸

Immigration policy is set by the Federal Ministry of the Interior and by the Ministry of the Interior of each state. The Federal Ministry oversees both the Federal Asylum Authority and the German border police. Over the past few years, in order to prevent people from entering German territory, these institutions have been equipped with increased staff and high-tech equipment. The Interior and Welfare Ministries of each state are responsible for conferring immigration status and hosting refugees. Some states, governed by coalitions of the Social Democratic Party and the Greens, follow a fairly liberal policy. The Federal Ministry of the Interior, however, has taken a fairly harsh stance toward admitting refugees into the country and has consistently tried to control the actions and policies of the state ministries.

The former Secretary of the Federal Ministry, Manfred Kanther, believed strongly in the German Nationality Law

of 1913 which is based on the principle of *jus sanguinis* (and not *jus soli*) — only persons of German “blood” are entitled to German citizenship. Kanther refused to accept the fact that over the past decades Germany has become a country of multi-ethnic immigration, similar to the United Kingdom, France or the United States. Thus, for example, of the nearly 2.05 million Turks living in Germany at the end of 1996, only one-third had residency permits and only a small percentage had acquired German citizenship. Turkish children born in Germany must decide at age eighteen between Turkish and German citizenship — dual citizenship is not allowed. Even in conservative circles, experts and politicians warn that this policy is unrealistic in that it keeps a fairly large minority from participating in the democratic process, and that it will create severe social tensions in the near future.⁹ Because there is no immigration law allowing job-seeking immigrants to enter Germany, all individuals try to enter as refugees and asylum seekers. The Greens and the Social Democratic Party, who form the new government, want to reform the Nationality Law but will probably not pass an immigration law.

A comparison of European countries shows that Germany — although taking in the largest absolute number of asylum seekers in the 1980s and 1990s — is currently at the top of the list of hardliners with respect to asylum policies.¹⁰ It is followed by Switzerland, the United Kingdom and the Netherlands. France and Sweden have the most liberal policies, but have indicated they are likely to follow the German model more closely.¹¹

Treatment of Refugees in Germany

Upon arriving in Germany, individuals are sent to centralized camps, which are usually deserted barracks or public buildings. These camps have many of the indicators of “totalitarian institutions” described in Goffman’s classic study “*Asylums*.”¹² The camps are often located in isolated areas, hard to reach by public transportation, and surrounded by barbed wire with guards posted at the entrance. Camp personnel are given authority equivalent to that of a police force. Individuals living in the camps can be subjected to body searches and their fingerprints forwarded to the state Central Register of Foreigners. Within a short time after arrival, a

computerized distribution system allocates refugees to camps scattered in different German states according to a quota system. This anonymous bureaucratic procedure often ignores individual wishes, for example, to be located near relatives already settled in Germany. After their first year in Germany, individuals can be transferred to one of the many smaller hostels managed privately for profit. The owners of these hostels keep lodgers in overcrowded, extremely shabby conditions while taking high fees from the welfare department for each individual lodger. Among insiders these hostels are called "louse hotels." The living conditions in most camps, homes and hostels are bad and certainly do not offer a traumatized person the rest or the privacy necessary for recovery.¹³

Individuals are given a hearing in front of the German authorities within the first few days after arrival. The asylum authorities must be given a detailed account of the reasons for seeking asylum, and any other relevant details. This report is expected to be complete, and the authorities consider any new or supplemental information added later to be an "aggravation." The hearings, held by an interrogator who is assisted by an interpreter, rarely last more than an hour. A hearing protocol is drafted, the interpreter translates it orally, and it is then signed by the applicant. The time for going over the protocol with the interpreter is often much too short to enable the applicant to make corrections.

A study of hearing protocols taken from patients of the Berlin Center for the Treatment of Torture Victims has shown that interrogators rarely pay attention to clues indicating past trauma and/or torture.¹⁴ The hearings often resemble police interrogations and may therefore have a retraumatizing effect on applicants who have been harassed by the military or the police in their home country. In addition, this procedure ignores the fact that the main characteristics of traumatized persons and torture victims may be their shame and silence, their mistrust and their difficulty speaking about the trauma to a stranger. Memory loss and a tendency to avoid painful topics (a self-protecting psychological mechanism) can cause a person to confuse dates and produce blank spots in biographical data.^{15,16} Cultural differences are also often disrespected in the hearings. For example, while the German au-

thorities expect an individual to prove the fact that they have personally been persecuted, applicants whose culture thinks collectively may be more inclined to report the persecution of their people or political organization as a whole. German courts have begun to pay increasing attention to these issues and to accept "aggravations," omissions, avoidance behavior (e.g., reluctance to report rape) and/or contradictory statements as psychological symptoms that do not necessarily undermine an applicant's credibility.¹⁷

Individuals who find their asylum application rejected, or who are denied legal status for some other reason, may find themselves in "deportation prisons" while they await deportation to their country of origin. This is meant to be something like preventive detention. Care of these individuals does not fall under the jurisdiction of criminal law, but they are nonetheless often treated like criminals. The conditions vary from state to state. For example, North-Rhine Westfalia is known to try to provide humane living conditions in its deportation prisons, whereas the conditions in Berlin are known to be scandalous.¹⁸ The Berlin facility is known not to allow refugees to occupy themselves, to allow them outside for only one hour each day, and to mandate that all conversations with visitors occur behind a screen. Medical services are provided by police doctors who offer only minimum care.¹⁹ An inmate must overcome considerable bureaucratic and financial obstacles in order to see a health care provider from outside the facility.²⁰ Although most individuals are deported or released after a short period of time, some can spend more than a year in detention while awaiting a final decision in their case or because they lack the necessary identification papers. Not surprisingly, a number of suicides have been reported to occur in deportation detention.²¹

Refugee Health Care

In February 1998 Mr. C., his wife and their two-year old son were arrested at dawn and taken into deportation detention. His plea for political asylum (pending since 1990) had been rejected by the asylum authorities, entitling the immigration authorities to expel him immediately. Mr. C. has been under treatment in the Berlin Center for the Treatment of

Torture Victims for several years for the hemiplegia, memory loss, depression and anxiety he suffered after a severe beating by the Romanian secret police (Securitate) in 1989. The doctors from the Berlin Center had given their opinion as medical experts that Mr. C. was suicidal and that his poor health did not permit deportation. The asylum authorities had ignored this expert opinion. A police doctor had declared Mr. C. fit for travel after a medical examination which consisted of nothing more than having him walk three steps forward and back. "If you can walk, you can't be sick," the doctor commented. Merely by accident, Mr. C.'s lawyer was notified of the arrest and managed to get him released. Mr. C. was severely retraumatized by this incident, becoming fearful, disoriented and suicidal: "It is like in Romania when they came and arrested me." The spasms on the paralyzed side of his body increased. After the press reported on the case, a court suspended the repatriation order. Mr. C.'s lawyer is now trying to get a residency permit for him and his family on humanitarian grounds. Mr. C.'s story is not exceptional.²²

Physicians who wish to give adequate care to refugees feel handcuffed, a feeling emphasized by a brochure edited by the Berlin Medical Association, entitled, "Medicine in Handcuffs."²³ Different legal categories entitle people to different types of medical care. Employed individuals who have been granted asylum under Article 16a of the German Constitution or under the Geneva Conventions receive the same coverage as a worker born in Germany. If unemployed, they fall under the Federal Welfare Law, which grants health care to people on welfare. This law, however, denies foreigners health care coverage for such things as orthopedic surgery and devices, visual and hearing aids, and dental care.²⁴

Next in the hierarchy are individuals awaiting decisions from the asylum authority or the asylum court. This waiting period can last for several years because the authorities and courts are poorly staffed and equipped. During the first year of their stay in Germany, asylum seekers fall under the Law on Services for Asylum Seekers which grants medical care only in the case of severe pain or acute illness. In the case of a chronic illness, it is civil servants working at welfare agencies, or, in some cases, public health officers who judge whether outpatient or hospital treatment is absolutely nec-

essary to preserve health. Since the summer of 1997, the Law on Services for Asylum Seekers has provided asylum seekers and “tolerated” refugees with limited welfare payments and health care up to the first three years of their stay. “Tolerated” refugees are those who are denied political asylum but cannot be repatriated because their country of origin is unclear, they do not have and cannot obtain passports, or because their home country refuses to take them back. Individuals in the country illegally are by law not entitled to receive health care. Of course, some may find a sympathetic doctor willing to treat them.²⁵

Asylum seekers must obtain a health insurance voucher (Krankenschein) in order to see a doctor. In the state of Berlin, German welfare recipients receive vouchers directly from the welfare agency. In contrast, asylum seekers are given a voucher application, which must be signed by their doctor. The patient then sends this application to the Welfare Agency which in turn sends the voucher on to the doctor. This awkward procedure is intended to prevent abuse by ensuring that individuals do not pass their voucher on to someone else. As a consequence, doctors receive vouchers (which they need in order to be reimbursed by the welfare agency) only after long delays. This leads many doctors to refuse to treat asylum seekers or to demand a cash advance — something which few can afford. The end result is, of course, that many asylum seekers see health care providers only in the emergency rooms of city hospitals, where the care happens late, is rather anonymous and lacks follow-up. From an economic perspective, these emergency room treatments, which end up being much more expensive than routine appointments with a family physician, cost the state much more in the end.²⁶

Approximately 90 percent of the patients of the Berlin Center for the Treatment of Torture Victims do not have full health insurance coverage, and of those approximately half are asylum seekers. Therefore, most of the treatment provided by the Center — physiotherapy, psychotherapy, art therapy, sophisticated orthopedic and plastic surgery — is not covered by the state and has to be paid for through grants and donations. A doctor or psychologist in private practice can rarely afford to treat traumatized asylum seekers, and, as a result, the few treatment centers which do exist have huge

waiting lists.²⁷

It is a part of German culture that public life is over-regulated by laws, decrees and orders. It follows that the legal framework for refugees and asylum seekers is so complicated, and in part so illogical, that it is hard for nonlawyers to understand, let alone an asylum seeker or nonnative speaker! Political bodies and authorities have shown impressive creativity in inventing new laws every couple of years.²⁸ In addition, the administrative procedures required for the provision of health care to refugees and asylum seekers has resulted in inflated bureaucracy and excessive costs. For example, although demanded by his doctor, Mr. K., a Kurdish patient at the Center suffering from hepatic failure, was denied a subsidy to pay for the special diet and home care he needed. Yet the administrative cost of denying Mr. K an additional 30 DM a day may well have reached over several hundred DM. The driving force behind this complicated bureaucracy is not to save money ("refugees live on our tax money") but to make life for the recipients as difficult as possible.²⁹

Once in the health care system, the lack of privacy and confidentiality afforded to refugees and asylum seekers is of increasing concern. One patient from Sri Lanka discovered that his medical file had been passed on by the welfare department to German Intelligence, which then interrogated him about the political situation in Sri Lanka.³⁰ The German Foreign Law obliges public institutions such as welfare departments to report illegal aliens to the police, but this law does not apply to hospitals or to general practitioners. However, there is growing pressure on nurses and doctors in hospitals to report foreign patients whose residency status is unclear. In Berlin, a student from Sudan was beaten by skinheads, suffered severe cerebral trauma, and was then arrested in his hospital ward. Nurses had reported him to the police because he did not have proper identification. Although still very sick, he was put in deportation detention. He was eventually released, but only because of the intervention by a private refugee aid organization and a private antifascist fund which paid for his hospital treatment.³¹ Several similar cases have been reported to have occurred in Berlin, as well as elsewhere in the country. In addition, the growing number of deportations occurring during medical treatment is alarm-

ing. Police doctors all too readily certify that a patient is fit for travel, and the authorities rarely consider whether adequate treatment facilities exist in the country of origin in their deportation decisions.³²

A primary activity of doctors and psychologists working in centers for asylum seekers and refugees is to give expert opinions to the asylum authorities and to the courts. It is unfortunate how little the authorities know and understand about the nature of extreme trauma and trauma-related diseases. Perhaps ever more striking is the ignorance which exists among the medical community. For example, a survey of psychiatrists in Berlin revealed that only a small minority had ever heard of post-traumatic stress disorder.³³ It is worth remembering that concentration camp survivors faced the same ignorance in postwar Germany.³⁴

Refugees and asylum seekers receive only third class health care. In addition, as the authors of "Medicine in Handcuffs" warn, health care providers are increasingly failing to protect their immigrant, refugee and asylum-seeking patients. A slow erosion of ethical codes is underway that could soon affect other minorities in German society. There is hope, however, when one looks to the grassroots in Germany. A fairly broad community of refugee aid groups exist with many dedicated volunteer staff — among them doctors and psychologists — who provide their services regardless of the cost and legal obstacles. Professional organizations must use their lobbying power to support these efforts and counteract further erosion of the access these individuals have to the health care system.

Conclusion

The fiftieth anniversary provides an opportunity to scrutinize the policies of rich countries towards refugees. While the bulk of the world's refugees are hosted by poor countries, richer countries have the means and structures to provide refugees with both protection and humane living conditions. Tolerance and compassion are not token gifts; they can be either encouraged or eroded by government policies. Refugees must not be used as pawns in election campaigns, as when politicians in Germany and other Western European countries restrict the basic rights of refugees in order to pre-

vent the extreme right from gaining votes. Solutions must be found which take into consideration the capacity of countries to host the flow of refugees. International nongovernmental organizations such as Amnesty International and Physicians for Human Rights, as well as the Office of the UN High Commissioner for Human Rights must monitor the protection of the rights of refugees in rich countries, and put pressure on governments to live up to the promises in the declarations and conventions they have signed.

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3. F. Nuscheler, see note 1, p. 49.
4. Pro Asyl, *Keine Rückführung mit der Brechstange* (Frankfurt am Main: Pro Asyl e.V., 1997) (with support from the European Commission). Pro Asyl is an organization for refugee aid.
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16. S. Graessner, S. Ahmad, F. Merkord and A. Vergessen, "Gedächtnisstörungen bei Flüchtlingen mit Foltererfahrung", in: (eds.) S. Graessner et al., see note 13, pp. 237-252.

17. M. Mohr, see note 6, p. 26.

18. (eds.) Flüchtlingsrat Berlin, Ärztekammer Berlin, and Pro Asyl e.V, *Gefesselte Medizin: Ärztliches Handeln — abhängig von Aufenthaltsrechten* (Berlin: Flüchtlingsrat Berlin, Ärztekammer Berlin, and Pro Asyl e.V, 1998). It is to the credit of the Ärztekammer Berlin, (the Berlin Medical Association) that such a brochure was published. The Berlin Medical Association, under its president, Ellis Huber, is an exception among German state medical associations. The latter are primarily concerned with financial interests of doctors, whereas the former tackles political and ethical issues such as medical crimes under the Nazis.

19. Ibid.

20. Ibid.

21. Ibid.

22. This information was obtained from case files of the outpatient clinic at Berlin Center for the Treatment of Torture Victims.

23. (eds.) Flüchtlingsrat Berlin, Ärztekammer Berlin, and Pro Asyl e.V, see note 18.

24. Ibid.

25. Ibid.

26. Ibid.

27. There are about 10 centers for traumatized refugees in Germany. The Berlin Center — the biggest in staff and funding — treated 462 patients in 1997.

28. This is demonstrated in the following three publications from 1986, 1990 and 1998 on health care for refugees: (ed) Ärztegruppe Asyl, *Abschrecken statt Heilen, zur medizinischen Versorgung von Asylbewerbern* (Berlin: Ärztegruppe Asyl 1986); C. Pross, "Apartheid in der Medizin? Zur Situation der Krankenversorgung von politischen Flüchtlingen," *Berliner Ärzte* 5 (1990):27-28; and (eds.) Flüchtlingsrat Berlin, Ärztekammer Berlin, and Pro Asyl e.V, see note 18.

29. (eds.) Flüchtlingsrat Berlin, Ärztekammer Berlin, and Pro Asyl e.V, see note 18.

30. These are cases from the outpatient clinic at the Berlin Center for the Treatment of Torture Victims.

31. Ibid.

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